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General Terms and Conditions of Sale

1. Scope of application

- 1.1 These General Terms and Conditions apply to the sale of goods ("**Goods**") by Wirtgen Hong Kong Limited ("**WIRTGEN HK**"). These General Terms and Conditions shall form part of the sales contract between WIRTGEN HK and the buyer (the "**Buyer**") (if any). If there is any conflict between these General Terms and Conditions and the Sales Contract (as defined below), the Sales Contract shall prevail.
- 1.2 These General Terms and Conditions supersede any previously issued terms and conditions.
- 1.3 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase order ("**Order**") will form part of these General Terms and Conditions or govern the sale of Goods by WIRTGEN HK.

2. Quotations

- 2.1 Unless expressly indicated otherwise, all quotations and documents supporting the quotations provided by WIRTGEN HK at the request of the Buyer shall be non-binding.
- 2.2 Unless otherwise agreed, initial quotations shall be made by WIRTGEN HK free of charge. WIRTGEN HK reserves the right to charge adequate remuneration for additional quotations (if a Sales Contract (as defined below) in respect of such additional quotations has not been subsequently entered into).

3. Order

- 3.1 In relation to the purchase of the Goods, the Buyer shall first issue an Order. The Order shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these General Terms and Conditions.
- 3.2 WIRTGEN HK reserves the right at all times to reject any Order, in whole or in part, at its sole discretion.
- 3.3 A contract ("**Sales Contract**") will be formed upon the earlier of:
 - 3.3.1 the written acceptance by Wirtgen HK of the Buyer's Order; or
 - 3.3.2 the execution of an agreement by both Wirtgen HK and the Buyer.

4. Purchase price and payment

- 4.1 Unless otherwise agreed upon, the payment must be made in accordance with the terms in the Sales Contract.
- 4.2 The Buyer shall make all payments to the following account:
Name of Recipient: _____
Name of Bank: _____
Account Number: _____
Swift Code: _____
- 4.3 Where sums due under the Sales Contract are not paid in full by the relevant due date as stated in the Sales Contract:
 - 4.3.1 WIRTGEN HK may, without limiting its other rights under the Sales Contract or these General Terms and Conditions, charge interest on such sums at 12% a year above the best lending rate of HSBC from time to time in force; and
 - 4.3.2 interest will accrue on a daily basis from the day after the due date for payment until actual payment has been made in full.

5. Delivery and acceptance

- 5.1 Unless otherwise specified in the Sales Contract, Goods will be delivered by WIRTGEN HK on the date as agreed between the Buyer and WIRTGEN HK from time to time. The



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delivery of the Goods is subject to WIRTGEN HK's receipt of all required documents, permits or releases which are to be provided or prepared by the Buyer.

- 5.2 Subject to Clause 5.1, the Goods shall be delivered by WIRTGEN HK to the Buyer by way of "free carrier" to the Buyer by the relevant delivery date. Any specified delivery date is an estimate for delivery.
- 5.3 As between the parties, the Buyer shall assume WIRTGEN HK's obligations under any applicable laws with regard to packaging and holds WIRTGEN HK harmless with respect to the obligations under these laws.
- 5.4 The delivery requirements shall be deemed fulfilled if the Goods have been (i) collected from WIRTGEN HK's warehouse by the Buyer's carrier; or (ii) when the Goods are ready for unloading at another place mutually agreed upon (the "**Date of Delivery**").
- 5.5 WIRTGEN HK's deliveries shall not be deemed to be late if the Buyer is provided with replacement goods by the agreed delivery date, which fulfill the technical and functional requirements of the Buyer in all substantial respects, or WIRTGEN HK obtains written consent from the Buyer in relation to the delivery of the Goods on a date later than the agreed delivery date.
- 5.6 Unless otherwise agreed in the Sales Contract, the Buyer shall inspect the delivered Goods and notify WIRTGEN HK within one week of the Date of Delivery of any defects in the delivered Goods. The Buyer shall return the defected Goods to WIRTGEN HK. Upon WIRTGEN HK confirming that the returned Goods are not in complete compliance with the provisions and specifications of the Sales Contract, WIRTGEN HK shall arrange to provide replacement for the returned Goods as soon as practicable.
- 5.7 If there are no defects, the Buyer shall sign and return to WIRTGEN HK an acceptance report. If WIRTGEN HK is not notified of any defects within one week of the Date of Delivery, the Buyer shall be deemed to have accepted the goods (irrespective of whether the acceptance report has been signed and returned to WIRTGEN HK).
- 5.8 Any defect that could not be detected by a thorough examination within one week of the Date of Delivery shall be notified to WIRTGEN HK within three days of the Date of Delivery.

6. Transfer of risk and transport

- 6.1 Subject to Clause 6.2, risk shall pass to the Buyer when:
 - 6.1.1 the Goods have been (i) collected from WIRTGEN HK's warehouse by the Buyer's carrier; or (ii) when the Goods are ready for unloading at another place mutually agreed upon; and
 - 6.1.2 the Buyer has accepted the Goods in accordance with Clause 5 of these General Terms and Conditions.
- 6.2 Notwithstanding Clause 6.1, in the event that transport or the acceptance is delayed or becomes impossible due to circumstances that are not attributable to WIRTGEN HK, the risk shall pass to the Buyer upon the day on which the Buyer has been notified that the Goods are ready for dispatch.

7. Environment protection liabilities

- 7.1 By entering into the Sales Contract, the Buyer acknowledges that it has full knowledge and understanding of any and all regulatory and administrative requirements on pollutant emission of non-road mobile machinery provided by all applicable laws, rules and regulations. The Buyer fully understands all statutory responsibilities and potential liabilities related to any applicable environment protection laws.
- 7.2 Before entering into the Sales Contract, the Buyer acknowledges that it has been clearly notified of the air pollutant emission and energy consumption standards of the Goods to be purchased. Based on the foregoing information, the Buyer acknowledges that it has determined at its own discretion whether to purchase the Goods and where the Goods shall be used, upon full consideration of the applicable limitation on air pollutant



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emission and energy consumption standards of non-road mobile machinery where the Goods are to be used. After entering into the Sales Contract, the Buyer shall not be entitled to request replacement or return of the Goods, or claim any compensation from WIRTGEN HK, where the air pollutant emission or energy consumption standards of the Goods does not meet the applicable limitation of standards of non-road mobile machinery where the Goods are to be used. In addition, where the applicable limitation on air pollutant emission or energy consumption standards of non-road mobile machinery where the Goods are to be used is changed, or if for any other reasons the Buyer is ordered to stop or limit the usage of the Goods, the Buyer shall not have right to request replacement, return of the goods, or claim any compensation from WIRTGEN HK.

- 7.3 Upon the delivery, the Buyer shall bear all environmental protection liabilities under any and all applicable laws and regulations related to the purchase, sales, transport, use of the Goods, at its own risk, and hold WIRTGEN HK harmless and free from all such environmental protection liabilities.
- 7.4 The Buyer further agrees that, upon the delivery of Goods to the Buyer, if the Buyer is ordered by any government authority to cease using the Goods, or is imposed any penalties or other liabilities for any environmental protection requirements under any applicable laws, the Buyer shall not seek any replacement or return of the Goods or claim against WIRTGEN HK in respect of losses or damages. The Buyer hereby unconditionally and irrevocably waives any claims (whether under common law, contract, equity, statute or otherwise and whether present, future, actual, contingent or otherwise) against WIRTGEN HK arising out of or in respect of failure of the Goods in complying with the environment protection requirements under any applicable laws, and WIRTGEN HK shall not in any event be liable to the Buyer related to any environment protection requirements under any applicable laws whether in contract, tort or otherwise.

8. Title

- 8.1 The title in the Goods shall pass to the Buyer upon WIRTGEN HK receives the full price in relation to the Goods delivered.

9. Warranty

- 9.1 WIRTGEN HK warrants that, during the Warranty Period (as defined below), the delivered Goods are free from material defects ("**Material Defects**") in accordance with the design and technical standards as set out in the Sales Contract. Except as set out in this Clause and as required under applicable laws, Wirtgen HK gives no other warranty in relation to the Goods.
- 9.2 The warranty period of the Goods ("Warranty Period") is twelve (12) months or 1000 operation hours whichever occurs first, unless otherwise provided in the Sales Contract.
- 9.3 Upon written notification to WIRTGEN HK of the Material Defects in the Goods within the Warranty Period, WIRTGEN HK shall have four weeks from the receipt of the written notification to carry out all necessary repairs or replacements to the Goods. If the Buyer does not arrange for WIRTGEN HK to have sufficient time and opportunity to carry out all repairs or replacements, WIRTGEN HK is released from its warranty obligations and any liability arising out of those obligations.
- 9.4 WIRTGEN HK shall not be responsible for any incidental costs arising from the work required for repairing or remedying the Material Defects in the Goods, including, in particular, freight costs, import costs and customs duties, travel expenses, food and lodging, towing and crane charges, and costs required to assign mechanics and temporary staff.
- 9.5 WIRTGEN HK shall not be liable for any Material Defects to the Goods unless it can be proven that such Material Defects is a result of WIRTGEN HK's fault. Wirtgen HK will not



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be liable for any Material Defects to the Goods caused by normal wear and tear, unsuitable or improper use, faulty assembly of the Goods by the Buyer or third parties, improper repair of the Goods by the Buyer or third parties, faulty or negligent handling, use of unsuitable fuel, oils and lubricants, use of unsuitable replacement materials and parts, chemical, electrochemical, electromagnetic, electrical or similar influences. WIRTGEN HK's warranty obligations shall expire where the delivered Goods are not maintained and serviced at the stipulated maintenance intervals by either WIRTGEN HK itself, any authorized dealer of WIRTGEN HK, or the Buyer or operator of the Goods according to WIRTGEN HK's instructions (the operating manual).

- 9.6 Except as set out in this Clause and as required under applicable laws, Wirtgen HK gives no other warranty for the delivery of used machines and spare parts.
- 9.7 If any dispute relating to the quality of the Goods arises, both parties agree that the relevant Entry-Exit Inspection and Quarantine Bureau of the People's Republic of China shall assess the quality of the Goods and issue a certificate containing the following information: (i) the relevant contract number, (ii) the product name and model number of the Goods, (iii) the name of the seller, (iv) the date of inspection of the Goods and whether the Goods inspected are defective, and (v) whether the Material Defects have been rectified by the seller.

10. Termination of the Sales Contract

- 10.1 Subject to Clause 17.2, the Buyer may not terminate the Sales Contract unilaterally.
- 10.2 Without prejudice to any other rights under these General Terms and Conditions or under any applicable laws, if the Buyer unilaterally terminates the Sales Contract:
- 10.2.1 WIRTGEN HK may forfeit the down payment made by the Buyer under the Sales Contract.
- 10.2.2 if the Buyer has already paid the balance, WIRTGEN HK shall return the balance.
- 10.3 Subject to Clause 11.3, in the event that WIRTGEN HK delays delivery and thus causes any damage to the Buyer, the Buyer shall be entitled to demand a flat amount of compensation for damages caused by such delay. This amount is 0.3% of the contract price of the delayed Goods for each full week of delay, but the total amount of compensation is not to exceed 3% of the contract price of the delayed Goods. WIRTGEN HK shall be exempted from such compensation for damages if the Buyer is provided with replacement Goods within the agreed delivery period, which fulfill the technical and functional requirements of the Buyer in all substantial respects.
- 10.4 Clause 10.3 does not apply if the delay in the delivery is caused by a Force Majeure Event in accordance with Clause 17.

11. Limitation of Liability

- 11.1 Notwithstanding any other provision of these General Terms and Conditions, WIRTGEN HK shall not be liable to the Buyer for any indirect or consequential loss or damages, (including but not limited to loss of revenues or profits or loss of business) which arise out of or in connection with these General Terms and Conditions or Sales Contract.
- 11.2 Nothing in these clauses excludes or limits the liability of WIRTGEN HK for death or personal injury caused by WIRTGEN HK's negligence or fraudulent misrepresentation.
- 11.3 Subject to Clause 11.2 above and notwithstanding any other provision in these General Terms and Conditions, WIRTGEN HK's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of these General Terms and Conditions shall be limited to the amount paid by the Buyer to WIRTGEN HK under the Sales Contract.

12. Intellectual Property Rights

- 12.1 WIRTGEN HK owns all Intellectual Property Rights in documents supporting the offers,



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such as illustrations, drawings, specifications of weights and measurements, cost estimates, calculations, and other documents. They may not be disclosed by the Buyer to any third parties without prior express written consent from WIRTGEN HK. Such materials are to be returned to WIRTGEN HK immediately in the event that a Sales Contract is not entered into, or performance under the Sales Contract has been fully completed.

- 12.2 These General Terms and Conditions do not assign or transfer any Intellectual Property Rights in relation to the Goods whatsoever under any circumstances. WIRTGEN HK owns all Intellectual Property Rights in relation to the Goods under the Sales Contract.
- 12.3 The Buyer shall not decompile or reverse engineer the Goods for its own and/ or any third party's interest, unless necessary for its normal use of the Goods.

"Intellectual Property Rights" means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in goodwill, rights in confidential information, rights to sue for passing off and all similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;
- (e) to which WIRTGEN HK is or may be entitled; and
- (f) in whichever part of the world existing.

13. **Applicable law and choice of forum**

- 13.1 These General Terms and Conditions are governed by and shall be construed in accordance with the laws of Hong Kong for the time being in force and the Parties hereby irrevocably agree to submit any dispute arising out of or relating to these General Terms and Conditions to the non-exclusive jurisdiction of the Hong Kong courts in connection herewith.
- 13.2 During the period of litigation, the Buyer and WIRTGEN HK shall continue to exercise their remaining respective rights and fulfil their remaining respective obligations under these General Terms and Conditions, except in respect of those matters under dispute.

14. **Severability clause**

- 14.1 The invalidity or unenforceability of any provision of these General Terms and Conditions under any applicable laws shall not affect the validity of any other provision of these General Terms and Conditions.
- 14.2 These General Terms and Conditions and the Sales Contract between the Buyer and WIRTGEN HK constitute the entire agreement between the parties and supersede all prior discussions, negotiations and agreements between them.

15. **Amendments and supplements**

No amendment and supplement to the terms of General Terms and Conditions shall be effective unless it is in writing and signed by the authorized representatives of both parties upon agreement reached between parties through consultation.

16. **No transfer**

- 16.1 Subject to Clause 16.2 and 16.3 below, without prior written consent from the other party, neither the Buyer nor WIRTGEN HK may assign or transfer its rights or obligations under the Sales Contract or these General Terms and Conditions to a third party.
- 16.2 Notwithstanding Clause 16.1, a party may at any time, without obtaining prior written consent from the other party, assign or transfer its rights or obligations under the Sales Contract or these General Terms and Conditions to its Affiliates.



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16.3 Notwithstanding Clause 16.1, WIRTGEN HK may assign its right to receive all or portion of the payment due under the Sales Contract to its Affiliates or any third party without obtaining prior written consent from the Buyer.

"Affiliate" means, with respect to any specified person, any other person that, at the time of determination, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified person.

"Control" means, as to any person, the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise.

17. Force Majeure

17.1 "Force Majeure Event" shall mean all events which are beyond the reasonable control of a party, and which are unforeseen, unavoidable or insurmountable, and which prevent total or partial performance by that party, including without limitation:

17.1.1 war, terrorist attacks, riots, strikes,

17.1.2 acts of God, earthquakes, typhoons, explosion, fire, flood or other natural disaster;

17.1.3 epidemics and pandemics;

17.1.4 any law or any action taken by a government authority, including establishing containment areas, imposing an export or import restriction, quota or prohibition;

17.1.5 collapse of buildings, fire, or explosion; or

17.1.6 changes in law or the application thereof or any other instances which cannot be foreseen, prevented or controlled.

17.2 If a Force Majeure Event occurs, the Buyer or WIRTGEN HK'S contractual obligations under these General Terms and Conditions may be suspended during the period of delay caused by the Force Majeure Event and shall be automatically extended, without penalty, for a period equal to such suspension. In case the Force Majeure Event lasts for more than 90 days, the Buyer or WIRTGEN HK has the right to terminate the Sales Contract.

17.3 The party claiming Force Majeure must immediately, and in any event within fifteen (15) days from the occurrence of the Force Majeure Event, serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to the Force Majeure Event and providing sufficient proof of the occurrence and duration of such Force Majeure.

17.4 In the event of Force Majeure Event, the parties shall immediately consult with each other in order to find an equitable solution and shall use all reasonable endeavors to minimize the consequences of such Force Majeure Event.

17.5 In particular, for any delay due to the Force Majeure Event, WIRTGEN HK is entitled to extend the agreed delivery periods by the duration of the delay in delivery or performance plus a reasonable start-up period. WIRTGEN HK shall not be deemed to be in breach of these General Terms and Conditions or Sales Contract, or otherwise be liable to the Buyer, by reason of the abovementioned delay.

17.6 If delivery of goods during the occurrence of a Force Majeure Event is nevertheless carried out and this results in additional costs, such as higher freight costs or storage costs due to special security measures, the scarcity of means of transport, or the interruption of a delivery that has already commenced, these costs shall be borne by the Buyer.

18. Notices

18.1 Any notice to be given under these General Terms and Conditions shall be in writing and shall be sent by local registered mail, air mail, facsimile or e-mail to the address, number or e-mail address as that party may from time to time notify to the other party in accordance with this Clause.

18.2 Notices sent pursuant to Clause 18.1 shall be deemed to have been received:



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- 18.2.1 in the case of local registered mail, four (4) working days after the day of posting;
- 18.2.2 in the case of air mail, ten (10) working days after the date of posting;
- 18.2.3 in the case of facsimile, on receipt of a successful transmission report from the correct facsimile number; and
- 18.2.4 in the case of e-mail, when the e-mail first appears in any e-mail system that can reasonably be assumed to be used by the recipient.

19. Non-waiver of rights

Failure or delay on the part of the Buyer or WIRTGEN HK hereto to exercise or enforce a right provided by these General Terms and Conditions or Sales Contract or by law shall not operate as a release or waiver thereof, nor shall any single or partial exercise of such a right preclude any other future exercise thereof.

BY SIGNING THE SALES CONTRACT, WE ACKNOWLEDGE THAT:

- **WE HAVE READ THE FOREGOING AND ALL QUESTIONS HAVE BEEN ANSWERED TO OUR SATISFACTION**
- **WE HAVE BEEN ADVISED TO, AND HAVE HAD THE OPPORTUNITY TO CONSULT WITH OUR OWN LEGAL COUNSEL.**
- **WE CONFIRM OUR ACCEPTANCE TO THE FOREGOING.**

February 2023