



TERMS AND CONDITIONS OF SALE (NON-NEGOTIABLE)

(version 11.08.2021)

1. GENERAL

1.1 In these terms and conditions of sale ("Conditions") the following words have the meanings shown:

"**Buyer**" means the person, firm or company purchasing Goods and/or Services from Hilti;

"**Contract**" means any agreement between Hilti and the Buyer for the purchase of Goods and/or provision of Services from / by Hilti;

"**Goods**" means goods manufactured by Hilti and purchased by the Buyer on the terms of this Contract;

"**GST**" has the same meaning as in the GST Law;

"**GST Law**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"**Hilti**" means Hilti (Aust.) Pty Ltd, ABN 44 007 602 100, Level 5 Building G, 1 Homebush Bay Drive, Rhodes NSW 2138;

"**Personnel**" means the employees, servants, directors, agents, consultants or other personnel of Hilti or any of their subcontractors;

"**Services**" means the services to be supplied by Hilti under or in relation to the Contract;

"**Taxable Supply**" has the same meaning as in the GST Law;

"**Tax Invoice**" has the same meaning as in the GST Law.

1.2 Headings do not affect the interpretation of these Conditions.

2. MAKING THE CONTRACT

2.1 Any written quotation, estimate and/or advertised price for the Goods and / or Services shall be an invitation to treat and no binding contract shall be created by placing an order on Hilti's website or otherwise until Hilti has sent an acknowledgement of order to the Buyer or (if earlier) Hilti delivers the Goods or provides the Services to the Buyer, whereupon a Contract shall be formed. In the event that Hilti has not provided an acknowledgement of order, these Conditions, provided the Buyer shall have had prior notice of them, shall nonetheless apply to the Contract. Any order shall be accepted entirely at the discretion of Hilti.

2.2 Any quotation made by Hilti is given subject to these Conditions and is valid for 30 days from its date (or until any other date shown on the quotation), provided that Hilti has not previously withdrawn it.

2.3 Unless agreed otherwise in writing, these Conditions shall be incorporated in the Contract to the exclusion of all other terms, conditions or other representations. Any other general terms, conditions or other representations of the Buyer, even if they are known, are expressly excluded and rejected. These conditions shall furthermore provide the basis for all future transactions regarding the sale of Goods and/or provision of Services by Hilti.

2.4 These Conditions shall prevail unless expressly amended in writing and signed by two authorized representatives on behalf of Hilti.

2.5 In placing an order and purchasing any of the Goods, the Buyer acknowledges and agrees that all such purchases are for business purposes only.

3. DESCRIPTION OF GOODS AND SERVICES

3.1 The quantity, quality, description of and any specification for the Goods or Services shall be as set out in Hilti's acknowledgement of order or, in its absence, Hilti's quotation.

3.2 All descriptive matter, specifications and advertising issued by Hilti and any descriptions, details or illustrations contained in Hilti's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them and they will not form part of the Contract unless otherwise agreed in writing.

3.3 Hilti reserves the right, without liability to the Buyer, to make any changes in the specification of the Goods and / or

Services which are required to conform with any applicable national and / or EU laws, regulations and / or safety requirements or which do not materially affect the quality or performance of the Goods and / or Services.

3.4 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the Personnel shall be construed to vary in any way any of these Conditions under the Contract unless otherwise agreed in accordance with section 2.4 above.

4. PRICE AND DELIVERY

4.1 Subject to section 4.2 below, the price payable for Goods and/or Services shall, unless otherwise stated by Hilti in writing and agreed on its behalf, be the list price of Hilti current at the date of despatch and, in the case of an order for delivery by instalments, the price payable for each instalment shall be Hilti's current list price at the date of the despatch of each instalment.

4.2 Unless otherwise agreed in writing, Hilti's prices may be subject to variation to take account of variations in wages, materials or other costs since the date of Hilti's quotation or, if no quotation is issued, the Buyer's order. Hilti accordingly reserves the right to adjust the invoice price payable by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if it were the original Contract price.

4.3 Hilti shall be entitled to invoice the Buyer by post, by courier or email for the price of the Goods and / or Services in Australian dollars.

4.4 Hilti has the right to invoice the Buyer for the costs of any packaging, transportation of the Goods or any additional costs resulting from any other alteration made by or requested in written form by the Buyer on or at the time of delivery or upon notification by Hilti that the Goods are awaiting collection. Any such additional costs may be invoiced by Hilti in Australian dollars.

4.5 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 Buyer any right of cancellation or refusal of delivery or render Hilti liable for any loss or damages directly or indirectly sustained by Buyer as a result thereof.

5. CARRIAGE AND INSURANCE

5.1 The cost of carriage and insurance of the Goods to the Buyer's premises shall be in accordance with the applicable Incoterms 2020 (see section 5.2 below).

5.2 Unless expressly agreed otherwise in writing, export orders shall be charged in accordance with Incoterms 2020 - FCA place of departure, save that Hilti shall have no obligation to obtain any export licence or clearance required in relation to the Goods.

6. ADDITIONAL COSTS

6.1 The Buyer agrees to pay for any loss or extra costs above the quoted price for the Goods or Services which are directly or indirectly incurred by Hilti through the Buyer's instructions or lack of instruction or through failure or delay in taking delivery or through any act or default on the part of the Buyer, its servants or agents. In addition, Hilti reserves the right to dispose of the uncollected Goods without rendering Hilti liable for any loss or damages directly or indirectly sustained by Buyer as a result thereof.

6.2 Without prejudice to any other rights and remedies which Hilti may have, if the Goods are submitted to Hilti or its Personnel for repair, Hilti shall have a general lien on the Goods in respect of all debts owed by the Buyer to Hilti (including the costs of the repair), and if the Goods are not collected and paid for by the Buyer within 5 months of the Buyer being informed that the Goods are ready for collection, the Buyer agrees that Hilti shall be entitled after 14 working days' notice to the Buyer to dispose of the Goods as Hilti thinks fit.

7. TERMS OF PAYMENT

- 7.1 Unless agreed otherwise in writing, all payments due under any Contract must be made by the Buyer within 30 days of the date of the invoice sent by Hilti to the address provided by the Buyer. The Buyer shall not be entitled to exercise any set off, lien or any other similar right or claim unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Hilti to the Buyer. Hilti may set off any claim of any kind whatsoever which the Buyer may have against Hilti under the Contract or any other contract or otherwise howsoever against any sum which would otherwise be due from the Buyer to Hilti under the Contract or any other contract otherwise howsoever.
- 7.2 If the Goods or Services are delivered / provided in instalments, Hilti shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in accordance with section 7.1 above in respect of each invoice.
- 7.3 Any failure by the Buyer to either pay any due instalment in accordance with this Contract or failure to give delivery instructions in respect of any Goods or Services shall cause the whole of the price for Goods and Services already manufactured or provided at the time of such a default, to become due forthwith without any notice.
- 7.4 Prompt payment shall be a condition precedent to future deliveries of the Goods / provision of Services due under any Contract.
- 7.5 Unless otherwise agreed in writing between the parties, Hilti is entitled to charge and to be paid interest at the rate of 10% per year on any unpaid invoices and / or any other overdue payments due from the Buyer, calculated daily.

8. DELIVERY OF GOODS

- 8.1 The period for delivery shall be the period within which the Goods are intended to be despatched from Hilti's premises and shall be calculated from the date of the receipt by Hilti of the Buyer's order or the date of receipt of all necessary information to enable Hilti to manufacture or procure the manufacture of the Goods, whichever shall be the later, and the Buyer shall take delivery of the Goods within such a period. If no period is stipulated by Hilti, then delivery will be such time after receipt of instructions as Hilti thinks reasonable.
- 8.2 Unless agreed otherwise in writing, all times or dates given for delivery of the Goods are given in good faith and time for delivery shall not be of the essence. Hilti shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods.
- 8.3 Without prejudice to the warranties in section 12 below, no liability for non-delivery, loss of or damage to the Goods occurring post-delivery or for any claim that the Goods are not in accordance with the Contract will attach to Hilti, unless claims to that effect are notified in writing by the Buyer to Hilti (and in the case of claims for non-delivery, loss or damage with a copy to the carrier if Hilti's own vehicles have not been used to deliver the Goods):
- 8.3.1 immediately in case the loss of or damage to the Goods occurred in transit or upon delivery provided that the relevant loss or damage is expressly mentioned on the consignment note;
- 8.3.2 within 28 days of delivery of the Goods in the case of defective Goods; or
- 8.3.3 within 7 days of delivery of the Goods for any other noncompliance with the Contract.
- 8.4 If the Buyer fails to give notice in accordance with section 8.3 above, the Goods shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be deemed to have accepted the Goods and shall be bound to pay for the same accordingly.
- 8.5 All requests for proof of delivery must be made within a period of 21 days following the date of the invoice.
- 8.6 If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods have been notified as ready for delivery, Hilti may at its sole discretion store the Goods at the risk and cost of the Buyer and take all reasonable steps to safeguard and insure them at the cost of the Buyer, provided that the Buyer shall be immediately informed thereof.

- 8.7 Hilti shall have the right to make delivery by instalments of such quantities of the Goods and at such intervals as it may decide. Any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept further deliveries thereof.

9. RETURNS AND CANCELLATIONS

- 9.1 If Buyer wants to return Goods to Hilti where it has changed its 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 Hilti's approval and are subject to its inspection and acceptance on return;
- (c) returned are subject to a re-stocking fee of 10% plus freight; and
- (d) subject to an expiry date, special order products, chemical products and discontinued items shall not be accepted for return.
- 9.2 To the extent permitted by law, the method of refund provided by Hilti to Buyer in accordance with this clause is at its absolute discretion.

10. PASSING OF TITLE AND RISK

- 10.1 The risk shall pass in accordance with the applicable Incoterms 2020.
- 10.2 Property in the Goods shall not pass to the Buyer until Hilti has received in full (in cash or cleared funds) all sums due to it in respect of:
- 10.2.1 the Goods; and
- 10.2.2 all other sums which are or which become due to Hilti from the Buyer on any account.
- 10.3 Until property in the Goods has passed to the Buyer, the Buyer shall:
- 10.3.1 hold the Goods on a fiduciary basis as Hilti's bailee;
- 10.3.2 store the Goods (at no cost to Hilti) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Hilti's property;
- 10.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 10.3.4 maintain the Goods in satisfactory condition and keep them insured on Hilti's behalf for their full price against all risks to the reasonable satisfaction of Hilti. On request the Buyer shall produce the policy of insurance to Hilti.
- 10.4 The Buyer may use the Goods in the ordinary course of the Buyer's business before ownership has passed to it.
- 10.5 The Buyer's right to possession of the Goods shall terminate immediately upon the occurrence of any of the events specified in sections 19.1.2 to 19.1.6 below.
- 10.6 Hilti shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Hilti.
- 10.7 The Buyer grants Hilti and its Personnel an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them, and the Buyer acknowledges that Hilti shall have the right to intercept and repossess Goods in transit where the Buyer's right to possession has terminated.
- 10.8 Where Hilti is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession

has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by Hilti to the Buyer in the order in which they were invoiced to the Buyer.

- 10.9 On termination of the Contract, howsoever caused, Hilti's (but not the Buyer's) rights contained in this section 10 shall remain in effect. Hilti's rights and remedies set out in this section 10 are in addition to and shall not in any way prejudice, limit or restrict any of Hilti's other rights or remedies under the Contract or in law.

11 PERSONAL PROPERTY AND SECURITIES ACT 2009 (Cth) ("PPSA")

- 11.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 11.2 Hilti and Buyer acknowledge that these Terms and Conditions constitute a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in Hilti's favour over the goods supplied or to be supplied to Buyer as the Grantor pursuant to these Terms and Conditions.
- 11.3 The goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by Buyer pursuant to these Terms.
- 11.4 Hilti and Buyer acknowledge that Hilti, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to Buyer, as Grantor, under these Terms and Conditions on the PPSA Register as Collateral.

To the extent permissible at law, Buyer:

- (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 Buyer, as Grantor, to Hilti.
- (b) agrees to indemnify Hilti 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 Hilti; and
 - ii. enforcement or attempted enforcement of any Security Interest granted to Hilti by Buyer.
- (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 Buyer must be applied in accordance with section 14(6)(c) of the PPSA.

12 SUPPLY OF SERVICES

- 12.1 Hilti shall provide the Services to the Buyer in accordance with the Contract applying reasonable skill and care.

- 12.2 Hilti shall use its reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. Hilti shall not be liable for any loss whatsoever or howsoever arising caused by its failure to provide the Services on the due date.

- 12.3 Where Hilti is to perform the Services at the Buyer's premises, the Buyer shall:

- 12.3.1 procure safe and unhindered access to the premises for all the Personnel to carry out the Services at all relevant times;
- 12.3.2 ensure that all consents, permissions, or licences required to allow the Services to be provided are in place;
- 12.3.3 ensure the provision of adequate power, lighting, heating and other such facilities or supplies required for the provision of the Services;
- 12.3.4 provide adjacent to where the Services are to be provided storage for the materials required for the Services;
- 12.3.5 ensure that the site where Services are to be provided are adequate for that purpose, clear and free from all health and safety hazards and possesses such facilities for the Personnel to comply with any applicable legislation and as Hilti shall reasonably require; and
- 12.3.6 be responsible for the Personnel's death or personal injury or damage to or loss of Hilti's (and subcontractors and Personnels) property whilst on the Buyer's premises except to the extent any such death or personal injury results from the negligence of Hilti or its subcontractors.

- 12.4 The Services will be deemed to be completed and the relevant element of the Contract price to be due and payable forthwith:

- 12.4.1 when Hilti issues a written notice to the Buyer confirming such completion; or
- 12.4.2 if Hilti is available to perform the Services but is prevented from doing so by reason of:
 - (a) the lack of relevant assistance from the Buyer (such as lack of availability of test components or parts from the Buyer); or
 - (b) the condition of the Buyer's premises on the site at which the Services are to be provided and/or the facilities at or the services available at those premises at the time agreed for the provision of the Services; or
 - (c) the failure by the Buyer to comply with the Contract.

13. WARRANTIES

- 13.1 Where Goods and/or Services are supplied with the benefit of a specific written warranty set out in another document produced by Hilti, such warranty shall apply instead of the warranty set out in section 13.2 below. The warranty in section 13.2 shall only apply where no such specific warranty is supplied in relation to the Goods and / or Services. The exclusions in sections 13.3 to 13.5 shall apply to every such specific warranty except for the "manufacturer's lifetime warranty" set out in any operating instructions supplied with the Goods.

- 13.2 If the Buyer establishes to Hilti's reasonable satisfaction within 12 months of the date of delivery of the Goods or performance of the Services that there is a defect in the materials or workmanship of the Goods or that the Goods or Services are supplied not in accordance with the Contract then Hilti shall at its option, at its sole discretion and within a reasonable time:

- 13.2.1 repair or make good such defect or failure in such Goods free of charge to the Buyer (including all costs of transportation of any Goods or materials to and from the Buyer for that purpose); or

- 13.2.2 replace such Goods with Goods which are in all respects in accordance with the Contract or re-perform such Services: or
- 13.2.3 issue a credit note to the Buyer in respect of the whole or part of the Contract price or such Goods or Services as appropriate having taken back such Goods or materials relating to such Goods or Services,

subject in every case to the other provisions of this section 12 provided that the liability of Hilti under this section 12 shall in no event exceed the purchase price of such Goods or Services and performance of any one of the above options shall constitute an entire discharge of Hilti's liability under this warranty.

- 13.3 Hilti shall not be liable for breach of the warranty in section 13.2 above or any other warranty, guarantee or condition:
- 13.3.1 arising from any defect in Goods arising from any drawing, design or specification supplied by the Buyer;
- 13.3.2 arising from any acts, omissions negligence or default of the Buyer or arising from fair wear and tear (unless expressly stated otherwise in the warranty document), wilful damage, unsuitable storage, handling, treatment, installation, maintenance, repair or application, abnormal use or use under abnormal conditions;
- 13.3.3 arising from any non-compliance with the safety, training, usage and maintenance requirements (including, but not limited to, excessive or heavy use), method statements, data sheets, instructions or recommendations (whether oral or in writing) communicated to the Buyer by Hilti and / or any of its Personnel or suppliers;
- 13.3.4 arising from incorporation, alteration, modification or conversion of the Goods with any other goods, products or systems outside the intended purpose of the Goods, or as a result of non-compatibility of the Goods with any other goods, products or systems or use of consumables, components or spare parts other than those manufactured by Hilti without Hilti's prior written approval;
- 13.3.5 if the total price for the Goods and/or Services has not been paid by the due date for payment;
- 13.3.6 unless any claim by the Buyer which is based on any defect in the quality or condition of the Goods and/or Services or their failure to correspond with their description or specification shall (whether or not delivery is refused by the Buyer) be notified to Hilti within 10 days after the Buyer discovers or ought to have discovered the defect or failure; or
- 13.3.7 unless Hilti is given a reasonable opportunity to examine such Goods or location at which the Services were performed and the Buyer (if asked to do so by Hilti) returns such Goods or materials relating to the Services to Hilti's place of business for the examination to take place there.

- 13.4 Goods presented for repair may be repaired by Hilti using new or refurbished parts of quality equivalent to new. Hilti shall retain the replaced part that is exchanged as its property, and the replacement part will become your property. Goods traded-in (in the course of a repair or otherwise) in exchange for new Goods shall be retained by Hilti as its property. It is agreed by Buyer and Hilti that all Goods repaired and/or exchanged by Hilti are for value. By accepting the repair to be conducted by Hilti, Buyer agrees to the foregoing terms on which the repair will be conducted. This notice is given to Buyer or consumer under Australian Consumer Law.

- 13.5 Save as expressly provided in these Conditions, all warranties, conditions, guarantees or other terms implied by statute, custom usage or otherwise are excluded to the fullest extent permitted by law.

14. BUYER'S RESPONSIBILITY

- 14.1 The selection of the Goods and/or Services suitable for the Buyer's purposes depends on a range of factors. These

factors include, but are not limited to, on-site conditions or other circumstances of the proposed application of the Goods known only to the Buyer. The Buyer is solely responsible for satisfying itself that the data supplied to Hilti on which information or recommendations made by Hilti are based is correct and that any assumptions made by Hilti to supplement that data are suitable for the Buyer's purposes.

- 14.2 Any advice, representation or recommendation given by Hilti or Personnel to the Buyer or its employees or agents as to the Goods and/or Services, their fitting or use, or as to the incorporation or compatibility of the Goods with other goods, is therefore followed or acted upon entirely at the Buyer's own risk and the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representation. Accordingly, the Buyer must rely on its own judgement and if necessary seek expert advice in relation to the following:

- (a) the suitability and compatibility of the Goods for the intended use;
- (b) the training necessary for the Buyer and its employees;
- (c) the required level of ongoing maintenance for the Goods; and
- (d) the adequacy of the premises in which the Goods are to be used.

- 14.3 The Buyer acknowledges that it is responsible for ensuring it and its employees, agents, contractors and end-users of the Goods:

- (a) store, handle, use, construct, maintain, and repair the Goods at all times in accordance with good practice and in accordance with the Goods' method statements and data sheets, as well as all other relevant safety, training, usage and maintenance instructions and guidelines supplied to the Buyer from time to time by Hilti or its Personnel;
- (b) receive the necessary training in respect of Goods supplied;
- (c) in connection with the hiring of the Goods or the Goods being otherwise used by third parties, that the Goods are supplied in the original packaging including all method statements, data sheets, labelling and warnings as are supplied with the Goods by Hilti;
- (d) use the Goods with the recommended safety equipment in accordance with all applicable method statements and data sheets, and other relevant Hilti safety, training, usage and maintenance instructions and guidelines supplied from time to time; and
- (e) comply at all times with all applicable workers' health and safety laws and regulations, and all other relevant legislation in respect of the Goods and their usage.

- 14.4 The Buyer shall ensure and guarantee that no companies and persons blacklisted on the respective blacklists of the United States, the European Union, Switzerland or other competent jurisdictions / governments are supplied with products, information, software or technology without the legally required approval. The Buyer shall further guarantee that it does not intend to use any products, information, software and technology delivered by Hilti to the Buyer in or in connection with nuclear technology or weapons of mass destruction (nuclear, biological, chemical) or carriers thereof.

15. TAX AND DUTIES

- 15.1 All prices are exclusive of GST, taxes and all other applicable duties. The Buyer shall be liable for all and any local taxes (including GST), duties, levies and other government fees or charges as appropriate.

- 15.2 If any amount payable by the Buyer under this Contract is the consideration for a Taxable Supply in respect of which Hilti is liable to pay GST, the amount payable will be increased by the amount of the GST payable in respect of the Taxable Supply, and the additional amount will be payable at the same time as the Buyer is liable to pay the consideration for the Taxable Supply, however if the Buyer has not by then received a Tax Invoice from Hilti in respect of the Taxable

Supply, then the additional amount is payable within 7 days after receipt from Hilti of a valid Tax Invoice.

- 15.3 The Buyer and Hilti agree to comply with their obligations in relation to GST under GST Law and any other applicable legislation governing GST.
- 15.4 Each party warrants to the other that it is registered for GST and must immediately notify the other party if it ceases to be so registered.

16. ON SALE / RE-SELLING

- (a) Buyer agrees that upon on-sale / re-selling of any Goods to third parties it must not make any misrepresentations to third parties about the Goods.
- (b) Buyer will ensure that all the Goods (a) (include all applicable instruction-for-use and safety information, (b) have not expired and (c) have been stored and handled at all times while in its possession or control in compliance with all applicable legal requirements and Hilti's published information (including product labelling and packaging, technical publications, installation instructions, material safety data sheets "MSDS", etc.). Buyer will additionally ensure that materials with expiration dates are not resold if returned to Buyer more than fourteen (14) days after being initially sold and that the temperature-controlled goods are stored between 5°C and 25°C.
- (c) Buyer shall check and ensure that no companies and persons blacklisted on the respective blacklists of the United States, European Union, Switzerland 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. Buyer shall further guarantee that it does not intend to use any goods, information, software and technology delivered by Hilti or other affiliates of Hilti to Buyer in or in connection with nuclear technology or weapons of mass destruction (nuclear, biological, chemical) and carriers thereof.
- (d) Buyer shall cooperate with Hilti in providing relevant information and permits representatives of Hilti to review Buyer's 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.

17. INSPECTIONS

- (a) Buyer 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 Hilti in the same condition as that in which they were delivered, Hilti shall at its discretion replace those Goods or reimburse Buyer for the amount of the purchase price paid for them.
- (b) Any claim in this respect must be made within 30 days of the date of purchase. To the extent permitted by law, Buyer agrees that failure to notify Hilti within 30 days of the date of purchase will be deemed acceptance of the Goods as satisfactory and Buyer will have no further claim on Hilti.

18. LIMITATION OF LIABILITY

- 18.1 In an effort to keep the Contract price as low as possible, and as the Buyer is better able than Hilti to quantify loss which it may suffer from a breach of contract and to insure accordingly, the Buyer agrees to the following provisions of section 13 (Warranties) and this section 18 which set out the entire financial liability of Hilti (including any liability for the acts or omissions of its Personnel) to the Buyer in respect of:
- 18.1.1 any breach of these Conditions;
- 18.1.2 any use made by the Buyer of any of the Goods or Services; or
- 18.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

18.2 Hilti shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of turnover or revenue, loss of business, loss of production or opportunity, loss of data, depletion of goodwill or otherwise.

18.3 Hilti shall not be liable for any direct, indirect or consequential loss or damage howsoever arising.

18.4 Notwithstanding any other provision contained in these Conditions, nothing in these Conditions shall exclude or limit the liability of Hilti if and to the extent that such liability:

- 18.4.1 arises out of the fraud or fraudulent misrepresentation or wilful misconduct of Hilti;
- 18.4.2 is in respect of death or personal injury caused by negligence of Hilti;
- 18.4.3 cannot be excluded under consumer protection or general product safety laws applicable at the registered offices of Hilti;
- 18.4.4 is in respect of Hilti's implied undertakings as to title; or
- 18.4.5 in the case of a Buyer who is dealing as a consumer, is in respect of Hilti's implied undertakings as to conformity of goods with description or of sample or as to quality, or fitness for purpose of the Goods, or in relation to the standard of care used in the provision of any services.

18.5 **SUBJECT TO SECTIONS 18.1 TO 18.4 ABOVE, HILTI'S TOTAL LIABILITY (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, MISREPRESENTATION OR OTHERWISE) UNDER OR IN CONNECTION WITH THE PERFORMANCE, BREACH OF STATUTORY DUTY OR CONTEMPLATED PERFORMANCE OF ANY CONTRACT, OR BASED ON ANY CLAIM FOR CONTRIBUTION OR INDEMNITY, SHALL NOT EXCEED A SUM EQUAL TO THE INVOICE PRICE UNDER THE CONTRACT.**

19. BUYER'S INDEMNITY

19.1 The Buyer shall be liable for and indemnifies Hilti in respect of all damage or injury to any person or loss of or damage to any property and against all actions, demands, costs, charges, expenses or other loss suffered by Hilti arising:

- 19.1.1 under the statutes and regulations detailed in section 18.4.3 or otherwise under statute; and/or
- 19.1.2 in respect of any act, omission, negligence, and / or breach of the terms of these Conditions or otherwise through the default of the Buyer.

19.2 Where Goods supplied by Hilti are used by a third party in a manner not previously agreed in writing by Hilti to be suitable, or in a manner not in accordance with these Conditions, including (but not limited to) section 14.3, Hilti shall not be liable for any costs, loss, damage, liability or expenses suffered or incurred by the Buyer or any third party arising directly or indirectly from or in respect of such Goods or such use (including for loss of revenue, profits, production, opportunity, business, goodwill and/or of any contract) and the Buyer shall indemnify and keep indemnified Hilti from and against all such costs, loss, damage, liability or expenses suffered or incurred by Hilti as a result of any claim or demand in respect thereof by any third party.

20. DEFAULT OR INSOLVENCY OF BUYER

20.1 In the event that:

- 20.1.1 the Buyer shall be in breach of any of its obligations under the Contract;
- 20.1.2 any distress or execution shall be levied on the Buyer's property or assets; or
- 20.1.3 the Buyer (an individual or partnership) shall make or offer to make any voluntary arrangement or composition with its creditors or become bankrupt or if any bankruptcy petition be presented against him;
- 20.1.4 (if the Buyer is a company) the Buyer has an administrative receiver or administrator appointed

or makes a voluntary arrangement with its creditors, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder, or the Buyer commences to be wound up; or

- 20.1.5 the Buyer fails to pay its debts as and when they fall due; or
- 20.1.6 such equivalent event in section 20.1.1 to section 20.1.5 occurs to the Buyer in its local jurisdiction;

Hilti at its discretion and without prejudice to any other right or claim may by notice in writing forthwith determine wholly or in part any and all of the other Contracts between Hilti and the Buyer or may (without prejudice to Hilti's rights subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend further deliveries of Goods and/or the supply of Services.

21. INTELLECTUAL PROPERTY

- 21.1 Any intellectual property created by Hilti in the course of the performance of the Contract or otherwise in the design, manufacture or supply of or otherwise in relation to the Goods or the provision of the Services shall remain the property of Hilti. Nothing in these Conditions shall be deemed to have given the Buyer a licence or any other right to use any of the intellectual property of Hilti.
- 21.2 All logos, trade name or trademarks ('Marks') owned or used by Hilti in the course of its business are the property of Hilti. Hilti reserves all intellectual property rights in relation to the use of such Marks. The Buyer may not use, or permit the use of, such Marks or any similar Marks without the prior written permission of Hilti.

22. FORCE MAJEURE

Hilti shall be entitled to delay or cancel delivery or to reduce the amount of the Goods and/or Services delivered if it is prevented from, hindered or delayed in manufacturing, obtaining or delivering the Goods and/or Services by normal route or means of delivery through any circumstances beyond its control including, but not limited to, acts of God, governmental actions, national emergency, acts of terrorism, protests, riot, civil commotion, strikes, lock-outs, other labour disputes (whether or not relating to either party's workforce), accidents, war, fire, explosion, flood, epidemic, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery, shortage or unavailability of raw materials from normal source of supply, or restraints or delays affecting carriers.

23. EXPORT / IMPORT CONTROLS

- 23.1 If the delivery of Goods under a Contract is subject to the granting of an export or import license by a government or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, Hilti may suspend its obligations and the Buyer's rights regarding such delivery under the Contract until such license is granted or for the duration of such restriction and/or prohibition, respectively, and Hilti may terminate the Contract, without incurring any liability towards the Buyer.
- 23.2 By accepting Hilti's offer, by entering into any Contract and/or by accepting any Goods from Hilti, the Buyer agrees that it will not deal with the Goods and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

24. WAIVER

The waiver by Hilti of any right or the failure by Hilti to exercise any right or to insist on the strict performance of any provision of this Contract shall not operate as a waiver of, or preclude any further exercise or enforcement of any other right or provision of this Contract.

25. SEVERABILITY

If one or more of the provisions of these Conditions or the Contract are or will become invalid or unenforceable, or if one or more of the provisions of these Conditions or the Contract are or will become incomplete, the other provisions of these Conditions and the Contract will remain valid without limitation, save that the main obligations of the parties hereunder remain unaffected. Each invalid or unenforceable provision shall be replaced or completed by a valid and enforceable provision in such a way that the new provision closely reflects the legal and economic effects the parties have concurrently aimed at in the invalid or unenforceable provision.

26. THIRD-PARTY RIGHTS

A person who is not a party to this Contract has no right to enforce any term of this Contract.

27. ASSIGNMENT

The Buyer may not assign, transfer, sub-contract or in any way dispose of its rights or obligations under this Contract without the prior written consent of Hilti.

28. NOTICES

- 28.1 Any notice required to be served under this Contract shall be served on Hilti at its registered offices, the address of which may be notified to the Buyer by Hilti from time to time, and on the Buyer at the address notified to Hilti in its registration application by first class post, registered air mail or by email or facsimile. The Buyer is responsible for notifying Hilti in writing of any change of address, email address or fax number from those in the Buyer's registration application.
- 28.2 Any such notice served by post shall be deemed to have been served seven days after the date of despatch. In the case of service by email, when the email is available to read in the recipient's inbox and in the case of facsimile when the addressee's machine acknowledges receipt thereof provided that a copy of the notice or communication is also put into the post in accordance with section 28.1 within 24 hours following despatch of the initial version.

29. FAIR COLLECTION NOTICE – DATA PROTECTION

- 29.1 Hilti shall comply with the provisions of the applicable data protection laws in relation to the processing of any data, including personal data, it obtains from the Buyer or from third parties with the Buyer's consent, for example, credit reference agencies ("data"). Hilti shall comply with its online Privacy Policy when the Buyer purchases the Goods and/or Services from Hilti through Hilti's website.
- 29.2 Hilti may process all data to enable Hilti to do business with the Buyer and for the specific purpose of selling the Goods and/or Services to the Buyer. Hilti will not retain any data for longer than necessary for the legally permissible purposes for which they were collected, as required under applicable retention policies and/or as required or permitted in accordance with applicable law.
- 29.3 Any data will only be used in connection with the Contracts and any other business Hilti conducts for the Buyer and for any other purpose required for the fair processing of the Buyer's data or as agreed by the Buyer in a specific context. The Buyer may notify Hilti in writing to cease processing the data if it wishes Hilti to cease using any data which the Buyer has voluntarily given to Hilti. In such circumstances, Hilti reserves the right to terminate the Contracts.
- 29.4 Hilti may disclose the Buyer's data as required by law, including but without limitation, to prevent a crime, protect Hilti's, its customers', its employees' or other third parties' safety (such as for fraud protection purposes), discharge a statutory duty or as required by a binding order of a court, a law enforcement authority or a regulator. Hilti will carefully determine the permissibility of disclosing data in each such context, paying particular attention to the type of request, types of data affected and any impact that a disclosure of data would have on the data subject affected. Should Hilti decide to disclose data in such context it will also consider ways of reducing the scope of the disclosure, for instance by redacting the information provided.
- 29.5 Hilti may share the Buyer's data with other entities of the Hilti group of companies and with its business partners if there is a legitimate reason to do so and such sharing is legally permissible.



- 29.6 Hilti may employ third-party service providers to perform certain functions on Hilti's behalf and under its instructions. Examples include database management, computer maintenance services, web analytics, handling in-bound inquiries, delivering packages, sending postal mail and email, removing repetitive information from customer lists, analysing data, providing sales and marketing assistance, processing credit card payments, and providing customer service. Third-party service providers may for instance include IT companies, credit card processors, credit rating agencies or legal, financial and other advisors.
- 29.7 As Hilti continues to develop its business, it might sell all or parts of its business. In such transactions, customer data (including the Buyer's data) generally is one of the transferred business assets, but remains subject to the provisions stated herein, unless the Buyer consents otherwise.

30. CONFIDENTIALITY

The Buyer acknowledges that all trade and business secrets as well as all technical, commercial and financial data of Hilti disclosed to the Buyer by Hilti that are not public knowledge is the confidential information of Hilti. The Buyer shall not disclose any such confidential information to any third party without the prior written consent of Hilti and shall not use any such confidential information for any purpose other than as agreed between the parties in writing. The confidentiality obligation shall not apply if a disclosure is mandatory pursuant to applicable law or regulations. Prior to making a mandatory disclosure, the Buyer shall inform Hilti in writing of the need to make such a disclosure and the circumstances requiring it, and the parties shall discuss and agree in good faith upon appropriate means to protect Hilti's interests.

31. ENTIRE AGREEMENT

The Contract sets out the entire agreement and understanding between the Buyer and Hilti in connection with the sale of Goods and the provision of Services and shall supersede and replace all documentation previously issued by Hilti purporting to set out its terms and conditions of sale of Goods and/or Services. The Buyer acknowledges that the Contract has not been entered into wholly or partly in reliance on, nor has the Buyer been given any warranty, statement, promise or representation by Hilti or on its behalf other than as expressly set out in the Contract. The Buyer agrees that the only rights or remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had.

32. CHOICE OF LAW AND DISPUTE RESOLUTION

- 32.1 Any dispute arising out of, or in connection with these Conditions or the Contract shall be construed and operated in accordance with the laws of the State of New South Wales, without regard to conflict of law principles. The application of the UN Convention on the International Sale of Goods is excluded.
- 32.2 Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.

Hilti values 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 257393 | F 02 8748 1192
www.hilti.com.au

ABN 44 007 602 100 | ACN 007 602 100

Signed for and on behalf of the Buyer by:

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Signature of Director

.....
Name

.....
Date

.....
Signature of Director / Company Secretary

.....
Name

.....
Date