

# Terms and Conditions of Sale

## 1 Definitions

In this Agreement, unless the context indicates a contrary intention:

**Address** means a party's address set out in the Quote.

**Agreement** means these Terms and Conditions of Sale and incorporates the terms and conditions in the Quote and any relevant Work Schedules.

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement;

**Australian Consumer Law** has the meaning given to it in the *Competition and Consumer Act 2010* (Cth) (as amended from time to time).

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

**Business Day** means a day on which banks are open for general banking business in Sydney, New South Wales, Australia, excluding Saturdays and Sundays;

**Buyer** means the Party to whom the Quote is addressed.

**Claim** includes any claim, loss, liability, damage, proceeding, order, judgment or expense.

**Commencement Date** means the date of acceptance of the Quote.

**Confidentiality Agreement** means an agreement prepared by HMS regulating the party's use of confidential information.

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

**Delivery Date** means the delivery date listed in the Quote.

**Deposit** means the deposit listed in the Quote.

**Force Majeure Event** means any event outside the reasonable control of HMS including acts of God, war, riots, strikes, lock outs, trade disputes, fires, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above.

**Guarantor** means each Director of a corporate Buyer.

**Goods** means the products to be provided by HMS to the Buyer as specified in the Quote.

**Instalment Amount** means the progress payment listed on the Quote.

**HMS** means HMS Equipments Pty Ltd and includes all other entities within the HMS Group of Companies including HMS Servicing Pty Ltd ACN 161 870 739 and HMS Transport Pty Ltd ACN 161 872 742.

**Insolvent** means the occurrence of any of the following:

- (a) a party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- (b) a party becomes unable to pay its debts as they fall due;
- (c) a party enters into any arrangement with creditors;

- (d) a party becomes subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001* (Cth), including having a receiver or administrator appointed over all or any part of its assets; or
- (e) anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified in clauses (a) to (d) above occurs in relation to a party, including the court appointment of a receiver.

**Intellectual Property Rights** means all present and future rights to:

- (a) trade marks, trade names, domain names, logos, getup, patents, inventions, registered and unregistered design rights, copyright, circuit layout rights, and all similar rights in any part of the world (including knowhow); and
- (b) whether rights referred to in paragraph (a) are obtained or enhanced by registration, any registration of such rights, and applications and rights for any such application.

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**Maintenance Agreement** means HMS's standard Warranty Service & Maintenance Agreement.

**Materials** includes specifications, drawings, designs, writings, samples, layouts, test software and operating software (in whatever media they are contained).

**Personnel** includes a party's employees, agents, consultants and subcontractors, and their personnel and does not include the other party.

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**PPSR** means the Personal Property Securities Register established under section 146 of the PPSA;

**Quote** means a written quote issued by HMS for the sale of Goods on the terms of this Agreement.

**Quoted Price** means the total price listed on the Quote.

**Related Body Corporate** has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth).

**Site** means the site which the Goods will be delivered, as specified in the Quote.

**Supporting Documents** means training documentation, standard operating procedures, safe work procedures, parts or supply documentation, plans, mechanical or electrical drawings relating to the Goods.

**Warranty Period** means the period of 90 days from the date that the Goods are delivered to the Site.

**Work Schedule** means a schedule setting out the proposed timing for the manufacture of the Goods as described in clause 5.2.

## 2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this Agreement or another document includes any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;
- (b) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Agreement;
- (c) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (d) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (e) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (f) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (g) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (h) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, New South Wales, Australia, even if the obligation is to be performed elsewhere;
- (i) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (j) **(writing)** a reference to a notice, consent, request, approval or other communication under this Agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (k) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (l) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (m) **(month)** a reference to a month is a reference to a calendar month;
- (n) **(year)** a reference to a year is a reference to twelve consecutive calendar months;

## 3 Scope of Agreement

- (a) HMS must manufacture the Goods and supply the Goods to the Buyer in accordance with this Agreement.
- (b) The Buyer must pay the Purchase Price to HMS in accordance with this Agreement.

## 4 Term

This Agreement commences on the Commencement Date and continues until midnight on the last day of the Warranty Period, unless terminated earlier in accordance with this Agreement (**Term**).

## 5 Manufacture

### 5.1 *Manufacture*

HMS will not commence manufacturing the Goods until the Buyer accepts the Quote, the terms of this Agreement and pays the 50% Deposit if applicable.

### 5.2 *Work Schedule*

- (a) If not previously provided by the Buyer, then at the time of acceptance of a Quote from HMS, the Buyer shall submit to HMS the proposed Work Schedule for the manufacture of the Goods offered in the Quote.
- (b) If HMS agrees to the Work Schedule provided by the Buyer then it shall form part of this Agreement and shall not be varied except in accordance with the this Agreement.
- (c) If a Work Schedule is not submitted or agreed upon then HMS will manufacture the Goods detailed in the Quote in a time which is reasonable in the circumstances.
- (d) Where extra cost in labour, materials or overheads are incurred by HMS by virtue of acceleration of the agreed Work Schedule as requested by the Buyer, then HMS shall be entitled to vary the agreed Quote/Price to take into account such conditions.

## 6 Transport and Delivery

### 6.1 *Delivery*

- (a) HMS reserves the right to deliver the Goods in instalments.
- (b) HMS must use reasonable endeavours to deliver the Goods to the Site by the Delivery Date.
- (c) Unless otherwise agreed in writing, all delivery charges are in addition to the price for the Goods and will be separately itemised in any Quotes or invoices issued to the Buyer.

### 6.2 *Delay in delivery*

- (a) HMS must promptly notify the Buyer if it becomes aware that it will not be able to deliver the Goods on the Delivery Date, in which case HMS must propose a new delivery date.
- (b) If HMS has not made the Goods available for delivery to the Buyer within 14 days after the Delivery Date, the Buyer may serve a notice to HMS requesting that the Goods be made available for delivery (**Delivery Notice**).
- (c) If HMS does not make the Goods available for delivery to the Buyer within 7 days of receiving a Delivery Notice, the Buyer may rescind this Agreement by written notice to HMS.
- (d) The right of rescission under clause 6.2(c) is the Buyer's only remedy in connection with the delay or failure by HMS to make the Goods available for delivery to the Buyer and the Buyer releases the Buyer obligations.

## 7 Title and risk

- (a) Title in the Goods will pass to the Buyer on and from payment of the Purchase Price.
- (b) Risk in the Goods will pass to the Buyer immediately upon delivery to the Buyer.
- (c) HMS is entitled to an unpaid vendor's lien on Goods until the Buyer has paid the Purchase Price in full.
- (d) All copyright, design right and other Intellectual Property Rights in any design, specification, process, method of working or other information relating to the Quote or Goods (other than that provided by the Buyer to HMS) shall vest for all time in HMS.

## 8 Purchase Price

### 8.1 *Purchase Price*

The Purchase Price will be the Quoted Price.

### 8.2 *Final invoice*

Prior to the delivery of the Goods, HMS will issue a final invoice listing the full itemised Purchase Price.

### 8.3 *Variation by Buyer*

Where a written Quote has been accepted by the Buyer and the Buyer or any of its agents varies any conditions detailed in that Quote after accepting it, (including but not limited to changes in the design, quantity, type, colour or delivery location for the Goods), then HMS may

- (a) vary the Quoted Price to take into account such changes; and
- (b) extend the time taken to manufacture the Goods where such changes impact upon the time taken to manufacture the Goods.

## 9 Payment

### 9.1 *Payment prior to delivery*

- (a) Unless otherwise agreed, payment of the purchase price must be made in full on the delivery of the goods or the completion of services.
- (b) If credit terms are provided by HMS, payment must be made within 30 days from invoice date.
- (c) Credit terms may be revoked or amended at the sole discretion of HMS immediately upon giving notice to the customer.

### 9.2 *Payment method*

- (a) Payment must be made by cash, bank cheque, credit card (which may include a provider surcharge) or direct deposit into HMS's bank account, as agreed by the parties acting reasonably.

## 10 GST

### 10.1 *Interpretation*

Words or expressions used in this clause 10 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

#### 10.2 *Consideration is GST exclusive*

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as “GST inclusive”, does not include an amount on account of GST.

#### 10.3 *Gross up of consideration*

Despite any other provision in this Agreement, if a party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as “GST inclusive”):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST Exclusive Consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST Exclusive Consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

#### 10.4 *Reimbursements (net down)*

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

#### 10.5 *Tax invoices*

The Recipient need not make a payment for a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.

#### 10.6 *Adjustment event*

If the GST payable in relation to a taxable supply made under or in connection with this Agreement varies from the additional amount paid or payable by the Recipient under clause 10.3, so that:

- (a) a further amount of GST is payable in relation to that Supply; or
- (b) a refund or credit of GST is obtained in relation to the Supply,

then the Supplier will:

- (c) provide a corresponding refund or credit to; or
- (d) be entitled to receive the amount of that variation from,  
the Recipient.

Any payment, credit or refund under this clause 10.6 is taken to be a payment, credit or refund of the additional amount payable under clause 10.3. If an adjustment event occurs in relation to a taxable supply made under or in connection with this Agreement, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

## 11 PPSA

### 11.1 Interpretation

The terms Collateral, Debtor, Financing Change Statement, Financing Statement, Grantor, Proceeds, Secured Party, Security Agreement and Security Interest have the meanings given in the PPSA.

### 11.2 Acknowledgement

- (a) The Buyer acknowledges and agrees that by accepting these terms and conditions which form part of the Contract and constitute a Security Agreement that covers the Collateral for the purposes of the PPSA:
- (i) HMS (as **Secured Party**) holds a Security Interest over all of the present and after acquired Goods supplied by HMS to the Buyer and any Proceeds of the sale of those Goods (**Collateral**);
  - (ii) That any purchase by the Buyer on credit terms from HMS or retention of title supply pursuant to clause 11 hereof will constitute a purchase money security interest as defined under section 14 of the PPSA (**PMSI**);
  - (iii) The PMSI granted herein will continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence;
  - (iv) HMS will continue to hold a Security Interest in the Goods in accordance with and subject to the PPSA, notwithstanding that the Goods may be processed, commingled or become an accession with other Goods;
  - (v) Any Security Interest held by HMS will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all other registered or unregistered Security Interest;
  - (vi) Until title in the Goods pass to the Buyer, it will keep all Goods supplied by HMS free and ensure all such Goods are kept free of any charge, lien or Security Interest and not otherwise deal with the goods in a way that will or may prejudice any rights of HMS under the contract or the PPSA; and
  - (vii) In addition to any other rights under these terms and conditions or otherwise arising, HMS may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Buyer, to search for and seize, dispose of or retain those Goods in respect to which the Buyer has granted a Security Interest to HMS.

### 11.3 Undertakings

- (a) The Buyer undertakes to:
- (i) Sign any further documents and provide such information which HMS may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR;
  - (ii) Indemnify and upon demand reimburse HMS for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR or releasing any Security Interests;
  - (iii) Not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of HMS; and
  - (iv) Provide HMS not less than seven (7) days prior written notice of any proposed change in the Buyer's name, address, contact numbers, business

practice or such other change in the Buyer's details registered on the PPSR to enable HMS to register a Financing Change Statement if required.

#### 11.4 *Waiver*

- (a) The parties agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this contract.
- (b) The Buyer hereby waives its rights to received notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (c) The Buyer waives its rights as a Grantor and/or a Debtor under sections 142 and 143 of the PPSA.
- (d) Unless otherwise agreed in writing by HMS, the Buyer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- (e) The Buyer shall unconditionally ratify any actions taken by HMS under this clause.

## 12 Implied terms

To the full extent permitted by law:

- (a) Other than the Reseller Agreement, all conditions, warranties, guarantees, terms and obligations expressed or implied by law or otherwise relating to the supply of Goods by HMS under this Agreement are excluded, except for those conditions and warranties as to title in the Goods; and
- (b) Without limiting the generality of the foregoing, HMS gives no condition, warranty or guarantee whatsoever as to the suitability, performance or fitness of the Goods for their ordinary or any special use or purpose, and the description of the Goods in any document shall not import any such condition, warranty or guarantee on the part of HMS.

## 13 Defects and return of Goods

### 13.1 *Inspection*

The Buyer must inspect the Goods and notify HMS in writing within fourteen (14) days of delivery of any alleged shortages, defects or damage, together with photographic or other evidence. If no such notice and evidence is received by HMS within fourteen (14) days of delivery, the Buyer is deemed to have accepted the Goods.

### 13.2 *Shortages and defects*

- (a) If HMS accepts any shortages, or that Goods are defective or damaged, HMS may, at its sole discretion:
  - (i) agree to top up the short quantity of Goods;
  - (ii) replace the Goods;
  - (iii) provide a refund for the Goods; or
  - (iv) repair the Goods,except in circumstances where the defects or damages to the Goods occurs because they have not been stored or used in a proper manner by the Buyer or its agents.
- (b) HMS may, at its sole discretion, accept the return of non-defective Goods (within 30 days) for credit subject to a handling fee of 20% of the value of the returned Goods.
- (c) The Buyer must pay the freight (and any other additional) costs associated with the return of Goods under this clause.

### 13.3 Cancellation

- (a) If through circumstances beyond its control, HMS is unable to affect delivery or provision of Goods and Services, then HMS may cancel the Buyers order (even if it has already been accepted by notice in writing to the Buyer.
- (b) Orders for goods that are not stocked items may not be cancelled after an order for the goods has been placed by HMS.
- (c) Orders that have commenced manufacturing may not be cancelled
- (d) Subject to clause 13.3 (b), Goods returned for credit will only be accepted with the prior written notice of HMS and (where applicable) may only be returned by transport approved by HMS. A restocking fee of 20% of the Price may be charged to the Buyer.

## 14 Warranty

- (a) HMS warrants the Goods against defective workmanship and against defective materials for a period of one (1) year from the Delivery Date.
- (b) Any otherwise applicable warranty shall be voided by:
  - (i) Modification to any Goods supplied by HMS by any party other HMS or HMS Personnel; or
  - (ii) Failure to sufficiently maintain in line with any Maintenance Agreement entered into by the parties; or
  - (iii) Misuse or use in any manner other than that intended of any Services performed by HMS, or misuse or use in any manner other than that intended of any Goods supplied by HMS.

## 15 Credit information

### 15.1 Condition Precedent

- (a) This Agreement is conditional upon HMS obtaining a satisfactory credit report on the Buyer.
- (b) HMS may waive its rights to require a credit report by written notice to the Buyer.

## 16 Liability and indemnity

- (a) Neither Party will be liable to the other Party for any consequential loss, loss of use, opportunity, profit, anticipated profit, revenue, business or business opportunities and damage to goodwill, reputation or share price arising out of or in connection with this Agreement.
- (b) The Buyer retains liability for all risks associated with any Goods supplied or installed, in part or in full, on the Site at all times. The onus for insurance against such risks rests with the Buyer.
- (c) The Buyer agrees to indemnify and keep indemnified HMS against all Claims suffered or incurred by, or made against, the HMS as a result of a breach of this document by the Buyer except where those Claims are directly and solely attributable to the gross negligence or wilful default of the HMS or any of its duly authorised employees or agents.
- (d) The Buyer shall keep HMS indemnified against all Claims of whatsoever nature, which may be made against the Buyer or which the Buyer may sustain, pay or incur

as a result of or in connection with the use of the Goods. The Buyer's liability to indemnify HMS in respect of a Claim will be reduced proportionately to the extent that HMS' fraud or malicious, unlawful or negligent act or omission caused or contributed to the Claim.

If an issue, dispute or difference between or among any of the parties arises out of, or in relation to, this Agreement (**Dispute**), a party to the Dispute (**Disputant**) must not commence any court proceedings relating to the Dispute unless the Disputants have complied with this clause except where a Disputant seeks urgent interlocutory relief.

#### 16.2 *Notice of Dispute*

A Disputant may give written notice (**Notice of Dispute**) to the other Disputants specifying:

- (a) the nature of the Dispute;
- (b) the alleged basis of the Dispute; and
- (c) the position which the Disputant issuing the Notice of Dispute believes is correct.

#### 16.3 *Resolution by Representatives*

If the Dispute is not resolved within 5 Business Days after the last date on which a Notice of Dispute is given, each Disputant must nominate a suitable Representative with the authority to settle the Dispute.

#### 16.4 *Expert determination*

- (a) If the Dispute has not been resolved within 5 Business Days after the last date on which a Notice of Dispute is given (or within a period agreed in writing by them), the Dispute must be submitted to an expert in accordance with, and subject to, the *Institute of Arbitrators & Mediators Australia Expert Determination Rules*.
- (b) The determination of the Dispute by the expert will be final and binding.
- (c) Each Disputant must:
  - (i) bear its own costs in respect of any preparation and/or representation at an expert determination; and
  - (ii) pay one-half of the expert's costs and any incidental costs of facilitating the expert determination.

#### 16.5 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause **Error! Reference source not found.**, the referral to or undertaking of a dispute resolution process under this clause **Error! Reference source not found.** does not suspend the parties' obligations under this Agreement.

#### 16.6 *Proportionate liability*

To the extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any rights, obligations and liabilities of the parties arising out of the operation of this Agreement, whether they are sought to be enforced as a breach of contract or a claim in tort or otherwise.

### 17 **Default**

#### 17.1 *Buyer's default*

If the Buyer becomes Insolvent or fails to observe the terms of payment detailed in this Agreement, HMS may:

- (a) suspend manufacturing of the Goods;

- (b) repossess any unfixed portions of any Goods held by the Buyer for which the Buyer has not yet paid; and
- (c) charge default interest on any outstanding payments at a rate of 15% per annum;
- (d) claim immediate payment of all moneys due by the Buyer in respect of all Goods and/or Services which will then be immediately due and payable notwithstanding the due date or dates for payment; and/or
- (e) continue to enforce its rights and recover from the Buyer such payments and any other amounts owing as and when they fall due.

#### 17.1 *HMS' default*

- (a) The Buyer may terminate this Agreement immediately by giving notice to HMS if:
  - (i) HMS is subject to an Insolvency Event;
  - (ii) HMS commits a breach of this Agreement which is:
    - (A) capable of rectification but which is not rectified within 14 days of receipt of notice from the Buyer specifying such breach and stating that it is a notice under clause 20.3 or such longer period as the Buyer may allow in its absolute discretion; or
    - (B) not capable of rectification.
- (b) Termination under this clause 20.3 will be effective immediately and will not affect any other rights available to the Buyer.

## 18 Termination

### 18.1 *Termination*

- (a) HMS may terminate this Agreement at any time by giving at least one month's notice in writing to the Buyer.
- (b) Either party may terminate this Agreement by written notice if:
  - (i) a party becomes Insolvent; or
  - (ii) the other party is in material breach of its obligations under this Agreement and does not rectify within 10 Business Days of receiving written notice requiring the breach to be remedied.

### 18.2 *Consequences of termination*

Upon termination of this Agreement (whether through default or expiry or otherwise) the rights and obligations of the parties will cease except for:

- (a) any obligations arising or rights or remedies accrued as a result of an existing breach of this Agreement; and
- (b) any obligations which are expressed to continue in accordance with the terms of this Agreement.

## 19 Force Majeure

- (a) HMS will not be liable for the consequences of any failure or delay in performing any of its obligations under this Agreement to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.
- (b) If a Force Majeure Event arises, HMS will notify the Buyer in writing of the Force Majeure Event and the likely impact it will have on the HMS's performance under this Contract.

- (c) If the Force Majeure Event affects the capacity of HMS to complete its material obligations under this Agreement in a timely manner, the HMS may by notice to the Buyer terminate this Contract without any liability whatsoever on its part arising from that termination.
- (d) If any such delay detailed in this clause 19 persists for six (6) months or more then either party may by notice in writing to the other terminate the associated contract for the work. This termination shall not affect the rights and obligations of either party that accrued prior to such termination.

## 20 Confidentiality

### 20.1 *No Disclosure*

A party must not, without the prior written approval of the other, disclose the other party's Confidential Information or disclose or make public the terms of this agreement unless the disclosure is:

- (a) with the prior written consent of the other party;
- (b) to its officers, employees and professional advisers; and
- (c) if required by Law (including the rules of any relevant stock exchange).

### 20.2 *Buyer's obligations*

- (a) The Buyer will treat as confidential all information, data, drawings, specifications, samples and documentation supplied by the HMS relating to the Goods, and will not disclose them to any third party without the prior written consent of the HMS.
- (b) HMS reserves the right to request that the Buyer sign a Confidentiality Agreement in respect of its Goods.

### 20.3 *Extended Obligation*

Each party must take all reasonable steps to ensure its Personnel, do not make public or disclose the other party's Confidential Information.

## 21 Notices

- 21.1 Any notice given by one party to the other under this Agreement must be in writing and may be delivered personally, pre-paid post, electronic mail, facsimile, recorded delivery or courier service, with the exception of any notice sent in pursuant of clause 21, which will only be delivered by pre-paid post, recorded delivery or courier service.
- 21.2 Notices must be delivered or sent to the addresses of the parties on the Quote or to any other address notified in writing by one party to the other for the purpose of receiving notices after the date of this Agreement.
- 21.3 For avoidance of doubt, notices include, but are not limited to, notices in event of a dispute between the parties and variation notices, but exclude general correspondence and orders placed under this Agreement.

## 22 General

### 22.1 *Relationship between parties*

- (a) Nothing in this Agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:

- (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

#### **22.2** *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

#### **22.3** *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.

#### **22.4** *Variation*

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all parties.

#### **22.5** *No assignment*

A party cannot assign or otherwise transfer its rights under this Agreement without the prior written consent of the other party.

#### **22.6** *Quote and Acceptance*

Acceptance of the Quote includes the acceptance of the terms and conditions set out in this Agreement.

#### **22.7** *Legal expenses and stamp duty*

- (a) Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- (b) The Buyer must pay all stamp duty assessed on or in relation to this Agreement and any instrument or transaction required by or necessary to give effect to this Agreement.

#### **22.8** *Entire agreement*

The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Agreement, whether orally or in writing and whether or not the Buyer, at any time and by any means, purports to impose its own terms and conditions.

#### **22.9** *Invalidity*

- (a) A word or provision must be read down if:
  - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:

- (i) despite the operation of paragraph (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 22.9(b)(i) or (ii) applies.

#### *22.10 Waiver*

A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

#### *22.11 Survival after termination*

Clauses 10 (GST), 11 (PPSA), 16 (Liability and Indemnity), 18.2 (Consequences of Termination), 20 (Confidentiality) and 7 (Title and Risk) continue to apply after expiration or termination of this Agreement.

#### *22.12 Governing law and jurisdiction*

- (a) The laws applicable in New South Wales, Australia govern this Agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia, and any courts competent to hear appeals from those courts.