Conditions of Supply

1 Agreement
(a) These Conditions of Supply, any Quotation and any other document referred to in the Quotation, and this Agreement shall constitute a legal agreement between you and us, and shall be referred to as the “Agreement”.
(b) Acceptance of any equipment will constitute an offer from you to purchase the Supply from us, which will then be open for acceptance by us. Your offer can be made by doing either one or more of the following things:
(i) signing and returning the Quotation or otherwise accepting the Quotation;
(ii) issuing a purchase order or similar request for goods or services in response to the Quotation;
(iii) once your offer is made, we are at liberty to accept or reject your offer in our absolute discretion by
(iv) notice to you in writing;
(v) failing to make the Supply in accordance with a purchase order issued by you.
(d) Your offer in respect of this Agreement must be accompanied by sufficient information to enable us to proceed with the order forthwith otherwise we shall be at liberty to amend the Contract Price and/or delivery period to cover any variation or delay.

2 General & Definitions
(a) Where the following words are not already defined in the Quotation or another part of this Agreement:
Conidential Information means the content of this Agreement, any information of a party which is marked confidential and any information which is by its nature confidential;
Contract Price means the price payable in respect of any supply made under this Agreement, more particularly described in the Quotation.
Goods and/or equipment mean all goods and/or services forming part of the Supply.
HMA Group Member means any one or more of the following companies and divisions:
- Diamond Power (Australia) Pty Limited ABN 08 425 215;
- Greenbank Terotech Pty Limited - ABN 68 092 292 718;
- Valvico Industries Pty Limited - ABN 83 000 558 627;
- Halley & Mellowes Pty Limited - ABN 48 010 489 086;
- POGC Sensor Technologies Pty Limited - ABN 42 058 655 959;
- Techniplan Pty Limited - ABN 48 108 089 068;
- Measurement Resources Pty Limited - ABN 48 047 738;
- Select Transmission & Motors Australia (trading as a Division of Halley & Mellowes Pty Ltd)
Intellectual Property Rights means all intellectual property rights at any time protected by statute or common law, including patents, copyright and any registered intellectual property rights, registered designs, trademarks and goodwill; and any application or right to apply for registration of any of the above.
Personnel means your employees, officers or contractors.
PPSA means the Personal Property Securities Act 2009 (Cth).
Quotation means the document from which the Contract Price and other terms in the Quotation are to be determined.
Sections means sections numbered in the Quotation.
You or your means the customer to whom the Quotation is addressed, or if a customer is expressly nominated in the Quotation, then that entity.

3 Validity
Unless stated otherwise in the Quotation, the Contract Price and other items contained in the Quotation is/are valid for a period of thirty (30) days from the date of the Quotation and are automatically withdrawn unless accepted by you within this time and confirmed by us. Notwithstanding the above, we may withdraw the Quotation at any time prior to the commencement of this Agreement.

4 Prices
(a) The Contract Price or prices quoted are in Australian Dollars, based on the quantities quoted, current costs and exchange rates at the date of Quotation or at the specified base date (if any) and unless expressly stated to the contrary are subject to variation to cover any increase in costs and exchange rates between the date of Quotation (or the base date) and the date of any actual Supply that results in an increase in price.
(b) If any variation or modification of the Supply is received after your order is accepted by us, any such variation or modification will be charged as an additional cost to you.
(c) The Contract Price is exclusive of all taxes, impost, duties or levies (including without limitation, goods and services tax, sales tax, value added tax, withholding tax, customs/import duty, etc).
(d) You may pay in addition to and at the same time in the same method as the Contract Price, all taxes, duties or levies (whether Federal, State or otherwise) upon the Supply, or any goods or raw material incorporated into the Supply, imposed either prior to or subsequent to the placement of the order.

5 Packaging
Unless otherwise specified in the Quotation:
(a) delivery terms are EXW (Incoterms 2011) at place of manufacture;
(b) if we have agreed to provide any packing cases, skids, drums, etc. then all packing cases, skids, drums, etc. shall be returned to us at your expense and in good condition within one month of receipt, otherwise their cost will be charged to you; and
where goods are intended for transportation, that packing will be suitable for transportation of the goods by road. Special packing such as fumigated cases will only be provided where quoted and ordered.

6 Delivery/Installation Dates
(a) Any dates given in our Quotation for delivery or installation are estimates only and we will not be liable for any costs or other consequential loss or damage incurred by you if delivery is delayed or dates of delivery are not met.
(b) If you are in the unavailability of materials on reasonable commercial terms, the time for delivery will be extended and you shall be bound by any such increase in the time to deliver to you (or in the absence of any specified time, within a reasonable time), at all, the Agreement shall be voidable at the option of either party with no right by the other party to claim any damages beyond liability for payment of any completed (or partially completed) Supply.

7 Payment
(a) Where we have approved credit to you (and subject to the terms of any such credit approval, unless otherwise specified in writing by us, the terms of payment are in full by cash or bank cheque 30 days from the date of invoice.
(b) Notwithstanding any other provisions, you cannot terminate or any other agreement with you and without prejudice to any other rights we may have at law, in the event of any account remaining unpaid by you after the due date of payment,
- we shall be entitled, at our absolute discretion and without notice to you to suspend any work or refuse delivery of any goods;
- and you shall be liable to pay interest on any amount outstanding until that amount is paid in full. Interest will be calculated on the rate that is 2% above our then current financial institution’s overdraft rate for $100,000, calculated daily and commencing monthly.

8 Title And Risk
(a) The title in the goods supplied by us to you will not pass to you and will remain our absolute property until such time as we have been paid all monies due and owing to us by you in relation to any account.
(b) Until such time as we have been paid all monies due and owing to you by you in relation to any account,
(i) you take custody of the goods and retain them as our fiduciary agent and bailee.
(ii) You may resell but only on our written authority and only on the written authority of our fiduciary agent. Any right to bind us to any liability to any third party by contract or otherwise is however expressly negated.
(iii) Any such resale be to arm lengths and on market terms and pending resale or utilization in any manner is subject to being separate from your own, properly stored, protected and insured.
(iv) You will receive all proceeds whether tangible or intangible, direct or indirect of any dealing with the goods on trust for us and we will keep such proceeds in a separate account until the liability to us shall have been discharged.
(v) We are to have power to appropriate payments to such goods and accounts as we think fit notwithstanding any appropriation by you to the contrary.
(vi) In the event that you use the goods in some manufacturing process of your own or some third party, then you shall hold such part of the proceeds of such manufacturing process as relates to the goods on trust for us. Such part shall be deemed to equal in dollar terms the amount owing by you to us on the receipt of such proceeds.
(vii) You may not assign, factor or otherwise deal with your right to receive payment from any person in respect of a sale of any goods, or any item manufactured using any goods, without our written consent.
(viii) If you have breached this Agreement and we have notified you, at any time, to enter onto any premises which upon which we are stored with liability for trespass or damage to enable us to
- inspect the goods;
- reclaim the goods.
(ix) If you sell, dispose of or otherwise deal with goods or any part thereof before full payment has been received by us, you must advise us in writing, at such times as we may request, specifying full details of the goods sold, disposed of, utilized or otherwise dealt with.
(x) You agree that the provisions of this clause 8 apply despite any arrangement under which we grant credit to you.

9 Security and PPSA
(a) To the extent permitted by law, and for better security of payment, we reserve your security interest in any goods delivered or shipped to you for your account, and we reserve your security interest in all other goods or materials of or delivered to you for your account, whether in possession of you or not. You agree to immediately notify us of any such change of the secured assets, and you are responsible for the All other persons and businesses (whether Federal, State or otherwise) upon the Supply, or any goods or raw material incorporated into the Supply, imposed either prior to or subsequent to the placement of the order.

10 HMA Group of Companies

Committed People Innovative Solutions

Australia > Wyong • Sydney • Singleton • Melbourne • Morwell • Perth • Brisbane • Mackay • Gladstone • Darwin
New Zealand > Hamilton • Dunedin • Indonesia • Jakarta • South Africa • Johannesburg
ii. section 130 (notice of disposal), to the extent that it requires us to give a notice to you;

iii. section 132(3)(d) (contents of statement of account after disposal);

iv. section 132(4) (statement of account if no disposal);

v. section 135 (notice of retention);

vi. section 142 (reduction of capital);

vii. section 143 (reinstatement of security agreement).

(e) For the purposes of section 146 of the PPSA, you and (we) agree that any personal property which you have in our possession or control, or into which any such personal property is to be placed, is to be dealt with in accordance with this Agreement. You and (we) agree that any personal property which is to be placed in our possession or control for the purposes of giving effect to this clause and any personal property which is actually placed in our possession or control, is to be treated as if it had been delivered to the security interests as created by the PPSA.

(f) You consent to:

i. and agree to execute any other document or instrument required to give effect to the security interests created by this Agreement;

ii. the registration with the relevant authority or public register of any security interest created by this Agreement or any other document required to give effect to a security interest created by this Agreement.

(g) You must pay all costs and incidental to the preparation, execution and registration of any instrument which is executed for the purposes of giving effect to this clause and must also pay all costs incidental to the withdrawal, discharge or release of such instrument.

10 Storage

In the event of us receiving no instructions as to delivering, or not receiving sufficient instructions to enable us to despatch the goods or equipment to you within 14 days after the date of notification by you that they are ready for despatch, you must take delivery or arrange for storage. If you do not take delivery or arrange for storage, we shall be entitled to deliver the goods or equipment at your place of business or on site or elsewhere on your behalf and at your expense for storage or for demurrage shall be payable by you. In such case delivery shall be deemed to have been made and payment will be due.

11 Cancellation

Orders, once accepted by us, can only be countermanded or cancelled with our written consent provided always that you must indemnify us against any and all costs and losses incurred as a result.

12 Technical Data

All descriptions, specifications, drawings and particulars of weights and dimensions submitted with the proposal shall be deemed merely to present a general idea of the goods or services. After acceptance by you of our tender or quotation all relevant technical information may be supplied by us on request providing always that we have the right to request any confidential information or trade secret. Such technical data however must not under any circumstances be shown to any third party not a party to this agreement or necessary for its performance unless our written consent is obtained.

13 Disclaimers

(a) We reserve the right to make, at our discretion, any necessary substitutions of materials and equipment to effect the Supply.

(b) As our policy is one of continued product improvement the specification of the goods and equipment to be supplied is subject to change without notice.

14 Assignment

We reserve the right to assign any or all of our rights and obligations under this Agreement. You must not assign your rights under this Agreement without our prior written consent.

15 Tests

Our goods are carefully inspected before despatch. If special tests or tests in your presence or the presence of your representatives are required these tests, unless otherwise mutually agreed, will be made at your additional cost and in the event of any delay on your part in attending such tests after seven days notice that we are ready and may proceed in your absence and shall be deemed to have been made in your presence.

16 Performance

Any performance figures given by us are based on information supplied to us by the manufacturers or distributors of various goods or equipment. We shall be under no liability for damages for failure to attain such figures unless we have specifically guaranteed them.

17 Intellectual Property

(a) Any Intellectual Property Rights held by us before the commencement of this Agreement will be exclusively licensed to you.

(b) Any pre-existing Intellectual Property Rights owned by you before the commencement of this Agreement, will remain vested in you.

(c) Subject to any Intellectual Property Rights existing in any third party materials, all Intellectual Property Rights, created by us or under the terms of this Agreement or any other document required to give effect to this Agreement will remain vested in us notwithstanding those rights were created pursuant to or for use in the supply of goods or services under this Agreement.

18 Warranty and Limitation of Liability

(a) In relation to the goods we manufacture, to the fullest extent permitted by law, our liability is limited to making good by replacement or repair defects which, under proper use, appear thereon and arise solely from faulty design, material or workmanship within a period of six calendar months after the original goods or equipment have been first despatched, at the termination of which period all liability on our part ceases. For the avoidance of doubt, we are not liable for defects arising out of:

i. A failure by you or your Personnel to properly store any goods or equipment;

ii. A failure by you or your Personnel to operate any goods or equipment in strict accordance with any manuals, guidelines or directions given by us, or in the absence of such manuals, guidelines or directions, then in strict accordance with applicable industry standards;

iii. Defects caused by the continued use or operation of the goods or equipment after you or your Personnel have become aware of ought to have become aware of a