

TERMS OF SALE FOR EQUIPMENT

IMPORTANT NOTICE

Under section 47A of the *Fair Trading Act 1987* (NSW), the Seller is required to draw the Purchaser's attention to terms that may be considered substantially prejudicial to the Purchaser's interests. These Terms of Sale for Equipment include provisions that may affect the Purchaser's rights, including (for example) limitations of liability, indemnities, and cancellation or refund conditions. The Seller recommends the Purchaser reads these Terms of Sale for Equipment carefully before proceeding with the purchase, and please feel free to contact the Seller if there are any questions.

1. Definitions

In these conditions:

- 1.1. **Business Day** means a day that is not a Saturday, Sunday or public holiday in the place of the Seller.
- 1.2. **Commissioning** means the process of passing the acceptance tests expressly stated in the Contract or typically applied by the Seller in preparing the Equipment for operational use to confirm the Equipment does not display material defects in functionality.
- 1.3. **Contract** means the contract between the Seller and the Purchaser comprising these Terms of Sale for Equipment and incorporating the Quotation and the Purchase Order.
- 1.4. **Dealers** means business operators engaged in the sale, maintenance, repair, etc. of products under contract with the HCM Group.
- 1.5. **Equipment** means the items, machinery, or equipment specified in the Contract, including any associated components, parts, accessories, or materials supplied under this Contract. The reference to Equipment in these Terms of Sale for Equipment includes Used Equipment.
- 1.6. **HCM Group** means the Seller, Hitachi Construction Machinery Co., Ltd (HCM) and its related bodies corporate, including in particular (but without limitation) HCM's subsidiaries whether they are incorporated within or outside of Australia.
- 1.7. **Insights Data** means any data, results, analysis, reports, or other outputs generated through or derived from the use of the Telematics Services, including any interpretations, conclusions, transformation or metrics that arise from such data. Insights Data does not include the Machinery Information and will be de-identifiable to the Purchaser.
- 1.8. **Intellectual Property** means all intellectual property rights (including copyright) in any reports, documents, manuals, or other materials required to be provided by the Seller to the Purchaser under this Contract.
- 1.9. **Licensed Parties** mean HCM Group, Dealers and third-party vendors of HCM Group engaged by or on behalf of HCM Group to utilise Machinery Information for the purposes of generating, storing, processing, retrieving, printing or producing such information to develop Insights Data.
- 1.10. **Machinery Information** means all information obtained from the Telematics Services including, but not limited to, operational and location information of the Equipment.
- 1.11. **Manufacturer** means the maker and makers of the Equipment (or any part).
- 1.12. **Material** means any tools, methodologies, processes, libraries, databases, software, firmware, source code, documentation or other material in whatever form.
- 1.13. **Non-recoverable costs** mean the costs not recovered by the Seller upon the subsequent sale of the Equipment, including but not limited to Purchaser-specific components; and any attachments and options, assembly costs, storage and/or handling costs, transport costs, shipping and demurrage costs, insurance for transit and storage and any holding costs, interest, and security charges.
- 1.14. **Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth)

- 1.15. **Personnel** means a party's employees, contractors, agents or representatives.
- 1.16. **PMSI** means a Purchase Money Security Interest.
- 1.17. **PPSA** is the *Personal Property Securities Act 2009* (Cth) and 'Register,' 'Purchase Money Security Interest,' 'Security Agreement,' 'Security Interest', 'Verification Statement' and 'Financing Statement' will have the meanings for those terms as defined in the PPSA.
- 1.18. **PPSR** is the Personal Property Securities Register.
- 1.19. **Price** means the Price stated in the Contract, including any adjustments or conditional amounts (subject to their conditions) provided for in the Contract.
- 1.20. **Privacy Policy** is available for viewing at [Privacy Policy - Hitachi Construction Machinery Australia](#).
- 1.21. **Purchase Order** means the offer for the purchase of Equipment made by the Purchaser on the basis of the Quotation and these Terms of Sale for Equipment, which does not form a part of the Contract until accepted by the Seller either by countersignature on the order form by the Seller or issuance of an order acceptance confirmation by the Seller.
- 1.22. **Purchaser** means the party purchasing the Equipment as set out in the Contract.
- 1.23. **Quotation** means a written quotation provided by the Seller to the Purchaser stating an invitation to the Purchaser to offer to purchase Equipment.
- 1.24. **Seller** means Hitachi Construction Machinery (Australia) Pty Ltd ABN 62 000 080 179.
- 1.25. **Telematics Services** means telemetry services provided by HCM Group from time to time on the Equipment including, but not limited to, LANDCROS Connect and Global e-Service.
- 1.26. **Terminal** means the mobile communication terminal as may be installed in the Equipment.
- 1.27. **Used Equipment** means any Equipment which is not being supplied for the first time to an operator.

2. The Contract

This Contract becomes legally binding when either:

- 2.1. the Purchaser has provided to the Seller an executed Purchase Order and the Seller has provided to the Purchaser a countersigned copy of the Purchase Order; or
- 2.2. the Purchaser has provided to the Seller a Purchase Order and the Seller has provided to the Purchaser a written acceptance of the Purchase Order including a Purchase Order acceptance form.

Until either of the steps in either clauses 2.1 or 2.2 has occurred, there is no contract and the Seller may, without incurring any liability, revise or withdraw any statement, invitation or offer of any kind including a Quotation provided to the Purchaser.

3. Order of Precedence

Once the Contract becomes legally binding, in the event of inconsistency between the documents forming part of the Contract, the following order of precedence shall apply:

- 3.1. these Terms of Sale for Equipment;
- 3.2. the Quotation; and
- 3.3. the Purchase Order.

This order of precedence will apply notwithstanding anything to the contrary that may be stated in any other document.

4. Specifications and other details

- 4.1. If a Manufacturer changes Equipment specifications, decals or manufacturing plate prior to delivery in a way that does not materially reduce functionality of the Equipment, the Seller may supply the changed or substituted item (or part) which will be deemed accepted as an automatic variation to the Contract.
- 4.2. If a Manufacturer changes Equipment specifications, decals, or manufacturing plate prior to delivery in a way that materially reduces functionality of the Equipment, the Seller shall notify the Purchaser of the change and provide the Purchaser with the option to either:
 - 4.2.1. cancel the affected portion of the Contract without penalty; or
 - 4.2.2. accept substitute Equipment meeting the modified specifications, decals, or manufacturing plate subject to mutual agreement.

5. Price and Payment

- 5.1. The Purchaser must pay the Price as set out in the Contract, as adjusted under this Contract.
- 5.2. In addition, the Purchaser must pay to the Seller all taxes, duties and charges imposed by any government or other authority with mandatory jurisdiction in connection with the Equipment, including any currency and bank charges, such that the Price is received in cleared funds in the Seller's designated bank account at the time required by this Contract.
- 5.3. Where expressly stated in the Contract, the Seller may recover from the Purchaser any increase in the following cost components incurred after the date of the Purchase Order and prior to the Seller notifying the Purchaser that the Equipment is ready for delivery in accordance with clause 6.1:
 - 5.3.1. foreign exchange rate movements (calculated by reference to exchange rates published by the Reserve Bank of Australia);
 - 5.3.2. Manufacturer price adjustments;
 - 5.3.3. landing charges and port-related fees;
 - 5.3.4. freight and transportation costs;
 - 5.3.5. insurance costs; and
 - 5.3.6. handling and logistics charges.

- 5.4. For the purposes of calculating foreign exchange fluctuations, reference shall be made to the exchange rates published by the Reserve Bank of Australia as at the date of the Purchase Order and the date of invoicing (or such other dates as specified in the Quotation).
- 5.5. Such cost adjustments shall only apply to the extent that the Contract contemplates that these components may vary and shall be substantiated by reasonable evidence provided by the Seller upon request.
- 5.6. The Purchaser must pay the Price to the Seller on or prior to the delivery of the Equipment in accordance with the Seller's invoice unless otherwise agreed in writing between the parties and stipulated in the Contract. The Seller shall issue invoices in accordance with the payment schedule stipulated in the Contract.
- 5.7. If the Purchaser fails to pay the Price, the Seller will be entitled to charge interest on the Price from the date when due until payment, at the rate of 2% above the current Commonwealth Bank of Australia's overdraft reference rate (or where that rate is not available, a similar rate chosen by the Seller). This rate shall apply until the payment is made and shall not exceed the maximum permissible rate for pre-judgment interest as prescribed under section 100(1) and (2) of the *Civil Procedure Act 2005 (NSW)*.
- 5.8. The Purchaser must provide any security (bank guarantee or parent company guarantee) as set out in the Contract. If security is required under this Contract, the same must be irrevocable, available for immediate drawdown without reference to the Purchaser, be in the amount stated in the Contract and be in the form required by the Seller. Provision of this security is a condition precedent to any obligation to deliver the Equipment.

6. Delivery

- 6.1. Unless otherwise agreed in writing, the Purchaser must take delivery of the Equipment at the location for delivery set out in the Contract within 5 Business Days of receiving notification from the Seller that the Equipment is ready for delivery.
- 6.2. Unless expressly stated otherwise in this Contract, the Seller will be under no obligation to deliver the Equipment until the Price is paid in full.
- 6.3. If the Purchaser does not take delivery in accordance with clause 6.1, then the Seller may, at its discretion, cancel the Purchase Order or reallocate the Equipment to a later delivery cycle. In such cases, clause 16 will apply.

7. Delivery Timeframes – Reasonable Efforts

- 7.1. The Seller will use reasonable efforts to deliver the Equipment in accordance with the timeframes specified in the Contract or otherwise agreed by the parties in writing. However, any delivery date is an estimate only and not a binding commitment, unless expressly stated otherwise in this Contract.
- 7.2. To the fullest extent permitted by law, the Seller will not be liable to the Purchaser for any loss (including any consequential loss), loss of opportunity, loss of use, loss of revenue, general damages, or delay arising from any failure to deliver the Equipment by the estimated delivery date, except to the extent that such delay is directly caused by the Seller's wilful default.

8. Risk

- 8.1. The risk of loss or damage to the Equipment passes to the Purchaser at the earlier of the following events (as applicable):

- 9.1.1 the passing of title in the Equipment to the Purchaser in accordance with clause 15.1;
 - 9.1.2 either delivery of the Equipment to the Purchaser's site or collection of the Equipment by the Purchaser from the Seller's premises, as applicable and agreed between the parties;
 - 9.1.3 in the case of Equipment requiring assembly and commissioning on a mining site, delivery to the Purchaser's designated site as stated in the Contract and completion of Commissioning of the Equipment; and
 - 9.1.4 delivery of the Equipment to a carrier or other bailee as arranged by the Purchaser (where delivery via such a method is agreed between the parties), whether or not such carrier or bailee is named by the Purchaser.
- 8.2. If the Purchaser fails to pay the Price or any other amount payable under this Contract, the Seller may give the Purchaser 7 days' prior written notice of its intention to retake possession of the Equipment. If payment is not made within that notice period, the Seller may retake possession of the same (and for that purpose, the Purchaser grants the Seller an irrevocable licence to enter any premises where the same are located), resell these items, and apply the proceeds in reduction of any amounts owing.
- 8.3. To the extent permitted by law, the Seller is not required to provide the Purchaser with the notice referred to in section 35(3) of the *Sale of Goods Act 1923* (NSW) or any equivalent legislation in any other state or territory in Australia.

9. Health and Safety

In the event of the Seller's employee's attendance at a Purchaser's site, the Purchaser warrants that it will provide a safe environment and system of work including but not limited to delivering a safety induction, safety equipment and personal protective equipment (**PPE**), and providing information to facilitate the safe completion of the work by the Seller's personnel, contractors and agents.

10. Indemnity

The Purchaser indemnifies the Seller, its officers, employees and agents against any claims, damage, expenses, losses or liabilities in respect of any personal injury, illness or death suffered by the Seller's Personnel, or arising in connection with breach of this Contract by the Purchaser's Personnel, and any negligence or breach of statutory obligations of the Purchaser's Personnel.

11. License

- 11.1. The Seller retains ownership of all Intellectual Property in any reports, documents, manuals, or other materials required to be provided to the Purchaser under this Contract.
- 11.2. The Seller grants to the Purchaser a limited, royalty-free, non-transferable licence to use such Intellectual Property solely for the purpose of using and operating the Equipment in accordance with their intended purpose as outlined in the relevant manual.
- 11.3. The Purchaser must not sub-license, assign or otherwise deal with this Intellectual Property without the prior written consent of the Seller.

12. Manufacturer's Warranty

- 12.1. The Seller will provide the Purchaser with any express product warranty (if any) given with the Equipment.
- 12.2. To the extent applicable, if there is any other express product warranty applicable to the Equipment, the Seller will provide the Purchaser with the relevant product warranty documentation the Seller has in its possession.

13. Liability - General

- 13.1. To the maximum extent permitted by law, and without prejudice to any other limitation available in connection with this Contract, any liability of the Seller to the Purchaser of any kind whatsoever, including (but not limited to) for negligence and breach of contract, will be limited at the Seller's option, to any one or more of the following:
 - 13.1.1. the replacement of Equipment or the supply of equivalent Equipment;
 - 13.1.2. the repair of the Equipment;
 - 13.1.3. the payment of the cost of replacing the Equipment or acquiring equivalent Equipment; or
 - 13.1.4. the payment of the cost of having the Equipment repaired.
- 13.2. To the maximum extent permitted by law, the Purchaser indemnifies the Seller against all liabilities, losses, damages, costs and expenses (including legal costs on a full indemnity basis) arising from any claim by a third party in connection with the use or operation of the Equipment by or on behalf of the Purchaser except to the extent that the claim arises from the negligence, breach of contract, or breach of law by the Seller.
- 13.3. To the maximum extent permitted by law, and without prejudice to any other limitation available in connection with this Contract, except in relation to title, the Seller provides no warranties, express or implied, and shall have no liability for the sale of Used Equipment. Used Equipment is sold by the Seller on an "as-is, where-is, nil warranty given or implied". The Seller makes no representations about the condition; state; maintenance or repair history; fitness for any particular purpose; acceptable quality; or conformity to any safety, pollution or hazardous materials standard or requirement; of the Used Equipment. Where information about the Used Equipment has been provided by a previous owner and this is passed onto the Purchaser, the Seller has not verified the truth or accuracy of such information and the information is provided on an "as-is, where-is" basis.

14. Liability Cap and Exclusion

- 14.1. To the maximum extent permitted by law and subject to clause 13.1 the Seller will under no circumstances be liable to the Purchaser, including for negligence and breach of contract, for any loss, damage or expense, exceeding the Price.
- 14.2. The term "consequential losses" includes, but is not limited to, economic loss including actual or anticipated profits, business interruption, loss of use, loss of revenue, damage to reputation and/or loss of data and costs incurred, and indirect loss or damage to property or equipment. To the fullest extent permitted by law the Seller excludes all liability to the Purchaser for any consequential losses.
- 14.3. No limitation clause in this Contract operates to exclude liability for wilful default of the Seller, or to the extent that the law prohibits any particular limitation.

15. Reservation of Title

- 15.1. Property in and title to the Equipment remains with Seller until the Purchaser has paid Seller the Price and any other money that the Purchaser may owe to Seller at any time on any account.
- 15.2. If the Purchaser disposes of the Equipment before it obtains title under clause 15.1 (which may only occur with the written permission of the Seller), the sale proceeds are the property of Seller and the Purchaser holds these on trust for Seller.
- 15.3. In addition to clause 15.2, in the event of sale of the Equipment to a customer the Purchaser in its position as a trustee must assign to the Seller the benefit of any claim against the customer.
- 15.4. While the Equipment remains the property of the Seller, the Purchaser agrees:
- 15.4.1. to store the Equipment separately at the Purchaser's premises so they can be easily identified;
 - 15.4.2. to not cause the Equipment to lose their identifiable character or be intermingled with other Equipment in any way by any process of its own or by a third party, except with Seller's prior written consent;
 - 15.4.3. that it has no right or claim to any interest in the Equipment to secure any liquidated or unliquidated debt or obligation that Seller owes to the Purchaser; and
 - 15.4.4. that it cannot claim any lien over the Equipment, and it will insure the same for their full replacement value at all times. The Purchaser will provide the Seller with copies of relevant insurance policies over the Equipment at any time upon request.

With respect to any security interest (including the retention of title above under this Contract):

- 15.4.5. that a Purchase Money Security Interest (**PMSI**) is created over the Equipment provided under this Contract, and the Seller may register this security interest on the Personal Property Securities Register (**PPSR**) to protect the Seller's rights in case of non-payment or insolvency. The Purchaser acknowledges that this PMSI will give the Seller priority over other creditors with respect to the Equipment;
- 15.4.6. that the Seller retains a contractual lien over the Equipment until the Price and all other amounts payable under this Contract are fully paid. The Purchaser acknowledges that this contractual lien grants the Seller the right to sell or otherwise dispose of the Equipment to recover any outstanding amounts, and this right extends beyond the Purchaser's failure to pay; and
- 15.4.7. that if the Purchaser fails to pay the Price and any other amounts payable under this Contract, the Seller is entitled to take possession of the Equipment, including by entering the Purchaser's premises, and to sell or resell the Equipment to recover any outstanding amounts owed to the Seller.

16. Purchase Order Cancellation Fee

- 16.1. If:

- 16.1.1. the Purchaser cancels the Purchase Order for the supply of Equipment before delivery; or
 - 16.1.2. the Seller cancels or reallocates the Purchase Order for the delivery of Equipment in accordance with clause 6.3,
- then the Purchaser must pay the Seller a cancellation fee.
- 16.2. The cancellation fee will be determined by the Seller and may include, without limitation:
- 16.2.1. a restocking and handling fee of 15% of the Price of the Equipment subject to the cancelled or reallocated Purchase Order;
 - 16.2.2. where there has been partial delivery of the Equipment, the Price for the Equipment already delivered;
 - 16.2.3. re-marketing, interest, and holding costs associated with the cancelled or reallocated Equipment;
 - 16.2.4. costs associated with the transport or storage of the Equipment;
 - 16.2.5. demobilisation and freight costs;
 - 16.2.6. any Non-recoverable costs or expenses incurred by the Seller in connection with the cancelled or reallocated Purchase Order;
 - 16.2.7. administration fees and charges; and
 - 16.2.8. losses or costs arising from third-party arrangements connected with the Purchase Order.
- 16.3. The Purchaser must pay the cancellation fee within 14 days of receiving an invoice from the Seller, which will include reasonable supporting documentation for the amounts claimed.

17. PPSA

- 17.1. The Purchaser:
- 17.1.1. acknowledges that the Contract constitutes a Security Agreement for the purposes of the PPSA;
 - 17.1.2. grants a Security Interest to the Seller in:
 - 17.1.2.1. all Equipment supplied under this Contract;
 - 17.1.2.2. all Equipment (and their proceeds) previously supplied by the Seller to the Purchaser (if any, and only to the extent that the Purchaser owes the Seller monies with respect to those Equipment); and
 - 17.1.2.3. all future Equipment (and their proceeds) supplied by the Seller to the Purchaser.
 - 17.1.3. acknowledges that the Seller may register its Security Interest in the Equipment (and their proceeds) (including as a Purchase Money Security Interest) on the PPSR where the supply is on credit or otherwise unpaid at the time of delivery;

- 17.1.4. will execute all documents and do such further acts as may be required by the Seller to enable registration, perfection, or correction of its Security Interest on the Register;
- 17.1.5. acknowledges and agrees that, to the extent permitted by law:
 - 17.1.5.1. sections 116(2), 120, 125, 142 and 143 of the PPSA do not apply; and
 - 17.1.5.2. it waives its right to receive any notices under the PPSA (including notices of verification statements), unless the PPSA prohibits such waiver; and
- 17.1.6. agrees not to authorise disclosure of information under section 275(7)(c) or request information under section 275(7)(d) without the Seller's prior written consent.

18. Privacy

- 18.1. The Purchaser acknowledges and agrees that the Seller may collect, hold, use and disclose Personal Information about the Purchaser and/or Purchaser Personnel. The Personal Information the Seller may collect about the Purchaser or Purchaser Personnel includes but is not limited to the individual's:
 - 18.1.1. name;
 - 18.1.2. date of birth;
 - 18.1.3. mailing or street address;
 - 18.1.4. email address; and
 - 18.1.5. phone number
- 18.2. The Seller may collect Personal Information of the Purchaser and/or the Purchaser Personnel directly from the Purchaser or the Purchaser Personnel by way of the following:
 - 18.2.1. interactions over the phone;
 - 18.2.2. interactions in person;
 - 18.2.3. interactions online;
 - 18.2.4. participation in surveys or questionnaires;
 - 18.2.5. completion of delivery receipt and warranty documentation;
 - 18.2.6. completion of request for product manuals;
 - 18.2.7. subscription to the Purchaser's mailing list;
 - 18.2.8. apply for a position with the Seller as an employee, contractor or volunteer; or
 - 18.2.9. any other manner as contained in the Seller's Privacy Policy.

- 18.3. The Seller uses the Personal Information for many purposes in connection with the Seller's functions and activities, including the following purposes:
- 18.3.1. to provide the Purchaser with information or services requested from the Seller or reasonably to be expected as a purchaser of the Equipment;
 - 18.3.2. to deliver the Purchaser with more personalised experience and service offering;
 - 18.3.3. to improve the quality of the services the Purchaser offers;
 - 18.3.4. for internal administrative purposes;
 - 18.3.5. to provide digital solutions capability which may be subject to a separate licence;
 - 18.3.6. for the purposes of conducting credit checks;
 - 18.3.7. for marketing and research purposes; and
 - 18.3.8. for any other purposes as included in the Seller's Privacy Policy.
- 18.4. The Seller may disclose Personal Information to third parties (in Australia and internationally) in accordance with these Terms of Sale for Equipment in circumstances where the Purchaser would reasonably expect the Seller to disclose such information or as detailed in the Seller's Privacy Policy. For example, the Seller may disclose personal information to:
- 18.4.1. related companies (in Australia and internationally);
 - 18.4.2. our third party service providers (in Australia and internationally);
 - 18.4.3. our marketing providers (in Australia and internationally);
 - 18.4.4. credit reporting bodies (in Australia and internationally); or
 - 18.4.5. our professional services advisors.

19. Termination

- 19.1. The Seller may terminate this Contract immediately upon written notice to the Purchaser in the event that:
- 19.1.1. the Purchaser breaches any material term of this Contract, including but not limited to failure to make any payment when due, and fails to remedy such breach within 10 days of receiving written notice thereof;
 - 19.1.2. the Purchaser becomes insolvent, enters into liquidation, has a receiver or administrator appointed over any of its assets, or is otherwise unable to pay its debts as they fall due, subject to the law; or
 - 19.1.3. the Purchaser engages in any conduct that materially impairs the Seller's ability to perform its obligations under this Contract.
- 19.2. Termination under this clause shall be without prejudice to any other rights or remedies available to the Seller under this Contract or at law.

20. Trade in

- 20.1. Where the Seller is purchasing used equipment from the Purchaser which will serve as a credit against the Price for the sale of Equipment, the Purchaser warrants that:
- 20.1.1. it will deliver the used equipment to the Seller in the same state and condition as when the Seller provided an appraisal of the used equipment (fair wear and tear excepted);
 - 20.1.2. it will deliver the used equipment with any remaining warranties, procedures manuals, maintenance records or other document which the Purchaser has available to it;
 - 20.1.3. it will deliver all accessories and attachments included in the trade in value agreed between the Seller and Purchaser as listed in the Contract;
 - 20.1.4. it will disclose any accidents or incidents to the used equipment that may impact its structural integrity or operational safety which becomes known to the Purchaser since the appraisal of the used equipment was provided by the Seller; and
 - 20.1.5. the used equipment will be unencumbered upon delivery to the Seller.

In this clause “deliver” means either delivery of the used equipment and all accessories and attachments included in the agreed trade in value to the Seller’s nominated premises or the collection of the used equipment and all accessories and attachments included in the agreed trade in value by the Seller from the Purchaser’s premises as set out in the Contract.

- 20.2. If any of the warranties in clause 20.1 are breached by the Purchaser or if the Seller discloses to the Purchaser a matter contained in clause 20.1.4, the Seller may reduce the value of the previously agreed credit (reduction could be to zero) against the Price. In this instance, unless otherwise agreed in writing between the parties, the Purchaser will be required to purchase the Equipment for its full sale price as documented in the Contract without any deduction or relief.
- 20.3. The Seller and Purchaser declare that this recipient created tax invoice (**RCTI**) agreement relates to the used equipment that is the subject of trade-in identified in the Contract. The Purchaser acknowledges that it is registered for GST and will notify the Seller if it ceases to be registered. The Seller acknowledges that it is registered for GST and will notify the Purchaser if it ceases to be registered for GST. Acceptance of a RCTI for used equipment that is the subject of trade-in identified in the Contract constitutes acceptance of the terms of this written RCTI agreement. Both parties to this supply agree that they are parties to a RCTI agreement.

21. Defect Equipment and Loose Items

- 21.1. The Purchaser must provide the Seller and its representatives with reasonable and timely access to any Equipment alleged to be defective for the purpose of inspection, testing, diagnosis, repair, replacement or warranty assessment. If the Purchaser fails to provide such access within a reasonable time, the Seller will not be liable for any delay in performing its obligations, and any applicable warranty claim may be suspended until access is provided.
- 21.2. The Purchaser is responsible for removing all loose items and personal property from the Equipment prior to delivery to the Seller.

- 21.3. The Seller is not responsible for any loss of or damage to loose items, personal property, tools, accessories, documents, data storage devices or other materials left in, on or attached to any Equipment submitted to the Seller for servicing, inspection, commissioning or repair, unless such loss or damage is caused by the Seller's negligence or wilful misconduct.

22. Purchaser Selected Equipment

- 22.1. Where the Purchaser requests that the Seller supply, install or integrate a particular attachment, accessory, component, system or third-party product nominated or selected by the Purchaser ("**Purchaser-Selected Product**"):
- 22.1.1. the Purchaser acknowledges that it has independently assessed the suitability, specifications and fitness for purpose of the Purchaser-Selected Product;
 - 22.1.2. the Seller provides the Purchaser-Selected Product as a convenience to the Purchaser and does not warrant or assume responsibility for the effectiveness, performance, compatibility, suitability, safety, operation or fitness for purpose of the Purchaser-Selected Product including any interoperability or connection of the same with the Equipment, except to the extent any warranty cannot lawfully be excluded;
 - 22.1.3. to the maximum extent permitted by law, the Seller is not liable for any loss, damage, defect, failure, incompatibility, interoperability, safety, effectiveness, operation or performance issue arising from or connected with the Purchaser-Selected Product; and
 - 22.1.4. the Purchaser releases and indemnifies the Seller from and against any claims, losses, damages, costs or liabilities arising from or in connection with the supply, installation, operation or performance of the Purchaser-Selected Product, except to the extent caused by the Seller's negligence or wilful misconduct.

23. Machine data share terms

- 23.1. The parties agree that in connection with the use of any Equipment, Machinery Information may be collected and used by the Licensed Parties for the following purposes, anywhere in the world:
- 23.1.1. to provide after-sales services for the Equipment;
 - 23.1.2. to improve after-sales services, solutions service and other support services for Purchaser and other customers in general;
 - 23.1.3. develop Insights Data to use for the development, optimisation, improvement, marketing and support of the current and future goods and services of HCM Group to customers; and
 - 23.1.4. for the HCM Group to carry out its business objectives, including research and development, designing, engineering, manufacturing, sales and servicing.
- 23.2. In addition to clause 23.1, the Seller and Licensed Parties may also browse, use and disclose information that falls within any of the following categories for other purposes that are not set out in clause 23.1:

- 23.2.1. Machinery Information in which the Purchaser or the Equipment cannot be identified;
 - 23.2.2. information in which Purchaser or the Equipment cannot be identified, as a result of data transformation by the Licensed Parties; and
 - 23.2.3. Insights Data.
- 23.3. The Seller must ensure that its Personnel and must have HCM ensure the Licensed Parties do not:
 - 23.3.1. use any Machinery Information other than for the purposes outlined in clauses 23.1 and 23.2;
 - 23.3.2. purport to sell, let for hire, assign rights in or otherwise dispose for commercial purposes any Machinery Information; or
 - 23.3.3. alter any Machinery Information in any way, except as required to fulfil its obligations under clauses 23.1 and 23.2.
- 23.4. Machinery Information is the property of the Purchaser.
- 23.5. The Seller must have HCM ensure that it does not cause or have caused any pledge, lien, charge, mortgage, encumbrance of a third party or any other security interest to be placed on the Machinery Information or any database (whether electronic or otherwise) in which such Machinery Information is stored.
- 23.6. The Seller must establish and maintain safeguards against the destruction, loss or alteration of the Machinery Information in the possession, custody or control of the Seller that comply with all applicable laws.
- 23.7. The Seller must have HCM establish and maintain safeguards against the destruction, loss or alteration of the Machinery Information in the possession, custody or control of HCM Group (external to the Seller) that comply with all applicable laws.
- 23.8. Insights Data is the sole and exclusive property of HCM or an HCM Group entity.
- 23.9. All Intellectual Property in the Telematics Services and Insights Data are and remain the exclusive property of HCM or an HCM Group entity.
- 23.10. Purchaser acknowledges that the Terminal may be required to be certified by a government authority in the event that the Purchaser desires to export the Terminal and Equipment. The Purchaser must comply with the Laws of the country to be imported or remove the Terminal from the Equipment prior to export.
- 23.11. Neither the Seller or HCM Group are liable or responsible for the operation of the Telematics Services and all such entities shall be released of all liability in the event of any of the following:
 - 23.11.1. appropriate information fails to be reflected in Telematics Services due to conditions of the Terminal or its telecommunication environments;
 - 23.11.2. appropriate information fails to be reflected in Telematics Services due to malfunction of the sensor installed in Equipment;

- 23.11.3. Machinery Information fails to be properly received due to failure by the Purchaser to register, cancel, update or otherwise properly manage any of the Machinery Information;
 - 23.11.4. Machinery Information is delayed, is wrongly transmitted, or fails to be properly sent, due to deterioration of telecommunication environments or any inconvenience of the relevant telecommunications carrier; or
 - 23.11.5. Machinery Information is delayed due to any system maintenance of Telematics Services.
- 23.12. Either party may terminate the application of any one or all Telematics Services within 60 days from receipt of written notice by the terminating party.
- 23.13. On termination of any one or all Telematics Services pursuant to clause 23.12, if requested by the Purchaser at no cost to the Purchaser, the Licensed Parties must destroy and the Seller must certify in writing to the Purchaser the destruction of, the relevant Machinery Information derived from the terminated Telematics Services which is in the Licensed Parties' possession, custody or control except for all de-identified information designated in clause 23.2.
- 23.14. Any obligation of confidence contained in these terms and conditions is independent of and must survive termination pursuant to clauses 23.12 and 23.13.
- 23.15. The Purchaser and Seller may agree to reinstate any or all terminated Telematics Services at any time after termination upon mutual written agreement of the parties. Unless otherwise notified by the Seller, clause 23 will then apply to any reinstated Telematics Services.
- 23.16. For the purposes of clause 23, the Purchaser agrees to promptly notify the Seller in the instance the Equipment is intended to be sold or has been sold to a subsequent purchaser including the date of the sale and details of the subsequent purchaser.
- 23.17. Clause 23 constitutes the entire agreement between the Purchaser and Seller and supersedes any previous agreement relating to its subject matter.

24. General

- 24.1. This Contract will be construed and governed in all respects by the laws of the State of New South Wales, Australia and each party submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.
- 24.2. Where the Purchaser has provided the Seller with a nominated email address, the Seller may send any notices to the Purchaser by emailing it to that email address.
- 24.3. The Seller may request and the Purchaser must promptly provide any information, documents or assistance reasonably required by the Seller to satisfy any applicable sanctions, export control, customs or trade compliance obligations. The Purchaser warrants and represents on a continuing basis that the Purchaser is a person or entity subject to sanctions administered or enforced by the United Nations, Australia, Japan, the United States, the European Union or any other applicable governmental authority, and that the Purchaser will not sell, export, re-export, transfer, tranship, supply or otherwise make available the Equipment to any person, entity, country, territory or end user in breach of any applicable sanctions, export control laws, trade embargoes or export prohibitions imposed by any applicable governmental authority. The Purchaser must immediately notify the Seller if it becomes aware of any actual or suspected breach of this clause 24.3, and the Seller may suspend performance, refuse delivery or terminate this Contract without liability if the Seller reasonably

believes that performance of the Contract may cause the Seller to breach any applicable sanctions, export control laws or trade restrictions.

- 24.4. In the event that any provision of this Contract is held invalid or unenforceable, the remaining provisions of this Contract will remain in full force and effect.
- 24.5. The Seller may, from time to time vary this document which will from that point apply to all future Purchaser Orders/Contracts.
- 24.6. The Purchaser shall not assign its rights or obligations under this Contract without prior written consent of the Seller.
- 24.7. No failure or delay by the Seller to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 24.8. This Contract constitutes the entire agreement between the Seller and the Purchaser and supersedes any previous agreement relating to its subject matter.
- 24.9. The Purchaser agrees to provide the Seller with reasonable access to the premises where the Equipment is located at all times, and to cooperate with the Seller as reasonably required, for the purpose of allowing the performance of this Contract.
- 24.10. The Purchaser must ensure that its premises have adequate utilities, including but not limited to power, water, site facilities including internet, toilets, break rooms, and any other facilities required to perform the Contract.
- 24.11. The Purchaser agrees to provide accurate, complete, and timely information to the Seller in connection with the performance of this Contract, including but not limited to specifications, operational performance requirements, intended purpose, and the operational performance and condition of the Equipment during its use.
- 24.12. The Purchaser acknowledges that the Seller will rely on complete and timely information provided by the Purchaser in relation to the performance of this Contract and all associated conditions. To the extent that any such information is inaccurate, incomplete, misleading, or not provided in a timely manner, the Seller will not be liable for any resulting delays, defects, failures, or additional costs. The Purchaser shall be solely responsible for ensuring the accuracy and completeness of this information.
- 24.13. If the Purchase Order is in a form generated and produced by the Purchaser and contains any terms and conditions, the parties agree that the terms and conditions shall have no legal force or effect unless expressly agreed to in writing by the Seller in an order acceptance confirmation issued by the Seller or countersignature on the order form by the Seller.