

1. Definitions

- 1.1. **"HMC"** means Harrison Manufacturing Co Pty Limited ABN 50 000 080 946 its successors and assigns and any person acting on behalf of and with the authority of Harrison Manufacturing & Co Pty Limited.
- 1.2. **"Blanket Purchase Order" ("BPO")** means a written purchase order from the Customer to HMC specifying its requirements for Goods to be delivered during the period specified in the Blanket Purchase Order.
- 1.3. **"Customer"** means the person/s buying the Goods as specified in the Order (as confirmed in the Sales Order Confirmation) , and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.4. **"Delivery"** refers to receipt or collection of the Goods, determined in accordance with clause 5.2 of these terms and conditions.
- 1.5. **"Goods"** means all goods and/or services supplied by HMC to the Customer in accordance with a Sales Order Confirmation (where the context so permits the terms 'goods' and 'services' shall be interchangeable for the other).
- 1.6. **"GST"** means Goods and Services Tax.
- 1.7. **"Order"** means a written purchase order from the Customer to HMC for Goods given in accordance with clause 3.
- 1.8. **"Order Forecast"** means a Customer's forward forecast for orders for Goods.
- 1.9. **"Price"** means the Price payable for the Goods as stipulated in the Sales Order Confirmation (as may be adjusted by HMC in accordance with clause 4.3).
- 1.10. **"Sales Order Confirmation"** means HMC's written acceptance of an Order issued in accordance with clause 3.2.
- 1.11. **"Quotation"** means a written quotation provided by HMC to the Customer for the Price for the supply of Goods.

2. Application

- 2.1. These terms and conditions (subject to any variations agreed to by the parties in writing) apply to each sale of Goods by HMC to the Customer. These terms and conditions together with the applicable Sales Order Confirmation for the Goods, embody the whole agreement between the parties in relation to the sale of the Goods, and the Customer agrees to be bound by them.
- 2.2. These terms and conditions shall apply to the exclusion of any terms and conditions of the Customer (whether on the Customer's Order or otherwise).
- 2.3. HMC may modify these terms and conditions from time to time by giving notice to the Customer, and the modified terms and conditions will apply to each Order placed for Goods after the date of notification.
- 2.4. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions when the Customer places an Order for the Goods or receives delivery of the Goods (whichever is the earlier).

3. Orders for Goods

- 3.1. The Customer must place Orders for Goods in the form and manner specified by HMC from time to time, and otherwise in accordance with these terms and conditions.
- 3.2. All Orders placed by the Customer are subject to acceptance by HMC. If HMC is willing to supply Goods ordered by a Customer in an Order, it will issue a Sales Order Confirmation for that Order which will set out:
 - (a) the Goods which will be sold to the Customer;
 - (b) the Price for the Goods; and
 - (c) the proposed delivery date for the Goods.
- 3.3. Upon the Customer's receipt of a Sales Order Confirmation, the Sales Order Confirmation will be binding on

the Customer and will constitute a separate binding contract between the parties for the sale of the Goods specified in that Sales Order Confirmation.

- 3.4. In the event of any conflict or inconsistency between an Order and the Sales Order Confirmation, the Sales Order Confirmation will prevail to the extent of the conflict or inconsistency. The Customer must notify HMC immediately (within 3 business days) of any inconsistency between the Order and the Sales Order Confirmation, which the Customer does not accept.
- 3.5. All Orders are binding on the Customer upon its receipt of a Sales Order Confirmation, and the Customer must not rescind or amend any Order which has been accepted by HMC in a Sales Order Confirmation, unless agreed in writing by HMC.
- 3.6. HMC must use its reasonable endeavours to supply Goods in accordance with the confirmed Sales Order Confirmation.
- 3.7. HMC shall not be liable for any delays in delivery, including failure to deliver the Goods in accordance with any delivery date specified in the Customer's Order or the Sales Order Confirmation.

4. Price and Payment

- 4.1. The Price for ordered Goods will be set out in the Sales Order Confirmation. The Price set out in the Sales Order Confirmation is subject to adjustment in accordance with clause 4.3.
- 4.2. HMC may from time to time provide Quotations to the Customer with pricing for Goods. Any Quotations will be valid on the terms and for the time specified therein. Where HMC has provided a Quotation to the Customer, HMC reserves the right to vary the price quoted in the Quotation. Without limitation, HMC may vary quoted prices where it has issued an updated price list, where there is any variation to the plan of scheduled works or specifications for the Goods (including, but not limited to, any variation due to unforeseen circumstances, or due to fluctuations in the currency exchange rate, or as a result of increases to HMC in the cost of materials, packaging, labour and transport). Any such variations to the quoted price will be specified as variations to the Price in the Sales Order Confirmation.
- 4.3. The Price specified in the Sales Order Confirmation may be adjusted by HMC at (or prior to) date of despatch of the Goods and the adjusted Price will be the Price payable for the ordered Goods. Adjustments to Price may be made where HMC has issued an updated price list for the Goods, and the adjusted Price will be the Price quoted in the updated price list current as at the date of despatch of the Goods. Adjustments to Price may also be made where there is any variation to the plan of scheduled works or specifications for the Goods; changes to the cost to manufacture or supply the Goods (including, but not limited to, any variation to price due to unforeseen circumstances, or due to fluctuations in the currency exchange rate, or as a result of increases in the cost of materials, packaging, labour and transport). HMC will notify the Customer of any adjustment to the Price (including by issuing an updated price list). The Customer will be deemed to have accepted the adjusted Price, unless it notifies HMC within seven (7) days of receiving notification of the adjusted Price, that it does not accept the adjusted Price.
- 4.4. HMC will issue invoices on the date of fulfilment of an Order and despatch of the Goods. HMC's payment terms are within thirty (30) days from the date of the invoice (unless otherwise specified by HMC in its invoice, and subject to HMC reserving the right to require upfront payment in accordance with clause 4.7).
- 4.5. Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to five percent (5%) of the Price), foreign exchange (received in Australian dollars (\$AUD)) or by any other method as agreed to between the Customer and HMC.
- 4.6. Time for payment for the Goods is of the essence.
- 4.7. At HMC's sole discretion it may require the Customer to make payment in full (or part) on 'Payment in Advance' terms at the time of placing the Order. Orders for Goods on "Payment In Advance" terms, will not be received by HMC until payment has been made and proof of payment has been submitted i.e. payment remittance advice. A delay in HMC receiving the payment in advance for the Goods may affect

the lead time for Delivery.

- 4.8. Unless otherwise stated, Prices are quoted exclusive of GST and all other applicable taxes, duties, levies or fees. In addition to the Price, the Customer must pay to HMC an amount equal to any GST that HMC must pay for any supply by HMC under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.9. Notwithstanding clause 4.8, HMC shall not charge the Customer any applicable tax if HMC is satisfied prior to delivery of the Goods that the Customer is exempt from the payment of such tax.
- 4.10. Unless otherwise stated, Prices are exclusive of freight and insurance, import duty and other taxes or levies required by law to be paid in relation to the Goods. The Customer must pay such costs and charges as invoiced by HMC.
- 4.11. If the Goods are exported from Australia, the Customer will be responsible for any taxes and duties on the Goods in the country of destination.

5. Delivery of Goods

- 5.1. Delivery of the Goods is to be made at the delivery point specified in the Sales Order Confirmation.
- 5.2. Delivery of the Goods is taken to occur at the time that:
 - (a) the Customer (or the Customer's nominated carrier) takes possession of the Goods at HMC's warehouse address (where the delivery point is HMC's nominated warehouse); or
 - (b) HMC (or HMC's nominated carrier) delivers the Goods to the Customer's nominated delivery address even if the Customer is not present at the address where the delivery point is the Customer's nominated delivery address).
- 5.3. The cost of Delivery will be included in the Price at HMC's sole discretion. If the cost of Delivery is not included in the Price quoted by HMC, it will be a cost payable by the Customer in addition to the Price.
- 5.4. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. The Customer must return to HMC's custody as arranged any packaging which remains the property of HMC and must be returned (such as shipping or tank containers). In the event that the Customer is unable to take Delivery of the Goods or return packaging as arranged then HMC shall be entitled to charge a reasonable fee for redelivery and/or storage and to recover any other costs incurred by HMC including financing costs.
- 5.5. HMC may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.6. Any time or date for Delivery given by HMC to the Customer, is an estimate only. The Customer must accept Delivery of the Goods before or after any proposed date for Delivery, and HMC will not be liable for any loss or damage incurred by the Customer for not delivering the Goods on the proposed date for Delivery (including late Delivery).
- 5.7. In the absence of a proven defect in HMC's system of weighing, the weight of Goods sold by HMC shall be the last weight determined by HMC's system of weighing prior to Delivery.

6. Risk

- 6.1. Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, HMC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by HMC is sufficient evidence of HMC's rights to receive the insurance proceeds

without the need for any person dealing with HMC to make further enquiries.

- 6.3. If the Customer requests HMC to leave Goods outside HMC's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

7. Title

- 7.1. HMC and the Customer agree that ownership of the Goods shall not pass to the Customer until the Customer has paid HMC all amounts owing to HMC in full.
- 7.2. Receipt by HMC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 7.3. It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 7.1 that the Customer is only a bailee of the Goods and must return the Goods to HMC on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for HMC and must
 - (c) pay to HMC the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (d) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for HMC and must pay or deliver the proceeds to HMC on demand;
 - (e) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of HMC and must sell, dispose of or return the resulting product to HMC as it so directs;
 - (f) the Customer irrevocably authorises HMC to enter any premises where HMC believes the Goods are kept and recover possession of the Goods;
 - (g) HMC may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (h) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of HMC; and
 - (i) HMC may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 7.4. At all times HMC retains the right of possession of any pallets used for Delivery of the Goods and the Customer agrees to indemnify HMC in respect of any pallets not returned in good order and condition to HMC within one (1) month of Delivery of the Goods.

8. Order Forecasts

- 8.1. This clause 8 applies where HMC requires the Customer to provide Order Forecasts for Goods.
- 8.2. The Customer must provide HMC with forward forecasts for the Customer's anticipated order requirements for Goods for the order period/s specified in the Order Forecast. The Customer must use reasonable endeavours to ensure that all Order Forecasts are accurate, and place Orders for Goods consistent with Order Forecasts. If any Order Forecast is inaccurate, the Customer must notify HMC immediately.
- 8.3. All Orders placed by a Customer remain at all times subject to acceptance by HMC with the issue of a Sales Order Confirmation. HMC gives no guarantee or assurance that it will be able to deliver Goods in accordance with an Order Forecast.
- 8.4. Where a Customer does not place an Order for Goods consistent with an Order Forecast, the Customer must pay to HMC as a debt due and payable to HMC upon demand:
- (a) where HMC has in good faith procured raw materials (including components, packaging and labels) required to deliver the Goods to the Customer in accordance with the Order Forecast which HMC cannot use for any other order or purpose (**redundant raw material**), the invoiced cost for the

redundant raw material; and

(b) all other costs and expenses reasonably incurred by HMC in connection with delivery of the Goods in accordance with the Order Forecast (including costs of disposal of redundant raw material).

9. Blanket Purchase Orders

- 9.1. This clause 9 applies where HMC and the Customer have agreed to Blanket Purchase Orders (**BPO**) for Orders of Goods.
- 9.2. A BPO is only valid for Orders placed for Goods during the period specified in the BPO. A BPO will not be accepted for longer than a six (6) month period unless otherwise agreed to by HMC.
- 9.3. The Customer must use reasonable endeavours to place Orders and accept delivery of Goods in accordance with the terms of the BPO. All Orders placed by a Customer under a BPO remain at all times subject to acceptance by HMC with the issue of a Sales Order Confirmation.
- 9.4. HMC will deliver the Goods placed under a BPO on the basis specified in the BPO. Delivery of Goods placed under a BPO will be on a rateable basis throughout the order period specified in the BPO, unless otherwise agreed.
- 9.5. If at the end of BPO time period there are outstanding quantities of Goods remaining to be delivered under the BPO HMC at its discretion (but in consultation with the Customer) will either:
 - a) deliver those outstanding Goods to the Customer and invoice the Customer for those Goods; or
 - b) attempt to sell those outstanding Goods to another customer and if no other customer can be found for the Goods, dispose of the Goods. All costs and expenses incurred by HMC in connection with this clause (including costs of manufacture of the Goods and disposal of the Goods) will be invoiced to the Customer and will be a debt due and payable by the Customer to HMC in accordance with the invoice.

10. Cancellation of Orders for Goods

- 10.1. HMC may cancel any Sales Order Confirmation for the supply of Goods to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice HMC shall refund to the Customer any money paid by the Customer for the Goods. HMC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 10.2. The Customer may only cancel an Order for Goods where HMC agrees to the cancellation of the Order, which may be accepted or declined at the discretion of HMC. Cancellation of Orders for Goods made to the Customer's specifications, or for non-stock list items, will not be accepted once production has commenced.
- 10.3. In the event that the Customer cancels any Order, the Customer must reimburse HMC on demand, all costs and expenses incurred by HMC in connection with the cancelled Order, including, but not limited to, the cost of all materials (including raw material, components, packaging and labels) purchased by HMC for the purpose of fulfilling the Order, the full cost for all non-stock list items and costs for disposal of the Goods. If the cancelled Order is for Goods made to the Customer's specifications or is non-stock items, HMC may seek reimbursement of the full cost of production of those Goods.

11. Inspection and returns

- 11.1. The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify HMC in writing if Delivery does not conform with the Sales Order Confirmation or of any evident defect in or damage to the Goods. Failure to notify HMC is deemed to be conclusive evidence that the Customer accepts the Goods.
- 11.2. The Customer must notify HMC of any other alleged defect in the Goods as soon as reasonably possible

after any such defect becomes evident (and in any event within seven (7) days).

- 11.3. Upon notification of any alleged defect the Customer must allow HMC to inspect the Goods and provide such records and other information requested by HMC in order for HMC to investigate the alleged defect.
- 11.4. The Customer must not return any Goods, unless HMC has given its prior written approval for their return.
- 11.5. Subject to clause 11.7, a return of defective or damaged Goods will only be accepted by HMC where:
 - (a) the Customer has complied with the provisions of clause 11.1 or 11.2;
 - (b) HMC notifies the Customer that the Goods can be returned;
 - (c) the Goods are returned to HMC within a reasonable time and in accordance with HMC's directions for return;
and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.6. HMC may in its absolute discretion accept non-defective Goods for return, and in which case HMC may require the Customer to pay HMC's reasonable handling fee to facilitate the return of the Goods plus any return freight costs.
- 11.7. Notwithstanding anything contained in this clause 11, if HMC is required by a law to accept a return of any Goods then HMC will accept a return on the conditions imposed by that law.

12. Recall of Goods

- 12.1. If HMC becomes aware of any defect, fault or other condition, actual, potential or threatened, in any Goods of a nature or extent that the Goods should not be used or offered for sale (**Threat**), then HMC will (to the extent that it considers appropriate) notify the Customer.
- 12.2. The Customer must co-operate to the fullest extent possible with any directions from HMC to diminish any risk from the Threat.
- 12.3. The Customer waives any claim it may have in connection with any decision made by HMC to undertake a recall or withdrawal of the Goods.

13. Limitation of liability and Australian Consumer Law guarantees

- 13.1. Under applicable State, Territory and Commonwealth Law (including, without limitation the Australian Consumer Law), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the Australian Consumer Law) may be implied into these terms and conditions (**Non-Excluded Guarantees**). Nothing in these terms and conditions purports to modify or exclude the application of the Non-Excluded Guarantees.
- 13.2. Except as expressly set out in these terms and conditions, HMC makes no guarantees, warranties or other representations in relation to the Goods, including but not limited to the quality or suitability of the Goods for the Customer, and any other guarantees, warranties or representations whether implied or otherwise are excluded.
- 13.3. Except as may be otherwise notified by the Customer to HMC, the parties acknowledge that the Goods will be obtained by the Customer for either the purpose of re-supply (in an altered form or condition or to be incorporated into other goods) or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.
- 13.4. Where the Customer is a 'Consumer' (within the meaning of the Australian Consumer Law) and any of the Goods supplied by HMC are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, HMC's liability is limited to the extent permissible by law and at HMC's option to:
 - (a) the replacement of the Goods, or the supply of equivalent Goods;

- (b) the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods or any equivalent Goods; or
 - (d) the payment of the cost of have the Goods repaired.
- 13.5. Except as provided in clause 13.4, HMC's liability for any defect or damage in the Goods is:
- (a) limited to the extent set out in any express written warranty card for the Goods provided by HMC to the Customer;
 - (b) limited to the extent of any third party supplier or manufacturer warranty for the Goods to which HMC is entitled (where HMC did not manufacture the Goods); and
 - (c) otherwise negated absolutely to the fullest extent permitted by law.
- 13.6. HMC's total aggregate liability to the Customer in all circumstances is limited (to the extent permitted by law) to the amount paid by the Customer for the Goods.
- 13.7. Subject to law, HMC shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by HMC; or
 - (e) fair wear and tear, any accident, or act of God.

14. Intellectual Property

- 14.1. The Customer acknowledges and agrees that:
- (a) all trademarks, patents, formulations and other intellectual property rights in or relating to the Goods are the property of HMC, related entities of HMC, or HMC's suppliers or manufacturers, and the Customer will not directly or indirectly make any claim of or to the intellectual property rights relating to the Goods;
 - (b) the Customer must not, and must not do anything to enable or facilitate any other person or entity to do anything or deal with the Goods in any way that infringes, impairs or otherwise diminishes the intellectual property rights of HMC, HMC's related entities or HMC's suppliers or manufacturers;
 - (c) the Customer must not, and must not do anything to enable or facilitate any other person or entity to do anything to remove or alter in any way any of HMC's trademarks that may be applied to the Goods including packaging and product information materials;
 - (d) a breach of the Customer's obligations in this clause 14.1 may cause irreparable harm to HMC and damages may not be an adequate remedy for such breach; and
 - (e) the Customer consents to any injunctive relief or specific performance sought by HMC, in addition to any other remedies available to HMC.

15. Confidential Information

- 15.1. The Customer shall treat (and cause its personnel to treat) all confidential information of HMC (including Quotations, Sales Order Confirmations and Invoices, any information concerning HMC, the Goods or Price (including price lists), these terms and conditions, and any information marked as 'confidential') **(Confidential Information)** in the strictest confidence, and shall not disclose or permit it to be disclosed to any third party unless:
- (a) authorised in writing by HMC;
 - (b) it is disclosed to its advisers, financiers, or prospective financiers (who have agreed to be bound by

confidentiality);

(c) it is required to be disclosed by law; or

(d) it is information which is or becomes part of the public domain (other than as a result of a breach of this clause 15).

15.2. Where directed by HMC, the Customer must return to HMC all of HMC's Confidential Information in its possession or control; or delete, erase, or otherwise destroy any of HMC's Confidential Information contained in computer memory, magnetic, optical, laser, electronic or other media in its possession or control, but which is not capable of being delivered to HMC.

15.3. The Customer must not use HMC's names or marks, nor make any reference to HMC, directly or indirectly in any media release, public announcement or public disclosure relating to these terms and conditions or its subject matter, including in any promotional or marketing materials, customer lists or business presentations, without the prior written consent of HMC.

16. Default and Consequences of Default

16.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at HMC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

16.2. If the Customer owes HMC any money the Customer must indemnify HMC from and against all costs and disbursements incurred by HMC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HMC's collection agency costs, and bank dishonour fees).

16.3. Without limiting any other right or remedy that HMC may have, if any money payable to HMC has not been paid by the due date for payment HMC may by giving notice to the Customer suspend the supply of Goods until payment has been received. HMC will not be liable to the Customer for any loss or damage the Customer suffers because HMC has exercised its rights under this clause 16.3.

16.4. Without limiting any other right or remedy that HMC may have HMC may by giving notice to the Customer terminate all or any part of any Order of the Customer if:

(a) the Customer is in breach of any of its obligation under these terms and conditions (including its obligation to make payment);

(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16.5. Without prejudice to HMC's other rights or remedies at law, in the event that HMC terminates all or any part of any Order in accordance with this clause 16:

(d) the Customer must make immediate payment of all amounts owing to HMC shall, whether or not due for payment;

(e) where HMC has procured raw materials (including components, packaging and labels) required to deliver the Goods to the Customer in accordance with the terminated Order which HMC cannot use for any other order or purpose ('**redundant raw material**'), the Customer must make immediate payment of the invoiced cost for the redundant raw material; and

(f) the Customer must make immediate payment of all other costs and expenses reasonably incurred by HMC in connection with termination of the Order.

17. Personal Property Securities Act 2009 ("PPSA")

17.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

- 17.2. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by HMC to the Customer.
- 17.3. The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which HMC may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 17.3(a)(i) or 17.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, HMC for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of HMC; and
 - (d) immediately advise HMC of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 17.4. HMC and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 17.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 17.6. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 17.7. Unless otherwise agreed to in writing by HMC, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 17.8. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

18. Privacy Act 1988

- 18.1. The Customer agrees for HMC to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by HMC.
- 18.2. The Customer agrees that HMC may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.
- 18.3. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 18.4. The Customer consents to HMC being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

- 18.5. The Customer agrees that personal credit information provided may be used and retained by HMC for the following purposes (and for other purposes as shall be agreed between the Customer and HMC or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by HMC, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the
 - (d) provision of Goods; and/or
 - (e) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (f) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in
 - (g) the Customer's account in relation to the Goods.
- 18.6. HMC may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 18.7. The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that HMC is a current credit provider to the Customer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of HMC, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once; and
 - (h) that credit provided to the Customer by HMC has been paid or otherwise discharged.

19. Compliance with laws applicable to Goods

- 19.1. The Customer warrants that in storing, handling and using the Goods, the Customer must comply with all relevant laws and regulations (including, without limitation, environmental laws and regulations) and does, or on acquisition of the Goods, will, possess and comply with all necessary permits and licences and adhere to the necessary and appropriate safety precautions in relation to the Goods.

20. Change in Control

- 20.1. The Customer must give HMC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer will be liable for any loss incurred by HMC as a result of the Customer's failure to comply with this clause 20.

21. General

- 21.1. The failure by HMC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect HMC's right to subsequently enforce that provision.
- 21.2. Any provision of these terms and conditions that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision as required by this clause, part or all of the clause that is unlawful or unenforceable will be severed from these terms and conditions and the remaining provisions continue in force.
- 21.3. These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New Wales.
- 21.4. Neither party shall have any liability whatsoever to the other party for any indirect and/or consequential loss and/or expense (including loss of profit) arising out of a breach of these terms and conditions or in relation to the Goods. Subject to clause 13, HMC's liability shall under no circumstances exceed the Price of the Goods.
- 21.5. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by HMC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.6. HMC may license or sub-contract all or any part of its rights and obligations under these terms and conditions (including the manufacture or supply of the Goods) at its discretion, and without any requirement to obtain the Customer's consent.
- 21.7. The Customer agrees that HMC may amend these terms and conditions at any time. If HMC makes a change to these terms and conditions, then that change will take effect from the date on which HMC notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer places an Order for the Goods.
- 21.8. A party will not be liable for any failure or delay in the performance or discharge of its obligations under these terms and conditions (except in the case of the Customer's payment obligations) to the extent that such failure or delay is caused due to any act of God, war, terrorism, strike, lock-out, industrial action, embargoes, riots, insurrections, fire, flood, storm, defaults of HMC's suppliers or distributors, delays in transportation, instructions or priority requests of any government or any department of agency, civil or military authority, or other event beyond the reasonable control of either party.
- 21.9. The Customer warrants and agrees that it has the power to place Orders for the Goods and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that these terms and conditions create binding and valid legal obligations on the Customer.
- 21.10. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these terms and conditions.