

AUTOMATION INDUSTRIES PTY LTD  
ABN: 86 602 736 158

## AI TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

In these Conditions, unless the contrary intention appears:

**Agreement** means the agreement formed under Clause 3 below and includes the Quotation, the Purchase Order, the acceptance by Automation Industries Pty Ltd (**AI**) of the purchase order, these Terms and Conditions and any Special Conditions;

**Change in Law** means any change in regulation or legislation enacted by any government authority or delegated government authority.

**Conditions** means these Terms and Conditions and any Special Conditions agreed in writing by Automation Industries;

**Goods** means all or any part of the Goods the subject of a Purchase Order and includes Goods supplied as part of an agreement for the supply of Services;

**Intellectual Property** means all trademarks, patents, registered designs, copyright, logos, designs, drawings and software;

**PPSA** means the Personal Property Securities Act 2009;

**Security Interest** has the meaning given in the PPSA;

**Price** means the price of the Goods or Services as documented in the Agreement as set pursuant to Clause 6 below and is exclusive of GST;

**Purchase Order** means an offer by the Purchaser for the purchase of Goods or Services in accordance with any Quotation issued by Automation Industries, and includes any specifications or drawings attached or referred to in that Purchase Order;

**Purchaser** means the Purchaser on the Purchase Order;

**Quotation** means any quotation issued by Automation Industries to a Purchaser for the supply of the Goods and/or Services stipulated in Australian dollars (or in the case of New Zealand, New Zealand dollars) including the specifications for the Goods and/or Services;

**Services** means all or any part of the services to be provided by Automation Industries pursuant to the Agreement; and

**Special Conditions** means the special conditions attached to this agreement or included in the Quotation.

### 2. Application of these Terms and Conditions

These Conditions apply to all Agreements entered into by Automation Industries and a Purchaser except as varied in writing by Automation Industries.

### 3. Quotation and formation of Agreement

(a) All Automation Industries Quotations are for information purposes only and, subject to price variation pursuant to Clause 6 below, are valid for 30 days from the Quotation date or as varied in writing by Automation Industries prior to the formation of an Agreement.

(b) An Agreement is formed by the acceptance of Automation Industries of a Purchase Order submitted within the valid time frame stated in the Automation Industries Quotation. Such Agreement is be subject to these Terms and Conditions, the Automation Industries Quotation and any Special Conditions.

#### **4. Components**

(a) If Goods require components and a specific brand is not requested by the Purchaser in the Purchase Order then Automation Industries may (in its sole and absolute discretion) use such components as it deems necessary.

(b) In the event the Purchase Order specifies a specific brand of components and Automation Industries has accepted the Agreement on this basis, then Automation Industries will be entitled to a deemed extension of time due to any delay in obtaining the specified component.

(c) Automation Industries reserves the right to make reasonable modifications of any kind to the Goods without prior notice to the Purchaser.

#### **5. Intellectual Property Rights**

(a) Provided no monies are outstanding from the Purchaser to Automation Industries, Automation Industries will indemnify the Purchaser from and against all third party claims arising from any infringements by Automation Industries of any Intellectual Property rights in the Goods, provided always that the Purchaser provides written notification of any such claims and allows Automation Industries sufficient time to conduct any litigation, and cooperates with Automation Industries in the conduct of any litigation. Where the Purchaser fails to provide such notice or cooperation, the indemnity will not apply.

(b) Property, right and title in all Intellectual Property relating to the Goods remains at all times with Automation Industries and the Purchaser is granted a royalty free, non-assignable, non-exclusive license for so much of the Intellectual Property that is required for the proper use and performance of the Goods.

(c) All Intellectual Property created during the course of the supply of the Goods or as a result of work done in connection with the supply of the Goods vests in Automation Industries.

(d) All plans, drawings, dimensions and quantities submitted by Automation Industries with any Quotation are approximate, for Quotation purposes only and must not be used for construction purposes. The Purchaser must check all plans, drawings, dimensions, quantities and other specifications submitted by Automation Industries prior to installation of any Goods by any third party. Automation Industries is not responsible for any loss, damage or delay caused by or as a consequence of the Purchaser's failure to check all plans, drawings, dimensions, quantities and other specifications provided by Automation Industries.

#### **6. Price**

(a) Subject to clause 6(b), the Price is fixed at the date of the Agreement.

(b) After the date of the Agreement, if a Change in Law occurs which causes Automation Industries to incur additional cost for the supply of the Goods or Services, Automation Industries may adjust the Price to reflect the change in cost, using reasonable endeavours to minimise any increase.

(c) Prior to the date of this Agreement the Automation Industries Quotation is subject to exchange rate variations. Once the Agreement is formed, the Price is not subject to exchange rate variations.

#### **7. Goods and Services Tax**

In this Clause:

(a) **GST** refers to goods and services tax under A New Tax System (Goods and Services) Act 1999 (**GST Act**) (or the relevant NZ act) and the terms used have the meanings as defined in the GST Act.

(b) The Price and all other amounts agreed to be paid by the Purchaser to Automation Industries are exclusive of GST.

(c) In respect of any liability of Automation Industries for GST under this Agreement, and any variation for any taxable supplies, the Purchaser must pay to Automation Industries, at the same time as any payment is made involving Automation Industries the additional amount of GST, together with the payment to which it relates.

(d) The Purchaser's liability under this Clause is to reimburse the full amount of GST, disregarding and excluding Automation Industries' entitlement to input tax credits or other credit or reimbursements for GST.

(e) In respect of each payment by the Purchaser under this Agreement, Automation Industries agrees to deliver to the Purchaser tax invoices in a form which complies with the GST Act and the applicable regulations.

#### **8. Supply of Information**

(a) The Purchaser warrants the accuracy of all information provided by it, and Automation Industries is not liable for any loss or damage howsoever caused in the event that the Purchaser's information is incorrect in any respect.

(b) Any additional costs incurred by Automation Industries as a result of incorrect information or delay in supply of information by the Purchaser, including storage and transport costs, are payable by the Purchaser to Automation Industries in addition to the Price. Any such delays will result in a corresponding extension of time for Automation Industries to supply the Goods.

#### **9. Delivery of the Goods**

(a) Delivery dates are estimates only and time is not of the essence in delivery.

(b) The Purchaser may only reschedule the delivery date if Automation Industries is notified in writing. Any additional costs or losses of Automation Industries as a result of any change in delivery date (including storage) shall be at the Purchaser's cost and must be paid in addition to the Price.

(c) The Price agreed by Automation Industries under any Agreement is for Goods delivered free on truck from Automation Industries premises unless otherwise agreed by Automation Industries in writing at the time of entering in to the Agreement. The Goods will be deemed delivered once loaded onto the Purchaser's nominated carrier at Automation Industries premises (or, where specified in the Purchase Order at the nominated address of the Purchaser), at which time risk in the Goods passes to the Purchaser.

(d) All deliveries must occur in normal working hours. Any additional costs for delivery outside normal working hours shall be at the cost of the Purchaser.

(e) The Purchaser must inspect the Goods on delivery, and report in writing any damage to the Goods or shortage in delivery to Automation Industries within three (3) working days of delivery. Unless Automation Industries receives such written notification within this time, the Goods are deemed delivered and accepted in all respects in accordance with the Agreement, free from damage and shortage. Failure to comply with this Clause shall be a bar to any claim against Automation Industries.

(f) The Purchaser indemnifies Automation Industries against any loss or damage which occurs during removal of the Goods from the truck or during installation, unless Automation Industries installs the Goods in which case such indemnity will only commence once the installation is complete.

#### **10. Force Majeure**

(a) Should Automation Industries be prevented from delivering any of the Goods to the Purchaser or performing any Services in accordance with the Agreement by reason of any event beyond Automation Industries' control, including but not limited to industrial disputes, an intervention during shipping, acts of parliament, embargo, litigation, epidemic or pandemic, court orders, riots, industrial strike, fires, floods, Acts of God, or Automation Industries' inability to procure materials or components from its usual sources of supply, Automation Industries shall be entitled, at its own option:

(i) to delay delivery of the Goods and/or Services; or

(ii) to terminate the Agreement if the event continues for 3 months or more.

The Purchaser will not be entitled to recover any damage or loss as a result of such delay or termination.

#### **11. Access and equipment for delivery of Goods**

(a) Where Automation Industries is responsible for delivery of the Goods, the Purchaser must provide Automation Industries with adequate and safe entry and access to the premises when required, and with all necessary equipment and services required, for the removal of the Goods from the truck, at the Purchaser's cost.

(b) Automation Industries is not liable for any loss or damage arising from or related to any failure or delay in providing entry, access, equipment or services as required. Any additional costs incurred by Automation Industries arising from or related to any issue with access or equipment shall be a debt due from the Purchaser.

(c) Any delays arising under this clause shall result in a corresponding extension of time for Automation Industries to deliver the Goods/and or Services.

#### **12. Passing of property and risk**

(a) Except where Automation Industries is storing the Goods on behalf of the Purchaser, or delivering the Goods under clause 11, Automation Industries bears all risks for the Goods until delivery onto the Purchaser's truck or collection by the Purchaser from Automation Industries' premises. The Purchaser shall be on risk for the Goods where Automation Industries stores the Goods on behalf of the Purchaser.

(b) Ownership and property in the Goods shall pass upon receipt of full payment by the Purchaser.

(c) Automation Industries may, at the Purchaser's written request and where practicable, arrange transit insurance, and all costs in will be borne by the Purchaser.

### 13. Tests

(a) The cost of any tests required by the Purchaser to determine the performance of the Goods must be paid for by the Purchaser.

(b) If witness testing is stipulated in the Agreement, the Purchaser shall attend to such testing within two business days from the date of notification of commissioning of the Goods, failing which an invoice will be issued for the Goods and payment will be required in accordance with these Conditions.

### 14. Limitation of liability

(a) Automation Industries' liability, whether arising under this Agreement, under statute, by way of indemnity, tort (including negligence) or howsoever arising is excluded and limited to the following, as determined by Automation Industries in its absolute discretion:

(i) In the case of supply of Goods;

(1) The replacement, rectification or repair of the Goods; or

(2) The supply of equivalent Goods.

(ii) In the case of supply of Services;

(1) reperforming the Services; or

(2) The payment of the cost of having the Services supplied again,

and in no event will Automation Industries' liability exceed the component price or fee paid, whichever is the lower.

(b) To the maximum extent permitted by law, Automation Industries is not liable for loss of profit, loss of revenue, loss of business, loss of opportunity or any consequential, indirect or special damages.

(c) Automation Industries shall be under no liability to the Purchaser for any loss or damage suffered or incurred by the Purchaser arising from its acts or omission (or its servants, agents, employees, tenants and guests).

(d) Automation Industries shall not be liable for liquidated damages or any damages for delay unless agreed in writing by Automation Industries.

(e) This clause survives termination of this Agreement.

### 15. Indemnity

The Purchaser indemnifies Automation Industries and its successors and assigns from and against all actions, suits, claims, loss, damage, expense and demands and costs, arising out of or in relation to the actions or omissions of the Purchaser or its servants, agents, employees, tenants and guests.

### 16. Warranty

(a) Unless expressly provided by Automation Industries in writing, and to the maximum extent it can be excluded at law, Automation Industries does not provide any express warranties in relation to the Goods or services unless stated in clause 16(b).

(b) Subject to 16(c), Automation Industries warrants that:

(i) the Goods are fit for the purpose specified in the Purchaser Order (if any).

(ii) for a period of 12 months after the Goods are installed or commissioned (whichever is the earlier) under the terms of this Agreement, the Goods shall be free from defective materials and workmanship.

(c) This warranty does not apply to Goods or services effected by:

(i) abuse, neglect, or damage by fire, flood, abrasion, erosion, corrosion, or deterioration or the like due to changes in temperature, exposure to foreign matter, chemicals, energy, water, steam or other similar cause or failure to comply with any instruction or manual supplied by Automation Industries, or incorrect installation, maintenance or interference with the Goods by any other party (**Abuse**).

(ii) To the fullest extent permitted by law, Automation Industries shall not be liable in any way to the Purchaser or any third party for:

A) any damage to the Goods arising from or related to Abuse;

B) repair or replacement due to Abuse;

C) damage to surrounding areas due to Abuse including from work conducted or materials supplied to the Goods other than by a person authorised in writing by Automation Industries, or arising from the Purchaser's failure to notify Automation Industries of any defects within a reasonable time after those defects are first noticed by the Purchaser;

D) Customer resetting of equipment faults without first notifying, receiving advice or an inspection from Automation Industries.

(d) Any replacement part supplied by Automation Industries under warranty is covered for the unexpired portion of the warranty period in respect of the Goods or for a period of 90 days, whichever period expires last. Where Automation Industries did not install the Goods, the cost of labour for fitting of replacement parts will be at the expense of the Purchaser.

(e) This warranty does not extend to the replacement of refrigerant loss caused by defects in the Goods or performance of the supplied equipment, except in packaged liquid chillers and complete refrigerant systems (such as self-contained packaged air conditioning units) or where specifically agreed in writing by Automation Industries.

(f) Where the Purchaser requests Automation Industries attend to rectification of defective Goods under warranty and Automation Industries later determines that the defects are not covered under warranty or resulted from Abuse, then the Purchaser is responsible for the cost of such services and materials and must pay the relevant invoice within 30 days of receipt. The costs under this clause 16(f) are determined by Automation Industries in its sole discretion.

(g) Nothing in this Clause will exclude, restrict or modify any condition, warranty, right or liability implied by law where to do so would render this Clause void.

### **17. Noise and vibration**

Any information provided by Automation Industries concerning noise and vibration is given for the assistance of the Purchaser only and the Purchaser must not rely upon such information nor upon the skill or judgment of Automation Industries in respect of such information. Automation Industries is not responsible for noise and/or vibration except where such responsibility has been specifically requested by the Purchaser and agreed in writing by Automation Industries.

### **18. Returns**

(a) Goods cannot be returned except with the prior written consent of Automation Industries.

(b) Despite Goods being returned, all monies payable to Automation Industries will remain due and payable, subject only to such discount, rebate, reimbursement or other condition as is stated in the written consent.

(c) Restocking fees will apply on returned Goods, unless Automation Industries has provided its prior written consent to accept the return of any products in exchange for credit.

(d) Any returns are subject to the Purchaser completing the online [RMA](#) and paying a 15% restocking fee plus any shipping and administration costs.

(e) Returns will only be agreed if the Products are returned in original, unused, undamaged and unsoiled condition and not more than 30 days has passed since the original delivery date.

(f) Special orders are subject to the relevant supplier's return policy and may not be returnable.

### **19. Payment terms**

(a) If the Purchaser does not have a credit account with Automation Industries, payment of the Fee is required in full in advance of ordering the Goods or providing the Services, unless agreed otherwise by Automation Industries.

(b) If the Purchaser has a credit account with Automation Industries payment must be made:

(i) within 30 days of invoice by Automation Industries; or

(ii) for special orders or non-stock items, where the Quotation specifies a deposit amount, the deposit must be paid prior to ordering the Goods, with the remainder to be paid 30 days after Goods are received.

(c) Payments made by credit card will incur a 1.75% surcharge.

(d) Where any monies due and payable by the Purchaser to Automation Industries remain outstanding:

(i) such amount will be subject to an interest rate of 3.0% per month calculated on a daily basis from the due date of payment on the total of any or all monies which remain overdue for payment from time to time and such interest shall accrue before as well as after any court Judgment which is entered against the Purchaser.

(ii) the charging or payment of interest shall be without prejudice to all other rights and remedies Automation Industries may have to recover any amount due pursuant to the Agreement.

(iii) charge the Purchaser a monthly account keeping fee being the greater of \$50.00 or 5.0% of the total of any and all monies which remain overdue for payment on the first day of each month.

(iv) charge the Purchaser an administration fee of \$50.00 per month or on any part of a calendar month in which monies remain overdue for payment.

(f) Should the Purchaser fail to take delivery of the Goods within 7 days of notification by Automation Industries that the Goods are ready for dispatch (or delivery) from Automation Industries' premises, Automation Industries reserves the right to arrange storage of the Goods and to obtain payment for the Goods as though the Goods had been delivered in accordance with the Agreement, and further to recover the storage and handling costs together with any other additional costs and loss incurred by Automation Industries.

(g) Where any monies due and payable by the Purchaser to Automation Industries remain outstanding, or if the Purchaser is in breach of the Agreement, Automation Industries may suspend performance of this Agreement, until those moneys are paid to Automation Industries or the breach is rectified. In the event the breach is not rectified within 30 days, Automation Industries may terminate the Agreement, in which case Clause 21 shall apply. Automation Industries shall in no way be liable for any loss or damage of any kind arising from any such suspension or termination, and the Purchaser is responsible for any costs or loss incurred by Automation Industries arising from such suspension or termination.

(h) If Automation Industries terminates the Agreement or takes possession of the Goods pursuant to the Agreement, Automation Industries may resell the Goods concerned or the undelivered balance thereof.

(i) In the event the Purchaser contracts a third party to undertake any services during any warranty period provided by the Agreement, then all warranties provided by Automation Industries under the Agreement shall be null and void and Automation Industries may elect to terminate the Agreement in which case Clause 21 shall apply.

(j) To the fullest extent permitted by law, the obligations of Automation Industries to warrant the Goods pursuant to Clause 16 shall be suspended insofar as any monies which are due and payable by the Purchaser to Automation Industries remain outstanding. The warranty period provided by Clause 16 shall remain unchanged notwithstanding that pursuant to this Clause 19(j) the warranty has not applied for part of that period.

(k) The Purchaser must not deduct or withhold from any invoice any moneys by way of retention, set-off, counter claim, or otherwise.

(l) The Purchaser indemnifies Automation Industries for all damages, expenses, legal fees (including but not limited to all fees payable by Automation Industries to a solicitor) and costs of collection (including but not limited to all fees and commission actually or contingently payable to a mercantile agent) incurred by Automation Industries in exercising or attempting to exercise its rights in relation to these Terms and Conditions of Sale or howsoever otherwise incurred, in addition to all other remedies Automation Industries may have at law;

## **20. Retention of title**

(a) Risk passes to the Purchaser upon delivery but property and title in the Goods remains with Automation Industries until full payment for the Goods is received.

(b) Until the Goods have been paid in full and ownership remains with Automation Industries, the Purchaser must:

- (i) store them separately from all other goods clearly showing they are the property of Automation Industries (including by not removing any serial numbers or identification of Automation Industries);
- (ii) take out and maintain with a reputable insurance company comprehensive insurance of the Goods against any loss or damage to the Goods, howsoever caused;
- (iii) only sell the Goods in its ordinary course of business by a bona fide sale at full market value, in its own name, and not as the agent of Automation Industries;
- (iv) maintain a separate account holding the payment in trust and account to Automation Industries for the proceeds of any sale in a separate bank account, allowing Automation Industries to inspect these records upon request; and,
- (v) provide Automation Industries access to any premises to inspect the Goods upon demand;

(c) If:

- (i) the Purchaser fails to pay any monies due and payable pursuant to the Agreement; or
- (ii) the Purchaser breaches, repudiates or terminates the Agreement; or
- (iii) winding up proceedings are commenced against the Purchaser; or
- (iv) a Liquidator, Administrator, Receiver, Manager or Controller (as defined by the Corporations Act 2001) are appointed to the Purchaser or any part of its assets; or
- (v) the Purchaser commits an act of bankruptcy (as defined by the Bankruptcy Act 1966); or
- (vi) Automation Industries has a reasonable belief that a party may attempt to levy any form of execution against the Goods; or
- (vii) the Purchaser suspends, or threatens to suspend, the conduct of its business; or
- (viii) the Purchaser becomes unable to pay its debts as and when they fall due,



then Automation Industries may terminate the Agreement, in which case Clause 20 will apply, and without notice to the Purchaser, Automation Industries may elect (at its discretion) not to continue performance of the Agreement or may enter upon any premises at which the Goods are or may be stored and repossess them.

(d) Where any of the events referred to in clause 20(c) occurs, and where Goods delivered by Automation Industries to the Purchaser are used either in the manufacture or construction of new goods or are otherwise mixed with other objects to create new goods (**New Goods**), then Automation Industries shall be entitled to enter any premises at which the New Goods are stored and recover from those premises the Goods or the New Goods.

(e) The Purchaser indemnifies Automation Industries from any costs of removal, claims, suits and causes of action of any kind from any person or entity in respect of such entry and the removal of the Goods or New Goods.

(f) The affixing of Goods or New Goods to any part of any building in any manner whatsoever shall not have the effect of making the Goods a fixture of the building.

(g) The Purchaser must not assign any book debt represented the amount due and payable by any third party to the Purchaser for the Goods until the Purchaser's liability to Automation Industries under the Agreement has been discharged.

## **21. Termination**

In the event that the Purchaser purports to terminate and/or repudiate or cancel the Agreement, or if Automation Industries terminates the Agreement pursuant to its terms, then, without prejudice to its other rights and remedies, Automation Industries may recover from the Purchaser all costs and expenses incurred by Automation Industries in its performance of the Agreement, and all loss and damages arising from or related to the termination or repudiation.

## **22. Choice of law**

The Agreement shall be governed and construed according to the laws of the State of New South Wales or in the case of New Zealand, the laws of New Zealand and the parties submit to the courts of that relevant jurisdiction.

## **23. PPSA**

(a) Confidentiality under the PPSA

If this Agreement contains a Security Interest then each party agrees for the purposes of s275(6) of the PPSA that it will not disclose information of the type referred to in section 275(1) of the PPSA where a request is made under s275(1) of the PPSA in relation to this Agreement or any part of it except in circumstances where the party is compelled by law (other than s275(1) of the PPSA) to make that disclosure.

(b) Security Interests under the PPSA

If Automation Industries determines that any clause of this Agreement, or a transaction contemplated by this contract constitutes or is likely to give rise to a Security Interest in respect of which Automation Industries is the security holder then:

(i) the Buyer agrees to promptly provide all assistance and co-operation requested by Automation Industries that it determines is reasonably required to:

(A) register and maintain the registration of its Security Interest on the personal property securities register (PPSR) within any applicable time limits relevant to the effectiveness of the Security Interest;

(B) ensure that Automation Industries Security Interest is enforceable against third parties, perfected (within the meaning of the term 'perfect' under the PPSA) or otherwise effective;

(C) ensure that the Security Interest has the appropriate priority required by Automation Industries (including where applicable as a 'purchase money security interest' under the PPSA);

(D) ensure that any Security Interest granted temporary perfection under the PPSA is perfected by registration or other appropriate means prior to any applicable expiry of that temporary perfection; and

(E) enable Automation Industries to register financing statements or financing change statements under the PPSA with respect to any such Security Interest;

(ii) the Purchaser waives the right to receive notice of a verification statement in relation to the registration of that Security Interest;

- (iii) the Purchaser not register or permit to be registered any other Security Interest in respect of the personal property that comprises the collateral in respect of that Security Interest other than one that has been consented to or granted by Automation Industries;
- (iv) the Purchaser must not cause or allow any of the Purchaser's personal property (as defined in the PPSA) to become an accession (as defined in the PPSA) to Automation Industries' personal property or cause or allow Automation Industries' personal property to become an accession to the Buyer's personal property without the prior consent of Automation Industries; and
- (v) immediately notify Automation Industries if any other person claims or attempts to enforce a Security Interest in Automation Industries' personal property.

#### **24. Notices**

Notices may be delivered or posted to Automation Industries at its head office in New South Wales and to the Purchaser at its last known address, or delivered by email (so long as the sender does not receive an automated delivery failure message or an out of office return email).

#### **25. General provisions**

- (a) No consent or waiver, express or implied, of any breach by the Purchaser of the Agreement will be construed as a consent to or waiver of any other breach of the Agreement.
- (b) If any clause or provision of the Agreement is invalid, void or unenforceable, all other provisions which are capable of separate enforcement are and will continue to be of full force and effect in accordance with their terms.
- (c) Automation Industries' Quotation, a Purchase Order and these terms constitutes the entire Agreement between the Parties and all prior agreements, representations or warranties, save those expressly incorporated by the Conditions, and all local, general or trade customs, are hereby excluded.
- (d) Unless otherwise agreed in writing by a director of Automation Industries these Conditions prevail over any other terms and conditions of sale sought to be imposed by the Purchaser, to the fullest extent permitted by law and whether provided before or after these Conditions or the formation of the Agreement.