

# Standard Terms and Conditions

## 1. General Application

**1.1** The Standard Terms and Conditions shall apply to formation of contract, delivery of and payment for all goods and services supplied under contract or order, they form part of the contract and/or order and are accepted or shall be deemed accepted by customer upon signing contract or placing order, but no later than delivering written confirmation by HDT of the order; they supersede all other terms, conditions and/or representations, verbal or otherwise unless the other terms, conditions and/or representations shall have been confirmed in writing in relevant contract or order confirmation duly signed by HDT.

**1.2** HDT reserve the right to vary, modify, amend or delete any term and condition of the Standard Terms and Conditions prior to signing of contract or delivering written confirmation by HDT.

**1.3** HDT do not enter into any contract with, accept any order from or supply any goods and services to, any person who is (and any person or customer upon entering into contract or placing order with HDT shall be deemed self-identified) not a consumer as defined in the Sale of Goods Ordinance, Cap.26 and The Supply of Services (Implied Terms) Ordinance, Cap.457 and/or any other laws and/or regulations of similar nature of the laws of Hong Kong Special Administrative Region. HDT shall have no obligation to ascertain if the person or customer is such consumer.

## 2. Offer and scope of delivery

**2.1** All costs estimates, drawings, sample devices and documents, etc., of or issued by HDT shall not be regarded as offer.

**2.2** Contracts and/or Orders are deemed accepted only if they are confirmed in writing and duly signed by HDT.

**2.3** All cost estimates, quotations, drawings, sample devices and other documents are properties of HDT to which HDT retain unlimited ownership, copyright and exploitation rights. They shall not be made available to any third parties unless agreed by HDT in writing and must be returned to HDT immediately upon request whether or not HDT be awarded with contract or order.

**2.4** HDT retain the ownership- and copyright-related rights of exploitation to the cost estimates, drawings, model devices and other documents in unrestricted fashion; they may not be made accessible to third parties. Drawings, model devices and other documents related to the offers must be returned immediately upon request if HDT is not awarded the order.

**2.5** HDT reserve the right to make deviations of an immaterial nature from submitted models, further developments in production and model modifications, provided that they are reasonable for the Customer while taking its interests into account.

## 3. Prices

**3.1** Unless otherwise agreed, all quoted prices are ex works, excluding fees for packing and insurance, FCA Hong Kong.

**3.2** Packaging is charged at cost and will not be taken back.

#### **4. Payment**

**4.1** All payments are to be made payable to HDT with agreed currency by once and for all manner within 30 days after receipt of invoice without deduction and discount unless agreed otherwise by HDT in writing. Payments for repairs are payable immediately without deduction. In regard to timeliness of payments, receipt of money by HDT is decisive; in the case of payment by cheques, payment is considered made when the cheque is cashed.

**4.2** HDT has absolute discretion whether to accept overdue payment; if overdue payment is accepted, annual interest of at least 8% above the best lending rate of the Hongkong & Shanghai Banking Corporation Limited is chargeable; charging of interest shall not affect rights of HDT for claiming further and/or other remedies and damages.

**4.3** Payment by cheque, bills of exchange or other comparable means of payment is only done for sake of payment with prior consent of HDT, incidental charges thereof shall be borne by customer solely.

**4.4** HDT have the right to use payment(s) for settling previous invoice(s) and the interest and costs thereof.

**4.5** Should customer default on payment or if customer's financial situation is to the knowledge or judgement of HDT deteriorating, performance of the contract and/or order, maintenance and/or additional services are only provided by HDT against immediate settlement with HDT all sums unpaid and/or against provision of securities at the discretion of HDT. Should the customer fail and/or refuse to pay the sum and/or provide security, HDT are entitled to terminate the contract and/or the order, forfeit all the monies paid or deposited by the customer as liquidated damages and to claim against the customer for all loss and damages; upon HDT exercising the right to terminate the contract and/or the order, HDT may resell or otherwise deal with the goods in such a way as it thinks fit. Deficiency in price arising from such resale and all expenses attending the same shall be made good by the customer and any increase in price realized by such resale shall belong to HDT.

**4.6** Customer shall not withhold payment to HDT or have the same set off with the sum counter-claimed by the customer in disputed case.

#### **5. Delivery Time and Delay of Delivery**

**5.1** Deadlines for deliveries and services are only binding if they were explicitly confirmed by HDT in writing. The delivery period shall commence on the date upon which the contract is signed by customer and HDT or the duly signed order confirmation is delivered by HDT but in any event not before submission of necessary documents by the customers.

**5.2** The delivery period shall be deemed complied with at the time the goods leave the workshop or store of HDT or in the case of shipping being impossible or delayed, at the time an indication of readiness for dispatch of the goods is announced.

**5.3** A date or a specific period stated in the contract and/or order for supply of goods or services merely refers to the due date of delivery. If such delivery date or delivery period is not met, the delivery date or delivery period shall automatically be extended for a further period of 10 weeks commencing on the date immediately after the delivery date or on the date after the date of the expiration of delivery period. Upon expiration the extended period, customer is entitled to terminate the contract and/or order pursuant to the laws of Hong Kong. Any date(s) to be fixed or any deadline have to be agreed by both parties in writing.

**5.4** If performance of the contract and/or order or the delivery is hindered by force majeure – whether it has occurred on the part of HDT or at the supplier(s) of HDT, including but not limited to government official action or intervention, operational disturbances, labour dispute, delay in delivery and production of significant raw or auxiliary materials or products, unrest, war, disaster or similar events, e.g. strike or lock-out, etc., HDT are entitled to postpone the performance and/or the delivery or to withdraw from the contract or order without the buyer having the right to claim compensation or damages. If the impediment lasts longer than 6 months, the customer is entitled, after giving a reasonable grace period to HDT, to withdraw from the contract or order.

**5.5** Partial deliveries by HDT are permitted within reason.

**5.6** If the customer does not accept delivery on time, HDT is immediately entitled to charge for the delivery and the additional costs incurred (including but without limitation to storage charge and interest). Blanket orders are limited to a maximum period of 1 year and must be accepted within the period. The minimum call period is 30 days.

## **6. Risk and Shipping**

**6.1** Risk shall be passed to the customer upon the goods leaving the workshop or store of HDT regardless of means of delivery, collection and/or transportation; if delivery is delayed due to circumstances for which the customer is responsible, risk shall be passed to the customer at the time an indication of readiness for despatch of the goods is announced.

**6.2** HDT do not assume any obligation for insurance unless agreed in writing. Customer is advised to buy proper insurance.

**6.3** HDT may conduct such packaging for the goods as it think fit unless the packaging is specified by customer and agreed by HDT in writing.

## **7. Complaints / Warranties**

**7.1** HDT provides a warranty for a period of 6 months from date of dispatch of the goods to customer, except for wear parts such as test tips and cables; in the case delivery is delayed due to circumstances for which the customer is responsible, such 6-month warranty period shall commence from the date on which an indication of readiness for despatch of the goods is sent.

**7.2** The customer is obliged to inspect the goods immediately upon receipt and to notify HDT of any objections within 10 calendar days upon the date of receipt of the goods.

**7.3** For breach of warranty shall arise only if the defect has actually been notified to HDT in writing within the 10-day period provided in sub-clause 7.2 or within the 6-month warranty period provided in sub-clause 7.1. The rejected piece shall be submitted to HDT for inspection within 7 days after notifying HDT of the objection.

**7.4** In the event of justified complaints, HDT has absolute discretion to conduct repair, improve or renew or to provide replacement. Covering purchases are excluded. Upon the fulfillment of the obligation to remedy the defect and the remediation has not yet failed, the customer has no right to any change or reduction. The burden of proving a failure of the remediation lies with the customer.

**7.5** Replacements are only done according to the principle of performance and counter-performance, i.e. against surrender of the original delivery. If this is not possible, the customer is instead bound to provide restitution in which event the customer is obliged to surrender profits.

**7.6** Return of product is not acceptable without prior consent from HDT.**7.7** HDT shall always be given

opportunity for subsequent fulfilment with a reasonable period pursuant to sub-clause 7.4 and the customer in the circumstances is not entitled to withhold or delay payment for the goods and/or services.

**7.8** HDT retains the right to implement insignificant deviations compared to the presented patterns, developments in regard to manufacturing or model changes to the extent that they are reasonable. Customer shall have no claim for mere inappreciable deviation from the agreed composition and/or pattern.

**7.9** HDT shall accept no responsibility or bear any liability to whosoever for any consequence, loss or damage whatsoever of whatever nature howsoever arising from natural wear and tear, damage arising after passing of risk, unsuitable, incorrect or excessive use, improper or negligent treatment or repair or unsuitable operating materials, modification by the customer or any third party.

## **8. Other Claims, Liability**

**8.1** Unless herein provided otherwise, HDT shall accept or bear no further liability to whosoever for any consequence, personal injury, death, loss or damage including but without limitation to breach, default, impossibility of performance, tort, damage not caused to the goods or services supplied by HDT, loss of business or profit or other financial or economic and/or pure economic loss or damage.

**8.2** The exclusion and limitation of liability also apply to staff, workers, employees, legal representatives and agents of HDT.

**8.3** Customer is advised to buy proper and sufficient insurance.

**8.4** No order can be cancelled or modified once accepted by HDT except being agreed in writing by HDT and on condition that the customer agrees to pay all expenses incurred and damage sustained by HDT arising out of in connection with the cancellation or modification, plus a reasonable profit.

## **9. Reservation of Proprietary Rights**

**9.1** Until full settlement of purchase price or claim, the goods, service, document and material supplied and/or rendered by HDT remain properties of HDT.

**9.2** Title of the goods shall not be passed to customers until HDT have received payment in full of the price of the goods. HDT have the right to recover, sell or otherwise dispose of the goods, if customer defaults on payment of the purchase price.

**9.3** As long as the purchase price is not fully paid, the customer shall hold the goods in trust for HDT, keep the same separate from property of the customer and/or third party and store, secure, and insure the reserved goods properly.

**9.4** Until full payment, the customer may use the goods in the ordinary course of business or sell them with all the monies so received kept (in independent bank account(s)) separate for HDT and from the monies of the customer and/or third party, all monies and receivables from such sale shall be delivered to HDT.

**9.5** In the case of seizure or other interventions by third parties against the reserved goods, the customer must inform HDT forthwith for enabling HDT claiming its rights to and protect the reserved goods. Should the customer fail to comply with the provisions herein contained and/or its obligations under laws of any jurisdiction in favour of HDT, the customer shall be liable for all consequences and the resulting loss and damages. **10. Violations of Property Rights of Any Third Party**

Should HDT have to design, produce, manufacture, develop, process and/or to supply or deliver any product, goods and/or service (hereinafter referred to “the Performing”) according to matters or things whatsoever in whatever form including but without limitation to specifications, drawings, models, samples, information provided by the customer (hereinafter referred to “the References”), the customer shall be regarded as (i) ensuring and granting assurance to HDT that the References and the object and/or service finally come and/or supplied according or referring to or deriving from the References, do not violate any property (including intellectual property) rights of any third party and (ii) agreeing to hold HDT harmless in case rights of recourse are asserted. Should any third party invoke such rights, prohibit or sue the customer and/or HDT against and/or for the Performing, the References and/or such object or service finally come or supplied, HDT, without being obliged to check the legal situation thereof, shall have the right to suspend or terminate the performing, return the References and/or such object or service finally come or supplied to the customer or any party in such manner as HDT think fit without prejudice to the rights of HDT to claim reimbursement of all costs and expenses incurred, profit, indemnities and the remedies as stated in sub-clause 4.5 above.

### **11. Third Party's Rights**

Any person who is not a party to these Standard Terms and Conditions may not enforce any term of these Standard Terms and Conditions under any laws purporting to grant such rights which is hereby excluded to the extent permissible but this does not affect any right or remedy of a third party which exists or is available apart from such laws.

### **12. Data Protection**

Customer consents or deemed to have consented for having its data collected, processed and used inasmuch as necessary.

### **13. Assignment of Contract/Order or Rights**

Customer shall not assign in whatever manner the contract or order made with HDT or any right or obligation to, in, for or incidental thereto in whole or in part to any third party without consent of HDT in writing.

### **14. Applicable Law**

These Standard Terms and Conditions are subject to laws and exclusive jurisdiction of Hong Kong Special Administrative Region and the latest version of Incoterms 2000. If any provision in Incoterms 2000 is in conflict with the Standard Terms and Condition, the latter shall prevail. The provisions of the Vienna UN Agreement on Contracts for the International Sale of Goods of 11 April 1980 (CISG) are excluded.

### **15. Severance**

If any provision of the Standard Terms and Conditions is or shall become unlawful, invalid or ineffective, in whole or in part, such provision shall be severed from the Standard Terms and Conditions without modifying the remaining provisions which shall remain in full force and effect.

### **Hoover Dam Technology** *Standard Terms and Conditions*

Hoover Dam Technology (Asia) Ltd., Office B2, 16<sup>th</sup> Floor, Legend Tower, 7 Shing Yip Street,  
Kwun Tong, Kowloon, Hong Kong Tel. +(852) 2955 0638 Fax +(852) 2955 0208