

## **MERTZ MANUFACTURING, LLC** **EXPRESS PRODUCT WARRANTY**

Subject to the exceptions and limitations set forth below, Mertz Manufacturing, LLC (“MERTZ”), warrants that products which are designed, manufactured, or sold by them (the “**Products**”) conform to the specifications published by MERTZ for the corresponding part numbers (the “**Specifications**”) and are free from defective workmanship and materials for the periods indicated below.

### **Exceptions To Warranty**

This warranty does not cover defects or failures caused by:

1. improper shipping or handling by other than MERTZ or service representatives authorized by MERTZ; or
2. dirt, scale, rust, or other particles; or
3. improper disassembly and reassembly, or inadequate inspection and service by other than MERTZ or service representatives authorized by MERTZ; or
4. disasters or forces of nature; or
5. abuse, abnormal use, accidents or any other cause beyond the control of MERTZ; or
6. improper or inadequate storage, maintenance or repair; or
7. operation of the Product not in accordance with instructions issued with the Products or inconsistent with accepted industry practices; or
8. use for a purpose or in a manner for which the Product was not intended; or
9. use of the Product in a manner inconsistent with the Specifications; or
10. failure of follow the instructions contained in the MERTZ Instruction Manual for the Product; or
11. use of any attachment not approved by MERTZ for use with the Product.

### **Products Not Covered**

This warranty does not cover the following items:

Engines and engine accessories care covered only by the warranty made by the engine manufacturer, and are not covered by this warranty.

Parts that are not genuine original manufacturer service parts are not covered by this warranty.

Maintenance parts such as but not limited to: filters, brakes, rod ends, light bulbs, general fasteners, fuses and related parts, spark plugs, injector nozzle assemblies or parts, lubricants, coolants, belts, glass, cutting blades, greasible pins, bushings, spring systems, seats, decals, and screens (wire cloth).

Products which are damaged and sold as salvage units or in an “as is” condition are not covered by this warranty.

Wear parts such as, but not limited to, bucket cutting edges or teeth, trencher teeth, auger teeth, chain drives, tires, tracks, backhoe stabilizer feet or street pads, grouser and sprocket rollers, or nose rollers and/or bearings are not covered by this warranty.

Products which were not purchased in the United States, Puerto Rico, or Canada are not covered by this Warranty.

### **Products Covered**

This warranty specifically covers the following items:

The frame of the machine is covered by this warranty for workmanship subject to the Exceptions to Warranty listed above.

The loader or boom arms on the machine are covered by this warranty for workmanship subject to the Exceptions to Warranty listed above.

The coupler attachment plate on the machine is covered by this warranty for workmanship to the Exceptions to Warranty listed above.

The track weldment on the machine is covered by this warranty for workmanship subject to the Exceptions to Warranty listed above.

The operator stand plate on the machine is covered by this warranty for workmanship subject to the Exception to Warranty listed above.

### **Duration of Warranty**

Unless further limited below, this warranty is effective until the first to occur of: (i) three (3) years after delivery of a Product to the purchaser; of (ii) three thousand (3000) hours of operation. Products which are purchased for, or placed into, rental or hire to third parties are limited to a 1,000 hours or one (1) year.

Batteries are warranted for twelve (12) months from date of purchase on a pro-rated basis with free replacement during the first ninety (90) days.

Tracks are warranted on a pro-rata basis effective until the first to occur of: (i) one year from date of delivery to the purchaser; of (ii) four hundred hours of use, Mertz or its authorized Distributor/Dealer will replace that track at no cost including replacement labor. If the original track becomes unserviceable within the first 200 hours of use, Mertz or its authorized Distributor/Dealer will replace the track with a prorated discount from the cost of the track and no charge for the replacement labor. If the track becomes unserviceable within the first 400 hours of use, Mertz or its authorized Distributor/Dealer will replace the track with a prorated discount from the cost of the track with no replacement labor paid. First, divide the number of hours on the original tracks, the hours on the unit, by 400 to determine the “wear percentage factor.” Next, Subtract the result from 1 to determine the “prorated discount” to be applied to the

coast of the track. If a unit has 150 hours and requires a new track; divide 150 by 400 which equals .38, the “wear percentage factor.” Subtract that number from 1 which equals .62, or 62%, the “prorated discount.” In this case, the dealer will receive a warranty credit in the amount of his cost for the track less 62%. If the hours are less than 200 on the original track, a labor allowance of ½ hour will also be credited. No replacement labor will be paid if yours are over 200.

ANY IMPLIED WARRANTIES NOT NEGATED HEREBY WHICH MAY ARISE BY OPERATION OF LAW, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY EXPRESS WARRANTIES NOT NEGATED HEREBY, ARE GIVEN SOLELY TO THE INITIAL BUYER AND ARE LIMITED IN DURATION TO ONE(1) YEAR FROM THE DATE OF SHIPMENT BY MERTZ.

### **Exclusion of Consequential and Incidental Damages**

IT IS SPECIFICALLY ACKNOWLEDGED THAT THIS WARRANTY, ANY OTHER EXPRESS WARRANTY NOT NEGATED HEREBY, AND ANY IMPLIED WARRANTY NOT NEGATED HEREBY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, DO NOT COVER, AND MERTZ WILL IN NO EVENT BE LIABLE FOR, INCIDENTAL OR CONSEQUENTIAL DAMAGES, including, but not limited to lost profits, the cost of disassembly and shipment of the defective Product, injury to other property, damage to Buyer’s or end user’s product, damage to Buyer’s or end user’s processes, loss of use, or other commercial losses. Where, due to operation of law, consequential and incidental damages under this warranty, under any other express warranty not negated hereby or under any implied warranty not negated hereby (INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) CANNOT BE EXCLUDED, SUCH DAMAGES ARE EXPRESSLY LIMITED IN AMOUNT TO THE PURCHASE PRICE OF THE DEFECTIVE PRODUCT. THIS EXCLUSION OF CONSEQUENTIAL AND INCIDENTAL DAMAGES, AND THE PROVISION OF THIS WARRANTY LIMITING REMEDIES HEREUNDER TO REPLACEMENT, ARE INDEPENDENT PROVISIONS, AND ANY DETERMINATION THAT THE LIMITATION OF REMEDIES FAILS OF ITS ESSENTIAL PURPOSE OF ANY OTHER DETERMINATION THAT EITHER OF THE ABOVE REMEDIES IS UNENFORCEABLE, SHALL NOT BE CONSTRUED TO MAKE THE OTHER PROVISIONS UNENFORCEABLE.

### **Exclusion of Other Warranties**

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

## **Severability**

Any provision of this warranty which is invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, prohibition or unenforceability without invalidating the remaining provisions hereof, and any such invalidity, prohibition or unenforceability in any such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.