

# TERMS AND CONDITIONS

## 1. Definitions

- 1.1. MHM means MHM Automation Limited or any of its subsidiary companies.
- 1.2. The Customer means the party to which any quotation, confirmation of order, packing list or invoice incorporating these conditions is directed.
- 1.3. Products mean products and/or services provided by MHM as set out in a Order and/or Quotation.
- 1.4. Practical Completion means that stage of the work under the contract when the works are complete except for minor omissions and minor defects, which do not prevent the works from being reasonably capable of being used for their stated purpose.
- 1.5. Performance Tests means testing required to prove production rates as required under the Contract.

## 2. Application

- 2.1. These conditions apply to offers, quotations and agreements entered into between the MHM and the Customer.
- 2.2. The award of Contract or placement of an order shall be deemed to be acceptance of these terms by the Customer.
- 2.3. In the event of a conflict between the conditions of sale then the order of precedence shall be;
  - a. Our formal written tender offer,
  - b. These General Conditions of Sale,
  - c. The Customer's Purchase Order or Contract Acceptance documentation.

## 3. Quotations

- 3.1. Unless otherwise stated therein quotations shall be valid for acceptance for a maximum period of 30 days from the date of issue and may be withdrawn by the MHM at any time within such period by written or oral notice.
- 3.2. Orders are accepted subject to the MHM receiving any necessary license to purchase or to use the required raw materials and to the MHM being able to obtain such raw materials.

## 4. Delivery and completion

- 4.1. Time for delivery is given as accurately as possible and MHM will use its best endeavours to meet estimated delivery times. The Customer shall have no right to damages or to cancel the order for failure for any cause to meet delivery time stated.
- 4.2. The date of delivery shall in every case be dependent on prompt receipt of all necessary information, drawings, final instructions or approvals by the Customer. Alterations by the Customer in design specifications or quantities may result in delay in delivery.
- 4.3. Failure by the Customer to take delivery or to make payment in respect of any one or more instalments of Products delivered hereunder shall entitle MHM to treat the whole contract as repudiated by the Customer.
- 4.4. Delivery shall occur when MHM hands possession and control of the product to the Customer or to a third party for transportation. Thereafter the product shall be at the sole risk of the Customer and all costs of insurance, freight and delivery shall be paid by the Customer. MHM shall be under no obligation to arrange any such insurance, freight or delivery on behalf of the Customer.
- 4.5. Where a period is named for delivery and such period is not extended by consent in writing from

MHM the Customer shall take delivery within that period.

- 4.6. If MHM does not consent in writing to the Customer's request for postponement of delivery the Customer shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and payment for the Product shall become due and payable in accordance with these conditions.
- 4.7. Any packaging supplied by MHM, unless otherwise expressly agreed, is intended to provide adequate protection throughout normal conditions of travel of usual duration.
- 4.8. MHM is not responsible for third party shipping or transport delays whether engaged by MHM or the Customer and will be entitled to an extension to the delivery date should such delays occur.

## 5. Risk and title

- 5.1. Risk in the Products shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration in the Products:
  - a. If MHM delivers the Products by its own transport at the time when the products are delivered to the point of delivery.
  - b. In all other circumstances at the time when the Products or a relevant part thereof leave MHM's premises whether or not MHM arranges transport. Where the Products are delivered by carrier any claims for loss or damage in transit must be made by the Customer against the carrier in accordance with the carrier's conditions.
- 5.2. Title to the Products or any relevant part thereof shall only pass to the Customer upon the happening of the earlier of the following two events:
  - a. The Customer has paid to MHM all sums due under this contract OR
  - b. When MHM serves on the Customer notice in writing that title in the Products or part thereof has passed.
- 5.3. MHM may recover Products in which title has not passed to the Customer at any time and the Customer hereby licenses MHM, its officers, employees and agents to enter upon the premises of the Customer for the purpose of either satisfying itself that 5.4 below is being complied with by the customer or of recovering any Products in respect of which title has not passed to the Customer. MHM, its officers, employees and agents shall not be liable for any loss or damage suffered by the Customer or any other person resulting from such entry.
- 5.4. Until title to the Products has passed to the Customer pursuant to the terms of these conditions, the Customer shall possess the Products as a bailee of MHM on the terms of this contract. If MHM so requires, the Customer shall store the product separately from other goods and shall ensure that they are clearly identifiable as belonging to MHM.
- 5.5. Without prejudice to the foregoing sub-conditions and in the event that the Customer shall in the course of its business dispose of the products to a customer being a bona fide purchaser without notice of MHM's rights then the Customer shall have a fiduciary duty to MHM to account to MHM for the proceeds (which shall be kept separate and identifiable from the Customer's own monies) but may retain there from any excess of such proceeds over the amount outstanding under this or any other prior contract between them.

## 6. Cancellation and returns

- 6.1. Cancellation will only be accepted by MHM on condition that all costs and expenses incurred by MHM up to the time of cancellation and all loss of profits and other loss or damage suffered by MHM up to the time of cancellation will be paid forthwith by the Customer to MHM.

## 7. Prices

- 7.1. Unless otherwise stated all prices are quoted as ex MHM's works exclusive of goods and services tax and all other taxes, levies or duties and are subject to fluctuation in the event of any increase in the cost of labour, in the cost of materials, or overheads and MHM may alter any price quoted on account of such increases during the contract period.
- 7.2. All quotations are based on the product being constructed or service being performed during ordinary working hours and MHM schedules its work to allow for this. Should it not be possible to complete the product or perform the service within ordinary working hours due to causes beyond the reasonable control of MHM then the Customer shall recompense MHM for any additional costs incurred.
- 7.3. In the event of any alteration in design or specification being requested by the Customer and agreed to by MHM, then MHM shall be entitled to make an adjustment to the contract price corresponding to such alteration.

## 8. Terms of payment

- 8.1. All payments shall be made without deduction or setoff of any kind.
- 8.2. The NZ Construction Contracts Act 2002 Payment Procedure will apply and payment by the Customer shall be either:
- No later than the 20th day of the month following the month in which the Products were dispatched or would have been despatched save for postponement otherwise that due to default on the part of MHM. MHM shall be entitled to submit its invoice on the same date as its delivery advice note or at any time thereafter save that where delivery has been postponed at the request of or by the default of the Customer then MHM may submit its invoice at any time after the Products are ready for delivery or would have been in the ordinary course but for the request or default as aforesaid. OR
  - Where MHM and the Customer agree to a schedule of payments over the course of the contract then MHM will invoice the Customer in accordance with this schedule with payments due no later than 20th day of the month following the date the invoice was raised.
- 8.3. No disputes arising under the contract or delays beyond the reasonable control of MHM shall interfere with prompt payment in full by the customer.
- 8.4. In the event of default in payment by the Customer:
- MHM shall be entitled without prejudice to any other right or remedy to suspend all further deliveries or work in hand on any contract or contracts between MHM and the Customer without notice and to charge interest on any amount outstanding at the rate of 2% per annum above the overdraft rate charged by MHM's bankers in force at the time when payment was due.
  - The Customer will also be liable for payment of all legal costs incurred by MHM in obtaining recovery of all monies due.

- All payments by the Customer shall be applied first in reduction of interest and legal costs and then in reduction of all other outstanding amounts.

- 8.5. MHM is entitled to make progress claims for progress made on items produced or purchased away from the Customers site.

## 9. Insolvency

- 9.1. If the Customer shall become bankrupt or is unable to pay its debts as they fall due or compounds with creditors or in the event of a resolution being passed or proceedings commenced for the winding up or liquidation of the Customer (other than for a voluntary winding up for the purpose of reconstruction or amalgamation approved in advance by MHM) or if a receiver or manager is appointed of all or any part of its assets or undertaking of the Customer, MHM shall be entitled to cancel the contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to MHM and any money outstanding from the Customer to MHM shall become immediately due and owing.

## 10. Dimensions and components

- 10.1. MHM reserves the right to alter or change dimensions of the Products supplied within reasonable limits having regard to the nature and function of the Products. Dimensions specified by MHM are to be treated as approximate only unless the Customer specifically states in writing that exact measurements are required.
- 10.2. MHM reserves the right to use alternative components in the construction of its products and warrants that such alternatives will be of equivalent or better quality to those offered at the time of quotation. Components specified by MHM are to be treated as indicative only unless the Customer specifically states in writing that particular components are required.

## 11. Loss, shortage and defects apparent on inspection

- 11.1. Subject to Clause 13 the Customer shall have no claim for loss, shortage or defects apparent on visual inspection unless:
- The Customer inspects the Products on the first working day following their arrival at its premises or other agreed destination; AND
  - A written complaint specifying the loss, shortage or defect is made to MHM within three days or such shorter period as the carrier's conditions may require (if applicable).
  - MHM is given an opportunity to inspect the Products and investigate any complaint before any use of, alteration to or interference with the Products.
- 11.2. If a complaint is not made to MHM as provided in Clause 11.1 the Products shall be deemed to be in all respects in accordance with the contract and the Customer shall be bound to pay for the same accordingly.
- 11.3. Defects in quality or dimension in any instalment delivery shall not be ground for cancellation of the remainder of the contract.

## 12. Defects not apparent on initial inspection

- 12.1. Subject to Clause 13, the Customer shall have no claim in respect of defects not apparent on the visual inspection at the time of delivery envisaged by Clause 11 above unless:
- A written complaint is sent to MHM as soon as reasonably practicable after the defect is discovered and no use is made of the Products thereafter and no alteration made thereto or interference made therewith before MHM is

given an opportunity to inspect the Products in accordance with this condition: and

- b. The complaint is sent within 12 months of the date of delivery of the Products, 4000 operating hours [whichever is the earlier] or, in the case of an item not manufactured by MHM, within the guarantee period specified by the manufacturer of such item.
- 12.2. The Customer shall not be entitled to any claim if:
- a. any repairs or alterations to the Product has been undertaken without the specific prior written consent of MHM or.
  - b. in respect of any defect arising by reason of fair wear and tear or damage due to misuse or
  - c. if any spare parts including consumables have been replaced with non-standard items different to those that were in use at the time of Takeover.
- 12.3. MHM shall not be liable for loss or damage suffered by reason of use of the products after the Customer becomes aware of a defect or after circumstances which should have reasonably have indicated the existence to the Customer of a defect.
- 12.4. MHM may, within 15 days of receiving such a written complaint, inspect the Products and the Customer, if so required by MHM, shall take all steps necessary to enable MHM to do so.

### 13. Warranty

- 13.1. Where the Customer makes a complaint to MHM in accordance with either Clauses 11 or 12, then, if it is established that the Products in respect of which the claim is made are faulty or defective, MHM will, at its own cost and discretion, either repair or replace the faulty or defective Products or parts thereof provided that the Products have been used in accordance with MHM or other manufacturer's instructions and cleaning, maintenance and other operating instructions complied with.
- 13.2. MHM's obligations shall in all cases be limited to repair or replacement of defective or faulty Products as described in Clause 13.1 above and MHM shall not be liable for any losses, damages, costs or expenses which may be suffered by the Customer or by any other person.
- 13.3. MHM's obligation in respect of proprietary Products or components not manufactured by MHM is limited to the extent of the warranty offered by the original product manufacturer or supplier.
- 13.4. Under no circumstances whatsoever shall MHM be liable whether in contract, tort (including negligence) or otherwise for any claims arising by reason of death or personal injury or for consequential loss (including removal or rectification work required in connection with installed or repaired or substitute Products) loss of profits, damage to property, wasted expenditure or cost of mitigation.
- 13.5. The Customer acknowledges that all goods and services are purchased for the purpose of business and accordingly the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of goods and services from MHM to the Customer.
- 13.6. The Warrantee period is as described in the Pricing Summary.

### 14. Insurances

- 14.1. MHM will be responsible for and provide insurances as described in the section entitled Conditions of Contract.

### 15. Liability

- 15.1. Except as otherwise provided by statute MHM shall not be liable for:

- a. Any loss or damage or injury of any kind whatsoever whether suffered or incurred by the Customer or another person whether such loss or damage or injury arises directly or indirectly from goods or services or advice provided by us to the Customer and without limiting the generality of the foregoing of this Clause MHM shall not be liable for any consequential loss or damage or injury of any kind including without limitation any financial loss; and
  - b. for any loss, damage, or injury beyond the value of the goods provided by us to the Customer in contract, or in tort, or otherwise; and
- 15.2. The Customer shall indemnify us against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this Clause whether caused or arising as a result of our negligence or the infringement of any letters patent, trademark, trade name, copyright or other similar right to which any specification or information supplied by the Customer might be subject or otherwise by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the goods or this contract.
- 15.3. All claims must be received by us within 14 days of either delivery of the goods or when the Customer should have become aware of facts which might give rise to a claim
- 15.4. Unless otherwise stated in these terms and conditions, if MHM is in any way found liable for an insured risk then our liability is limited to the amount of the insurance monies, less any deductibles, received in our hands and available for meeting such liability. However, this Clause does not apply if MHM is not liable at all by virtue of other terms and conditions of these conditions of sale.

### 16. Design and advisory service

- 16.1. Any advice or recommendations that MHM may provide in respect of the Products or their use is part of MHM's sales service and, while every effort is made to ensure such advice or recommendations is accurate, MHM shall not be liable for any loss, damage or claims arising there from.

### 17. Confidential information and intellectual property rights

- 17.1. All drawings, documents, confidential records, computer software and other information supplied by MHM are supplied on the express understanding that copyright is reserved to MHM and that the Customer will not, without the written consent of MHM, give away, loan, exhibit, or sell such drawings, documents, confidential records, computer software or other information or extracts there from or use them in any way except in connection with the products in respect of which they are issued.
- 17.2. Products supplied by MHM are supplied on the express understanding that copyright is reserved to MHM and that the Customer will not will not copy or allow other parties to copy any of the products supplied by MHM.
- 17.3. In the case of Products or components not manufactured by MHM, MHM gives no assurance whatsoever that the sale or use of the Products will not infringe patent, copyright or other industrial property rights of any other person, firm or company.
- 17.4. All claims for alleged infringement in respect of patents, trademarks, registered design or copyright received by the Customer must be notified

immediately to MHM so that MHM can be kept fully informed of the conduct of such claims.

#### **18. Customer's drawings and data**

- 18.1. The Customer shall be solely responsible for ensuring that all drawings, information, advice and recommendations given to MHM either directly or indirectly by the Customer or by the Customer's agents, servants, consultants or advisers are accurate, correct and suitable. Examination or consideration by MHM of such drawings, information, advice or recommendations shall in no way limit the Customer's responsibility hereunder unless MHM specifically agrees in writing to accept responsibility.
- 18.2. The Customer shall indemnify MHM from and against all actions, claims, costs and proceedings which arise due to the manufacture of Products to the drawings or specifications of the Customer where such drawings or specifications are at fault or where it is alleged that they involve an infringement of a patent, copyright, registered design, design copyright or other exclusive right.
- 18.3. The Customer shall supply product identical to that provided to MHM at the time of the original quotation, both in physical characteristics and production rates. Should final product vary from that originally identified, MHM will be entitled to a Variation under Clause 23.

#### **19. Data and technical information**

- 19.1. The information contained in the advertising, sales and technical literature issued by MHM may be relied upon to be accurate only in the exact circumstances in which it is expressed, otherwise any illustrations, performance details, examples of installations, methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such data or information shall form part of the contract unless specifically incorporated therein by MHM.

#### **20. Force Majeure**

- 20.1. Neither party shall be under any liability for any delay loss or damage caused wholly or in part by act of God, governmental restriction, condition or control or by reason of any act done or not done pursuant to a trade dispute whether such dispute involves its employees or not or by reason of any other act, matter or thing beyond its reasonable control including failure by the other party to carry out the provisions of these conditions.

#### **21. Tools**

- 21.1. Any tools (such as jigs, dies, etc.) which MHM may construct or acquire specifically in connection with any order, notwithstanding any charges MHM may make for them, shall be and remain MHM's property and in MHM's possession and control. If, for two consecutive years, no orders are received from the Customer for Products to be made with such tools MHM may make such use thereof as it desires or otherwise dispose of them without liability to the Customer.

#### **22. Access to site**

- 22.1. MHM has assumed unhindered access to the Customers site to allow for installation of our product, and availability of product and throughput rates to meet our testing and commissioning requirements. Should these not be made available then MHM will be entitled to a Variation under Clause 23.

#### **23. Variation**

- 23.1. MHM shall be entitled to claim for any costs, or extension of time and related costs for variations made to the contract as a result of any act, omission or change directed or caused by the Customer or for other matters referenced in these Conditions. Upon it becoming apparent a Variation has occurred, MHM will notify the Customer of such circumstances, and subsequently advise cost and time impacts.
- 23.2. The Customer shall respond to the Company's Variation submissions within 14 days of submission

#### **24. Governing Law**

- 24.1. The Agreement is governed by, and construed in accordance with, the laws of New Zealand. References to legislation are references to New Zealand Acts. The parties submit to the non-exclusive jurisdiction of the Courts of New Zealand in respect of any disputes, actions, suits or proceedings arising out of or relating to this agreement.

#### **25. Updated Terms and Conditions**

- 25.1. These Terms are subject to change by MHM without prior notification to and acceptance by the Customer. The most recent Terms & Conditions of Sale are published on MHM's website MHMAutomation.com and supersede all Terms previously advised to the Customer. A copy of the most recent Terms & Conditions can be provided to Customer on request.