



**HV POWER MEASUREMENTS & PROTECTION LTD**

## **STANDARD CONDITIONS OF SALE**

### **1.0 HV**

- 1.1 "HV" means HV Power measurements and Protection Ltd and the "Purchaser" means the company or individual to whom a quotation is submitted, or with whom HV enters into a contract to supply goods or services.

### **2.0 PRICES**

- 2.1 HV shall have the right to vary the prices quoted in the event of:
- 2.1.1. any increase in the cost of materials labour or manufacture
  - 2.1.2. any charge of or any increase in any customs import duties (or export duties from country of origin), and other rates and charges, or changes in exchange rates. The amount of any currency variation shall equate to the approximate proportion that the imported content of goods bears to the total price.
  - 2.1.3. any cost incurred due to delays caused by the Purchaser including (but not limited to) late instructions changes in delivery schedules failure to give adequate information and/or failure or delay in the supply of special tools, materials, drawings or patterns. Where such circumstances result in prices increases HV will provide documentation to verify the increase when requested in writing by the Purchaser.
- 2.2 Duty is not included, but would be additional if ever applicable.

### **3.0 PAYMENT/SETTLEMENT**

- 3.1 Subject to clause 5.0, unless with prior written agreement of HV to the contrary, payment shall be made in full by the Purchaser for items imported specifically for the Purchaser (against his confirmed order) on the 20<sup>th</sup> of the month following the date of dispatch and invoice, unless other arrangements have been agreed beforehand in writing. If payment is not made by the due date, interest shall be charged at the rate of 2.5% per month or part month on all overdue accounts (without prejudice to HV other rights and remedies).

### **4.0 RISK**

- 4.1 The risk of any loss or damage or deterioration of the goods due to any cause whatsoever shall pass to the Purchaser when the goods are delivered in accordance with clause 6.4.

### **5.0 TITLE**

- 5.1 Title to the goods shall not pass to the Purchaser until payment has been made in full. Until payment has been made in full, the Purchaser shall be deemed to hold the goods as bailee for HV and shall store the goods in such a way that they are capable of identification as belonging to HV. If payment in full is not made as aforesaid the Purchaser shall deliver up possession of the goods to HV or its representative on being requested to do so. The right of recovery is reserved to HV only and does not entitle the Purchaser to return the goods ordered but not paid for. The Purchaser hereby authorises HV or its representative to enter upon any premises where the goods are stored and recover the same if the Purchaser fails to deliver the goods upon being requested to do so. If the goods are sold by the Purchaser before payment is made to HV then proceeds of the sale thereof shall be property of HV and the Purchaser shall ensure that the said sale proceeds are deposited into a separate bank account for credit.
- 5.2 Where the Purchaser mixes or processes the goods supplied with its own goods or those of a third party ("the combined goods") so as to irretrievably mix HV's goods, then HV shall retain property in the combined goods in proportion to the value that its goods contributed to the same or in the proceeds of same thereof in the same proportion.

## **6.0 PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**

- 6.1 Without limiting anything else in these conditions the Purchaser acknowledges and agrees that:
  - 6.1.1 These terms and conditions constitute a security agreement for the purposes of the PPSA.
  - 6.1.1 These terms and conditions create a security interest in favour of HV Power in all Goods either previously supplied, or to be supplied in the future by the HV to the Purchaser
- 6.2 The Purchaser undertakes to:
  - 6.2.1 Promptly do all things, sign any further documents and/or provide any further information which the HV may require to register a financing statement or financing change statement on the Personal Property Securities Register.
  - 6.2.2 Indemnify and reimburse the HV for all costs incurred in registering a financing statement or financing change statement on the Register or releasing any Goods so charged.
  - 6.2.3 Not register a financing statement or financing change statement in respect of the HV Goods without the prior written consent of the HV.
  - 6.2.4 Give HV not less than twenty-one (21) days' notice of any change or proposed change, in the Purchaser's name, address and contact details and business practice.
- 6.3 Nothing in section 114(1) (a), 133 and 134 of the PPSA shall apply to these Terms and Conditions
- 6.4 The Purchaser waives its rights as a debtor under sections 116, 120 (2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA.
- 6.5 The Purchaser waives its rights to receive a verification statement in accordance with section 148 of the PPSA.
- 6.6 The Purchaser irrevocably gives HV a power of attorney in relation to actions taken under the PPSA and hereby unconditionally approves and ratifies any actions taken by HV under the PPSA.

## **7.0 TIME/Form OF DELIVERY**

- 7.1 HV shall use reasonable endeavours to adhere to delivery times/dates contained in its quotation but unless specifically agreed in writing, time shall not be of the essence of the Contract and in the event of failure to deliver or complete within the terms quoted the same shall not be a breach or repudiation of the Contract. HV shall not in any circumstances be liable for any consequential loss or damage suffered by the Purchaser as a result of any such delay.
- 7.2 If the contract does not otherwise provide HV shall be entitled at its option to deliver the goods by a single delivery or by installments. If the Contract provides by installments or HV so elects, each installment shall be treated as a separate contract and default or delay in any single delivery shall not affect the balance of the Contract nor entitle the Purchaser to terminate the same.
- 7.3 Times quoted for dispatch or delivery are from acceptance by HV of the Purchaser's order or from receipt by HV's overseas Principal of any necessary parts information or drawings which are to be supplied by the Purchaser and which are necessary to enable the work to be put in hand whichever shall be the later.
- 7.4 When the goods are delivered to the premises of the Purchaser or to an agent of the Purchaser they will be deemed to have been delivered. Any transport nominated by the Purchaser shall be deemed to be the Purchaser's agent.

## **8.0 CLAIMS**

- 8.1 The liability of HV whether in contract or in tort for any loss, damage or injury arising directly or indirectly from any defect or non-compliance of the goods supplied is limited to replacement of such goods or damages not exceeding the invoice value of such defective or non-complying goods at the option of HV. The Purchaser shall indemnify HV against any claims by the Purchaser's servants, agents, purchasers or other persons whomsoever in respect of any loss, damage or injury arising from any defect or non-compliance of the goods supplied to the Purchaser.

- 8.2 The right to reject non-conforming goods shall be limited so as to be effective only if rejection is notified in writing to HV within 10 days of receipt of the goods. No claim for damages or otherwise in respect of defects or non-conformity of the goods or otherwise shall be effective or enforceable unless written notice thereof is given to HV within 10 days of receipt of the goods. No claim shall be a ground for the Purchaser withholding payment of any sum due to HV under this or any other agreement that HV may have with the Purchaser nor give any right to offset payments due by the Purchaser to HV.
- 8.3 Liquidated damages for late delivery shall be limited to 0.5% of the value of the goods per week of delay up to a maximum of 5% of the value of delayed goods in full final satisfaction of HV liability for delay.

## **9.0 DESCRIPTION AND DATA**

- 9.1 Goods will be supplied substantially as described but it is not a condition of contract that the goods will correspond precisely with the description, which is provided solely as an aid in identification of the goods.
- 9.2 HV shall make every effort to ensure the accuracy of technical data or literature relating to the goods, but HV accepts no liability in contract, tort or otherwise for damages or injury arising from any incorrect application of the goods.

## **10.0 PACKAGING**

- 10.1 HV may charge an amount it considers reasonable in respect of packaging, pallets, containers or cartons used in the packaging and delivery of the goods.

## **11.0 GST**

- 11.1 Goods and Services Tax where applicable will be charged in addition to the quoted price.

## **12.0 PATENTS, DESIGNS ETC**

- 12.1 The sale of the goods and the publication of any information or technical data relating thereto does not imply freedom from patent, registered design or other industrial property rights in respect of any particular application of the goods.
- 12.2 The Purchaser warrants that any designs and specifications it supplies to HV will not involve the infringement of any patent, registered design or other industrial property right in the manufacture and sale of the goods by HV.
- 12.3 The Purchaser undertakes to indemnify and keep indemnified HV against all royalties, claims, actions, demands, proceedings, losses and costs in connection with any infringement or alleged infringement of any patent, registered design or other industrial property right in the manufacture, sale or application of the goods arising out of or in connection with the matters described in paragraph 12.1 and/or 12.2 above.

## **13.0 INDENT SALES**

- 13.1 Where HV is supplying to the Purchaser imported (indented) goods then HV is contracting with the Purchaser as an agent of the manufacturer and, accordingly, all orders placed with HV will be accepted by HV on behalf of the manufacturer, subject to the manufacturer's final confirmation and acceptance. Should the manufacturer not confirm or accept the Purchaser's order no liability whatsoever attaches to HV.

## **14.0 CONTRACT**

- 14.1 HV has agreed to supply goods as specified only on the basis that the Purchaser has accepted the Standard Conditions of Sale hereon. No variation, addition or waiver of any condition shall be recognised by HV unless it has been formally agreed in writing and signed by a director of HV. Any special conditions on the Purchaser's order forms will not form part of this agreement. All the original rights, powers and exemptions and remedies of HV shall remain in full force notwithstanding any neglect forbearance or delay in the enforcement thereof.

## **15.0 INTERPRETATION**

15.1 This contract is entered into on behalf of and intended to bind and ensure the benefit of HV and its successors and assigns. The provisions of these conditions of contract, including this one, shall be given a large and liberal interpretation in favour of HV and so that the Contra Proferentem Rule shall not in any case apply against or to the disadvantage of HV. The conditions of sale are to govern all contractual relationship between HV and the Purchaser.

## **16.0 LEGAL**

16.1 This agreement shall be subject to and be governed by the laws of New Zealand.

## **17.0 WARRANTY/GUARANTEEE**

17.1 If not otherwise stated in writing HV will honour the manufacturer's warranty but at all times warranty is the ultimate responsibility and liability of the manufacturer and HV will not be liable for any default or interpretation in respect of the warranty by the manufacturer.

## **18.0 FORCE MAJEURE**

18.1 HV shall not be liable to the Purchaser or any third party for any breach or failure to perform any of its obligations under this sale where such breach or failure is occasioned by a cause or causes beyond HV's reasonable control, including, without limiting the generality of the foregoing, war, civil commotion, hostilities, strikes or lockouts. If HV is likely to be affected by any such cause, it shall immediately notify the Purchaser of the occurrence of the relevant event and shall use all reasonable endeavours to overcome or mitigate the effects of the event.

## **19.0 SPECIFICATION**

19.1 Only the Customer can know in detail the exact environment into which the goods/services purchased are to operate. Precise selection of appropriate products is therefore the Customer's responsibility.