



Hilti (New Zealand) Ltd

Terms and Conditions of Sale

We supply all goods to you subject to these terms and conditions.

1 Acceptance

- 1.1 By placing an order with us, you accept these terms and conditions, despite anything stated to the contrary on your order, terms and conditions of purchase or similar document. You acknowledge that the terms and conditions herein constitute a 'security agreement' for the purposes of the Personal Property Securities Act 1999 and that we may register a financing statement in respect of that agreement. In these terms and conditions "goods" means all goods supplied by us to you. The description of the goods shall, for the purpose of these terms and conditions, be as described in a quote, order form, invoice or other document.

2 Price

- 2.1 All orders will be filled at prices quoted by us in writing or otherwise current at the date of delivery of the goods. Prices are subject to change without notice.
- 2.2 Unless stated otherwise, all prices are exclusive of GST or other taxes payable on goods supplied or on any amount payable under clause 8, freight costs, insurance charges and maintenance costs. You must pay all of these taxes and charges unless we agree otherwise with you in writing.

3 Terms of Payment

- 3.1 Payment is due in cash at the time you place an order with us for the goods, unless we have previously agreed to supply you on trade terms.
- 3.2 Where we have agreed to supply you on trade terms, payment is due on the 20th of the month following the date of invoice.
- 3.3 You must make payment of all amounts owing without set-off or deduction.
- 3.4 You agree that we may send you an invoice by email.

4 Delivery

- 4.1 Dates given for delivery are stated in good faith but are not to be treated as a condition of the sale. If delivery of the goods is delayed for any reason at all, we will not be responsible or liable in any way to you or any other party for loss suffered due to that delay.

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- 4.2 We may make delivery by instalments and may cancel delivery of the goods or any instalments of the goods without limiting or affecting our rights to recover all money you owe us for deliveries already made.
- 4.3 Where you do not take delivery of the goods by the delivery date specified or any later date we agree on, you must pay reasonable storage costs until you take delivery of the goods. We will determine the costs of storage and may invoice you.
- 4.4 We will not accept any claim for discrepancy in orders unless you make written claim to us within 48 hours of delivery.
- 4.5 Delivery by us to a carrier will be deemed to be delivery to you.

5 Consumer Guarantees Act

- 5.1 If you are a consumer under the Consumer Guarantees Act 1993 and you have not contracted out of that Act under clause 6.1 of these terms and conditions, you may have certain rights under that Act, and nothing in these terms and conditions limits those rights.

6 Warranties and Conditions

- 6.1 Where these terms and conditions would otherwise be subject to the Consumer Guarantees Act 1993 ("Act") and you are acquiring the goods for business purposes as defined in the Act, you agree that you are acquiring the goods for business purposes and that the Act does not apply to the supply of the goods to you.
- 6.2 Where you supply goods to one of your customers and the supply of goods to that customer would otherwise be subject to the Act, and the customer acquires or holds itself out as acquiring the goods for business purposes as defined in the Act, then you warrant that you will obtain the written agreement of the customer that the Act will not apply to the supply to the customer.
- 6.3 We warrant that our goods will meet or exceed the relevant minimum durability standards of the Building Act 2004 and any regulations or codes made under that Act, applying as at the date of supply of the goods. However, the minimum standards may vary depending upon the application for which particular goods are used and therefore:
 - a. You must ensure that you purchase goods which are appropriate for their proposed application; and
 - b. Our liability in relation to the supply of goods is limited as set out in clause 11.

With the exception of the warranty in clause 6.3 and any express written warranty we give, no warranty or condition will be implied against us by any statute, at common law or otherwise and no representation, condition, warranty or variation of these terms and conditions will bind us unless it is in writing and signed for us or on our behalf.

7 Ownership and Risk

- 7.1 Risk in the goods will pass to you on delivery into your custody or the custody of anyone acting on your behalf even though ownership in the goods may not have passed to you. You must insure the goods in our name and your name for our respective interests from the time of delivery until payment in full.
- 7.2 We will retain legal and beneficial ownership of any and all goods and /or any other goods which the goods have been incorporated into or mixed with (“mixed goods”), until we receive payment in full for them and all other amounts owing to us, and until you have satisfied all obligations you owe us, even though we may have granted you a period of credit.
- 7.3 You hold the goods and/or mixed goods as fiduciary bailee and agent for us and must store the goods and/or mixed goods in such a way that they are clearly identifiable as our property. You must keep separate records in respect of the goods and/or mixed goods, until payment in full has been made.
- 7.4 You will not sell, dispose of or otherwise part with possession of the goods and/or mixed goods except that you may sell them in the ordinary course of your business. Where you do sell or otherwise dispose of the goods and/or mixed goods prior to payment in full you must hold the proceeds of sale in a fund separate from your own money.

8 Default

- 8.1 Where we consider you may be unable to meet your payment obligations to us, we may, without limiting or affecting our other rights and remedies, do all or any of the following:
- a. Require you to stop selling or otherwise disposing of the goods or mixed goods;
 - b. Demand payment of all or part of any sums due;
 - c. Require security for your obligations before we may any further supplies to you;
 - d. Without notice, withhold deliveries of goods ordered by you.
- 8.2 Where:
- a. You are in breach of any of these terms and conditions (including failure to make payment on due date), or
 - b. You become insolvent or are adjudicated bankrupt, or an application is made for your liquidation or administration or bankruptcy or a liquidator, administrator or a receiver is appointed in respect of your assets; or
 - c. You no longer carry on business or threaten to stop carrying on business;
 - d. An arrangement is made or is likely to be made with your creditors; or
 - e. If the goods are ‘at risk’ (as that term is defined in the PPSA); then, without limiting or affecting our other rights and remedies, we may do all or any of the following:

- i. Where you have failed to make payment on due date, require you to compensate us by making payment to us on demand of interest as liquidated damages on the amount due from the due date until the date of payment at a rate equal to two (2) per cent above the current overdraft rate which we have with our principal trading bank (in addition to you remaining liable for the full amount outstanding);
 - ii. Cancel this and any other contract of supply with you;
 - iii. Recover and/or resell any of the goods and/or mixed goods and enter any premises where we believe the goods and/or the mixed goods are stored and you grant us an irrevocable right and authority to do so. We may only recover and resell for our own account sufficient goods or mixed goods to satisfy all unpaid liabilities, the costs of recovery and resale and the costs referred to in clause 8.3. If we recover any excess, we will not be liable in damages to you but must account to you for the excess. Sections 108, 109 and 120 of the Personal Property Securities Act 1999 do not apply to the extent that they are inconsistent with this clause.
- 8.3 You will pay all costs and expenses (including costs on a solicitor/client basis and debt collectors' costs) we incur in enforcing or attempting to enforce our rights under this clause. We may deduct any costs and expenses incurred from the proceeds of sale of any goods or mixed goods recovered from you.
- 8.4 Your payment will be applied first in reduction of interest, liquidated damages and costs due under this clause, with the balance being applied in reduction of any amounts due under clause 3.

9 Claims for Damaged or Defective Goods

- 9.1 Subject to clauses 5, 6 and 11, we may, at our discretion, repair any damaged or defective goods or make a reasonable allowance on the purchase of goods to replace the goods provided:
- a. You return the goods within seven (7) days of delivery at your cost, together with a copy of the invoice and a claim specifically identifying the damage or defect(s); and
 - b. We have a reasonable opportunity to investigate the claim.
- 9.2 If you do not comply with the above requirements, you will be deemed to have accepted the goods and we will not incur any liability whatsoever to you in relation to the goods.

10 Credits for Returned Goods

- 10.1 We may, at our discretion, give credit for returned goods which are delivered to us within seven (7) days at your cost in the same condition and packaging in which they were dispatched, with a copy of our invoice.

11 Limitation of Liability

- 11.1 Without restricting the limitations and exclusions of liability contained elsewhere in these terms and conditions and subject to clause 11.2, our liability in relation to the supply of the

goods and the goods themselves is limited to the purchase price of the goods in respect of which such liability arises. We have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising.

- 11.2 Without restricting the limitations and exclusions of liability contained elsewhere in these terms and conditions, we are not responsible for any damage whatsoever caused either to the goods supplied or as a result of the malfunction of the goods if:
- a. The goods are fitted by unqualified tradespersons or are fitted in an unprofessional manner; or
 - b. The goods are adapted to a use or which they are not specifically intended or are used in an application for a longer period of time than the relevant minimum durability standard referred to in clause 6.3; or
 - c. The goods are added to or repaired using components not recommended by us or by the manufacturer; or
 - d. The goods are improperly stored or transported.

12 Personal Property Securities Act 1999 (“PPSA”)

- 12.1 You grant a security interest in the goods and all proceeds of the goods in favour of us for the purposes of the PPSA and as security for the payment for the goods and any amount owing by you to us from time to time.
- 12.2 Following a request by us, you will promptly execute any documents and do anything else required by us to ensure that the security interest created under these terms and conditions constitutes and remains a first perfected security interest (as that term is defined in the PPSA) over the goods including providing any information we may reasonably require to complete a financing statement or a financing change statement.
- 12.3 You will pay all costs, expenses and other charges incurred, expended or payable by us in relation to the filing of a financing statement or financing change statement in connection with these terms and conditions.
- 12.4 You shall immediately notify us in writing of any change in your name (and within 14 days of any such change), and you waive any right to receive a copy of a verification statement under the PPSA.
- 12.5 You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.6 You agree that your rights as debtor in sections 116, 120(2), 121, 125, 126, 127, 129 ,and 131 of the PPSA shall not apply to these terms and conditions.

13 Force Majeure

- 13.1 We will not be in breach of these terms and conditions because of any failure on our part directly or indirectly due to wars, strikes, lockouts, delays or defaults of manufacturers or

suppliers, acts of God or any other cause (whether similar or dissimilar) beyond our reasonable control.

14 General

- 14.1 You indemnify us against any liability for any direct, indirect or consequential injury, loss or damage arising out of any act, default or omission of, or any representation made by, you or your servants or agents.
- 14.2 If any of these terms or conditions is held by a Court to be ineffective because of non-registration, illegality or any other reason, then that term or condition or part of it will be severed from all other terms and conditions without affecting the validity or enforceability of all other terms and conditions or part of them.
- 14.3 No waiver by us of any term or condition will constitute a waiver of any other of these terms or conditions.
- 14.4 We may vary these terms and conditions at any time by notice in writing to you. You may not vary these terms and conditions unless we agree in writing.