



# Terms and Conditions of Sale (non-negotiable)

V.15.04.2019

## 1. GENERAL

In these Terms and Conditions of Sale, We or us or Our means Hilti (Aust.) Pty Ltd, ABN 44 007 602 100, Level 5 Building G, 1 Homebush Bay Drive, Rhodes NSW 2138; You means any person, firm or company placing an order with us for the purchase of goods; Goods means goods merchandise and service supplied to you by us.

All orders you place with us are subject to these Terms and Conditions of Sale and as amended from time to time. Any supply of Goods made after the acceptance of these Terms is pursuant to the supply agreement that is comprised of these Terms and the relevant order as accepted by us. Any such supply does not give rise to a new or separate agreement.

Your order represents an offer to us to purchase goods which is accepted by us when we dispatch the goods to you. All prices are current at the time of order and subject to change without notice. Placing an order and purchasing any of the Goods, the Customer acknowledges and agrees that all such purchases are for business purposes only.

These Terms contain all of the terms and conditions of the contract between the parties. Hilti reserves the right to vary these Terms at any time and will provide notice to you in writing of any variation made. Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.

No waiver of any of these Terms or failure to exercise a right or remedy by Company will be considered to imply or constitute a further waiver by Company of the same or any other term, condition, right or remedy.

## 2. PAYMENT

All payments are due within 30 days from the end of the month of the invoice date (unless otherwise stated on your invoice). Interest may be charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received by us. You are not entitled to withhold payment due to an account query, dispute or set off unless approved by us. If you fail to make payment in accordance with this clause, all amounts owed to us shall immediately become due and payable. We shall be entitled to claim from you all costs, expenses and charges incurred to recover monies or goods due from you.

## 3. DELIVERY

All deliveries will incur a minimum delivery charge with the exception of repair orders in the No-Cost period. Fleet Management orders and Fleet Management repair orders, which are part of an original order that has been partly fulfilled. Any date or time quoted for delivery is an estimate only. Any failure or delay in supply or delivery of the Goods shall not confer to you any right of cancellation or refusal of delivery or render us liable for any loss or damages directly or indirectly sustained by you as a result thereof.

Our obligation to deliver shall be discharged on arrival of the goods at your nominated delivery destination or the address appearing on the invoice. Particulars appearing on our delivery docket and any substantiating driver's dockets shall constitute prima facie evidence of date, time and place of delivery, whether or not the documents were signed.

## 4. ON SALE / RE-SELLING

You agree that upon on-sale/ re-selling of any Goods to third parties you must not make any misrepresentations to third parties about the Goods.

4.1 You will ensure that all the Goods (a) include all applicable instruction-for-use and safety information, (b) are accompanied by (c) have the necessary permits and approvals in order to review the quality of the goods and services and to ensure that branding and goods handling activities are appropriate

4.2 You shall check and ensure that no companies and persons blacklisted on the respective blacklists of U.S., E.U., CH or other competent countries / governments are supplied with goods information, software or technology without the legally required approval. This includes abiding by all export or re-export restrictions applicable. You shall further guarantee that you do not intend to use any goods, information, software and technology delivered by us or other affiliates of ours to you in or in connection with nuclear technology or weapons of mass destruction (nuclear, biological, chemical) and carriers thereof.

4.3 You shall cooperate with us in providing relevant information and permits representatives of ours to review your store locations and sales and service activities in order to review the quality of the goods and services and to ensure that branding and goods handling activities are appropriate

## 5. INSPECTION

You shall examine the goods immediately after delivery. If the goods do not correspond with the description of them on the delivery note or invoice or are defective on examination of the goods, please call customer service on 131 292. Provided that the goods are preserved intact and are returned to us in the same condition as that in which they were delivered, we shall at our discretion replace those goods or reimburse you for the amount of the purchase price paid for them.

Any claim in this respect must be made within 30 days of the date of purchase. To the extent permitted by law, you agree that failure to notify us within 30 days of the date of purchase will be deemed acceptance of the goods as satisfactory and you will have no further claim on us.

## 6. RETURNS

If you want to return goods to us where you have changed your mind, please call customer service on 131 292. In these circumstances and to the extent permitted by law, Goods:

- (a) must be unused items in original packaging and in unbroken quantities and in as-new condition to qualify for return.
- (b) shall only be accepted for return within 30 days of the date of purchase, subject to our approval and are subject to our inspection and acceptance on return.
- (c) returned are subject to a re-stocking fee of 10% plus freight.
- (d) subject to an expiry date, special order products, chemical products and discontinued items shall not be accepted for return.

To the extent permitted by law, the method of refund provided by us to you in accordance with this clause is at our absolute discretion.

## 7. PROPERTY AND RISK

Property in any given good shall remain with us until you have paid and discharged any and all other indebtedness to us on any account whatsoever, including all applicable sales taxes and other taxes, levies and duties.

The risk in the goods shall pass to you upon delivery to you, your agent or to a transport company nominated by you. You acknowledge that you are in possession of the goods solely as a bailee for us until payment has been made in full and until such payment you shall be fully responsible for any loss or damage to the goods whatsoever and nowsoever caused following delivery.

You hereby irrevocably grant us, our agents and servants an unrestricted right and licence without notice to enter premises occupied by you to identify and remove any of the goods in our property in accordance with these Terms and Conditions of Sale without in any way being liable to you or any person claiming through you. We shall have the right to sell or dispose of any such goods removed or otherwise in our sole discretion and shall not be liable for any loss occasioned thereby.

## 8. PERSONAL PROPERTY AND SECURITIES ACT 2009 (Cth) ("PPSA")

Defined terms in clause have the same meaning as given to them in the PPSA. We and you acknowledge that these Terms and Conditions constitute a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in our favour over the goods supplied or to be supplied to you as the Grantor pursuant to these Terms and Conditions.

The goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of 'Other Goods' acquired by you pursuant to these Terms.

We and you acknowledge that we, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to you, as Grantor, under these Terms and Conditions on the PPSA Register as Collateral. To the extent permissible at law, You:

- (a) waive your 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 you, as Grantor, to us.
- (b) agree to indemnify us on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the registration or amendment or discharge of any Financing Statement registered by or on behalf of us; and
  - i. enforcement or attempted enforcement of any Security Interest granted to us by You.
- (c) agree that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms.
- (d) agree 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 130(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.
- (e) agree that all payments received from you must be applied in accordance with section 14(6)(c) of the PPSA.

## 9. UNCOLLECTED GOODS

If you fail to pick up goods at your nominated delivery destination or the address appearing on the invoice we endeavour to contact you with the details you have provided to us. If we are unable to contact you at your last known address or phone number or you do not pick up and make payment in full for the goods within the respective states' legislative timeframes we reserve the right to dispose of these goods without rendering us liable for any loss or damages directly or indirectly sustained by you as a result thereof.

## 10. PROVISION OF SERVICES ON CUSTOMER PREMISES

Where our services are performed on your premises, you are responsible for:
(a) Giving safe access to Our personnel (e.g. employees, agents and contractors);
(b) Ensuring that all consents and permissions required to perform the services are in place;
(c) Providing facilities such as power and lighting necessary to perform the services;
(d) Ensuring that the premises are free from health and safety hazards; and
(e) the death or personal injury to Our personnel or loss of property of Us, our personnel and subcontractors whilst on your premises except where caused by our or our subcontractor's negligence

## 11. INTELLECTUAL PROPERTY RIGHTS

Nothing in these Terms and Conditions of Sale constitutes a transfer of any intellectual property rights. You acknowledge and agree that, as between you and us, we own all intellectual property rights in the Goods. You must obtain prior written approval from Us for any use by you of Our trademarks or brand.

## 12. WARRANTY AND LIMITATION OF LIABILITY

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Please note for chemical products, you must comply with the directions contained in the Information for Use document accompanying the product.

- (a) in relation to Goods;
  - (i) replacing the Goods or the supply of equivalent goods;
  - (ii) the repair of the Goods;
  - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the Goods repaired.
- (b) where the Goods are services;
  - (i) re-supplying the services;
  - (ii) reimbursing the consumer for paying someone else to supply the services.

To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and We are not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate you 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 Our failure to complete or delay in completing the order to deliver the Goods.
- Any warranty supplied with goods to you shall be subject to payment in full in accordance with the particulars stated on your invoice. To the extent permissible by law, nothing herein or in any warranty given by us shall impose any liability on us in respect of any defect in the goods arising out of facts, omissions, negligence or default of you, your agents or servants including without limitation any failure by you to comply with our recommendations as to storage, handling, use, or servicing of the Goods.

## 13. TERMINATION

If you fail to comply with our Terms and Conditions of Sale or being a natural person or persons commit any act of bankruptcy, or being a corporation pass a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enter into any composition or arrangement with creditors or if a receiver or manager or administrator is appointed for any property or assets of you or become liable to be wound up by reason of insolvency or if any petition is presented for your winding up, or if a liquidator or provisional liquidator or administrator is appointed, we may, in addition to exercising all or any of our rights against you, suspend any further deliveries and immediately recover possession of any goods not paid for, and all amounts owed to us shall immediately become due and payable.

## 14. INDEMNITY

To the full extent permitted by law, Customer will indemnify Company and keep Company indemnified from and against any liability and any loss or damage Company may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Customer or its representatives.

## 15. GOVERNING LAW

You agree that these Terms and Conditions of Sale shall be construed according to the laws of the State or Territory as we may in our sole discretion determine. Proceedings may be instituted in such State or Territory as we may in our sole discretion determine. Failing such determination you consent to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales.

These Terms and Conditions of Sale do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which by law cannot be excluded, restricted or modified.

## 16. FORCE MAJEURE

We will not be liable for any loss incurred as a result of delay or failure to meet an accepted order or to observe any of these Terms and Conditions of Sale due to an event of force majeure, being any cause or circumstance beyond our control, including but not limited to any failure or delay in performance caused by acts of God, fire, flood, lightning, war, revolution, acts of terrorism, riots, strikes and other industrial actions and failures of supplies of power, fuel, transport, equipment and raw materials which adversely affect our supply chain. During the continuance of an event of force majeure affecting us, our obligations hereunder will be suspended and will resume as soon as possible after the cause or circumstance has ceased to have effect.

We value your business and welcome your call to 131 292 or e-mail to serviceaustralia@hilti.com for all your needs whether it concerns additional information or goods, repair and maintenance, changes or queries regarding your account or any failure to live up to your expectations.

Hilti (Aust.) Pty Ltd  
PO Box 3217  
Rhodes NSW 2138

T 1800 257 393 | F 02 8748 1192  
www.hilti.com.au

ABN 44 007 602 100 | ACN 007 602 100

Signed on behalf of the applicant by

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date

Signature

Print Name

Position