

## GENERAL TERMS & CONDITIONS OF SALES

### 1. Definitions

- 1.1 Jungheinrich Lift Truck Malaysia Sdn Bhd is hereinafter referred to as the "Seller" which expression shall include its successors in title.
- 1.2 The person or entity whose order for Equipment (as defined in clause 1.4 below) is accepted by the Seller is hereinafter referred to as the "Buyer" whether or not expressly referred to in other documents of sales, purchase invoices or delivery notes issued by Seller or Buyer.
- 1.3 "Contract" means the agreement made between the Buyer and the Seller and referred to in clause 2.1 herein, for the purchase of the Equipment comprising the terms set out in the Seller's offer and these Terms and Conditions.
- 1.4 "Equipment" shall include any goods, equipment, machine, or part thereof and any attachments or fittings or replacements or any other things sold under this Contract.
- 1.5 "Rules and Regulations" means any written laws, legislation, regulation, by-law, or other similar instrument, including any amendment thereto or re-enactment or replacement thereof.
- 1.6 "Terms & Conditions" means these General Terms & Conditions of Sales.
- 1.7 "Working days" means Monday to Friday except public holidays.

### 2. Binding Contract

- 2.1 The signed offer by the Buyer or the order, whether by letter, attached to an electronic mail, facsimile or other forms of communication for the sale of Equipment shall be construed and deemed as an express acceptance of these Terms and Conditions and together shall be known as the "Contract" and in so far as any provision of the Buyer's said order be inconsistent therewith these Terms and Conditions shall be deemed to prevail. These Terms and Conditions likewise apply to all future transactions with the Buyer regarding the products listed in the Seller's offer and signed by the Buyer, and shall always prevail over any differing or additional terms and conditions proposed or included by the Buyer and not contained in the Contract including, without limitation, those contained in Buyer's order, acknowledgment of invoice, or additional or any other documents.
- 2.2 Any variations or purported variations of these Terms and Conditions shall be deemed to be of no effect unless otherwise agreed in writing in an amendment contract and signed by an Authorised Manager or Director of the Seller. All other terms shall remain in force and the Contract shall be deemed amended accordingly.
- 2.3 In case individual terms of the Contract should become partly or wholly invalid due to governmental law, regulation, order or action, Seller and Buyer shall forthwith try to find a mutually acceptable replacement for the term thus invalidated. If no mutual agreement concerning such replacement can be reached, Seller shall have the option to either accept the invalidation thereof and keep the remainder terms of the Contract in force or be entitled to terminate the Contract by written notice to the Buyer.

### 3. Changes in goods

The Seller reserves the right to make any changes in the specification of the Equipment to be delivered, provided it does not materially affect the quality or performance or if the Equipment is/are required to conform to any applicable statutory requirement.

### 4. Price Revision

- 4.1 Prices quoted or contracted by Seller with the Buyer may be revised by Seller to cover unforeseen increase in Seller's cost which are due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of custom or other duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment requested by the Buyer or any delay caused by any instructions of the Buyer or the failure of the Buyer to give the Seller adequate information or instructions.
- 4.2 If Seller desires to revise prices accordingly but is restricted to any extent against so doing by reason of any law, regulation, order or action, or if the cost basis of prices quoted or contracted as fixed prices is altered by reason of any law, regulation, order or action, Seller shall have the right to rescind the Contract by written notice to Buyer if the parties cannot agree forthwith on a mutually acceptable solution concerning the additional cost thus incurred by the Seller.

### 5. Terms of Payment

- 5.1 The Buyer shall pay the price of the Equipment within the credit terms specified in the offer and the Seller shall be entitled to recover the price, notwithstanding that full delivery may not have taken place and the property or title to the Equipment has not passed to the Buyer. Unless otherwise provided in the Seller's offer, if the Buyer fails to make full payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
  - a) Cancel the Contract or suspend any further deliveries to the Buyer;
  - b) Appropriate any payment made by the Buyer to such of the Equipment (or Equipment supplied or sold under any other contract between the Buyer and the Seller) as the Seller may consider fit (notwithstanding any purported appropriation by the Buyer); and
  - c) Charge the Buyer interest (before and after any judgment) on the amount unpaid, at the rate of 1.5% per month of the unpaid portion of the Contract Price, until payment in full is made.

5.2 Seller reserves the right, among other remedies, either to terminate the Contract or to suspend further deliveries or services under it in the event and for such time as Buyer fails to pay for any Equipment when payment is due. Should Buyer's credit standing become unsatisfactory to Seller, additional advance payment, down payments, or full payment or such other satisfactory security may be required by the Seller for future deliveries of Equipment to be rendered as well as for Equipment which are yet to be delivered.

## **6. Delivery Periods / Delivery Dates**

- 6.1 Confirmed delivery periods shall apply only from the date that all details of the order have been clarified and confirmed, including clarification and confirmation of all technical details and other documents required by Seller to execute the order and are subject to Buyer's compliance with the payment terms as stipulated in the offer.
- 6.2 The Seller shall be allowed to make partial delivery or early delivery upon giving reasonable notice to the Buyer. In the event, delivery of the Equipment is prevented for reasons beyond the Seller's control, the delivery deadlines and dates will be considered respected if the Buyer is notified on the agreed dates that the Equipment is ready for delivery. If the Buyer requests to delay delivery of the Equipment, fails to take delivery of the Equipment or fails to give the Seller adequate delivery instructions, then the Seller, without prejudice to any other right or remedy available to it at law or under the Contract, may store the Equipment until actual delivery and charge the Buyer for the cost of intermediate handling and storage of the Equipment. In case such delay of delivery of Equipment exceeds one month, Seller is entitled to charge Buyer interest at a rate of 1.5% per month on the total value of the Contract ("Contract Price"). Interest shall not be charged by the Seller in cases of force majeure.
- 6.3 Where the Equipment is to be delivered in instalments, each delivery shall constitute a separate contract. If the Seller fails to deliver one or more of the instalments in accordance with the Contract, claims by the Buyer in respect of any one or more instalments; shall not entitle the Buyer to treat the entire Contract to be repudiated.

## **7. Delivery acceptance**

Buyer agrees to accept the Equipment supplied (or the service rendered) immediately upon delivery and to give notice in writing of any claim which is based on failure to correspond with specifications within three (3) working days of delivery. Failure to give notice in writing as aforesaid within the specified time constitutes an unqualified acceptance of the Equipment and waiver of all claims with respect thereto. Once the notice period has passed, the Buyer shall not be entitled to reject the Equipment and the Seller shall have no liability for failure to correspond with specifications, and the Buyer shall be bound to pay the price as if the Equipment had been delivered in accordance with the Contract. Any acknowledgement of the notice by the Seller means that a verification process will be initiated and this in no way shall be construed as an acceptance of the claim notified by the Buyer.

## **8. Liability and Risk**

Upon notification to the Buyer that the Equipment is available for collection and acceptance by Buyer's carrier or upon delivery to Buyer's premises, whichever comes first, the Buyer shall assume all risks, responsibility and liability for loss and damage to the Equipment resulting from the transportation, handling, storage or use of the Equipment supplied under the Contract. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall in no event be liable to the Buyer by reason of any representation, implied warranty, condition or other term, or under the express terms of the Contract for any indirect, special, consequential, incidental or other damages whether such damages are foreseeable or not, (whether for loss of profit or otherwise), loss, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise or resulting from delayed delivery, short shipment, handling, storage, use, imperfection or otherwise of Equipment supplied which arise out of or in connection with the sale or supply of the Equipment or their use or resale by the Buyer). The Seller's entire liability in respect of Equipment supplied or sold under the Contract shall in any case be limited to the total value of the Contract in respect of which damages are claimed.

## **9. Force Majeure**

The Seller is entitled to defer the delivery of the Equipment or to reduce the number of Equipment ordered or to cancel or terminate the Contract without being liable to the Buyer, if the Seller is prevented from or delayed in the carrying on of its business due to circumstances beyond their reasonable control or by events of force majeure. Events of such force majeure shall include but not limited to acts of God, war, riot, fire, explosion, accident, flood sabotage, pandemic, lockdowns as ordered by authorities or government, inability to obtain fuel, power, raw material, labour, containers or transportation facilities, breakage or failure of machinery or apparatus, governmental law, regulation, order or action, national defence requirements or any other event beyond the reasonable control of Seller or in the event of labour disputes, strike, lockouts, or injunction, any of which events prevent the manufacture or dispatch of a shipment of the Equipment or a material which the manufacture of the Equipment is dependent. If due to such event Seller is unable to supply part or all of the Equipment contracted under the Contract, Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract and shall be exempted to such extent from its obligations with respect to the particular delivery upon giving prompt notice of such event to Buyer, but the Contract shall otherwise remain in force.

## 10. Property of Documents

Documents, including illustrations, drawings, cost estimates and printed literature as well as data sheets stating weight, dimensions, performance and energy requirement, submitted by Seller to Buyer shall not be deemed to be binding specifications unless expressly stated in a binding offer submitted by the Seller. Seller shall retain title to and copyright of all such documents irrespective of the form or cover under which they were submitted to Buyer and Buyer shall not pass on such documents or any proprietary information received from Seller to third parties either in writing or verbally, without the prior written consent of Seller.

## 11. Reservation of Title

Notwithstanding delivery and the passing of risk in the goods, Equipment supplied or sold by the Seller shall remain Seller's property until the purchase price in respect of such Equipment has been paid in full by Buyer. In case the Equipment have been processed by Buyer before the full purchase price has been paid, Seller's reservation of title shall extend over the entire new product from which the Equipment was processed. In case of processing, combining or mixing Seller's Equipment with goods owned by Buyer or third parties, Seller shall acquire a part title of the newly created products at a percentage corresponding to the ratio between the value of Seller's Equipment to that of the goods of Buyer or third parties. Until such time as the property in the Equipment and the newly created product passes to the Buyer, the Buyer shall hold the Equipment as the Seller's fiduciary agent and bailee and the Buyer shall store the Equipment and such newly created products in a manner to indicate that Buyer holds these goods and products as a bailee for Seller. Buyer may nevertheless sell these goods and products to a third party in the normal course of business but shall account to Seller for the portion of proceeds lawfully belonging to Seller. Until such time as the property in the Equipment passes to the Buyer (and provided that the Equipment is still in existence and have not been resold), the Seller shall be at liberty and be entitled at any time to require the Buyer to deliver up the Equipment to the Seller and, if the Buyer fails to do so forthwith, to enter upon the premises of the Buyer or any third party where the Equipment is stored and repossess the Equipment. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Equipment which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 12. Warranty

- 12.1 Seller makes no warranty, whether as to merchantability, fitness or otherwise expressed or implied concerning the Equipment supplied or sold other than the specifications stated in the Seller's offer and that the Equipment will be free from defects in material and workmanship for a period provided for in the Seller's offer. Seller's warranty does not cover:
- Any defect in the goods arising from normal wear and tear, wilful damage, negligence, abnormal working conditions, misuse or alteration or repair of the goods without the Seller's approval;
  - Any defect in the Equipment arising from any wrongly submitted drawing, design or specification of the Buyer;
  - Any Equipment for which the total price has not been paid by the due date for payment; and
  - Parts, materials, or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 12.2 Seller's warranty is further subject to Buyer's compliance with generally accepted practice or the Seller's instructions (whether oral or in writing) for proper handling and use of the Equipment. Any recommendation made by the Seller concerning the use of the Equipment is believed by the Seller to be reliable, but Seller makes no warranty of the results to be obtained.
- 12.3 Seller shall be entitled to repair or replace the rejected Equipment or the unserviceable part thereof or refund the Buyer the price of the Equipment (or a proportionate part of the price) at Seller's sole option, but in any event the Seller shall have no further liability to the Buyer.
- 12.4 Seller's obligations under this warranty shall be **CONDITIONAL** on Buyer's full compliance with Buyer's obligations under the Contract, especially requiring full compliance with the terms of payment.

## 13. Indemnity

If the goods are to be manufactured or any process is to be applied to the Equipment by the Seller in accordance with specification required by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

## 14. Cancellation

Buyer may not cancel the order or the Contract described herein except with the express prior written consent of the Seller. In the event of a cancellation the Buyer, shall be liable to and shall pay the Seller a cancellation charge equal to:

- Cancellation within 5 working days upon reception of order from Buyer: 30% of the total Contract Price or down payment whichever is higher
- After 5 working days upon reception of order from Buyer: 75% of the total Contract Price

Except that nothing herein shall limit any other remedies available to the Seller hereunder or at law.

#### **15. Events of Default or Insolvency of the Buyer**

If any of the following events occurs, the Seller shall be entitled to cancel the Contract or suspend any further deliveries of goods or services under the Contract without any liability to the Seller, and if the Equipment have been delivered but not paid for, the price shall become immediately due and payable to the Seller.

- a) the Buyer is or could be deemed at law or by a court to be insolvent or unable to pay its debts as they fall due, makes or proposes to make a general assignment, or an arrangement or composition with its creditors or a moratorium is declared in respect of or affecting all or a material part of the indebtedness of the Buyer;
- b) A distress, attachment, execution or other legal process is levied or enforced on or against the assets of the Buyer;
- c) Any step is taken by any person with a view to the winding-up, liquidation (voluntary or otherwise) or bankruptcy of the Buyer (otherwise than for the purpose of amalgamation, reconstruction, reorganisation, merger or consolidation) or for the appointment of a liquidator, receiver or manager, judicial manager, trustee or administrator of the Buyer or over any part of the assets of the Buyer;
- d) The Buyer ceases, or threatens to cease, to carry on all or a substantial part of its business;
- e) Any step is taken by another person with a view to the seizure, compulsory acquisition, expropriation or nationalisation of all or a material part of the assets of the Buyer;
- f) It is or will become unlawful for the Buyer to perform or comply with any one or more of its obligations under the Contract
- g) Any event occurs, or circumstances arise which the Seller reasonably determines gives reasonable grounds for believing that the Buyer may not (or may not be unable to) perform or comply with any one or more of its obligations under the Contract; or
- h) Any event occurs which, under the law of any jurisdiction, has an analogous or equivalent effect to any of the events mentioned in (a), (b), (c) or (d) above.

#### **16. Entire Agreement**

16.1 The entire agreement between the parties with respect to the sales of the Equipment and its delivery is contained in the Contract and all previous understandings, agreements, representations or warranties, expressed or implied which are not expressly contained in the Contract are superseded.

16.2 Any purported terms and conditions made referenced to or incorporated or alluded to within any purchase order or other document issued by the Buyer relating to this Contract or the Equipment shall have no effect and shall not bind the Seller.

#### **17. Governing Laws**

The Contract shall be governed by and construed in accordance with the laws of Malaysia, excluding any conflict of laws principle that would refer to the laws of another jurisdiction.

#### **18. Arbitration**

Any dispute arising out of or in connection with the Contract or these Terms & Conditions or any matters described hereunder, including any question regarding its existence, validity, interpretation or termination, whether or not during the term of this Contract or thereafter and whether before or after any termination of the Contract, shall be referred to and finally resolved by arbitration in Kuala Lumpur- Malaysia, in accordance with the Asian International Arbitration Centre (the "AIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference to this clause. The tribunal shall consist of a sole arbitrator and the language of the arbitration shall be in English