

# **Standard Terms of Sale and Delivery for Automation Control Warehouse Ltd. (ACW Ltd.)**

## **1. Application**

**1.1** All deliveries of products ("Products") from Automation Control Warehouse Ltd. 2 Inchkeith, EAST KILBRIDE G74 2JZ ("ACW LTD.") to any purchaser ("Purchaser") shall be governed by these standard terms of sale and delivery (the "Terms") to the extent that they are not waived in writing by ACW LTD. and expressly to the exclusion of any terms of purchase or procurement which the Purchaser may seek to apply. ACW LTD.'s acceptance of Purchaser's order is expressly conditioned upon Purchaser's acceptance of these Terms and no addition to, or modification shall be binding on ACW LTD. unless expressly agreed to in writing.

**1.2** The international trade terms specified in "Incoterms 2020" shall apply between ACW LTD. and the Purchaser.

**1.3** ACW LTD. may employ sub-contractors to carry out any part of its obligations under these Terms at its sole discretion and it may assign its rights and obligations under these Terms to any other party.

## **2. Ordering**

**2.1** No final agreement concerning sale or delivery shall exist between ACW LTD. and the Purchaser until ACW LTD. has given its acceptance as an order confirmation or other explicit written confirmation.

**2.2** If ACW LTD.'s order confirmation does not match the Purchaser's order, the Purchaser must complain immediately. Failure to do so means that the Purchaser shall be bound by the content of the order confirmation.

**2.3** Quotations, pro forma invoices and other associated correspondence shall not be binding on ACW LTD.

**2.4** No cancellation or alteration of orders is regarded as having been accepted until ACW LTD. has confirmed such cancellation or alteration in writing. In case of cancellation or alteration the Purchaser shall reimburse ACW LTD. for all reasonable costs incurred in connection with the cancellation or alteration of orders.

**2.5** The Purchaser will provide ACW LTD. with such information, material, copies, drawings, designs, plans, answers to queries, licenses, approvals and access to the Purchaser's systems, premises and staff, as may be reasonably necessary for or requested by ACW LTD. to perform these Terms. The Purchaser is responsible for ensuring that such material and answers are accurate and complete.

## **3. Terms of delivery**

**3.1** All deliveries by ACW LTD. shall be FCA East Kilbride (Incoterms 2020), and the Purchaser shall bear all risks in case of loss, damage or delay during transport. In the absence of any agreement to the contrary, transport shall be performed using the means ACW LTD. deems best without any liability for ACW LTD.

**3.2** ACW LTD. undertakes to take appropriate measures to deliver on time. If a delay nevertheless occurs, ACW LTD. shall be entitled to postpone the time of delivery for up to 30 days (without limitation to the separate provisions at clause 17.1) without the Purchaser being entitled to cancel the order. A late delivery shall not entitle the Purchaser to claim compensation.

## **4. Tax and duty**

**4.1** In addition to the purchase price, the Purchaser shall pay all tax (including VAT and other sales tax), duty (including import duty) or tariffs which may be levied on the Products well as any necessary expenses connected with the approval of the Products.

## **5. Prices**

**5.1** ACW LTD. reserves the right to change prices until a final order confirmation has been issued. ACW LTD. also reserves the right to change the prices of confirmed orders in case of changes in production costs, salaries/wages, cost of material, sub-supplies, exchange rates, expenses imposed by public authorities, the official discount rate and changes to the specification of any Products requested by or agreed to by the Purchaser.

## **6. Terms of payment**

**6.1** Payment shall be made no later than at the time of delivery FCA East Kilbride (Incoterms 2020), unless otherwise specifically agreed in writing.

**6.2** If payment is delayed, ACW LTD. shall be entitled to claim 2% interest on the purchase price per month or part of a month, as well as to withhold all future consignments. ACW LTD. shall also be entitled to demand that the Purchaser pays all reasonable costs incurred in connection with legal or non-legal action taken with the purpose of collecting payment (on a full indemnity basis where applicable).

**6.3** The Purchaser shall not be entitled to withhold any payments in respect of alleged claims against ACW LTD., unless such claims have been accepted in writing by ACW LTD. in advance.

**6.4** If the Purchaser fails to take delivery of consignments or part- consignments, which are ready for delivery on the agreed day, the Purchaser shall nonetheless pay for the Products as if delivery had taken place, in the absence of any agreement to the contrary.

## **7. Property rights**

**7.1** Until ACW LTD. has received full payment for Products delivered, legal and beneficial title to such Products shall remain the property of ACW LTD. even though the Purchaser has started to use or process the Products or started incorporating the Products in its own application. Until title in the Products passes to the Purchaser, the Purchaser shall not sell the Products without the prior written consent of ACW LTD.

**7.2** If the Purchaser is in default in payment for any Products or ACW LTD. in good faith on reasonable grounds believes the Purchaser is or may be insolvent, the Purchaser shall on request deliver up those Products to which title has not passed, to ACW LTD. If the Purchaser fails to do so, ACW LTD. may enter upon any premises owned, occupied or controlled by the Purchaser where those Products are situated and repossess the Products.

**7.3** The Purchaser shall not pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of ACW LTD.

**7.4** The Purchaser shall insure the Products to the full price against “all risks” to the reasonable satisfaction of ACW LTD. until the date when property in the Products passes and shall whenever requested by ACW LTD. produce a copy of the policy of insurance.

## **8. Intellectual property rights**

**8.1** ACW LTD. reserves all rights to Products and their design. Products may not be copied or given to any third parties with a view to copying the Products. All drawings and descriptions sent to the Purchaser shall remain the property of ACW LTD., and may not be copied, transferred or in any other way communicated with any third parties without the consent of ACW LTD.

**8.2** If the provision in clause 8.1 is violated, the Purchaser shall pay ACW LTD. compensation for any loss attributable to unlawful copying; and all costs incurred in connection with the legal and non-legal pursuit of ACW LTD. rights (on a full indemnity basis where applicable).

**8.3** In case of a development project should a third party claim intellectual property rights such as patents, design patents, copyrights, trademarks and similar rights against ACW LTD., the Purchaser of the project shall indemnify ACW LTD. all costs such as legal and court costs and any damages resulting from such claim provided that the claim is a result of the Purchaser’s specifications and requirements.

## **9. Embedded software**

**9.1** If Products are delivered with embedded software, ACW LTD. provides the Purchaser with a non-exclusive, software license in the form of a right to use such software solely for the purposes set out in applicable Product specification. Aside from this, the Purchaser obtains no rights in form of license, patent, copyright, trademark or other proprietary right connected with such software. The Purchaser shall not obtain any rights to software source code nor shall the Purchaser attempt to access such source code.

**9.2** If Products are delivered with embedded software, the Purchaser shall be responsible for keeping the software up to date following delivery, by installing necessary updates offered by ACW LTD.

## **10. Technical changes and approval**

**10.1** ACW LTD. reserves the right to make technical and other changes in Products including ordered Products without notice, if it can be done without changing the agreed technical specifications.

**10.2** ACW LTD. is not liable for absence or misinterpretation of information in catalogues and other written material drawn up by ACW LTD.

**10.3** The Purchaser shall be fully liable for its application, use and operation of any Product, whether or not such application, use or operation has been approved by ACW LTD. It is the responsibility of the Purchaser to ensure that the agreed or recommended/suggested technical specifications meet the performance criteria defined by the Purchaser for their application.

ACW LTD. cannot assess the impact of all the conditions under which the Products shall be operated. This includes but is not limited to suspension of the actuator; vibration; load curve; exposure to outside elements like temperature and moisture; duration and frequency of use, safety, etc.

The suitability of the Products and the Products performance under such varying conditions can only be verified by testing and the responsibility for this testing and validation lies solely with the Purchaser. This includes but is not limited to testing the Products in the Purchaser’s application and ensuring the suitability when connecting the Purchaser ‘s or third parties’ components to the Products. Products may not in any circumstances be used in aircraft or in connection with nuclear power of any kind.

**10.4** The Purchaser undertakes to apply for all necessary national or international approvals of any application in which Products are used.

## **11. Complaints**

**11.1** If the Purchaser wishes to claim that the delivered Products are defective, the Purchaser must complain immediately to ACW LTD.

**11.2** The Purchaser shall inspect consignments immediately on receipt to check for any shortages, defects, errors or any other deviations from the contract. If the Purchaser wishes to complain to ACW LTD., the Purchaser shall submit such complaints to ACW LTD. no later than 5 days after receipt of the Products if the relevant defects could have been discovered during the Purchaser's inspection on receipt of the delivered Products.

**11.3** Any damage or loss occurring during transport shall be of no concern to ACW LTD. and claims in such circumstances may only be made against the transport agent concerned.

## **12. Cost-free repairs and replacement**

**12.1** At its sole discretion, ACW LTD. agrees to repair, replace or credit Products that are found to be defective, at time of delivery, due to faulty manufacture, design and/or defective materials, provided that Purchaser makes a claim to ACW LTD. within 12 months from the date of production as stipulated on the Product label, unless otherwise agreed (the "Claim Period"). If batteries are provided by ACW LTD. as a part of a Product, the Claim Period for such batteries pursuant to this clause shall be 6 months from production as stipulated on the Product label.

**12.2** If Purchaser discovers defects within the Claim Period, the Purchaser shall in writing inform ACW LTD. of such alleged defects within 5 days after discovery and the Product shall then be sent to ACW LTD. or to any other address determined and designated by ACW LTD. with freight and insurance paid by the sender, accompanied by a description of the reason for such return. If ACW LTD. accepts that the Product is defective and the Purchaser has complained within the Claim Period, ACW LTD. shall dispatch the Product after replacement or repair free of charge. ACW LTD. shall reimburse the Purchaser for the freight costs incurred by the Purchaser in sending the defective Product to ACW LTD.'s place of business, but only if ACW LTD. has approved in writing of the method of dispatch and the costs incurred prior to the dispatch of Products. If, however, ACW LTD.'s analysis shows that the Product is not defective, ACW LTD. may return the Product to the Purchaser at Purchaser's cost and risk, and ACW LTD. may charge a fee for the time and materials used in analysing the allegedly defective Product.

**12.3** Re-delivery or repair under this clause shall under no circumstances be performed outside ACW LTD. places of business, unless otherwise agreed by ACW LTD. ACW LTD. shall not in any circumstances remove, replace or remount Products which have been incorporated in other non-Products.

**12.4** Excluded from cost-free repairs and replacements are Products delivered with embedded software where claims arise from (i) combination of Products with any hardware or software not manufactured or not provided by ACW LTD.; (ii) the Purchaser's specifications being different from the agreed written specifications; (iii) nonconformity not discovered by ACW LTD. during release and quality testing nor by Purchaser during Purchaser's quality testing and approval; (iv) failure to update such software as necessary; and (v) any alteration or modification to Products, except those alternations or modifications made by ACW LTD. or specifically agreed to by ACW LTD. in writing.

**12.5** In case of defects in software covered by clause 12.1, cf. clause 12.4 the Purchaser's sole remedy and ACW LTD. aggregated liability shall be limited to ACW LTD. providing and/or replacing any defective parts in the Products by supplying new software components to the Purchaser. ACW LTD. shall not be responsible for replacement of Products or part of Products in the Purchaser's applications, including but not limited to any kind of field updates.

**12.6** Unless otherwise expressly stated in these Terms, Products are supplied "AS IS", "WHERE IS" and "WITH ALL FAULTS", ACW LTD. does not extend any warranty, written, expressed nor implied for implied merchantability or fitness for particular purpose.

**12.7** Products shall not be subject to clause 12.1 regarding cost-free repairs or replacement, if ACW LTD. has determined, in its sole discretion, that the Purchaser has misused the Products in any manner, has failed to use the Products in accordance with industry standards and practices or has failed to use the Products in accordance with any instructions, if any, provided by ACW LTD. Further ACW LTD. accepts no liability for wear and tear nor for Products which have been subject to violent treatment or inadequate maintenance.

**12.8** Products which are repaired under this clause 12 shall themselves be protected by the remainder of the Claim Period which was applicable to the original Products.

## **13. Product liability**

**13.1** ACW LTD. Shall be liable for product liability in accordance with applicable legislation in this connection but does not assume liability in any degree beyond that specified by applicable legislation.

**13.2** The Purchaser shall indemnify ACW LTD. to the extent that ACW LTD. is liable vis-à-vis third parties for any damage or loss for which ACW LTD. is not liable vis-à-vis the Purchaser in accordance with clause 13.1 above.

## **14. Limitation of liability**

**14.1** ACW LTD. shall not be held responsible nor liable for any special, indirect, consequential, punitive or exemplary damage or

loss, which might arise out of faulty Products, delay in the delivery of Products, product liability, recall or otherwise, irrespective of cause, including but not limited to, loss of production, loss of profit, loss of data and/or loss of goodwill.

**14.2** Save for liability for death or injury caused by the negligence of ACW LTD. and for other liability which cannot be excluded by law, in all other cases ACW LTD.'s total liability (whether in contract, tort including negligence or otherwise) under or in connection with any order or these Terms or based on any claim for contribution or indemnity in respect of any single claim or series of connected claims shall not exceed the price paid for such Products as are the subject of that claim or claims in aggregate.

**14.3** The Purchaser shall maintain such insurance protection as shall be reasonable and prudent, taking account of the nature of the Purchaser's business. ACW LTD. shall not be liable under these Terms for losses suffered by the Purchaser which are, or would have been, recoverable under such policy of insurance.

## **15. Export control**

**15.1** The Purchaser acknowledges that ACW LTD. is required to comply with applicable export / import laws and regulations relating to the sale, export, import, transfer, assignment, disposal and use of the Products. The Purchaser agrees that Products will not at any time directly or indirectly be used, exported, re-exported, imported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with any export / import laws and regulations.

## **16. Protection of personal data**

**16.1** As a part of handling sales requests from Purchaser, ACW LTD. shall process contact and invoice data. Any personal data ACW LTD. may process may be shared with other ACW LTD. group companies. Personal data will not be shared with any third parties other than data processors who process data on behalf of ACW LTD. based on a data processor agreement. Further information can be found in ACW LTD.'s Privacy Policy which can be found at [www.ACW Ltd..co.uk](http://www.ACW Ltd..co.uk).

## **17. Force majeure**

**17.1** ACW LTD. is entitled to cancel orders or suspend delivery of Products and shall not be liable for any non-delivery, faulty or delayed delivery, which partly or wholly is caused by circumstances beyond ACW LTD.'s reasonable control, including, but not limited to, riots, civil unrest, war terrorism, health emergencies, health epidemic or pandemic or any associated governmental or regulatory restrictions, fire, insurrection, requisition, seizure, embargo or defects or delays in deliveries by sub-suppliers, strikes, lockouts, slowdowns, lack of transportation, scarcity of materials, and insufficient supplies of energy. Any of Purchaser's contractual rights are suspended or become void in any such circumstances referred to in this Clause. Purchaser is not entitled to any kind of damages or to make claim whatsoever in case of cancellation or delayed delivery due to such circumstances.

## **18. Confidentiality**

**18.1** The Purchaser shall keep strictly secret and not disclose to any third party any confidential information received through doing business with ACW LTD.

## **19. Termination**

**19.1** ACW LTD. may terminate these Terms or any order or suspend the performance of the same with immediate effect on written notice if the Purchaser; (a) ceases or threatens to cease to carry on its business or becomes insolvent or enters into liquidation or any formal insolvency process or has a receiver or administrator appointed over any of its assets or issues a dishonoured bill of exchange; or (b) commits a material breach of these Terms and, in the case of a breach capable of remedy, fails to remedy it within 21 days of receipt of written notice from ACW LTD. specifying the breach and containing a warning of an intention to terminate if the breach is not remedied.

**19.2** In the event of a suspension, ACW LTD. Shall be entitled to demand pre-payment of any part of the price not yet due for payment as a condition of re-commencing its performance.

**19.3** Upon termination or suspension of any order or these Terms for whatever cause, the Purchaser shall pay to ACW LTD. all monies due to ACW LTD. at that date after taking into account amounts previously paid including (a) the total value of Products delivered up to the date of termination, the price for which shall then become payable immediately; (b) any cancellation charges payable to ACW LTD.'s sub-contractors; (c) the cost of the Products ordered for the purposes of these Terms for which ACW LTD. has paid or is legally bound to pay; (d) the cost of removal from the delivery address of any property of ACW LTD.; and (e) any other costs incurred by ACW LTD. in connection with these Terms or their termination including but not limited to loss of profits, processing costs already incurred and any reduction in the value of the material used.

**19.4** Termination of any order or these Terms shall not affect any rights of the parties accrued to them up to the date of termination.

## **20. Miscellaneous**

**20.1** Any variation of any order or these Terms shall be inapplicable unless agreed in writing by the parties.

**20.2** If one or more of the terms and conditions in these Terms or any part of a term is deemed invalid, unenforceable, illegal or inoperable, then such term shall be severed from the remainder of these Terms and the validity, enforceability, legality or operability of all further terms and conditions shall not be affected or diminished thereby.

**20.3** No delay or failure by ACW LTD. To exercise any of its powers, rights or remedies under these Terms will operate as a waiver of them and any waiver, to be effective, must be in writing.

**20.4** These Terms are the complete and exclusive statement of the agreement between the parties relating to the subject matter of these Terms, save as may be expressly stated in writing, and supersedes all previous communications, representations and other arrangements, written or oral.

## **21. Applicable law and venue for disputes**

**21.1** Any disagreements or disputes between ACW LTD. And the Purchaser shall be settled by the laws of Scotland without regard to its conflict of law rules.

**21.2** Unless ACW LTD. gives its written consent to a process of arbitration, which shall then take place in Scotland, all disputes shall be settled by legal proceedings at the courts of Scotland.