

Heyns Mechanical Solutions Limited – Terms & Conditions

While it might feel a bit time-consuming to read the fine print, we do believe it is the best way to manage expectations and avoid any surprises. Our terms of trade set out what we will deliver to you and what we expect from you. The last thing we want is a mismatch in understanding and a poor outcome for you, the consumer.

We believe in providing great service and we take pride in our standards. The terms of trade below serve as the criteria for all the work we carry out. These terms override any agreements made in person, over the telephone, or in any other communication.

When you ask Heyns Mechanical Solutions Limited to carry out work on your behalf, you agree to uphold your obligations under these terms of trade.

If you have any questions, please contact us. If you are unhappy with the work we provide, or have any problems or comments, please let us know immediately. We will do our best to fix any problems right away, if you do not give us feedback or if you delay payment, it makes it difficult for us to put things right.

We take pride in what we do and would love for you to use us again and refer us to your friends.

1. Definitions:

- 1.1. The following definitions shall apply to these terms of trade unless the context requires otherwise.
 - a) "Heyns Mechanical Solutions", "HMS" and "HM Solutions Ltd" means Heyns Mechanical Solutions Limited, its successors and assignees or any person acting on behalf of and with the authority of Heyns Mechanical Solutions Limited.
 - b) "Customer" means the person/s ordering the Services as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
 - c) "Services" means all Services or Parts supplied by Heyns Mechanical Solutions Limited to the Customer at the Customer's request from time to time (where the context so permits the terms 'Services' or 'Parts' shall be interchangeable for the other).
 - d) "Price" means the Price payable for the Services as agreed between HMS and the Customer in accordance with clause 5 below.
 - e) "Goods" means the goods supplied to the Customer by HMS which are described by item or indicated on the invoice associated with those goods, (where the context so permits the terms 'goods' or 'Services' or 'services' shall be interchangeable for the other).
 - f) "PPSA" means the Personal Property Securities Act 1999 and associated regulations, as amended from time to time.
 - g) "PPSR" means the Personal Property Securities Register under the PPSA.

2. Acceptance

- 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Services.
- 2.2. These terms and conditions may only be amended with Heyns Mechanical Solutions Limited consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and HMS. HMS also reserves the right to halt all Services until such time as HMS and the Customer agree to such changes.
- 2.3. The Customer acknowledges and accepts that the customer is responsible to supply Parts for the accepted services and services will only commence once the customer has supplied such list of parts required to provide the service.
- 2.4. Where HMS gives advice, recommendations, information, assistance or service to the Customer or the Customer's agent, regarding the Parts or Services then it is given in good faith and HMS shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same.
- 2.5. The Customer acknowledges that replacement parts is not included in the quoted Price unless specified in writing.
- 2.6. The Customer and/or Contractor accept and acknowledge its obligation to provide all contract Services insurance unless otherwise agreed to in writing prior to commencement of the Services.

3. Authorized Representatives

- 3.1. Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to HMS as the Customer's duly authorized representative, that once introduced that person shall have the full authority of the Customer to order any Parts or Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies HMS in writing that said person is no longer the Customer's duly authorized representative).
- 3.2. In the event that the Customer's duly authorized representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise HMS in writing of the parameters of the limited authority granted to their representative.
- 3.3. The Customer specifically acknowledges and accepts that they will be solely liable to HMS for all additional costs incurred by HMS (including HMS's profit margin) in providing any Services, Parts, services or variation/s requested by the Customer's duly authorized representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

- 4.1. The Customer shall give HMS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by HMS as a result of the Customer's failure to comply with this clause.

5. Price and Payment

- 5.1. At HMS's sole discretion the Price shall be either:
 - a) as indicated on invoices provided by HMS to the Customer in respect of Services performed or Parts supplied; or
 - b) HMS's quoted Price (subject to clause 5.2) which shall be binding upon HMS provided that the Customer shall accept HMS's quotation in writing within thirty (30) days; or
 - c) As per the standard rates of trade.

- 5.2. HMS reserves the right to change the Price:
 - a) if a variation to the Parts which are to be supplied (if any) is requested; or
 - b) if a variation to the Services originally scheduled is requested; or
 - c) where additional Services are required due to the discovery of hidden damages or difficulties (including, but not limited to, perished pipes, faulty fuses, hidden leaks, and wiring faults etc.) which are only discovered on commencement of the Services; or
 - d) Or in the event of increases to HMS in the cost of labor or Parts which are beyond HMS's control.
 - e) Where a discount is administered at our discretion. HMS will make the Customer aware at the Customer's request if their discount is still valid. These discounts may be revoked, and the full amount may be charged to the Customer if an invoice remains unpaid for more than 20 days or any other agreed date.
- 5.3. At HMS's sole discretion a deposit may be required upon request.
- 5.4. Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by HMS which may be:
 - a) on completion of the Services; or
 - b) The date specified on any invoice or other form as being the date for payment; or
 - c) Failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by HMS
- 5.5. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or EFTPOS or by any other method as agreed to between the Customer and HMS.
- 5.6. No allowance has been made in the Price for the deduction of retentions unless agreed to in writing prior to the Services commencing. If retentions are made, HMS reserves the right to treat retentions as placing the Customer's account into default.
- 5.7. Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to HMS an amount equal to any GST HMS must pay for any supply by HMS under this or any other agreement for the sale of the Parts. The Customer must pay GST, without deduction or set off any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 5.8. Account Holders
 - a) Account Holders are defined by completion and acceptance of the "HMS credit application form"
 - b) Account Holders shall pay for the goods and services no later than the 20th of the following month following the date of the invoice or as may otherwise be required by HMS.
 - c) HMS may at any time in its sole discretion withdraw the provision of credit to the Customer.
 - d) In the event of any default the full amount owing to HMS shall immediately become due and payable.
 - e) HMS may take immediate action if the Customer is in default under any agreement with HMS or commits an act of insolvency or bankruptcy, goes into liquidation or receivership, enters into a creditor's composition or has its credit standing impaired in any way. If the Customer fails to pay the amount due on or before the due date HMS (without prejudice to its other rights and remedies) shall be entitled to charge interest at the rate of 2.5% per month compounded monthly on the 20th of each month on the outstanding balance.

6. Delivery of the Services

- 6.1. Subject to clause 6.2 it is HMS's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2. The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that HMS claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond HMS's control, including but not limited to any failure by the Customer to:
 - a) Provide the necessary parts; or
 - b) Have the machinery available for the Services; or
 - c) Notify HMS that the machinery is available for the Services; or
 - d) Where the Services are delayed by either the Customer or any other third party.
- 6.3. The Customer acknowledges and accepts that HMS reserves the right to charge for travel based on either a local fee, HMS's hourly rate for time involved in traveling to the Service site and/or by the kilometer from the time that the Mechanic leaves their premises or from the last designated job, unless otherwise agreed between HMS and the Customer, all such costs will be shown as an extra on the invoice.
 - a) If while undertaking work for the customer, we are required to pay for parking or any other vehicle travel costs such as Tolls or permits, HMS reserves the right to forward these costs to the customer at HMS's discretion.
- 6.4. HMS may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5. Any time or date given by HMS to the Customer is an estimate only. HMS shall not be liable for any loss or damage whatsoever due to failure by HMS to deliver the Services (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of HMS.
- 6.6. The Customer acknowledges and accepts that HMS reserves the right to charge for any compliance documentation relevant to the Services completed. This shall be shown on the invoice as a separate charge or built into a service charge.
- 6.7. HMS offers a free quoting service: this covers smaller jobs and does not cover any additional modifications or consultation services offered.
 - a) If Services are requested by the customer to start on the same visit as the quote HMS reserves the right to charge for the travel to that job.
- 6.8. If, in the course of a job, the Customer requests HMS to do work which falls outside of normal working hours, HMS reserves the right to charge the Customer additional fees, as per the standard rates of trade. If it has been arranged as a call-out, call-out fees will be applied. If not, additional fees will be applied to cover the overtime rates.

7. Risk

- 7.1. If HMS retains ownership of the Parts under clause 10 then;
- Where HMS is supplying Parts only, all risk for the Parts shall immediately pass to the Customer on delivery and the Customer must insure the Parts on or before delivery.
 - Delivery of the Parts shall be deemed to have taken place immediately at the time that either;
 - The Customer or the Customer's nominated carrier takes possession of the Parts at HMS's address; or
 - The Parts are delivered by HMS or HMS's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
 - Where HMS is to both supply and install Parts then HMS shall maintain a contract Services insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Customer.
- 7.2. Notwithstanding the provisions of clause 7.1 if the Customer specifically requests HMS to leave Parts outside HMS's premises for collection or to deliver the Parts to an unattended location then such Parts shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Parts are insured adequately or at all. If such Parts are lost, damaged, or destroyed then replacement of the Parts shall be at the Customer's expense.
- 7.3. Where HMS is required to install the Parts the Customer warrants that the structure of the premises or equipment in or upon which these Parts are to be installed or erected is sound and will sustain the installation and work incidental thereto and HMS shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 7.4. The Customer acknowledges that Parts supplied, if any, may exhibit variations in shade, color, texture, surface, and finish, and may fade or change color over time. HMS will make every effort to match batches of product supplied to minimize such variations but shall not be liable in any way whatsoever where such variations occur.
- 7.5. The Customer acknowledges that HMS is only responsible for parts that are replaced or repaired by HMS and that in the event that other parts/Parts, subsequently fail, the Customer agrees to indemnify HMS against any loss or damage to the Parts supplied, replaced or repaired by HMS, or caused by the Parts, or any part thereof howsoever arising.

8. Customer Responsibilities

- 8.1. It is the intention of HMS and agreed by the Customer that it is the responsibility of the Customer to provide and have erected scaffolding to enable the Services to be undertaken (where in HMS's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 8.2. The Customer agrees to remove any furniture, furnishings, or personal goods from the vicinity of the Services and agrees that HMS shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.
- 8.3. The Customer acknowledges that it is their responsibility to ensure that all Parts, plant or equipment which HMS is required to install (or to connect any of its Parts to) are of the correct type, size, rating, standard, quality, color and finish, conform with all relevant New Zealand standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which HMS based the quotation on and therefore, the Customer agrees to indemnify HMS against any costs incurred by HMS in rectifying such errors if required.
- 8.4. HMS will clean and leave tidy the area where services were performed but is not responsible for the removal of rubbish from or clean-up of the construction site/s in its surrounds. This is the responsibility of the Customer or the Customer's agent.

9. Access

- 9.1. The Customer shall ensure that HMS always has clear and free access to the work site to enable them to undertake the Services. HMS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of HMS.

10. Title

- 10.1. HMS and the Customer agree that ownership of the Parts supplied by HMS, if any, shall not pass until:
- the Customer has paid HMS all amounts owing to HMS; and
 - The Customer has met all its other obligations to HMS.
- 10.2. Receipt by HMS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared, or recognized.
- 10.3. It is further agreed that:
- Until ownership of the Parts passes to the Customer in accordance with clause 13.1 that the Customer is only a Bailee of the Parts and unless the Parts have become fixtures must return the Parts to HMS on request.
 - The Customer holds the benefit of the Customer's insurance of the Parts on trust for HMS and must pay to HMS the proceeds of any insurance in the event of the Parts being lost, damaged, or destroyed.
 - The production of these terms and conditions by HMS shall be sufficient evidence of HMS's rights to receive the insurance proceeds directly from the insurer without the need for any person dealing with HMS to make further inquiries.
 - The Customer must not sell, dispose, or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Parts then the Customer must hold the proceeds of any such act on trust for HMS and must pay or deliver the proceeds to HMS on demand.
 - The Customer should not convert or process the Parts or mix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of HMS and must sell, dispose of or return the resulting product to HMS as it so directs.
 - Unless the Parts have become fixtures the Customer irrevocably authorizes HMS to enter any premises where HMS believes the Parts are kept and recover possession of the Parts.
 - HMS may recover possession of any Parts in transit whether or not delivery has occurred.
 - The Customer shall not charge or grant an encumbrance over the Parts nor grant nor otherwise give away any interest in the Parts while they remain the property of HMS.
 - HMS may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Customer.

11. Personal Property Securities Act 1999 ("PPSA")

- 11.1. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - A security interest is taken in all Parts previously supplied by HMS to the Customer (if any) and all Parts that will be supplied in the future by HMS to the Customer.
- 11.2. The Customer undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which HMS may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - indemnify, and upon demand reimburse, HMS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Parts charged thereby;
 - not register a financing change statement or a change demand without the prior written consent of HMS; and
 - Immediately advise HMS of any material change in its business practices.
- 11.3. HMS and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5. Unless otherwise agreed to in writing by HMS, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6. The Customer shall unconditionally ratify any actions taken by HMS under clauses 14.1 to 14.5.

12. Security and Charge

- 12.1. In consideration of HMS agreeing to supply the Parts, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2. The Customer indemnifies HMS from and against all HMS's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising HMS's rights under this clause.

13. Customer's Disclaimer

- 13.1. The Customer hereby disclaims any right to rescind, or cancel any contract with HMS or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by HMS and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgment.

14. Defects in Parts

- 14.1. The Customer shall inspect the Parts on delivery and shall within three (3) days of delivery (time being of the essence) notify HMS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford HMS an opportunity to inspect the Parts within a reasonable time following delivery if the Customer believes the Parts are defective in any way. If the Customer shall fail to comply with these provisions the Parts shall be presumed to be free from any defect or damage. For defective Parts, which HMS has agreed in writing that the Customer is entitled to reject, HMS's liability is limited to either (at HMS's discretion) replacing the Parts or repairing the Parts.
- 14.2. Parts will not be accepted for return other than in accordance with 17.4

15. Warranties

- 15.1. To the extent permitted by statute, no warranty is given by HMS as to the quality or suitability of the Parts for any purpose and any implied warranty, is expressly excluded. HMS shall not be responsible for any loss or damage to the Parts or caused by the Parts, or any part thereof however arising.

16. Consumer Guarantees Act 1993

- 16.1. If the Customer is acquiring Parts for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Parts by HMS to the Customer.

17. Default and Consequences of Default

- 17.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at HMS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2. If the Customer owes HMS any money the Customer shall indemnify HMS from and against all costs and disbursements incurred by HMS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, HMS's collection agency costs, and bank dishonor fees).
- 17.3. Without prejudice to any other remedies HMS may have if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions HMS may suspend or terminate the supply of Services to the Customer. HMS will not be liable to the Customer for any loss or damage the Customer suffers because HMS has exercised its rights under this clause.
- 17.4. Without prejudice to HMS's other remedies at law HMS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to HMS shall, whether or not due for payment, become immediately payable if:
- any money payable to HMS becomes overdue, or in HMS's opinion the Customer will be unable to make a payment when it falls due;
 - the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

18. Dispute Resolution

- 18.1. All disputes and differences between the Customer and HMS touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

19. Compliance with Laws

- 19.1. The Customer and HMS shall comply with the provisions of all statutes, regulations, and bylaws of government, local and other public authorities that may be applicable to the Services.
- 19.2. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 19.3. The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

20. Insurance

- 20.1. HMS shall have public liability insurance of at least \$2m. It is the Customers responsibility to ensure that they are similarly insured.

21. Cancellation

- 21.1. HMS may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice HMS shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to HMS for Services already performed. HMS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.2. In the event that the Customer cancels the delivery of Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by HMS as a direct result of the cancellation (including, but not limited to, any loss of profits).

22. Privacy Act 1993

- 22.1. The Customer authorizes HMS or HMS's agent to:
 - a) access, collect, retain, and use any information about the Customer;
 - b) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or For marketing products and services to the Customer.
 - c) Disclose information about the Customer, whether collected by HMS from the Customer directly or obtained by HMS from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 22.2. Where the Customer is an individual the authorities under clause 25.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.3. The Customer shall have the right to request HMS for a copy of the information about the Customer retained by HMS and the right to request HMS to correct any incorrect information about the Customer held by HMS.

23. Unpaid HMS's Rights

- 23.1. Where the Customer has left any item with HMS for repair, modification, exchange or for HMS to perform any other service in relation to the item and HMS has not received or been tendered the whole of any amounts of money owing to it by the Customer, HMS shall have, until all amounts of money owing to HMS are paid:
 - a) a lien on the item; and
 - b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected Parts.
- 23.2. The lien of HMS shall continue despite the commencement of proceedings or judgment for any amounts of money owing to HMS having been obtained against the Customer.

24. Construction Contract Act 2002

- 24.1. The Customer hereby expressly acknowledges that:
 - a) HMS has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
 - i. the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer, or
 - ii. a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - iii. the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to HMS by a particular date; and
 - iv. HMS has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
 - b) if the Customer suspends work, it:
 - i. is not in breach of contract; and
 - ii. is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - iii. is entitled to an extension of time to complete the contract; and
 - iv. Keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - c) if HMS exercises the right to suspend work, the exercise of that right does not:
 - i. affect any rights that would otherwise have been available to the Customer under the Contractual Remedies Act 1979, or
 - ii. Enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of HMS suspending work under this provision.

25. General

- 25.1. The failure by HMS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect HMS's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 25.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 25.3. HMS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by HMS of these terms and conditions (alternatively HMS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 25.4. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by HMS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.5. HMS may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 25.6. The Customer agrees that HMS may amend these terms and conditions at any time. If HMS makes a change to these terms and conditions, then that change will take effect from the date on which HMS notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for HMS to provide any Services to the Customer.
- 25.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, or other events beyond the reasonable control of either party.

26. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorizations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

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