

## 1. Definitions

- 1.1 **"HMC"** means Harrison Manufacturing Co Pty Limited ABN 50 000 080 946 of 75 Old Pittwater Road Brookvale NSW 2100 (and any related entity that may accept an Order for the Goods) and includes any successors and assigns.
- 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"** means receipt or collection of the Goods by the Customer, determined in accordance with clause 5.2 of these terms and conditions.
- 1.5 **"Delivery Point"** means the place for Delivery of the Goods as confirmed in the Sales Order Confirmation, and may include ex-works from HMC's nominated warehouse address or the Customer's nominated delivery address.
- 1.6 **"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).
- 1.7 **"GST"** means Goods and Services Tax.
- 1.8 **"Order"** means a written purchase order from the Customer to HMC for Goods given in accordance with clause 3.
- 1.9 **"Order Forecast"** means a Customer's forward forecast for orders for Goods.
- 1.10 **"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).
- 1.11 **"Quotation"** means a written quotation provided by HMC to the Customer for the Price for the supply of Goods.
- 1.12 **"Sales Order Confirmation"** means HMC's written acceptance of an Order issued in accordance with clause 3.2.
- 1.13 **"Trade Referees"** means the trade referees referred to in the Account Application Form.

## 2. Application

- 2.1 These terms and conditions 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.
- 2.2 These terms and conditions apply to the exclusion of any terms and conditions of the Customer (whether on the Customer's Order or otherwise).
- 2.3 The Customer is taken to have exclusively accepted and is immediately bound by these terms and conditions when the Customer places an Order for the Goods.
- 2.4 HMC may amend these terms and conditions from time to time, and the amended terms and conditions will apply to each Order placed for Goods after the date of amendment.
- 2.5 The terms and conditions current as at the date of an Order can be found at [www.harrisonmanufacturing.com.au/terms/](http://www.harrisonmanufacturing.com.au/terms/).

## 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:
- the Goods which will be sold to the Customer;
  - the Price for the Goods; and
  - the proposed date for Delivery of 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 (and within three (3) business days of receipt of the Sales Order Confirmation) 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, accept as may be provided for in this terms and conditions or as otherwise 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 proposed date for delivery of the Goods as specified in the Customer's Order or in 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 Customer must notify HMC immediately (and within three (3) business days of receipt of the Sales Order Confirmation) if the Customer does not accept the Price specified in the Sales Order Confirmation. The Price set out in the Sales Order Confirmation is subject to later adjustment by HMC 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 a Sales Order Confirmation may be adjusted by HMC at any time prior to the 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 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 and the reasons that it does not accept the adjustment. Any disputes in relation to any adjustment to Price in accordance with this clause are to be discussed and resolved by the parties acting reasonably.
- 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 different payment terms including upfront payment in accordance with clause 4.7).
- 4.5 Payment of invoices must be made by electronic/on-line banking to HMC's nominated bank account, 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. If the Customer fails to pay HMC by the due date for payment in accordance with clause 4.4, HMC shall charge the Customer interest on overdue invoices in accordance with clause 16.1 until payment has been made in full.
- 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 or prior to despatch. Orders for Goods on "payment in advance" terms, will not be processed or despatched 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 delivery, 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.
- 4.12 If the Customer objects to anything contained in an invoice: (a) the Customer must give written notice to HMC detailing the Customer's objection within seven (7) days of the date of that invoice. The Customer must include appropriate evidence supporting its objection. If the Customer fails to give the notice within the time prescribed, it is taken to have accepted the invoice as issued;
- (b) HMC must consider the Customer's objection and notify the Customer within seven (7) days whether it accepts or rejects the objection, and give its reasons for any rejection; and
- (c) any disputes in relation to an invoice in accordance with this clause are to be discussed and resolved by the parties acting reasonably.
- 4.13 The Customer is responsible for ensuring payment is made to the correct HMC nominated bank account or payment is otherwise received by the method as agreed between the Customer and HMC in accordance with clause 4.5.
- 4.14 The Customer must have in place payment verification systems and processes to ensure payment is made to HMC. The Customer will remain liable to pay all amounts due to HMC in the event that the Customer makes a mistaken or incorrect payment (for example, as a result of the Customer paying the incorrect bank account due to a scam or fraudulent invoice).
- 4.15 Without limiting any clause in these terms and conditions, in the event of debts owed by Customer to HMC being more than six (6) months past the due date, the Customer acknowledges HMC will notify Equifax, Experian and Illion credit agencies of the debt.
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- 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) where the Delivery Point is HMC's warehouse (or nominated address), when the Customer (or the Customer's nominated carrier) takes possession of the Goods at HMC's warehouse (or nominated address); or (b) where the Delivery Point is the Customer's delivery address, when HMC (or HMC's nominated carrier) delivers the Goods to the Customer's nominated delivery address even if the Customer is not present at that address to accept delivery.
- 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. In the event that the Customer does not accept, or is unable to accept Delivery of the Goods 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 The Customer must return to HMC's custody as arranged any packaging which remains the property of HMC (including shipping or tank containers, and intermediate bulk vessel ("IBV")). In the event that the Customer does not return any such packaging to HMC, or such is returned in a damaged condition, then HMC shall be entitled to charge a fee for the unreturned or damaged packaging.
- 5.6 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.
- 5.7 Any time or date for delivery of the Goods 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 of the Goods, 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).



- 5.8 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.
- 5.9 The Customer shall comply with all relevant regulations and laws applicable to Goods in accordance with clause 19, including in relation to delivery of the Goods.
- 5.10 Where the Delivery Point is the Customer's nominated delivery address:
- (a) the Customer must take Delivery at its nominated delivery address in accordance with HMC's delivery schedule allowing reasonable time for transportation and delivery; and
- (b) where HMC identifies a potential risk to safety or potential environmental harm at the Customer's Delivery Point, it may withhold delivery of the Goods until such time that the Customer rectifies the issue.
- 5.11 Nothing in clause 5.10 (or this Agreement) is intended to have the effect of HMC assuming any responsibility or liability for the Customer's obligations under or in connection with compliance with all regulations or laws.
- 5.12 Where the Delivery Point is ex-works from HMC's warehouse address, the Customer must comply with any notice, procedure or reasonable instruction given by HMC in connection with access to and taking Delivery of the Goods (including vehicle requirements and loading) at the warehouse address.
- 5.13 Where CHEP pallets (supplied under hire or loan by CHEP Australia Limited / CHEP Group) or LOSCAM pallets (supplied under hire or loan by Loscam Australia Pty Ltd) are used for transport and delivery of the Goods, the Customer must hold and maintain an active CHEP or LOSCAM account and comply with the CHEP or LOSCAM terms of hire. The Customer must notify HMC in the event that it's CHEP or LOSCAM account has been suspended or revoked. Where the Customer does not hold an active CHEP or LOSCAM account, it must return to HMC all CHEP or LOSCAM pallets in good condition within thirty (30) days of Delivery of the Goods. The Customer must indemnify HMC for any loss or expense suffered by HMC in connection with the Customer's use of CHEP or LOSCAM pallets (including for non-return or damage).
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- 6. Risk**
- 6.1 Risk of damage to or loss of the Goods passes to the Customer in accordance with clause 6.4 and the Customer must insure the Goods on or before risk in the Goods passes to the Customer.
- 6.2 If any of the Goods are damaged or destroyed during or following Delivery but prior to title to the Goods 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 warehouse premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 6.4 Risk in the Goods shall pass to the Customer:
- (a) in the case of packed Goods where the Delivery Point is the Customer's delivery address, at the time of physical delivery at the relevant Delivery Point (which for avoidance of doubt in relation to pallet Goods is when Goods are made available to off-load at the relevant Delivery Point by the vehicle driver);
- (b) in the case of packed Goods where the Delivery Point is HMC's warehouse address (ex-works), at the time that the Goods are made available to load onto the Customer's vehicle; and
- (c) in the case of bulk Goods, as the Goods pass the flange connecting the delivery facilities provided by HMC with the receiving facilities provided by the Customer.
- 6.5 Any technical, engineering or other information concerning the Goods that may be provided by HMC to the Customer whether in person, in written form, through its website or by any other means and whether connected with the sale of Goods or not ("**technical information**") is provided by HMC as general information only. Any technical information that may be provided, is not provided as a substitute for the Customer's obligation to make its own assessment of the Goods, or the Customer obtaining its own independent advice and using its own sound professional judgement (including without limitation engineering judgement). The Customer must independently verify the suitability of any technical information before acting on it. HMC does not have any responsibility for, or control over, the use, application or resale of the Goods by the Customer. The Customer acknowledges and agrees that HMC cannot anticipate all conditions or variables for any of the Customer's use of the Goods or the appropriateness of the technical information for the Customer's use, application or resale of the Goods. Accordingly (and subject to law) HMC is not liable for and disclaims any liability for loss or damage that may be suffered by the Customer directly or indirectly related to any technical information and Customer assumes all risk relating to its use of any technical information.
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- 7. Title**
- 7.1 HMC and the Customer agree that title and ownership of the Goods shall not pass to the Customer until the Customer has paid to HMC in full all amounts owing for the Goods.
- 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;
- (c) the Customer must 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.

due and payable by the Customer to HMC in accordance with the invoice.

## 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 shall ensure that all Order Forecasts are accurate, and place Orders for Goods consistent with Order Forecasts.
- 8.3 The Customer must notify HMC as soon as practical if it is unable to place Orders in accordance with Order Forecasts.
- 8.4 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.
- 8.5 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 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 shall 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

## 10. Cancellation of Orders for Goods

- 10.1 HMC where it has reasonable grounds for doing so (including due to production delays and raw material shortages), may cancel any Sales Order Confirmation for the supply of Goods or cancel delivery of Goods 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 any Order is cancelled by the Customer, 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 for non-stock items, HMC may seek reimbursement of the Price for the Goods.

## 11. Inspection and returns

- 11.1 The Customer must inspect the Goods on Delivery and must within three (3) business days of Delivery notify HMC in writing if Delivery does not conform with the Sales Order Confirmation. 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 HMC shall take and retain a control sample of Goods for a maximum period of eighteen (18) months from date of manufacture of the Goods. At the end of this period the control sample will be discarded unless the Customer has made a complaint or claim, in which case it shall be retained for analysis as set out in clause 11.5.
- 11.4 Upon notification of any alleged defect the Customer must allow HMC to inspect the Goods, take samples of the Goods for testing and provide to HMC such records and other information (including storage and handling records) requested by HMC in order for HMC to investigate the alleged defect.
- 11.5 Subject to clause 11.9, any claim for defect in the Goods will be determined by HMC through an analysis of:
- (a) HMC stored control sample (retained in accordance with clause 11.3);
- (b) the defective Goods sample taken by HMC (obtained in accordance with clause 11.4);
- (c) the Customer's alleged defective Goods; and
- (d) the Customer's records and information (obtained in accordance with clause 11.4).
- 11.6 The Customer must not return any Goods, unless HMC has given its prior written approval for their return.
- 11.7 Subject to clause 11.9, a return of defective or damaged Goods will only be accepted by HMC where:
- (a) the Customer has complied with the provisions of clause 11.2;



- (b) the Customer has used best endeavours to minimise any loss or damage resulting from the alleged defect;
- (c) HMC notifies the Customer that the Goods can be returned;
- (d) the Goods are returned to HMC within a reasonable time and in accordance with HMC's directions for return; and
- (e) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.8 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.
- 11.9 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.

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## 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.

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## 13. Limitation of liability and Australian Consumer Law guarantees

- 13.1 Except as expressly set out in these terms and conditions or otherwise in writing by HMC, HMC gives no guarantees, warranties or other representations in relation to the Goods, including but not limited to the quality, durability or suitability of the Goods for the Customer. Except as may be required by law, any other guarantees, warranties or representations whether implied or otherwise are excluded.
- 13.2 The parties acknowledge that except where otherwise specified, the Goods are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, and are acquired by the Customer for either the purpose of re-supply, or for the purpose of using them in trade or commerce, or for the purpose of using them in a process of production or manufacture, or for the purpose of using them for repairing or treating other goods or fixtures on land.
- 13.3 HMC's liability to the Customer is limited (to the extent permissible by law) 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.
- 13.4 Except as provided in clause 13.3, HMC's liability for any defect or damage in the Goods is otherwise negated absolutely to the fullest extent permitted by law.
- 13.5 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.

- 13.6 Subject to law, HMC shall not be liable for any defect or damage to the extent which is caused or arises as a result of:
- (a) the customer failing to make its own investigations and its own assessment of the suitability of the Goods for the purpose for which they will be used;
- (b) the Customer failing to properly handle, maintain or store any Goods, including as outlined within Australian Standards (AS 1940: 2017) and specifically for grease National Lubricating Grease Institute ("**NLGI**") Recommended Practices for Storage and Handling of Lubricating Grease;
- (c) the Customer using the Goods for any purpose other than that for which they were designed;
- (d) 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;
- (e) the Customer failing to follow any instructions or guidelines provided by HMC;
- (f) the Customer failing to comply with clause 19;
- (g) fair wear and tear; or
- (h) any accident, or act of God.

- 13.7 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**"). To the extent that such Non-Excluded Guarantees apply to the sale of the Goods to the Customer, nothing in these terms and conditions purports to modify, restrict or exclude the application of the Non-Excluded Guarantees including any statutory remedies.

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## 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 (including any associated documentation and materials) are the property of HMC, related entities of HMC, or HMC's suppliers or manufacturers, and the Customer does not own, and will not directly or indirectly make any claim 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 may infringe, impair or otherwise diminish the intellectual property rights of HMC, HMC's related entities or HMC's suppliers or manufacturers in the Goods;
- (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 labelling, 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, to enforce its rights under this clause 14.

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## 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 use or disclose, or permit it to be used or 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%) above the Reserve Bank of Australia ("**RBA**") Cash Rate. Such interest is in addition to any other remedies available to that party in respect of non-payment.

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:

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

(c) 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 Laws

18.1 To the extent that a party handles personal information in connection with these terms and conditions or any Order, the party must handle the personal information in accordance with applicable Privacy Laws.

18.2 **Trade referees:** The Customer must:

(a) notify the Trade Referees that:

(i) it will provide HMC with their personal information so that HMC can contact them for trade reference



- purposes, including to collect information about the Customer's payment history;
- (ii) HMC will handle their personal information in accordance with HMC's privacy policy that is located on the HMC website; and
- (b) obtain consent from the Trade Referees for HMC to collect and use their personal information to contact them for trade reference purposes.
- 18.3 The Privacy Collection Notice set out in Attachment A explains how HMC will handle personal information in connection with these terms and conditions.
- 18.4 If HMC makes available any portal or account to the Customer in connection with these terms and conditions, the Customer must ensure that it and its personnel, must keep all usernames, passwords and other security-based information secure and private at all times. If any username, password or other security based information is lost or stolen, the Customer must notify HMC in writing and take any reasonable steps HMC advise the Customer to take to mitigate the adverse impact of the lost or stolen security-based information at the earliest possible opportunity.
- 18.5 In this clause:
- (a) **"Personal information"** has the meaning given to that term in the *Privacy Act 1988*(Cth).
- (b) **"Privacy Laws"** means the *Privacy Act 1988* (Cth) as amended from time to time.
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- 19. Compliance with laws applicable to Goods**
- The Customer warrants that in accepting delivery, storing, handling and using the Goods, the Customer must comply with all relevant guidelines, standards, laws and regulations applicable to the storage and use of the Goods (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.
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- 20. Change in Control**
- 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.
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- 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 for the supply of Goods 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 South Wales.
- 21.4 Subject to clause 13, HMC's liability to the Customer under these terms and conditions shall under no circumstances exceed the amount paid by the Customer for the Goods or the Price of the Goods, whichever is the greater.
- 21.5 The Customer shall not withhold payment of any invoice because part of that invoice is in dispute.
- 21.6 The parties must, without delay and acting reasonably, attempt to resolve any dispute which arises out of or in connection with these terms and conditions and the supply of the Goods. Unless a party has complied with the provisions of this clause that party may not commence court proceedings or arbitration relating to any dispute arising from these terms and conditions except where that party seeks urgent interlocutory relief, in which case that party need not comply with this clause before seeking the relief.
- 21.7 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.
- 21.8 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 the amended and updated terms and conditions are notified to the Customer or otherwise made available at [www.harrisonmanufacturing.com.au/terms/](http://www.harrisonmanufacturing.com.au/terms/) The Customer will be taken to have accepted such amendments if the Customer places an Order for the Goods.
- 21.9 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.
- 21.10 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.
- 21.11 The United Nations Convention on Contracts for the International Sale of Goods does not apply to these terms and conditions.



## Attachment A- PRIVACY COLLECTION NOTICE

- HMC understands the importance of being open and transparent with you in the way in which we collect, hold, store, use and share your personal information. We take protecting your privacy very seriously.
- This document contains important information on how we handle your information and we strongly recommend you read it carefully.
- ***This Privacy Collection Notice applies to all individuals in connection with the Customer who provide personal information on or in connection with this Agreement.***
- The Customer is responsible for making aware individuals, such as its staff, that HMC collect information about such individuals in the course of doing business with the Customer.

HMC collects, stores, uses and shares personal information in connection with doing business with the Customer in connection with the terms and conditions and Orders. HMC handles your personal information in accordance with the *Privacy Act 1988* (Cth) (**Privacy Act**) (including the Australian Privacy Principles (**APPs**)).

### ***Why do we collect, store and use your personal information?***

HMC generally only collects your name, job title, and business contact information (such as email, phone number and address).

We collect, use and store this personal information for the purposes of:

- contacting you (including by way of email) in response to your enquiries about your Orders or our Goods and services and otherwise in connection to manage our relationship with the Customer;
- sending you information including by way of direct marketing about other Goods or services, news or events that we think might be of interest to you – you can opt out at any time by using the unsubscribe facility in the messages we send you, or by contacting us in accordance with our Privacy Policy;
- complying with our legal and regulatory obligations; and
- otherwise conducting our ordinary business functions and activities.

We otherwise collect, store, use and share your personal information as set out in our Privacy Policy. We generally collect your personal information in Australia. However, it is likely that we will share your personal information with overseas recipients, as further explained in our Privacy Policy.

### ***How can you find out more information and contact us?***

You should refer to HMC's **Privacy Policy** on our website at <https://harrisonmanufacturing.com.au/> for further detail about how:

- we handle personal information;
- you can opt-out of marketing communications from us;
- you may access and seek correction of your personal information; and
- you may make a complaint about how your personal information has been handled and how HMC will handle your complaint.