

HITACHI CONSTRUCTION MACHINERY (THAILAND) CO., LTD.

TERMS AND CONDITIONS OF SALE

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HITACHI CONSTRUCTION MACHINERY (THAILAND) CO., LTD.
TERMS AND CONDITIONS OF SALE

1. Definitions and Interpretation

1.1 In these Conditions, the following words mean:

“Company”	Hitachi Construction Machinery (Thailand) Co., Ltd.(Registration No: 0115546010648).
“Conditions”	The Company’s standard terms and conditions of sale set out in this document.
“Contract”	The contract for the sale and purchase of the Equipment.
“Customer”	The customer of the Company who submits the order for the Equipment or whose order for the Equipment is accepted by the Company or who accepts a quotation of the Company for the sale of the Equipment (as the case may be).
“Equipment”	Any equipment including parts, components, attachments, accessories or materials incorporated in them as detailed in the order form.
“Force Majeure”	Any event, condition, causes or circumstances whatsoever beyond the Company’s control. “Force Majeure” shall include but not limited to Acts of God, flood, earthquake, storm, landslide or other natural calamity and exceptional weather condition, explosion, fire, strikes, lockout, labour disturbance or other industrial disruption, war, acts of terrorism, insurrection, riot, civil commotion, accident, sabotage, infectious disease, epidemic, travel restriction or travel warning due to any such event, shortage of material or supply, perils of the sea, delays in shipment, land transportation and transit, import or export regulations or embargoes, orders or regulations of governments of any relevant jurisdiction and changes in the laws affecting the sale of the Equipment.
“Order”	The Customer’s order for the Equipment as detailed in the order form.

1.2 A “year” and “month” shall mean a calendar year and a calendar month in the Gregorian calendar and a “day” means a period of twenty-four (24) consecutive hours beginning immediately after midnight.

1.3 “Party” refers to either the Company or the Customer and “Parties” refers to both of them.

1.4 Any reference to the Company and Customer shall include their respective successors-in-title.

2. Order

2.1 The Order submitted by the Customer shall constitute an offer from the Customer and it is fully binding on the Customer. However, the Order shall not become binding on the Company until an authorised representative of the Company has signed the Order.

2.2 The Company can refuse to accept either wholly or partially the Order:

- (a) if the Customer refuses to accept or comply with these Conditions; or
- (b) the Customer provides incomplete or inaccurate information; or
- (c) if required by the Company, the Customer fails to pay the Deposit (as hereinafter defined) or partial payment (if any) stipulated in the Order, or fails to provide any guarantee or security if required by the Company; or
- (d) at the Company’s absolute discretion without assigning any reason for it.

- 2.3 If the Customer fails to receive a copy of the Order signed by the Company or any acceptance or confirmation in writing from the Company (as the case may be) within fourteen (14) days from the date of the Order, then the Order shall lapse and be treated as null and void and the Parties shall not have any claim against each other in respect of the Order.
- 2.4 The Order has a validity period of one (1) months from the date of the Company's acceptance of this Order ("Order Validity Period") unless otherwise stated in the Order. The Order Validity Period may be extended at the Company's absolute discretion upon such terms and conditions by notification in writing to the Customer.

3. Price

- 3.1 The price of the Equipment quoted in the Order is in effect and prevailing as of the date of the Order and shall remain valid during the Order Validity Period stated in Article 2.4 above. In the event the price of the Equipment shall have to be increased by the Company due to delivery is made after the Order Validity Period, the Customer shall pay such increased price upon notification in writing by the Company.
- 3.2 The Customer shall bear any and all the cost and tax on its own in accordance with the related laws during the course of the Customer' performance of all the obligations under the Contract and Order and shall not request the Company to pay any additional cost or make compensation to the Customer. The contract price set forth in the Order between the Company and the Customer shall include any and all cost born by the Customer to perform all obligations under the Contract or Order, including, without limitation tax fees and VAT, unless otherwise agreed by the Parties.

4. Payment Terms

- 4.1 The Company shall be entitled to invoice the Customer upon delivery of the Equipment, whether in whole or in part within thirty (30) days from the date of the invoice unless otherwise agreed by the Parties. The Customer shall pay the amount by such period without any counter claims, set offs or deductions, within the terms agreed by both Parties. The Customer shall be liable to pay interest at the rate of fifteen percent (15.0%) per annum (or such higher rate as is permissible under the law) on any overdue amount, calculated on daily basis from the date the amount falls due until the date of full payment.
- 4.2 It is a condition of this Order that the Customer strictly adheres to the time and terms of payment and the Customer shall not be entitled to make any deduction, delay or withhold payment for any reason whatsoever.
- 4.3 The Company's invoice and/or statement of account or indebtedness in writing and signed by the authorised representative of the Company shall be conclusive proof of the amount outstanding and payable by the Customer. The Customer shall reimburse the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount from the Customer.

5. Formation of Contract

- 5.1 Each Order shall form the Contract when an authorised representative of the Company signs the Order or the Company issues acceptance of the Order to the Customer. If any Order purports to provide terms and conditions which vary or is in conflict with these Conditions, The Company reserves the right not to accept the Order.
- 5.2 Employees of The Company are not authorized to enter into oral collateral agreements or to give verbal guarantees beyond these Conditions.

6. Delivery and Force Majeure

- 6.1 Unless otherwise agreed, delivery of the Equipment shall be made by the Company at the delivery site stated in the Order as stated by the Customer or at the Company's designated premises (as the case may be) within seven (7) days or such time period notified by the Company that the Equipment is ready for collection (whichever is the later)
- 6.2 Any expected delivery date stated in the Order is approximate only. The Company shall not be liable to Customer for any loss, damage, cost or expense directly or indirectly arising or resulting from delay in delivery of the Equipment when such delay arises from shipment of supplies or from any Force Majeure event and/or other causes whatsoever beyond the Company's control. Any delay in delivery shall not entitle the Customer to refuse to accept delivery, cancel the Order, terminate the Contract, or to demand reimbursement or compensation of any kind whatsoever.
- 6.3 If the delivery of the Equipment shall be delayed due to any of the causes set out in Article 6.2 above, the time for delivery shall be extended until the Force Majeure event or the cause preventing delivery has ceased. In that event, the Company will notify the Customer of the revised delivery date.
- 6.4 The Company shall not be liable for any risk of loss or damage to the Equipment beyond the point of the delivery site stated in the Order.

7. Cancellation, Failure to Take Delivery and Breach of Conditions

- 7.1 If the Customer cancels the Order or breaches any of these Conditions before delivery of the Equipment or fails to take delivery of the Equipment within seven (7) days or such period notified by the Company to do so, the Deposit and any partial payment paid will be forfeited immediately without prior notice from the Company.
- 7.2 According to above event, The Company shall, at its sole discretion, have the right to place the Equipment in an appropriate storage location upon written notification to the Customer. The Customer shall pay all handling, insurance, storage charges and all incidental charges relating thereto, and shall assume the risk of loss or damage to such Equipment. Nothing herein shall affect The Company's right to invoice for the Equipment, and the Equipment placed in storage pursuant to Article 7.1 shall be deemed to have been delivered to and accepted by the Customer.

8. Risk and Property

- 8.1 Risk in the Equipment will pass to the Customer at the time the Customer takes delivery of the Equipment.
- 8.2 Notwithstanding the delivery and the passing of risk in the Equipment to the Customer, the title and property in the Equipment shall remain with the Company and shall not pass to the Customer until the Company has received full payment of the price and other amount (including interest and costs) due under the invoice for the Equipment.
- 8.3 The Customer shall not assign any of its rights and/or obligations under the Contract to a third party, nor authorise a third party to accept its rights and/or obligations under the Contract without the prior written consent of the Company. The Customer also agrees not to sell, dispose of, transfer, lease, let on hire-purchase, mortgage, pledge, grant security over, sell with right to redemption, exchange or grant or allow any encumbrance on the Equipment, or allow other person to possess or use the Equipment during the time the Equipment is under the ownership of the Company and the Company has not received full payment for the same, unless having received the prior written consent of the Company.

9. Trade-In

- 9.1 Where the Customer trades in a machine, the Customer warrants that the trade-in machine is free from all encumbrances and it is the absolute property of the Customer and its title registered to the Customer. In which case the Company, at its sole discretions assesses the value of the trade-in machine, if such value is less than the value of the Equipment, the Customer shall pay the add money up to the price of the Equipment to the Company.
- 9.2 The Customer shall deliver the trade-in machine together with the add money (as the case may be) [complete with its registration document, service history and ignition keys] to the Company in substantially the same condition as at the date of the Company's inspection. In the event the trade-in machine upon delivery to the Company shall be found to be unacceptable to the Company for any reason whatsoever, the Company shall be discharged from any obligation to accept the trade-in-machine or to make any allowance in respect thereof and the Customer shall respond in full by way of cash the price of the Equipment.
- 9.3 In the event that the arrival or the availability of the Equipment takes longer than the expected delivery date or the standard delivery period, the Company reserves the right to conduct a second inspection on the trade-in machine to reassess its condition and to revalue the trade-in machine. The Customer shall pay for any diminution in the trade-in value or allowance (if any) to the Company upon notification in writing from the Company before delivery of the Equipment.

10. Warranty, Exclusion of Warranty and Limitation of Liability

- 10.1 The period and conditions of warranty for the Equipment ("Warranty") are as stipulated in the Warranty Certificate for the Equipment. The Warranty will be invalid outside Thailand.
- 10.2 The Company shall not be liable to the Customer for any special, direct, indirect, incidental or consequential loss (including loss of profit or other economic loss) or damage of any nature or due to any cause whatsoever and/or for any costs, expenses or claims for compensation (whether in contract, tort or otherwise) arising out of or in connection with the Order or the performance of the Contract except as expressly provided in the Warranty and in these Conditions.
- 10.3 Warranty for the Equipment shall be as specified by the manufacturer of the Equipment. The Company shall at its sole discretion repair or replace any of the Equipment that: (a) the Customer has notified the Company does not comply with the Warranty during the applicable warranty period; and (b) the Company has confirmed to be defective. In case of Replacement, the Equipment shall carry the remaining warranty of the original Equipment.

11. Indemnity

The Customer shall indemnify the Company in full against all liabilities, claims, loss, damage, costs and expenses incurred or awarded against the Company in respect of damage to any property, death or personal injury to any person or claim by a third party arising from the purchase or use of the Equipment or breach of these Conditions by the Customer, its employees, agents and contractors.

12. Sale and Export Terms

- 12.1 The Customer shall not export the same if the Equipment has less than two thousand (2,000) operation (excluding travel) hours on the computer system of the Equipment or is used less than twelve (12) months in Thailand from the date of delivery (whichever is the later)^{*1}. In the event of any breach of this provision, the Customer agrees and undertakes to pay damages, whether or not actual damage or loss is proved a sum equivalent to twenty percent (20%) of the price of the Equipment to the Company.

- 12.2 The Customer shall within seven (7) days upon the request by the Company at any time during the first two thousand (2,000) operation hours or first twelve (12) months from the date of delivery (whichever is the later) furnish the exact location or whereabouts of the Equipment for the purpose of verification and/or inspection. The Company reserves the absolute right or discretion whether or not to carry out such inspection. In the event of any default by the Customer to comply with the request by the Company, it shall be deemed that the Equipment is no longer in Thailand and has been exported with less than two thousand (2,000) operation hours and/or operated less than 12 months^{*1}. In such contravention, an agreed sum equivalent to fifty percent (50%) of the purchase price shall become due and payable to the Company immediately upon notification.
- 12.3 The parties acknowledge that the Equipment, their respective documentation and other materials supplied under this Contract may be subject to export control laws and regulations of the United States, Thailand and applicable law (as the case may be). In case the Customer export the Equipment, the Customer shall, at its cost obtain all consents and licences as may be required of them from time to time under applicable law.

13. Consequences of Event of Default

In the event that the Customer breaches any Article of these Conditions, the Oder or the Contact for whatever reason or the Customer fails to pay the full invoice price by the due date for payment (the "Event of Default"), the Company shall be entitled at its absolute discretion and option, use one or many of following measure(s);

- (a) To suspend the Contract or/and;
- (b) To enforce the security immediately and, without prejudice to its rights under the Contract or/and;
- (c) To charge the Customer interest (both before and after judgment) of fifteen percent (15.0%) per annum (or such higher rate as is permissible under the law) on any overdue amount, calculated on daily basis from the date the amount falls due until the date of full payment.

14. Termination

14.1 In addition to the Company's right to terminate the Contract as provided elsewhere in the Contract, the Company also has the right to terminate the Contract with immediate effect in the following cases:

- (a) The Customer defaults in making one or more of the instalment payments.
- (b) In the event that the Customer is an individual, the Customer dies, becomes incompetent or quasi-incompetent per Court order and no one arranges for a third party whom the Company deems eligible to guarantee the Customer's rights and obligations to the Company within 30 days from the date of the Customer's death or become incompetent or quasi-incompetent per Court order.
- (c) In the event that the Customer is an individual or juristic person, the Customer is deemed insolvent, is declared bankrupt, or is placed in receivership or absolute receivership per Court order.
- (d) In case the title of the Equipment is not transferred to the Customer, The Customer undertakes or consents to another person to modify, install or do any act whatsoever which in the Company's opinion will depreciate or devalue the Equipment beyond the standard rate of depreciation or conducts such actions according to an unmodified standard.

- (e) The Customer undertakes or consents to any acts which could cause detrimentally affect the Company's rights in any way in respect of the Equipment or under the Contract.
 - (f) The Customer in any way impairs or reduces any security given to the Company (if any) or the suretyship agreement (if any) with the third party in respect of obligation of the Customer's obligation under the Contract becomes invalid or unenforceable during the term of the Contract.
- 14.2 In case the Company terminate the Contract pursuant to Article 14.1 above, the Company is entitled to re-possess the Equipment immediately and the Customer shall responsible for any cost of repossession and/or damages arising from such termination.

15. Reservation of Rights

Any delay, neglect or failure by the Company to enforce its rights under these Conditions and/or to compel the Customer to perform or comply with any terms of the Order and Contract shall not be construed as a waiver by the Company of its rights to enforce the same or to insist upon performance or compliance by the Customer at a later date.

16. Governing Law and Jurisdiction

The Contract will be governed by and interpreted in accordance with the laws of Thailand. Any action arising out of the Order and the Contract shall fall under the exclusive jurisdiction of the courts of law in Thailand. The Customer consents that such courts shall have jurisdiction over the Customer with respect to any such action.

17. Notice and Binding Effect

- 17.1 Any notice required to be given by either Party to the other under these Conditions shall be in writing and addressed to that other Party at its address stated in the Order or at such other addresses as may be notified in writing by one Party to the other Party at the relevant time.
- 17.2 These Conditions shall be binding upon the successors-in-title of the Company and the Customer.

18. General

- 18.1 All previous communication between the Customer and the Company, whether oral or written before the date of the Order are superseded by these Conditions. Any change or modification of the Order, the Contract and these Conditions must be in writing and signed by the authorised representatives of the Company and the Customer. Time is of the essence in the performance of the Customer's obligations in the Contract.
- 18.2 The Customer consents to the Company using, processing, handling and retaining the Customer's data and information provided to the Company for purposes of the Order and performance of the Contract. By submitting the Order, the Customer acknowledges the terms of the Company's Personal Data Protection Notice to the Customer.
- 18.3 The Customer shall provide the Company at any time upon request with such information and documentation as the Company requires for verification and for compliance with applicable laws and regulations including but not limited to Anti-Money Laundering Act, B.E. 2542 (1999) and Counter-Terrorism and Proliferation of Weapons of Mass Destruction Financing Act B.E. 2559 (2016)

18.4 The rights and remedies in these Conditions are cumulative and not exclusive of any rights or remedies provided by law.

18.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, such provision shall be construed, limited or if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability. The validity of the other provisions of these Conditions is not affected and shall remain in full force and effect.

*1 3,000 operating hours irrespective of operation period for machine exported to North, Central and South America