

# HYBRID MANUFACTURING TECHNOLOGIES GLOBAL, INC. TERMS & CONDITIONS OF SALE

## 1 INTERPRETATION

### 1.1 **Definitions.** In these Conditions, the following definitions apply:

"**Business Day**" a day (other than a Saturday, Sunday or public holiday) indicated by when banks are open for business.

"**Conditions**" the terms and conditions set out in this document as amended from time to time in accordance with clause 13.7.

"**Contract**" the contract between HMT and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"**Customer**" the person or firm who purchases the Goods from HMT.

"**Force Majeure Event**" has the meaning given in clause 17.

"**Goods**" the goods (or any part of them) set out in the Order.

"**HMT**" HMT Manufacturing Technologies Global, Inc. (or its subsidiary or controlled affiliate including HMT Limited, registered in England and Wales with company number 08334706).

"**IPR**" means all Confidential Information, patents, trade marks and service marks, rights in designs, trade or business names, copyright including rights in computer software), database rights and topography rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may exist anywhere in the world.

"**Order**" the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of HMT's quotation, or overleaf, as the case may be.

"**Services**" includes activities by HMT personnel including service, development and applications work.

"**Specification**" any specification for the Goods, including HMT technical specifications and any related plans and drawings for customization, that is agreed in writing by HMT to the Customer.

### 1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

## 2 BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when HMT issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of HMT that is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by HMT and any descriptions or illustrations contained in HMT's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by HMT shall not constitute an offer and may be withdrawn at any time. A quotation shall only be valid for a period of 30 days from its date of issue.

## 3 GOODS

3.1 The Goods are described in the Specification.

3.2 HMT reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

3.3 HMT reserves the right to incorporate any modifications or improvements in its products and services and specifications that it considers necessary, but are not documented within the specification.

3.4 HMT reserves the right to amend the Specification at any time to address security and safety issues as they arise.

## 4 SUBSTITUTIONS AND MODIFICATIONS

4.1 HMT has the right to make substitutions and modifications of the specifications of the Products or Services provided that such substitutions or modifications will not materially affect overall performance of the Products or Services. Model Numbers subject to change based on final product spec.

## 5 CHANGES

- 5.1 Orders may not be cancelled, terminated or suspended except by prior written consent of HMT. A restocking charge of 20% of the price of the Products will be applied for the cancellation of standard items. Charges for the cancellation of Services, specialty items, or items with non-standard configurations or specifications will be based on non-recoverable expenses accruing to the order sustained by HMT plus 20% of the selling price.
- 5.2 Orders may not be changed except by prior written consent of HMT. If the client requests a change directly to products specified in a confirmed order or requests that said products be configured or adapted for use with an alternative machinery model or type, HMT or any of its affiliates reserves the right to adjust the pricing and terms of the contract accordingly. The client acknowledges that such changes may necessitate additional time, resources, and labor, resulting in variations in the overall cost and scope of work. HMT shall provide the client with a revised estimate detailing any adjustments in price, delivery timelines, and work requirements associated with the requested machinery replacement. The client agrees to review and approve the revised estimate provided by HMT before proceeding with the requested change. Upon approval, the revised pricing and terms shall supersede those outlined in the original contract for the specified products. HMT shall not be held liable for any delays, disruptions, or discrepancies resulting from the client's request to change the scope of the project. Any change order is otherwise subject to the terms and conditions of the original contract between the client and HMT, and no modifications shall be deemed valid unless executed in writing and duly signed by both parties.

## 6 DELIVERY

- 6.1 Each HMT Product purchased hereunder will be shipped in HMT standard shipping materials marked for shipment to Customer's address or to such other address as Customer may specify in writing. HMT Product(s) will be delivered "Ex Works" EXW [INCOTERMS 2020] HMT factory unless otherwise stated by HMT in writing. Customer shall pay all taxes, freight, insurance, brokerage, handling, shipping, installation, travel, and other expenses, as well as any special packing expenses, whether or not stated on the order. Unless given written instruction, HMT shall select the carrier. HMT shall not be liable for damages or penalty for delay in delivery or for failure to give notice of any delay, and the carrier shall not be deemed to be an agent of HMT. HMT may fulfill orders from multiple factory locations if needed or practical at the discretion of HMT.
- 6.2 HMT shall ensure that:
  - 6.2.1 each shipment of the Goods is accompanied by a delivery note that shows the date of shipping documents preparation, all relevant Customer and HMT reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - 6.2.2 if HMT requires the Customer to return any packaging materials to HMT, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as HMT shall reasonably request. Returns of packaging materials shall be at HMT's expense. Where HMT does not require the Customer to return any packaging materials, the Customer shall dispose of the same at its own expense.
- 6.3 HMT shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after HMT notifies the Customer that the Goods are ready.
- 6.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 6.5 Any dates quoted for delivery are approximate only, are calculated based on Business Days and the time of delivery is not of the essence. The estimated delivery dates listed in quotes are based on HMT's existing business conditions at the time of the quotation. Changing business conditions, component availability, and timing of order may impact the final delivery date. An updated estimated delivery date is confirmed upon receipt of order and deposit. The HMT production schedule is allocated sequentially based on receipt of the deposit. Furthermore, any delivery timelines shall not commence until the customer's purchase order has been confirmed and any deposit is paid by the customer. HMT shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide HMT with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.6 It is the Customer's responsibility to check the Goods against the delivery paperwork. Any loss of or damage to the Goods must be notified to HMT within 7 days of receipt of the Goods, failing which the Customer shall be deemed to have accepted delivery of the same.
- 6.7 If the Customer fails to accept delivery of the Goods within five Business Days of HMT notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or HMT's failure to comply with its obligations under the Contract:
  - 6.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day after the day on which HMT notified the Customer that the Goods were ready; and
  - 6.7.2 HMT shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 6.8 If 10 Business Days after the day on which HMT notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, HMT may resell or otherwise dispose of part or all of the

Goods [and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- 6.9 HMT may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **7 QUALITY**

- 7.1 HMT warrants that upon shipment, and for a period of 12 months from the date of shipment (warranty period), the Goods shall:
- 7.1.1 conform in all material respects with the Specification; and
  - 7.1.2 be free from material defects in design, material and workmanship;
- 7.2 Subject to clause 7.3, if:
- 7.2.1 the Customer gives notice in writing to HMT during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 7.1;
  - 7.2.2 HMT is given a reasonable opportunity of examining such Goods; and
  - 7.2.3 the Customer (if asked to do so by HMT) returns such Goods to HMT's place of business at the Customer's cost,  
HMT shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 7.3 HMT shall not be liable for Goods' failure to comply with the warranty set out in clause 7.1 in any of the following events:
- 7.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 7.2;
  - 7.3.2 the defect arises because the Customer failed to follow HMT's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 7.3.3 the defect arises as a result of HMT following any drawing, design or Specification supplied by the Customer;
  - 7.3.4 the Customer disassembles, alters or repairs such Goods without the written consent of HMT;
  - 7.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 7.3.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.4 Except as provided in this clause 7, HMT shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.
- 7.5 For sales in the United Kingdom, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract and equivalent principles are invoked for other territories.
- 7.6 These Conditions shall apply to any repaired, upgraded, or replacement Goods supplied by HMT.

## **8 TITLE AND RISK**

- 8.1 The risk in the Goods shall pass to the Customer upon shipping per the EXW terms.
- 8.2 Title to the Goods shall not pass to the Customer until HMT receives payment in full (in cash or cleared funds) for the Goods and any other goods that HMT has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums;
- 8.3 Until title to the Goods have passed to the Customer, the Customer shall:
- 8.3.1 store the Goods so that they remain readily identifiable as HMT's property;
  - 8.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 8.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 8.3.4 notify HMT immediately if it becomes subject to any of the events listed in clause 15.2; and
  - 8.3.5 give HMT such information relating to the Goods as HMT may require from time to time.
- 8.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.2, then, without limiting any other right or remedy HMT may at any time:
- 8.4.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
  - 8.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **9 PRICE AND PAYMENT**

- 9.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in HMT's published price list in force as at the date of delivery.
- 9.2 All pricing and delivery of adapted or customized installations is subject to site survey, host machine configuration (CNC, robot, Gantry, etc.), spare control relays, special laser guarding requirements, etc. The site survey is typically a ~1 day site visit to find out details on the controller (requires opening the electrical cabinet), e-stop circuit, exact sizes of the machine and remove some of the covers to plan the laser-safe

guarding modifications. HMT will invoice for the visit, but can credit this value towards purchases made in the next 6 months.

- 9.3 HMT may, by giving notice to the Customer at any time increase the price of the Goods to reflect any increase in the cost of the Goods that is due to delays outside of HMT's control that relate to the customer or the customer's site. These scenarios include but are not limited to the site not being prepared for the equipment, not following the pre-install manual guidance, material changes in travel arrangements to accommodate or work around the customer preferences or needs, or changes in government-controlled borders.
- 9.4 HMT may, by giving notice to the Customer at any time up to 10 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - 9.4.1 any factor beyond HMT's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 9.4.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - 9.4.3 any delay caused by any instructions of the Customer or failure of the Customer to give HMT adequate or accurate information or instructions.
- 9.5 The price of the Goods is exclusive of the costs and charges of packaging, insurance, transport, unloading, site installation and commissioning of the Goods, which shall be invoiced to the Customer.
- 9.6 The price of the Goods is exclusive of amounts in respect of applicable Federal, state or local excise, sales, use, value-added tax (VAT), goods and services tax (GST) or other taxes (including any customs or duties) and any similar charges, all of which are payable by Customer. The Customer shall, on receipt of a valid invoice from HMT, pay to HMT such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 9.7 HMT may invoice the Customer for the Goods on or at any time after the shipping documents for the Goods are prepared .
- 9.8 The Customer shall pay the invoice in full and in cleared funds within the timeframe established by the invoice. Payment shall be made to the bank account nominated in writing by HMT. Time of payment is of the essence.
- 9.9 Unless negotiated otherwise, customers who have not been granted a credit account will be charged proforma. The standard payment terms for component sales and services with a total value of less than 10,000 USD shall be 30 days when the customer is granted a credit account, which is at HMT's discretion.
- 9.10 Unless agreed by HMT in writing otherwise, the standard payment terms for sales of products with a value in excess of 10,000 USD, where post-delivery installation and training services are not required the payment terms shall be 50:50 meaning 50% of the value of the goods shall be paid to initiate the order and 50% shall be due upon departure of goods from HMT (evidenced with delivery shipping documents). The final invoice for the balance will include any additional charges such as shipping, insurance, other charges handled for the Customer's convenience by HMT, but that are the responsibility of the Customer according to the EXW terms. Sales Tax and Value Added Tax "VAT" will also be added as required. If HMT receives additional charges related to the sale (such as shipping or customs fees for example) that are not included in the delivery invoice, these will be invoiced separately.
- 9.11 Installation or training of shipped components may be withheld if the customer is not keeping these payment terms.
- 9.12 Where export arrangements are not made by HMT, such as may be the case with EXW delivery, the appropriate evidence of export must be supplied to HMT in a timely manner. HMT reserves the right to charge the customer the amount of tax or VAT at any time before or after shipment. If such tax or VAT is refundable, then a credit note will be issued for the amount of VAT when appropriate and complete export documentation is received. If after three requests, appropriate evidence of export is not provided, the VAT shall be paid to the appropriate government authority as if the sale were based in local to the HMT factory and the customer shall be liable to HMT for said amount.
- 9.13 If the Customer fails to make any payment due to HMT under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of at the monthly rate of 1.5% (19.56% annual rate) or the maximum rate permitted by law, whichever is less. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.14 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). HMT may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by HMT to the Customer.
- 9.15 In the event of default by Customer of any obligations to HMT, HMT will have the right to repossess the goods sold hereunder without liability to Customer. Customer shall make the goods available to HMT so that HMT can repossess them without breach of the peace, and shall cooperate fully with HMT to execute such documents and accomplish any appropriate filings as HMT may deem necessary for the protection of HMT's interests in the Products and Services.

## **10 RETURN MATERIALS AUTHORIZATION PROCEDURES**

- 10.1 HMT will only accept Products or Services during the applicable warranty period that are returned under HMT's Return Material Authorization procedures then in effect ("RMA"). Customer shall obtain a RMA number from HMT prior to returning any Product or Service and return the Product or Service prepaid and insured to HMT to the EXW point or to such other location as designated in writing by HMT. Any Product or Service which has been returned to HMT but which is found to meet the applicable specification for the Product and Service and not defective in workmanship and material, shall be subject to HMT's standard examination charge in effect at the time and return shipping/insurance shall be charged to Customer. HMT shall be responsible for shipping costs to Customer for claims properly covered under HMT's warranty.

## **11 LIMITED EXPRESS PRODUCT WARRANTIES**

- 11.1 HMT warrants to Customer or, if Customer is an authorized HMT reseller or distributor, to Customer's original customer of the Product or Service, that the Products delivered hereunder that are standard products of HMT will conform to their applicable specifications and be free from defects in materials and workmanship, and that Services provided by HMT will be performed in accordance with HMT policies of professionalism.
- 11.2 For goods that are not standard products of HMT, such as developmental or custom designed goods, HMT warrants to Customer that such goods delivered hereunder will conform to their applicable specifications and be free of defects in materials and workmanship upon receipt by Customer.
- 11.3 These non-transferable warranties start on the shipment date from HMT (or other date specifically referencing the warranty start date in HMT's sales order/order acknowledgement) and continue until the end of the warranty period listed in HMT's sales order/order acknowledgement.
- 11.4 If there is no warranty period listed, then the warranty period is one year. Products or major components manufactured by parties other than HMT bear the original manufacturer's warranty and warranty period. Customer's sole and exclusive remedy, and HMT's exclusive obligation and liability, with respect to HMT's warranties is, at HMT's sole option, (i) for Product, to repair or replace the affected Product and correct the deficiencies and (ii) for Services, for HMT to re-perform the affected Services. HMT warrants repaired or replaced Products under warranty only for the remaining un-expired period of time in the original warranty.
- 11.5 HMT reserves the right to issue a credit note for any defective Products that have proved defective through normal usage; Customer debit memos are not allowed.
- 11.6 This warranty governs over any conflicting terms in Customer's purchase order or other HMT documents except as expressly provided herein. This warranty excludes and does not cover defects or damage resulting from any of the following: damage from crashes or collisions, contamination of external optical surfaces and motion components; unauthorized modification, misuse or mishandling, disassembly or opening, neglect, or damage from accident; operation outside environmental specifications or product ratings; user software or interfacing; components and accessories manufactured by companies other than HMT, which have separate warranties; improper or inadequate installation, site preparation or maintenance; or failure to follow information and precautions contained in the operating manual. Components subject to wear during normal use and over time, such as nozzles, coatings, windows, media feed surfaces, safety valves or shear pins or breakers designed to fail if overloaded, etc., are excluded from this warranty. Additional warranty exceptions, limitations and exclusions may apply for systems manufactured by HMT and its affiliates as set forth in the applicable quotation and sales order/acknowledgement. All products or components (including software) identified as experimental, prototypes or to be used in field trials are not warranted and are provided to the Customer on an "as is" basis.
- 11.7 This warranty does not extend to cover any labor, travel, shipping or transport costs involved in the replacement of faulty components and the Manufacturer will not accept liability for loss of production or any other consequential losses which may arise as a result of a warranty claim.
- 11.8 HMT assumes no responsibility for Customer or third-party supplied material, components, systems or equipment. Products and repaired Products may contain components that have been previously used in other products, however such Products meet HMT Product specifications for newly manufactured Products. The Customer must give prompt notification to HMT of any claim under the warranty in writing.
- 11.9 HMT has no responsibility for warranty claims more than 30 days after the Customer discovers or becomes aware of the claimed defect. Any repairs to or alterations of the goods shipped hereunder must be authorized in writing by HMT to prevent voiding HMT's warranty.
- 11.10 Without limiting the generality of any of the exclusions or limitations described in other paragraphs, Manufacturer's warranty does not include any warranty that the equipment will meet Customer's production specifications or other requirements or that operation of the equipment will be uninterrupted or error-free.
- 11.11 HMT's warranty shall not be enlarged, diminished, or affected by, and no obligation or liability shall arise or grow out of, HMT's rendering of technical advice or services in connection with Customer's order of the goods hereunder. Customer is responsible for providing appropriate utilities and operating environment as stated in the operating manual and the specifications.
- 11.12 HMT is not responsible for any damage to parts, fixtures, machines or other property of Customer, or for any other incidental damages that may be caused by a malfunction of the equipment. This warranty applies

only to the original Customer at the initial installation or delivery point. Customer must make all claims under this warranty and no claim will be accepted from any third party.

- 11.13 EXCEPT FOR THE LIMITED WARRANTIES EXPRESSLY SET FORTH ABOVE, HMT SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS TO BUYER, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES, SUCH AS FREEDOM FROM INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. HMT DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCT, AND SPECIFICALLY DISCLAIMS ANY WARRANTIES RELATING TO PRODUCTION RATE AND/OR OUTPUT.

**11.14 LIMITATION OF REMEDIES AND LIABILITIES.**

- 11.14.1 THE REMEDIES PROVIDED HEREIN ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES. IN NO EVENT SHALL HMT BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM OR RELATING TO THIS ORDER OR THE PRODUCTS OR SERVICES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF REVENUE OR LOSS OF GOODWILL) WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY. HMT'S MAXIMUM LIABILITY ARISING UNDER THESE TERMS AND CONDITIONS WILL NOT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT PAID FOR THE PRODUCTS OR SERVICES BY BUYER.

**12 INDEMNIFICATION**

- 12.1 Customer shall indemnify, defend and hold harmless HMT, its officers, directors, employees and affiliates from and against any costs, expenses (including legal counsel), damages or losses arising out of any actual, threatened or alleged action, suit, claim, judgment or settlement (a "Claim") based in whole or in part upon (i) Customer's breach of this Agreement, (ii) the negligent or wrongful acts or omissions of the Customer, or any of its personnel, agents, or contractors, (iii) patent infringement by reason of any use of HMT's products in combination with other materials and parts or in the operation of any process of Customer or its products or (iv) any loss or damage to property or injury to persons, including without limitation, any injury, disability or death of workers or employees, caused by or in any manner incurred because of the possession, use, modification, or operation of the goods after delivery, except that Customer shall not be liable under this section for damages arising out of or damage to property or injury to persons directly caused by or resulting from the sole gross negligence or strict liability of HMT.
- 12.2 All warranties in connection with such products made by Customer or its subsidiaries or affiliates as manufacturer and/or HMT shall not directly or impliedly obligate HMT or any of its subsidiaries or other affiliates.

**13 CONFIDENTIALITY**

- 13.1 Customer shall hold confidential and shall not use, disclose or permit others to use any technical data, commercial information, know-how, specifications, inventions, processes, initiatives and other information which is of a confidential nature and which has or may be disclosed to the Customer by HMT and/or its agents and any other confidential information concerning the business of HMT and/or its products, which the Customer may obtain "Confidential information" identified as such in writing or orally by HMT or information which Customer knows or ought to reasonably know is confidential, proprietary or trade secret information of HMT, including, without limitation, trade secrets embodied in Products or Services. This provision does not supersede any executed non-disclosure or confidentiality agreement in place between HMT and Customer.
- 13.2 The Customer will restrict disclosure of the Confidential information to such of its employees, agents or subcontractors as need to know the same and will ensure that such employees, agents or subcontractors are subject to equivalent obligations of confidentiality as bind the Customer.
- 13.3 The Customer will not without the prior written consent of HMT publish or disclose the Confidential Information to any third party or make any use of the Confidential Information except to the extent necessary to implement the Contract.
- 13.4 The Customer agrees not analyse the shape or composition of, or reverse engineer or decompile any tangible materials or components or software constituting Confidential Information provided by HMT, nor permit such activities by any third party.

**14 INTELLECTUAL PROPERTY**

- 14.1 Customer shall not copy, reverse engineer, decompile, disassemble, derive or subject to technical analysis any technology, component, module, hardware, firmware, software or other feature of the Product or Service. Customer agrees that HMT has sold and will sell product(s) to third parties that have the same or similar functionality to the Product ("Other Products") or the Service ("Other Service") and therefore Customer will not seek to enjoin, exclude from importation, exportation, or otherwise interrupt or seek damages from HMT for its supply, import, sale, offer for sale, distribution, or manufacture of Products, Other Products, Services or Other Services by HMT to any third party or assert any Customer IP right against HMT for an indirect infringement of such Customer IP right. HMT's Products and Services are protected under US and foreign trade secrets and copyrights and may be protected under US and foreign patents and patents pending.

- 14.2 The Customer will keep HMT indemnified in full against liability, loss, damage, injury, claim, action, demand, expense or proceeding in respect of any infringement or alleged infringement of any patent, registered design, unregistered design, design copyright, trademark or other industrial or intellectual property rights resulting from any use by HMT of the Customer's Property or any compliance by HMT with the Customers instructions whether express or implied.
- 14.3 All right, title and interest in and to any inventions, discoveries, improvements, methods of manufacture, methods of use, writings, drawings, ideas, and other forms of intellectual property ("IP"), which are made, created, developed, written, conceived or first reduced to practice by HMT solely, jointly or on its behalf, in the course of, arising out of, or as a result of work performed by HMT, whether or not invoiced, including but not limited to work in HMT application labs, shall be the sole and exclusive property of HMT and are hereby assigned to HMT. The parties specifically agree that all subsequent improvements, inventions, discoveries and copyright in works of authorship, including those in formative stages, made by either party hereto (either alone or jointly with others) improving upon or related to the work performed by HMT from the time of conception or, in the case of works of authorship, from the time of creation, may be practiced by HMT and are hereby licensed to HMT if developed by a party other than HMT and owned by HMT if developed by HMT.
- 14.4 If the Customer in any way acquires any such rights it will promptly inform HMT and take such steps as HMT may reasonably require to assign such rights or vest such title in HMT.
- 14.5 The Customer agrees not make any application for a patent, design or other registered intellectual property protection which uses, incorporates, improves upon or is based on the Discloser's intellectual property without written permission from HMT.
- 14.6 Nothing in these Conditions will be construed as any representation or warranty by HMT that the design, manufacture, use or sale of the Goods is not an infringement of any third party intellectual property rights.

## 15 TERMINATION AND SUSPENSION

- 15.1 If the Customer becomes subject to any of the events listed in clause 15.2, HMT may terminate the Contract with immediate effect by giving written notice to the Customer.
- 15.2 For the purposes of clause 15.1, the relevant events are:
- 15.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts (for UK sales within the meaning of section 123 of the Insolvency Act 1986), or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, (for UK sales within the meaning of section 268 of the Insolvency Act 1986), or (being a partnership) has any partner to whom any of the foregoing apply;
- 15.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 15.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 15.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 15.2.5 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 15.2.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 15.2.7 (being an individual) the Customer is the subject of a bankruptcy petition or order;
- 15.2.8 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 15.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.1 to clause 15.2.6 (inclusive);
- 15.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 15.2.11 the Customer's financial position deteriorates to such an extent that in HMT's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 15.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 15.3 Without limiting its other rights or remedies, HMT may suspend provision of the Goods under the Contract or any other contract between the Customer and HMT if the Customer becomes subject to any of the events listed in clause 15.2.1 to clause 15.2.12, or HMT reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 15.4 On termination of the Contract for any reason the Customer shall immediately pay to HMT all of HMT's outstanding unpaid invoices and interest.
- 15.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 15.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 16 LIMITATION OF LIABILITY

- 16.1 Nothing in these Conditions shall limit or exclude HMT's liability for:
  - 16.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 16.1.2 fraud or fraudulent misrepresentation;
  - 16.1.3 breach of the terms (for UK sales, as implied by section 12 of the Sale of Goods Act 1979);
  - 16.1.4 defective products (for UK sales as defined under the Consumer Protection Act 1987); or
  - 16.1.5 any matter in respect of which it would be unlawful for HMT to exclude or restrict liability.
- 16.2 Subject to clause 16.1:
  - 16.2.1 HMT shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - 16.2.2 HMT's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

## 17 FORCE MAJEURE

- 17.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.
- 17.2 A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, default of suppliers or subcontractors, national or international foreign trade or customs requirements, embargos or other sanctions.

## 18 HEALTH AND SAFETY

- 18.1 The Product may be an OEM version of equipment that is intended only for incorporation into other equipment. Customer should assume that the Product does not comply with requirements of the Center for Devices and Radiological Health of the FDA. Buyer is responsible for CDRH certification of the system that incorporates the Product. For further information, contact HMT's Quality Department.
- 18.2 Customer is exclusively responsible for the handling and clean up of any and all feedstocks and media used in any process including handling of fine metal powders, wires, filaments, pellets, and the like.

## 19 GENERAL

- 19.1 **Export Control.** The Customer understands that some of the components of the Goods are subject to US and UK technology control (including EAR – Export Administration Regulations and ITAR - International Traffic in Arms Regulations), and export laws and regulations which means that any sale or export of the Goods into embargoed countries (currently Cuba, Iran, North Korea, Sudan and Syria) is prohibited. The Customer undertakes that it will comply with all applicable technology control or export laws and regulations and will indemnify, and keep indemnified, HMT against any and all actions, claims, fines, penalties, damages, costs (including legal costs) or other liability suffered or incurred by HMT as a result of the breach by the Customer of such technology control or export laws and regulations. The Customer will be required to sign an end user certificate prior to the supply of the Goods.
- 19.2 **Use of Images, Branding, and Recording.**
  - 19.2.1 The parties may promote their own capabilities by referencing the other's logo indicating that they are a customer or supplier so long as the branding guidelines of the IP owner is followed.
  - 19.2.2 Any images of HMT equipment and ancillaries captured during installation or service may be used in an anonymized fashion for product improvement purposes and training (such as in training manuals).
  - 19.2.3 HMT makes extensive use of video and audio calls for many business functions. Please be advised that any virtual interaction with HMT may include the option for recording as a routine way to provide service. HMT will endeavor to routinely remind any participant of their option to consent to being part of a recorded session, even those who join late. This serves as a general notice and reminder for those who do not wish to provide consent to make this known to HMT and to be aware of the recording in progress message on conference calls and similar services and to vocalize their preference or not participate.
- 19.3 **Assignment and other dealings.**



- 19.3.1 HMT may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.3.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of HMT.
- 19.4 **Notices.**
- 19.4.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class mail or other next working day delivery service, commercial courier, fax [or e-mail].
- 19.4.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.4.1; if sent by pre-paid first class mail or other next working day delivery service, at [9.00 am] on the [second] Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax [or e-mail], one Business Day after transmission.
- 19.4.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 19.5 **Severance.**
- 19.5.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 19.5.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 19.6 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.7 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 19.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by HMT.
- 19.9 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales for sales in Europe, or Texas for sales in the Americas and the rest of the world.
- 19.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales for sales in Europe, or Texas for sales in the Americas and the rest of the world shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
- 19.11 **Arbitration.** All claims and disputes arising from or relating to Customer's purchase or use of HMT equipment, or that in any other way relate to the contract between Customer and Seller, and that are not resolved by agreement between the parties, shall be arbitrated. This clause shall not preclude parties from seeking temporary or permanent equitable relief (including but not limited to temporary restraining orders or preliminary injunctions) as necessary to avoid or limit irreparable harm before the commencement of arbitration or appointment of an arbitrator, or provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitration proceeding shall be held at a location within the federal judicial district in which HMT maintains a principal place of business, in accordance i) with the Commercial Arbitration Rules of the American Arbitration Association (AAA) in the Americas or ii) the arbitration in the seat of England of a single arbitrator appointed by agreement between the parties or, in default of agreement, an appointment made by the court shall be accepted in accordance with The Arbitration Act 1996 for sales in Europe. Buyer and Seller agree that all claims involving HMT, whether based on warranty or on other grounds, will also be resolved exclusively by arbitration pursuant to this Agreement should HMT agree to or request arbitration of such claims. In such event the parties will take all reasonable action to permit joinder of HMT in the arbitration proceeding between Customer and Seller, or the consolidation of arbitration proceedings in cases involving Buyer, Seller and HMT.