

HTS-110 Limited Partnership
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Terms and Conditions of Sale

DEFINITIONS – In these Terms and Conditions of Sale,

“**Agreement**” means any accepted Order or Quotation read together with these Terms;

“**Customer**” means the person or company with whom this agreement is made;

“**HTS-110**” means HTS-110 Limited Partnership and any subsidiaries, joint ventures or affiliates thereof;

“**Order**” means an order placed by the Customer which is subject to acceptance by HTS-110; and

“**Products**” means the products and/or services provided by HTS-110 as set out in the Order and/or Quotation;

“**Quotation**” means a quotation provided by HTS-110 to the Customer setting out the Products to be supplied at specified prices; and

“**Terms**” means these Terms and Conditions of Sale.

GENERAL – Stenographic and clerical errors are subject to correction. All orders or agreements are subject to acceptance by HTS-110 at its offices at 1B Quadrant Drive, Waiwhetu, Lower Hutt, 5010 New Zealand, or the location identified with the corporate signature on the quotation, regardless if taken elsewhere by a salesperson or selling agent. These Terms shall prevail over any conditions of the Customer’s order unless specifically modified by negotiation and accepted in writing. No variation or qualification to these Terms or of any Quotation, Order or Agreement shall be valid unless agreed in writing by HTS-110 and the Customer.

PAYMENT – The Customer shall make payments on receipt of invoices. All payments are to be made by wire transfer to HTS-110’s nominated bank and all costs associated with the wire transfers shall be paid by the Customer. Unless other terms are expressly agreed upon and noted in an HTS-110 quotation, the Customer, with approved credit as provided below, shall pay the invoiced amount of all Products within thirty (30) days from date of invoice. The Customer has no right to set off any amount owing or alleged to owe by HTS-110 to the Customer in relation to any payment. Where the Customer has beneficial use of the Products but minor warranty or other issues are outstanding, the Customer is still obliged to make payment to HTS-110 of all outstanding invoices, including of the final invoice issued on completion of the Products. Amounts past due are subject to a service charge of 1.5% per month or portion thereof.

Payment Default - Notwithstanding any other provision herein if the Customer fails to make any payment on the due date for payment then (without prejudice to any of HTS-110’s other rights and remedies) HTS-110 may:

- Make immediate formal demand for all monies due and payable to HTS-110 on any account whatsoever which monies shall then immediately fall due and payable;
- Charge the Customer interest (Default Interest) on any amount not paid when due at a rate of 1.5% per month or portion thereof, compounding monthly;
- Appoint a debt collector at the Customer’s cost to recover any amounts in default;
- At its sole discretion, may also restrict or terminate the supply of further Products until any default amounts are recovered; and
- Exercise any and all legal remedies afforded to a secured party including re-taking possession of the Products and use or dispose of them for HTS-110’s own benefit at HTS-110’s sole and absolute discretion.

CREDIT – Accounts are subject to credit approval by the HTS-110 Credit Department and HTS-110 may at any time decline to make any delivery or perform any work except on receipt of payment in cash or upon security satisfactory to HTS-110. The Customer authorises HTS-110 to obtain, disclose, check, exchange and supply information about the Customer in connection with the Agreement with or to any credit agency.

PRICES – The prices quoted are on the Products as specified and will be held for a period of 30 days from the date of quotation. The prices are based on the Terms and Conditions of Sale. All prices quoted are exclusive of taxes, packaging, freight or insurance and are based on the Terms and Conditions of Sale, unless specified in the quotation. If changes are made in specifications, delivery, or other quoted terms, HTS-110 reserves the right to adjust prices, if necessary to cover increased costs plus handling or service costs.

SUBSIDIARIES AND AFFILIATES – This agreement may be performed, and all rights hereunder against the Customer may be enforced, in whole or in part, by HTS-110 or any one or more companies affiliated with HTS-110.

TESTING MATERIALS – The Customer shall be responsible for the supply and associated costs for all material supplied to HTS-110 for testing purposes unless specifically provided otherwise. Materials supplied shall include but not be limited to the following items (as applicable to the Products) which will be to the grade and quality as specified and planned for use in final production: raw materials, representative samples, blanks or coil material, pre-manufactured/completed components, inputs required to be processed or used with the products, etc. All materials shall be provided on the scheduled dates in suitable quantity and quality for shop trials at HTS-110’s facility, runoff/acceptance trials at HTS-110’s facility and runoff/acceptance trials at the Customer’s facility. All costs associated with the delay in supply of material to HTS-110 by the scheduled dates shall be to the Customer’s account. Any delay will also delay the respective delivery date from HTS-110.

TAXES – Prices are exclusive of taxes, and all taxes arising hereunder are the responsibility of the Customer. Any taxes which HTS-110 may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of Products shall be for the account of the Customer, who shall promptly pay the amount thereof to HTS-110 upon demand.

DELIVERY – The terms and conditions of delivery shall be interpreted in accordance with INCOTERMS 2013 (International Commercial Terms) and its supplements published by the International Chamber of Commerce, unless otherwise agreed in writing or specified in the HTS-110 quotation. The quantity of any consignment of Products as recorded by HTS-110 upon dispatch from HTS-110's place of business shall be conclusive evidence of the quantity received by the Customer unless the Customer can provide conclusive evidence to the contrary.

TITLE AND RISK – Products shall be delivered Ex Works unless otherwise agreed in writing. Risk of loss shall pass when the Products are delivered Ex Works to a common carrier. Title in the Product will pass when full payment relating to that Product is received by HTS-110. While HTS-110 retains ownership of Products that are in the Customer's possession, the Customer shall have responsibilities to securely store the Products and keep them insured for their full replacement value. The Customer acknowledges that these Terms create a security interest in favour of HTS-110 in the Products and any proceeds from, and existing or future rights in relation to, such Products as security for all amounts payable by the Customer to HTS-110 and the performance of the Customer's obligations under the Agreement.

IP RIGHTS – HTS-110's transfer of title to Products shall not be construed to transfer to the Customer any intellectual property rights and, except that necessarily implied by law by the sale of the Products, shall not include a licence, for example, to any HTS-110 intellectual property rights. HTS-110 may, at the Customer's request, provide the Customer with models or copies of the relevant design and assembly drawings for the Customer's sole use over the life of the Products. HTS-110, however, retains ownership in all such models, design and assembly drawings, together with all intellectual property associated with these models, designs and drawings. Notwithstanding that the Customer has possession of models or design and assembly drawings, the Customer may only use those models or drawings in respect of the Products provided by HTS-110 and may not distribute them to third parties or use them for any other use.

CHANGES – Proposed changes in the specifications, quantities, method of shipment, schedule or place of delivery of Products must be provided to HTS-110 in writing and may be accepted by HTS-110 in its sole discretion. Should such changes increase the cost or the time of performance, HTS-110 reserves the right for a period of thirty (30) calendar days from the acceptance of the change by HTS-110 to obtain an equitable price adjustment from the Customer. If, following HTS-110's response in writing, the Customer elects to incorporate the changes into the agreement then HTS-110 shall be bound by Customer's election and the changes shall be recorded in writing ("the Variation"). The Variation shall amend the specifications to incorporate the changes and shall record the effect, if any, of the changes on the price, delivery, installation dates, warranty and other provisions of the agreement.

INSPECTION – If, upon delivery of Products covered hereby, such Products appear not to conform to the agreed specification, the Customer shall notify HTS-110 of such conditions in writing within thirty (30) calendar days from receipt thereof and afford HTS-110 a reasonable opportunity to inspect the Products. No Products shall be returned without HTS-110's consent.

LIMITED WARRANTY – HTS-110 warrants that newly manufactured Products sold by HTS-110 are free from defects in material and workmanship under normal use and service for a period twelve (12) months from the date of acceptance of the Products by the Customer. Normal use and service is defined as being in operation for one shift per day or operational equivalent if operated in excess of one shift per day. All warranty claims shall be notified to HTS-110 as soon as the Customer becomes aware of the circumstances giving rise to the claim. HTS-110's sole obligation and the Customer's exclusive remedy under this warranty shall be for HTS-110, as its sole choice, to modify, adjust, repair or replace Products proven to be defective within the stated warranty period, or to accept a return of the Products and provide a refund of amounts paid to HTS-110 for the returned Products. Repair or replacement of parts under this warranty shall be done on an Ex Works, HTS-110 factory, basis. Title and risk of loss or damage of Products replaced under warranty passes to the Customer in accordance with the terms above or such other terms as agreed between HTS-110 and the Customer. If HTS-110 determines that Products for which the Customer has requested warranty service are not eligible for warranty service for any reason, the Customer shall pay or reimburse HTS-110 for all costs of investigating and responding to such request at HTS-110's then prevailing time and materials rates. The warranty for any required or replaced Products shall be three (3) months from the date of completion of the repair or the balance of the 12-month warranty period, whichever is the longer.

Exclusions from Warranty – This warranty shall not apply to: Products that require installation by technical staff that have not been installed and/or commissioned under the direct supervision of HTS-110; Products that have been repaired or altered other than by HTS-110 in any way so as, in HTS-110's judgement, to affect the reliability; Products that have been subject to misuse, negligence, or accident, or where operator manual instructions and/or recommendations have not been followed; material defects caused by normal wear; or any item that is experimental, developmental or supplied for evaluation purposes. If Customer modifies any part of the Products within the warranty period without the express consent of HTS-110 then the warranty shall be void in relation to that modified part of the Products. HTS-110 may, at its sole choice, decide that the warranty is void in relation to the part of the Products which have not been modified.

The foregoing limited warranty is exclusive and in lieu of all other warranties by HTS-110, expressed or implied, oral or written, including but not limited to any warranty of merchantability, fitness for a particular purpose or non-infringement.

PATENT INFRINGEMENT WARRANTY – HTS-110 warrants that neither the Products, the use of the Products or any part of the applications or designs employed in the manufacture of the Products, nor the providing of any services breaches any copyright, trade secret, trade mark, or any other property right of any third party nor constitute unfair competition. The Customer agrees that the use of any of its calculations, data, specifications, designs, drawings, papers, documents, procedures, techniques, and other material information supplied by the Customer to HTS-110 for use in connection with the Products will not infringe any intellectual property rights of a third party and shall indemnify HTS-110 against all damages penalties costs and expenses whatsoever which HTS-110 incurs or becomes liable to pay as a consequence of work done at the Customer's request which results in the infringement or the alleged infringement of any patent, registered design, copyright, trademark or other intellectual property right of any third party or any passing-off.

FORCE MAJEURE – HTS-110 will make every effort to deliver the Products on the agreed date or dates. "Force Majeure" means causes beyond the reasonable control of HTS-110 or its suppliers or manufacturers, preventing or interfering with the delivery by HTS-110, including natural disaster, war (declared or undeclared), riots, civil commotion, strikes, lockouts, inclement weather, fire, acts of terrorism, accidents, restraints affecting shipping or credit, non-arrival or delay of carriers, short or reduced supply of fuel or raw materials or excessive costs thereof, or of production, acts of any governmental authorities, or any other similar contingency affecting HTS-110 or its suppliers or manufacturers. Should Force Majeure prevent the total or partial performance under the order, the party claiming Force Majeure shall inform the other party substantiating the occurrence of and the nature of the contingency. Any default or delay caused by Force Majeure shall not constitute a breach of this agreement. HTS-110 is not liable for any default or delay caused by Force Majeure and may, at its option, deliver ratably with reference to all its customers or cancel any delivery not made.

INSTALLATION – The Customer is responsible (at the Customer's cost) for the operating conditions at the site of installation, including site setup, access to utilities, assistance with installation and for providing a safe working environment. Any extra ordinary costs or delays such as, but not limited to, extended site induction, construction works not complete, extended safety meetings, loss of site services, incorrect power supplies or extraction systems, encountered on site shall be to the Customer's account and charged at prevailing market rates.

CANCELLATION – Orders placed cannot be cancelled by the Customer, nor can delivery of Products completed or in process be deferred or extended beyond the original delivery date specified, except with HTS-110's consent and upon terms which indemnify HTS-110 against loss. If the Customer, with HTS-110's consent, cancels the agreement, the Customer shall forthwith pay to HTS-110 the reasonable costs incurred by HTS-110 and a pro rata profit margin in relation to materials supplied and work completed under the agreement prior to receiving notice of cancellation, provided that such costs shall not exceed the Purchase Price.

INFORMATION & CONFIDENTIALITY – All information including, but not limited to, software, data, drawings, designs, specifications, photographs and sketches forwarded by HTS-110 to the Customer shall be treated as confidential by the Customer and shall be used by the Customer solely for the purpose for which it is furnished. Such information shall not be reproduced, transmitted, disclosed or used otherwise, in whole or in part, without written authorisation from HTS-110. At the completion of the project HTS-110 reserves the right to obtain photographic and video images of the equipment for use in promotion of HTS-110's capabilities. Such images shall not be published, or made available to any third party, prior to public release of the product manufactured on the equipment without the express written permission of the Customer.

LIMITATIONS OF LIABILITY – The total liability of HTS-110 (including HTS-110 officers, employees, agents, suppliers or manufacturers) on any claim, whether in agreement, tort (including negligence), breach of warranty or otherwise, arising out of, connected with, or resulting from the manufacture, sale, storage, delivery, resale, repair, replacement or use of any Products shall not exceed the purchase order value. HTS-110's liability on all such claims shall expire three (3) years after HTS-110's delivery of the Products giving rise to the claim(s). In no event shall HTS-110 (including HTS-110 officers, employees, agents, suppliers or manufacturers) be liable to the Customer or any third party for any special, incidental, consequential, exemplary, or other indirect damages, or for loss of profits or revenues, loss of use of the products or any associated product, loss of agreement, loss of goodwill, cost of capital, claims of customers for service interruptions, and costs incurred in connection with procuring substitute goods. The benefit of the foregoing paragraphs shall be extended to the officers, employees and agents of HTS-110.

PARTIAL INVALIDITY - The illegality, invalidity or unenforceability of a provision of this agreement under any law shall not affect the legality, validity or enforceability of that provision under any other law or the legality, validity or enforceability of any other provision in this agreement.

GOVERNING LAW - This agreement is governed by, and construed in accordance with, the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the Courts of New Zealand in respect of any disputes, actions, suits or proceedings arising out of or relating to this agreement.

UPDATED TERMS & CONDITIONS – These Terms & Conditions of Sale are subject to change by HTS-110 without prior notification to and acceptance by the Customer. The most recent Terms & Conditions of Sale are published on HTS-110's website HTS-110.co.nz and supersede all Terms & Conditions of Sale previously advised to the Customer.