



## Hymec Precision Engineering Limited

### Supplemental terms and conditions for the supply of machined components.

These supplemental terms and conditions ('these Terms') apply to all Orders for Components made by \_\_\_\_\_ and its affiliates ('Customer') under the supply agreement ('Agreement') dated \_\_\_\_\_ and made between Hymec Precision Engineering Limited (registered in England and Wales with company number 08384551) and the Customer.

In the event of any conflict between the terms of the Agreement and these Terms, the provisions of these Terms will prevail.

#### 1. Defined terms used in these Terms

**Components:** the components to be provided by the Supplier to the Customer pursuant to the Agreement.

**Minimum Order Value:** \_\_\_\_\_

*[insert details of minimum quantities or values. It is assumed below that the reference period is yearly]*

**Order:** the Customer's order for Components, as set out in the Customer's purchase order form as accepted by the Supplier.

**Specification:** any specification for Components, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

**Writing:** includes faxes [and e-mails].

#### 2. Ordering

- 2.1 The Agreement as supplemented or varied by these Terms shall apply to all Order<sup>s</sup> placed by the Customer and accepted by the Supplier during the term of the Agreement.
- 2.2 The Agreement as supplemented or varied by these Terms and the contents of the Order as accepted by the Supplier constitute 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 the Supplier which is not set out in the Agreement or these Terms.
- 2.3 An Order constitutes an offer by the Customer to purchase the Components in accordance with the Agreement and these Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate in all respects. The Supplier shall not be liable to the Customer in any way for any Components supplied in conformity with the Customer's Order but which are not fit for any purpose or which are the wrong size, quantity or design, or are delivered to the wrong location or on the wrong date to that required by the Customer where such matter arises from any error in the Order or the Specification provided by the Customer. The Customer shall remain bound to accept delivery and to pay for all such Components in accordance with the Agreement and these Terms.
- 2.4 Any quotation for Components given by the Supplier shall not constitute an offer but an invitation. An acceptance of a quotation by the Customer within the quotation period shall constitute an Order. A quotation shall only be valid for a period of \_\_\_ Business Days from its date of issue.
- 2.5 An Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order. The Supplier is not obliged to accept any Order of the Customer.
- 2.6 The Customer shall in each year of the Agreement place Orders with the Supplier in aggregate for not less than the Minimum Order Value for that year. In the event that the Customer fails in any year of the



Agreement to place Orders with the Supplier of in aggregate at least the Minimum Order Value, the Supplier shall be entitled to charge the Customer a sum calculated by the Supplier as being a reasonable estimate of the Supplier's loss of profit (including any loss of economies of scale) as a result of the shortfall. In the event that in any year of this Agreement the Customer places Orders with the Supplier of in aggregate in excess of the Minimum Order Value for that year, the Supplier will carry forward the amount of the excess in calculating whether the Customer achieves the Minimum Order Value in the following year of this Agreement.

### **3. Specification of the Components**

- 3.1 In respect of each accepted Order, the Supplier will supply the Components in accordance with the Specification as set out in the Agreement, the Order or otherwise agreed in writing by the Supplier and the Customer prior to acceptance of the Order.
- 3.2 The Supplier shall not be obliged to supply any Components different to the Specification for those Components set out in the Agreement or the Order as accepted by the Supplier. Any such agreement of the Supplier shall be subject to confirmation in writing by the Supplier and to the Customer agreeing any additional costs (including tooling costs) required as a result.
- 3.3 To the extent that the Components are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.1 shall survive termination of the Agreement.
- 3.4 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements provided that this does not materially affect the quality or dimensions of the Components. If any such material affect is envisaged by the Supplier, it shall promptly notify the Customer of this whereupon both parties will endeavour, acting in good faith, to agree any consequential changes to the Order.

### **4. Delivery**

- 4.1 The Supplier shall only be obliged to deliver the Components to the location set out in the Agreement or the Order, as appropriate. The Supplier may agree to deliver to an alternative location subject to the Customer agreeing to any additional costs incurred as a result. The Supplier may, where obtaining any Components from a third party, arrange for those Components to be delivered direct by the third party and in such cases references in these terms to delivery by the Supplier are to be construed accordingly.
- 4.2 Unless otherwise agreed in writing by the Supplier, delivery of the Components shall be completed on the completion of unloading of the Components at the agreed delivery location. If the parties agree that the Customer is to collect the Components, delivery shall be completed when the Components are loaded at the Supplier's premises.
- 4.3 Where the Supplier is delivering to the Customer's delivery location, delivery will be made on a Delivery Duty Paid (under the Incoterms 2010) basis and, unless otherwise agreed in writing, the Supplier will be responsible for all freight, customs duties, customs fees, insurance and other similar costs.
- 4.4 The Supplier shall ensure that:
  - (a) each delivery of Components is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Components (including the code number of the components, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Components remaining to be delivered; and



- (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall agreed upon on receipt of order.
- 4.5 Any dates quoted for delivery are approximate only. Time is not of the essence under the Agreement or these Terms but the Supplier will use all reasonable endeavours to deliver Components on the dates and by the times set out in the agreed Order. On the Supplier becoming aware of any delay or anticipated in delivery, the Supplier shall promptly notify the Customer and shall use its reasonable endeavours to expedite delivery to minimise the delay.
- 4.6 The Supplier shall not be liable for any delay in or failure of delivery of Components that is caused by a Force Majeure Event (as defined in these Terms) or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Components.
- 4.7 If the Supplier fails to deliver the Components and is liable to the Customer, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Components.
- 4.8 If the Customer fails to take delivery of Components on the due delivery date (or later date as notified by the Supplier to the Buyer in the case of a delay) then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Agreement:
  - (a) delivery of the Components shall be deemed to have been completed at the time and on the date that the Components were tendered for delivery by the Supplier at the delivery location; and
  - (b) the Supplier shall store the Components until delivery actually takes place, and is entitled to charge the Customer for all related costs and expenses (including insurance) but may after [10] Business Days of storing the Components, resell or otherwise dispose of part or all of the Components and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the agreed Order price of the Components or charge the Customer for any shortfall below the agreed Order price of the Components.
- 4.9 In the event of any under or over delivery of quantities of the Components the supplier will contact the customer in the event of any under or over deliveries of components to either close orders short or add increased quantities to existing orders to rectify in a suitable manner for both parties.
- 4.10 The Supplier may deliver the Components by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Order and any delay in delivery or defect in an instalment shall not entitle the Customer to cancel the Agreement or any other instalment.

## **5. Title and risk**

- 5.1 The risk in the Component shall pass to the Customer on completion of delivery.
- 5.2 Title to the Components shall not pass to the Customer until the earlier of:
  - (a) the Supplier receives payment in full (in cash or cleared funds) for the Components and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Components shall pass at the time of payment of all such sums; and
  - (b) the Customer incorporates the Components into other goods or resells the Components in the ordinary course of its business, in which case title to the Components shall pass to the Customer immediately before the time of incorporation or at which resale by the Customer occurs.
- 5.3 Until title to the Components has passed to the Customer, the Customer shall:
  - (a) store the Components as the Supplier's bailee, separately in a manner so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Components; and

- (c) maintain the Components in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.
- 5.4 Subject to clause 5.5, the Customer may resell or use the Components in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Components.
- 5.5 If before title to the Components passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy the Supplier may have:
  - (a) the Customer's right to resell the Components or use them in the ordinary course of its business ceases immediately; and
  - (b) the Supplier may at any time:
    - (i) require the Customer to deliver up all Components in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Components are stored in order to recover them.

## 6. Quality

- 6.1 The Customer must inspect each delivery of Components and notify the Supplier of any damage to the Components, or any under or over delivery, or any delivery of the wrong goods within 60 days of the date of delivery. If the Customer fails to do so, the Customer will be deemed to have accepted the delivery as being in accordance with the Order. This provision is without prejudice to the Customer's rights in respect of the warranties set out in clause 6.2.
- 6.2 The Supplier warrants that on delivery, and for a period of [12] months from the date of delivery (**warranty period**), the Components shall:
  - (a) conform in all material respects with the Specification;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 6.3 Subject to clause 6.4, if:
  - (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Components do not comply with the warranty set out in clause 6.2;
  - (b) the Supplier is given a reasonable opportunity of examining such Components; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Components to the Supplier's place of business.

the Supplier shall, at its option, repair or replace the defective Components, or refund the price of the defective Components in full.

- 6.4 The Supplier shall not be liable for Components, failure to comply with the warranty set out in clause 6.2 in any of the following events:
  - (a) the defect arises because the Customer failed to follow the Supplier's written instructions as to the storage, commissioning, installation, use and maintenance of the Components or (if there are none) good trade practice regarding the same;
  - (b) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
  - (c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

- (d) the Components differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
  - (e) The customer has attempted any assembly or additional works to the any components the customer will immediately void the warranty and transfer any liability from the supplier to the customer.
- 6.5 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Components' failure to comply with the warranty set out in clause 6.2.
- 6.6 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 Agreement.
- 6.7 These Terms shall apply to any repaired or replacement Components supplied by the Supplier.

## **7. Price and payment**

- 7.1 The price of the Components shall be the price set out in the Order.
- 7.2 The Supplier may, by giving notice to the Customer at any time up to 2 Business Days before delivery, increase the price of the Components to reflect any increase in the cost of the Components that is due to:
- (a) any request by the Customer to change the delivery date(s), quantities or types of Components ordered, or the Specification; or
  - (b) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Components is inclusive of the costs and charges of packaging, insurance and transport of the Components.
- 7.4 The price of the Components is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Components.
- 7.5 The Supplier may invoice the Customer for the Components on or at any time after the completion of delivery.
- 7.6 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.7 If the Customer fails to make any payment due to the Supplier under the Agreement and these Terms by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank plc's base rate from time to time. 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.

## **8. Termination and suspension**

- 8.1 If a party ('defaulting party') becomes subject to any of the events listed in clause 8.2, the other party ('innocent party') may terminate the Agreement with immediate effect by giving written notice to the defaulting party.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- (a) the defaulting party 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 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, 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;

- (b) the defaulting party 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 other than (where the defaulting party is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the defaulting party with one or more other companies or the solvent reconstruction of the defaulting party;
  - (c) (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 defaulting party, other than for the sole purpose of a scheme for a solvent amalgamation of the defaulting party with one or more other companies or the solvent reconstruction of the defaulting party;
  - (d) (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 defaulting party;
  - (e) (being a company) the holder of a qualifying floating charge over the defaulting party assets has become entitled to appoint or has appointed an administrative receiver;
  - (f) a person becomes entitled to appoint a receiver over the defaulting party's assets or a receiver is appointed over the defaulting party's assets;
  - (g) (being an individual) the defaulting party is the subject of a bankruptcy petition or order;
  - (h) a creditor or encumbrancer of the defaulting party 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;
  - (i) any event occurs, or proceeding is taken, with respect to the defaulting party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(f) (inclusive);
  - (j) the defaulting party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - (k) (being an individual) the defaulting party 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.
- 8.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Components under the Agreement or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2(a) to clause 8.2(k), or the Supplier 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 the Agreement on the due date for payment.
- 8.4 On termination of the Agreement for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 8.5 Termination of the Agreement, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **9. Limitation of liability**

- 9.1 Nothing in these Terms shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;



- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) Where any Components are being manufactured using tooling parts or other materials provided by or on behalf of the Customer, the Supplier shall have no liability to the Customer for any (and the Customer shall indemnify the Supplier from all) liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer (or by the Supplier in the case of the indemnity from the Customer) as a result of any defect, fault or other cause of the materials supplied by or on behalf of the Customer; and
- (b) the Supplier 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, loss of business, loss of reputation, fine or penalties or any indirect or consequential loss arising under or in connection with the Agreement or Order; and
- (c) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed a multiple of one times the price of the Components the subject of the claim.

## 10. Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Agreement to the extent that such failure or delay is caused by a Force Majeure Event. 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, or default of suppliers or subcontractors.

## 11. General

### 11.1 Assignment and other dealings.

- (a) The Supplier 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 Agreement.
- (b) 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 Agreement without the prior written consent of the Supplier.

11.2 **Governing law.** The Agreement, 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.

11.3 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).