

HCD Flow Technology Limited – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "HCD" shall mean HCD Flow Technology Limited its successors and assigns or any person acting on behalf of and with the authority of HCD Flow Technology Limited.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other forms as provided by HCD to the Client.
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by HCD to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by HCD to the Client.
- 1.5 "Services" shall mean all services supplied by HCD to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between HCD and the Client in accordance with clause 3 of this contract.
2. **Acceptance**
- 2.1 Any instructions received by HCD from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by HCD shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of HCD.
- 2.4 The Client shall give HCD not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by HCD as a result of the Client's failure to comply with this clause.
3. **Price And Payment**
- 3.1 At HCD's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by HCD to the Client in respect of Goods supplied; or
 - (b) HCD's current price at the date of delivery of the Goods according to HCD's current Price list; or
 - (c) HCD's quoted Price (subject to clause 3.2) which shall be binding upon HCD provided that the Client shall accept HCD's quotation in writing within thirty (30) days.
- 3.2 HCD reserves the right to change the Price in the event of a variation to HCD's quotation. The Client acknowledges and agrees that HCD's cost for overseas transactions may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges for foreign sourced components. Any variation from HCD's quoted Price will be detailed in writing and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 At HCD's sole discretion a deposit may be required.
- 3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and HCD.
- 3.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
4. **Delivery Of Goods**
- 4.1 At HCD's sole discretion delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by HCD or HCD's nominated carrier).
- 4.2 At HCD's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Client's account.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then HCD shall be entitled to charge a reasonable fee for redelivery.
- 4.4 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 agreement.
- 4.5 The failure of HCD to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 HCD shall not be liable for any loss or damage whatsoever due to failure by HCD to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of HCD.
5. **Risk**
- 5.1 If HCD retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, HCD is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by HCD is sufficient evidence of HCD's rights to receive the insurance proceeds without the need for any person dealing with HCD to make further enquiries.
6. **Title**
- 6.1 HCD and Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid HCD all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to HCD in respect of all contracts between HCD and the Client.
- 6.2 Receipt by HCD 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 and until then HCD's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until HCD shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from HCD to the Client HCD may give notice in writing to the Client to return the Goods or any of them to HCD. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Client is only a bailee of the Goods and until such time as HCD has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for HCD; and
 - (d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that HCD will be the owner of the end products; and
 - (e) if the Client fails to return the Goods to HCD then HCD or HCD's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated as the invitee of the Client and take possession of the Goods, and HCD will not be liable for any reasonable loss or damage suffered as a result of any action by HCD under this clause.
7. **Personal Property Securities Act 1999 ("PPSA")**
- 7.1 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 Goods previously supplied by HCD to the Client (if any) and all Goods that will be supplied in the future by HCD to the Client.
- 7.2 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 HCD may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, HCD 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;
 - (c) not register a financing change statement or a change demand without the prior written consent of HCD; and
 - (d) immediately advise HCD 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.
- 7.3 HCD and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 7.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 7.5 Unless otherwise agreed to in writing by HCD, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 7.6 The Client shall unconditionally ratify any actions taken by HCD under clauses 7.1 to 7.5.
8. **Client's Disclaimer**
- 8.1 The Client hereby disclaims any right to rescind, or cancel any contract with HCD or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by HCD and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
9. **Defects**
- 9.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify HCD of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford HCD 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 HCD has agreed in writing that the Client is entitled to reject, HCD's liability is limited to either (at HCD's discretion) replacing the Goods or repairing the Goods.
10. **Returns**
- 10.1 Returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 9.1; and
 - (b) HCD has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (d) HCD will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 10.2 HCD may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
11. **Warranty**
- 11.1 For Goods not manufactured by HCD, the warranty shall be the current warranty provided by the manufacturer of the Goods. HCD 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.
- 11.2 To the extent permitted by statute, no warranty is given by HCD as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. HCD shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof how ever arising.
12. **Consumer Guarantees Act 1993**
- 12.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by HCD to the Client.
13. **Default & Consequences Of Default**
- 13.1 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 one half percent (2.5%) per calendar month (and at HCD's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by HCD.
- 13.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify HCD from and against all costs and disbursements incurred by HCD in pursuing the debt including legal costs on a solicitor and own client basis and HCD's collection agency costs.
- 13.4 Without prejudice to any other remedies HCD may have, if at any time the Client is in breach of any obligation (including those relating to payment), HCD may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. HCD will not be liable to the Client for any loss or damage the Client suffers because HCD has exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to HCD's other remedies at law HCD shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HCD shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to HCD becomes overdue, or in HCD's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client 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 Client or any asset of the Client.
14. **Security And Charge**
- 14.1 Despite anything to the contrary contained herein or any other rights which HCD may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to HCD or HCD's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that HCD (or HCD's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should HCD elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify HCD from and against all HCD's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint HCD or HCD's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.
15. **Cancellation**
- 15.1 HCD may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice HCD shall repay to the Client any sums paid in respect of the Price. HCD shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by HCD (including, but not limited to, any loss of profits) up to the time of cancellation.
16. **Privacy Act 1993**
- 16.1 The Client and the Guarantor/s (if separate to the Client) authorises HCD to:
 - (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
 - (b) disclose information about the Client and/or Guarantors, whether collected by HCD from the Client and/or Guarantors directly or obtained by HCD 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 and/or Guarantors.
- 16.2 Where the Client and/or Guarantors are an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3 The Client and/or Guarantors shall have the right to request HCD for a copy of the information about the Client and/or Guarantors retained by HCD and the right to request HCD to correct any incorrect information about the Client and/or Guarantors held by HCD.
17. **Unpaid HCD's Rights**
- 17.1 Where the Client has left any item with HCD for repair, modification, exchange or for HCD to perform any other Service in relation to the item and HCD has not received or been tendered the whole of the Price, or the payment has been dishonoured, HCD shall have:
 - (a) a lien on the item;
 - (b) the right to retain the item for the Price while HCD is in possession of the item;
 - (c) a right to sell the item.
- 17.2 The lien of HCD shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
18. **General**
- 18.1 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.
- 18.2 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 courts of New Zealand.
- 18.3 HCD 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 HCD of these terms and conditions.
- 18.4 In the event of any breach of this contract by HCD the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 18.5 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 HCD nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.6 HCD may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.7 HCD reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which HCD notifies the Client of such change.
- 18.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 18.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 18.10 The failure by HCD to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect HCD's right to subsequently enforce that provision.