

## GENERAL TERMS AND CONDITIONS OF SALE

### 1. Interpretation

In these conditions:

- 1.1 "Customer" means the party/(ies) making this credit application.
- 1.2 "Dealer Agreement" means the document titled 'Dealer Agreement' between the customer (who is identified as the dealer in that document) and Hitachi for the supply of goods and as the document may be amended and updated from time to time.
- 1.3 "Goods" means all products and services supplied or to be supplied by Hitachi to the Customer including Spare Parts.
- 1.4 "Hitachi" means Hitachi Power Tools Australia Pty Ltd, ABN 27 072 677 153, and its assigns and any one or more of them.
- 1.5 "Spare Parts" means the Goods supplied by Hitachi for use as a spare part or for replacement of failed parts of the Goods.

### 2. General Application of these Conditions

- 2.1 In the event that the parties execute a Dealer Agreement, the parties agree that the terms and conditions as stated in full in the Dealer Agreement apply to the relationship between the parties from the commencement date as is stated in the Dealer Agreement.
- 2.2 Subject to clause 2.1, if the parties have not executed a Dealer Agreement, then these terms and conditions shall prevail over all conditions of a purchase order. Any subsequent agreement between the parties in respect of the supply of goods will be read as incorporating these terms and conditions unless these terms are varied or excluded expressly in writing by a person actually authorised by Hitachi to vary or exclude these terms and conditions. For the avoidance of doubt, the subsequent execution of a Dealer Agreement by the parties is acceptance by the parties that the Dealer Agreement will apply to the relationship between the parties to the exclusion of all terms in these terms and conditions.

### 3. Terms of Sale

The Goods are sold by Hitachi on these terms and conditions. All quotations or offers in relation to Goods by Hitachi are given or made subject to these terms and conditions.

### 4. Price

- 4.1 The sale price of the Goods to the Customer shall be the price published in Hitachi's published price list and as amended from time to time.
- 4.2 The Prices may be changed by Hitachi from time to time provided it gives the Customer at least 30 day's notice. All orders placed by the Customer with Hitachi after the expiry of the 30 day notice will be subject to the updated prices. Change to products and upgrades will be subject to pricing current at product launch date.
- 4.3 The sale price of the Goods is expressed to be inclusive / exclusive of Goods and Services Tax (GST) and in addition to payment of the sale price the Customer is responsible for the payment of any GST amount in relation to the applicable invoice for Goods.
- 4.4 All payments made with a credit or charge card will incur a payment processing fee of 1.5% of the total payment.
- 4.5 The Customer agrees that it will pay to Hitachi courier delivery charges in relation to the sale and delivery of:
  - (a) Spare Parts and accessories for orders under \$150.00; and
  - (b) Tools under \$250.00,at the cost of \$15.00 per order. Hitachi reserves the right to vary delivery charges by notice in writing to the Customer.

### 5. Payment

- 5.1 The price of Goods shall be payable net without deduction or set off any claim for damages or otherwise.
- 5.2 Payment for Goods shall be made on or before the 30<sup>th</sup> day of the month next following the month in which Goods were delivered unless otherwise agreed in writing by Hitachi.
- 5.3 If the Customer fails to make payment to Hitachi when due, the Customer must pay interest on that amount, following notice by Hitachi to the Customer of the late payment, which interest will accrue daily from the due date for that amount until such amount is paid in full. The rate of interest for the purpose of this clause will be 1.5% per month (calculated daily).
- 5.4 If the Customer fails to make payment to Hitachi when due in relation to any Goods supplied, the invoiced price of all Goods sold and delivered by Hitachi to the Customer shall then become immediately due and payable.

### 6. Credit

Hitachi may at any time, in its absolute discretion, refuse to supply further Goods on Credit to the Customer. If Hitachi withdraws or suspends any credit facility granted to the Customer, whether in breach of the agreement or not, Hitachi shall not be liable to the Customer for any consequential loss or damage which the Customer may suffer.

### 7. Delivery

- 7.1 Hitachi will use its reasonable endeavours to deliver the Products on the agreed delivery date. Hitachi is not liable for any loss or damage of any kind, including loss of profits, caused directly or indirectly by any delay in a failure of delivery or as a consequence of the unavailability of such products or any cause beyond the control of Hitachi. Delivery occurs when the Products are unloaded from a carrier at the Customer's warehouse.
- 7.2 Hitachi may, in its absolute discretion, stop delivery of Goods to the Customer if:
  - (c) the Customer is trading outside the terms of payment specified in paragraph 5 hereof; or
  - (d) the Customer has breached any other term of this agreement or any other agreement with Hitachi; or
  - (e) Hitachi believes on reasonable grounds that the Customer is or may become insolvent or that the Customer will not be able to satisfy any payments due to Hitachi.

### 8. Warranties

- 8.1 The liability of Hitachi in respect of a breach of a consumer guarantee or any warranty made under these Terms and Conditions for any Goods not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at the option of the Printer to:
  - (a) the replacement of the Goods;
  - (b) the repair of the goods;
  - (c) the payment of the cost of replacing the Goods or acquiring equivalent goods; or
  - (d) the payment of the cost of having the goods repaired.
- 8.2 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and Hitachi is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:
  - (a) any increased costs or expenses;
  - (b) any loss of profit, revenue, business, contracts or anticipated savings;
  - (c) any loss or expense resulting from a claim by a third party; or
  - (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the printer's failure to complete or delay in completing the order to deliver the Goods.

### 9. Claims (short supply)

The Customer shall release Hitachi from any claim or demand arising from the short delivery of Goods unless the Customer delivers to Hitachi a claim in writing within 5 days of the delivery to which the claim relates.

- 10. Returns**
- 10.1 Goods will not be accepted for return without the prior written approval of Hitachi.
- 10.2 Goods accepted for return:-
- (a) must be accompanied by a copy of the approval and must quote Hitachi's invoice and delivery docket number to which the Goods relate;
  - (b) must be returned in their original packaging;
  - (c) must not have been used or damaged and must be of merchantable quality;
  - (d) must be returned at the cost of the Customer.
- 10.3 Goods accepted for return shall be accepted and credited to the Customers credit account, except in the case of cash sales.
- 10.4 The Customer agrees that it will pay Hitachi a handling charge of fifteen percent (15%) of the invoice price of the Goods accepted for return.
- 11. Title in the Goods**
- 11.1 Title to the Goods shall not pass to the Customer until and unless all monies due and payable by the Customer to Hitachi on all accounts have been paid in full.
- 11.2 Until payment is made the Customer shall hold the Goods as bailee.
- 11.3 The Customer shall, if required, store the Goods in a manner which clearly identifies Hitachi's ownership of the Goods.
- 11.4 Unless and until Hitachi makes demand for return of Goods, the Customer may sell the Goods in the ordinary course of its business and shall hold and account for the proceeds of sale to Hitachi. The proceeds of sale are to be paid into an account maintained solely for that purpose.
- 11.5 If the Customer sells Goods to a purchaser who refuses or neglects to pay for the Goods the Customer will, if called upon to do so, assign to Hitachi its rights against the purchaser.
- 11.6 The Customer shall at its own cost insure the Goods for their full insurable value against all of the usual risks in the names of both Hitachi and the Customer for their several interests. If called upon to do so, the Customer will produce evidence to Hitachi of such insurance.
- 11.7 If the Customer is trading outside the terms of payment as specified in paragraph 5 hereof or if the Customer becomes insolvent then the Customer shall, if required to do so by Hitachi, promptly deliver up the Goods to Hitachi.
- 11.8 If the Customer fails to promptly deliver up the Goods to Hitachi, Hitachi by its servants or agents is authorised at any time and from time to time to enter without notice any place where the Goods are situated and to take possession of and remove them and for this purpose Hitachi is appointed the Customer's agent.
- 12. Personal Property Securities Act 2009 ("PPSA")**
- 12.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 12.2 The Seller and the Customer acknowledge that these terms and conditions constitute a Security Agreement and give rise to a Purchase Money Security Interest ("PMSI") in favour of Hitachi over the Goods supplied or to be supplied to the Customer as Grantor pursuant to the Terms of Trade.
- 12.3 The Goods supplied or to be supplied under these terms and conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these terms and conditions.
- 12.4 Hitachi and the Customer acknowledge that Hitachi, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer as Grantor under the terms and conditions on the PPSA Register as Collateral.
- 12.5 To the extent permissible at law, the Customer:
- (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Hitachi.
  - (b) agrees to indemnify Hitachi on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
    - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of Hitachi; and
    - (ii) enforcement or attempted enforcement of any Security Interest granted to Hitachi by the Customer.
  - (c) agrees that nothing in sections 130 to 143 of the PPSA will apply to the Terms of Trade or the Security under the terms and conditions;
  - (d) agrees to waive its right to do any of the following under the PPSA:
    - (i) receive notice of removal of an Accession under section 95;
    - (ii) receive notice of an intention to seize Collateral under section 123;
    - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
    - (iv) receive notice of disposal of Collateral under section 130;
    - (v) receive a Statement of Account if there is no disposal under section 132(4);
    - (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
    - (vii) receive notice of retention of Collateral under section 135;
    - (viii) redeem the Collateral under section 142; and
    - (ix) reinstate the Security Agreement under section 143.
- 13. Charge**
- 13.1 To secure payment of all monies which may become payable by the Customer to Hitachi, the Customer hereby charges with the due payment of those monies all of the Customer's interests in real property, both present and future ("Property") and the Customer consents to Hitachi lodging a caveat or caveats noting its interests hereunder. If called upon to do so, the Customer will execute and deliver to Hitachi a charge in registrable form giving effect to the agreement recorded in this clause.
- 13.2 Customer acknowledges that in order to give effect to clauses 13 and 14 above, Hitachi may register its interest in the Goods or the Property on such registers as are provided for at law.
- 14. Requirement to disclose information**
- 14.1 Where the Customer becomes aware of an incident where a person has suffered death or serious injury or illness that was caused by, or may have been caused by, the Goods ("Incident"), the Customer must immediately notify Hitachi in writing of such Incident.
- 14.2 Where the Customer becomes aware of an Incident, the Customer must also provide sufficient information to Hitachi to allow Hitachi to meet its statutory reporting requirements, including but not limited to:
- (a) details as to when the Goods were purchased and the quantity of Goods purchased;
  - (b) the nature of the injury or illness and the circumstances in which it occurred;
  - (c) any other information that Hitachi reasonably believes is required to allow it to investigate the Incident and to meet its statutory reporting obligations.
- 14.3 Nothing under this clause will be taken to be admission by Hitachi of any liability in relation to the Goods or the Incident.
- 15. Applicable Law**
- Any contract or any agreement, incorporating these conditions of sale shall be deemed to have been made in New South Wales and the Customer agrees to submit to the jurisdiction of the Courts of New South Wales.

I / We agree that should this application be approved, I / We will abide by your General Terms and Conditions of Sale as detailed on this application.

Signatures: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_