

**TERMS -WARRANTY and SALES CONTRACT**  
**HEAVY PARTS MIAMI LLC**

**1. HEAVY PARTS MIAMI LLC** acting as HPM

Proposal. "Proposal" means the HPM proposal, quotation, estimate or other HPM supplied documents and all addenda thereto, including drawings and specifications, that describe a scope of supply. The provisions of this Metso Sales Terms and Conditions document are a part of the Proposal, except to the extent specifically provided elsewhere in the Proposal.

"Agreement" means the Proposal and any other terms, conditions, or documents if and to the extent agreed to in writing by HPM. "Product(s)" means the HPM supplied equipment and related parts, software, services or documentation as described in the Proposal.

**2. BUYER'S ACCEPTANCE** OF THE PROPOSAL IS EXPRESSLY LIMITED TO AND CONDITIONED UPON ACCEPTANCE ALL OF THE PROVISIONS THEREOF, INCLUDING THESE SALES TERMS AND CONDITIONS. IF A HPM PROPOSAL IS CONSTRUED AS AN ACCEPTANCE OF BUYER'S OFFER OR AS A CONFIRMATION OF AN EXISTING CONTRACT, SUCH ACCEPTANCE OR CONFIRMATION IS EXPRESSLY CONDITIONED ON THE BUYER'S ASSENT TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED HEREIN.

**3. PRICE & PAYMENT:** (A) Prices and payments are in U.S. Dollars and do not include any sales, use or excise taxes, customs duties or similar charges or fees. If not otherwise set forth in the Proposal, Prices do not include the services of any representative of HPM including, but not limited to the assistance in the installation, inspection or startup of the Products. Pro rata payment are due for partial shipments. If shipment is delayed by Buyer, the date the shipment is ready shall be deemed to be the shipment date for payment purposes. If Buyer fails to pay by the due date, HP shall be entitled to interest at a rate of 1.5% per month not to exceed the legal maximum.

**4. DELIVERY and TITLE:** Delivery shall be defined by an applicable Incoterm. Partial deliveries and transshipments are permitted. All delivery dates are approximate. Title shall transfer upon delivery unless otherwise agreed to in writing. If shipment delayed by Buyer, HPM may ship and/or store the Products at Buyer's risk and expense and issue the final invoice with payment due in 30 days.

**5. REJECTION:** Any rejection of Products must be made by the Buyer in writing within a reasonable time after delivery but in no event later than thirty (30) business days after delivery. Failure to make such claim within the stated period shall constitute an irrevocable acceptance of the Products.

**6. LIMITED WARRANTY:** HPM warrants that Product(s) are free of defects in workmanship and material. Except for warranty of title, THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, GUARANTEES, OR THE LIKE WITH REGARD TO THE PRODUCTS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING OR PERFORMANCE, USAGE OF TRADE OR OTHERWISE:

-AFTERMARKET PARTS 6 MONTHS OR 500HRS

-ELECTRIC PARTS NOT RETURN OR EXCHANGE

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- UNDERCARRIAGE PARTS AFTERMARKET 1000 HRS OR 1 YEAR
- ORIGINAL PARTS ARE SUBJECT TO ORIGINAL MANUFACTURES WARRANTY

**7. EXCLUSIONS TO WARRANTY:** HPM MAKES NO WARRANTIES AS TO PERFORMANCE OR PRODUCTION, NOR AS TO WEAR PARTS OR CONSUMABLES, NOR AS TO ANY SEPARATELY LISTED ITEM OF THE PRODUCT(S) WHICH IS NOT MANUFACTURED BY HPM and covered by the manufacturer's warranty, HPM and its suppliers shall have no obligation under the limited warranty as to any Product which has been improperly stored or handled, or which has not been installed, operated or maintained according to Metso or supplier furnished manuals or other instructions or is operated during the warranty remedy period with other than genuine Metso parts.

**8. LIMITED WARRANTY REMEDY ORIGINAL PARTS :** (A) If, within (6) months from date of delivery, but not more than (12) months from date that Buyer is advised that Products are ready for shipment, Buyer discovers that a Product was not as warranted and promptly notifies HPM in writing thereof, HPM shall cause the repair or replacement the defective Product or part thereof.

Buyer shall assume all responsibility and expense for removal, reinstallation, and freight in connection with replacement parts furnished by HPM. Buyer's entitlement to warranty remedies is contingent upon Buyer's cooperation in permitting HPM to investigate the defect and in returning replaced parts to HPM, if requested, at HPM expense.

The warranty period shall not be extended by the repair or replacement, nor shall there be a separate remedy period for any replacement Product or part. The warranty remedy period for HPM spare parts (not replacement parts furnished under warranty) is six (6) months from date of delivery. (B) If, after a reasonable number of repeated efforts, HPM determines that it is unable to repair or replace a defective

Product or part, Buyer shall, at HPM option, return the Product (or part thereof, if such does not materially impair the value of the remaining Product) to HPM at Buyer's expense and Metso shall return the applicable purchase price as Buyer's entire and exclusive remedy. (C) THE REMEDIES EXPRESSLY PROVIDED HEREIN ARE BUYER'S EXCLUSIVE REMEDY AGAINST HPM AND ITS SUPPLIERS UNDER THE AGREEMENT, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING OUT OF WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATIONS OR DEFECTS FROM ANY CAUSE. (D)

If the foregoing disclaimer of additional warranties is not given full force and effect, any resulting additional warranty shall be limited in duration to the above warranty remedy periods and be otherwise subject to and limited by these sales terms and conditions.

**9. BUYER'S PERMITS, APPROVALS AND DATA:** Buyer shall provide and pay for all permits and licenses required for the installation and operation of the Products. Timely performance by HPM is contingent upon Buyer's supplying to HPM, when needed, all required technical information and data, including drawing approval, and all required commercial documentation.

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**10. FOUNDATIONS:** Buyer shall be solely responsible for the design and construction of foundations. Any plans furnished by HPM are examples only, and HPM assumes no responsibility for foundation adequacy and disclaims any liability arising out of inadequate foundations and any effect on Products.

**11. BUYER EMPLOYEES AND PREMISES:** Compliance with OSHA, MSHA or similar federal, state or local laws during any installation, operation, or use of the Product(s) is the sole responsibility of Buyer.

**12. NUCLEAR AND HAZARDOUS WASTE USES:** Products shall not be used in or in connection with a nuclear or hazardous waste application, and Buyer agrees to indemnify, defend, and hold Metso harmless from all loss, cost, damage, expense and other liability whatsoever from such use. Buyer also acknowledges its responsibility for the disposal of any Products (including any computer or other electronic equipment or components) in accordance with applicable law, including any recycling, reporting or record keeping requirements.

**13. RELIEF.** If HPM is hindered or suffers delay in performance due to any cause beyond its reasonable control, including war or other hostilities or civil unrest, act or failure to act of government, lack or loss of services or access (such as utilities or roads), act of God, including fire, flood, earthquake, landslide, pandemic or extreme weather event, strike or other labor trouble, or any sabotage, the time of performance shall be extended a period of time equal to the period of the resulting nonperformance and its consequences. In no event shall HPM have liability to Buyer arising out of any such delays. If the delay arising under this section is more than 180 days, either party has the right to terminate the Agreement and the parties' respective obligations shall be equitably adjusted. HPM shall be reimbursed for any additional costs it reasonably incurs as a direct result of Buyer's delay or inability or failure to perform.

**14. INTELLECTUAL PROPERTY.**

(A) HPM shall pay costs and damages finally awarded to the extent based upon a finding by a U.S. court that the design or construction of a Product as furnished infringes a U.S. patent or copyright (except infringement occurring as a result of incorporating a design or modification at Buyer's request or Buyer's use of the Products in a manner contrary to the Agreement or HPM manuals or instructions), provided that Buyer promptly notifies HPM in writing of any claim of such infringement, and HPM is given the right at its expense to settle and defend and control the defense of any such claim.

THIS SECTION SETS FORTH HPM EXCLUSIVE LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY.

(B) All drawings, specifications, data, software, firmware, manuals, instructions, documentation or other works of authorship furnished by HPM are copyrighted property of HPM or its suppliers, and are to be used by Buyer only for the purpose of installing, operating, maintaining and repairing the Products. Such works and data may not be otherwise used or reproduced or disclosed.

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(C) HPM or its suppliers retain all right, title and interest in and to its and their inventions, discoveries, concepts, ideas or other intellectual property embodied in or related to its Products.

**15. LIMITATION OF LIABILITY.**

(A) NEITHER HPM NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT (INCLUDING BREACH OF REPRESENTATION OR WARRANTY) OR IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR FOR INFRINGEMENT OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, PRODUCTION, REVENUE, PROFIT; OR FOR COST OF CAPITAL, INCREASED COSTS OF OPERATION OR MAINTENANCE; OR FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, WHETHER OR NOT ANY OF THE FOREGOING DAMAGES ARE FORESEEABLE

In Agreements where HPM does not have responsibility for installation and erection of the equipment, all costs related to the disassembly, assembly, reinstallation, and erection shall be deemed to be excluded herein.

(B) IN ANY EVENT, HPM TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO 100% OF THE PURCHASE PRICE TO THE EXTENT PAID BY BUYER OR ANY SUCH OTHER LIABILITY CAP AS MAY BE PROVIDED ELSEWHERE IN THE AGREEMENT, WHICHEVER IS LESS.

(C) The limitations of liability contained in this section 15 shall be effective without regard to (i) HPM performance or failure or delay of performance under any other term or condition of this Agreement, including any warranty or remedy or (ii) the invalidity or unenforceability of any other limitation, disclaimer or exclusion of any warranty, remedy or other right.

**16. SECURITY INTEREST AND INSURANCE:** HPM retains and Buyer grants to HPM a security interest in the Product(s) and proceeds and any replacement regardless of mode of attachment to realty or other property to secure payment of all amounts due to HPM . In the event of breach of Buyer's payment obligations, Buyer consents to the entry of an ex parte writ of seizure permitting HPM to take possession of the Product(s) for which payment has not been made. Buyer agrees to do all acts necessary to perfect and maintain said security interest, and to protect HPM interest by adequately insuring the Product against loss or damage from any external cause with HPM named as insured or additionally insured.

**17. CHANGES AND SUBSTITUTIONS:**

(A) HPM reserves the right to make, at no cost to Buyer, such changes in materials or designs that are, in HPM judgment, reasonable and necessary for the proper operation and life of the Products. HPM further reserves the right to make improvements to subsequently supplied Products without imposing an obligation on itself to modify its previously supplied products.

(B) Whenever a material, piece of equipment or another item is identified by brand name, manufacturer' s or vendor's name, trademark, catalog number, etc. ("Brand"), it is intended merely to establish a general quality standard and not to require the use of the Branded item. HPM shall have the option to provide items that otherwise conforms to the applicable standard, although the Buyer shall have the option to pay any increased cost of the Brand item.

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**18. TERMINATION FOR CONVENIENCE:** Buyer acknowledges that it does not have a right to terminate or suspend performance of an Agreement for its convenience without HPM written consent, which consent may be withheld or delayed in HPM sole discretion. In the event that HPM provides such consent; Buyer will pay HPM:

- (18.1) the price of any Products delivered (including services performed);
- (18.2) all costs committed or incurred by HPM in performance of the Agreement;
- (18.3) a reasonable profit on those costs;
- (18.4) costs reasonably incurred to protect and preserve the Products in HPM possession or under its control; and
- (18.5) any supplier or subcontractor charges.

**19. ASSIGNMENT:** The Proposal and any Agreement and any rights and obligations there under may not be assigned or delegated by either party, except with written consent of the parties, in a party's sole discretion and except that HPM may so assign or delegate to a corporate affiliate owned or controlled by HEAVY PARTS MIAMI LLC, a Finnish corporation.

**20. SANCTIONS AND EXPORT CONTROL LAWS:**

(A) Buyer and HPM undertake as follows:

- (1) To comply with any and all laws and regulations applicable to Buyer or HPM with respect to the Agreement and any action taken pursuant to either prohibiting or otherwise restricting trade with any individual, entity or jurisdiction, or imposing licensing requirements on the same, including without limitation sanctions, embargoes and export controls such as those imposed by the US Treasury Department Office of Foreign Assets Control (OFAC), the US Department of State, the US Commerce Department, the European Commission or any member state of the European Union (together "Sanctions and Export Control Laws").
- (2) To not take any action, or make any omission, that could cause any party to be in breach of, or otherwise be exposed to any restriction or penalty pursuant to, or suffer any adverse consequences of any kind arising directly or indirectly from, any Sanctions and Export Control Laws, including without limitation making any Product or any item incorporating the Product available for the direct or indirect benefit of a person subject to financial sanctions, such as those named on the OFAC list of Specially Designated Nationals and Blocked Persons, the EU Consolidated List of Financial Sanctions Targets or any similar list maintained by any EU member state, or any party owned or controlled by such a person (together "Sanctions Targets").