



HV Power Standard Conditions of Sale

1 Definitions

1.1 In these Terms:

- (a) **Contract** means a contract between HV Power and the Purchaser formed pursuant to clause 4.1 (and references to 'the Contract' apply separately to each and every Contract formed between HV Power and the Purchaser pursuant to these Terms);
- (b) **Goods** means the goods described in a Purchaser Order or Quotation (as applicable);
- (c) **GST** means goods and services tax chargeable in accordance with the Goods and Service Tax Act 1985;
- (d) **HV Power** means HV Power Measurements and Protection Limited;
- (e) **NZD** means New Zealand dollars;
- (f) **Quotation** means a written quotation, offer, proposal, estimate, or scope of work issued by HV Power, including any pricing, specifications, assumptions, and validity period stated therein;
- (g) **Services** means any services supplied by HV Power;
- (h) **Personal Property Securities Register** means as defined under the PPSA.
- (i) **PPSA** means the Personal Property Securities Act 1999;
- (j) **Purchase Order** means any document issued to HV Power by the Purchaser requesting the supply of Goods and/or Services, and includes any Purchaser Materials that may be attached or referred to therein;
- (k) **Purchaser** means the customer named on the relevant Purchase Order or Quotation and, unless expressly stated in the Contract or agreed by HV Power, does not include the Purchaser's employees, agents, successors or assigns;
- (l) **Purchaser Materials** means any specifications, drawings, designs, documents or other information supplied by the Purchaser that describe the Purchaser's requirements for the Goods and/or Services; and
- (m) **Terms** means these HV Power Standard Conditions of Sale.

2 Application of terms

- 2.1 All Goods and Services are supplied solely on these Terms.
- 2.2 Acceptance of Goods or Services constitutes acceptance of these Terms.
- 2.3 Notwithstanding anything else in these Terms (including any acceptance of a Purchase Order under clause 4.1(a)) all terms included in a Purchase Order or proposed by the Purchaser are expressly excluded.

3 Purchase Orders and Quotations

- 3.1 HV Power may, at its discretion, reject or request variations to any Purchase Order prior to acceptance.

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- 3.2 Unless stated otherwise, a Quotation:
- (a) is valid for acceptance for **25 business days** from the date of issue; and
 - (b) may be withdrawn or varied by HV Power at any time before acceptance.
- 3.3 The Purchaser acknowledges and agrees that Quotations are based on the information provided by the Purchaser and shall be subject to any assumptions or additional conditions stated therein.
- 3.4 Any variation to a Purchase Order or Quotation may result in a revised price, time for delivery, or scope.

4 **Contract formation**

- 4.1 A legally binding contract is formed between HV Power and the Purchaser when either:
- (a) HV Power accepts a Purchase Order submitted by the Purchaser (whether in writing or by performance); or
 - (b) the Purchaser accepts a Quotation issued by HV Power, whether by:
 - (i) written acceptance (which includes instructing HV Power to proceed); or
 - (ii) accepting delivery of Goods or Services.
- 4.2 Once accepted, the Purchase Order or Quotation (as applicable), together with these Terms, shall form the entire Contract.
- 4.3 HV Power is not obliged to commence supply of the Goods or Services until the Contract is formed.

5 **Variations**

- 5.1 Any change requested by the Purchaser after acceptance of a Quotation or Purchase Order:
- (a) must be agreed in writing by HV Power; and
 - (b) may result in adjusted pricing, delivery times, or scope.
- 5.2 No amendment to, or departure from, these Terms or the Contract by the Purchaser shall be effective or binding unless agreed to in writing by HV Power.

6 **Price**

- 6.1 Unless a Quotation expressly states otherwise, all prices exclude GST, duties, levies, freight (including packaging), insurance and other surcharges, which are payable by the Purchaser.
- 6.2 Where Goods are to be imported into New Zealand by HV Power:
- (a) GST will be charged in NZD based on the NZD value of the Goods determined by HV Power on the day the Goods clear through New Zealand customs;
 - (b) HV Power may adjust the amount payable by the Purchaser to reflect any adjustment in taxes or duties payable in relation to the importation of those Goods into New Zealand; and

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- (c) if the Contract indicates a foreign exchange rate, HV Power may adjust the amount payable by the Purchaser to reflect any variation to the relevant exchange rate as determined on the day the Goods clear through New Zealand customs.

To avoid variations of price under this clause, a fixed price may be agreed in writing at HV Power's discretion, for an additional fee.

7 **Payment**

- 7.1 Payment is due in full on the 20th of the month following the month of any invoice (or such other period stated on the quotation or otherwise agreed by HV Power).
- 7.2 HV Power may:
 - (a) require payment in advance;
 - (b) withhold delivery, require return of the Goods and/or suspend Services for non-payment; and/or
 - (c) charge interest on overdue amounts at 2.5% per month.
- 7.3 The Purchaser may not withhold, deduct, or set off any amounts due to HV Power under the Contract.

8 **Delivery**

- 8.1 Delivery dates are estimates only and HV Power is not liable for any delay or failure to deliver the Goods by a stated delivery date.
- 8.2 When the Goods are delivered to the Purchaser's nominated delivery address or collected by the Purchaser or its agents (including any person who transports the Goods on the Purchaser's behalf) the Goods are deemed delivered and no longer the responsibility of HV Power.
- 8.3 The Purchaser is solely responsible for safely unloading all Goods at the Purchaser's nominated delivery address and must inspect the Goods and Services promptly upon delivery.
- 8.4 The Purchaser shall be liable for any additional costs incurred due to delivery delays caused by the Purchaser, including delays arising from any change to, or delay in providing, any Purchaser Materials, quantities, or other requirements, or suspension by the Purchaser of any delivery date.

9 **Title and risk**

- 9.1 Risk in the Goods passes to the Purchaser on delivery to the Purchaser's nominated delivery address or collection by the Purchaser (or its agents), whichever occurs first.
- 9.2 Title to the Goods remains with HV Power until all amounts owing by the Purchaser to HV Power under the Contract are paid in full.
- 9.3 Until title to the Goods passes the Purchaser:
 - (a) the Purchaser is deemed to hold the Goods as bailee for HV Power;
 - (b) the Purchaser must store the Goods in such a way that they are capable of being identified as belonging to HV Power; and

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(c) the Purchaser must not sell or otherwise dispose of the Goods.

10 Security interest

- 10.1 These Terms constitute a security agreement for the purposes of the PPSA.
- 10.2 The Purchaser grants to HV Power a continuing security interest in the Goods (and their proceeds) as security for payment of all amounts owing by the Purchaser to HV Power until such amounts are paid in full.
- 10.3 The Purchaser consents to HV Power registering and maintaining financing statements or financing change statements on the Personal Property Securities Register and will do all things HV Power reasonably requires for the purpose of ensuring the security interest is enforceable and perfected, and to enable HV Power to exercise its rights in connection with the security interest.
- 10.4 The Purchaser must notify HV Power within **10 business days** of any change to its name, address, business structure or other details set out in the Contract.
- 10.5 To the extent permitted by law, the Purchaser waives the right to receive verification statements and any other notices under the PPSA.
- 10.6 Nothing in sections 114(1)(a), 133 or 134 of the PPSA shall apply to the Contract.
- 10.7 Rights of the Purchaser as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 148 of the PPSA shall not apply to the Contract.

11 Claims and liability

- 11.1 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.
- 11.2 The Purchaser is responsible for selecting Goods or Services that are suitable for their intended use and environment. HV Power accepts no liability for any loss, damages or injury arising in connection with the improper use or application of the Goods and is not responsible for compliance with laws relating to the Purchaser's use of the Goods.
- 11.3 The Purchaser acknowledges and agrees that:
 - (a) the supply of Goods under these Terms may be subject to third-party supplier restrictions on exportation;
 - (b) it shall not export any Goods without HV Power's prior written consent, which may be provided in HV Power's sole discretion, subject to any conditions HV Power may impose to ensure full compliance with such third-party supplier restrictions; and
 - (c) where the Goods are disposed of to any third party, the Purchaser shall procure the relevant third party to be bound by the provisions of this clause 11.3.
- 11.4 HV Power will use reasonable endeavours to obtain for and/or assign to the Purchaser, the benefit of any manufacturer's warranty applicable to the Goods. If HV Power is unable to assign any such warranty to the Purchaser, HV Power shall, if requested by the Purchaser, exercise all rights under the warranty on the Purchaser's behalf, provided that HV Power has no liability under, or for the performance or enforcement of, any such warranty.

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- 11.5 Claims for defects must be made in writing within **10 business days** of receipt of the Goods. HV Power's liability for such claims is limited, at its option, to repair, replacement, or resupply of the Goods or a refund of the purchase price.
- 11.6 Notwithstanding anything else in these Terms or the Contract, and to the maximum extent permitted by law:
- (a) all implied warranties and conditions are excluded;
 - (b) HV Power's total liability arising in connection with the Contract is limited to the price paid for the affected Goods or Services;
 - (c) HV Power has no liability in connection with the Contract to any party other than the Purchaser; and
 - (d) HV Power is not liable to the Purchaser for any indirect, consequential, special or economic loss, including any loss of use, productivity or profit.

12 Cancellation and returns

- 12.1 Where the Contract is for Goods to be imported into New Zealand, HV Power's obligations are subject to acceptance and satisfaction of those obligations by the relevant third-party supplier. To the extent a third-party supplier is not able to supply the imported Goods in accordance with these Terms, HV Power reserves the right to cancel or suspend the order or Contract (as applicable) in respect of the relevant Goods without liability to the Purchaser.
- 12.2 The Purchaser may not cancel, suspend, or vary the Contract without HV Power's prior written consent.
- 12.3 If HV Power agrees to a cancellation, the Purchaser must pay HV Power:
- (a) the full price for any Goods and Services already supplied;
 - (b) all costs reasonably incurred by HV Power in connection with the Contract, including:
 - (i) work in progress;
 - (ii) materials ordered or committed;
 - (iii) labour and overheads; and
 - (iv) restocking, handling, and administrative costs; and
 - (c) any additional loss suffered by HV Power as a result of the cancellation.
- 12.4 Any deposit or prepayment may be retained by HV Power and applied against amounts owing.
- 12.5 Goods are not returnable unless expressly agreed by HV Power in writing.
- 12.6 Returns approved under clause 12.5 must:
- (a) be accompanied by a pre-authorized Goods Return Authority (GRA) form available on request from HV Power;
 - (b) be returned at the Purchaser's cost and risk to HV Power's nominated store within **20 business days** of delivery of the Goods to the Purchaser; and
 - (c) be in original, unused, resaleable condition and in the original packing.

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12.7 HV Power may refuse returns of:

- (a) non-stocked or special-order Goods;
- (b) Goods manufactured to Purchaser Materials;
- (c) Goods that have been used, installed, altered, or damaged; and
- (d) Goods returned outside the period stated in clause 12.6(b).

12.8 Any returned Goods will be credited at 80% of the invoiced value, however HV Power may charge:

- (a) a restocking fee;
- (b) inspection, repair, or repackaging costs; and/or
- (c) freight or handling charges.

12.9 Title to returned Goods does not pass back to HV Power until inspection and acceptance of the Goods at HV Power's sole discretion.

13 **Force majeure**

13.1 HV Power is not liable for any failure or delay caused by events beyond its reasonable control, including without limitation supply shortages, transport disruption, strikes, or acts of God.

13.2 If HV Power is likely to be affected by any such cause, it shall 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.

14 **Intellectual property**

14.1 Subject to clause 14.2, all intellectual property rights in:

- (a) the Goods or Services;
 - (b) any designs, drawings, specifications, tooling, software, processes, methods, or documentation relating to the Goods or Services; and
 - (c) any improvements, modifications, or derivatives of the above,
- remain with HV Power unless expressly agreed otherwise in writing.

14.2 Where Goods are manufactured or provided in accordance with any Purchaser Materials:

- (a) ownership of the Purchaser Materials remains with the Purchaser;
- (b) the Purchaser grants HV Power a royalty-free, non-exclusive licence to use the Purchaser Materials for the purpose of performing the Contract; and
- (c) ownership of HV Power's background intellectual property and all intellectual property rights arising in the resulting Goods remains with HV Power.

14.3 HV Power is not liable for, and the Purchaser indemnifies and holds harmless HV Power from and against, all losses, liabilities, damages, costs, and expenses (including legal costs on a solicitor and own-client basis) arising from:

- (a) any claim that Purchaser Materials infringe third-party intellectual property rights;

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- (b) HV Power's use of Purchaser Materials in accordance with the Contract;
- (c) the combination of any Goods with other products not supplied by HV Power;
- (d) modification of any Goods without HV Power's approval; and/or
- (e) use of Goods outside their intended purpose.

15 Termination

15.1 HV Power may terminate the Contract immediately if the Purchaser:

- (a) fails to pay any amount when due;
- (b) breaches these Terms; or
- (c) becomes insolvent.

15.2 Termination does not affect accrued rights or payment obligations.

16 Consumer Guarantees Act 1993

16.1 The Purchaser acknowledges and agrees that unless otherwise stated in a Purchase Order or Quotation:

- (a) HV Power is supplying the Goods and/or Services to the Purchaser in trade;
- (b) the Purchaser is acquiring the Goods and/or Services in trade and not as a consumer; and
- (c) to the fullest extent permitted by law, including section 43 of the Consumer Guarantees Act 1993, the parties agree that the provisions of the Consumer Guarantees Act 1993 shall not apply to the relevant Contract or to any supply of goods or services made under the Contract.

16.2 The Purchaser further agrees that it is fair and reasonable that they are bound by this clause 16.

17 Governing law

17.1 These Terms are governed by the laws of New Zealand, and the parties submit to the exclusive jurisdiction of the New Zealand courts.

18 General

18.1 HV Power may update these Terms at any time by notifying the Purchaser.

18.2 To the extent any provision of these Terms is unenforceable, that provision is severed from the Contract, the remainder of which remains in force.

18.3 Any waiver must be in writing and applies only to that instance.

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19 Notices

19.1 A notice is taken as given by the sender and received by the intended recipient:

- (a) if delivered personally or by courier, on the date of delivery;
- (b) if posted, **3 business days** after posting; or
- (c) if emailed:
 - (i) on receipt of an automatic receipt transmission reply by the sender; or
 - (ii) four hours after the time sent unless the sender receives an automated message that delivery failed.

19.2 HV Power's address for notices is:

HV Power Measurements and Protection Limited
PO Box 26-074, Epsom
Auckland 1344

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