

AUTOMATION SYSTEMS & CONTROLS PTY LTD

CONDITIONS OF SALE – SEPTEMBER 2013

1. Definitions

- (a) "The Company" means Automation Systems and Controls Pty Limited (ABN 52 764 019 674) or its successor.
- (b) "The Purchaser" means the Company, firm or persons to whom the Company's tender, quotation or invoice is addressed and includes successors in title and permitted assigns.
- (c) "Sale" means and includes the sale of the Company's goods as well as any order, tender or quotation made or given by the Company and any contract entered into between the Purchaser and the Company.
- (d) "Offer" means tender or quotation.
- (e) "The Price" means the price quoted in the Company's catalogues or price list (published from time to time), tender or quotation or the contract or sale price as the case may be.
- (f) "Force Majeure" means events beyond the reasonable control of the Company and, without limiting the generally thereof, shall include strikes, lock-outs, slow down, fire, riot, tempest, war, embargo, government act, regulation or request, accident, delay in transportation or inability to obtain necessary labour, materials or manufacturing facilities or default by any manufacturer, supplier, subcontractor to the Company preventing or hindering the Company in due performance and observant of its duties and obligations under this contract for sale of any equipment.

2. General

- (a) These conditions apply in respect of every sale by the Company.
- (b) Each tender or quotation is, notwithstanding any rule of law, an invitation only by the Company to treat and is not an offer by the Company to the Purchaser.
- (c) The proper law of the contract shall be the Law of Victoria.
- (d) The headings in these conditions are for convenience only and are not to be taken into account for the purpose of interpreting this agreement.

3. Alterations and Variations

No alterations or variations of these terms and conditions shall be made unless expressly stated in the Company's tender or quotation or in any other case agreed in writing by a director of the Company.

4. Validity

Unless otherwise advised in writing to the Purchaser any offer made by the Company shall remain valid for 30 Days from the date of the offer.

5. Price

- (a) The price excludes delivery costs and GST, all of which shall:-
 - (i) be paid by the Purchaser; and
 - (ii) if the Company disburses those costs, be refunded to the Company by the Purchaser.
- (b) The price shall be paid to the Company:-
 - (i) free of exchange at the address of the Company stated in the invoice, and
 - (ii) 30 days from end of month without set-off or discount for existing account holders unless otherwise specified; and
 - (iii) in Australian dollars.
- (c) Should the purchaser fail to pay for goods on the due date, then the Company shall have the right and without prejudice, to other all rights to which it is entitled by law, sue the purchaser for the price of the goods as a liquidator sum even though the Company reserves title to goods supplied to the purchaser.

6. GST

GST will be in addition to prices stated and shown as a separate amount. The purchaser must pay all GST applicable.

7. Title / Delivery

- (a) The parties agree that the ownership of the goods delivered by the Company to the Purchaser is only transferred to the Purchaser when he has paid all sums owing to the Company whether under this or any other Contract.
- (b) Where the Company has not been paid the price and the Company delivers the goods to the Purchaser, then, until disposed of by the Purchaser in accordance with the provisions of this clause, the Purchaser agrees with the Company to keep the goods as a fiduciary for the Company and, if required, store the goods in a manner that clearly shows the ownership of the Company.
- (c) Where:-
 - (i) the Purchaser makes a new object from the goods, whether finished or not;
 - (ii) the Purchaser mixes the goods with other goods; or
 - (iii) the goods become part of other goods; the Purchaser agrees with the company:-
 - (iv) that the ownership of the new object or the other goods immediately passes to the Company; and
 - (v) until payment of all sums owing to the Company whether under this or any other sale to hold them as a fiduciary for the Company; and
 - (vi) for the purposes of removing doubt, the ownership of the new object or other goods passes to the Company at the beginning of the single operation or event by which the goods are converted into a new object, is mixed or becomes a part of other goods ("the new goods"), and;
 - (vii) where the Company has not been paid in the manner specified in

sub-clause (a) the Purchaser agrees with the Company to keep the new goods as a fiduciary for the Company and, if required by the Company to store the new goods in a manner that clearly shows the ownership of the Company.

- (d) Notwithstanding sub-clause (a) to (c) inclusive, the Purchaser may sell the goods to a third party in the course of business and deliver them to that party subject to:-
 - (i) where the Purchaser is not paid by that party, the Purchaser agrees, at the option of the Company, to assign his claim against that party to the Company upon the Company giving the Purchaser notice in writing to that effect.
- (e) For the purpose of giving effect to and perfecting the agreement:-
 - (i) specified in sub-clauses (a) to (c) inclusive, if the Purchaser does not pay for any goods on the due date stated in the invoice, the Company, its authorised servants and agents, is hereby irrevocably authorised by the Purchaser to enter the Purchaser's premises (or any premises under the control of the Purchaser or act as agent of the Purchaser if the goods are stored at such premises) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Purchaser whatsoever;
 - (ii) specified in sub-clause (d) (ii), the Purchaser irrevocably appoints the Company as its attorney.
- (f) the parties agree that the provisions of this Clause apply notwithstanding an agreement, whether subsequent to this sale or not, between the parties under which the Company gives the Purchaser credit.
- (g) If, and only if, expressly stated in the offer delivery of equipment to a carrier shall constitute delivery to the Purchaser and regardless of freight payment, all risk in relation to the equipment shall pass to the Purchaser at the time.
- (h) If the nominated place of delivery is unattended or if delivery cannot otherwise be effected the Company in its sole discretion may store the goods at the Purchaser's risk and expenses or take other steps as it considers appropriate.
- (i) the Company reserves the right to choose or vary the means, route and procedure of delivery, transport and handling of the goods. If the Purchaser requires a different means, route or procedure, freight and insurance shall be at the Purchaser's expense notwithstanding any other provision of these conditions.
- (j) The Company may deliver the goods in installments and these conditions shall apply to the delivery of each installment as if the delivery was the subject of a separate contract between the Company and the Purchaser and in particular the Purchaser shall pay the Company for each installment so delivered irrespective of any failure or delay in the delivery of any other installment.
- (k) the risk of loss of damage to the goods shall pass to the Purchaser on delivery to the address nominated to the Company by the Purchaser.
- (l) The Company shall make all reasonable efforts to meet any date for delivery of the goods agreed between the Company and the Purchaser. Where a delay in delivery is caused by force majeure the time for delivery shall be extended by a reasonable period.
- (m) If the purchaser delays in taking delivery of the goods, then:-
 - (i) the risk shall immediately pass from the Company; and
 - (ii) the Purchaser shall refund the Company on demand any reasonable costs (including insurance and storage) incurred by the Company in respect to the goods during the period of that delay.
- (n) If at the date of dispatch, any component part, goods or other equipment manufactured by a third party (collectively called "the other equipment") is not available, the Company reserves the right to dispatch the goods to the Purchaser and to dispatch the other equipment to the Purchaser at a later time and the Purchaser will fit and install the other equipment without cost to the Company.

8. Packing

- (a) Where the goods have not been packed by the Company, the Company shall not be responsible for any loss or damage to the goods caused by or arising from transport or delivery of the goods.

9. Warranty / Guarantee

- (a) The Company will, without any charge to the Purchaser, repair or replace, as it may elect, any part of the goods and which in the company's opinion is defective in material or workmanship, provided that:-
 - (i) The Company receives notice from the Purchaser within 7 days of the discovery of the defect in question and within the period of life service of the part in question as stated in the catalogue or if no period is stated such notice is received within one year from the date of invoice of the relevant part; and
 - (ii) If the Company so requires, the Purchaser return the part alleged to be defective to the Company at such place in Australia as the Company may require and at the Purchaser's cost (which cost may be refunded to the Purchaser if the Company accepts the Purchaser's claim).
- (b) The Company guarantees to the Purchaser that any industrial control device included in the goods will perform the number of operations specified for that device in the offer, provided that:-
 - (i) the device is used solely and properly for the purpose for which it is designed; and
 - (ii) the actual voltage applied to that device is within the limits prescribed; and
 - (iii) the device is mounted by the Purchaser in an enclosure of good quality which effectively excludes dust and moisture; and
 - (iv) a short protection (either HRC fuses or circuit breakers) is used for that device and does not exceed the maximum capacity specified for it in the catalogue.

The Company's liability under the guarantee will be strictly limited to repairing or replacing that device, as it may elect.

- (c) The provisions of sub-clauses (a) and (b) are stipulated for the benefit of the Purchaser only and are not intended for the benefit of any third party.
- (d) Save for sub-clauses (a) and (b) the Company does not give any warranty or guarantee or make representations whatever in respect of the goods or the fitness of the goods or any part thereof for any purpose (whether or not that purpose is known to the Company).

10. Goods Returned for Credit

- (a) The Purchaser may return goods for credit only with the Company's prior approval.
- (b) Goods returned for credit shall be delivered to the company free into store in the original packing, unsoiled and undamaged and accompanied by a return of goods authority number and a delivery docket stating the original invoice number, the date of purchase and the reason for return.
- (c) Non-standard equipment which is made to special order shall not be returned for credit.
- (d) Goods shall not be returned for credit more than 14 days from the date of delivery.
- (e) Unless otherwise agreed in writing goods returned for credit shall be subject to a restocking charge of 20% of their invoice amount.
- (f) Credit shall not be given for incorrect supply of goods unless the company receives written confirmation of the order prior to dispatch of the goods.

11. Drawings and Documentation

- (a) Any descriptive specifications and drawings and any weights and dimensions furnished by the Company with any offer and any statement, description, illustration or other information in the Company's catalogues, price lists and other advertising matter are intended merely to give a general idea of the goods and will not form any part of the offer.
- (b) Following acceptance of the offer by the company or Purchaser as the case may be, certified drawings may at the discretion of the Company be provided on request to the Purchaser at the Purchaser's expense.
- (c) Any studies, drawings or other documents submitted by the Company to the Purchaser remain the property of the Company and constitute the confidential information of the Company and the Purchaser shall not use them for any purpose other than that stipulated in the contract nor transmit them to third parties.
- (d) If the offer is not completed, any studies, drawings or other documents submitted with the Company's offer shall be returned to the Company within 14 days of expiry of the offer.
- (e) Any performance figures stated in the offer shall be subject to the recognised tolerance and rejection limits applicable to those figures.
- (f) The Purchaser acknowledges receiving from the company a document detailing the Company's Standard for providing Drawing and Documentation and the Terms and Conditions of that document are deemed incorporated into this agreement.

12. Subject and Limit of the Offer

- (a) The prices quoted by the Company are only for the supply of those goods and/or services specified in the offer and shall not apply to any additional goods and/or services supplied by the Company unless agreed in writing by the company.
- (b) Following submission of the offer the Company shall not be required to comply with any additional standards, specifications, rules or other requirements proposed by the Purchaser and if such additional standards, specifications, rules or other requirements are proposed by the Purchaser the Company reserves the right to decline to proceed with the offer, vary the offer or adjust the price of the offer.
- (c) Any technical assistance provided by the Company shall be at the Purchaser's expense provided that if the contract is for one installation, erection or commissioning any technical assistance provided by the Company pursuant to such installation, erection or commissioning shall be at the Company's expense.
- (d) The price of the goods does not include training of the Purchaser's employees, servants, or agents by the Company.
- (e) Unless otherwise notified in writing to the Purchaser the goods are standard design and the Company shall not be required to comply with tender specifications of minor importance to the operation of the goods.
- (f) Drawings and documentation supplied by the Company shall be standard technical commercial literature.

13. Termination

- (a) The Company may terminate the contract without notice if the Purchaser:-
 - (i) is in breach of a term of the contract and fails to remedy the breach within 14 days of notice in writing by the Company specifying the breach and requesting the Purchaser to remedy it; or
 - (ii) has failed or refused to take delivery of the goods or any part thereof and such failure or refusal continues for a period of 7 days after the Company advises the Purchaser that the goods are ready for delivery; or
 - (iii) is declared, bankrupt, resolves to go into liquidation or has a petition its bankruptcy or winding up presented or enters into a scheme or arrangement with its creditors or if any liquidation, receiver or official manager is appointed in respect of the Purchaser.
- (b) In the event of such termination the Company shall, after taking into account payments made by the Purchaser to the Company, be entitled to payment for work done and expenditure obligated under the contract up to and including the date of termination and any direct and indirect loss suffered by the company including without limitation to the

Company's loss of profit on the contract and the legal costs of the Company (on a full indemnity basis) incurred in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any breach.

- (c) Termination of the contract pursuant to these provisions shall be without prejudice to the rights of the Company accruing up to the date of termination.
- (d) If by reason of the operation of force majeure the Company is unable to perform or observe its obligations under this contract, the company shall not be deemed to be in breach of its duties and obligations so long as force majeure continues to operate.

14. Cancellation

If any order of undelivered goods is cancelled or suspended by the Purchaser without the Company's prior written consent the Company shall be entitled to charge the following cancellation fees:-

- (a) Where the goods are listed in the Company's current Australian catalogue or price list for the time being as stock items, a cancellation fee of 20% of the net invoice amount; or
- (b) Where the goods are listed in the Company's current Australian catalogue or price list for the time being as non-stock items, a cancellation fee of 100% of the net invoice amount; or
- (c) Where the goods are not listed in the Company's current Australian catalogue or price list for the time being, a cancellation fee of 100% of the net invoice amount.

15. Severance

If any provision or part of any provision of these conditions is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of these conditions.

16. Exclusions

The Company shall not be liable under any circumstances whatsoever for:-

- (a) Any injury, damage or loss, including consequential damage or loss (including without limitation loss of market, loss of profit or loss of contracts) whether to persons or property arising out of this sale or the goods supplied pursuant to it including any defects therein or anything connected therewith or with repair or replacement or any other work related thereto and without limiting the generality of the foregoing, the Company shall not be liable for any loss of profit or other special damage or consequential damages arising out of any latent or other defect in the goods; or
 - (b) Any reduction in the price for any shortages in any delivery, unless the shortage is noted by the Purchaser on the Company's delivery note for that delivery; or
 - (c) Any loss of damage to the goods whilst in transit, unless (without affecting the provisions of Clause 8(m)) the Purchaser notifies the Company in writing of that loss or damage within 7 days from the date on which the damaged goods are received.
- If liability may not be excluded by this sale and where the goods to be provided by the Company are not of a kind ordinarily acquired for personal or household use or consumption then the liability of the /company for a breach of a conditions or warranty implied by the Trade Practices Act (other than a condition or warranty implied by Section 69) shall be limited to the repair of the goods or at the Company's option, the replacement of the goods or the supply of equivalent goods.

17. Indemnities, Patents and Design Rights

- (a) The Purchaser warrants that any design or instructions furnished or given by him shall not be such as to cause the company to infringe any letters patent, registered design, trademark or copyright in the execution of the sale.
- (b) The Purchaser indemnifies the Company against all claims, damages and costs which arise out of any infringement by the Company of any letters patent, registered design, trademark or copyright as a result of any work carried out by the Company from any information, specifications, designs or other data supplied by the Purchaser.
- (c) Any letters patent, registered design, trademark or copyright held by the Company and relating to the goods offered or supplied by the Company shall remain the absolute property of the Company and shall not be reproduced or disclosed without the Company's written consent. The Purchaser will not without the Company's previous written consent, copy or allow others to copy any drawings, equipment or part thereof supplied by the Company.
- (d) The Purchaser shall indemnify the Company in respect of any claims, demands, damages, proceedings, costs, charges and other expenses caused by, arising out of or in any way connected with any special, consequential, direct or indirect loss, damage, harm, or injury suffered by any person arising out of this sale or the goods supplied pursuant to it.

18. Substitutes

The Company may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority or non-availability of materials from suppliers.

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