

## HPM Legrand New Zealand Ltd Terms & Conditions of Sale

### Definitions

'HPML' means HPM Legrand New Zealand Ltd

'Buyer' means the person or company placing an order with HPML for the purchase of Goods

'Conditions' or 'these Conditions' means the Terms & Conditions of Sale outlined in this document

'Goods' means all goods, merchandise and services supplied by HPML to Buyer

'Written' means any information which can be printed on any material, including information data stored in a computer or any information retrieval system or any form of information stored by any technical means

'MOQ' means minimum order quantity

'MOV' means minimum order value

### 1) Alteration of Conditions

- a) These Conditions shall apply to all orders for Goods placed by the Buyer with HPML to the exclusion of all other terms or conditions and shall prevail over all other terms, conditions or representations
- b) No other terms or representations will apply to any sale of Goods by HPML to the Buyer, including and without limitation, any terms contained on the Buyer's purchase order
- c) These Conditions may only be varied in writing, signed by both parties

### 2) Acceptance of Orders and Quotations

- a) HPML reserves the right to accept, or to decline, in whole or part, any order and any order or part order not accepted is deemed cancelled
- b) A quotation made by HPML is not to be construed as an offer to sell, and HPML reserves the right to accept or reject in whole or in part any order derived via the quotation process
- c) HPML may accept orders placed by intangible (including electronic and verbal) means but the Buyer hereby releases HPML from any loss or damage the Buyer may suffer due to errors or omissions arising from the transmission (or failure of transmission) of the order

### 3) Cancellation of Orders

- a) Once lodged with HPML, an order may only be cancelled with the written consent of HPML. If the Buyer cancels an order without prior consent, the Buyer must indemnify HPML for any loss or damage HPML suffers as a result
- b) Without limiting clause 3(a) (above), where the Goods are not listed in HPML's current New Zealand price list a cancellation fee of 100% of the net invoice value will apply
- c) Orders for non standard Goods, or Goods made to special request may not be cancelled.

### 4) Customer Specific Orders

- a) Where the Buyer orders Goods that are to be specially made for the Buyer and where the Goods are non-catalogue or indent Goods, the Buyer shall accept:
  - i) that if any commissioning or acceptance procedure agreed that has been successfully completed by HPML, the Buyer shall not make any claim against HPML that the supply of the order does not meet the Buyer's requirements with regard to the completion of the order
  - ii) that HPML shall warrant that it shall supply the Goods according to the designs and specifications provided by the Buyer in which case the Buyer agrees that liability for the Goods will remain with the Buyer and the Buyer will pay the Company in full for the Goods and will not hold the Company responsible for any loss, including (without limitation), any economic or consequential loss that may be incurred by the Buyer as a result of the Goods produced from incorrect or mistaken designs, specifications or instructions provided by the Buyer

### 5) Order MOQ, Multiples and MOV

- a) All orders must be for a minimum quantity or multiples thereof as stipulated by HPML
- b) An MOV of \$100 applies to all orders (net of discounts & taxes). For orders that do not meet the MOV threshold, a handling charge of \$10.00 will be added to the invoice. Notwithstanding the foregoing, Goods placed on back order will be delivered when available free of the handling charge

### 6) Prices & Quotations

- a) All published prices are exclusive of GST, which will be added to the invoice at the time of sale
- b) HPML publishes price lists which shall determine pricing at the point of order, or will confirm the price of goods in a written quotation (and any written quotation will, while it is valid, apply in place of the published price list subject to the other provisions of this clause 6 of the Conditions)
- c) It is the Buyer's responsibility to ensure that the HPML quotation number is clearly indicated on any order based on a quote, so as to avoid invoicing errors
- d) No credit will be issued and no claim accepted should the HPML quotation number be missing from the order
- e) Unless otherwise expressly stated in writing in the quotation, quoted prices will be valid for 3 months from date of quotation
- f) All pricing, whether price list or quotation is subject to variation at the discretion of HPML due to increases in material costs, exchange rate fluctuations or changes in taxation or duties

### 7) Freight

- a) Unless otherwise agreed between HPML and the Buyer in writing, all prices quoted by HPML for the supply of Goods to the Buyer are exclusive of any freight or carrier charges

### 8) Governing Law & Submission to Jurisdiction

- a) These Conditions and any contract incorporating them shall be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand

### 9) Terms of Payment

- a) The extension of credit to the Buyer and the terms upon which it is provided remain at all times at the absolute discretion of HPML
- b) Unless HPML agrees to extend credit to the Buyer, all payment for Goods shall be made in full and without deduction, counterclaim or set-off by the 20th of the month following the date of invoice
- c) Receipt of any cheque or other bill of exchange shall not comprise payment until the same has been honoured or cleared. Part payment will not compromise HPML rights to recover the balance owing, nor will it constitute satisfaction and/or transfer of title of the Goods
- d) Without limiting clause 9(a) (above) HPML retains the right to withdraw credit facilities at any time for reasons of non-payment, or if the Buyer is placed in liquidation, voluntary or otherwise
- e) Notwithstanding anything contained in these Conditions, all payments, whether due for payment or not, shall become immediately due to HPML in the event that:
  - i) the Buyer fails to comply with any of these Conditions or any other contract with HPML;
  - ii) the Buyer commits an act of bankruptcy;
  - iii) the Buyer enters into an arrangement or composition with its creditors;
  - iv) if the Buyer is a company:
    - (1) the Buyer does anything that would make it liable to be put into liquidation;
    - (2) a resolution is passed or an application is made for the liquidation of the Buyer;
    - (3) a receiver or statutory manager, or a person in a similar position, is appointed over all or part of the Buyer's assets and undertakings; or
    - (4) an act of insolvency is committed

### 10) Late Payments

- a) HPML may, at its discretion, charge the Buyer interest on late payments based on the bank overdraft rate charged to HPML, plus 2%, from the date when such payment fell due, until paid, notwithstanding any agreement for extension of time for payment
- b) Where payments are overdue, or where HPML reasonably considers that the Buyer will not be able to pay its debts to HPML as they fall due, HPML may at its option either cancel uncompleted contracts or orders forthwith or suspend delivery of Goods yet to be delivered, without prejudice to any other remedy that HPML may have

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### 11) Invoice Claims & Disputes

- a) The Buyer shall notify HPML in writing within seven (7) days of the date of receipt of Goods of any objection or discrepancy (excluding shortages in quantities mentioned in clause 14.c) as to the invoice. In the event that no written objection is received by HPML within seven (7) days of the date of receipt of the Goods, the invoice shall be conclusive evidence between the Buyer and HPML, and the Buyer waives any rights of objection or query with respect to such invoice

### 12) Specification

- a) HPML will supply the Goods in compliance with the manufacturer's specifications in effect at the time of delivery
- b) The specifications and description of Goods are subject to change without notice and HPML will not be required to supply superseded or discontinued Goods nor will it be liable for any loss or damage suffered by the Buyer as a result of any change to the specifications or description of the Goods

### 13) Delays & Non-Delivery

- a) The date for delivery (if any) is the estimated and tentative date for delivery only and HPML shall be under no liability for any loss or damage howsoever arising if the Goods are not delivered by that date

### 14) Point of Delivery & Passing of Risk

- a) Where Goods are conveyed by HPML's nominated carrier, passing of risk will be on delivery at the Buyer's nominated address
- b) Where Goods are conveyed by the Buyer's nominated carrier, risk shall pass (and delivery shall be deemed to have been made) upon collection of the Goods from HPML
- c) All deliveries shall be deemed to have been delivered without shortage in quantity unless the Buyer gives HPML notice of such shortage within twenty four (24) hours after delivery of the Goods to the Buyer
- d) Where Goods are conveyed by HPML's nominated carrier, HPML will accept no liability for damage to Goods in transit not notified in writing to it and to the carrier concerned within twenty four (24) hours after delivery and HPML liability, if any, shall be limited to repair or replacement of the Goods within a reasonable time
- e) The Buyer must ensure that it is ready and capable to accept delivery of the Goods on the delivery date. If the Goods are unable to be promptly discharged or delivered, the Buyer is liable to compensate HPML fully for any cost incurred by HPML as a result of any delay encountered

### 15) Title

- a) Until HPML has received payment in full for the Goods:
  - i) title in the Goods remains with HPML and the Buyer will hold the Goods as bailee for HPML;
  - ii) HPML may at any time terminate any contract relating to the Goods and the bailment without notice to the Buyer and may thereupon take possession of the Goods;
  - iii) upon demand by HPML, the Buyer shall deliver up forthwith the Goods to HPML (or as HPML directs) and, if the Buyer fails to do so, the Buyer irrevocably authorises HPML by its servants or agents to enter any premises owned, leased or otherwise occupied by the Buyer or its agent for the purpose of taking possession of the Goods (and, in the event that any Goods are wholly or partially attached to or incorporated in any other goods, sever or disconnect the Goods from those other goods) and authorises HPML by its servants or agents to use all reasonable force to obtain such possession. The Buyer must at all times ensure that HPML can access third party premises for the purposes of retaking possession of any Goods that are located at those premises. The cost of retaking possession of the Goods as set out in this clause shall constitute additional charges payable by the Buyer to HPML;
  - iv) the Buyer shall store the Goods in a manner that clearly enables them to be identified as the property of HPML
  - v) the Buyer must not pledge or in any way charge or encumber the Goods by way of security for the indebtedness of the Buyer or any other person;

- vi) if the Goods are sold by the Buyer, the Buyer acknowledges that such sale is by the Buyer as bailee for and on behalf of HPML and agrees to hold the proceeds of sale as a fiduciary on trust for HPML in a separate account until payment in full to HPML for the Goods, and HPML is entitled to receive forthwith upon demand from such proceeds, payment of the total purchase price outstanding to HPML; and
- vii) the proceeds of a sub-sale (to the extent of the amount of the total purchase price outstanding to HPML) shall be held by the Buyer as a fiduciary on trust for HPML even if the Buyer fails to keep such proceeds in a separate account.

### 16) Warranties – Exclusions & Limitations

- a) HPML warrants that each of the Goods and its components directly supplied by HPML will conform to the applicable manufacturer's specifications for a period of one year from the date of delivery, unless otherwise specified
- b) If there is a material defect, and the Buyer notifies HPML of the material defect and within that period, HPML will use its best efforts to repair or replace the defective component. HPML total obligation under the warranty is limited to the replacement or repair of the Goods (or their defective components), or a credit to the invoice value of the product
- c) The warranty given in clause 16(a) will not apply if:
  - i) the Goods are damaged in transit;
  - ii) the Buyer interferes with, modifies or damages the Goods or uses the Goods in connection with other products or in any way not specified by HPML; or
  - iii) the Goods are exposed to harsh or unusual environmental conditions
- d) The Buyer shall return, freight prepaid, to HPML any Goods and components on which a warranty claim exists and shall permit HPML to make tests on site in relation to such Goods or components
- e) These Conditions do not exclude or limit the application of any provision of any statute where to do so would:
  - i) contravene that statute; or
  - ii) cause any part of this clause to be void
- f) Except for clause 16(a) (above), HPML excludes all conditions and warranties expressed or implied by statute, general law or custom except any implied condition or warranty the exclusion of which would cause this clause to be void
- g) If the Buyer acquires the Goods from HPML for the purposes of a business in any way, or the Buyer holds itself out as acquiring the Goods for the purposes of a business in any way, the Buyer agrees to the following terms:
  - i) the conditions, warranties and guarantees, representations and descriptions set out in the Sale of Goods Act 1908 and the Consumer Guarantees Act 1993 ("CGA") or implied by law, trade or custom will not apply and are excluded from these Conditions; and
  - ii) the Buyer may not claim any of the remedies set out in the CGA from HPML or from any contractor to HPML or manufacturer of the Goods or from any manufacturer of any components or parts in the Goods; and
  - iii) ties, representations, conditions and agreements in respect of the Goods are those which are contained in these Conditions; and
  - iv) the Buyer shall use its best endeavours to minimise loss and damage arising from any alleged defect in the Goods; and
  - v) neither HPML, its employees, agents nor contractors will be liable to the Buyer, its employees, agents or contractors for any consequential loss or damage howsoever caused. This exclusion applies whether the consequential loss is incurred by the Buyer or a third party
- h) The Buyer warrants that if it purchased any Goods from HPML for resupply as, or incorporates any Goods into, goods ordinarily acquired for personal household or domestic use ("Consumer Goods") it will supply the Consumer Goods on the following conditions:
  - i) if it supplies the Consumer Goods for resupply by its customer it will ensure that its terms and conditions of supply require its customer and each person in the distribution chain to include in its supply agreements or

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conditions of sale obligations requiring its customer to exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Goods for business purposes;

- ii) if it supplies the Consumer Goods directly to an end user/consumer it will do so using terms and conditions of supply which exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Goods for business purposes
- i) The Buyer agrees to fully indemnify HPML against any costs, losses, damages or liabilities arising directly or indirectly as a result of or in any way in connection with:
  - i) any failure by the Buyer, its customers or any person in the distribution chain to properly contract out of liability to business end users/consumers under the CGA;
  - ii) the Buyer's breach of any term of these Conditions;
  - iii) all third party claims made against HPML by any person relating to the handling and use of the Goods; and
  - iv) any breach by the Buyer of any statute, regulation, order or law to which it is subject or with which it is required to comply
- j) Subject to clauses 16(e) and 16(f), HPML total liability to the Buyer, in tort, under statute or for breach of any express provision of a contract is limited to the lesser of:
  - i) the price of the Goods supplied under that contract in respect of which the breach occurred; and
  - ii) the cost of supplying those Goods again
- k) Without limiting clause 16(j) (above), HPML will not, in any circumstances be liable for any consequential loss or damage suffered by the Buyer howsoever caused. This clause applies whether the consequential loss is incurred by the Buyer or a third party

### **17) Return of Goods**

- a) No Goods shall be returned without the prior consent in writing of HPML and in conformity with all HPML Goods return policies & procedures. Where Goods are returned without such consent, they will not be accepted and will be returned to the Buyer at the Buyer's expense

### **18) Method of Return**

- a) Unless otherwise agreed in writing by HPML, all returns must be made freight prepaid at the Buyer's expense and at the Buyer's risk pending final inspection by HPML
- b) The Goods must be properly and adequately sent in their original and specific packaging materials (Goods fully secured), and suitable for immediate resale
- c) All returned Goods must be accompanied by a completed HPML RMA document. Intention to return Goods must be notified to HPML within seven (7) days of delivery to Buyer and return must be to HPML warehouse in Auckland within 14 (fourteen) days of date of delivery by the Buyer.

### **19) Re-stocking & Handling Charges**

- a) Unless otherwise agreed, Goods returned will be subject to a 20% restocking and handling fee

### **20) Non-Returnable Goods**

- a) Without limiting clause 17 (above), none of the following shall be accepted for return under any circumstances:
  - i) Goods which are custom made or per the Buyer's specifications or non-standard Goods, or made by special orders;
  - ii) Goods which are not in their original shape, form or condition;
  - iii) Goods damaged by abnormal use, or faulty maintenance, or when Goods have not been used or maintained according to manufacturer or HPML instructions or specifications;
  - iv) Goods expressly sold on a non-return basis (for example, non stock items in New Zealand);
  - v) Goods damaged during installation or fitting process; and
  - vi) Goods containing lead acid batteries as a backup power source

### **21) Intellectual Property**

- a) All intellectual property in the Goods sold to the Buyer remains the property of HPML

- b) HPML gives no rights to the Buyer to use or to exploit or otherwise deal in any of intellectual property without its prior express written consent

### **22) Privacy Act 1993**

- a) HPML will hold any personal information received from the Buyer for marketing, product development, account administration and credit purposes. HPML may disclose personal information about the Buyer to any person the Buyer names as a credit referee or to any person for the purpose of securing HPML's interest in any Goods. Failure by the Buyer to supply personal information for these purposes entitles HPML to withdraw or refuse credit to the Buyer and to repossess any Goods in the possession of the Buyer

### **23) Personal Property Securities Act 1999 ("PPSA")**

- a) The Buyer grants HPML a security interest in the Goods and any proceeds thereof in favour of HPML for the payment of the purchase price of the Goods and for all other indebtedness of the Buyer to HPML on any account
- b) To protect HPML's security interest, the Buyer agrees to allow HPML to register or otherwise perfect HPML's security interest as permitted by the law in any relevant jurisdiction
- c) The Buyer acknowledges that the terms of the PPSA will apply to all Goods supplied in New Zealand to the Buyer and agrees:
  - i) that HPML may register a financing statement in respect of the security interest in the Goods and any proceeds of sale;
  - ii) to promptly give HPML all such assistance, and all such information, as is necessary to register that financing statement;
  - iii) to waive the right to receive a copy of any verification statement under section 148 of the PPSA;
  - iv) if so required by HPML, to indemnify HPML for any costs incurred by HPML under this clause;
  - v) not to change its name without first notifying HPML in writing of its intention to change its name at least 10 business days prior to doing so;
  - vi) that HPML may exercise any power to take possession of and/or to sell any Goods over which HPML has a security interest even if HPML does not have priority over other secured parties having a security interest in the same Goods, and, pursuant to section 107(1), sections 109 and 111 of the PPSA shall not apply to the extent that they are inconsistent with this clause;
  - vii) HPML need not give the Buyer any notice of its intention to sell any Goods under section 109 of the PPSA, and section 114(1)(a) of the PPSA shall not apply; and
  - viii) that it has no rights under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA

### **24) Grounds for Termination**

- a) In the event that the Buyer's financial condition shall become impaired prior to delivery or full payment to HPML, the Buyer shall notify HPML immediately
- b) In the event that HPML, in its sole and unfettered discretion, finds the financial condition of the Buyer or its paying agent unsatisfactory (with or without notice from the Buyer) HPML may exercise any or all of the following options: demand immediate payment; suspend all further deliveries; terminate any agreement upon 2 days written notice to the Buyer, without limitation of any other rights or remedies it has herein or under law
- c) The Buyer, in the event of its default hereunder, either directly, indirectly or through an agent, shall be liable for HPML damages including expenses and cost of collections, in addition to any other rights or remedies that HPML shall have herein or under law

### **25) General Terms:**

- a) In the event that the Buyer instructs HPML to debit its account with a paying agent and to send invoices to be paid by a paying agent acting on behalf of the Buyer, the same terms and conditions shall be applicable to the paying agent, unless otherwise agreed in writing by HPML, the Buyer and the paying agent. The appointment of a paying agent or any agent does not affect in any event HPML's rights or remedies it has herein or under law

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- b) HPML's obligation to perform will be suspended for the duration of any delay arising out of anything outside HPML's control, including but not limited to, fire, storm, flood, earthquake, accident, war, labour dispute, materials or labour shortage, failure or delay in transportation and act or omission of the Buyer or any third person
  - c) HPML's failure to insist upon strict performance of any of the terms herein shall not be deemed a waiver of any rights or remedies that HPML may have, and shall not be deemed a waiver of any subsequent breach or default in their terms, conditions, and covenants herein contained
  - d) If any clause or part of a clause of these Conditions is held to be invalid or unenforceable for whatever reason, to the extent not inconsistent with that invalid clause, the remaining provisions shall remain in full force and effect
  - e) The Buyer is not entitled to assign, transfer or otherwise dispose of any of its rights or obligations under these Conditions to anyone else without HPML's prior written consent.
  - f) Unless otherwise agreed between the parties in writing, all notices given hereunder shall be served in writing (including via fax or email) to the registered offices of the Buyer and/or HPML, attention to a member of the senior management team.
  - g) Headings are for convenience only and shall not be used in construing and interpreting these Conditions
  - h) These Conditions supersede all previous agreements, understandings and negotiations between the parties and any previously published terms and conditions
- b) The Buyer's compliance with all the above undertakings is a condition of HPML continuing to supply the Goods to the Buyer and HPML has the right to suspend such supply and terminate any agreement where we have a reasonable belief that the above undertakings are not being complied with or if any obligation under any agreement would constitute a breach of any national or international regulations or any embargo or sanction and HPML shall have no liability to the Buyer or any third party by way of damages or otherwise in respect of such suspension or termination.

### **26) Exports and Embargoes**

This section applies where the Buyer undertakes export, re-export or resale of the Goods or where our commercial arrangement is not restricted solely to the New Zealand market (Exports).

- a) The Buyer warrants and undertakes to HPML:
  - i) The Buyer shall comply with all the (re-) export control regulations of Australia, France, the EU and the USA and those of any other applicable jurisdiction and it shall obtain all necessary licences, shipping documents and authorisations required under such legislation in respect of such Exports.
  - ii) The Buyer shall not export or re-export the Goods to a country that is subject to embargo or sanction without having obtained all necessary authorisations from Australian, French, European or American authorities, the United Nations or any other country or organisation that imposes such restrictions.
  - iii) The Buyer shall not supply the Goods to parties, organisations or entities subject to embargoes, sanctions or other restrictions imposed by Australia, France, the EU, the USA, the United Nations or by any other country, or to parties, organisations or entities if there is reason to believe that they fail to fully comply with all applicable national or international regulations, sanctions and embargoes.
  - iv) The Goods are not intended to be used in connection with any sectors or use that is banned or subject to restrictions under any laws or regulations, unless all required authorisation by the relevant bodies have been obtained.
  - v) All transfer and receipt of funds by the Buyer comply with all national and international regulations.
  - vi) To enable authorities or HPML to conduct compliance audits, the Buyer upon request by HPML, shall promptly provide HPML with all relevant licences and authorisations, information as to the identity of the customer to whom the Goods are supplied, the destination and intended use of the Goods and the financial institutions or entities used to collect and issue payments.
  - vii) The Buyer shall notify HPML if the Buyer suspects that any person the Buyer has supplied the Goods to may not be complying with any embargo, sanction or export control regulation.
  - viii) Buyer shall indemnify and hold harmless HPML from and against any and all claims, proceedings, actions, fines, losses, costs and damages arising out of or relating to any noncompliance by the Buyer with any of the above undertakings or breach of any relevant export control regulations or sanction or embargo.