

Automation Control Warehouse Ltd.

Terms and Conditions of Sale

The Buyer's attention is drawn in particular to the provisions of clause 14.

1. GENERAL

- 1.1 All quotations and tenders submitted by and all contracts made with Automation Control Warehouse Limited (hereinafter referred to as "the Seller") shall be upon and subject to these terms and conditions save in so far as specifically varied by a director of the Seller in writing to the exclusion of all other terms and conditions (including any terms and conditions which are implied by trade, custom, practice or course of dealing, or which the Buyer purports to apply under any order, specification or other document).
- 1.2 The contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance, or warranty made or given by or on behalf of the Seller which is not set out in the contract.

2. VALIDITY

Unless previously withdrawn any quotation or tender is open for acceptance for the period stated therein or when no period is so stated for thirty days from (and including) its date of issue.

3. PRICES

- 3.1 Prices quoted are based upon costs prevailing at the date of the quotation or tender.
- 3.2 The Seller reserves the right to increase prices set out in any quotation or tender at any time prior to delivery by notice in writing to the Buyer.
- 3.3 The price for the goods is exclusive of any VAT, and all costs and charges in relation to packaging, loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition to the price.

4. ACCEPTANCE

Any order from the Buyer must be accompanied by all such information (in a format which is readily usable by the Seller) and any other relevant items to enable the Seller to proceed with preparing the order forthwith otherwise the Seller is to be at liberty to amend the price to cover any increased costs to the Seller resulting from a failure by the Buyer to provide such information or amend the delivery period dependent of production capacity.

5. PACKING

Unless agreed otherwise in writing by the Seller all reusable packing cases, skids, drums and other packing materials must be returned to the Seller's works at the Buyer's expense in good condition within one month from the date of receipt. If not so returned the Seller shall invoice the Buyer for all the costs plus VAT of such packaging materials etc.

6. PAYMENT

- 6.1 The Seller may invoice the Buyer for the goods on or at any time after the completion of delivery or deemed delivery.
- 6.2 Unless expressly agreed to the contrary by the Seller in writing, all accounts shall be paid net within 30 days from the date of invoice.
- 6.3 All cheques and money orders should be made payable to Automation Control Warehouse Limited or ACW Ltd.
- 6.4 No payment will be deemed to be received until the Seller has received cleared funds.
- 6.5 The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.6 Time shall be of the essence for payment.
- 6.7 The Buyer shall make all payments due under the contract in full without deduction whether by way of set-off, counter claim, discount, withholding, abatement or otherwise.
- 6.8 Save in the case of clause 6.8.2, in no case will ownership of the property or title to any of the goods pass to the Buyer until payment of the full contract price and all other sums which are payable to the Buyer on any account have been made to the Seller.
- 6.8.1 Until title to the goods has passed to the Buyer, the Buyer shall (a) store the goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property, (b) not remove, deface, or obscure any identifying mark or packaging on or relating to the goods, (c) maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery, (d) notify the Seller immediately if it becomes subject to any of the events listed in clause 6.8.3, and (e) give the Buyer such information relating to the goods as the Buyer may require from time to time.
- 6.8.2 The Buyer may resell the goods before ownership has passed to it solely on the following conditions (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value, (b) any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal and not as the Seller's agent when making such a sale and (c) title to the goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.
- 6.8.3 The Buyer's right to possession of the goods shall terminate immediately if the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or any document is filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer or the Buyer suffers or allows any execution, whether legal or equitable to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or the Buyer encumbers or in any way charges any of the goods.
- 6.8.4 The Seller shall be entitled to recover payment for the goods notwithstanding that ownership of any of the goods has not passed from the Seller.
- 6.8.5 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the goods are or may be stored in order to inspect them, or, where the Buyer's rights to possession has terminated, to recover them.
- 6.8 So long as any payment under this contract is overdue the Seller reserves the right to withhold or suspend performance of any contractual obligation.

7. DELIVERY & RISK

- 7.1 Any times quoted for despatch or delivery are approximate only and are to date from the receipt by the Seller of a written order to proceed, and all necessary information drawings and any other relevant items to enable the Seller to put the work in hand.
- 7.2 The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event (clause 11) or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the goods.
- 7.3 Time shall not be made of the essence in respect of delivery by notice. If no date for delivery is specified delivery shall be within a reasonable time.
- 7.4 Subject to Clause 12, the goods are at the risk of the Buyer from the time of delivery.

8. INSTALMENT DELIVERIES

- 8.1 The Seller shall have the right to make delivery of the goods by instalments of such quantities and at such intervals as it may decide.
 - 8.2 Each instalment shall be invoiced and paid for in accordance with the provisions of the contract.
 - 8.3 Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other contract or instalment.
- ### 9. GOODS LOST OR DAMAGED IN TRANSIT
- 9.1 Unless the Seller receives a complaint in writing within 7 days of the date upon which the invoice is sent to the Buyer that the goods have not been delivered the goods shall be deemed to have been delivered to the Buyer 2 days after the date of invoice.
 - 9.2 Unless the Seller receives a complaint in writing within 7 days of the date upon which the invoice is sent to the Buyer of the goods, the goods shall be deemed to be undamaged and in a good condition and of the quantity and description invoiced or in the case of non-delivery within such time from the date of despatch as shall enable the Seller to make a reasonable claim on the carrier.
 - 9.3 Any liability of the Seller for non-delivery of, or damage to, the goods shall be limited to replacing the goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such goods and subject to compliance with this clause the Seller shall have no further liability in respect of the loss or non-delivery of the goods. The Seller shall have no liability for any failure to deliver the goods to the extent that such failure is caused by a Force Majeure Event (clause 11) or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the goods.

10. DRAWINGS

- 10.1 All descriptive and forwarding specifications drawings and particulars of weight and dimensions submitted by the Sellers are approximate only and the descriptions and illustrations contained in the Seller's catalogues price lists and other advertisement matter are intended merely to present a general idea of the goods described therein and none of these shall form part of a contract and any statement or representation made by or on behalf of the Seller is excluded to the maximum permissible extent.
- 10.2 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the contract.
- 10.3 These conditions in clause 10 shall apply to any repaired or replacement goods supplied by the Seller.

11. FORCE MAJEURE

- 11.1 The Seller reserves the right to defer the date of delivery or cancel the contract or reduce the volume of goods ordered by the Buyer (without liability to the Buyer) if it is directly or indirectly prevented from or delayed in performing the contract due to circumstances beyond the reasonable control of the Seller including (without limitation) acts of God, strikes, lock-outs, riots, military or usurped power, war, blockade, fire, ice, government action or default of suppliers or subcontractors.

12. STORAGE

If the Seller does not receive forwarding instructions from the Buyer sufficient to enable the Seller to dispatch the goods within 14 days after the date of notification that they are ready for despatch the risk in the goods shall pass to the Buyer, the goods shall be deemed to have been delivered and the Seller shall be entitled to arrange storage either at his own works or elsewhere on behalf of the Buyer and all charges for storage insurance or demurrage shall be payable by the Buyer.

13. DEFECTS AFTER DELIVERY

The Seller will make good by repair or at its sole option by a replacement, defects which under proper use appear in the goods within a period of twelve calendar months after the goods have been delivered, and arise solely from faulty design (other than a design made, furnished or specified by the Buyer) materials or workmanship provided always that defective parts have been returned to the Seller if so required. The Seller shall refund the cost of carriage on such returned parts and the repaired or new parts will be delivered free of charge. Subject to compliance with this clause the Seller shall have no further liability in respect of any such faulty design material or workmanship in the goods.

14. LIMITATION OF LIABILITY

- 14.1 Subject to clause 9 and 13 the warranties given by the Seller in these Terms and Conditions of Sale are in lieu of all other warranties or conditions express or implied by common law or statute and all such warranties, conditions and other terms are to the fullest extent permitted excluded from the contract.

- 14.2 Nothing in these conditions excludes or limits the liability of the Seller:

- (i) for death or personal injury caused by the Seller's negligence;
- (ii) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (iii) for any matter which it would be illegal for the Seller to exclude or attempt to exclude;
- (iv) for fraud or fraudulent misrepresentation.

- 14.3 Subject to clause 14.2:

- (i) the Seller's total liability to the Buyer whether in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the contract shall be limited to the contract price;
- (ii) The Seller shall under no circumstances whatever be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and similar loss) costs, damages, charges or expenses caused directly or indirectly by:
 - (i) any delay in delivery of the goods; and/or
 - (ii) any loss or failure to deliver the goods;
 - (iii) any damage to the goods in transit;
 - (iv) any defect in design or materials or workmanship of the goods;
 - (v) any breach of these conditions or of the contract.
 - (vi) any use made, or resale, by the Buyer of the goods or any product incorporating the goods

15. GOODS NOT OF THE SELLER'S MANUFACTURE

- 15.1 Where the goods are not of the Seller's manufacture the Seller will endeavour (but shall be under no obligation) to transfer to the Buyer the benefit of any warranty or guarantee which the Seller may have received from the Supplier of such goods in respect thereof but not so as to impose on the Seller in respect of such goods a liability greater than those contained in these Terms and Conditions of Sale.

16. REPAIR WORK

- 16.1 Quotations for repair work are made based on a preliminary examination by the Seller of the goods to be repaired. To ensure a satisfactory repair it is frequently necessary to carry out additional work to that originally quoted for. The Seller therefore reserves the right to invoice repair work based on actual costs incurred. If following receipt of a quotation for the repair of goods the Buyer decides not to proceed, the Seller reserves the right to charge for dismantling and installation. If within twenty-one days from receipt of a quotation for the repair of goods, the Buyer does not give any instructions the Seller will not therefrom accept any liability for loss of or damage to any of the Buyer's property remaining in its hands. Any parts replaced in the course of any repair work undertaken by the Seller shall become the property of the Seller.

17. CREDIT TERMS ON RETURNED GOODS

- 17.1 It is not the policy of the Seller to accept for credit, goods returned as incorrectly ordered. In exceptional circumstances and at the Seller's sole discretion, goods may be accepted for credit, subject to a handling charge calculated on a case by case basis but not exceeding 60% of invoice value. In these instances, original order number or invoice number will be required as proof of purchase.

18. INTELLECTUAL PROPERTY

- 18.1 In the event of any claim being made or action being brought or threatened against the Seller in respect of any claim that goods manufactured according to the designs and/or specifications of the Seller infringe any intellectual property or other proprietary rights of any third party the Seller shall notify the Buyer as soon as reasonably possible of any such claim being made or action being brought or threatened and the Seller shall be at liberty (with the full assistance of the Buyer if required) at the Buyer's expense to conduct all negotiations for the settlement of the same and/or any litigation that may arise therefrom. The Buyer shall indemnify the Seller against all costs, losses, claims, expenses, damages, charges or liability whatsoever (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in respect of or in connection with any claim made against the Seller for actual or alleged infringement of intellectual property or other proprietary right of a third party relating to any product supplied to the design and/or specification of the Buyer or following the instructions of the Buyer.

19. GENERAL

- 19.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all its rights and obligations under the contract or any part of it, to any person, firm or company.

- 19.2 The Buyer shall not be entitled to assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all its rights and obligations under the contract or any part of the contract without the prior written consent of the Seller.

- 19.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the contract shall not be construed as a waiver of any of its rights under the contract nor shall it prevent or restrict further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any

other right or remedy.

19.4 Any waiver by the Seller of any breach of, or any default under, any provision of the contract by the Buyer is only effective if made in writing signed by a director of the Seller and shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the contract.

19.5 The parties to the contract do not intend that any term of the contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19.6 Except as set out in these Terms and Conditions, no variation of the contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by a director of the Seller.

19.7 If any provision or part-provision of the contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, enforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted and the remaining provisions of the contract and the remainder of such provision shall continue in full force and effect.

19.8 The formation, existence, construction, performance, validity and all aspects of any quotation, tender or contract (including non-contractual disputes or claims) shall be governed by Scottish law and the parties irrevocably agree to submit to the exclusive jurisdiction of the Scottish courts.