

GENERAL TERMS AND CONDITIONS FOR VENDOR

1. DEFINITIONS

- 1.1 **Jungheinrich Lift Truck India Private Limited** is hereinafter referred to as the "**Buyer**" which expression shall include its successors in title.
- 1.2 "**Vendor**" means the person or entity which accepts the Purchase Order of the Buyer which expression shall include its successors in title.
- 1.3 "**Purchase Order**" means the Buyer's purchase order exclusively made to the Vendor for purchasing of the Product and/or availing of Service. The Purchase Order shall be valid if only signed by authorised manager or director of the Buyer.
- 1.4 "**Contract**" means the agreement made between the Vendor and the Buyer and referred to in clause 2.1 herein, for the purchase of the Product and/or availing of Service comprising;
 - i. the terms set out in the Purchase Order, and
 - ii. these Terms & Conditions.
- 1.5 "**Product**" shall include any goods, equipment, machine, or part thereof and any attachments or fittings or replacements or any other things sold under the Contract.
- 1.6 "**Service**" shall include any repair, refurbish and/or modification, or any other services rendered under the contract.
- 1.7 "**Rules and Regulations**" means any written laws, legislation, regulation, by-law, or other similar instrument, governmental law, regulation, order or action including any amendment thereto or re-enactment or replacement thereof.
- 1.8 "**Terms & Conditions**" means these GENERAL TERMS AND CONDITIONS FOR VENDOR.
- 1.9 "**Working Days**" means Monday to Friday except public holidays.
- 1.10 "**Parties**" means the Buyer and the Vendor.

2. BINDING CONTRACT

- 2.1 The signed Purchase Order by the Vendor or the acceptance of the Purchase Order by the Vendor via electronic mail, facsimile or any other modes of communication for the sale of the Product/Service shall be construed and deemed as an express acceptance of these Terms & Conditions and together shall be known as the "Contract" and in so far as any provision of the Vendor's documents be inconsistent therewith, these Terms & Conditions shall be deemed to prevail. These Terms & Conditions likewise apply to all future transactions between the Parties regarding the Product/Service listed in the Buyer's Purchase Order and accepted by the Vendor and shall always prevail over any differing or additional Terms & Conditions proposed or included by the Vendor and not contained in the Contract including, without limitation, those contained in Vendor's offer, invoice, or any other documents.
- 2.2 Any variations or purported variations of the Contract shall be deemed to be of no effect unless agreed in writing in a supplemental contract and signed by an Authorised Manager or

Director of the Buyer. The remaining terms of the Contract, except as specifically amended therein, shall remain in full force and effect.

- 2.3 If any provision of the Contract is or becomes invalid due to the Rules and Regulations, the Parties shall forthwith try to find a mutually acceptable replacement for the provision thus invalidated. If no mutual agreement can be reached, the Buyer shall have the option to either accept the invalidation thereof and keep the remaining terms of the Contract in force or be entitled to terminate the Contract by written notice to the Vendor.

3. PRICE

- 3.1 The Buyer shall pay the price for the Product/Service as stated in the Purchase Order (the "**Purchase Price**") unless otherwise agreed in writing by the Parties.
- 3.2 The Purchase Price includes the transportation cost, living expenses and other miscellaneous incurred by the Vendor, its employees, or agents in connection with the delivery and installation of the Product/Service.

4. TERMS OF PAYMENT

- 4.1 The Vendor agrees to issue invoice to the Buyer with delivery of the Product/Service. The Buyer will not be obligated to make payment towards any invoices submitted after such period.
- 4.2 The Buyer shall make payment towards the undisputed invoices within thirty (30) days from the date of receiving such invoices.
- 4.3 The Buyer reserves the rights, among other remedies, either to terminate the Contract or to suspend payment in the event that the Product supplied, or the Service provided is not in accordance with the agreed specification and/or defective.

5. SET-OFF

The Buyer may set off any amount owing at any time from the Vendor to the Buyer or any of its affiliates against any amount payable at any time by Buyer under the Contract.

6. TERMINATION FOR CAUSE

- 6.1 The Buyer may terminate the Contract by giving thirty (30) days' written notice to the Vendor if the Vendor breaches any material terms of the Contract.
- 6.2 The Buyer may terminate the Contract immediately without any prior notice (i) upon institution of insolvency, receivership, or bankruptcy proceedings against the Vendor, (ii) upon Vendor making an assignment for the benefit of its creditors, or (iii) upon Vendor's dissolution or cease of business operation.

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7. TERMINATION FOR CONVENIENCE

- 7.1 The Buyer may terminate the Contract or any part thereof, at any time for its own convenience by giving written notice of termination to the Vendor.
- 7.2 There shall be no charges for the termination of the Contract in respect of Product/Service that has not been delivered to the Buyer.

8. DELIVERY PERIODS / DELIVERY DATES

- 8.1 The Vendor shall notify the Buyer in writing within Three Working Days of receipt of the Purchase Order if the Vendor is unable to comply with the Purchase Order. In the absence of such written notice, it automatically constitutes an acceptance of the Purchase Order.
- 8.2 The Vendor shall deliver the Product and/or provide the Service in accordance with the schedule of the Purchase Order and any failure to deliver the Product and/or provide the Service on the due date shall constitute a material breach of the Contract.
- 8.3 The Buyer is entitled to reject and return any non-conforming shipments to the Vendor at the Vendor's own risk and expense.
- 8.4 The Vendor shall promptly notify the Buyer if the Vendor is unable to deliver the Product and/or provide the Service on the due date and shall state the reason thereof. The Buyer may in its sole discretion accept reschedule of delivery in whole or in part with any additional cost incurred to be borne by the Vendor.
- 8.5 The Vendor shall bear the risk of damage, loss and destruction of the Product in transit.

9. LIQUIDATED DAMAGES

In the event the Vendor is delay in the delivery of Product and/or provision of Service as per the due date, the Buyer shall, without prejudice to any of its other rights under applicable Laws or the Contract, have the right to levy liquidated damages for such delay at the rate as per buyer purchase order

10. INSPECTION

- 10.1 All Products delivered and Service provided to the Buyer is subject to the Buyer's inspection, testing, approval, and acceptance at Buyer's premises notwithstanding any inspection or testing at Vendor's premises or any prior payment for such Product/Service.
- 10.2 If the Product/Service fails to conform to the specifications or has any defects, the Buyer is entitled to either accept repair and remedy within seven (7) days from the date of notice to the Vendor or to reject and return the Product or to reject the Service at the Vendor's own expense and cost.

11. WARRANTY

- 11.1 The Vendor makes the following warranties in respect of the Product/Service supplied and provided and such warranties shall survive any delivery, inspection, acceptance, payment, and resale of the Product (if any):-

- (a) the Product/Service will not infringe any party's intellectual property rights;
- (b) the Vendor has the necessary right, title, and interest to supply and provide the Product/Service to the Buyer, and the Product/Service will be free from liens and encumbrances;
- (c) the Product is new, and of the grade and quality specified;
- (d) within 1 year from the date of delivery of Product or the date of completion of Service, the Product/Service is free from defects in workmanship and material, conform to all samples, drawings, descriptions, and specifications furnished or published by the Vendor and to any other agreed specifications.
- (e) the Product shall conform to the manufacturing quality provisions set forth in the Purchase Order; and
- (f) the Product/Service shall meet the performance standards provided in the Purchase Order.
- 11.2 If the Vendor breaches any of the warranties, or the Product/Service is otherwise defective or non-conforming, the Vendor shall, at the option of the Buyer, to promptly repair, replace, or refund the amount paid for such Product/Service.
- 11.3 The Vendor shall bear the cost of shipping and shall bear the risk of loss of all defective or non-conforming Product while in transit.

12. PROPERTY OF DOCUMENT

Any specifications, drawings, schematics, technical information, data, tools, test equipment, and other materials furnished or paid for by the Buyer shall: (i) be kept confidential; (ii) remain or become the Buyer's property; (iii) be used by the Vendor exclusively for the Buyer's orders; (iv) be clearly marked as the Buyer's property and segregated when not in use; (v) be kept in good working condition at the Vendor's expense; and (vi) be shipped to the Buyer promptly on demand.

13. INTELLECTUAL PROPERTY INDEMNIFICATIONS

- 13.1 The Vendor shall indemnify and hold the Buyer and its customers harmless from any costs, expenses (including attorneys' fees), losses, damages, or liabilities incurred because of actual or alleged infringement of any patent, copyright, trade secret, trademark, or other intellectual property right arising out of the use or sale of the Product/Service by the Buyer or the Buyer's customers, irrespective of whether the Buyer furnishes any specifications to the Vendor. The Buyer shall notify the Vendor of such claim or demand and shall permit the Vendor to participate in the defence or settlement thereof.
- 13.2 If an injunctive relief is obtained as a result of any claim or action, the Vendor agrees at its own expense and at the option of the Buyer to either: (i) procure for the Buyer and the Buyer's customers the right to continue to use the Product/Service; (ii) replace them with non-infringing items; (iii) modify them so they become non-infringing; or (iv) refund to the Buyer the amount paid for the Product/Service which has been returned to the Vendor or destroyed. Regardless of which of the foregoing remedies is effected, the Vendor shall pay to the Buyer rework expenses and incremental costs incurred by the Buyer to procure alternative products or services required to fill the orders placed by the Buyer and accepted by the Vendor as of the effective date of the injunction.

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14. INSURANCE

- 14.1 The Vendor shall obtain, and thereafter maintain at all times, the following insurance coverage:-
- (a) Worker's compensation insurance as required under the local applicable laws;
 - (b) Product and Public Liability insurance with a minimum insured amount of \$1,000,000 for bodily injury, death and damage to property
- 14.2 The Vendor shall deliver the insurance certificates to the Buyer prior to the commencement of the Contract.
- 14.3 The Vendor shall notify the Buyer for termination of, or material change to, the insurance policies.

15. INDEMNIFICATIONS

The Vendor shall fully defend, indemnify, hold harmless and reimburse the Buyer, its employees, agents, customers from all claims, suits, actions, proceedings, damages, losses and expenses, including attorneys' fees, arising out of, related to, or resulting from:

- (a) any breach of any representation, warranty, certification, covenant or agreement made by the Vendor in these Terms & Conditions;
- (b) any omission, negligence or wilful misconduct of the Vendor or its agents or subcontractors in connection with its performance under the Contract;
- (c) any litigation, proceeding or claim by any third party relating to the obligations of the Vendor under the Contract; and
- (d) any personal injury (including death) or any damage to or loss or destruction of property attributable to the breach of any terms by the Vendor under the Contract, except to the extent of such damages are caused by the negligence of the Buyer.

16. LIMITATION OF LIABILITY

In no event shall the Buyer be liable in contract, tort (including negligence and strict liability) or otherwise for any special, indirect, incidental, or consequential (including loss of profit or revenue) damages whatsoever arising under the Contract. The Buyer's entire liability under the Contract and in respect of the purchase of Product and/or Service employed under the Contract shall in any case be limited to the total value of the Contract in respect of which damages are claimed.

17. FORCE MAJEURE

The Buyer shall not be liable to the Vendor in respect of its failure to carry out any of its obligations under the Contract if the Buyer is prevented from or delayed in the carrying on of its business due to circumstances beyond the Buyer's 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 Vendor or in the event of labour disputes, strike, lockouts and injunction.

18. CONFIDENTIALITY

- 18.1 The Vendor undertake not to use the information (whether it be marked as confidential or not) of the Buyer for its own purposes or any other purpose or disclose to any person, except as permitted hereunder, without the prior written consent of the Buyer.
- 18.2 The disclosure to any of the employees or representatives of the Vendor shall be on a need-to-know basis and only to the extent necessary for each of them to perform their respective duties in relation to its obligations under the Contract. Further, it shall be a duty of the Vendor to bind such recipient to terms at least as restrictive as those stated in this Terms & Conditions.
- 18.3 Upon request of the Buyer, or on expiry or termination of the Contract, the Vendor undertakes to return or, on instruction of the Buyer, destroy or have destroyed all data, notes, records, etc. based on or derived from the information received from the Buyer or which was disclosed to it or within its knowledge.

19. ACCESS AND AUDIT

The Vendor shall permit the Buyer access to (i) all locations where work is performed in connection with the Products supplied and (ii) the Vendor's books and records relating to the Product/Service provided pursuant to the Contract.

20. ASSIGNMENT

The Vendor shall not assign or subcontract its obligations under the Contract or any portion thereof (by operation of law or otherwise) without the prior written consent of the Buyer, and if the Vendor does so, the assignment and subcontract shall be null and void. Notwithstanding any such assignment or subcontract, the Vendor shall remain jointly and severally liable for any breach of the Contract by any such assignee or subcontractor.

21. ENTIRE AGREEMENT

- 21.1 The entire agreement between the parties with respect to the sales of the Product and the provision of Service 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.
- 21.2 Any purported **terms** and conditions made referenced to or incorporated or alluded to within any documents issued by the Vendor relating to the Contract or the Product/Service shall have no effect and shall not bind the Buyer.

22. GOVERNING LAWS

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

23. ARBITRATION

Any dispute arising out of or in connection with the Contract or any matters described hereunder, including any question regarding its existence, validity, interpretation or termination, whether or not

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during the term of the Contract or thereafter and whether before or after any termination the Contract, shall be referred to and finally resolved by arbitration in India in accordance with the applicable Arbitration & Conciliation Act, 1996 and rules and regulations made thereunder for the time being in force, which rules are deemed to be incorporated by reference to this clause. The venue of arbitration shall be Mumbai, Maharashtra. The tribunal shall consist of a sole arbitrator and the language of the arbitration shall be in English.

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