

## **TERMS & CONDITIONS OF SALE**

ACCEPTANCE OF BUYER'S ORDER IS CONDITIONAL ON BUYER'S ASSENT TO THE TERMS AND CONDITIONS PRINTED BELOW. IF BUYER OBJECTS TO ANY TERMS BELOW, SUCH OBJECTION MUST BE MADE KNOWN TO SELLER WITHIN A REASONABLE TIME, NOT TO EXCEED TEN (10) DAYS OF RECEIPT OF THIS DOCUMENT. FAILURE TO MAKE SUCH A TIMELY EXCEPTION, OR ACCEPTANCE BY BUYER OF ANY GOODS DELIVERED BY SELLER HEREUNDER, SHALL BE CONCLUSIVELY DEEMED ASSENT TO THE TERMS AND CONDITIONS BELOW. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER WILL NOT BE A WAIVER OF THE PROVISIONS HEREOF. NO ALTERATION OR VARIATION OF THESE TERMS AND CONDITIONS SHALL BE OF ANY FORCE OR EFFECT UNLESS EXPRESSLY AGREED TO IN WRITING AND SIGNED BY AN AUTHORISED REPRESENTATIVE OF HIGH POWER EQUIPMENT AFRICA (PTY) LTD T/A HPE AFRICA.

### **GENERAL PROVISIONS**

#### **1) Taxes**

Prices do not include any Vat where unstated.

#### **2) Prices, Releases and Setoff**

All Ex-Import prices are subject to exchange rate fluctuations unless otherwise formally stated.

#### **3) Price quoted on products ex-stock**

Price quoted on products ex-stock are valid subject to no prior sale.

#### **4) Title and Delivery**

All quoted prices and shipments of goods shall be delivered F.O.B. Purchases premises, and title and liability for loss or damage thereto shall pass to the Buyer upon Seller's delivery of the goods. In the event that the client or a representative of the client arranged the transport of the respective equipment, liability will fall on the client upon delivery by the supplier to the client's carrier.

All transport costs if applicable will be quoted separately.

Seller may deliver goods in installments. Shipping dates are approximate only. Seller shall not be liable for any loss or expense, whether by way of contract or 3<sup>rd</sup> party, (consequential or otherwise) incurred by Buyer if Seller fails to meet the specified estimated delivery schedule because of unavoidable production or other delays.

Approximated delivery lead-time on ex-stock standard specification units is 3 to 7 working days and 8 to 12 weeks ex-factory standard specification units.

#### **5) Terms and Method of Payment**

Where Seller has extended credit to Buyer, terms of payment shall be net seven (7) days from date of delivery unless otherwise agreed in writing by both the seller and the buyer. The amount of credit or terms of payment may be changed, or credit withdrawn by Seller at any time. All payments by the Buyer shall be made free from any deductions or set-off unless expressly otherwise provided for in the quotation conditions or a specific invoice.

If the goods are delivered in installments, Buyer may pay separately for each installment or according to the prior agreement made with the supplier. Goods will only be delivered once payment has been received in full or on receipt of an official release notice from a creditable financial institution. Should the Buyer default in paying any invoice then the whole amount outstanding on the Buyer's account will automatically and immediately become due and payable notwithstanding the fact that any portion of the amount is not due in accordance with the agreed terms of payment.

#### **6) Contingencies and Force Majeure**

The Buyer shall not have any claim whatsoever against HPE Africa (Pty) Ltd for any failure by HPE Africa (Pty) Ltd to carry out any of its obligations under the contract as a result of vis major, including but without being limited to: any strike, lock-out, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or supplier of HPE Africa (Pty) Ltd, riot, political or civil disturbances, the elements, any act of any State or Government, any delay in securing any permit, consent or approval required by HPE Africa (Pty) Ltd for the supply of Products under the contract, or any other authority, or any other causes whatsoever beyond HPE Africa (Pty) Ltd's absolute and direct control.

#### **7) Legal Compliance**

Buyer, at all times, shall comply with all applicable and local laws and regulations.

#### **8) Limited Warranty**

Sellers principal, except as otherwise hereinafter provided, warrants the goods against faulty workmanship or the use of defective materials, and that such goods will conform to Seller's principals written specifications and other descriptions for a period set forth in the schedule below. Seller warrants that at the time of delivery Seller has title to the goods free and clear of any and all liens and encumbrances. Seller's Principal warrantee is applicable in cases of new equipment being sold only and is subject to all servicing during the warrantee period being concluded by the seller or an authorized dealer and shall be as follows:

- Hyundai Excavator (9 Series) – 2 Years or 3 000 hours.
- Hyundai Excavator (7 Series) – 1 Year or 2 000 hours.
- Hyundai TLB – 2 Year or 3 000 hours.
- Cummins Engines – 2 Years or 2 000 hours.
- Soosan – 1 year for piston, cylinder, valve, F/H, B/H and frame.
- Soosan – 6 months for front cover, ring bush and through bolt.

Continued use or possession of goods after expiration of the applicable warranty period stated above shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of Buyer.

Seller's warranties as hereinabove set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of Seller's rendering of technical advice or service in connection with Buyer's order of the goods furnished.

#### **9) Product Application Indemnity**

Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in 3rd party claims or contract, against Buyer and/or Seller.

#### **10) Acceptance of Product**

Acceptance shall be presumed conclusively to have occurred on the days of delivery of product to Buyer, unless Buyer has accepted the product prior to that date.

#### **11) Termination and Cancellation**

a. Buyer may terminate this contract in whole, or from time to time, in part, upon thirty (30) days advance written notice to Seller subject to the seller being able to terminated the order with the seller's supplier and/or the goods quoted herein have not been shipped.

b. In such event, Buyer shall be liable for termination charges which shall include: a price adjustment based on the quantity of goods actually delivered and all cost, direct and indirect, incurred and committed for this contract; together with a reasonable allowance for prorated expenses and anticipated profits.

#### **12) Non-Waiver of Default and Collection Rights**

In the event of any default by Buyer, Seller may invoke any remedy provided by law or by the terms herein stated, and may decline to make further shipments. If Seller elects to continue to make shipments, Seller's actions shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies for any such default.

In the event Seller resorts to a third party or to litigation in order to collect amounts due Seller, Buyer agrees to pay costs of collection for amount owed to Seller, including, but not limited to, attorney's fees, court costs, and interest in the amount of 1.55% per month (18.6% per annum), from the date the amount is due.

#### **13) Applicable Law and Forum**

The validity, performance and construction of this contract shall be governed by the laws of the Republic of SA, and shall be the only jurisdiction in which any suit may be brought against Seller regarding any dispute arising out of this transaction.

**14) Affidavits and Certificates**

No certificates of compliance or conformance shall be provided unless Buyer's detailed requirements are stated on the face of the Buyer's order. Seller reserves the right to charge an additional fee for any such certificate.

**15) Release of Information**

Neither party hereto shall, without the prior written consent of the other party (which will not be unreasonably withheld), publicly announce or otherwise disclose the existence of the terms of this Agreement, or release any publicity regarding this Agreement. This provision shall survive the expiration, termination or cancellation of this Agreement.

This quote is confidential and may under no circumstance be disclosed to seller's competitors.

**16) Spares Part**

HPE Africa has a large stock holding and an advanced inventory management system (IMS) and therefore is confident when ensuring the buyer of the best parts coverage and availability, at all times.

**17) Training**

Instruction to operator on general use and operation of machine and recommended servicing and maintenance procedures is given on handover of machine.

**18) Validity**

This quote is Valid for a period of 14 days from the date stated on the face hereof.

**19) Domicilium and Notices**

High Power Equipment Africa (Pty) Ltd t/a HPE Africa nominates its address as 33 Patrick Road, Jet Park Boksburg, 1645 as its domicilium citandi et executandi for service upon it of all notices and processes in connection with any claim for any action arising between High Power Equipment Africa (Pty) Ltd t/a HPE Africa and the Buyer in terms of these terms. The Buyer nominates its address, telefax number and e-mail address as given on the invoice in question as its domicilium citandi et executandi for service upon it of all notices and processes in connection with any claim for any action arising between High Power Equipment Africa (Pty) Ltd t/a HPE Africa and the Buyer in terms of these terms.