

# Hydrapower Systems Limited – Terms & Conditions of Trade

## 1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Price, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "HSL" means Hydrapower Systems Limited (or otherwise referred to as the "Vendor"), its successors and assigns or any person acting on behalf of and with the authority of Hydrapower Systems Limited.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting HSL to provide the Goods as specified in any proposal, price, order, invoice or other documentation, and:
  - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods, or Services, supplied by HSL to the Client (including consultation, materials, manufacturing and design) at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.5 "Cookies" means small files which are stored on a user's electronic device. They are designed to hold a modest amount of data (including PII) specific to a particular Client and website and can be accessed either by the web server or the Client's electronic device. If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to ordering Goods via the website.
- 1.6 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between HSL and the Client in accordance with clause 6 below.

## 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a client information form with HSL and it has been approved with a credit limit established for the account, if required.
- 2.5 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, HSL reserves the right to refuse acceptance for new orders or refuse delivery of the Services.
- 2.6 The supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, HSL reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 6.2. In all such cases HSL will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Services on hold, as per clause 7 until such time as HSL and the Client agree to such changes.
- 2.7 The Client acknowledges that when bulk orders are made but arranged to be released by HSL on an interim basis, the Client is responsible for the entire bulk order and no cancellation will be permitted.
- 2.8 In the event that the Goods provided by HSL are the subject of an insurance claim that the Client has made, then the Client shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by HSL and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.9 Where HSL gives any advice, recommendation, information, assistance or service provided by HSL in relation to Goods supplied is given in good faith and is based on HSL's own knowledge and experience and shall be accepted without liability on the part of HSL.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.11 In the event that HSL is required to provide the Goods urgently, that may result in HSL to work outside normal business hours (including, but, not limited to working through lunch breaks, weekends and/or Public Holidays) or incur travel or accommodation costs, then HSL reserves the right to charge the Client the additional costs unless otherwise agreed between HSL and the Client.

## 3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that HSL shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - (a) resulting from an inadvertent mistake made by HSL in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by HSL in respect of the Goods.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1 and is not attributable to the negligence and/or wilful misconduct of HSL; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 3.3 Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgement or invoice shall be subject to correction.

## 4. Authorised Representatives

- 4.1 The Client acknowledges that HSL shall (for the duration of the Services) liaise directly with your authorised representatives, and that once introduced as such to HSL, those representatives shall have the full authority of the Client to order any Goods, and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to HSL for all additional costs incurred by HSL (including HSL's profit margin) in providing any Goods, or variation/s requested thereto by the Client's duly authorised representatives.
- 4.2 If the Client's duly authorised representatives as per clause 4.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise HSL in writing of the parameters of the limited authority granted to their representatives.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to HSL for all additional costs incurred by HSL (including HSL's profit margin) in providing any Goods, or variations requested by the Client's duly authorised representatives (subject always to the limitations imposed under clause 4.2 (if any)).

## 5. Change in Control

- 5.1 The Client shall give HSL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact details, change of directors, change of trustees, or business practice). The Client shall be liable for any loss incurred by HSL as a result of the Client's failure to comply with this clause.

## 6. Price and Payment

- 6.1 At HSL's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by HSL to the Client in respect of Goods performed or Goods supplied; or
  - (b) HSL's quoted Price (subject to clause 6.2) which shall be binding upon HSL provided that the Client shall accept HSL's Price within the period noted on HSL's supplied quotation.
- 6.2 HSL reserves the right to change the Price:
  - (a) if a variation to the Goods (including any change in specification) which are to be supplied is requested; or
  - (b) in the event of increases to HSL in the cost of labour or materials (including but, not limited to any variation as a result of fluctuations in currency exchange rates or increases to HSL in the cost of taxes, levies, freight or insurance charges, or delays in shipment, wholesale supply rates etc) which are beyond HSL's control.
- 6.3 Variations will be charged for on the basis of HSL's Price, and will be detailed in writing, and shown as variations on HSL's invoice. The Client shall be required to respond to any variation submitted by HSL within ten (10) working days. Failure to do so will entitle HSL to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 HSL reserves the right to change the Price if a variation to the Goods supplied is requested by the Client or in the event of increases to HSL in the cost of labour or Goods, different from the accepted quoted Price, (if delivery of Goods is delayed by the Client beyond 90 days from the acceptance of the quoted Price) which are beyond HSL's control.
- 6.5 At HSL's sole discretion a non-refundable deposit may be required.
- 6.6 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by HSL, which may be:
  - (a) on delivery of the Goods; or
  - (b) the date specified on any invoice or other form as being the date for payment; or

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- (c) for certain approved Clients, due twenty (20) days following the end of the month in which an invoice is sent to the Client's address or address for notices; or
  - (d) immediately payable at the time the Client places an order for any non-stock list item or bespoke Goods that HSL have to pay to any third-party supplier.
- 6.7 Payment may be made by electronic/on-line banking or by any other method as agreed to between the Client and HSL.
- 6.8 HSL may in its discretion allocate any payment received from the Client towards any invoice that HSL determines and may do so at the time of receipt or at any time afterwards. On any default by the Client HSL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by HSL, payment will be deemed to be allocated in such manner as preserves the maximum value of HSL's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by HSL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to HSL an amount equal to any GST HSL must pay for any supply by HSL under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.

### 7. Delivery of the Goods

- 7.1 At HSL's sole discretion, delivery of the Goods shall take place when the Goods are supplied to the Client at the Client's nominated address, even if the Client is not present at the address or when the Client or the Client's nominated carrier takes possession of the Goods at HSL's address.
- 7.2 If HSL is not able to deliver the Goods because of a Client action or inaction, redelivery costs will be applied to the Client.
- 7.3 At HSL's sole discretion the cost of delivery is included in the price.
- 7.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.
- 7.5 HSL may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time specified by HSL for delivery of the Goods is an estimate only and HSL will not be liable for any loss or damage incurred by the Client as a result of delivery being delayed for any reason. However, both parties agree that they shall make every endeavour to enable the Goods to be supplied at the time and place as was arranged between both parties. In the event that HSL is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then HSL shall be entitled to charge a reasonable fee for re-supplying the Goods at a later time and date, and/or for storage of the Goods.

### 8. Dimensions, Plans and Specifications

- 8.1 HSL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, HSL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 Where the Client is to supply HSL with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. HSL shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.
- 8.3 In the event the Client gives information relating to measurements and quantities of Goods required in completing the Goods, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or HSL places an order based on these measurements and quantities. HSL accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

### 9. Risk

- 9.1 If HSL retains ownership of the Goods under clause 13 then where HSL is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that the Goods are delivered by HSL or HSL's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- 9.2 Notwithstanding the provisions of clause 9.1 if the Client specifically requests HSL to leave Goods outside HSL's premises for collection or to deliver the Goods to an unattended location then such Goods shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.
- 9.3 Extreme instances of weather, temperature or forecast weather, may cause delay to HSL being able to deliver the Goods, HSL accepts no losses, damages or costs as a result of this instance.
- 9.4 The Client acknowledges that Goods supplied may exhibit variations in texture, shade, tone, colour, surface, finish and may fade or change colour over time. Whilst HSL will make every effort to match batches of product supplied to minimise such variations, HSL will not be held liable in any way whatsoever, should such variations occur.
- 9.5 The Client shall ensure (at the expense of the Client) any installation or maintenance that may be required for the Goods is to be undertaken by an experienced/accredited technician, if this proves to not have occurred, there will be no liability, costs or damages to HSL for any underperformance.
- 9.6 The Client warrants that no other tradesmen interfere with any Services supplied under this Contract. HSL shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.
- 9.7 The Client agrees and acknowledges that in occurrences where there may be remedial work required, HSL will be granted first opportunity to undertake any such remedial work, before a secondary contractor is engaged.
- 9.8 The Client acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in HSL's or the manufacturers fact sheets, price lists or advertising material are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use does not constitute a sale by description and does not form part of the contract, unless expressly stated as such in writing by HSL.
- 9.9 Where HSL has effected delivery, all risk passes to the Client as per clause 9.1 and the Client claims the Goods have been stolen, it shall be the Client's responsibility to contact the police, and shall not excuse the Client from fulfilling their financial obligations under this Contract.

### 10. Client Responsibilities

- 10.1 The Client shall as soon as practicable make available to HSL access to all information, documents and other particulars relating to the Client's requirements for the Services, which HSL considers as relevant to the provision of the Services.
- 10.2 Where the Client has provided instructions or specifications for HSL to complete the Services (including, but not limited to, any requested variation to the original design), then HSL shall accept no liability whatsoever for the finished Services being deemed as unsatisfactory to the Client.

### 11. Insurance

- 11.1 HSL shall have public liability insurance of at least two (2) million dollars, it is the Client's responsibility to ensure that they are similarly insured.
- 11.2 In the event of any breach of this contract by HSL, the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of HSL exceed the cost of the Services supplied.

### 12. Compliance With Laws

- 12.1 The Client and HSL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods including any relating Worksafe health and safety laws or any other relevant safety standards or legislation pertaining to the Goods.

### 13. Title

- 13.1 HSL and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid HSL all amounts owing to HSL; and
  - (b) the Client has met all of its other obligations to HSL.
- 13.2 Receipt by HSL 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.
- 13.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to HSL on request; and
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for HSL and must pay to HSL the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; and
  - (c) the production of these terms and conditions by HSL shall be sufficient evidence of HSL's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with HSL to make further enquiries; and

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- (d) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for HSL and must pay or deliver the proceeds to HSL on demand; and
- (e) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of HSL and must sell, dispose of or return the resulting product to HSL as it so directs; and
- (f) unless the Goods have become fixtures the Client irrevocably authorises HSL to enter any premises where HSL believes the Goods are kept and recover possession of the Goods; and
- (g) HSL may recover possession of any Goods in transit whether or not delivery has occurred; and
- (h) the Client 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 HSL; and
- (i) HSL may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 14. Personal Property Securities Act 1999 (“PPSA”)

- 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all present or after acquired Goods and/or collateral (account) – being a monetary obligation of the Client to HSL for Goods that have previously been supplied and that will be supplied in the future by HSL to the Client.
- 14.2 The Client hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor:
- (a) for all Goods previously supplied by the Vendor to the Client (if any); and
  - (b) for all of its present and after acquired Goods; and
  - (c) for intellectual property arising out of or in connection with the Services.
- 14.3 The Client agrees to grant a "Purchase Money Security Interest" to the Vendor in respect to all amounts owed by the Client to the Vendor, as that term is defined in the PPSA.
- 14.4 Where Goods in respect of which title has not passed to the Client are sold by the Client in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Client for the Vendor in terms of section 45 of the PPSA:
- (a) Where any proceeds of sale are placed in the Client's bank account the funds in the Client's bank account shall be deemed to be held on trust for the Vendor to the extent of proceeds of sale; and
  - (b) Where any payments are made from the Client's bank account otherwise than to HSL payment shall be deemed to have been made from all other funds in the Client's bank account and not from funds held on trust for the Vendor; and
  - (c) The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods supplied to the Client.
- 14.5 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which HSL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and
  - (b) indemnify, and upon demand reimburse, HSL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; and
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of HSL; and
  - (d) immediately advise HSL of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.6 HSL and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.7 If any of the Goods are incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods shall be and remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods shall continue in the terms of section 82 of the PPSA.
- 14.8 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 14.9 Unless otherwise agreed to in writing by HSL, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.10 The Client shall unconditionally ratify any actions taken by HSL under clauses 14.1 to 14.9.

### 15. Security and Charge

- 15.1 In consideration of HSL agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Client indemnifies HSL from and against all HSL's costs and disbursements including legal costs on a solicitor and own Client basis incurred in exercising HSL's rights under this clause.
- 15.3 The Client irrevocably appoints HSL and each director of HSL as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

### 16. Defects

- 16.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify HSL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford HSL an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which HSL has agreed in writing that the Client is entitled to reject, HSL's liability is limited to either (at HSL's discretion) replacing the Goods or repairing the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:
- (a) HSL have agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and
  - (c) HSL will not be liable for Goods which have not been stored, used in a proper manner or for the purpose it was intended to be used by.

### 17. Returns

- 17.1 HSL has no obligation to accept the return of Goods for credit and specifically manufactured Goods will absolutely not be returned for credit whatsoever unless meeting criteria contained in clause 16.1.

### 18. Warranties

- 18.1 Subject to the conditions of warranty set out in clause 18.2 HSL warrants that if any defect in any workmanship of HSL becomes apparent and is reported to HSL within twelve (12) months of the date of delivery, then HSL will either (at HSL's sole discretion) replace or remedy the workmanship.
- 18.2 The conditions applicable to the warranty given by clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Client or their agents to properly maintain the Goods or leave the Goods exposed to the elements for any time; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by HSL or the Manufacturer; or
    - (iii) any use of the Goods otherwise than for any application specified on a quote or order form; or
    - (iv) the Goods being altered, varied, modified, adjusted, repaired or maintained in any way without HSL's written consent; or
    - (v) the continued use of the Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (vi) fair wear and tear, any accident or act of God (see clause 28.9).
  - (b) the warranty shall cease, and HSL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without HSL's consent; or
  - (c) in respect of all claims HSL shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 18.3 For Goods not manufactured by HSL, the warranty shall be the current warranty provided by the manufacturer of the Goods. HSL shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 18.4 HSL shall ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, the Client issues written instruction insisting on installation that goes against HSL's recommendations or falls below industry standards, in this scenario, HSL shall offer no warranty.

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- 18.5 Whereby, where HSL is required to reinstall or reapply the Materials under the Manufacturer's warranty, HSL is entitled to charge a cost of labour to undertake this work to the Client or HSL's supplier, whichever is applicable to bear the cost.
- 19. Consumer Guarantees Act 1993**
- 19.1 The Client agrees that if they are acquiring Goods for the purposes of a business (as that term is defined in the CGA), to the extent permitted by law the provisions of the CGA will not apply to the supply of Goods by HSL to the Client.
- 20. Intellectual Property**
- 20.1 Where HSL has designed, drawn, written plans or a schedule of Goods, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in HSL, and shall only be used by the Client at HSL's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of HSL.
- 20.2 The Client warrants that all designs, specifications or instructions given to HSL will not cause HSL to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify HSL against any action taken by a third party against HSL in respect of any such infringement.
- 20.3 The Client agrees that HSL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which HSL has created for the Client.
- 21. Overdue Payments**
- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of six percent (6%) above HSL's bank's lending rate per calendar month (and at HSL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes HSL any money the Client shall indemnify HSL from and against all costs and disbursements incurred by HSL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Client basis, HSL's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies HSL may have under this Contract, if a Client has made payment to HSL, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by HSL under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 21.4 Without prejudice to HSL's other remedies at law HSL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HSL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to HSL becomes overdue, or in HSL's opinion the Client will be unable to make a payment when it falls due; or
  - (b) the Client has exceeded any applicable credit limit provided by HSL; or
  - (c) the Client becomes insolvent or bankrupt, 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 22. Cancellation**
- 22.1 Without prejudice to any other rights or remedies HSL may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then HSL may suspend the Goods immediately. HSL will not be liable to the Client for any loss or damage the Client suffers because HSL has exercised its rights under this clause.
- 22.2 HSL may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are commenced by giving written notice to the Client. On giving such notice HSL shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to HSL for Goods already performed. HSL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Client cancels the delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by HSL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will not be accepted if production has commenced or once the quoted scope of works has been signed off by the Client.
- 23. Privacy Policy**
- 23.1 All emails, documents, images or other recorded information including Personally Identifiable Information (PII) as defined and referred to in clause 23.4 held or used by HSL is considered confidential. HSL acknowledges its obligation in relation to the handling, use, disclosure and processing of PII pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). HSL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients PII, held by HSL that may result in serious harm to the Client, HSL will notify the Client in accordance with the Act and/or the GDPR. Any release of such PII must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to HSL in respect of Cookies from HSL's website. HSL agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection the Clients Personal Information such as:
- (a) IP address, browser, email Client type and other similar details;
  - (b) tracking website usage and traffic;
  - (c) reports which are available to HSL when HSL sends an email to the Client; so HSL may collect and review that information (collectively "PII")
- 23.3 If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wish to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.4 The Client authorises HSL or HSL's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (e.g. email, Facebook or Twitter details), or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by HSL from the Client directly or obtained by HSL from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 23.5 Where the Client is an individual the authorities under clause 23.4 are authorities or consents for the purposes of the Privacy Act 2020.
- 23.6 The Client shall have the right to request HSL for a copy of the PII about the Client retained by HSL and the right to request HSL to correct any incorrect PII about the Client held by HSL.
- 24. Service of Notices**
- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person; or
  - (b) by leaving it at the address of the other party as stated in this Contract; or
  - (c) by sending it by registered post to the address of the other party as stated in this Contract; or
  - (d) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 25. Trusts**
- 25.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not HSL may have notice of the Trust, the Client covenants with HSL as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund; and
  - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; and

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- (c) the Client will not without consent in writing of HSL (HSL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust; or
  - (ii) any alteration to or variation of the terms of the Trust; or
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

### 26. General

- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Christchurch courts of New Zealand.
- 26.4 HSL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by HSL of these terms and conditions (alternatively HSL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.5 HSL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of HSL.
- 26.7 HSL may elect to subcontract out any part of the Goods but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of HSL's sub-contractors without the authority of HSL.
- 26.8 The Client agrees that HSL may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for HSL to provide Goods to the Client.
- 26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, pandemic, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party. (referenced as Force-Majeure).
- 26.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.