



The Halley &amp; Mellowes Group of Companies

## Conditions of Supply

 20<sup>th</sup> October 2006

### 1 GENERAL & DEFINITIONS

- a) The acceptance of our quotation or tender constitutes your acknowledgment and acceptance of these terms and conditions.
- b) The terms "we", "our/s" or "us" mean and refer to:
- Diamond Power (Australia) Pty Limited - ACN 008 425 215; or
  - Greenbank Terotech Pty Limited - ACN 69 002 407 730; or
  - Valveco Industries Pty Limited - ACN 68 092 292 718; or
  - Halley & Mellowes Pty Limited - ACN 83 000 558 627; or
  - POGC Sensor Technologies Pty Limited - ACN 42 058 605 959,
- as the case may be – the relevant Halley & Mellowes Group entity contracting with you is described on the invoice.
- c) The terms "you" and "your/s" mean and refer to customer or entity to whom our quotation is addressed (as named therein) or the entity from whom any order is accepted (as named in such order) with whom this contract is formed.
- d) The term "good/s" means any goods, product or equipment purchased from us by you.

### 2 ACCEPTANCE

- a) Your acceptance of our tender or quotation is subject to our confirmation at the time of such acceptance.
- b) The acceptance of our tender or quotation must be accompanied by sufficient information to enable us to proceed with the order forthwith otherwise we shall be at liberty to amend the contract prices and/or delivery period to cover any variation or delay.

### 3 VALIDITY

This tender or quotation unless withdrawn by us or otherwise modified or varied in our tender or quotation is valid for a period of thirty (30) days from the date thereof and is automatically withdrawn unless accepted within this time and confirmed by us.

### 4 PRICES

- a) The price or prices quoted are based on current costs at the date of quotation or at the specified Base Date and unless expressly stated to the contrary are subject to variation to cover any fluctuation in costs between the date of quotation (or the Base Date) and the date of any actual supply of goods or equipment or the completion of any works.
- b) If any variation or modification of the goods to be supplied or works to be completed is received after your order is accepted by us, any such variation or modification will be charged as an additional cost to you.
- c) In addition to the price quoted or communicated to you, any sales tax, import duties, levies or other taxes whatsoever (whether Federal State or otherwise) upon the goods or equipment herein, or any goods or raw material incorporated in the goods or equipment, imposed either prior to or subsequent to the placement of the order shall be at your expense and charged directly to you.

### 5 PACKAGING

Unless otherwise specified in our tender or quotation, all packing cases, skids, drums, etc must be returned to us at your expense and in good condition within one month of receipt, otherwise their cost will be charged to you.

### 6 DELIVERY/INSTALLATION DATES

- a) Any dates given in our tender or quotation for delivery or installation are estimates only and while we shall use reasonable commercial endeavours to meet such dates you acknowledge and agree that no liability shall attach to us for any loss or damage, (whether direct or consequential), arising out of any such delay in delivery or
- b) If due to any cause beyond our control including but not limited to acts of God, storm, flood, war or insurrection, industrial disputes, or due to the unavailability of materials on reasonable commercial terms, we are unable to deliver or install, either within the times quoted to you (or in the absence of any specified time, within a reasonable time), or at all, the contract shall be voidable at the option of either party with no right by the other party to claim any damages beyond liability for payment of any completed (or partially completed) supplies or works.

### 7 PAYMENT

- a) Where we have approved credit to you (and subject to the terms of any such credit approval), unless otherwise specified in writing by us, the terms of payment are in full by cash or bank cheque 30 days from the date of our invoice.
- b) Notwithstanding any other provisions herein contained or any other agreement with you, we shall be entitled, at our option and without notice to you, to suspend any work or refuse delivery of any goods in the event of any account remaining unpaid by you after the due date of payment.

### 8 TITLE AND RISK

- a) Goods supplied by us to you will be at your risk immediately upon:
- i) delivery of the Goods to you, your agent or into the your custody or control; or
  - ii) collection of the goods by the your nominated carrier or agent.
- b) You must:
- i) effect and maintain with a reputable insurance company insurance for the goods, at your cost, against all risks as it thinks appropriate;
  - ii) note our interest on the insurance policy; and
  - iii) produce a certificate of currency of the insurance effected by you under this clause 8(b) to us, upon request.
- c) Risk in the goods will remain with you at all times unless we retake possession of the goods in accordance with clause 8(f)(ii).
- d) Title in the goods supplied by us to you will not pass to you and will remain our absolute property until such time as we have been paid all monies due and owing to us by you in relation to any account.
- e) Until such time as we have been paid all monies due and owing to us by the you in relation to any account:
- i. You take custody of the goods and retain them as our fiduciary agent and bailee.
  - ii. You may resell but only as a fiduciary agent of our. Any right to bind us to any liability to any third party by contract or otherwise is however expressly negated. Any such resale is to be at arms length and on market terms and pending resale or utilisation in any manufacturing process is to be kept separate from your own, properly stored, protected and insured.
  - iii. You will receive all proceeds whether tangible or intangible, direct or indirect of any dealing with the goods on trust for us and will keep such proceeds in a separate account until the liability to us shall have been discharged.
  - iv. We are to have power to appropriate payments to such goods and accounts as we thinks fit notwithstanding any appropriation by you to the contrary.
  - v. In the event that you use the goods in some manufacturing process of your own or some third party, then you shall hold such part of the proceeds of such manufacturing process as relates to the goods on trust for us. Such part shall be deemed to equal in dollar terms the amount owing by you to us at the time of the receipt of such proceeds.
  - vi. You may not assign, factor or otherwise deal with your right to receive payment from any person in respect of a sale of any Product, or any item manufactured using any Product, without our written consent.
- f) If you have breached these Terms or the terms of any relevant Sales Contract, you authorise us, at any time, to enter onto any premises upon which our goods are stored to enable us to:
- i) inspect the goods; and/or
  - ii) reclaim the goods.
- g) If you sell, dispose of or otherwise deal with goods or any part thereof before full payment has been received by us, you must advise us in writing, at such times as we may request, specifying full details of the goods sold, disposed of, utilised or otherwise dealt with.
- h) Customer agrees that the provisions of this clause 8 apply despite any arrangement under which we grant credit to you.

Head Office Wyong	Perth	Brisbane	New Zealand
10 Hereford St, Berkeley Vale NSW 2261 PO Box 5010 Chittaway NSW 2261 Ph: 02 4389 6191 Fax: 02 4388 5442	1/34 Ledger Rd, Balcatta WA 6021 Ph: 08 9345 3688 Fax: 08 9344 8707	433 Logan Rd, Stones Corner QLD 4120 Ph: 07 3394 8272 Fax: 07 3847 9755	215 Tanners Point Road RD1, Katikati, Bay of Plenty, NZ Ph/Fax: +64 7 549 0448
Sydney	Townsville	Morwell	Mackay
48 Whiting St, Artarmon NSW 2064 Ph: 02 9432 7300 Fax: 02 9432 7399	PO Box 347, Aitkenvale QLD 4814 Ph: 07 4728 6300 Fax: 07 4728 6388	8 Jones Rd, Morwell VIC 3840 Ph: 03 5134 8398 Fax: 03 5134 5702	44 Michelmore St, Paget QLD 4740 Ph: 07 4952 5555 Fax: 07 4952 5322

j) Notwithstanding the provisions of subclauses (a) to (h) hereof, risk of loss or damage to any goods shall pass to you:

i. In the case of a contract for supply only of any goods immediately upon delivery to you or a nominated carrier for transportation to you, or to some other place or site nominated by you.

ii. in the case of a contract for supply and installation of any goods immediately upon the delivery of the goods to work site.

k) Such delivery shall in every case be deemed to be delivered to you and accepted by you whether or not you are present at the time of delivery to sign a receipt for such goods.

#### **9 STORAGE**

In the event of us receiving no instructions as to delivering or not receiving sufficient instructions to enable us to despatch the goods or equipment to you within 14 days after the date of notification that they are ready for despatch, you must take delivery or arrange for storage. If you do not take delivery or arrange for storage, we shall be entitled to deliver the goods or equipment at your place of business or on site or elsewhere on your behalf and all charges for storage, insurance or for demurrage shall be payable by you. In such case delivery shall be deemed to have been made and payment will be due

#### **10 CANCELLATION**

Orders, once accepted by us, can only be countermanded or cancelled with our written consent provided always that you must indemnify us against any and all costs and losses incurred as a result.

#### **11 TECHNICAL DATA**

All descriptions, specifications, drawings and particulars of weights and dimensions submitted with the tender of quotation are approximate only, intended merely to present a general idea of the goods or services. After acceptance by you of our tender or quotation all relevant technical information may be supplied by us on request providing always that we have the right to withhold any confidential information or trade secret. Such technical data however must not under any circumstances be shown to any third party not a party to this agreement or necessary for its performance unless our written consent is obtained.

#### **12 VARIATION**

a) We reserve the right to make, at our discretion, any necessary substitutions of materials and equipment to effect the supply of the goods or equipment to you.

b) As our policy is one of continued product improvement the specification of the goods and equipment to be supplied is subject to change without notice.

#### **13 ASSIGNMENT**

We reserve the right to assign any or all of our rights and obligations under this contract.

#### **14 TESTS**

Our goods are carefully inspected before despatch. If special tests or tests in your presence or the presence of your representatives are required, these tests, unless otherwise agreed, must be made at our works and will be at your additional expense, and in the event of any delay on your part in attending such tests after seven days notice that we are ready, the tests may proceed in your absence and shall be deemed to have been made in your presence.

#### **15 PERFORMANCE**

Any performance figures given by us are based on supplied to us by the manufacturers or distributors of various goods or equipment. We shall be under no liability for damages for failure to attain such figures unless we have specifically guaranteed them in writing subject always to recognised tolerances applicable to them and any variances based on differing inputs, loads, installation or usage requirements being applied to them.

#### **16 WARRANTY AND LIMITATION OF LIABILITY**

a) In relation to the goods we manufacture, to the fullest extent permitted by law, our liability is limited to making good by replacement or repair defects which, under proper use, appear thereon and arise solely from faulty design, material or workmanship within a period of six calendar months after the original goods or equipment have been first despatched, at the termination of which period all liability on our part ceases.

b) In the case of goods or equipment not of our manufacture, you are entitled only to such benefits as given under any manufacturer's warranty in respect thereof.

c) Except where expressly prohibited by statute, save as set out sub-clauses (a), (b) and (f) of this clause 16 all expenses or implied warranties relating to quality or fitness for any purpose of the goods is hereby expressly excluded to the fullest extent permitted by law.

d) Such defects referred to in sub-clauses (a) and (b) of this clause 16 must be notified to us at the address above as soon as any defect is noticed and you must prove to our satisfaction that the goods or equipment in question were manufactured or supplied by us.

e) Where goods are manufactured by us or supplied to you to your description or specification we shall be under no liability to replace or repair defects arising from faulty design, or for any other claims whatsoever except faulty workmanship or material.

f) In the event that any supply of goods, equipment or services pursuant to this agreement ("the supply") is a supply of goods or

services to a consumer as defined in THE TRADE PRACTICES ACT 1974 (as amended) ("the Act") nothing contained in these terms and conditions excludes or modifies any condition, warranty, right or remedy which pursuant to the Act applies to the contract for the supply or is conferred upon you provided that to the extent the Act permits us to limit such liability then our liability for such breach shall be limited at our absolute discretion to any one of the following:

i) the cost of replacing the goods; or

ii) cost of acquiring equivalent goods; or

iii) the cost of repairing the goods; or

iv) In the case of services, the supplying of the services again; or

v) The payment for the cost of having the services supplied again.

g) The foregoing shall be our sole and exclusive liability to you arising from our dealings with you.

h) Under no circumstances whatsoever shall we be liable to you for special, incidental or consequential damages including but not limited to damage or loss resulting from inability to use the goods, loss of anticipated profits, loss by reason of plant shut down, non-operation or increased expense of operation, service interruption, loss of production, cost of purchased or replacement power, claims of customers, cost of money, loss of capital or revenue, or for any special, incidental or consequential damages, whether similar to dissimilar of any nature arising from any cause whatsoever, whether based in contract, tort (including negligence), strict liability or any other theory of law and whether or not we have been given notice of the possibility of any such damages or losses occurring.

#### **17 DISPUTE**

If a dispute arises out of or relates to this contract, or the breach, termination, validity or subject matter thereof, the parties agree to endeavour to settle the dispute with good faith negotiations between the respective General Managers of both parties before having recourse to litigation.

#### **18 ENTIRE AGREEMENT**

These terms and conditions constitute the entire agreement for sale of the goods or equipment between us and shall only be varied, modified or rescinded by written agreement and approved by us and shall expressly exclude and nullify any differing terms and conditions purported to be incorporated into the contract of sale of any goods or equipment.

#### **19 APPLICABLE LAW AND JURISDICTION**

This contract is entered into in New South Wales under the laws of that State and is subject to the exclusive jurisdiction of the courts of New South Wales for the adjudication of any disputes arising herefrom.

#### **20 CONFIDENTIALITY**

We are supplying you with goods, operations manuals and other support documents which are subject of copyright and other statutory and common law protection. After you have purchased the goods and materials from us, you are not permitted to disclose to any other person or company, or to use for any purpose other than for that you have disclosed to us, any of the documentation, engineering, design and manufacturing details; operations manuals or any other information in any way related to the goods and other materials supplied by you by this agreement. If you do so, you will cause damage to us, and we will be entitled to seek compensation from you. This condition continues even after you have paid for and taken delivery of the goods and other materials. This condition does not apply to information already publicly available other than due to a breach of this condition by you (or by any person obtaining this information from you), or if you are compelled to disclose the information to a Court or similar body.