

HITACHI CONSTRUCTION TRUCK MANUFACTURING LTD.

PURCHASE ORDER TERMS AND CONDITIONS

1. Acceptance

The purchase order, together with these terms and conditions (“**Terms and Conditions**”), and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the “**Purchase Order**”), constitutes the entire and exclusive agreement between Hitachi Construction Truck Manufacturing Ltd. (“**HTM**”) and the supplier (“**Supplier**”) identified in the Purchase Order. HTM’s submission of the Purchase Order is conditioned on Supplier’s agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Supplier purports to condition its acceptance of the Purchase Order on HTM’s agreement to such different or additional terms. Supplier’s electronic acceptance, acknowledgement of the Purchase Order, or commencement of performance constitutes Supplier’s acceptance of these terms and conditions. The Purchase Order supersedes any or all prior or contemporaneous oral or written communications with respect to the subject matter of the Purchase Order. No modification, waiver or amendment shall be binding unless in writing and signed by HTM. Notwithstanding the foregoing, if a master contract covering procurement of the Products (as defined below) described in the Purchase Order exists between Supplier and HTM, the terms of such master agreement shall prevail over any inconsistent terms in this Purchase Order.

2. Technical and Other Specifications

2.1 Any and all products, goods, materials or equipment supplied by or to be supplied by Supplier as set out in this Purchase Order (“**Products**”) shall conform with the technical and other specifications which have been stated, as applicable, in HTM’s request for quotation, delivery instructions or otherwise in the Purchase Order.

2.2 HTM reserves the right to modify the specifications for Products ordered at any time and from time to time. Any differences in price and/or delivery time resulting from such modifications shall be agreed by both parties in writing.

2.3 Supplier undertakes to use manufacturing methods and materials consistent with those set out in the HTM Supplier Quality Manual, as amended from time to time (the “**Manual**”) or as otherwise specified by HTM and when possible use environmentally-friendly materials and manufacturing methods in its designs and to take into account the environmental impact of the application and eventual disposal of the Products. All wood packaging used for shipping and/or packaging of Products to HTM must be treated and marked according to the Manual and as set out in the

International Plant Protection Standard Convention ISPM #15. Any wood packaging not consistent with the requirements set out in the Manual and International Plant Protection Standard Convention ISPM #15 will be re-exported immediately back to the applicable country of origin at Supplier’s cost and expense.

3. Right of Inspection

3.1 Supplier shall adhere to the First Article requirements set out in the Manual at all times, unless otherwise specified by HTM in writing.

3.2 HTM’s approval of the First Article package shall not limit Supplier’s obligations and liabilities, nor Supplier’s duty to supply Products in accordance with applicable specifications nor any liabilities of Supplier to HTM including, without limitation, any applicable warranties.

3.3 If required by HTM, Supplier shall provide HTM and its customers, agent or any governmental authority (collectively, the “**Inspection Parties**”) at all times, with such access as HTM may require as part of the First Article process set out in the Manual and shall provide all reasonable assistance to any representative of the Inspection Parties with respect thereto.

3.4 Payment shall not constitute a waiver of HTM’s rights to reject the Products in accordance with the Manual or hereunder.

4. Spare Parts

Supplier undertakes to provide HTM with ninety (90) days prior written notice of its intention to discontinue any spare parts to the Products, and allow HTM during such ninety (90) day period to place orders for such spare parts on reasonable terms and conditions.

5. Terms of Delivery

5.1 Delivery terms shall be interpreted according to the “**INCOTERMS**” in force at the time of delivery. Unless otherwise expressly agreed, the term of delivery shall be CIF, and the price agreed for the Product shall include packaging.

5.2 This Purchase Order is for the exact quantity stated, and no overrun, over-shipment or other charges will be chargeable to HTM unless approved by HTM in writing prior to shipment. No costs additional to those stated in this Purchase Order shall be chargeable to HTM unless approved by HTM in writing prior to shipment. There shall be no back-order or partial shipments except with the written approval of HTM. Supplier shall notify HTM prior to shipment where Products cannot be delivered in the quantities shown at the times specified in the delivery schedule. Supplier’s failure to comply with the provisions set out herein and the provisions set out in the Manual may result in HTM’s rejection of the Products and Supplier being responsible for all costs

- incurred by Supplier as a result of such non-compliance.
- 5.3 Deliveries shall be carried out in accordance with the routing instructions provided by HTM. Any unauthorized deviations from this routing instruction, which result in excess freight/customs brokerage charges to HTM, will be debited to Supplier's account. Supplier will preserve, pack, package and handle the Products in accordance with the Manual so as to protect the Products from loss or damage or in accordance with best commercial practices in the absence of any specifications, instructions or requirements from HTM or as set forth in the Manual. Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous work, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, export and disposal.
- 5.4 Time is of the essence in respect to delivery of the Products. Where Supplier fails to deliver the Products on or before on or before a date specified by HTM for delivery by Supplier to occur (a "Delivery Required Date"), other than if delivery is delayed due to any cause beyond Supplier's reasonable control pursuant to Section 15.1, (whereby the Delivery Required Date shall be extended during the continuance of such cause and for a reasonable time thereafter), HTM may cancel this Purchase Order or any part of it without prejudice to its other rights, and may return at Supplier's expense part or all of any shipment of Products received after the Delivery Required Date, unless such late shipment has been approved. Supplier agrees to pay HTM, in full satisfaction of any damages HTM incurs as a result of any Product that is not shipped within one week after the Delivery Required Date, where such delay in delivery is solely due to the fault of Supplier.
- 5.5 All shipping documents shall show: packing slip number, date of shipment, HTM purchase order number, line number on purchase order, HTM part number and description, quantity, Canada/US HS classification (10 digits), and country of origin.
- 6. Rules of Origin and Export Restrictions**
- 6.1 Supplier shall ensure that Products and other goods under this contract may be imported free of duties and tariffs where applicable free trade agreements (or equivalent) are in place or apply.
- 6.2 Supplier must provide NAFTA Certificates of Origin and Affidavit of Manufacturer for any shipments to Canada, the United States and Mexico on an annual blanket basis, which certificates are due in December of the preceding year.
- 6.3 Supplier guarantees the validity of any declarations and certificates referred to in Section 6.2 and the accuracy of the date therein. Should Supplier for any reason fail to comply with Sections 6.1 and 6.2 upon the delivery of the Products, HTM shall be entitled to refuse to take delivery of the Products.
- 6.4 If the export or use of Supplier's Products or parts thereof can be considered restricted because of any national or other regulations, presently or in the future, Supplier is obliged to promptly inform HTM in writing of such fact and the consequences thereof. In addition, Supplier shall keep HTM constantly informed of changes to Supplier's Products or parts thereof which may result in applicability of control regulations thereto.
- 7. Controlled Substances**
- 7.1 Upon request by HTM, Supplier shall timely provide information concerning its use in the manufacture of the Products of (a) any substances of very high concern listed by the European Chemical Agency, (b) toxic substances prohibited under the Canadian Environmental Protection Act, and (c) chemical substances prohibited by HTM (collectively, "Controlled Substances"). Supplier shall confirm upon request by HTM that the Products do not contain Controlled Substances. Supplier shall advise HTM of the existence and weight of Controlled Substances in Products.
- 7.2 Supplier shall not ship Products containing Controlled Substances to HTM without prior written consent of HTM.
- 8. Warranties**
- 8.1 In addition to all other express or implied warranties and conditions, Supplier represents, warrants and covenants that: (a) Supplier is and shall at all times, be in full compliance with all applicable governmental, legal, regulatory and professional requirements, including without limitation all applicable laws, codes, regulations, rules, ordinances, judgments, orders and decrees, including, without limitation, those related to intellectual property rights, fair trade and anti-trust, customs, immigration, labour, employment, working conditions, worker health and safety, branding and labeling, adulteration and contamination, board of health and environmental matters; (b) as of delivery of the Products to HTM, the Products shall be: (i) in conformity with all specifications applicable to such Products and any parts thereof, and otherwise in substantial conformity with all documentation for such Products; (ii) be of good materials and workmanship and free from defects, whether latent or patent; (iii) be labeled in accordance with the provisions set out in Manual; and (iv) be in full compliance with all applicable laws; and (c) that Supplier has good and marketable title to the Products and that neither the supply of any Products to HTM nor the use of those Products by HTM shall constitute an infringement of any patent, invention, trade mark, copyright or similar proprietary interest belonging to any third party, and Supplier shall indemnify HTM and shall save HTM harmless from and against any and all claims, liabilities or costs (including legal costs on a full indemnity basis) to which HTM is exposed by reason of any such infringement.
- 8.2 Supplier expressly warrants that (the "Supplier Warranty") that: (i) the delivered Products and any related services (a) shall conform to applicable specifications and requirements and to HTM's delivery instructions as set out in the Manual; (b) shall be fit for the particular purposes indicated by HTM; and (c) that the workmanship and the materials employed in the

production of the Products shall be free from fault; and (ii) the delivered Products shall conform with all information or documentation provided or produced by Supplier in connection with the Products' use, properties and features that has been submitted to HTM for the marketing of the Products or otherwise prior to HTM's issuance of the delivery instructions.

8.3 The Supplier Warranty shall remain valid until a period of twenty-four (24) months calculated from the date when the HTM end-product, into which the Product is incorporated, or the Product itself is delivered to the final end-user of the HTM truck, but in no event longer than thirty-six (36) months from delivery of the Product to HTM (the "**Warranty Period**").

8.4 In the event that a Product fails to comply with Supplier Warranty during the Warranty Period, at HTM's option, Supplier shall at its expense repair or replace the Product and reimburse HTM for any incurred travel, labor and material cost of repair or replacement and shall be responsible for damage to other components. If delivery of Products results in findings of improper workmanlike product, defects in materials and workmanship or other such deficiency, Supplier agrees to make available service technicians to HTM, as deemed necessary by HTM, to carry out the repair or other related services in connection with a deficiency with the delivered Products. Supplier shall be responsible for the out-of-pocket service costs of HTM related to any servicing, replacement or repair of such deficiency. The aforesaid Supplier's Warranties shall survive acceptance and payment and shall run to HTM, its customers and their successors in title and shall not be deemed to be exclusive, but shall be in addition to HTM's other rights under the terms of the Purchase Order or at law or equity.

8.5 Any product or service which has been provided by way of replacement shall be subject to all the terms of this Section 8, and a new product warranty period shall apply for the replacement Product. The Warranty Period shall not apply, should any defect or deficiency involving a significant risk of personal injury be discovered in a delivered Product, provided that such defects are not the result of normal wear and tear, or if identical or similar defects or deficiencies are discovered in a large number of delivered Products, whether the discovery was made before or after the expiry date of the applicable warranty.

9. **Indemnification**

In addition to the foregoing indemnifications by Supplier of HTM, as set out in these Terms and Conditions, Supplier shall indemnify and hold HTM, its parent, its affiliates and subsidiaries, and their respective agents, officers, directors and employees ("**HTM Indemnitees**") harmless by law, in equity or otherwise, at its own expense, at HTM's option defend, indemnify and hold harmless the HTM Indemnitees, from and against all claims, including, but not limited to third-party claims, allegations, demands, liabilities, fines, losses, damages, costs and expenses, including, without limitation, reasonable legal fees and expenses and any amounts paid in settlement, arising out of or related to: (i) Supplier's breach of any representation, warranty, covenant or other obligation set forth in this

Purchase Order; (ii) any intentional or wilful misconduct of Supplier or subcontractors (whether or not approved by HTM) or their respective employees or other representatives; (iii) any failure by Supplier or its subcontractors (whether or not approved by HTM) to comply with the policies or the Manual of HTM; or (iv) any bodily injury, death or damage to personal property arising out of or relating to Supplier's or subcontractors' (whether or not approved by HTM) and their respective employees' or other representatives' performance under this Purchase Order. Supplier shall carry and maintain insurance coverage sufficient to cover the above, and upon HTM's request, shall furnish HTM with satisfactory evidence of such insurance.

10. **Price and Payment**

10.1 Supplier shall furnish the Products covered by this Purchase Order in accordance with the prices and delivery schedule stated on the front of this Purchase Order. If prices and/or delivery dates are not stated, Supplier shall offer its lowest prices and best delivery dates, both of which shall be subject to written acceptance by HTM. All prices are net of all applicable taxes and other government charges, including, but not limited to, all federal, provincial, state and municipal sales, use or excise taxes, or any customs duties. Supplier warrants that the prices charged for the Products ordered shall be as low as the lowest prices charged by Supplier to any customers purchasing similar Products in the same or smaller quantities and under like circumstances. No increase in price of the articles, materials, Products covered by this Purchase Order shall be binding unless accepted in writing by HTM.

10.2 Payment shall be as specified in the Purchaser Order. The term of payment is calculated from the date of the receipt of Supplier's packaging slip, invoice and final inspection documentation by the addressee indicated by HTM. Timely payment is conditional upon the invoice being correctly addressed with restatement of the entire HTM order number, line number and position number.

11. **Specific Equipment**

11.1 In these Terms and Conditions, "**Specific Equipment**" means all tools, jigs, fixtures, forms, models, control panels and other devices which have been produced or adapted specially for the production or control of Products for HTM, or which have been provided, paid for or in any other way financed by HTM.

11.2 If HTM furnishes any Specific Equipment to Supplier in connection with this Purchase Order, title thereto shall remain or vest in HTM, and Supplier shall label, identify, maintain and preserve such Specific Equipment and shall dispose of Specific Equipment (including scrap) only in accordance with HTM's direction. Unless otherwise authorized in writing by HTM, Supplier shall use such Specific Equipment exclusively in the performance of Purchase Order for HTM. Supplier shall be responsible for any loss, damage or destruction to such Specific Equipment, but Supplier shall not include any insurance cost thereafter in the prices charged under this Purchase Order. Supplier shall establish and currently update a register of the Specific Equipment, which register shall be

accessible to HTM.. In cases where Specific Equipment needs to be replaced, Supplier shall give HTM at least 30 days notice of such requirement in addition to advising as to the reason for the replacement of such Specific Equipment. If replacement of the Specific Equipment is for a reason other than reasonable wear and tear, Supplier shall bear the cost of such replacements. The provisions relating to Specific Equipment shall, where applicable, also apply to data stored in electronic form and to computerized geometries.

12. Confidentiality and Intangible Rights

12.1 Designs, tests, drawings, plans, technical documentation, programs, know-how, equipment or other information, including without limitation data stored in electronic form and computerized geometries, which has been provided by HTM, or by a third party for and on HTM's behalf, shall be kept confidential by Supplier for the duration of the Purchase Order and thereafter and may not be used by it for any other purpose than for supplies to HTM. Copying or other reproduction of such information is permitted only in connection with the fulfillment of Supplier's obligations towards HTM, and in full compliance with applicable laws and regulations concerning copyright and other intangible rights. All such proprietary information, including any copies thereof which Supplier may have made, shall be returned to HTM upon HTM's request. Any knowledge or information or trade secrets which Supplier discloses or hereafter discloses to HTM in connection with this Purchase Order shall not, unless HTM agrees otherwise in writing, be deemed to be confidential or proprietary information, and shall be acquired, free from any restrictions, as part of the consideration for this order.

12.2 Supplier may not, without the prior written consent of HTM, advertise or in any other way publicize the fact that it supplies or has reached an agreement to supply HTM, nor use the HTM's name or logotype or any of the trade names or trademarks belonging to or used by the HTM group of companies.

12.3 HTM shall own all intellectual property rights, including by not limited to ideas, discoveries, inventions, documents, designs, drawings, electro media, calculations and descriptions which Supplier under this Purchase Order develops, creates or causes to be developed, invented or created specifically relating to the subject matter of the Purchase Order (collectively, "**Works**"). In the event that any that Intellectual property rights in and to any Works vests in Supplier, Supplier hereby assigns to the HTM all of its right, title and interest in such the Works and any Intellectual property rights in such Works without further compensation. Supplier hereby waives to and in favour of HTM its moral rights in and to the Works and any Intellectual property rights in such Works. In connection with the foregoing assignment of rights, Supplier agrees to execute any and all documents that are reasonably necessary or required by HTM in order to give full force and effect to said assignment.

12.4 Supplier shall not use any of the Works for any other purpose than for Supplier's performance under this Purchase Order.

13. Subcontracting and Assignment

Supplier shall not use any sub-contractors to perform its obligations under the Purchase Order, nor transfer, assign or delegate its obligations under these the Purchase Order without the prior written consent of HTM. Should HTM consent to such subcontracting, transfer, assignment or delegation, Supplier shall provide HTM with written confirmation that the subcontractor has entered in an agreement which contains confidentiality provisions which are no less restrictive than those contained herein and those set out in any separate confidentiality agreement between Supplier and Hitachi and further provide HTM with written confirmation that the subcontractor, transferee, assignee or delegate, as the case may be, has agreed in writing to comply with the provisions hereof and of the Purchase Order. Supplier shall, further, remain responsible and not be relieved from any of its obligations according to the Purchase Order.

14. Termination

14.1 At its option, HTM may terminate all or part of the work under the Purchase Order upon written notice to Supplier. In such case, HTM shall have no liability to Supplier whether for damages or otherwise, (including without limitation for any financial obligation whatsoever with respect to goods or components thereof procured or work done, or goods partially fabricated) in excess of amounts set forth in the Purchase Order

14.2 HTM requires strict performance of each and every term and condition of this Purchase Order and if goods or services are rejected by HTM as non-conforming, Supplier shall have no right to remedy such default. HTM may by written notice to Supplier immediately suspend or terminate this Purchase Order for default in whole or from time to time in part if: (i) Supplier fails to deliver goods or to perform the services within the time specified in this Purchase Order; (ii) Supplier fails to deliver goods which conform to the contractual requirements or to perform any of the provisions of this Purchase Order, or so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms; or (iii) Supplier becomes insolvent or commits an act or bankruptcy or if reorganization proceedings are commenced by or against Supplier.

14.3 If this Purchase Order is terminated for default, HTM shall have any and all rights and remedies which the law provides for Supplier's failure to perform in accordance with contract requirements, including the right to charge Supplier with the costs incurred by HTM in fabricating or procuring from other sources goods or services which Supplier fails to furnish HTM in accordance with the Purchase Order to the extent that such costs shall exceed the purchase price set forth in the Purchase Order, and HTM may set-off any such charge against any amounts which may become payable by HTM to Supplier, under this Purchase Order or otherwise.

15. Force Majeure

- 15.1 If a party (the “**Failing Party**”) is unable or fails to perform any or all of its duties and obligations under a Purchase Order by reason of Force Majeure (as defined below), the Failing Party will not be liable to the other party during the period of Force Majeure and to the extent of its inability or failure, but: (i) the Failing Party claiming Force Majeure must notify the other party in writing within 72 hours after the Force Majeure event, setting out in reasonable detail the nature of the event, giving a good faith estimate of the expected duration of the event and outlining the steps the Failing Party intends to take to mitigate the effect of the event; and (ii) the Failing Party will make all commercially reasonable efforts in the circumstances to surmount the event of Force Majeure, and to resume full performance as soon as it is reasonably possible to do so.
- 15.2 In these Terms and Conditions “**Force Majeure**” means acts of God; laws, orders, rules, regulations, acts and restraints of armies, militaries, enemies, terrorists, and governmental authorities; war, revolutions, mobilization, political and civil unrest or insurrection, embargos, disturbances and riots; epidemics, outbreak of disease and quarantine; inclement weather including floods, storms, tornados, hurricanes, tsunamis, earthquakes, volcanic eruptions and landslides; explosions and fire; damage, destruction or expropriation of property; delays or defaults in or caused by, and shortages of, power, water, transportation and common carriers, facilities, labour, subcontractors, goods, materials and supplies; breakdowns in or the loss of production; non-availability of relevant markets and the state of the marketplace; and any other event or occurrence beyond the reasonable control of the applicable Party].<
- 16. Miscellaneous**
- 16.1 Supplier shall ensure that its personnel and contractors sign agreements binding its employees to obligations consistent with all of Supplier’s obligations under this Purchase Order.
- 16.2 HTM shall be entitled at all times to set-off any amount owing at any time from Supplier to HTM or any of HTM’s affiliates, whether arising under this Purchase Order or otherwise, against any amount payable at any time by HTM to Supplier.
- 16.3 The headings of the Purchase Order are for convenience only and shall not affect its construction or interpretation.
- 16.4 Any notice to be given under the Purchase Order will be in writing and addressed to the party at the address stated in the front of the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five days of deposit in the mail.
- 16.5 The failure of HTM at any time to require performance by Supplier of any provision of this Purchase Order shall in no way affect the right to require performance
- at any time thereafter nor shall the waiver of HTM of a breach of any provision of this Purchase Order constitute a waiver of any succeeding breach of the same or any other provision. HTM may insist upon strict compliance with these Terms and Conditions despite any previous custom, practice or course of dealing to the contrary.
- 16.6 Nothing in the Purchase Order shall be deemed to create a joint venture, partnership or fiduciary relationship between the Parties.
- 16.7 If any provision contained in this Purchase Order is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and all other provisions shall remain in full force and effect.
- 16.8 The obligations of Supplier contained in Sections 4, 6, 7, 8, 9, 11, 12 and 15 of these Terms and Conditions shall not be affected by the termination or cessation of the Purchase Order.
- 16.9 This Purchase Order shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable in that Province without regard to the conflict of laws principles. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the subject matter of this Purchase Order.
- 16.10 It is the express wish of the parties that the agreement is in the English language. *Les parties confirment qu’il est de leur volonté express et réciproque que ce contrat soient rédigé en anglais.*
- 16.11 Delivery of this Purchase Order by facsimile, e-mail or other functionally equivalent electronic means of transmission constitutes valid and effective delivery.