

General Purchase Terms and Conditions of Hitachi Construction Machinery (Europe) N.V.

1. Definitions

The capitalised terms and abbreviations hereinafter shall have the following meaning:

GTC - General Purchase Terms and Conditions of Hitachi Constructions Machinery (Europe) N.V.

HCME - Hitachi Construction Machinery (Europe) N.V.

Supplier - a company or an individual which undertakes to deliver Products and/or Services to HCME under a Contract

Products - all or any kind of goods, which shall be delivered from the Supplier to HCME under a Contract

Services – services rendered by or on behalf of the Supplier under a Contract

Order - a purchase order issued by HCME including any other documents, which may be attached therewith

Contract - an individual contract concluded between HCME and Supplier, which is formed by the procedure stated in Article 3 of the present GTC

Party or Parties – HCME and Supplier individually or collectively

2. General

1. These GTC apply to all requests for proposals, offers, Orders, Contracts, agreements and other legal understandings regarding the supply and/or delivery of Products and/or Services to HCME.
2. The Supplier hereby agrees that these GTC are the sole provisions applicable to the purchase of Products and/or Services and shall supersede and prevail over the terms and conditions of the Supplier.
3. No additional or inconsistent provisions proposed by the Supplier shall bind HCME unless agreed to in writing by a duly authorized official of HCME.
4. If any term or condition of these GTC is found to be illegal, invalid or unenforceable under any applicable law, such term or condition shall, insofar as it is severable from the remaining terms and conditions, be deemed omitted and shall in no way affect the legality, validity or enforceability of the remaining terms and conditions.
5. If any terms or conditions of the GTC are in conflict with the terms and conditions in individual Contracts, those of the Contracts shall prevail to the extent of the inconsistency.
6. All the notices between the Parties shall be given in writing. The Orders, Contracts, messages and all other information exchanged by the Parties by electronic or facsimile transmission shall be handled in the same manner and have the same effect as written communication on paper.

3. Formation of a Contract

1. HCME's Orders shall be binding upon the Supplier. Amendments unilaterally made by the Supplier in the Order and any other deviating or additional terms stipulated by Supplier shall not be binding upon HCME.
2. The Order shall be accepted by the Supplier if signed by the duly authorized representative of the Supplier and delivered to HCME by post, electronic or facsimile transmission. The signed and delivered to HCME Order shall become a binding Contract between the Parties.
3. In the absence of Supplier's written acceptance or explicit rejection of the Order within 5 (five) working days from the date of the issuance of the Order, HCME may revoke the Order without any further obligations or liability.
However, if Supplier neither delivers a signed Order to HCME nor explicitly rejects it, and the Order is not revoked by HCME within 5 (five) working days, such Order shall be regarded to have been accepted by the Supplier and shall become a binding Contract after expiration of the said period.

4. Prices and payment

1. Unless otherwise agreed in writing, all prices for Products shall be Delivered at Place (DAP, Incoterms 2010), Amsterdam or Oosterhout, fixed and exclusive VAT. If no price for the Services has been agreed, the Supplier's price list at the moment of the conclusion of these GTC shall apply.
2. Invoices shall be issued in compliance with all applicable regulations.

3. Unless otherwise agreed in writing, all payments shall be made in EURO by telegraphic transfer remittance to the designated by the Supplier bank account within 30 (thirty) days after HCME's receipt and acceptance of the invoice, which shall be issued by the Supplier not prior to the date of the acknowledgement of receipt of delivery.
4. Payments of the Products and/or Services shall not be interpreted as HCME's acceptance stipulated in the Article 9.4.
5. HCME shall have the right to set off the amounts due and payable to the Supplier against HCME's claims to the Supplier for the performance of the Supplier's obligations.

5. Shipment and delivery

1. Time of shipment and delivery shall be of the essence of any Contract.
2. Unless otherwise agreed in writing, the delivery of the Products shall be made Delivered at Place (DAP, Incoterms 2010), Amsterdam or Oosterhout, delivery of the Services shall be made to the place specified in a Contract.
3. The delivery of the Products and/or Services must be complete, made according to the specifications of the Contract on the agreed date and time, accompanied by all the documents relating to it, acknowledged by receipt by a duly authorized representative of HCME in HCME's customary acceptance manner; the ownership for the Products and/or Services must be transferred and Products and/or Services must be free from any right or claim of a third party.
4. Unless otherwise agreed, Supplier shall inform HCME of the shipping date of Products and/or Services in writing 1 (one) week prior to the shipping.
5. If Supplier expects that shipment or delivery shall delay due to whatever causes, Supplier shall immediately notify HCME in writing, stating the reason for such delay, the portion of Products and/or Services affected thereby, the expected reasonable extended period of the delay and measures to be taken. HCME shall notify the Supplier of its approval or disapproval of the proposed measures within as a reasonable period as possible. Approval does not imply that HCME recognizes the validity of the cause of the potential delay nor does it prejudice any rights or claims due to HCME pursuant to any Contract.
6. If Supplier fails to effect delivery of a part or all of the Products and/or Services within the period agreed with HCME, he shall be in default without further notice of default. In this event HCME is entitled to claim a penalty of minimum 0,5% (a half percent) and maximum 15% (fifteen percent) of the total value of the Contract for each working day of delay. This amount shall be calculated excluding VAT, without prejudice to HCME's rights to claim performance of the Contract or other remedies provided by law including full compensation.
7. HCME is entitled to set-off payments to the Supplier against the penalty and/or compensation referred to in Article 5.6.

6. Packaging

1. Supplier shall pack the Products in such a manner that they shall be clearly marked and labelled, safe from damage or deterioration while transported, loaded, unloaded or stored.
2. Unless otherwise agreed in writing, Supplier shall comply with the packaging instructions provided by HCME.

7. Quality control and warranties

1. Supplier shall provide HCME with a copy of ISO 9001 certificate obtained by the Supplier. In the absence of ISO certificate Supplier warrants that he shall use quality assurance system corresponding or equivalent to ISO 9001 and provide HCME with a written proof of such quality assurance system.
2. Supplier warrants that the Products and/or Services :
 - a) fit for the purposes for which they are intended and possess the qualities which Supplier expressly or impliedly made known to HCME at the time of the conclusion of a Contract
 - b) are in conformity with the specifications, drawings or other information provided by the Supplier and approved by HCME
 - c) fully comply with all applicable statutory requirements and laws including but not limited to REACH (Registration, Evaluation and Authorization of Chemicals) regulations
 - d) are free from any right or claim of a third party, including but not limited to rights or claims based on industrial property or other intellectual property;

- e) are free from either patent or latent defects in design, material, workmanship and quality for a period of 24 (twenty four) months after the date of the acknowledgment of receipt of delivery.
3. Supplier furthermore warrants that it shall supply Products' spare parts to HCME for a period of at least 10 (ten) years after the last regular delivery of these Products. In case if the Supplier ceases the manufacture of Products, he shall inform HCME about it promptly in advance, so HCME shall be able to order the Products and/or spare parts to them. In this event Supplier shall give an opportunity to HCME to order the Products at reasonable prices.

8. Drawings, specifications and data

1. If HCME requires the submission of drawings, specifications or other data for approval, Supplier shall submit them on or before the time specified by HCME free of charge.
2. If HCME reviews drawings, specifications or data submitted by Supplier in connection with any Contract and makes suggestions or comments, or approves such drawings, specifications or other data, such HCME's actions shall only be deemed an expression of its opinion and shall not relieve Supplier of its obligations for the reliability, quality, rate of output, costs, delivery, performance or any other requirements of any Contract and are without prejudice to any warranty obligations.

9. Pre-shipment inspection and acceptance of the Products and/or Services.

1. Supplier shall thoroughly inspect and/or test all Products and/or Services before shipment. Such inspection/ test shall confirm that Products and/or Services or any part thereof conform to the agreed specifications in the Contract and provisions of Article 6 and warranties of the Supplier in the Articles 7.1 and 7.2 of these GTC. Unless otherwise agreed, Supplier shall maintain such inspection/test record for 10 (ten) years and submit it to HCME free of charge upon HCME request.
2. HCME or its representatives shall be entitled to attend the Products' and/or Services' pre-shipment inspection/test and Supplier shall fully cooperate with HCME in this regard.
3. HCME shall inspect the delivered Products and/or Services within as a reasonable period as is practicable in the given circumstances. If HCME's inspection reveal that the Products and/or Services or any part thereof are not in conformity with the Contract, HCME shall notify Supplier about rejection of such Products and/or Services in writing and without prejudice to the other legal remedies, may demand at its option as the case may be:
 - a) delivery of that what is missing, in which case the payment term stipulated in the Article 4.3 shall be postponed accordingly and shall start not prior to the date of the acknowledgment of the receipt of the delivery of missing Products and/or Services;
 - b) return of the non-conforming Products to the Supplier for replacement by new Products or rendering of the Services again, in which cases all the costs and risks (including but not limited to return costs and costs of storage and transportation of the non-conforming Products) shall be borne by the Supplier;
 - c) repair of the non-conforming Products or correction of the non-conforming Services without any costs for HCME;
 - d) reduction of the price in proportion to the divergence from what was agreed
4. Without prejudice to the warranties of the Supplier in the Article 7.2, the Products and/or Services shall be deemed to be accepted by HCME if HCME has not fully or partially rejected them in accordance with the Article 9.3 of these GTC within as reasonable time as practicable in the given circumstances, but no more than within 3 (three) months from the date of the acknowledgment of receipt of delivery.

If the Products and/or Services are rejected by HCME in accordance with the Article 9.3, the warranty period specified in the Article 7.2e) shall be extended correspondingly and shall start from the date of the acknowledgment of the receipt of delivery of conforming Products and/or Services.

10. Transfer of ownership and risks

1. The ownership for the Products and/or Services shall pass to HCME at the moment of acknowledgment of receipt of delivery by a duly authorized representative of HCME or at the moment of full payment of the price, whichever comes first.

2. All risks to the Products and/or Services shall pass to HCME at the moment of acknowledgement of receipt of delivery by a duly authorized representative of HCME.

11. Intellectual property rights and ownership of the production means

1. All tools, dies, gauges, equipment, models, drawings, specifications, technical data, documentation or materials of any description furnished to Supplier by HCME or made by Supplier for the purpose of performing of any Contract and/or specifically paid for by HCME, and all replacements thereof and materials fixed or attached thereto, shall be and remain the property of HCME. Such property and, whenever applicable, each individual item thereof, shall be plainly marked or otherwise adequately identified by Supplier as "Property of Hitachi Construction Machinery (Europe) N.V." and shall, at Supplier's expense, be safely stored separately and apart from Supplier's property. Unless otherwise agreed in writing, Supplier shall not use such property except for the performing of the specific Contract.
2. HCME shall remain the sole owner of any copyrights on the drawings, specifications, technical data, documentation and material of any description furnished to Supplier.
3. Without prejudice to Articles 11.1 and 11.2 of these GTC and in the event that Supplier makes (i) invention regarding Services, Products, or its production method or (ii) creation regarding design, copyright (including software/hardware and its secondary work production), circuit placement, know-how or any other technical deliverable ((i) and (ii) are hereinafter collectively referred to as "Development"), based on the design or any other technical information provided by HCME, Supplier shall promptly inform HCME about such Development and its background. HCME and Supplier shall discuss and agree the attribution of ownership of intellectual property rights of the Development and its application and registration.
4. In the event if no Development regarding the Products and/or Services is made by the Supplier and the Products, Services and/or the accompanying documentation are subject to intellectual property rights, Supplier shall grant to HCME a non-exclusive, non-transferable, worldwide, royalty free irrevocable licence:
 - (a) to use, sell and to sub-license to use, and sell the Products and/or accompanying documentation;
 - (b) to use, copy and sell and to sub-license to use, copy, and sell the results of rendered Services and/or accompanying documentation.
5. Supplier warrants to HCME that no intellectual property rights of any third party are infringed in relation to the Products and/or Services.

12. Confidential information

Any drawings, specifications, plans, instructions, know-how etc. furnished by either Party to the other Party and/ or all related technical and commercial information that the Parties shall obtain under any Contract, shall be confidential and shall not be used for any purpose other than for performing of a Contract. Upon request of HCME the Parties shall enter a confidentiality agreement prior to the conclusion of a Contract or a number of Contracts for the purchase of the Products and/or Services of the same nature.

13. Indemnification

1. Supplier shall indemnify and hold HCME and its respective officers, employees agents, distributors and end-users harmless, and defend at its own expense from all suits, actions, liabilities or proceedings ("Claims") brought against HCME for any injury, death or property damage (including without limitation for consequential damages), resulting from improper or defective material, workmanship, design or content of prohibited controlled chemical substances in the Products or spare parts or arising out of the Product liability legislation. HCME shall cooperate with the Supplier in the defence thereof.
2. Supplier shall indemnify and hold HCME and Hitachi group companies harmless, and defend at its own expense from all Claims brought in connection with or arising out of HCME's use of the rendered Services.
3. In the event if any claim or action arises out of an infringement of intellectual property rights relating to Products and/or Services, Supplier shall indemnify, defend and hold HCME and Hitachi group companies harmless against any and all such Claims.

14. Limitation of liability

HCME shall never be liable to the Supplier for indirect or consequential damages including but not limited to loss of profit, loss of revenue, loss of savings, loss of investments and damages arising out of Supplier's liability against third parties. In any event the total liability of HCME, whether arising out of or in connection with a Contract, tort or other legal basis, shall not exceed the lesser (i) a purchase price of a Product or Service giving rise to a Claim or (ii) an amount compensated by an insurance company of HCME in a specific occurrence. HCME shall not rely on any limitations of liability provided for in these GTC if and to the extent that any damages are the result of the wilful misconduct or gross negligence of HCME's executive management

15. Insurance

Supplier warrants that its insurance shall cover at least 2 500 000 (two million five hundred thousand) Euro per occurrence against liability towards the third party and HCME. Upon request of HCME Supplier shall promptly send a confirming statement of the insurer every year.

16. Force Majeure

Either Party shall not be liable for a delay or failure in the performance which arises from acts of God, acts or economic sanctions of any governmental authority, riot, revolution, fire, war, or any other causes beyond the reasonable control of a Party, affected by a Force Majeure circumstance. However, the affected Party shall endeavour to shorten any such delay. In the event if Supplier invokes a Force Majeure circumstance and such a delay continues for more than 1 (one) month, HCME may terminate any Contract as to the undelivered portion. In this event HCME shall neither be obliged to pay any termination charges nor incur any other liability in connection with such a termination.

17. Anti-bribery

Neither Supplier nor any of its affiliates has taken and neither will 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 any government official (including any officer or employee of a government or government-controlled entity or instrumentality, or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or official thereof, or candidate for political office, all of the foregoing being referred to as "Government Officials") 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 Government Official for the purposes of obtaining or retaining business or securing any improper advantage or influencing official action.

No part of the payments received by Supplier from HCME will be used for any purpose which would cause a violation of law, including, without limitation, the anti-bribery laws of any country or jurisdiction, by Supplier.

18. Termination

1. Either Party may terminate any Contract forthwith without any further liability or obligations towards the other Party in the event if:
 - a) the other Party ceases doing business, is declared bankrupt or insolvent, granted a provisional suspension of payments or a moratorium, dissolved, liquidated or wound up;
 - b) a trustee, liquidator, receiver, custodian or similar official is appointed for the other Party or for any substantial part of its property or any analogous proceeding is commenced ;
 - c) the other Party's assets are placed under administration ;
 - d) the other Party enters into voluntary arrangements, proceedings, under bankruptcy regulation;
 - e) the other Party suffers or initiates any proceedings in any jurisdiction which correspond or have an effect equivalent to any of the foregoing.
2. In addition, HCME may terminate any Contract forthwith without any further liability or obligations if there is a change of ownership or control in the business of Supplier including sufficient change in the management of the Supplier.
3. In the event of a material breach of any Contract by either Party, the other Party may, at its option, suspend the performance (or further performance) of the Contract and/or give written

4. notice stating the nature of the breach and its intention to terminate the Contract. If the breach is not remedied within 30 (thirty) days of the receipt of the notice, then the Contract shall be terminated forthwith. Where the breach is not capable of being remedied, the Contract may be terminated forthwith by written notice. Termination by HCME shall be without prejudice to any right to damages or any other rights by virtue of law, Contract or otherwise.

19. Assignment

Assignment by the Supplier of any Contract or any right, interest or obligation thereunder or of any payment due or to become due hereunder or there under to the third parties, without written consent of HCME shall be void. In the event if HCME gives such consent to the Supplier, the Supplier shall be jointly and severally liable for the performance of the third party, to whom the Contract or any right, interest or obligation thereunder is assigned

20. Applicable law and dispute resolution

1. These GTC and all proposals, offers, Orders, Contracts and other understandings between the Supplier and HCME shall be exclusively governed by the laws of the Netherlands. The UN Convention on Contracts for the International Sales of Goods, 1980 (CISG) shall not be applicable.
2. All claims and disputes arising out of or relating to these GTC, any proposal, offer, Order, Contract or any other legal relations between the Parties shall be settled by the competent court in Amsterdam, The Netherlands. However, HCME shall have the right to submit any claim or dispute to a court that would have jurisdiction pursuant to the applicable rules of international law in the absence of the foregoing stipulation.
3. As an exception to Article 20.2, if Supplier is domiciled outside the European Union, or in Iceland, Switzerland or Norway, all claims and disputes between the Parties arising out of or relating to these GTC, any proposal, offer, Order, Contract or any other legal relations between the Parties shall be finally settled in accordance with the Arbitration Rules of The Netherlands Arbitration Institute (Netherlands Arbitrage Institute). The arbitral tribunal shall be composed of three arbitrators. The place of arbitration shall be Amsterdam, The Netherlands. The arbitral procedure shall be conducted in the English language. The arbitral tribunal shall decide in accordance with the rules of Dutch law. Consolidation of the arbitral proceedings with other arbitral proceedings pending in The Netherlands, as provided for in Section 1046 of the Dutch Code of Civil Procedure, shall be excluded.

Supplier: _____

Name: _____

Position: _____

Address: _____

Trade Register
Number: _____

Date: _____