



STANDARD CONDITIONS OF AGREEMENT

1. Object of agreement
- 1.1. The Customer agrees that (a) this Agreement represents the entire Agreement between the Customer and Hilti SA (Pty) Ltd (hereinafter called Hilti) and that no alterations or additions to this Agreement may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorized representative of Hilti; (b) this Agreement will govern all future contractual relationships between the parties relating to the subject matter contained herein; (c) this Agreement is applicable to all existing debts and future debts between the parties arising from the subject matter contained herein; (d) this Agreement is final and binding and is not subject to any suspensive or resolutive terms or conditions; (e) any conflicting conditions stipulated by the Customer are expressly excluded; (f) these terms supersede all previous conditions of agreement without prejudice to any securities or guarantees held by Hilti.
2. Terms of agreement
- 2.1. This Agreement only becomes final and binding on receipt and acceptance of this offer by a duly authorized representative of Hilti at its business address in Midrand.
- 2.2. Any order only becomes final and binding on receipt and acceptance of such order by a duly authorized representative of Hilti at its business address per clause 2.1, whether in whole or in part.
- 2.3. The signatory hereby binds himself / herself in his / her personal capacity as Director (in the case of a company) or Member (in the case of a close corporation) as surety and co-principal debtor jointly and severally for the full amount due to Hilti and agrees that these Standard Conditions will apply in the exact same way to him / her.
3. Representations
- 3.1. The Customer acknowledges that it does not rely on any representations made by Hilti regarding the goods and services or any of its qualities leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by Hilti in respect of the goods or services orally or in writing will not form part of the Agreement in any way unless agreed to in writing by Hilti.
- 3.2. The Customer agrees that neither Hilti nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer.
- 3.3. It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purposes of intended use.
- 3.4. The Customer agrees to pay all additional costs resulting from any acts or omissions by the Customer including, but not limited to, a suspension of work, modification of requirements, failure or delay in giving required to enable work to proceed on schedule or requirements that work be completed earlier than agreed.
- 3.5. Hilti reserves the right at its sole discretion to provide alternative goods of the same quality and quantity at the prevailing prices to those ordered by the Customer should such goods be superseded, replaced or their manufacture terminated.
4. Quotations
- 4.1. All quotations will remain valid for a period of 7 days from the date of the quotation.
- 4.2. All quotations are subject to the availability of the goods or services and subject to correction of good faith errors by Hilti and the prices quoted are subject to any increases in the cost price, including currency fluctuations, of Hilti before acceptance of the order.
- 4.3. If the Customer disputes the amount of increase, the amount of the increase may be certified by any independent auditor and such certificate shall be final and binding on the Customer.
- 4.4. The Customer hereby confirms that the goods or services on any Tax Invoice issued duly represent the goods or services ordered by the Customer at the prices agreed to by the Customer and, where delivery / performance has already taken place, that the goods or services were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.
5. Returns
- 5.1. The goods may be exchanged or returned for credit by the Customer within 10 days of the delivery date, subject to prior written approval by Hilti.
- 5.2. All goods to be returned or exchanged shall be dispatched and carriage paid by the Customer and shall be subject to a handling fee as per the Standard Rates of Hilti, available on request.
- 5.3. Hilti shall not accept the return of any goods unless Hilti has been advised of the prior dispatch of the goods and the original Tax Invoice number has been quoted.
- 5.4. Any return of consumable goods used and/or expired shall be subject to a charge for disposal per Standard Rates of Hilti, available on request.
- 5.5. Chemical products (with an expiry date) cannot be accepted back.
6. Variations to orders
- 6.1. Notwithstanding the provisions of clause 1 above, all orders or agreed variations to orders, whether orally or in writing, shall be binding and subject to these Standard Conditions of Agreement and may not be revoked by the Customer.
7. Delivery
- 7.1. Hilti shall be entitled in its sole discretion to split the delivery / performance of the goods or services ordered in the quantities and on the dates, it decides.
- 7.2. Hilti shall be entitled to invoice each delivery / performance actually made separately.
- 7.3. Any delivery note, waybill, time sheet or job card (copy or original) signed by the Customer or a third party engaged to transport the goods and held by Hilti shall be prima facie proof that delivery of the correct quantity and quality of the item was made to the Customer, and the Customer shall be precluded from making any claim against Hilti in connection with any short or incomplete delivery.
- 7.4. The risk of damage to, destruction or theft of goods shall pass to the Customer on acceptance of any order placed in terms of this Agreement and the Customer undertakes to comprehensively insure the goods until paid for in full. Hilti may recover insurance premiums from the Customer for such ordered and uninsured goods.
- 7.5. Delivery and performance times quoted are merely estimates and are not binding on Hilti.
- 7.6. If Hilti agrees to engage a third party to transport the goods, Hilti is hereby authorized to engage a third party on the Customer's behalf and on the terms deemed fit by Hilti.
- 7.7. The Customer indemnifies Hilti against any claims against Hilti that may arise from such agreement in clause 7.6.
- 7.8. All goods to be delivered shall be dispatched and carriage paid by the Customer and shall be subject to a delivery fee as per the Standard Rates of Hilti, available on request.
- 7.9. Where the Customer requests that delivery be suspended or delayed to a date later than that originally requested, Hilti shall be entitled to charge the Customer a reasonable fee for the storage of such goods.
- 7.10. Hilti is entitled to withhold delivery of goods if the Customer has not made payment of amounts due in respect of previous orders.
8. Repairs
- 8.1. Repair times and repair costs given are merely estimates and are not binding on Hilti.
- 8.2. Hilti shall repair all new goods at no cost to the Customer within the specified no cost period for that tool.
- 8.3. Repairs to be made to goods after the No Cost Period shall be charged at a limited fixed amount which is the Repair Cost limit of maximum 40 percentage of the then current list price of corresponding or equivalent tool except on items specifically indicated otherwise.
- 8.4. As part of our quality guarantee: For 3 months after every paid repair, the Buyer may be entitled to a replacement of the product in accordance with the contract subject to/at Hilti's sole discretion/ according to Hilti's reasonable satisfaction with regards to the Goods
- 8.5. Any item handed in for repair may be sold by Hilti to defray the cost of such repairs if the item remains uncollected within 30 days of the repairs being completed, including tools not collected that were sent back unrepaired.
- 8.6. All tools submitted for repair must be collected from designated Hilti Center within 30 days from the date of delivery after which Hilti shall not be accountable with regard to the loss or damage of the tool.
- 8.7. Hilti reserves the right to dispose of at its own discretion any uncollected tools remaining in Hilti possession for more than 3 (three) months after services rendered date.
- 8.8. Tools subject to unapproved quotations or where the quotation has expired will be returned to the customer in a disassembled state and if in the event that any customer rejected the tool, Hilti has the right to scrap the tool without any further notification.
- 8.9. The Customer acknowledges and accepts that Hilti may suspend the no cost period or repair warranty period should any amount due by the Customer to Hilti be overdue for more than 31 days without payment and no items for repairs will be booked in during this time.
9. Limitation of liability
- 9.1. If the Customer establishes to Hilti's reasonable satisfaction within 12 (twelve) months of the date of delivery of the Goods that there is a defect in the Goods supplied not in accordance with this Agreement, then Hilti shall, given the reasonable opportunity to examine the Goods and at its sole discretion within a reasonable time (i) repair such defect free of charge to the Customer (including all transportation costs to and from the Customer for that purpose); or (ii) replace such Goods in accordance with this Agreement; or (iii) issue a credit note to the Customer in respect of the whole or part of the order price, failing which the goods shall be deemed to be complete in all respects and without defects, and the Customer shall be precluded from making any claim against Hilti in connection with the defective goods
- 9.2. Hilti's liability under this contract shall not exceed the purchase price of the Goods and performance of any one of the above shall constitute an entire discharge of Hilti's liability under this Agreement.
- 9.3. Subject to clause 9.1 above, Goods are guaranteed according to the Manufacturer's product specific warranties only and all other warranties including common law warranties are hereby specifically excluded.
- 9.4. Liability under clause 9.3 is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit at the sole discretion of Hilti.
- 9.5. The Customer agrees that the provisions of Conditions 9.1, Conditions 9.2 and this Condition 9.5 set out the entire financial of Hilti (including for the acts and omissions of its employees, agents and sub-contractors) to the Customer and the exclusive remedies of the Customer against Hilti in respect of any breach of these conditions; and any use made by the Customer of any of the Goods.
- 9.6. Hilti shall not be liable to the Customer for any economic loss of whatever nature (direct or indirect), including without limitation loss of anticipated profits, loss of actual profits (direct or indirectly) loss of turnover or revenue, loss of business, loss of production or opportunity, loss of data, depletion of goodwill or otherwise howsoever arising.
- 9.7. Notwithstanding any other provision contained in these Conditions, Hilti does not in any manner whatsoever exclude or limit its liability if and to the extent that such liability: (i) arises out of the fraud or fraudulent misrepresentation of Hilti; or (ii) in is respect of death or personal injury caused by negligence of Hilti; and cannot be legally excluded or limited.
- 9.8. No claim under this Agreement shall arise unless the Customer has, within 14 days of an alleged breach of Agreement and/or defect occurring, given Hilti written notice by prepaid registered post to Hilti's head office of such breach or defect, and has afforded Hilti at least 30 days to rectify such defect or breach.
- 9.9. All guarantees and warranties are immediately null and void should any goods be tampered with or should the seals on goods be broken by anyone other than Hilti or should the goods be used or stored outside the Manufacturer's specifications. Hilti cannot be responsible of an accident occurring with a modified tool, especially if a part of the tool was not provided by Hilti (e.g. cable, plug, safety part, consumables etc.)
- 9.10. Under no circumstances shall Hilti be liable to the Consumer for any economic loss of whatever nature (direct or indirect) including without limitation loss of anticipated profits, loss of actual profits (direct or indirect), loss of anticipated savings, loss of business and any indirect, special or consequential loss or damage, howsoever arising..
10. Copyrights
- 10.1. The Customer acknowledges all intellectual property rights, including but not limited to copyright, patents, designs and trade marks, owned by Hilti in respect of its products, know how and goodwill, whether registered or unregistered in South Africa and abroad, and shall not cause or, where preventable, permit anything to be done (or, as the case may be, not done) which may infringe, damage or endanger the intellectual property rights of Hilti.
- 10.2. The Customer indemnifies Hilti against any claims, costs and expenses arising out of the infringement of copyright, patent, trademark or design supplied by the Customer.
11. Online purchases
- 11.1. In the event of Customers ordering goods online, the Customer shall be entitled to exercise a cooling-off right within 7 days of receiving the goods in terms of section 44 of the ECT Act. The Customer shall be liable for the cost of returning the goods.
12. Indemnity
- 12.1. The Customer hereby indemnifies Hilti against any and all liability, loss, damage or claim of any nature suffered by any third party in relation to any act or omission by the Customer or the Customer's members, employees, representatives, agents or assigns or any third party in relation to the goods and the use thereof and/or arising from the provisions of these Standard Conditions of Agreement.
- 12.2. Subject to applicable consumer laws, the total aggregate liability of Hilti arising out of, or in connection with the performance or contemplated performance of this Agreement whether for negligence or breach of this Agreement or any case whatsoever shall in no event exceed 100% of the price paid or payable by the Customer under this Agreement.
13. Other provisions
- 13.1. Any item delivered to Hilti shall serve as pledge in favour of Hilti for present and past debts and Hilti shall be entitled to retain or realize such pledges as it deems expedient. The sworn or realized value of pledged goods will be offset against the Customer's debts any excess balance will be paid to the Customer.
- 13.2. Under no circumstances shall Hilti be liable for any damage arising from any misuse, abuse or neglect of the goods or services, after delivery to the Customer. Hilti shall not be held liable for inappropriate use, incorrect operation, improper or negligent handling, in particular undue strain, inappropriate working stock, as well as chemical, electro-chemical or electrical influences, and alteration or repair of the goods by either the Customer or third parties which cannot be demonstrably be traced back to faulty manufacture. Furthermore, Hilti shall not be held liable under any circumstances for any special designs, or new designs, springs, flexible drives or other parts which are explicitly declared to be not subject to liability in the quotation.
- 13.3. Delivery of goods or services to the Customer shall take place at the place of business of Hilti, unless otherwise agreed to in writing between the parties.
- 13.4. If the Customer or its agent fails to take delivery of the goods, or in any way delays the delivery of the goods, the Customer shall be liable to pay all costs of storing, insuring and handling the goods until delivery takes place.
- 13.5. The Customer agrees that the amount contained in a Tax Invoice issued by Hilti shall be due and payable unconditionally (a) cash on order; or (b) if the Customer is a Credit Approved Customer, within 30 days from the end of the month in which a Tax Invoice was issued by Hilti.
- 13.6. The risk of payment by cheque through the post rests with the Customer.
- 13.7. The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by Hilti, reduced to writing and signed by the Customer and a duly authorized representative of Hilti.
- 13.8. The Customer is not entitled to set off any amount due to the Customer by Hilti against payment in accordance with this Agreement.
- 13.9. No settlement discounts will be granted under any circumstances.
- 13.10. The Customer agrees that the amount due and payable to Hilti may be determined and proven by a certificate issued and signed by any director or manager of Hilti, whose authority need not be proven or by any independent auditor. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.
- 13.11. Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of the Electronic Communications and Transactions Act 25 of 2002 have not been met.
- 13.12. The Customer agrees that interest shall be payable at the maximum legal interest rate prescribed by the National Credit Act 34 of 2005 on any moneys past due date to Hilti and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order.
- 13.13. The Customer expressly agrees that no debt owed to Hilti by the Customer shall become prescribed before the passing of a period of six years from the date the debt falls due.
- 13.14. The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 13.13 above in the case of a Credit Approved Customer, Hilti is: (i) entitled to immediately institute action against the Customer at the sole expense of the Customer; or (ii) to cancel the Agreement and take possession of any goods delivered to the Customer and claim damages. These remedies are without prejudice to any other right Hilti may be entitled to in terms of this Agreement or in law. Hilti reserves its right to stop supply immediately on cancellation or on non-payment.
- 13.15. A Credit Approved Customer will forthwith lose this approval when payment is not made according to the conditions of clause 13.15 and all amounts then outstanding shall immediately become due and payable.
- 13.16. Hilti shall be entitled to withdraw credit facilities at any time within its sole discretion.
- 13.17. In the event of cancellation of the Agreement by Hilti, it shall be entitled to repossess any goods that have been delivered to the Customer and remains unpaid by the due date.
- 13.18. In the event of cancellation of this Agreement and the repossession of goods by Hilti, the Customer shall be liable to pay (a) the difference between the selling price and the value of the goods at the time of repossession and (b) all other costs incurred in the repossession of the goods. The value of repossessed or retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.
- 13.19. All goods supplied by Hilti remain the property of Hilti until such goods have been fully paid for whether such goods are attached to other property or not, and notwithstanding that the goods may have been purchased for resale.
- 13.20. The Customer is not entitled to sell or dispose of any goods unpaid for without the prior written consent of Hilti. The Customer shall not allow the goods to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of Hilti in the goods.
- 13.21. The Customer shall be liable to Hilti for all legal expenses on the attorney-and-own-client scale incurred by Hilti in the event of (a) any default by the Customer or (b) any litigation regarding the validity and enforceability of this Agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that Hilti may demand.
- 13.22. The Customer agrees that Hilti will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Law of the Supreme Court 59 of 1959.
- 13.23. The Customer agrees that no indulgence whatsoever by Hilti will affect the terms of this Agreement or any of the rights of Hilti and such indulgence shall not constitute a waiver by Hilti in respect of any of its rights herein. Under no circumstances will Hilti be estopped from exercising any of its rights in terms of this Agreement.
- 13.24. The Customer hereby consents that Hilti shall have the right to institute any legal action in either the Magistrate's Court or the South Gauteng High Court at its sole discretion. These South African courts shall have exclusive jurisdiction in any litigation between the parties arising from whatsoever source.
- 13.25. Any document shall be deemed duly presented to and accepted by the Customer (i) within 5 days of prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer; or (ii) within 24 hours of being faxed to any of the Customer's fax numbers or any director, member or owner's fax numbers; or (iii) on being delivered by hand to the Customer or any director, member or owner of the Customer; or (iv) within 48 hours if sent by overnight courier or (v) within 7 days of being sent by surface mail; or (vi) within 24 hours of being e-mailed to any e-mail address provided by the Customer.
- 13.26. The Customer chooses its address for any notification or service of legal documents or processes as the business address or the physical addresses (domicilium citandi et executandi) of any Director (in the case of a company), Member (in the case of a close corporation) or of the Owner(s) or Partner(s).
- 13.27. The Customer undertakes to inform Hilti in writing within 7 days of any change of Director, Member, Shareholder, Owner or Partner or address or 14 days prior to selling or alienating the Customer's business and failure to do so will constitute a material breach of this Agreement. Upon receipt of such written notification, Hilti reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.
- 13.28. The Customer hereby consents to the storage and use by Hilti of the personal information that it has provided to Hilti for establishing its credit rating and to Hilti disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Customer agrees that Hilti will not be held liable for the good faith disclosure of any of this information to third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific third party.
- 13.29. The Customer hereby consents that Hilti can provide personal information of the Customer to third parties, if the Customer has indicated Hilti as a trade reference to third parties and the Customer agrees that Hilti will not be liable for the good faith disclosure of any of this information to such third parties.
- 13.30. The Customer hereby agrees that the credit facility is a variable credit facility and that Hilti shall be entitled to increase its credit limit from time to time.
- 13.31. The Customer agrees to the Standard Rates of Hilti for any goods or services rendered, which rates may be obtained on request.
- 13.32. Each provision of this Agreement is severable from the other provisions. Should any provision be found to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall nevertheless remain binding and continue with full force and effect.
- 13.33. Any order is subject to cancellation by Hilti due to acts of God or any circumstance beyond the control of Hilti, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.
- 13.34. Any order is subject to cancellation by Hilti if the Customer breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or judgement is recorded against the Customer or any of its principals.
- 13.35. The Customer agrees that Hilti will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 13.34 or 13.35 occur.
- 13.36. If the National Credit Act 34 of 2005 is applicable the following clauses shall not be applicable to this Agreement: clause 3.2, clause 13.25 and clause 13.31.
- 13.37. If the Consumer Protection Act 68 of 2009 is applicable the following clauses shall not be applicable to this Agreement: clauses 3.2, 4.2, 4.4, 7.1, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 10.10, 13.9, 13.14, 13.22, 13.25, 13.31, 13.26, 13.27, 13.31.
- 13.38. This Agreement and its interpretation is subject to South African law.