

## 1. Definitions

In these Terms:

**ACL** means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

**Agreement** means any agreement for the provision of goods or services by the Supplier to the Customer;

**consumer** is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;

**Customer** means the person, jointly and severally if more than one, acquiring goods or services from the Supplier;

**Duties** means any excise, sales tax, GST or other charges which may be established or levied by any Government or governmental authority (whether Commonwealth, State or foreign);

**goods** means goods supplied by the Supplier to the Customer;

**GST** means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;

**Intellectual Property** means any and all drawings, specifications, schedules, registered or unregistered trade marks, designs or patents owned by or licensed to the Supplier at the time of entering into the Agreement with the Customer, and any variation, modification or improvement;

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

**services** means services supplied by the Supplier to the Customer;

**Supplier** means Automation Innovation Pty Ltd ACN 130 259 479 of 20 Arctic Court, Keysborough, Victoria; and

**Terms** means these Terms and Conditions of Trade.

## 2. Basis of Agreement

2.1. Unless otherwise agreed by the Supplier in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2. The Agreement constitutes the entire agreement between the parties and supersedes all previous arrangements, undertakings, correspondence, representations, understandings and communications whether oral or in writing.

2.3. Any quotation provided by the Supplier to the Customer for the proposed supply of goods or services is:

- (a) subject to clause 3.2 and 3.3;
- (b) valid for 30 days;
- (c) an invitation to treat only; and
- (d) only valid if in writing.

2.4. The Terms may include additional terms in the Supplier's quotation, which are not inconsistent with the Terms.

2.5. An Agreement is accepted by the Supplier when the Supplier accepts, in writing or electronic

means, an offer from the Customer or provides the Customer with the goods or services.

2.6. The Supplier may refuse to accept any offer.

2.7. The Customer must provide the Supplier with its specific requirements, if any, in relation to the goods and services.

2.8. No variation to the Customer's accepted order/s will be recognised or acted upon by the Supplier unless expressly agreed to by the Supplier in writing.

2.9. The Supplier may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to quotes or orders placed after the notice date.

## 3. Pricing and Quotations

3.1. Subject to clause 3.2(c), prices quoted for the supply of goods and services include applicable Duties imposed on or in relation to the goods and services.

3.2. Prices quoted are subject to:

- (a) reasonable adjustment at the date of receipt of the Customer's order, save that in respect of any increase, the Supplier must comply with clause 3.12;
- (b) all relevant price regulations (if any) on the date of despatch;
- (c) any Duties exemption the Customer evidences to the Supplier's reasonable satisfaction, by providing to the Supplier a valid excise or sales tax exemption number.

3.3. Unless expressly stated to the contrary, quoted prices for imported goods do not include the following costs and expenses, for which the Customer is liable:

- (a) existing F.O.B. prices;
- (b) rates of exchange;
- (c) freight;
- (d) insurance;
- (e) customs; and
- (f) other duties and landing, clearing and storage charges.

3.4. Any quotation given by the Supplier is subject to withdrawal, correction or alteration at any time before receipt of the Customer's order. No order is deemed to have been received by the Supplier unless acknowledged in writing.

3.5. Any performance figures quoted by the Supplier are based on experience and are those expected to be obtained on test. The Supplier accepts no liability for failure to attain such figures quoted unless specifically guaranteed in the quotation subject to any recognised or accepted tolerances specified or agreed.

3.6. The dimensions, weights, horsepower, electric current ratings and other details of design in the Supplier's quotation are subject to alteration without notice to the Customer.

3.7. The Supplier reserves the right to supply products of the manufacturer's latest specifications.

3.8. Any plans provided by the Supplier, unless officially certified, cannot be guaranteed and no responsibility is taken for their accuracy.

3.9. Any weights, where given by the Supplier, are approximate only and are not under any circumstances guaranteed.

- 3.10. Any particulars given in the Customer's order are subject to:
- (a) confirmation by the Supplier on receipt of the order and;
  - (b) the goods referred to in the order being still available or procurable for execution of the order at that time.
- 3.11. If:
- (a) the Customer requests any variation to the Agreement, and by reason of that request there is an increase in the costs to be incurred by the Supplier; or
  - (b) there is otherwise a change in the costs incurred by the Supplier in relation to the goods or services:
- and the Supplier proposes to increase the price payable by the Customer to take account of any such change, it must notify the Customer and the Customer may:
- (c) accept the change in price, and continue under the Agreement; or
  - (d) reject the change in price, and cancel:
    - (i) in the case of clause 3.11(a), the requested variation; or
    - (ii) in the case of clause 3.11(b), the Agreement.
- 3.12. The Supplier reserves its right to review or withdraw from any quote provided without penalty should there be any changes to the scope and/or if additional requirements are identified by the Supplier which were not disclosed of at the time of the quote being prepared, provided the Supplier made all reasonable efforts to ensure it identified such requirements prior to issuing the quote.
- 4. Customer's Order**
- 4.1. Subject to clause 4.2, the Customer's order, once accepted by the Supplier, may not be cancelled or varied by the Customer without the prior written consent of a Director of the Supplier.
- 4.2. In special circumstances the Supplier may in its discretion agree to cancel the Customer's order conditional upon payment by the Customer of such cancellation fees as may be communicated by the Supplier to the Customer at the time of the Customer placing its order.
- 5. Payment**
- 5.1. Unless otherwise agreed in writing:
- (a) Subject to 5.1(b) and clause 6.1, full payment for the goods or services must be made within 7 days of the date of the Supplier's invoice;
  - (b) The Supplier reserves the right to require payment in full on delivery of the goods or completion of the services; and
  - (c) payment shall be made in Australian currency.
- 5.2. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 5.3. The time for payment is of the essence.
- 6. Financing Arrangements**
- 6.1. Goods purchased by the Customer under a financing arrangement (hire purchase, leasing, etc.) will not be delivered until the Customer has provided to the Supplier, acceptable documentation from the financial institution, confirming payment in full will be made by them to the Supplier.
- 6.2. In the event that such documentation is not received by the Supplier, delivery of goods may be withheld by the Supplier and in such circumstances the Customer accepts liability for any costs associated with the delay in delivery.
- 6.3. On payment to the Supplier of the full contract price by the financial institution any holding deposits or monies previously paid shall, where appropriate, will be refunded to the Customer.
- 7. Payment Default**
- 7.1. If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any of its other accrued or contingent rights:
- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 4% for the period from the due date until the date of payment in full;
  - (b) charge the Customer for, and the Customer must indemnify the Supplier from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
  - (c) cease or suspend supply of any further goods or services to the Customer;
  - (d) by written notice to the Customer, terminate any uncompleted contract with the Customer.
- 7.2. Subject to any applicable statutory stay of proceedings, clauses 7.1(c) and 7.1(d) may also be relied upon, at the Supplier's option:
- (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
  - (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.
- 8. Passing of Property**
- 8.1. Until the Supplier receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer:
- (a) title and property in all goods remain vested in the Supplier and do not pass to the Customer;
  - (b) the Customer must hold the goods as fiduciary bailee and agent for the Supplier;
  - (c) the Customer must keep the goods separate from its goods and maintain the Supplier's labelling and packaging;

- (d) the Customer must hold the proceeds of sale of the goods on trust for the Supplier in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee;
  - (e) in addition to its rights under the PPSA, the Supplier may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.
  - (f) the Supplier will exercise its right of entry (including the use and extent of force) in accordance with applicable laws;
- 9. Personal Property Securities Act**
- 9.1. Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 9.2. For the purposes of the PPSA:
- (a) terms used in clause 9 that are defined in the PPSA have the same meaning as in the PPSA;
  - (b) these Terms are a security agreement and the Supplier has a Purchase Money Security Interest in all present and future goods supplied by the Supplier to the Customer and the proceeds of the goods;
  - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
  - (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by the Supplier on the Personal Property Securities Register.
- 9.3. The security interest arising under this clause 9 attaches to the goods when the goods are collected or dispatched from the Supplier's premises and not at any later time.
- 9.4. Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95 (notice of removal of accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (notice to grantor in enforcement of security interests in liquid assets), 130 (notice of disposal of collateral), 132(3)(d) (statements of account following disposal), 132(4) (statements of account if no disposal), 135 (notice of retention of collateral) and 157 (verification statements) of the PPSA.
- 9.5. The Supplier and the Customer agree to contract out of and nothing in the provisions of sections 96 (retention of accession when person has interest in the whole), 125 (obligation to dispose of or retain collateral), 129 (disposal by purchase), 142 (entitled persons' redemption of collateral) and 143 (entitled persons' reinstatement of security agreement) of the PPSA will apply to these Terms.
- 9.6. To the extent permitted by the PPSA, the Customer agrees that:
- (a) the provisions of Chapter 4 (enforcement of security interests) of the PPSA which are for the benefit of the Customer or which place obligations on the Supplier will apply only to the extent that they are mandatory or the Supplier agrees to their application in writing; and
  - (b) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 9.7. The Customer must immediately upon the Supplier's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
  - (b) procure from any person considered by the Supplier to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Supplier may at any time require.
- 9.8. The Supplier may allocate amounts received from the Customer in any manner the Supplier determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Supplier.
- 9.9. For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods, except as otherwise required by law or that is already in the public domain.
- 10. Risk and Insurance**
- 10.1. The risk in the goods and all insurance responsibility for theft, damage or otherwise, pass to the Customer immediately on the goods being delivered to the Customer or taken from the Supplier's premises.
- 10.2. The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.
- 10.3. The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the goods sold by the Supplier, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.
- 11. Performance of Agreement**
- 11.1. Any period or date for delivery of goods or provision of services stated by the Supplier is an estimate only and not a contractual commitment.
- 11.2. The Supplier will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 11.3. If the Supplier cannot complete the services by any estimated date, it must complete the services within a reasonable time.
- 11.4. Where goods requested by the Customer are unavailable, the Supplier may substitute goods with equivalent characteristics or performance, or change design details and methods of meeting specifications, provided that there is no reduction in overall quality or functionality

## 12. Delivery

- 12.1. Subject to clause 12.9, the Supplier will arrange for the delivery of the goods to the Customer.
- 12.2. Unless otherwise specified in writing, the Supplier will deliver the goods free of charge in the capital cities of Melbourne, Sydney, Brisbane, Adelaide and Perth to the door of the Customer's premises, to a carrier's depot or to a rail siding, where upon the liability of the Company for all loss or damage to the goods shall cease and from that point of delivery the goods shall be at the risk of the Customer.
- 12.3. The Customer is responsible for all costs associated with:
  - (a) unloading;
  - (b) unpacking;
  - (c) positioning; and
  - (d) erection.
- 12.4. It is the Customer's responsibility to provide unloading facilities and equipment, at the sole expense of the Customer, without delay. Any costs incurred by the Supplier caused by delays in receiving or unloading the goods shall be to the Customers account.
- 12.5. Unless otherwise stated in the quotation, the Supplier will be responsible for insurance cover on the goods until delivery to the Customer's delivery point. The Customer accepts full responsibility for the goods from the point where unloading operations commence.
- 12.6. The Supplier may make part delivery of goods or provision of services and the Supplier may invoice the Customer for the goods or services provided.
- 12.7. The Supplier may vary delivery or completion dates as necessary where such delays are as a result of events beyond the control of the Supplier.
- 12.8. The Customer indemnifies the Supplier against any loss or damage suffered by the Supplier, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and the Supplier has not used due care and skill.
- 12.9. If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the goods.
- 12.10. If agreed that the Customer will collect the goods:
  - (a) the Customer must collect the goods with seven days of being advised they are ready;
  - (b) if the Customer does not collect the goods within this time, the Customer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.

## 13. Liability

- 13.1. Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 13.2. If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against the Supplier for failure of a statutory guarantee under the ACL.

- 13.3. If the Customer on-supplies the goods to a consumer and:

- (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Supplier's liability to the Customer;
- (b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of the Supplier's liability to the Customer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

- 13.4. If clause 13.2 or 13.3 do not apply, then other than as stated in the Terms or any written warranty statement the Supplier is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.
  - 13.5. The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
  - 13.6. The Customer acknowledges that:
    - (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the goods or services or their use or application.
    - (b) it has not made known, either expressly or by implication, to the Supplier any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer.
    - (c) any advice or recommendation given by the Supplier, its employees or agents to the Customer, its employees or agents as to the storage, application or use of the goods which is not confirmed in writing by the Supplier is followed or acted on entirely at the Customer's own risk, and accordingly, the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
  - 13.7. Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
- ## 14. Cancellation
- 14.1. If the Supplier is unable to deliver the goods or provide the services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.
  - 14.2. In the event of cancellation pursuant to Clause 14.1, the Supplier must return to the Customer any

- and all amounts paid by the Customer in respect of goods or services that are cancelled.
- 14.3. No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Supplier once the order has been accepted.
- 15. Intellectual Property**
- 15.1. Except as expressly agreed by the parties, the Customer acknowledges it has no proprietary right or interest in the Intellectual Property, and must not at any time:
- (a) register or record or attempt to register or record anywhere in the world the Intellectual Property or any part of it, or assist anyone else to do so; or
  - (b) create, sell, manufacture or process any products taking advantage of the Intellectual Property, or assist anyone else to do so.
- 15.2. Any and all Intellectual Property provided by the Supplier to the Customer in the course of the Supplier providing the goods or services:
- (a) may only be used by the Customer strictly for the purposes for which it was provided; and
  - (b) remains the exclusive property of the Supplier and must be returned to the Supplier on demand and must not be copied or communicated to any third party without the express prior written consent of the Supplier.
- 15.3. The Customer hereby assigns to the Supplier any right, title or interest in any of the Intellectual Property that the Customer may create or acquire.
- 16. Shortages and Exchanges**
- 16.1. Subject to clause 16.2 and 16.3, the Supplier will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies the Supplier with full details and description within 14 days of delivery otherwise the Customer is deemed to have accepted the goods.
- 16.2. When any shortages, claim for damaged goods or non-compliance with the Agreement specifications is accepted by the Supplier, the Supplier may, at its option, replace the goods, or refund the price of the goods.
- (a) subject to clause 16.3, the Supplier will not under any circumstances accept goods for return that:
  - (b) have been specifically produced, imported or acquired to fulfil the Agreement;
  - (c) are discontinued goods or no longer stocked by the Supplier;
  - (d) have been altered in any way;
  - (e) have been used; or
  - (f) are not in their original condition and packaging.
- 16.3. If the Customer is a consumer, nothing in this clause 15 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- 17. Force Majeure**
- 17.1. Subject to clause 17.2, neither the Customer nor the Supplier are liable to each other in any way howsoever arising under the Agreement to the extent that they are prevented from acting by events beyond their reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, the Customer or the Supplier may suspend or terminate the Agreement by written notice to the other party.
- 17.2. Nothing in this clause 17 excuses the Customer from an obligation to pay money to the Supplier
- 18. Miscellaneous**
- 18.1. The law of Victoria, Australia from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 18.2. The Supplier's failure to enforce any of these Terms shall not be construed as a waiver of any of the Supplier's rights.
- 18.3. If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.
- 18.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier, is subject to correction by the Supplier without any acceptance of liability to the Customer.
- 18.5. A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
- 18.6. The Customer must comply with the Australian Privacy Principles in connection with any personal information supplied to it in connection with this Agreement.