

TERMS OF TRADE - HMG

1. Application of terms and conditions

- a) The terms of this Quotation must be read in conjunction with the Master Supply Agreement of any agreement previously entered into between HMG, the Customer and any guarantor(s) of the Customer in respect of the supply of Goods and Services.
- b) The agreement referred to in clause 1(a) continues to have full force and effect, except that if there is an inconsistency between the terms of this Quotation and the agreement referred to in clause 1(a), then the terms of this Quotation prevail but only to the minimum extent necessary to remove that inconsistency.
- c) Without limiting clauses 1(a) and 1(b), the terms and conditions in this Quotation are intended to be an abbreviated version of the terms and conditions in the Master Supply Agreement, and a clause, sub-clause or paragraph in the Master Supply Agreement is not to be regarded as inconsistent with the terms of this Quotation merely because that clause, sub-clause or paragraph (or a variation of it) is not contained in the Quotation.

2. Acceptance of Quotation and performance of work

- a) If the Customer wishes to accept this Quotation, the Customer must do so within the time period specified in Item 5.2 of the Reference Schedule to the Master Supply Agreement, or if no such time is specified, within 14 days after the Customer receives this Quotation.
- b) In order to accept this Quotation under clause 2(a), the Customer must provide HMG with an original counterpart of the Quotation signed by the Customer, together with a Purchase Order Agreement. Any Purchase Order received from a person who appears to be an employee or an agent of the Customer will be taken to have been issued by an authorised representative of the Customer.
- c) Once placed, a Purchase Order or Quotation cannot be cancelled, or delivery deferred, without HMG's consent.
- d) Notwithstanding clause 2(b), if HMG receives a Purchase Order from the Customer, but does not receive a properly signed Quotation corresponding to that Purchase Order in accordance with clause 2(b), then unless HMG notifies the Customer otherwise the Customer will be taken to have accepted and agreed to that Quotation.
- e) In the case of Services and notwithstanding clause 2(b), if the price specified in this Quotation (excluding GST and any charges for freight, insurance and other ancillary amounts) is equal to or less than the Automatic Quotation Approval Threshold, then the Customer will be taken to have accepted and agreed to the Quotation, even if the Customer does sign this Quotation or provide HMG with a corresponding Purchase Order. However, if HMG still requires the Customer to issue a Purchase Order for those Services, then the Customer must comply with that requirement within the time period referred to in clause 2(a).
- f) If the Customer does not accept this Quotation in accordance with clauses 2(a) and 2(b), HMG may charge the Customer for the cost of preparing the Quotation, by multiplying the time spent preparing the Quotation and any relevant Inspection Report by the Hourly Rate, and the Customer must pay this amount to HMG following receipt of an Invoice in accordance with clause 4.2.
- g) If the Customer does not accept this Quotation in accordance with clauses 2(a) and 2(b) and the Customer either:
 - i. directs HMG to dispose of the Customer Goods; or
 - ii. abandons the Customer Goods by failing to arrange collection of the Customer Goods within the period required by HMG,

then HMG may dispose of the Customer Goods and charge the Customer the amount specified in Section 6 of this Quotation. The Customer must pay this amount to HMG following receipt of an Invoice in accordance with clause 4.2.

- h) Once HMG accepts a Purchase Order, either by notifying the Customer of that acceptance or by commencing performance of the Purchase Order and this Quotation in accordance with the Master Supply Agreement.
- i) HMG may refuse to accept a Purchase Order if it is not received within the time period referred to in clause 2(a) or if the Purchase Order is not consistent with this Quotation or the Master Supply Agreement.
- j) Notwithstanding any provision of this Quotation, HMG may elect not to commence work in respect of a Quotation accepted (or taken to be accepted) by the Customer until the Customer provides HMG with a Purchase Order that HMG accepts for the purposes of clauses 2(h) and 2(i).

3. Delivery

3.1 Responsibility for arranging delivery

- a) If under this Quotation HMG is responsible for arranging delivery and/or collection, then:
 - i. HMG must organise collection of any Customer Goods from the Delivery Address, so that HMG can perform the Services, and the Customer must make those Customer Goods available for collection at the time and in the manner specified by HMG; and
 - ii. once the Goods have been manufactured or the Services completed, HMG must organise delivery of the Finished Goods to the Delivery Address.
- b) If under the Quotation the Customer is responsible for arranging delivery and/or collection, then:
 - i. the Customer must organise delivery of any Customer Goods to the Delivery Address at the time and in the manner specified by HMG, so that HMG can perform the Services; and
 - ii. once the Goods have been manufactured or the Services completed, HMG must notify the Customer (either by telephone or in writing) and the Customer must arrange for collection of the Finished Goods from the Delivery Address at the time and in the manner specified by HMG.
- c) If the goods are not dispatched within 7 business days of completion HMG may apply at its discretion a Lay Down Area fee to be charged at a \$20 per square metre, per month (charged on a daily rate).

3.2 Responsibility for payment for delivery

The person specified in this Quotation as being responsible for payment for delivery or collection of Customer Goods and Finished Goods to or from the Delivery Address, must promptly pay those costs.

3.3 Timing

HMG must use reasonable endeavours to effect or enable delivery of provision of Goods and Services within the time specified in Item 5.3 of the Reference Schedule to the Master Supply Agreement and any estimated delivery date specified in this Quotation, but in no circumstance will HMG be liable for any loss or damage resulting from a delay in delivery.

4. Payment

4.1 Invoicing

- a) HMG must give an invoice to the Customer in respect of any Goods and Services it provides to the Customer (**Invoice**).
- b) HMG may Invoice the Customer for part or all of the price payable in respect of any Goods and Services before providing, delivering or allowing collection of the Goods and Services.
- c) HMG may elect not to provide, deliver and/or allow collection of the Goods and Services until it has received full payment of an Invoice issued under clause 4.1(b).

4.2 Terms of payment

- a) The Customer must pay HMG the full amount owing to it for the Goods and Services provided or to be provided on receipt of the Invoice relating to those Goods and Services, except to the extent clause 4.2(b) applies.
- b) If HMG supplies Goods and Services under this Quotation, then to the extent that the sum of all amounts (including the amount of the Invoice relating to those Goods and Services) owing by the Customer to HMG at that time (Whether under this Quotation or otherwise and whether or not actually payable at that time) does not exceed the Approved Credit Limit, the Customer must pay HMG the amount of that Invoice within 30 days from the end of the month in which the invoice is issued, unless otherwise agreed in writing by HMG.
- c) Clause 4.2(b) does not apply if:
 - i. clause 7.5 applies;
 - ii. the Customer (or any guarantor) is the subject of an “Event of Default” (as that term is defined in the Master Supply Agreement); or
 - iii. HMG notifies the Customer in respect of certain Goods or Services that payment in advance of delivery or collection is required.
- d) Subject to the Master Supply Agreement, each payment under this clause 4 must be made without set-off or counterclaim and otherwise in the manner specified in the relevant Invoice.

4.3 Default in payment

If the Customer defaults in the payment of any money payable to HMG, then HMG may do one or more of the following:

- a) suspend performance of its obligations under this Quotation until all amounts owing by the Customer to HMG (whether under this Quotation or otherwise and whether or not actually payable at that time) are paid in full;
- b) **supply further Goods or Services to the Customer strictly on a “cash on delivery” or “cash in advance” basis; and**
- c) charge interest on the amount outstanding at the Prescribed Rate accruing daily from and including the due date for payment until the date of payment in full, which interest must be paid by the Customer to HMG on demand.

5. GST

5.1 Definitions

In this clause 5:

- a) the expressions **Consideration**, **Input Tax Credit**, **Recipient**, **Supply**, **Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act; and
- b) **Supplier** means any party treated by the GST Act as making a Supply under this Quotation.

5.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration is given to be provided under or in accordance with this Quotation are exclusive of GST.

5.3 Payment of GST

- a) If GST is imposed on any Supply made under or in accordance with this Quotation, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply.
- b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Quotation.

6. Risk

The risk of any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (including legal costs of a solicitor and own client basis) to Finished Goods will pass to the Customer on delivery which occurs on the earlier of.

- (a) collection of the Finished Goods by the Customer.
- (b) delivery to the Customer at the Delivery Address.
- (c) delivery by HMG to a carrier nominated by the Customer or arranged by HMG for the purpose of delivering Finished Goods to the Customer at the Delivery Address or
- (d) if the Customer and HMG enter into any arrangement for the storage of the Goods on HMG’s premises (in accordance with clause 3.1(c) or otherwise), then on the date on which the storage arrangement commences.

7. Title

7.1 Retention of title

Title to all Goods Supplied by HMG to the Customer remains with HMG and does not pass to the Customer until the price for those Goods and all other moneys owing by the Customer to HMG on any account whatsoever (**Amount Outstanding**) is paid to and received in full by HMG in cleared funds.

7.2 Customer’s obligations

Until title to Goods supplied by HMG to the Customer passes to the Customer in accordance with clause 7.1, the Customer must:

- a) to the extent practical, store the Goods separately from the Customer’s own Goods and those of third parties, to enable them to be readily identifiable as HMG’s property;
- b) hold the Goods as the bailee and fiduciary agent of HMG;
- c) not supply or sell the Goods to any Person, other than with HMG’s prior written consent or in the ordinary and usual course of the Customer’s business, it being acknowledged that any such supply or sale by the Customer will be as the bailee and fiduciary agent of HMG;
- d) when requested by HMG, allow HMG to enter the premises where the Goods are stored to inspect the Goods and provide to HMG the consent of any Person whose consent is required for that entry.
- e) keep records that relate to the Goods separately identifiable and readily distinguishable from those that relate to any other goods in its possession;
- f) not allow any Person to have or acquire any encumbrance or security interest in the Goods; and
- g) keep the Goods insured against theft, damage and destruction (and if the Customer fails to insure the Goods, HMG may do so and the Customer must reimburse HMG for the cost of insurance).

7.3 Sale of the Goods

Except to the extent that clause 7.4 applies, if the Customer sells or otherwise disposes of the Goods supplied by HMG before title to them has passed from HMG to the Customer:

- a) that part of the proceeds of any sale or dealing as is equal to the Amount Outstanding or if the proceeds of sale or dealing are less than the Amount Outstanding, the whole of the proceeds of sale or dealing (in either case, **HMG's Entitlement**) must be held by the Customer in a separate identifiable account on trust for HMG and must not be mixed with any other moneys of the Customer; and
- b) the Customer must account to HMG for HMG's Entitlement, until all liability of the Customer to HMG has been discharged.

7.4 Manufacture or mixing of the Goods

If any Goods are used in a manufacturing process or mixed with other materials (whether by the Customer or a third party) to create an article from which those Goods are not reasonable separate (**Article**) before title to the Goods has transferred from HMG to the Customer, then:

- a) the Customer must hold, in a separate identifiable account on trust for HMG, that part of the proceeds received by the Customer from the sale or disposition of the Article as relates to the relevant Goods (**HMG's Proportion**), determined in accordance with clause 7.4(b);
- b) HMG's Proportion is taken to be the dollar amount equal to the lesser of:
 - i. the proceeds received by the Customer from the sale or disposition of the Article; and
 - ii. the amount owing by the Customer to HMG for the relevant Goods at the time of the sale or disposition of the Article by the Customer; and
- c) the Customer, on demand by HMG, must account to HMG for HMG's Proportion.

7.5 Customer's rights limited

The Customer has no right to sell the Goods or deal with the Goods if:

- a) an Insolvency Event occurs in relation to the Customer or a guarantor of the Customer;
- b) the Customer breaches these terms and conditions and fails to remedy the breach within 5 Business Days after receiving notice from HMG requiring the breach to be remedied; or
- c) the Master Supply Agreement (having been entered into) is terminated for any reason.

7.6 Failure to return Goods

If the Customer loses its right to sell or deal with the Goods under clause 7.5, then the Customer must return the Goods to HMG on written demand. If the Customer does not return the Goods to HMG within 24 hours after receipt of the demand, then without limiting any other rights or remedies HMG may have:

- a) HMG may, as agent of the Customer, enter the Customer's premises or any other premises where the Goods are located and do all things necessary to retake possession of the Goods, without liability for trespass or any resulting damage;
- b) HMG may keep or resell any of the Goods repossessed;
- c) the Customer is liable for all costs associated with the exercise by HMG of its rights under this clause 7.6, which costs are payable to HMG on demand; and
- d) the Customer indemnifies and must keep indemnified HMG against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against HMG or which HMG may pay, sustain or incur as a direct or indirect result of the exercise by HMG of its rights under this clause 7.6.

7.7 Lien

- a) Without limiting HMG's other rights and remedies, HMG holds a lien over Customer Goods in its possession until the Customer pays HMG in full for the Services performed in respect of those Customer Goods.
- b) If the Customer defaults in its payment obligations to HMG under this Quotation, then HMG may, without limiting its other rights and remedies, sell the Customer Goods in its possession and apply the proceeds of sale to the outstanding debt (including any interest payable in respect of the debt) and any reasonable administration charges determined by HMG.
- c) If the proceeds of sale under clause 7.7(b) exceed the amount of the outstanding debt together with interest and reasonable administration charges, then HMG must pay the excess sale proceeds to the Customer.

8. Warranty

8.1 Warranty Period

All Finished Goods are warranted against defects in workmanship and materials for the Warranty Period.

8.2 HMG Responsibilities

During the Warranty Period applicable to each item of Finished Goods, HMG will (as the Customer's sole and exclusive remedy):

- a) all Finished Goods are warranted for the Warranty Period against defects in workmanship and materials provided by HMG in respect of those Finished Goods.
- b) the Warranty Period that applies to Components ends on the expiry of 12 months from the date of delivery of the Component to the Customer or 2000 hours of use of the Component after that date, whichever occurs first.
- c) the Warranty Period that applies to Cylinders ends on the expiry of 12 months from the date of delivery of the Cylinder to the Customer or 5000 hours of use of the Cylinder after that date, whichever occurs first.
- d) rectify defects in workmanship or materials in the Finished Goods, subject to them being returned to HMG in accordance with clause 9;
- e) subject to clause 9, pay transport costs incurred in returning Finished Goods to HMG for repair or inspection while under warranty; and
- f) without limiting clause 10, not cover any other consequential loss or damage.

8.3 Limitations

The warranty provided under this clause 8 does not cover:

- a) failure or damage resulting from improper use or installation not in accordance with the manufacturer's operational guidelines;
- b) failure or damage resulting from abuse, neglect and/or improper repair;
- c) failure or damage resulting from repairs, adjustments or modifications made without HMG's prior approval; or
- d) items or parts of the Finished Goods not manufactured by HMG (these may be covered by warranties given by the original manufacturers of these items).

9. Return of Goods

- a) To the maximum extent permitted by Law, Goods supplied by HMG in accordance with this Quotation can only be returned by the Customer to HMG to the extent that HMG, in its absolute discretion, authorises the return of the Goods for that purpose.
- b) HMG reserves the right to inspect the Goods before authorising or declining to authorise their return.

- c) If any Goods are returned to HMG without prior authorisation, HMG may charge the Customer, and the Customer must pay, an administration fee in the amount reasonably specified by HMG.
- d) If any Goods are returned to HMG on the basis that they are defective, but the Goods are later found by HMG not to be defective, HMG may charge the Customer, and the Customer must pay, an administration fee in the amount reasonably specified by HMG.

10. Liability

10.1 Limitations and liability

Subject to this clause 10 and to the maximum extent permitted by Law, HMG and its directors and employees are not liable to the Customer or to any other Person for:

- a) any loss or damage of any kind caused by or not resulting from any act or omission of the Customer or any of its employees, agents or contractors; or
- b) any loss of profits or anticipated profits, economic loss, loss of business opportunity, loss or damage resulting from wasted management time or any special, incidental, indirect or other potential loss or damage, even if notified of the possibility of that potential loss or damage and irrespective of whether it is due to negligence, breach of contract or any other cause.

10.2 Exclusion of implied warranties

Any representation, warranty, condition or undertaking that would be implied in this transaction by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by Law.

10.3 Non-excludable rights implied by statute

Nothing in this Quotation excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Customer by the *Trade Practices Act 1974 (Cth)* or any other applicable Law that cannot be excluded, restricted or modified by agreement.

10.4 Liability for breach of non-excludable rights

To the maximum extent permitted by Law, the liability of HMG for a breach of a non-excludable condition or warranty referred to in clause 10.3 is limited, at HMG's option, to:

- a) in the case of Goods, any one or more of the following:
 - i. the replacement of the Goods or the supply of equivalent Goods;
 - ii. the repair of the Goods;
 - iii. the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - iv. the payment of the cost of having the Goods repaired; or
- b) in the case of Services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.

11. Confidentiality

The Customer must keep the terms of this Quotation strictly confidential and must not disclose the terms of this Quotation to any other Person without HMG's prior written consent.

12. Definitions

In this Quotation:

Approved Credit Limit means the dollar amount specified by HMG in its notice to the Customer accepting the Credit Application, which dollar amount may be varied from time to time by HMG without any need to give notice to the Customer;

Automatic Quotation Approval Threshold means the amount calculated by applying the percentage amount specified in Item 8 of the Reference Schedule to the Master Supply Agreement to the relevant OEM Price;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Queensland;

Controller means, in relation to a Person, a receiver, receiver and manager, administrator or liquidator (whether a provisional or otherwise) of that Person or that Person's property; or

- a) anyone else who (whether or not as agent for the Person) is in possession, or has control, of that Person's property to enforce an encumbrance;

Corporations Act means the *Corporations Act 2001 (Cth)*;

Credit Application means the "Credit Application" submitted by the Customer for approval by HMG;

Customer means the customer described in Section 2 of this Quotation;

Customer Goods means goods owned by the Customer or a third party in respect of which HMG provides Services;

Delivery Address means the address described in Item 7.1 of this Quotation;

Finished Goods means Goods, together with any Customer Goods to which Goods have been added or applied as part of the Services;

Goods means the products manufactured or supplied by HMG or any of its Related Bodies Corporate as specified in Section 4 of this Quotation, and includes component parts, coatings and other products which are added or applied to Customer Goods in the course of providing the Services, but does not include any part of those products that are Customer Goods;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental, local governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

GST has the meaning given to that term in the GST Act;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

HMG means HMG Pty Ltd ABN 47 009 695 309 of Mundin Street, Meeandah, Queensland, 4008;

Hourly Rate means the rate specified in Item 6 of the Reference Schedule to the Master Supply Agreement, as may be amended from time to time under clause 16 of the Master Supply Agreement, or if no such hourly rate applies, HMG's current hourly rate for the relevant Services as specified by HMG;

Including or any form of that word must be construed as if it were followed by "(without being limited to)";

Insolvency Event means, in relation to a party, any one or more of the following events or circumstances occurring in relation to the party (or any Person comprising the party):

- a) being in liquidation or provisional liquidation or under administration;
- b) having a Controller or analogous Person appointed to it or any of its property;
- c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- d) being unable to pay its debt or being otherwise insolvent;
- e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- f) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; and
- g) any analogous event or circumstance under the laws of any jurisdiction;

Inspection Report means a report prepared by HMG following its inspection of Customer Goods;

Invoice has the meaning given in clause 4.1;

Law means:

- a) principles of law or equity established by decisions of courts;
- b) statutes, regulation of by-laws of the Commonwealth, a State, a Territory or a Government Agency that have a force of law;

Master Supply Agreement means an agreement of that name entered into by HMG, the Customer and any guarantors;

OEM Price means in relation to Services to be provided on or in respect of certain Customer Goods, the price that HMG determines would be payable at that time to the manufacturer of new Goods that are equivalent to those Customer Goods (excluding GST and any charges for freight, insurance and other ancillary amounts);

Person includes a natural person and anybody or entity whether incorporated or not;

Prescribed Rate means the rate that is 2% per annum above the penalty interest rate fixed from time to time under the *Supreme Court Regulation 1998 (Qld)*:

Purchase Order means an order for Goods or Services that is in a form acceptable to HMG from time to time, whether written, verbal or otherwise;

Quotation means a quotation provided by HMG to the Customer;

Reference Schedule means the schedule of that name to the Master Supply Agreement;

Related Body Corporate has the meaning given to that term in the Corporations Act;

Services means reconditioning, reclamation, maintenance or other services provided by HMG or any of its Related Bodies Corporate in respect of Customer Goods or otherwise, as specified in Section 4 of this Quotation;

Specifications means specifications for Goods and Services as set out in this Quotation; and

Warranty Period means the warranty period applicable to Finished Goods as specified in Section 8 of this Quotation.