

EXECUTED as an Agreement

The Customer:

The Customer hereby acknowledges that it has read and understood the terms of this Agreement.

Company or Trading Name

ABN (if applicable)

Address

Signed*

Name (Print name)

Position

Date

*Where the Customer is not a sole trader, by executing this Agreement, the signatory states that the signatory is duly authorised to sign this Agreement on behalf of the Customer.

William Adams Pty Ltd:

Signed (William Adams' representative)

Name (Print name)

Date

State where signed: Victoria / Tasmania*
*delete whichever does not apply

Schedule

Table with 2 columns: PRODUCT FAMILY, MODELS. Rows include Backhoe Loaders, Wheel Loaders, Integrated Toolcarriers, Hydraulic Excavators, Motor Graders, Track Type Tractors, Track type Loaders, and Articulated Trucks.

William Adams Pty Ltd

ABN 72 009 569 493

3748 Plus Guarantee



BACKGROUND

By an agreement made on the date described below between William Adams Pty Ltd ("William Adams") and the Customer (hereafter referred to as the "Standard 3748 Guarantee Agreement"), William Adams agreed to provide the Customer with an extended maintenance and repair guarantee for the Product for the period of cover described in that agreement.

The initial period of cover under the Standard 3748 Guarantee Agreement has, or is about to, expire. William Adams has offered to provide to the Customer an extended maintenance agreement for the Product from the expiry of the initial period of cover, for a further period of 3 years or 3,000 operating hours, whichever occurs first. An extension to the Extended Guarantee of 1 year or 2000 hours, whichever occurs first, is also applicable.

Customer and Product Details

Customer Name: ("Customer")

Customer Service Contact: Customer Phone Number:

Model: ("Product") Serial Number:

Date of Original Standard 3748 Guarantee Agreement:

Original Date of Delivery: Anticipated Machine Monthly Hours Usage:

Extended Maintenance Service Fee: Upfront: \$ (plus GST); or ("Service Fee")

Deferred Payment Plan: 24 installments of \$..... (plus GST) payable monthly in advance

Payment Method* [] Upfront [] Deferred Payment Plan * One box must be ticked; Conditions Apply (see clause 1.2)

William Adams and the Customer agree as follows:

1. 3748 PLUS GUARANTEE

1.1 AGREEMENT

In consideration of the payment of the Service Fee and the Customer complying with the Customer Responsibilities (as defined in clause 2.2), William Adams will carry out the Dealer Responsibilities (as defined in clause 2.3) in respect of the Customer's Caterpillar® Product (as described above), for the Extended Period of Cover (as defined in clause 2.1) subject to the terms and conditions set out in this Agreement ("3748 Plus Guarantee")

1.2 SERVICE FEE

- (a) The Service Fee is payable by the Customer by one of the following methods as nominated above:
(i) Upfront: Under the Upfront payment method the Service Fee is due 30 days after the end of the month of the date of William Adams' invoice; or
(ii) Deferred Payment Plan: Under the Deferred Payment Plan, the Service Fee is payable in advance in 24 monthly installments by direct debit with the first installment due on the date of this Agreement.
(b) William Adams' obligation to carry out the Dealer Responsibilities will be conditional upon the Customer applying for and receiving credit approval from William Adams on terms and conditions acceptable to William Adams.
(c) If more than one or no payment method has been nominated in this Agreement, the Upfront payment method will automatically apply.

(d) If the Service Fee or any other amount payable to William Adams by the Customer remains overdue for more than 7 days, then without prejudice to any other rights or remedies that may be available, William Adams may by written notice to the Customer immediately terminate this Agreement.

2. MACHINE MAINTENANCE AND REPAIR

2.1 DEFINED COVER

(A) Extended Period of Cover:

The Extended Period of Cover is 3 years or 3,000 hours from the expiry of the initial period of cover described in the Standard 3748 Guarantee Agreement, whichever occurs first.

(B) Extent of Cover:

The Dealer Responsibilities will extend to the whole of the Product as delivered to the Customer except for Excluded Items (as defined in the Standard 3748 Guarantee Agreement), which includes but is not limited to buckets, Caterpillar work tools, non Caterpillar attachments, and other items covered by separate Warranty Statements such as Machine Control and Guidance Products, Ground Engaging Tools, Batteries and Tyres.

(C) Continued Extended Guarantee – Caterpillar Parts and Workmanship

Subject to the terms and conditions of the Standard 3748 Guarantee Agreement, William Adams will continue to provide the Extended Guarantee (as defined in that agreement, for Powertrain and Hydraulics only) for an additional 1 year or 2000 hours from the expiry of the Original Standard 3748 Guarantee Agreement, whichever occurs first.

2.2 CUSTOMER RESPONSIBILITIES

The Customer acknowledges the purpose of the following responsibilities (“Customer Responsibilities”) is to ensure that during the Period of Cover, the Product has been maintained to a known standard of maintenance.

The Customer will:

- (a) Adhere to and carry out all daily, weekly and other routine lubrication, inspections, servicing and maintenance practices as defined in the Caterpillar “Operation and Maintenance Manual” for the Product except for scheduled services and inspections defined as a Dealer Responsibility. The Customer is responsible for adding and recording (for Scheduled Oil Sample (“S.O.S.”) requirements) the use of any make up lubricants and coolant on a daily basis. The cost of such lubricants and coolant are the Customer’s responsibility.
- (b) If the Product has 500 hour scheduled service and inspection intervals, ensure engine and other oil samples are taken in accordance with the “Operation and Maintenance Manual” (generally every 250 hours) and promptly forwarded to William Adams. In these circumstances, William Adams at its cost will provide the Customer with the appropriate S.O.S. kit/s.
- (c) Have William Adams perform all scheduled services and inspection requirements on the Product at 250 (where applicable), 500, and 1,000 hour intervals, as specified by Caterpillar in the “Operation and Maintenance Manual” supplied to the Customer with the Product (250 hour services are not carried out by William Adams where engine oil and filter changes are not required).
- (d) Provide to William Adams sufficient notice (minimum 5 clear days) of each scheduled service and inspection requirement to ensure it can be scheduled to occur on or before the elapsed period. If servicing and inspection by William Adams is precluded on account of trade union, industrial agreement or for other reason, a qualified William Adams service person is to supervise the servicing and inspection of the Product. Such costs will be at the Customer’s expense.
- (e) If the product application dictates a requirement (as reasonably determined by William Adams), for more frequent servicing, be responsible for the costs associated with this additional servicing including top up lubricants.
- (f) Ensure the Product has an operating hour meter throughout the Period of the Agreement by checking and recording the reading at least each week. If it is found defective, the Customer must promptly advise William Adams who will arrange for a new meter to be installed. For any claim made by the Customer the total hours operated must be shown and able to be verified by William Adams by reference to the hour meter and Customer records of meter readings.
- (g) Ensure all relevant personnel within the Customer’s own organisation are aware of the Customer Responsibilities.
- (h) Ensure genuine Caterpillar parts, lubricants and authorised repairers are used for all servicing and repairs of the Product while under this Agreement.
- (i) Ensure that whenever the Product is made available to William Adams for servicing, inspections or repairs, the Product has been cleaned to a standard of cleanliness and in a manner which satisfies the criteria contained in William Adams’ “Contamination Control” processes and procedures. If in the opinion of William Adams the Product is dirty or soiled in a manner which will hinder William Adams’ performance of its obligations or which do not meet the Contamination Control criteria and standards, William Adams may clean the Product and the cost of doing so will be to the Customer’s account.

2.3 DEALER RESPONSIBILITIES

William Adams will:

- (a) Carry out scheduled services and inspections at 250 (where applicable), 500 and 1,000 hour intervals for the Product excluding Excluded Items (as defined in the Standard 3748 Guarantee Agreement), at the machine location (within William Adams’ dealer territory) when requested by the Customer and be available to perform these activities between the hours of 7.00 am and 7.00 pm, 7 days per week (excluding public holidays) at no cost to the Customer (including travel time and mileage costs), subject to the Customer providing a minimum of 5 clear days notice of the scheduled service and inspection being required. Charges may be made by the Dealer if sufficient notice is not provided to allow efficient planning of the scheduled service and inspection.

Other scheduled services and inspections required due to use of the Product in adverse conditions, or due to use of Excluded Items (as defined in the Standard 3748 Guarantee Agreement), or at 250 hour service intervals where engine oil and filter changes are not required, are not included. If these are required to be carried out by William Adams they will be an extra Customer expense.

(b) Provide all parts, labour, fluids, lubricants, S.O.S. kits, materials and other consumable items required for scheduled services and inspection including disposal of used fluids and other consumables for which William Adams is responsible.

- (c) Promptly process S.O.S. analysis and advise the Customer in writing (advanced advice may be provided verbally), of any special attention or action required by the Customer to avoid failure or escalation of damage to the Product.

Collectively the above items comprise the “**Dealer Responsibilities**”.

3. 48 HOUR MACHINE REPAIR GUARANTEE HOURS EXTENSION

3.1 ACKNOWLEDGEMENT

The Customer acknowledges that the 48 hour guarantee (as defined in the Standard 3748 Guarantee Agreement) expired or will expire 3 years or 2,400 / 3,700 / 4,800 hours (as applicable) from the Original Date of Delivery, whichever occurs first.

3.2 48 HOUR GUARANTEE HOURS EXTENSION

If the 48 hour guarantee has expired on account of the Product’s operating hours exceeding 2,400 / 3,700 / or 4,800 hours (whichever is applicable), William Adams will, on and subject to the terms of the Standard 3748 Guarantee Agreement, extend the term of the 48 hour guarantee to 3 years or 4,000 / 6,000 hours (whichever is applicable) from the Original Date of Delivery, whichever occurs first.

4. PRODUCT LINK

(a) The Customer acknowledges that the Product may be fitted with Caterpillar’s equipment remote monitoring and information collection system known as Product Link and if this is the case:

- (i) Data and information concerning the Product, its condition and operation will be transmitted to William Adams, Caterpillar and/or other Caterpillar dealers; and
- (ii) The periodic subscription fees payable to activate and utilize Product Link are included in the Service Fee for the Extended Period of Cover but will be to the account of the Customer should the Customer wish to continue using Product Link on the termination or expiry of the Extended Period of Cover.

(b) The Customer grants to William Adams an irrevocable, royalty free, transferable licence to sell, sub-license, grant access to or in any other way use, all data and information created by, or provided to, William Adams (including without limitation, data and information transmitted via Caterpillar and Product Link), whether before, during or after the Extended Period of Cover in connection with any servicing, maintenance, monitoring, repair or other dealings with the Product. William Adams’ rights under this paragraph survive the termination of this Agreement.

(c) In this clause, “data and information” include without limitation, machine serial number and location, operational data (including but not limited to fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers), details of installed attachments, and machine service and repair history.

5. GENERAL CONDITIONS

5.1 PURPOSE

The objective of this Agreement is to ensure the Customer continues to receive the benefits of consistent, managed maintenance of the Product, resulting in greater reliability, less costly down-time, lower and known operating costs

5.2 EXCLUSIONS AND LIMITATIONS

Notwithstanding any other provisions contained in this Agreement:

(a) Except to the extent that liability cannot lawfully be excluded, in no event will William Adams be liable for any costs, claims, demands, expenses or liabilities of any nature, including, without prejudice to the generality of this clause, claims for the failure of the Product or of any work tools or attachments, to operate for any period, death, personal injury, damage to property, loss of profits and consequential loss (including loss of profits), which may be made against William Adams or which William Adams may sustain, pay or incur as a result of or in connection with this Agreement whether caused by the negligence of William Adams or for any other reason, and the Customer will keep William Adams indemnified in relation to all such claims. In this paragraph “liabilities” means all liabilities whatsoever and howsoever arising and without limiting the generality of the foregoing, includes liability in tort (including liability for negligence), contract, statute, equity or other legal principle and any liability for consequential loss including loss of profits or damage of any kind howsoever caused or arising.

(b) Except to the extent that liability cannot lawfully be excluded, the maximum liability of William Adams under or in connection with this Agreement will not exceed the amount of the Service Fee received by William Adams.

(c) All statutory or implied conditions and warranties are excluded to the fullest extent permitted by law and to the fullest extent permitted by law, William Adams’ liability under any condition or warranty which cannot legally be excluded is limited to:

(i) In the case of goods, the replacement of the goods or the supply of equivalent goods;

(ii) In the case of services, supplying the services again or paying the cost of having the services supplied again.

(d) The 3748 Plus Guarantee will not apply:

(i) Whenever the Product is operated outside William Adams’ dealer territory unless, at the request of the Customer, William Adams has in its absolute discretion agreed otherwise in writing.

(ii) When any delay results from strikes affecting Caterpillar, William Adams, suppliers or carriers, acts of God or other occurrences beyond the control of William Adams.

(e) The 3748 Plus Guarantee does not extend to:

(i) The consumption of maintenance/consumable items (such as grease and top up lubricants).

(ii) Any increased maintenance requirement over and above the manufacturer’s recommendations due to the use of attachments such as hydraulic hammers or caused by the environment or application in which the Product is located or operated.

(iii) Product breakdowns, or the cost of repairing the Product or to improve operating performance due to normal wear and tear or the gradual reduction in operating performance where a breakdown has not occurred. This includes but is not limited to engine tune-up, adjustment to fuel settings or electronic unit injectors, valve and ring repairs designed to improve engine compression or reduce oil consumption, hydraulic system pressure and flow adjustment.

(f) William Adams will provide replacement air cleaner elements for scheduled services and inspections occurring every 1,000 hours for primary elements and every 2,000 hours for secondary elements. Extra replacement air cleaner elements provided or required at all other times will be at the Customer’s expense.

5.3 OTHER ITEMS

(a) This Agreement will be binding on and enforceable by the successors and permitted assigns of each party. William Adams may assign any of its rights or obligations under this Agreement without the Customer’s consent. The Customer may not assign the benefit of this Agreement without the prior written consent of William Adams who may in its absolute discretion withhold or refuse to give its consent.

(b) The 3748 Plus Guarantee is given by William Adams exclusively and is not binding on Caterpillar or any other Caterpillar dealer.

(c) All notifications (whether verbal, written or otherwise) (“notice”) which are required to be given by the Customer to William Adams under this Agreement, will only be treated as having been given at the time when receipt of the notice is confirmed (whether verbally, in writing or otherwise) to the Customer by William Adams. A receipt or other acknowledgment generated automatically by computer or any other automatic means at the time when the notice is delivered or opened will not be treated as confirmation by William Adams of the receipt of the notice.

(d) Except where stated otherwise, all amounts payable or any consideration to be provided by the Customer under this Agreement are exclusive of GST. If GST is imposed on any supply made by William Adams under this Agreement, the Customer will pay or reimburse to William Adams, an amount equal to the GST payable by William Adams on the relevant supply.

(e) If the Service Fee or any other amount payable by the Customer is not paid by the due date for payment, William Adams may charge interest on the overdue amount at an interest rate 4% above the ANZ Bank Business Reference Rate prevailing on the date the amount became due. Such interest will be calculated and compound on a daily basis.

(g) This Agreement and any un-expired part of the Standard 3748 Guarantee Agreement represents the entire agreement between William Adams and the Customer in relation to the subject matter of this Agreement, namely the 3748 Plus Guarantee and the Extended Guarantee. Apart from any un-expired part of the Standard 3748 Guarantee Agreement, any prior representations, arrangements or undertakings are superseded by this Agreement. The Customer acknowledges and warrants to William Adams that it has not relied on any representation, warranty or promise not contained in this Agreement or the Standard 3748 Guarantee Agreement.

(h) This Agreement is governed by the law in force in the State of Victoria or Tasmania in which this Agreement is signed by William Adams as indicated herein and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them for determining any dispute concerning this Agreement or the transactions contemplated by this Agreement.

(i) William Adams’ failure to or delay in exercising a power or right does not operate as a waiver of that power or right.

(j) Any amendment or variation to this Agreement is only effective if it is in writing and signed by both parties.