

## Purchase Conditions

26<sup>th</sup> March 2020

### 1. OFFER AND CONTRACT

a) The following terms, together with such terms as are set forth on the face of this purchase order, with such plans, specifications, or other documents as are incorporated by reference on the face of this order, and with such additional terms as are approved in writing by us constitute the whole of the offer.

b) This order is regarded as accepted by you unless we are notified to the contrary within seven (7) days of your receipt of this order.

c) Acceptance of this order is acceptance of all terms and conditions stated hereon.

### 2. TERMS OF PAYMENT

The date of payment shall, subject to any contrary terms on the face hereof or unless mutually agreed in writing at or before the time of ordering be 45 days after the date of:

a) The end of the month of our receipt of an acceptable invoice; or

b) Receipt of the goods in good condition, together with any required documents whichever is later.

**c) 45 days from Bill of Lading**

### 3. DELIVERY, DELAYS

The time or times of delivery specified in this order are of the essence, any delay in delivery of goods shall be notified to us immediately as it becomes apparent that such delay has occurred or is likely to occur. In the event of any delay for any reason whatsoever we reserve the right to cancel this order without incurring any liability to you.

### 4. ORDER NUMBER

This order number is to be quoted on all invoices and delivery dockets.

### 5. PRICES

a) Prices quoted by you and which are subject to the order are to remain firm and no variation in the price as a result of increased taxes, costs, fluctuations in exchange rates or any other reason whatsoever will be permissible unless first agreed to by us in writing.

b) Any variation in the price after acceptance by you of this order shall have no effect.

### 6. WARRANTY

a) You warrant that the goods ordered:

- i. have been thoroughly tested prior to delivery
- ii. are fit for their purpose
- iii. do not require further testing or inspection by us
- iv. comply with the descriptions set forth or incorporated by reference herein
- v. are free of defects in workmanship or material,
- vi. are of merchantable quality,
- vii. will be fit for such purposes as are expressed in, (or can be reasonably inferred from) the specifications, drawings, or other descriptions which are part of the order
- viii. are to be the best of their respective kind
- ix. are supplied subject to our acceptance and approval.

b) We reserve the right to reject any goods and work not of the stipulated quality, weight, measurement, specifications or description whether or not we have paid for same and any extra expense occasioned by such rejection is to be borne by you.

c) Unless otherwise agreed, you guarantee the adequacy of spare parts and materials necessary for any future repairs or alteration of the goods for a period of at least twenty-four (24) calendar months. If there is any shortage of such spares or materials (or such shortage may be foreseeable) you undertake to inform us of this fact prior to completing this order.

### 7. PASSING OF TITLE AND RISK

Title in and risk of loss or damage to the goods shall pass to us:

a) In the case of a contract for supply only of goods when the goods have been delivered to our works or site nominated by us and we have acknowledged and accepted such delivery.

b) In the case of a contract for supply and installation of goods when these are fully installed and operative to our satisfaction.

### 8. CHANGES, VARIATIONS, ETC.

We reserve the right to change, vary or modify any quantities, quality, specifications, plans, drawings, or other instructions forming part of or incorporated into this order in writing. Any adjustment in price, timing or delivery resulting from such variation shall be adjusted equitably after we have received in writing notice of any such adjustment. Notwithstanding any such modification by us you shall proceed with the order without interruption.

### 9. TESTING AND INSPECTIONS

a) All materials and work in progress shall always be subject to inspection and testing by us or our nominee and when practicable. Where requested by us, during manufacture you shall allow us without additional charge, all reasonable facilities and assistance for such safe inspections and tests.

b) All goods shall be subject to final inspection by us at the point of delivery or destination and if in our opinion such goods are found to be defective we shall have the right to either require your prompt correction thereof to reject the goods without assuming liability for the goods either directly or consequentially. Any and all expenses arising from any necessary correction or from our rejection of the goods shall be borne by you.

### 10. TERMINATION, SUSPENSION ETC.

a) We reserve the right to terminate this order at any stage of production or supply. In the event of termination, other than a cancellation for your default, we will be responsible to pay for the work in progress and any materials and labour costs reasonably incurred to the date of termination, provided such cost is always below the stipulated contract price, and we may take possession of any unfinished goods at our option. Our liability for any termination under this clause does not extend to include any claim for loss of profit or any other consequential loss flowing from such termination whatsoever.

b) We reserve the right to suspend, cancel or modify this order in the event of strikes, lockouts, accidents or any other events beyond our control in the nature of force majeure.

### 11. PATENTS, TRADEMARKS

In accepting the order, you agree and undertake to indemnify, defend, and save harmless ourselves, our successors, our assigns, our customers and the users of the goods from any infringements or suits at law or equity, and for all damage, claims and demands for actual or alleged infringement of any letters patent, trademarks, copyrights or any other intellectual property right of any person or corporation by the possession and/or use of the goods.

### 12. INDEMNIFICATION

In the event of any claims, actions, demands, suits, costs or expenses of whatsoever nature arising out of any fault of or defective design of the goods, or work or material used by you, your employees, agents or subcontractors, incurred or which hereafter may be made or incurred by or against us in connection with or arising from the goods supplied pursuant to this order, you indemnify and hold us harmless and our successors, assigns, our customers and the users of the goods against all such claims, damages, costs losses, expenses, injuries or death.

### 13. ASSIGNMENTS, SUBCONTRACTING

In the event of any subcontracting of any part of this order you shall guarantee the performance of the part of the order so subcontracted on the terms and conditions herein specified and you shall be liable for all defects, claims and liabilities as if no such subcontracting had taken place. Neither party shall have any right to assign the whole of this order or benefit without prior written consent of the other and unless otherwise agreed in writing the rights of any assignee shall be subject to all the terms and conditions herein.

### 14. SUBSTITUTIONS

No substitutions of materials or accessories may be made by you without our written consent. No charges for extras will be allowed unless such extras have been ordered by us and specifically agreed in writing by us.

**15. PLANS, SPECIFICATIONS, TOOLS ETC.**

In the case of orders for custom or specially commissioned goods, all plans, papers, reference material, specifications, calculations, tools, gauges, jigs and other equipment supplied by us to you or manufactured or purchased by you solely for the purpose of manufacturing the goods hereby ordered shall remain our sole property, but shall be insured against fire, theft and other damage and kept safe by you. Any plans, specifications, maps, blue prints, calculations or other information supplied to you by us for the order is confidential unless otherwise stipulated and shall be kept in safe keeping and not revealed to any third parties or persons not specifically engaged in the interpretation and working with the same.

**16. WAIVER**

Any waiver by us of any specific default or defaults by you or failure by us to cancel this order or any part thereof when a right of cancellation arises shall not constitute a waiver by us of such right of cancellation or a waiver of any of our rights or other entitlements under the terms and conditions of this order with respect to any further or subsequent default by you or any other matter or thing.

**17. GOVERNING LAW**

The law governing this order shall be that of New South Wales and any dispute arising here from shall be the exclusive jurisdiction of the courts of that State.

**18. NOTICES**

All notices are to be sent by either facsimile or prepaid postage to the addresses herein stated. In the event a notice is sent by facsimile, delivery will be deemed to have been made on the day of sending the same provided the sender's machine issues a receipt confirming such satisfactory transmission. In the event of notices sent by prepaid post, they shall be deemed to have received 2 business days after sending.

**19. CONFIDENTIAL INFORMATION**

a) In this Purchase Order, "Confidential Information" means all information and documentation consisting of any facts, information, trade secrets, data or advice (whether oral or written), or know-how in any form relating to:

i) engineering, designing, manufacturing and assembling, processing inspecting, testing, marketing, transporting, installing, calibrating, system integration, maintaining and repairing products manufactured, marketed and sold by any entity within the HMA Group; and

ii) services provided by any of the HMA Group; including but not limited to reports, letters, drawings, training and operating manuals, engineering standard books, specifications, bills of material, photographs, design details, patents, licences, design registrations, all of which are owned by any of the HMA Group or licensed to any of the HMA Group, whether before or after the date of the Agreement and applicable to any of the matters in sub-clauses (i) and (ii) of this sub-clause 19(a).

b) The Supplier warrants that it will not henceforth without our prior written consent:

i) directly or indirectly divulge to any person or use any of the Confidential Information for his own or for another's benefit,

ii) accept any employment, appointment or position or render services who would require him to reveal or disclose any of the Confidential Information.

c) The provisions of subclause (b) shall not apply to Confidential Information where:

i) any such information is or becomes part of the public domain other than reason of a breach of this clause; or

ii) disclosure is required by law or by any court tribunal, commission or other competent judicial or administrative body; or

iii) the party or person can establish that it knew the information before such information was disclosed and that it was not acquired either directly or indirectly from a person who is a party to this agreement or any other person with obligation of confidentiality; or

d) The Supplier acknowledges that any breach of this Confidentiality clause will cause irreparable damage to us and be grounds for injunctive relief or any other claim against the Supplier.

e) On completion of the transaction between the Supplier and us the Supplier must return to us all Confidential Information in possession or control.

e) The provisions of the Confidentiality clause will continue to bind the Supplier.

**20. DEFINITIONS**

a) The terms "we", "our/s" or "us" mean and refer to:

- Halley & Mellowes Pty Limited - ABN 83 000 558 627; or
- HMA Geotechnical (trading as a Division of Halley & Mellowes Pty Ltd) – ABN 83 000 558 627; or
- HMA Materials Handling (trading as a Division of Halley & Mellowes Pty Ltd) – ABN 83 000 558 627; or
- HMA Wear Solutions Pty Limited - ABN 69 002 407 730; or
- HMA Power Generation - ABN 64 008 425 214; or
- Diamond Power (Australia) Pty Limited ABN 64 008 425 214; or
- HMA Instrumentation Pty Limited - ABN 42 058 605 959; or
- HMA Flow and Industrial Pty Limited - ABN 68 092 292 718; or
- Measurement Resources Pty Limited – ABN 62 003 247 738; or
- HT Engineering Pty Limited – ABN 76 103 801 574

as the case may be – the relevant HMA Group entity contracting with you is as described in our purchase order.

b) The terms "HMA Group" refers to all the entities named above.

c) The terms "you" and "your/s" mean and refer to customer or entity to whom our purchase order is addressed (as named therein) with whom this contract is entered into.

d) The term "good/s" means any goods, product or equipment purchased by us from you.