

## TERMS AND CONDITIONS OF PURCHASE ORDER

All Purchase Orders are subject to the following terms and conditions.

### 1. PURPOSE AND USE

- 1.1. These Terms and Conditions (the "Terms") apply to the sale of items by us ("HITACHI"). The Goods and/or Services (as applicable) may be more fully described in the Specifications (defined below). Changes to these Terms are not part of the Contract unless HITACHI expressly agrees to them in writing. Clause 3 describes how the Parties may enter into a binding contract for the Goods or Services.
- 1.2. Any Purchase Order received from the CUSTOMER shall be subject to the conditions stated herein unless specifically varied by HCSA in writing and these conditions shall at all times take precedence over any terms, conditions or stipulations contained in any of the CUSTOMER'S documentation as may be in conflict herewith. Should the CUSTOMER in any way purport to attach any conditions which vary, amend or are in conflict with the conditions set forth herein, then, notwithstanding anything to contrary stipulated by the CUSTOMER, the conditions set forth herein shall prevail and be of full force and effect unless specifically varied by us in writing with specific reference to the CUSTOMER'S contrary documentation.
- 1.3. All specifications, illustrations, drawings, diagrams, price lists, dimensions, delivery dates and performance figures furnished by HITACHI and representations in regard thereto, are proximate and furnished for information purposes only, and, unless specifically guaranteed by HITACHI in writing, shall not form part of the Contract or bind HITACHI in any way.

### 2. DEFINITIONS

- 2.1. "**Affiliate**" of an entity means any other entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such entity.
- 2.2. "**CUSTOMER**" means the Entity buying Goods and/or Services from HITACHI.
- 2.3. "**Contract**" is comprised of (a) these Terms, (b) the applicable Purchase Order, (c) the Specifications, if applicable, (d) any other master agreement, scheduling agreement, or written document issued by or agreed to in writing by the CUSTOMER with respect to the Goods or Services that reference these Terms.
- 2.4. "**Control**" (and with the terms "**Controlled by**" and "**under common Control with**") means, with respect to any person or entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another person or entity, whether through the ownership of voting securities, by contract, or otherwise.
- 2.5. "**Entity**" means any person, association, business, close corporation, company, concern, enterprise, firm, partnership, juristic person, trust, undertaking, voluntary association or other similar entity, whether corporate or un-incorporate.
- 2.6. "**HITACHI**" means Hitachi Construction Machinery Southern Africa Co. (Pty) Ltd.
- 2.7. "**Goods**" means the Goods identified in any applicable Purchase Order.
- 2.8. "**Parties**" means collectively the CUSTOMER and HITACHI, and references to a "**Party**" shall be to any of the foregoing individually, as the context may require.
- 2.9. "**Purchase Order**" or "**Order**" is a document issued by CUSTOMER to HITACHI to evidence the CUSTOMER'S purchase of Goods and/or Services.

- 2.10. **“Seller”** means Hitachi Construction Machinery Southern Africa Co. (Pty) Ltd with Registration Number: 1951/002418/07.
- 2.11. **“Services”** means the services identified in a Purchase Order and/or the Specifications.
- 2.12. **“Specifications”** means all CUSTOMER-approved specifications written instructions, all drawings including the component drawings, specification sheets, statements of work, samples and such other technical details, data or proprietary information referenced in the Purchase Order.

### **3. OFFER, ACCEPTANCE, ORDER OF PRECEDENCE**

- 3.1. The CUSTOMER must place a Purchase Order for Goods and/or Services in writing which Purchase Order constitutes the CUSTOMER'S offer to HITACHI for the purchase of Goods and/or Services identified in that Purchase Order.
- 3.2. HITACHI shall be entitled to accept the CUSTOMER'S Purchase Order in whole or part.
- 3.3. HITACHI shall not be obliged to accept any Purchase Order unless it is reduced to writing. In the event of the CUSTOMER supplying HITACHI with a verbal order, then, and in that event only, HITACHI shall e-mail the CUSTOMER a written confirmation of the said verbal Order, which written confirmation shall be deemed to be binding on the CUSTOMER, unless the CUSTOMER objects to the terms of the written confirmation within 3 days of date of dispatch of the written confirmation by HITACHI.
- 3.4. Upon acceptance by HITACHI of the CUSTOMER'S written Purchase Order, or upon dispatch by HITACHI of the written confirmation and acceptance of a verbal Purchase Order to the CUSTOMER, the Contract shall be deemed to have been concluded between the CUSTOMER and HITACHI on the terms and conditions set forth herein.
- 3.5. A binding Contract shall also be concluded on receipt of the CUSTOMER'S signature on HITACHI's written quotation and such Contract shall be subject to the Terms.
- 3.6. HITACHI's acceptance of the Purchase Order is limited to the specific terms of the Purchase Order to the extent that they are not in conflict with the Terms. Any additions, modifications, or different terms proposed by the CUSTOMER, including any standard terms or forms that the CUSTOMER may use or submit to HITACHI, are material and expressly rejected and are not part of the Contract unless specifically agreed to in a writing signed by an authorised representative of HITACHI. Any reference on the face of the Purchase Order to HITACHI'S quotation or other prior communication does not imply acceptance of any term, condition or instruction in the quotation, but is solely to incorporate the description or specifications of the Goods or Services to be supplied to the CUSTOMER, and only then to the extent that such description or specifications are not in conflict with the Terms.
- 3.7. In the event of any conflict between any of the documents that comprise the Contract, the following priority shall be applied: (a) the Terms; (b) the Specifications; (c) the Purchase Order (excluding references to the Terms).
- 3.8. HITACHI shall be bound to execute the Order according to the terms and conditions of the Contract and in particular those terms and conditions relating to the Specifications and samples (if any).
- 3.9. Purchase Orders and quotations are based on information and measurements supplied by the CUSTOMER or measurements taken on behalf of the CUSTOMER and HITACHI will accept no responsibility for incorrect measurements and/or incorrect description of materials, the correctness of which lies solely with the CUSTOMER. It is accepted conclusively that the CUSTOMER has checked and agreed to the measurements, description of materials and conditions of sale as stated on the Purchase Order or quotation of HITACHI.
- 3.10. When HITACHI is required to manufacture or supply Goods and/or Services to the CUSTOMER'S Specifications and/or drawings, or renders Services according to the CUSTOMER'S instructions, or those of its nominees, HITACHI accepts no responsibility for the efficiency or workability of Goods so manufactured or Services so carried out.

- 3.11. Where Specifications are to be supplied, the CUSTOMER shall supply such Specifications in a reasonable time to enable HITACHI to complete delivery timeously.
- 3.12. In the event of the CUSTOMER requesting HITACHI to perform additional Services, it shall request such additional Services in a written Purchase Order to HITACHI and, if accepted by HITACHI, such acceptance shall be communicated to the CUSTOMER in writing, and such additional Services shall then be undertaken by HITACHI at its normal rates (unless otherwise specified in writing) on the Terms.
- 3.13. Any alteration to the Goods at the CUSTOMER'S request will be for the CUSTOMER'S account calculated at HITACHI's prevailing rates in respect of material used, time and labour spent and transport costs.
- 3.14. HITACHI shall not without first obtaining the written consent of the CUSTOMER publish or in any manner advertise the fact that HITACHI has contracted with the CUSTOMER for the supply of the Goods mentioned in the Purchase Order.
- 3.15. No addition or variation to the Terms shall be made or applied, unless expressly agreed in writing by HITACHI and the CUSTOMER.

#### **4. PRICE, PAYMENT AND DISCOUNTS**

- 4.1. The Contract price shall be determined in accordance with HITACHI'S standard rates and charges as same may vary from time to time and ruling at the time the Services are carried out. The Contract price of the Goods and/or Services shall be that stated in the quotation at the time of the conclusion of the Contract and shall exclude VAT and where no price has been quoted, the price shall be HITACHI'S normal price current at the date of acceptance of the Order.
- 4.2. All prices quoted are firm and remains valid for the period stated on the quotation or if no period is stated for 15 (fifteen) days.
- 4.3. Any quotation made by HITACHI may be withdrawn at any time before acceptance. If not accepted within 15 (fifteen) days from the date thereof, the quotation shall be deemed to have been withdrawn.
- 4.4. HITACHI reserves the right by giving written notice to the CUSTOMER at any time before delivery of the Goods or the Services, to increase the price of the Goods or the Services to reflect any increase in the cost to HITACHI which is due to any factor beyond the control of HITACHI (such as without limitation, foreign exchange fluctuation, currency regulation, alteration of duties) any change in delivery dates, quantities or specifications for the Goods or the Services (as the case may be) which is requested by the CUSTOMER or any delay caused by any instructions of the CUSTOMER or failure of the CUSTOMER to give adequate information or instructions. The price shall increase by an amount equal to the increase in HITACHI's costs but if the increase in HITACHI's costs cannot be calculated accurately, HITACHI's auditors acting as experts shall determine the increase in HITACHI's costs and their decision shall be final and binding on the Parties.
- 4.5. HITACHI shall endeavour to use new or equivalent to new in performance materials and parts if same are available. All old parts which have been replaced by HITACHI shall become the property of HITACHI.
- 4.6. Payment of the Contract price shall be made in South African currency by way of a credit card or an electronic funds transfer in favour of HITACHI (and it is specifically agreed between the Parties that no to dispatch/delivery of the Goods to the CUSTOMER shall take place until such time as the Contract price reflects as a credit in the bank account of HITACHI and provided that the amount is in fact paid), unless:
  - 4.6.1. otherwise stipulated in HITACHI's quote.

- 4.6.2. the Goods and/or Services are purchased on credit in terms of an account facility opened by HITACHI for the CUSTOMER, in which case payment shall be made within 30 (thirty) days of date of statement for that facility; or
- 4.6.3. the Goods and/or Services are purchased by means of electronic funds transfer the Goods and/or Services shall not be released until the funds reflect in the bank account of HITACHI.
- 4.7. The CUSTOMER accepts that the Services (if applicable) shall not commence until the funds reflect in the bank account of HITACHI.
- 4.8. If the CUSTOMER fails to pay any amount on due date, whether owed under the Contract or not then without prejudice to any other rights which HITACHI may have, HITACHI may:
  - 4.8.1. require that all amounts then owed to it by the CUSTOMER become due and payable immediately (whether such amounts are owed under the contract or any other cause whatsoever).
  - 4.8.2. retain in its possession as security any Goods of the CUSTOMER until those amounts have been paid.
  - 4.8.3. suspend the carrying out of any of its then uncompleted obligations (whether under the Contract or any cause whatsoever) until payment is made.
  - 4.8.4. terminate any credit facilities granted to the CUSTOMER (whether under the Contract or any cause whatsoever).
- 4.9. Should there be any claim against HITACHI or any dispute of whatsoever nature, the CUSTOMER shall not be entitled to withhold payment or to do a set-off.
- 4.10. No retention monies may be deducted from any amount due by the CUSTOMER to HITACHI.
- 4.11. A Certificate signed by any manager or director of HITACHI stating the CUSTOMER'S indebtedness, as at the given date shall be prime facie proof of the amount and validity of such indebtedness for the purpose of all legal proceedings instituted by HITACHI against the CUSTOMER.
- 4.12. To the extent allowed by law, if payment for the Goods supplied under this or any other Contract is overdue in whole or in part, HITACHI may (without prejudice to any of its other rights) retake possession of and/or resell any Goods, the title to which it has by these conditions retained and the CUSTOMER shall, upon the request of HITACHI, allow HITACHI's agents to enter its premises during normal working hours for the purpose of recovering possession of such Goods.
- 4.13. Notwithstanding any other agreement as to the terms of payment, the total invoiced price shall immediately become due and payable, and HITACHI shall have the right forthwith to terminate this Contract (without prejudice to any other of its rights) upon the occurrence of any of the following events:
  - 4.13.1. if the CUSTOMER commits any act of insolvency or if an application for its liquidation is made against or by the CUSTOMER.
  - 4.13.2. if the CUSTOMER ceases or threatens to cease to carry on business.
  - 4.13.3. if the CUSTOMER shall enter into any negotiations for an arrangement or composition with its creditors.
  - 4.13.4. in the event of the CUSTOMER being a limited company, if an application is presented for the appointment of a business rescue practitioner or a resolution is proposed to place the CUSTOMER under supervision or wind up the CUSTOMER or if a receiver of its assets or undertaking or part thereof is appointed; or
  - 4.13.5. if any execution is levied on the CUSTOMER.

- 4.14. Upon any such termination HITACHI shall have such rights of repossession and resale as are set out in clause 4.10 above.
- 4.15. All amounts unpaid on due date shall be levied with interest at a rate equal to 2.5% above the prime overdraft interest rate charge by the Standard Bank of South Africa.
- 4.16. After delivery of Goods or performance of the Services, HITACHI shall promptly render correct and complete tax invoices to the CUSTOMER.
- 4.17. Unless otherwise agreed to in writing the contract price is strictly nett and is not subject to any discount whatsoever.

## **5. PERFORMANCE OF SERVICES AND DELIVERY OF GOODS**

- 5.1. Where Services are to be carried out at HITACHI's premises the CUSTOMER shall at the CUSTOMER'S cost deliver the Goods to HITACHI and shall on completion of the Services collect such Goods.
- 5.2. If the Services are to be carried out at any other place other than HITACHI's premises the CUSTOMER shall:
  - 5.2.1. ensure that the Goods are available to HITACHI at the proper time during normal working hours; and
  - 5.2.2. provide all such facilities as HITACHI may reasonably require for performing the Services.
- 5.3. If HITACHI is of the opinion that the Services which are required could only be performed by the transportation of the equipment concerned or any part thereof to HITACHI's premises, the costs of such transportation shall be for the account of the CUSTOMER. HITACHI shall not be liable for any damage of whatsoever nature which the CUSTOMER may suffer whilst the equipment or any part thereof is on HITACHI's premises or in transit to or from HITACHI's premises and the provisions of clause 8 below will apply *mutatis mutandis*. It will be the obligation of the CUSTOMER to ensure that the equipment is securely packed and dispatch and insurance for the equipment in transit will be arranged and borne by the CUSTOMER the equipment is insured against all risks whilst on HITACHI's premises.
- 5.4. HITACHI may appoint any agents or sub-contractor to perform all or any part of the Services.
- 5.5. Should HITACHI require any permit or consent or approval under any law for carrying out the Services under the Contract, then the Services shall not commence until HITACHI has obtained the said permit, consent or approval.
- 5.6. Should HITACHI at its sole discretion, deem it necessary to strip or dismantle any equipment in order to prepare a quotation for repairs, then:
  - 5.6.1. HITACHI shall be entitled to strip and/or dismantle the equipment to such an extent as it may deem necessary in its sole discretion to prepare the said quotation.
  - 5.6.2. the CUSTOMER shall be liable for all charges in respect of the dismantling or stripping at HITACHI's current rates; and
  - 5.6.3. should the CUSTOMER not accept HITACHI's quotation, the said CUSTOMER shall accept and remove the equipment in its stripped-down condition.
- 5.7. Deliveries must be made in quantities and at times specified in the Purchase Order.

- 5.8. Time shall not be of the essence of the Contract, and should any date/s be agreed upon in the Contract for completion of the Services or delivery of the Goods, HITACHI shall not be strictly bound thereby but shall made reasonable effects to perform by such date/s.
- 5.9. The signature of any employee of the CUSTOMER on HITACHI's official delivery note or waybill or the delivery note of any authorized independent carrier will constitute delivery of the Goods purchased or the Services rendered.
- 5.10. The CUSTOMER shall take delivery of the Goods promptly upon the delivery date or dates or at the intervals stated in the Contract or as soon thereafter as it is notified by HITACHI that the Goods are available for delivery. If for any reason the CUSTOMER fails to call off or give delivery instructions, or take delivery of the Goods on the due date, or upon receipt of such notification, or otherwise causes or requests a delay in delivery, then, without prejudice to any other rights of HITACHI hereunder, HITACHI shall be entitled to store or arrange for the storage of the Goods and it if does so:
- 5.10.1. it shall so inform the CUSTOMER in writing, and
- 5.10.2. the CUSTOMER shall pay or reimburse the reasonable cost (including insurance) of such storage from the due date, or the date of notification as aforesaid, until delivery to the CUSTOMER.
- 5.11. If the Goods are delivered through a carrier for transmission to the CUSTOMER, the carrier shall be the agent of the CUSTOMER, and the CUSTOMER shall be liable for such carrier's changes and delivery to the carrier shall be deemed to be delivery to the CUSTOMER.
- 5.12. In cases where HITACHI carries or procures the carriage of the Goods, HITACHI shall not in any event be liable for loss of or damage to the Goods in transit unless the following conditions are complied with:
- 5.12.1. in the case of any loss from a consignment of Goods or of damage to the Goods HITACHI must be notified in writing within 3 clear days of delivery to the CUSTOMER.
- 5.12.2. in the case of non-delivery of the whole consignment of the Goods, HITACHI must be notified within 21(twenty-one) clear days after the date of invoice.
- 5.13. Unless otherwise agreed in writing, HITACHI is entitled to make deliveries by instalments or partial deliveries. Each instalment shall be construed as constituting a separate contract to which all the provisions of these Terms shall (with the necessary changes) apply.
- 5.14. HITACHI shall only accept Goods for returns within 10 (ten) business days from invoice.
- 5.15. When Goods are accepted for return to HITACHI a handling charge of 10% (ten per centum) on the invoice value of the Goods will be made.

## **6. PASSING OF OWNERSHIP AND RISK**

- 6.1. Ownership in the Goods supplied by HITACHI shall remain vested in HITACHI until payment has been made by the CUSTOMER in full of all amounts owing to HITACHI (whether under this Contract or otherwise), but risk in and to the Goods shall pass to the CUSTOMER on delivery.
- 6.2. Notwithstanding such retention of title, HITACHI shall be entitled to institute an action for payment of the price as soon as payment falls due.

- 6.3. The CUSTOMER acknowledges that it is in possession of the Goods solely as bailee and in a fiduciary capacity for HITACHI until such time as the price and all other sums due from the CUSTOMER to HITACHI, whether under this Contract or otherwise, has been paid in full. Until such time the CUSTOMER will store the Goods on its premises separately from others' Goods (including its own) and in a manner which makes them readily identifiable as belonging to HITACHI and shall not alter, modify or add to any such Goods or any marking or identification on them and shall maintain them in good condition.

## **7. CLAIMS AGAINST HITACHI**

- 7.1. It is a condition of each sale that, to the extent allowed by law, the Goods are sold voetstoots and unless stated in writing otherwise, without any warranties whatsoever. In addition, the CUSTOMER shall be precluded from raising any complaints or disputing liability to HITACHI in any way unless it shall have notified HITACHI of its complaints or grounds of dispute in writing within 7 (seven) days of receipt of the Goods in question.
- 7.2. Notwithstanding the timeous raising of a complaint or dispute of liability by the CUSTOMER, the CUSTOMER shall under no circumstances be entitled to withhold payment in respect of the Goods from HITACHI pending the resolution of such dispute or complaint. Subject to a foregoing, HITACHI shall in its discretion be entitled to either remedy any failure by adjusting, repairing or replacing the Goods or Services in question or refunding the whole or part (as the case may be) of the Contract price paid by the CUSTOMER in respect of such Goods or Services.
- 7.3. The CUSTOMER shall not be entitled to withhold payment from HITACHI in respect of such Goods or Services for any reason whatsoever.

## **8. LIABILITY AND WARRANTIES**

- 8.1. In no event whether as a result of breach of contract, warranty indemnity, negligence or otherwise shall HITACHI or its Affiliates, be liable for any special, consequential, incidental, indirect penal or exemplary damages including but not limited to loss of profit or revenues, loss of use of equipment or any associated equipment, damage to associated equipment, cost of capital, cost of substituted Goods, facilities, services, downtime cost, or claims of the CUSTOMER for any damages or penalties of whatsoever nature.
- 8.2. Should HITACHI fail to carry out any of its obligation under the Contract as a result of vis major, including but not limited to any shortage of labour or materials, strikes, lockout, delay in transport, accident of any kind, any default or delay by any sub-contractor or supplier of HITACHI, riot, political or civil disturbances, the elements, any act of any state of Government or any other authority or any other cause whatever beyond HITACHI's control, the CUSTOMER shall not have any claim of any nature whatsoever against HITACHI. The provisions hereof are also stipulated for the benefit of any of HITACHI's employees, agents and sub-contractors.
- 8.3. In the event of HITACHI incurring any liability of whatever nature in terms hereof, then such liability shall be limited to the maximum of the greater of (i) such sum as HITACHI may by reasonable steps be able to obtain under such insurance as it has which covers the claim, or (ii) the purchase price of the Goods and/or Services (excluding VAT).
- 8.4. The CUSTOMER hereby indemnifies and holds HITACHI harmless against any and all claims in respect of any loss (including pure economic loss), damage, death or injury whether direct, indirect or consequential suffered by the CUSTOMER or a third party instituted against HITACHI by any person (including the CUSTOMER and/or any third party), and any and all costs, expenses or damages incurred or suffered by HITACHI, arising out of the performance by HITACHI of its obligations in terms of the Contract or the commission of a delict by HITACHI or any of its employees, representatives, agents and/or sub-contractors.
- 8.5. Subject to an express warranty or guarantee given by HITACHI in writing (which forms part of the Contract) HITACHI does not:
- 8.5.1. give any warranty or guarantee or make any representations whatsoever in respect of any Services carried out by it, or any Goods supplied by it.

8.5.2. accept any liability for any latent or other defect in any Goods supplied by it or any delay in the manufacture or delivery of the Goods.

8.5.3. warrant that the Goods are suitable for their intended use.

## **9. SERVICE EXCHANGE TRANSACTION**

9.1. Subject to the express proviso that HITACHI and the CUSTOMER have agreed in writing on a service exchange transaction in respect of a clearly identified component ("the CUSTOMER component") the following provisions will apply:

9.1.1. the CUSTOMER shall, within 7 (seven) days from date of the aforesaid agreement, deliver the CUSTOMER component to HITACHI and shall be liable for all delivery costs and all additional charges in respect thereof.

9.1.2. the CUSTOMER shall be invoiced for any replacement component installed by HITACHI at HITACHI's normal and standard charges and same shall, unless otherwise agreed in writing, become payable at the standard terms of 30 (thirty) days nett from date of invoice; and

9.1.3. within a reasonable period after receipt of the CUSTOMER component, HITACHI shall determine the cost of repair of the CUSTOMER component in accordance with HITACHI's standard conditions of service.

9.2. Should the aggregate of (a) the costs of repair of the CUSTOMER component and (b) a service exchange levy of 10 (ten per centum) plus VAT, not exceed 70 (seventy per centum) of the prices charged for the replacement component, HITACHI shall:

9.2.1. credit the CUSTOMER with the price of the replacement component; and

9.2.2. debit the CUSTOMER with the aggregate of a) the costs of repair of the CUSTOMER component and (b) a service exchange levy of 10 (ten per centum) plus VAT in respect of the CUSTOMER component.

9.3. Should the aggregate of (a) the costs of repair of the CUSTOMER component and (b) a service exchange levy of 10 (ten per centum) plus VAT exceed 70 (seventy per centum) of the prices charged for the replacement component then the provisions of clause 9.2 hereof shall apply unaltered.

9.4. Notwithstanding anything to the contrary set out above it is specifically recorded that the Terms will apply in respect of the CUSTOMER component and the said CUSTOMER component and replacement component will be dealt with on an exchange basis.

9.5. Upon receipt of the CUSTOMER component the same will become the property of HITACHI.

## **10. BREACH**

10.1. In the event of the CUSTOMER failing to make payment to HITACHI on due date or committing a breach of any other provisions of these Terms and failing to remedy such breach within 7 (seven) days after delivery of written demand, HITACHI shall be entitled (but not obliged) to terminate the Contract forthwith or to claim immediate specific performance of all of the CUSTOMER'S obligations then due for performance.



- 10.2. Should the CUSTOMER be sequestrated/liquidated (whether finally or provisionally) or placed under business rescue or should the CUSTOMER commit any act of insolvency in terms of Section 8 of the Insolvency Act or enter into any compromise with its creditors, or fail to satisfy any default judgment granted against it, or apply for the rescission thereof within 10 (ten) days after date of judgment, this Contract may, at any time thereafter, without prejudice to any other rights or remedies available to HITACHI at law, be terminated at HITACHI's discretion.
- 10.3. HITACHI's rights as above shall not be exhaustive and shall be in addition to its common law rights.
- 10.4. In the event of HITACHI instructing its attorneys to recover money or Goods from the CUSTOMER, the CUSTOMER shall be liable for and pay all legal costs incurred by HITACHI on an attorney and own client scale, including any collection commission.

## **11. ANTICORRUPTION COMPLIANCE**

- 11.1. The Parties acknowledge that HITACHI, being part of an international group of companies, is subject to the provisions of the United States Foreign Corrupt Practices Act 1977 ("FCPA") and the United Kingdom's Bribery Act of 2010 ("Bribery Act"). Therefore, each of the Parties undertakes to adhere to the standards of conduct required under the FCPA and the Bribery Act.
- 11.2. The CUSTOMER shall not offer or give, directly or indirectly, whether through any agent or intermediary or otherwise, anything of value to any person to encourage that person to perform his or her job duties or functions improperly or to reward that person for having done so in violation of any anti-corruption law applicable to the CUSTOMER ("Improper Payment").
- 11.3. The CUSTOMER shall conduct its business in compliance with the requirements of the FCPA and the Bribery Act (even if these laws are not otherwise applicable to the CUSTOMER).
- 11.4. The CUSTOMER shall maintain books and records that are accurate and complete. If the CUSTOMER is found to have made any Improper Payment, then HITACHI shall have the right to terminate the Contract and/or any Purchase Order for cause, and, in addition to any other right that HITACHI may have, to recover from the CUSTOMER:
- 11.4.1. the amount or value of the Improper Payment, and
  - 11.4.2. any fines or expenses incurred by HITACHI in connection with the Improper Payment.
- 11.5. The CUSTOMER indemnifies and holds harmless HITACHI from all costs, fees, interest payments, fines and/or other liabilities incurred by HITACHI in connection with or arising from the investigation of or defence against any litigation or other judicial, administrative or other legal proceedings brought against HITACHI arising from any act or omission of the CUSTOMER or any of its subcontractors, agents, workmen or any other person for when it is vicariously liable in violation of, or alleged to be in violation of, the anti-corruption law of any jurisdiction.
- 11.6. Neither Party nor any of their Affiliates shall take any actions in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to:
- 11.6.1. any person who engages in services for national or local governments.
  - 11.6.2. any person who engages in services for an agency or organization affiliated with a government entity.
  - 11.6.3. any person who engages in services for a public enterprise or state-owned entity.
  - 11.6.4. any person who engages in public services for an international public organization.

- 11.6.5. any political party, party official, or candidate for political office; or
- 11.6.6. any person authorized by a government entity to exercise a public function, all of the foregoing being referred to as "*Public Officers*", or to any other person while knowing that all or some portion of the money or value was or will be offered, given or promised to a Public Officer for the purposes of obtaining or retaining business or securing any improper advantage or influencing official action.
- 11.7. No part of the payments shall be used for any purpose which would cause a violation of laws, including, without limitation, the anti-bribery laws, anti-money laundering laws and anti-terrorist financing laws of any country or jurisdiction, by any Party.
- 11.8. Each Party agrees that they will conduct their business in compliance with laws, including, without limitation, the anti-bribery laws, anti-money laundering laws, anti-terrorist financing laws, anti-trust laws, competition laws and human rights laws of any country or jurisdiction.
- 11.9. Each Party shall not participate in other forms of misconduct, including, but not limited to, fraud, collusion, coercion and facilitating payments in connection with any transaction or matter associated with its relationship to the other Parties; provided, however, in case of facilitating payments, if:
- 11.9.1. the Party shall make facilitating payments for avoiding threat on certain person's life, body, safety or freedom; or
- 11.9.2. such facilitating payment is proved as lawful by applicable laws and regulations or documents issued by government authority, such Party may make facilitating payments by providing the report recording the accurate fact and truth of such payment.
- 11.10. Each Party shall not conduct any act or omission which constitutes unfair discrimination, human trafficking, child labour, forced labour, prostitution, organ trade and slavery, servitude, debt bondage, deceptive recruitment and shall not make any business relationship with any person or third party which conducts any of the abovementioned activities.
- 11.11. Each Party shall take all necessary actions for the compliance of this Clause. If each Party finds violation or potential risk of violation for any obligation of this Clause, the Party shall promptly notify the other Party such event.
- 11.12. Each Party may conduct audit for the compliance of this Clause by sending written notice. At the request of the Party, the other Party shall submit necessary documents to requesting Party or cooperate with investigation at the premise of requested Party. If the Party unreasonably rejects request for the audit, the other Party may suspend certain transaction under the Contract until the requested Party proves its compliance with this Clause or may terminate the Contract in accordance with this Clause.
- 11.13. In addition to all other rights and remedies herein, if each Party is found or reasonably suspected to be in breach of any of the foregoing compliance provisions, the other Party shall have the right to terminate the Contract immediately, unconditionally and without penalty, upon serving breaching Party a written notice of termination.

## **12. CUSTOMER'S SPECIFICATIONS AND DESIGNS**

- 12.1. When Goods are supplied to the CUSTOMER'S specifications or designs, the CUSTOMER shall indemnify HITACHI fully in respect of loss, damages, costs and expenses awarded against or incurred by HITACHI in connection with or paid or agreed to be paid by HITACHI in settlement of any claim made or proceedings brought against HITACHI by any party claiming infringement of patent rights, copyright design, trade mark or other industrial or intellectual property rights which results from HITACHI's use of the CUSTOMER'S specification or design.
- 12.2. The CUSTOMER warrants that any design or specification furnished or given to HITACHI shall not be such as will cause HITACHI to infringe any patent, copyright design, trademark or other industrial or intellectual property right in the execution of the CUSTOMER'S Order.

12.3. The CUSTOMER warrants that any design or specification furnished or given to HITACHI shall be complete in every respect (including without limitation all necessary technical information) sufficient to enable HITACHI to manufacture the Goods to comply with all applicable performance, durability, health, safety, conformity and labelling requirements whether the CUSTOMER or the CUSTOMER'S CUSTOMER or howsoever arising at law and the CUSTOMER shall indemnify HITACHI fully in respect of loss, damage, costs and expenses incurred by HITACHI which results from any incompleteness in the CUSTOMER'S specification or design.

### 13. DOMICILIUM

13.1. The Parties choose *domicilium citandi et executandi* ("domicilium") for all purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Contract, as follows:

13.1.1. HITACHI: at Solomon Jefferson Mahlangu & Paul Smit Rd, Dunswart, Boksburg, 1489.

13.1.2. the CUSTOMER: at the address reflected in the Purchase Order or if no address is reflected, then at the registered address of the CUSTOMER.

13.2. Each of the Parties shall be entitled from time to time, by written notice to the other of them, to vary its domicilium to any other physical address, provided that the change shall become effective on the 5th (fifth) Business Day from the receipt of the notice by the other Party.

13.3. Any notice given by either Party to the other shall be in writing and if delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed to have been received by the addressee at the time of delivery.

13.4. Notwithstanding anything to the contrary contained in this clause 13, a written notice or other communication received by a Party shall be adequate written notice or communication to it notwithstanding that the notice was not sent or delivered to that Party's domicilium.

### 14. CONSENT IN TERMS OF THE PROTECTION OF PERSONAL INFORMATION ACT ("POPIA")

14.1. The CUSTOMER hereby expressly gives HITACHI permission (such permission/consent given separately in respect of each of the purposes referred to below) to:

14.1.1. process (as defined in clause 14.3 below) the CUSTOMER'S personal information (listed in clause 14.7 below) for any purposes directly connected with the CUSTOMER'S business relationship with HITACHI, including but not limited to maintaining account information and personal contact details, processing the Goods and/or Services bought, keep the CUSTOMER informed generally about new Goods, provide the CUSTOMER with a relevant service or product, bill the CUSTOMER for purchasing HITACHI's Goods and/or services, for warranty purposes, servicing or repairing of Goods acquired from HITACHI, buying or exchanging parts for HITACHI's Goods, providing aggregated reports to third parties (they do not contain identifying information), preventing and detecting fraud or other crimes, recover debts, security and training reasons, access control, checking credit references, reconciliation of the CUSTOMER'S account, invoicing, sending statements, complying with applicable legislation and to protect HITACHI's legitimate interests in respect of criminal offences which have been, or can reasonably be expected to be, committed against the CUSTOMER or other customers of HITACHI; and

14.1.2. share the CUSTOMER'S personal information with companies in HITACHI's Affiliates, partners or agents involved in delivering Goods and Services purchased by the CUSTOMER, agents that conduct CUSTOMER satisfaction surveys, contractors engaged to perform Services for, on behalf of HITACHI, credit reference agencies, fraud prevention agencies, the bankers of the CUSTOMER in respect of a business transaction that the CUSTOMER concludes with HITACHI, debt collection agencies, law enforcement agencies, regulatory bodies, courts, or other public authorities.

- 14.1.3. Any personal information of the CUSTOMER will only be used by such third parties in accordance with the instructions of HITACHI. When HITACHI transfers the CUSTOMER'S personal information to other third parties in countries outside South Africa, HITACHI will fully comply with applicable personal information protection legislation. This may happen if HITACHI's servers or suppliers and service providers (such as Microsoft), or their servers, are based outside South Africa, or if their services are hosted on systems (such as Microsoft's servers) outside South Africa including the European Economic Area (EEA).
- 14.2. For purposes of this clause, "*processing*" refers to processing as defined in POPIA and includes but is not limited to collecting, receiving, recording, organising, collating, storing, updating, retrieving, altering, using, disseminating, distributing, merging, linking, blocking, degrading, erasing or destroying of the personal information of the CUSTOMER.
- 14.3. The CUSTOMER warrants that all personal information provided by the CUSTOMER to HITACHI shall at all times be true and correct and that the provision of inaccurate and/or misleading personal information shall constitute a breach of the Contract.
- 14.4. HITACHI will use its best commercial endeavours to keep all the CUSTOMER'S personal information safe, but despite the security measures that are in place to protect the CUSTOMER'S personal information (firewalls, password access and encryption methods), the CUSTOMER acknowledges that it may be accessed by an unauthorised third party, e.g. as a result of an illegal activity such as hacking).
- 14.5. The CUSTOMER has the right to access, correct, amend, delete personal information, or to object to the processing of personal information and consequently upon receipt of a written request and sufficient information to permit HITACHI to identify the CUSTOMER'S personal information, HITACHI will disclose to the CUSTOMER the personal information HITACHI holds about the CUSTOMER, for which HITACHI may charge a fee as allowed by applicable law.
- 14.6. "*Personal Information*" for purposes of the Contract means the CUSTOMER'S name, registration number, physical and postal address, account information, email address, phone number, mobile number and account information.
- 14.7. HITACHI can obtain the CUSTOMER'S essential personal information when it buys a Product or Service from HITACHI (including buying Goods online, over the phone and from an authorised dealer or other retail outlet), delivers a specific Product for repairs or service, communicates with HITACHI in any manner whatsoever, subscribes to newsletters, alerts or other services from HCSA, asks for more information about a Product or Service, or contact HITACHI with a question or complaint or by taking part in a competition or survey.
- 14.8. HITACHI may also use cookies (small text files stored in the CUSTOMER'S browser) and other techniques such as web beacons (small, clear picture files used to follow the CUSTOMER'S movements on HITACHI's website).
- 14.9. These collect information that makes the website remember a visitor and tells HITACHI how visitors use HITACHI's website, web-related Goods and services.
- 14.10. HITACHI may also use a persistent cookie (a cookie that stays linked to a visitor's browser) to record the visitor's details so that HITACHI can recognise a visitor when he visits the website again.
- 14.11. Cookies by themselves cannot be used to discover a person's identity. Cookies do not damage a computer. A browser can be set to notify a person when a cookie is received. This will enable a visitor to decide if he wants to accept it or not. If a person chooses not to accept cookies from HITACHI's website this may limit its functionalities or performance.
- 14.12. The processing of the CUSTOMER'S personal information is further regulated by HITACHI's Privacy Policy which can be accessed on HITACHI's website at [www.hitachicm.co.za](http://www.hitachicm.co.za) or can be requested from HITACHI's Information Officer by email at [paiarequests@hcmsa.co.za](mailto:paiarequests@hcmsa.co.za) or by writing to HITACHI at P.O. Box 6331, Dunswart, 1508, South Africa.

14.13. The CUSTOMER hereby indemnifies HITACHI and holds HITACHI harmless against any claim which may be made against HITACHI by any third party whose personal information was transferred or made available to HCSA, pursuant to the Contract or otherwise, arising from the fact that the CUSTOMER did not have that third party's consent to transfer or make available that third party's personal information to HITACHI, or arising from the failure of the CUSTOMER to comply with any of its obligations outlined in POPIA to the extent that it relates to personal information of third parties made available or transferred to HITACHI.

## 15. DISPUTE RESOLUTION

15.1. Subject to any other provisions of the Contract which provide for their own remedies, should any dispute arise between the Parties in connection with:

15.1.1. the conclusion or existence of.

15.1.2. the implementation of.

15.1.3. the interpretation or application of any of the provisions of.

15.1.4. the Parties' respective rights and obligations in terms of or arising out of the conclusion, breach or termination of; or

15.1.5. the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of.

15.1.6. any documents furnished by the Parties pursuant to the provisions of this Agreement or which relates in any way to any matter affecting the interests of the Parties in terms of this Agreement, such dispute shall, save as otherwise provided herein, be determined in terms of this clause.

15.2. Any Party may demand that a dispute be determined in terms of this clause by written notice given to the other Party.

15.3. Subject to the provisions of this clause, the arbitration shall be conducted in accordance with the commercial arbitration rules of the Arbitration Foundation of Southern Africa (or failing it, any successor or equivalent body thereto) in force from time to time ("AFSA") and failing any such rules, shall otherwise be governed by the arbitration laws for the time being in force in the Republic of South Africa from time to time.

15.4. This clause shall not preclude any Party from obtaining interim or urgent relief from a court of competent jurisdiction.

15.5. The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should any Party by written notice given to the other Party require the arbitration to be held on an urgent basis. In such event the Parties agree to apply jointly to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.

15.6. The arbitrator shall be, if the matter in dispute is principally:

15.6.1. a legal matter, a practising advocate or attorney of Gauteng of at least 15 (five teen) years' standing.

15.6.2. an accounting matter, a practising chartered accountant of Gauteng of at least 15 (five teen) years' standing.

15.6.3. any other matter, any independent person agreed upon between the Parties.

- 15.7. Should the Parties fail to agree whether the dispute is principally a legal, accounting or other matter within seven days after the arbitration is demanded, the matter shall be deemed to be a legal matter.
- 15.8. Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 15.2, any of the Parties shall be entitled to request the Registrar for the time being of AFSA to nominate the arbitrator during the ensuing seven-day period, and who, in making the nomination, shall have regard to the nature of the dispute and the Parties' requirement for a speedy arbitration.
- 15.9. That nomination shall be final and binding on the Parties and the Parties shall jointly appoint that nominated person as the arbitrator.
- 15.10. If the appointment is to be made in terms of clause 15.6.1, preference shall be given to attorneys or advocates having the requisite expertise, on the panel of arbitrators of AFSA.
- 15.11. The arbitration shall take place in Johannesburg or in such other place as is agreed by the Parties, no party shall be represented before the Arbitrator by an Attorney or Counsel.
- 15.12. The arbitrator shall determine the applicable procedure to be followed in the arbitration and shall not be bound by strict rules of evidence.
- 15.13. The arbitrator may, by notice to the Parties within 7 (seven) days after his or her appointment, dispense wholly or in part with formal submissions and/or proceedings provided that the Parties are given an adequate opportunity to make submissions to the arbitrator.
- 15.14. The decision of the arbitrator shall be final and binding on the Parties and may be made an order of the court at the instance of any of the Parties to the dispute.
- 15.15. The Parties hereby consent to the jurisdiction of the Gauteng High Court of South Africa in respect of the proceedings referred to in clause 15.14.
- 15.16. The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of an order to be made.
- 15.17. The provisions of this clause 15:
- 15.17.1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
  - 15.17.2. are severable from the rest of the Contract and shall remain in effect despite the termination of or invalidity for any reason of the Contract.
- 15.18. The Parties agree that a written demand by either Party in terms of clause 15.2 that the dispute be submitted to arbitration, is deemed to be a legal process for the purpose of interruption of extinctive prescription in terms of the Prescription Act, 68 of 1969.

## **16. GENERAL**

- 16.1. The Contract, its interpretation and the respective rights and obligations of the Parties shall be determined in accordance with the laws of the Republic of South Africa.
- 16.2. HITACHI shall be entitled at its sole election, to institute any proceeding against the CUSTOMER in any Magistrate's Court having jurisdiction over the CUSTOMER.

- 16.3. HITACHI shall not be bound by any oral statement, recommendations, figures, advises, formulae, specifications, prices quoted, acceptances, or representation unless they are in writing and signed on behalf of HITACHI by its duly authorised representative.
- 16.4. No variation of the Contract shall be binding on HITACHI unless in writing and signed by a duly authorised representative of HITACHI.
- 16.5. Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include associations of persons having corporate status by statute or common law.
- 16.6. Without prejudice to the generality of any previous exclusion or limitation of liability, HITACHI shall not be liable for any failure to fulfil any term of any transaction governed by these conditions if fulfilment has been delayed, hindered or prevented by circumstances whatsoever which are not directly within HITACHI's control and if HITACHI is able to fulfil some but not all of the demand for the Goods or the Services, HITACHI may allocate its available supplies amongst its customers including Affiliates in such manner as HITACHI in its absolute discretion considers to be fair.
- 16.7. No relaxation or indulgence granted to the CUSTOMER by HITACHI at any time shall be deemed to be a waiver of any of HITACHI's rights in terms hereof and such relaxation or indulgence shall not be deemed a novation of any of the terms and conditions set out herein or create any estoppel against HITACHI.
- 16.8. No verbal guarantee, warranty, representation or any promise of whatever nature made by HITACHI's officials, employees or agents are binding upon HITACHI unless expressly mentioned herein or confirmed in writing.
- 16.9. The Contract constitutes the entire agreement between HITACHI and the CUSTOMER with respect to the matter it contains and supersedes all prior oral or written representations and agreements.
- 16.10. The failure of either Party to enforce any right or remedy provided in the Contract or by law will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy. No extension of time for performance of any obligation or act by either Party will be deemed an extension of time for the performance of any other obligation or act.