



## HILTI (MALAYSIA) SDN. BHD. TERMS AND CONDITIONS

### 1. GENERAL

1.1 In these conditions the following words have the meanings shown:

"Buyer" means the person, firm or company purchasing Goods

"Company" means Hilti (Malaysia) Sdn Bhd or one of its associated or subsidiary companies as the case may be

"Contract" means the agreement between the Company and the Buyer for the purchase of Goods from the Company by the Buyer

"Contracts" includes all agreements between the Company and the Buyer for the purchase of Goods from the Company by the Buyer

"Goods" means the goods and services supplied by the Company and purchased by the Buyer on the terms of the Contract

"Saleable means those unused items in original packaging, Condition" defect-free and in unbroken quantities

1.2 Unless agreed otherwise, these conditions shall be incorporated in all Contracts of the Company to sell Goods and shall be the entire conditions under which the sale takes place. All other terms, conditions or other representations are excluded from the Contracts between the Buyer and the Company including any terms and conditions which the Buyer may purport to apply under any order for Goods.

1.3 These conditions shall prevail unless expressly varied in writing and signed by a Director on behalf of the Company.

1.4 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the agents or employees of the Company shall be construed to vary in any way any of the conditions under this Contract unless otherwise agreed in accordance with Clause 1.3 above.

1.5 Any written quotation, estimate and/or advertised price for the Goods shall be an invitation to treat and no binding contract shall be created by placing an order on the Company's website or otherwise until the Company has acknowledged the order to the Buyer either verbally or in writing as appropriate.

**Hilti Malaysia Sdn. Bhd. (157721-A)**

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## 2. PRICE

- 2.1 Subject to Clause 2.2 below, the price payable for Goods shall, unless otherwise stated by the Company in writing and agreed on its behalf, be the price list of the Company current at the date of dispatch and in the case of an order for delivery by installments the price payable for each installment shall be the Company's current price list at the date of the dispatch of each installment.
- 2.2 Unless otherwise agreed, the Company's prices may be subject to variation to take account of variations in wages, materials or other costs since the date of the Company's quotation (or if no quotation is issued) the Buyer's order. The Company accordingly reserves the right to adjust on reasonable basis (reasonable objection by the Buyer not unreasonable withheld) the invoice price payable by the amount of any increase or decrease in such costs after the price is quoted via notice in writing to the Buyer and the invoice so adjusted shall be payable as if it were the original Contract price.
- 2.3 All prices are exclusive of Goods and Services Tax. The Buyer shall be liable for all and any local taxes or charges as appropriate.
- 2.4 The Buyer agrees that section 39(3) of the Sale of Goods Act 1957 (Act 32) ("the Act") shall not apply to Goods sent by the Company.
- 2.5 The Company shall be entitled to invoice the Buyer by post, facsimile or email for the price of the Goods in Ringgit Malaysia or such other currency as the Company shall agree in writing.
- 2.6 The Company has the right to invoice the Buyer for the cost of any packaging, transportation of the Goods or any additional costs resulting from any other alteration made by the Buyer on or at the time of delivery or upon notification by the Company that the Goods are awaiting collection. Any such additional costs may be invoiced by the Company in Ringgit Malaysia or such other currency as the Company shall agree in writing.

## 3. FUEL SURCHARGE/ CARRIAGE AND INSURANCE

- 3.1 The cost of fuel surcharge to the Buyer's premises in Malaysia shall be in accordance with the charges pre-agreed between the Buyer and the Company.
- 3.2 The cost of carriage and insurance of the Goods to the Buyer's premises in Malaysia shall be in accordance with the charges laid out in the Company's current price list.
- 3.3 In all other cases the price of the Goods shall be exclusive of carriage and insurance to the Buyer's premises.
- 3.4 Export orders shall be charged Free On Board (port of Malaysia).



#### 4. ADDITIONAL COSTS

The Buyer agrees to pay for any loss or extra costs above the quoted price for the Goods which are directly or indirectly incurred by the Company through the Buyer's instructions or lack of instruction or through failure or delay in taking delivery or through any act or default on the part of the Buyer, its servants or agents.

#### 5. TERMS OF PAYMENT

5.1 All payments due under any Contract are due and payable within thirty (30) days from the date of the invoice issued to the Buyer. The Buyer shall not be entitled to exercise any set off, lien or any other similar right or claim.

5.2 If the Goods are delivered in installments, the Company shall be entitled to invoice each installment as and when delivery thereof has been made and payment shall be due in accordance with Clause 5.1 above in respect of each invoice.

5.3 Any failure by the Buyer to either pay any due installment in accordance with this Contract or failure to give delivery instructions in respect of any Goods shall cause the whole of the price for Goods already manufactured at the time of such a default, to become due forthwith without any notice

5.4 Prompt payment shall be a condition precedent to future deliveries of the Goods due under any Contract.

5.5 Without prejudice to any other rights it may have, the Company is entitled to charge and to be paid interest at 2% per month above the then current base rate of HSBC Bank Malaysia Berhad on any overdue payment of the price of the Goods or the price of any installments thereof.

#### 6. DELIVERY

6.1 The period for delivery shall be the period within which the Goods are intended to be despatched from the Company's premises and shall be calculated from the date of the receipt by the Company of the Buyer's order or the date of receipt of all necessary information to enable the Company to manufacture or procure the manufacture of the Goods whichever shall be the later and the Buyer shall take delivery of the Goods within such period. If no period is stipulated by the Company, then delivery will be such time after receipt of instructions as the Company thinks reasonable.

6.2 All times or dates given for delivery of the Goods are given in good faith but without any responsibility on the part of the Company. Time of delivery shall not be of the essence of any Contract nor shall the Company be under any liability for any delay beyond the Company's control.

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- 6.3 Where the Goods are handed to a carrier for carriage to the Buyer or the Malaysia port for export, any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purpose of sections 50, 51 and 52 of the Act.
- 6.4 No liability for non-delivery, loss or damage to the Goods occurring post delivery or for any claim that the Goods are not in accordance with the Contract will attach to the Company, unless claims to that effect are notified in writing by the Buyer to the Company (and in the case of claims for non-delivery, loss or damage with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods):
- 6.4.1 within 1 day of delivery in the case of partial loss or damage of Goods in transit or delivery;
- 6.4.2 within 1 day of delivery of the Goods in the case of defective Goods; or
- 6.4.3 within 1 day of delivery for any other non-compliance with the Contract.
- 6.5 If the Buyer fails to give notice in accordance with Clause 6.4 above, the Goods shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be deemed to have accepted the Goods and shall be bound to pay for the same accordingly.
- 6.6 All requests for proof of delivery must be made within a period of 21 days following the date of the invoice.
- 6.7 The Buyer agrees that in the event of a valid claim for non-delivery, loss or damage to the Goods and/or non-compliance with the Contract, the Company may at its sole discretion either reprocess or replace the Goods at its own expense but shall then be under no further liability in connection with such non-delivery, loss, damage or non-compliance.
- 6.8 If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods have been notified as ready for delivery, the Company may at its sole discretion store the Goods at the risk of the Buyer and take all reasonable steps to safeguard and insure them at the cost of the Buyer, provided that the Buyer shall be immediately informed thereof.
- 6.9 The Company shall have the right to make delivery by installments of such quantities of the Goods and at such intervals as it may decide. Any defect in any installment shall not be a ground for cancellation of the remainder of the installments and the Buyer shall be bound to accept further deliveries thereof.

## 7. RETURNS AND CANCELLATIONS

- 7.1 The Company must be notified of all returns within 2 weeks from delivery and subject to 10% restocking fees. Products must be in saleable condition to qualify for return.



Saleable condition is defined as those unused items in original packaging, defect-free and in unbroken quantities. All returns are subject to Hilti inspection and acceptance. Request for return after 2 weeks of delivery will not be accepted. Non-stocking, non-standard items and discontinued items are not eligible for return credit.

- 7.2 The following products are not eligible for return,
- a) All Chemical products
  - b) Products specially purchased / ordered for customer
  - c) Products sold under promotion or selloff

## 8. PASSING OF TITLE AND RISK

- 8.1 From the date of delivery to the Buyer the Goods shall be at the risk of the Buyer who shall be solely responsible for their custody and maintenance, but unless otherwise expressly agreed in writing, the Goods shall remain the property of the Company until all payments due to the Company from the Buyer under the Contract or any other contract have been made in full unconditionally and credited to the Company's account. Whilst the ownership of the Company continues the Buyer shall keep the Goods separate and identifiable from all other goods in its possession as fiduciary agent and bailee for the Company.
- 8.2 In the event of any resale by the Buyer of the Goods the beneficial entitlement of the Company shall attach to the proceeds of the sale or other disposition thereof, so that such proceeds or any claim thereof shall be assigned to the Company.
- 8.3 In the event of failure to pay the price in accordance with the Contract, the Company shall have the power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.
- 8.4 Pending payment of the full purchase price of the Goods, the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business for which the Goods are for the time being used in an amount at least equal to the balance of the price for the same time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest and shall be produced to the Company on request.

## 9. REPAIR POLICY

- 9.1 The Hilti Lifetime Service means that the tool will be free from defects caused by manufacture for a period of twelve (12) months from the date the invoice is issued by Hilti, depending on the tool model, Provided That the tool is operated, handled,



cleaned and serviced in accordance with the Hilti Operating Instructions provided in your RED Hilti Box. Only original Hilti consumables, components and spare parts are used in this premium tool.

- 9.2 If the tool is not covered by the warranty period, Hilti will issue a quotation for repairs above Ringgit Malaysia 200.00 and will issue a quotation for repair below Ringgit Malaysia 200.00 upon request in the event of a request for repairs. Please note that Hilti Lifetime Service and Repair Cost Limit does not apply to all tools, please call our customer service for more information at 1800-88-0985 or visit our website at [www.hilti.com.my](http://www.hilti.com.my).
- 9.3 Hilti reserves the right not to repair any Hilti machines / tools with missing parts and or fully or partially disassembled machines / tools received for repairs. Hilti also reserves the right not to repair any machines / tool damages caused by vandalism, rough or negligent handling.
- 9.4 There will be a minimum charge of Ringgit Malaysia 100.00 for each returned unrepaid machine / tool irrespective of whether the tool is still under warranty.
- 9.5 There will be a minimum charge of Ringgit Malaysia 200.00 for tools you have requested for us to repair and you request for us to dismantle after repair is completed irrespective of whether the tool is still under warranty.
- 9.6 Hilti is not obligated for direct, indirect, incidental or consequential damages, losses or expenses in connection with, or by reason of, use of, or inability to use the products for any purposes. Implied warranties of merchantability or fitness for a particular purpose are specifically excluded.
- 9.7 Customer is responsible for all transportation charges and insurance of any tools returned to the Hilti sales office/repair centre and any customs or imports duties for any replacement parts, including units under warranty.
- 9.8 Hilti reserves the right to take possession and dispose of the tool at its own discretion should any of the tools remain in Hilti's possession for more than four (4) weeks after quotation or repair and the customer fails to collect the tool.
- 9.9 Hilti reserves the right to amend the above repair policy without prior notice.

## 10. WARRANTIES

- 10.1 All Goods are sold with the benefit of and subject to the conditions of the warranty supplied with them, which is available for inspection on request. If no specific warranty is supplied with the Goods, Hilti will, at Hilti's sole option and absolute discretion and subject to Clause 10.2, replace, refund, repair the Goods if Hilti is notified of any defect within twelve (12) months of delivery of the Goods.



- 10.2 Notwithstanding Clause 10.1 or any other clause in these conditions, nothing herein or in any warranty given by the Company shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Buyer, its servants and agents including without limitation any failure by the Buyer to comply with any recommendations of the Company as to storage and handling or use or servicing of the Goods, use of the Goods with other goods or other misuse of the Goods or accident or fair wear and tear of the Goods or failure to use the Goods in accordance with applicable law.
- 10.3 The Company shall not be liable for any damage, loss, costs or expenses of any type whatsoever and however arising from or in any way connected to or with the installation of the Goods by the Buyer or any of its employees, agents or contractors. The Buyer hereby indemnifies the Company against all actions, costs, charges, losses, damages and expenses which the Company may incur or sustain by reason of any action brought by any third party relating in any way to the installation of the Goods by the Buyer or any of its employees, agents or contractors.
- 10.4 Except as provided for in these conditions, any warranties, (whether express or implied by statute or common law or howsoever), including without limitation those of satisfactory quality or of fitness for a particular purpose even if that purpose is made known expressly or by implication of the Company) are hereby excluded.

## 11. BUYER'S RESPONSIBILITY

- 11.1 The selection of the Goods suitable for the Buyer's purposes depends on a range of factors. These factors include, but are not limited to, on-site conditions or other circumstances of the proposed application of the Goods known only to the Buyer. The Buyer is solely responsible for satisfying itself that the data supplied to the Company on which information or recommendations made by the Company are based is correct and that any assumptions made by the Company to supplement that data are suitable for the Buyer's purposes.
- 11.2 The Company accepts no responsibility of any nature whatsoever for information or advice it supplies, where any data supplied by the Buyer is incorrect or where any assumption which the Company has made is unsuitable for the Buyer's purposes. The Buyer is encouraged to raise with the Company any questions it may have.
- 11.3 Services

The Company may, at the Buyer's request and subject to these conditions, perform the services listed herein below; in the event that services are performed by the Company on the Buyer's premises, the Buyer is solely responsible for:

- a) providing safe access and a safe working environment to the Company's personnel, including the Company's employees, agents and contractors;



- b) ensuring that all consents and permissions required for the Company to perform the services are in place;
- c) providing facilities and utilities, including power and lighting, which are necessary for the Company to perform the services;
- d) Ensuring that the Buyer's premises are free from health and safety hazard; and
- e) The safety and well-being of the Company's personnel, subcontractors and property whilst on the Buyer's premises, and the Buyer shall be liable for any death, personal injury or loss of property, except to the extent caused by the Company's or its subcontractor's negligence.

## 12. LIABILITY

- 12.1 Notwithstanding anything contrary, the Company's liability to any user for personal injury or death caused by its negligence or fraud is not limited.
- 12.2 The Company shall not be liable (whether or not the Company has been advised of the possibility of such loss) in contract, tort, negligence or otherwise howsoever arising for any claim, damage, loss or costs in respect of:
  - 12.2.1 any losses special to the Buyer, any direct loss of profits, any direct loss of turnover and/or any direct loss of revenue; and
  - 12.2.2 any indirect or consequential loss or damage howsoever caused including without limitation any losses special to the Buyer, any loss of profits, loss of turnover, loss of revenue, loss of business and/or loss of data and for the avoidance of doubt, the sub-clauses in this Clause 12.2 are intended and agreed by the Buyer to be severable.
- 12.3 Subject to Clause 12.1, the aggregate liability of the Company (whether in contract, tort, negligence or breach of statutory duty or otherwise) to the Buyer for any loss or damage shall be limited to the price of the Goods, and in the case of warranty claim, refund of purchase price of the Goods or, at Hilti's option and absolute discretion, replacement or repair of the Goods or re-performance of the services, as the case may be.
- 12.4 The Buyer shall be liable for and shall indemnify the Company its affiliates, officers, agents and other partners and employees against any and all expenses (including legal costs on a solicitor-client basis), loss, liability or proceedings suffered by the Company and/or a third party arising as a result of or in connection with any act, omission, negligence, and/or breach of the terms of this Contract or otherwise through the default of the Buyer.





12.5 The Company makes no representation or warranty that the use of the Goods does not infringe the rights of any third party and the Company accepts no liability in this respect.

### 13. DEFAULT OR INSOLVENCY OF BUYER

13.1 In the event that:

13.1.1 the Buyer shall be in breach of any of its obligations under the Contract;

13.1.2 any distress or execution shall be levied on the Buyer's property or assets; or

13.1.3 if the Buyer (an individual or partnership) shall make or offer to make any voluntary arrangement or composition with its creditors or become bankrupt or if any bankruptcy petition be presented against him;

13.1.4 (if the Buyer is a company) has an administrative receiver or administrator appointed or makes a voluntary arrangement with its creditors or commences to be wound up; or

13.1.5 otherwise if the Buyer fails to pay its debts as and when they fall due; or

13.1.6 such equivalent event in Clauses 13.1.1 to Clause 13.1.5 occurs to the Buyer in its local jurisdiction; the Company at its discretion and without prejudice to any other right or claim may by notice in writing forthwith determine wholly or in part the Contract and any and all of the other Contracts between the Company and the Buyer and may (without prejudice to the Company's rights subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend further delivery of the Goods and recover possession of any Goods not paid for.

### 13A. INTELLECTUAL PROPERTY

The Buyer undertakes not to, whether by itself, its proprietor/partners, servants or any of them or otherwise howsoever, order, export, import, offer for sale or supply, sell, supply, distribute or otherwise deal with the Goods or any other goods under the brand names(s) or trade mark(s) owned or used by the Company or the Company's supplier which are not supplied by or through the Company or which are imported through parallel trade or which are faked products.

The Buyer shall fully co-operate with the Company with a view to stopping any infringement of any intellectual property rights (including, but not limited to trade mark rights) of the Company in the Goods.

The Buyer acknowledges and accepts that the Company retains all intellectual property belonging to the Company or the Company's affiliates or any branding,



packaging, design, trade name that is similar or identical to the Company's intellectual property.

In case of breach of the aforesaid terms, the Company shall be entitled to institute legal proceedings against the Buyer for all losses and damages suffered as a result thereof on full indemnity basis.

14. FORCE MAJEURE

The Company shall be entitled to delay or cancel delivery or to reduce the amount of the Goods delivered if it is prevented from, hindered or delayed in manufacturing, obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including, but not limited to, strikes, lock-outs and other industrial actions, riots, acts of God, flood, lightning, revolution, acts of terrorism, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of or failures of supplies of power, fuel, transport, equipment and raw materials which adversely affect Hilti's supply chain or breakdown of plant or machinery.

15. WAIVER

The waiver by the Company of any right or the failure by the Company to exercise any right or to insist on the strict performance of any provision of this Contract shall not operate as a waiver of, or preclude any further exercise or enforcement of any other right or provision of this Contract.

16. SEVERABILITY

15.1 Each provision of this Contract is severable and distinct from the others. The parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If in any particular case any of these conditions shall be held to be invalid or shall not apply to this Contract, the other conditions shall continue in full force and effect.

17. ASSIGNMENT

The Buyer may not assign, sub-contract or in any way dispose of its rights or obligations under this Contract without the prior written consent of the Company.

18. NOTICES

18.1 Any notice required to be served under this Contract shall be served on the Company at its registered office in Malaysia or such other address as the Company may from



time to time notify to the Buyer and on the Buyer at the address notified to the Company in its registration application by first class post, registered air mail or by email or facsimile. The Buyer is responsible for notifying the Company in writing of any change of address, email address or fax number from those in the Buyer's registration application.

- 18.2 Any such notice served by post shall be deemed to have been served in the case of a destination in Malaysia 5 days after the date of dispatch and seven days after the date of dispatch to any other destination. In the case of service by email, when the email is available to read in the recipient's inbox and in the case of facsimile when the addressee's machine acknowledges receipt thereof.

## 19. FAIR COLLECTION NOTICE

- 19.1 The Company shall comply with its on-line Privacy Policy when the Buyer purchases the Goods from the Company through the Company's website.

- 19.2 The Company may process all the details it obtains from the Buyer to enable the Company to do business with the Buyer and for the specific purpose of selling the Goods to the Buyer. The Company shall obtain explicit consent from the Buyer for the collection by the Company. For the avoidance of any doubt, the Company shall not be collecting from the Buyer sensitive data as defined by and under Malaysia's Personal Data Protection Act such as racial origin, trade union membership and commission of offences.

- 19.3 Any information gathered will only be used in the context of the business the Company conducts for the Buyer and for any other purpose required for the fair processing of the Buyer's data. The Buyer may notify the Company to cease processing the data if it is unhappy with the way the Company uses the Buyer's personal data or wishes the Company to cease using any data which the Buyer has voluntarily given to the Company.

- 19.4 The Company may disclose the Buyer's personal data as required by law, including but without limitation, to prevent a crime, discharge a statutory duty or as required by a court order in the context of legal proceedings or to any third parties who process personal data on the Company's behalf, such as computer maintenance companies and any group company within the Company's organisation.

## 20. GOVERNING LAW

This Contract shall be construed and operated in accordance with the laws of Malaysia and all proceedings in connection herewith shall be brought in the Courts of Malaysia.



21. SIGNED CONTRACT

Should the Goods shown on the invoice and/or delivery order be supplied under signed Contract, all terms printed on such contract form will apply in addition to the terms herein contained.

22. HEADINGS

Section titles in the Terms and Conditions are for convenience and do not define, limit or extend any provisions of the Terms and Conditions.