

1. DEFINITIONS

1.1. Unless the context otherwise requires, the following definitions shall apply to these terms and conditions:

“Accessions”, “Commingled Goods”, “Inventory”, “Perfect”, “Non-Purchase Money Security Interest”, “Proceeds”, “Purchase Money Security Interest”, “Secured Party”, “Security Interest” and **“Verification Statement”** have the meaning given to such terms in the PPSA or that may be taken from their use in the PPSA.

“Amount Owning” means, at any time, the unpaid price charged by the Seller for the Goods and any other sums that the Seller is entitled to charge under these Terms and Conditions or, which are otherwise owing by the Purchaser to the Seller (in whatever capacity).

“Default Rate” means the base lending rate charged by the Seller’s bank plus a margin of 5 per centum per annum.

An **“Event of Default”** means an event where:

- (a) The Purchaser fails to comply with these Terms and Conditions and any other agreement with the Seller; or
- (b) The Purchaser is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership or which generally precedes such an event; or
- (c) An event occurs or information becomes known to the Seller which, in the Seller’s opinion might materially affect the Purchaser’s creditworthiness, the value of the Goods, the subject of the Security Interest or the Purchaser’s ability or willingness to comply with its obligations under these Terms and Conditions or any other agreement with the Seller; or
- (d) Any guarantor of the Purchaser’s obligations under these Terms and Conditions is in default under any agreement with the Seller (in any capacity).

“Goods” means all goods and services supplied from time to time by the Supplier to the Purchaser provided that:

- (a) (but solely for the purpose of the application of the PPSA) where the Goods supplied are inventory of the Purchaser then all references to Goods in these

Terms and Conditions shall, in respect of those Goods, be read as reference to inventory for so long as they are held as inventory; and

- (b) Where the Goods supplied are not inventory of the Purchaser, then all references to Goods in these Terms and Conditions shall, in respect of those Goods, mean the Goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) prepared by the Seller and relating to those Goods, on the basis that each such order form, packing slip or invoice (or equivalent) is deemed to be assented to by the Purchaser, incorporated in, and form part of these Terms and Conditions, and (unless the context requires otherwise) includes all proceeds of such Goods in any product or mass which the Goods subsequently become part of.

“PMSI” means a Purchase Money Security Interest as this term is defined in the PPSA.

“PPSA” means the Personal Property Securities Act 1999 and associated regulations.

“Purchaser” means the purchaser of the Goods from the Seller shown on the front of this form.

“Purchase Order” means the Purchaser’s acceptance of a quote given to it by the Seller or the final order for Goods agreed between the Seller and the Purchaser.

“Seller” means Hiko Power Engineering Limited.

- 1.2. Reference to any statutory provision shall include any statutory provision which amends or replaces it and any subordinate legislation made under it.

2. ORDERS AND SUPPLY

- 2.1. Each Purchase Order for Goods shall be a binding contract between the Seller and the Purchaser pursuant to which the Goods will be supplied by the Seller to the Purchaser at the price specified in the Purchase Order and otherwise on these Terms and Conditions unless the Seller agrees in writing to change them.
- 2.2. The Seller will not be bound by any conditions included in the Purchaser’s order unless it expressly accepts them in writing.
- 2.3. The Purchaser shall not be entitled to cancel or amend any Purchase Order unless the Seller agrees in writing. Any costs incurred by the Seller

- in agreeing to the cancellation or amendment of a Purchase Order may be passed by the Seller to the Purchaser.
- 2.4. Where the Goods or any part of the Goods supplied pursuant to any Purchase Order have been designed by the Seller in response to any request made by the Purchaser or following any negotiations between the Seller and the Purchaser, the following will apply:
- (a) The design shall be the intellectual property of the Seller unless agreed otherwise in writing;
 - (b) The Seller will provide the Goods purchased to the specification set out in the Purchase Order and as otherwise agreed in writing;
 - (c) The Purchaser has accepted the Goods are suitable for their intended use;
 - (d) The Purchaser will have no claim against the Seller if such Goods are not suitable for the intended use;
 - (e) The Seller shall only be liable to remedy any defects in the Goods if they do not meet the agreed specification.
3. PRICE
- 3.1. The price for the Goods shall be the price specified in the Purchase Order, or if no such agreement is made then the current price charged by the Seller at the date of delivery. The price does not include charges for freight, taxes, insurance or duties unless otherwise agreed between the Seller and the Purchaser.
- 3.2. Any price agreed between the Seller and the Purchaser in the Purchase Order may be varied if wages, salaries, cost of materials, freight rates, taxes, government charges, insurance rates duty and / or exchange rates are increased between the date of the order and the date of delivery.
4. PAYMENT
- 4.1. The Purchaser shall pay for the Goods on or before the date agreed in the Purchase Order, but, if there is no such agreement, the Purchaser shall pay for the Goods no later than 20th of the month following delivery and if the Purchaser fails to pay on or before due date the Purchaser shall pay interest at the Default Rate from the due date until payment.
- 4.2. Payment by cheque, bill of exchange or any other negotiable instrument will not be considered as payment until actually paid or honoured. Payment by bank transfer will not be considered as payment until the funds have been cleared.
- 4.3. The Purchaser shall pay the price in full and shall have no right to set off against the price any claims which the Purchaser might have against the Seller.
- 4.4. The price shall become immediately payable regardless of the terms of payment and the Seller may take immediate action to recover the price if the Purchaser is in default under this agreement or commits an act of bankruptcy or goes into liquidation or receivership or enters into a credit composition or has its credit standing impaired in any other way.
- 4.5. In the event of sequential contracts or deliveries of Goods, money paid by the Purchaser to the Seller will be applied by the Seller to the earliest-in-time delivery or contract that is unpaid or has a portion unpaid for the purposes of determining the continued existence of PMSI's taken by the Seller with respect to particular deliveries of Goods.
5. DELIVERY
- 5.1. Delivery shall be made to the Purchaser when the Goods are first dispatched from the Seller's premises unless agreed otherwise between the parties.
- 5.2. The Seller will do all in its power to see that deliveries are maintained according to schedule but any period or dates quoted for delivery are to be regarded as approximate only.
- 5.3. Goods from each Purchase Order may be delivered in instalments.
- 5.4. The Seller may stop future deliveries until the Purchaser has paid for all previous deliveries.
- 5.5. If the Seller is unable to deliver the Goods because of any cause beyond its control it may suspend delivery or cancel the Purchase Order without incurring any liability for loss or damage suffered by the Purchaser.
- 5.6. The Purchaser shall not cancel or refuse delivery of any Goods pursuant to a Purchase Order .
6. OWNERSHIP AND THE PPSA
- 6.1. Ownership in the Goods shall not pass to the Purchaser and any proceeds of sale of the Goods shall belong to the Seller until the Purchaser has paid for the Goods in full.
- 6.2. The Purchaser acknowledges and agrees that the Seller may register any security interest that the Seller has in respect of the Goods and their proceeds on the Personal Property Securities Register and that such security interest survives until the Goods are fully paid for.
- 6.3. Until payment to the Seller has been made in full for the Goods, the Purchaser acknowledges and agrees that:
- (a) the Seller supplies the Goods to the Purchaser on terms on the condition that the Seller has a PMSI in the Goods;
 - (b) in relation to Goods that are inventory, the Purchaser will not allow any non-purchase money security interest to arise in respect

- of the Goods unless the Seller has perfected its PMSI prior to the Purchaser's possession of the Goods;
- (c) the Purchaser will not permit the Goods to become accessions or commingled with other Goods or mass if the Seller has not perfected any security interest that the Seller has in relation to the Goods;
- (d) if the Purchaser (notwithstanding clause 6.1 of this agreement) sells the Goods prior to payment for the same to the Seller, the Purchaser will pay the proceeds arising from that dealing into a separate account with separate records so that those proceeds remain identifiable and traceable to that dealing and the Goods. The Purchaser agrees that there will be no other funds in the account. If the Purchaser further deals with such proceeds, the Purchaser will manage that dealing or dealings in a manner having the result that the proceeds remain identifiable or traceable to the original Goods. If the Purchaser sells the Goods prior to payment for same to the Seller, all claims which the Purchaser holds against third parties shall be handed over to the Seller.
- 6.4. If the Seller perfects any security interest that the Seller has in relation to the Goods, the Purchaser will not do anything that results in the Seller having less than the security or priority position in respect of the PPSA that the Seller assumed at the time of that perfection.
- 6.5. The Purchaser irrevocably gives the Seller and its agents the right to enter upon the Purchaser's premises, without giving notice and without being in any way liable to the Purchaser, or to any person claiming through the Purchaser, if the Seller has sufficient cause to exercise any rights that the Seller has under section 109 of the PPSA.
- 6.6. The Purchaser and the Seller acknowledge and agree that, to the extent permitted under section 107 of the PPSA, the following provisions of the PPSA will not apply in respect of the Goods or between the Seller and the Purchaser: sections 114, 125, 129, 131, 133 and 134. The Purchaser acknowledges and agrees that by contracting out of these provisions, the Purchaser also loses its right to redeem collateral under section 132 of the PPSA and to require the Seller to sell collateral under section 121. In addition, in accordance with section 148 of the PPSA, the Purchaser waives its right to receive any financing statement or financing change statement from the Seller.
- 6.7. The Purchaser will assist the Seller by completing any formalities or providing any information required by the Seller such that the Seller may establish and maintain the best security position that it is entitled to under the PPSA.
7. RISK
- 7.1. The risk in the Goods shall pass to the Buyer upon delivery even though ownership of the Goods may not have passed to the Buyer.
8. WARRANTIES AND CONDITIONS
- 8.1. Notwithstanding any other provisions of these terms and conditions, nothing herein is intended to limit any condition, warranty, right or remedy available under or imposed by any New Zealand legislation except to the extent permitted by such legislation.
- 8.2. Where the Purchaser acquires, or holds itself out as acquiring, the Goods from the Seller for the purposes of a business, the Purchaser agrees that the provisions of the Consumer Guarantees Act 1993 shall not apply in respect of such Goods.
- 8.3. Where the Consumer Guarantees Act 1993 does not apply to these Terms and Conditions the Purchaser may reject non confirming or defective Goods by lodging a claim to the Seller within 7 (seven) days of receipt, quoting the invoice /packing slip number and date and the Seller may, in its own discretion, repair, replace or refund the purchase price of the Goods. No goods are returnable after 7 (seven) days.
- 8.4. Subject to clause 8.1:
- (a) all representations or terms (including any condition or warranty expressed or implied by law, statute or otherwise) not expressly included in these terms and conditions are hereby expressly excluded;
- (b) the Seller's liability arising from any of these terms and conditions or a breach of them or for any misrepresentation shall be limited to the price of the Goods or the actual loss or damage suffered whichever shall be the lesser;
- (c) under no circumstances will the Seller be liable for indirect or consequential loss of any kind whatsoever;
- 8.5. The Purchaser agrees to indemnify and keep indemnified the Seller from and against all costs, damages and expenses incurred by or recovered against the Seller in respect of any claim for infringement of any letters patent or registered design where the Seller has used them on the Purchaser's instructions.
- 8.6. The Seller will not be responsible for any damages whatsoever to the Goods resulting from malfunction of such Goods where they are:
- (a) Fitted by unqualified tradespersons;
- (b) Fitted in an un-tradesperson-like manner;
- (c) In any way adapted to a use to which they are not specifically intended; and/or
- (d) Added to or repaired by components not recommended or approved by the manufacturer of the Goods.

9. DEFAULT

- 9.1. If an Event of Default occurs:
- (a) the Seller may suspend or terminate any Purchase Order;
 - (b) the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen;
 - (c) the Seller may enforce the Security interest; and
 - (d) the Seller may (without the consent of the Purchaser) appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these Terms and Conditions and otherwise to exercise all rights and powers conferred on a receiver by law.
- 9.2. The Purchaser agrees that, at any time after an Event or Default which is continuing or at any time if any Goods are at risk, the Seller may:
- (a) take possession of any Goods; and / or
 - (b) sell or otherwise dispose of any Goods,
- In each case in such a manner and generally on such Terms and Conditions as it thinks fit, and, in each case, otherwise do anything the Purchaser could do in relation to those Goods. The Seller and the Purchaser AGREE THAT SECTION 109(1) of the PPSA is contracted out of in respect of particular Goods if, and only for so long as, the Seller is not the secured party with priority over all secured parties in respect of those Goods. As the Purchaser's agent, the Seller (and its employees and agents) may, without prior notice, enter any land or premises where the Goods are kept in order to take possession of and / or remove them, without being responsible for any damage caused in doing so. The Purchaser agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Seller (and its employees and agents) against any liability incurred in connection with, such entry, and taking of possession or removal. The Seller may resell any of the Goods and apply the proceeds of sale in reduction of the Amount Owing.

10. OVERDUE ACCOUNTS

- 10.1. If the Purchaser does not pay any Amount Owing by its due date, the Seller may charge the Purchaser interest at the Default Rate and any discounts may be disallowed. The Purchaser is liable for costs on a fully indemnity basis incurred in the collection of any overdue Amount Owing..

11. MISCELLANEOUS

- 11.1. The Seller is entitled at any time to assign to any other person all or part of any debt owing by the Purchaser to the Seller.
- 11.2. The rights, powers and remedies provided for in these Terms and Conditions are in addition to and

do not limit or exclude (or otherwise adversely affect) any right, power or remedy provided to the Seller by law.

- 11.3. The Seller reserves the right to review any of these terms and conditions at any time and from time to time. If, following any such review there are changes to these Terms and Conditions, these changes will take effect from the date on which the Seller either gives notice to the Purchaser of such change or posts such change on its website, whichever shall first occur.
- 11.4. If the purchaser is a Trust, these Terms and Conditions will bind each trustee of that Trust and each trustee personally. The Seller's rights against each trustee will only be limited if the trustee is an independent trustee (not being a trustee who has a right or interest in any of the assets of the Trust except in the trustee's capacity of a trustee of that Trust). The liability of a independent trustee should be limited to the assets of that Trust. However, this shall not affect the liability of an independent trustee who has guaranteed the Purchaser's obligations under these terms and conditions in his or her personal capacity.