



TERMS AND CONDITIONS OF SALE

1. Interpretation

In these conditions, unless the contrary intention is apparent:-

- 1.1 "the Company" means ABN: 48 067 411 858 Pty Ltd trading as Oakes Automation Systems Pty Ltd, Keswick, South Australia, and includes its successors and assigns;
- 1.2 "the Customer" means the person to whom the Company agrees to supply the Goods;
- 1.3 "the Goods" means the Goods to be supplied by the Company in accordance with these conditions to the Customer;
- 1.4 "Intellectual Property Rights" includes copyright, patent, design, trademark and any other like right, whether registered or unregistered;
- 1.5 words importing the singular include the plural and vice versa; words importing corporations include natural persons and vice versa.

2. Conditions to Prevail

- 2.1. The Customer acknowledges that these conditions are the entire and the only conditions under which the Company will supply the Goods to the Customer, and that accordingly, they prevail over any other terms or conditions proposed by the Customer, whether in its purchase order or otherwise, unless the Company accepts such other terms and conditions by notice in writing to the Customer.
- 2.2. These conditions may not be varied other than in writing signed by a Director or other agent of the Company authorised by a Director of the Company to do so in writing.

3. General

- 3.1. Any order placed by a purchaser is deemed to be an order incorporating these terms and conditions notwithstanding any inconsistencies which may be introduced in the purchaser's order or acceptance unless expressly agreed to by Oakes Automation Systems Pty Ltd (the "Company") in writing.
- 3.2. Quotations and Prices - the prices quoted are based on the Company's estimated cost of production, manufacture or supply at the time of quotation and are subject to alteration without notice to the purchaser due to any increase in the Company's costs between the date of quotation and the date or dates of delivery. The Company will use its best endeavours to meet the Customer's requirements, as set out in its quotation. Unless otherwise expressly agreed by the Company in writing all goods will be charged for at the prices ruling at the date or dates of delivery. All prices quoted are exclusive of sales tax and GST which, if applicable, will be for the purchaser's account. All prices are expressed in Australian dollars and, unless expressly stated otherwise. A quotation is not an offer by the Company to sell and may be withdrawn without any notice; any order given in respect of a quotation is not binding on the Company until accepted by the Company in writing.
- 3.3. Orders - orders accepted by the Company may not be cancelled or altered in whole or in part without the Company's written consent. The Company may decline, by written notice to the purchaser, any order in whole or in part, at any time prior to delivery of the goods or performance of the service, in which case the Company will be under no obligation in respect of the order.

4. Price and Payment Terms

- 4.1. Invoices. The Customer will:-
 - 4.1.1. regard the price contained in the Company's quotation as the Company's best estimate only of its proposed and likely charges;
 - 4.1.2. pay the amount specified on the Company's invoice for the Goods within thirty (30) days of the date of that invoice in full in Australian dollars; but the Company reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery should the credit worthiness of the purchaser at any time become in the Company's opinion unsatisfactory.
 - 4.1.3. Where any payments are not made within the period specified in 4.1.2, then the Company will be entitled to interest at a rate of two (2%) above the overdraft rate from time to time being charged by the Company's banker for the relevant period on unsecured overdrafts of more than one hundred thousand Australian dollars, and which interest will be compounded monthly and calculated from the due date for payment to the date it is actually made.
 - 4.1.4. pay any additional amounts over and above the amount shown on the Company's invoice for taxes (including sales tax but excluding income tax) payable in respect of the agreement between the Company and the Customer; and
 - 4.1.5. pay any other charge separately payable by the Customer under these conditions on demand by the Company.
 - 4.1.6. Should payment for the Goods be outside of, or beyond, the terms stipulated in these Terms and Conditions, the Customer shall be liable for all costs, including legal costs (on a full indemnity basis) and all other costs incurred by the Company in recovering the outstanding payments.
- 4.2. Additional Sums. Without limiting the generality of clause 4.1 the Company may invoice the customer for any charge in excess of the amount contained in the Company's quotation, if;
 - 4.2.1. the cost to the Company of supplying the Goods increases after the date of the Company's quotation; or
 - 4.2.2. the Customer varies its requirements and the Company agrees to meet those varied requirements.
- 4.3. Terms.

If the Company approves payment terms for the customer different from those set out in this clause 4, it may revoke such approval at any time by notice to the Customer and substitute any other payment terms, including by requiring cash on delivery.
- 4.4. Payment by Cheque.

If the Customer purports to pay an amount owing to the company by cheque or other payment order, payment will be deemed made only when the cheque or other payment order has been cleared and the funds are available to the Company.

5. Customer's Specification

Where a customer provides a written specification, the Company will endeavour to meet this to the best of its abilities. Where no specification is given, or the specification provides does not cover the areas concerned, current Australian Standards will provide the template against which Goods will be supplied. Where no Standards exist, the Company will provide Goods in accordance with current Industry standards.

6. Performance and Representations

The purchaser acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the goods for any particular purpose or any other matter. In particular, the purchaser acknowledges that it does not rely on the skill and judgement of the Company in supplying goods which are fit for a particular purpose, and that it will ensure that any goods supplied to it by the Company are in accordance with its order.

Advice

- 6.1. The Company is not obliged to provide advice on design or construction of, or the appropriate materials or suitability for purpose of the Goods or the Equipment, whether submitted by the Customer, by third parties or otherwise.
- 6.2. If it does provide such advice, then the Company does so without liability of any kind to any person including the Customer, whether or not its advice is wrong or negligently given.

7. Operating Software

The Company will supply the Customer with the application software ('the Operating Software'), written for the use on the specific operating system ('OS') of the goods, and which remains the property of the Company.

In the event that the Customer fails or refuses to make any payment for the goods in strict accordance with clause 4 of the Company's Terms and Conditions of Sale or the terms of the Company's Tax Invoice, then the Company at its sole discretion may render the Operating Software inoperative until such time as the Customer makes such payment.

In the event that the Company renders the Operating Software inoperative, to the full extent permitted by law, the Company excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages.

8. Description

Any description of the goods is given by way of identification only and the use of such description shall not constitute the contract a sale by description.

9. Implied Terms

It is hereby acknowledged by the Company that, under applicable State, Territory and Commonwealth law, certain conditions and warranties may be implied in the contract between the Company and the purchaser and rights and remedies conferred upon the purchaser and other parties in relation to goods or services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). The limitations below are subject to these Non-excludable Rights. Subject to the above, the Company disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the purchaser or other parties by statute the common law equity trade custom or usage or otherwise howsoever and all such conditions and warranties and all such rights and remedies are hereby expressly excluded other than any Non-excludable Rights. Where so permitted the liability of the Company for a breach of a Non-excludable Right is limited, at the Company's option, in the case of goods, to the replacement or repair of the goods or the supply of equivalent goods or the cost of replacing or repairing the goods or of acquiring equivalent goods and, in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.

- 9.1 Indirect Loss- accordingly, subject to Clause 8, in no event shall the Company be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the purchaser as user arising from or caused or contributed to by negligence of the Company, its servants or agents, nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the purchaser as user as a result of a breach by the Company of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.
- 9.2 Indemnity- Subject to clause 8, the purchaser shall indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from any of the following:
 - (a) as a result of the purchaser's failure to:
 - (i) ensure that any safety markings on the goods are adequately displayed;
 - (ii) comply with any legislation as to the labelling or marking of goods;
 - (iii) take any other reasonable precautions either to bring to the attention of any potential users of the goods any dangers associated with goods, or to detect any matters in relation to which the Company may become liable, including, without limitation, liability under Part VA of the Trade Practices Act; or
 - (iv) otherwise comply with any laws, rules, standards or regulations applicable in relation to the goods or the use of the goods;
 - (b) as a result of any other negligence or other breach of duty by the purchaser; or
 - (c) as a result of any compliance or adherence by the Company with any instructions of the purchaser in relation to the goods or their manner of fabrication.

10. Delivery

Unless otherwise expressly agreed by the Company in writing, the goods will be delivered ex-warehouse.

Any time quoted for delivery is an estimate only and The Company will use its best endeavours to fulfil the Customer's order within the stated time or if no time is stated then within a reasonable time.

The Company may deliver the whole or any portion of the customer's order, and may invoice the Customer accordingly.

Nonetheless, the Company shall not be liable for any loss or damage howsoever arising as a result or consequence of any failure to deliver or delay in delivery arising from any circumstances of whatsoever nature including in particular but without limiting the generality of the foregoing fire, flood, explosion, strike, lockout or other industrial act or dispute or the break-down of or accident to plant unavailability or shortage of raw materials, labour, power, supplies or transport facilities or failure or inability to obtain licences or act of God or any order or direction of any local, State or Federal Government or Government authority or instrumentality. If the Company determines that it is or may be unable to deliver within a reasonable time or at all the contract may be cancelled by the Company. In the event of cancellation the purchaser shall have no claim against the Company for any damage, loss, cost or expense whatsoever. The purchaser shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.

The Company reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure of the Company to deliver any instalment shall not entitle the purchaser to cancel the balance of the order. In the event of the purchaser making default in respect of any instalments, the Company may elect to treat the default as a breach of contract relating to each other instalment.

11. Claims

Any claim by the purchaser for short or wrongful delivery of the goods MUST BE NOTIFIED TO THE COMPANY IN WRITING WITHIN 14 DAYS after delivery of the goods to the purchaser and any claim which the purchaser does not notify within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived. No goods can be returned for any reason without first obtaining written permission from the Company. Goods returned without authorisation are subject to being returned to the Buyer at his expense.

13. Title, Property and Risk

- 13.1 Property in the goods shall not pass from the Company to the purchaser until the purchaser has paid all monies outstanding from the purchaser to the Company on any account in full. The risk of loss or of damage to the goods shall pass to the purchaser on delivery.
- 13.2 Title to the Goods shall only pass to the Customer on payment in full of the company's invoice in respect of the Goods, and all other moneys due to the company by the Customer under these conditions.
- 13.3 The purchaser agrees to store the goods separately and mark them so as to render them identifiable as being or being made from or with goods which are the property of the Company.
- 13.4 The purchaser shall have no right to sell or otherwise dispose of the goods or the new products until the price of the goods has been paid in full to the Company unless:
 - 13.4.1. the goods or the new products are sold in the ordinary course of the purchaser's business; and
 - 13.4.2. that part of the proceeds of sales of the goods and the new products as represents the price of the goods shall be paid forthwith to the Company and until such part of the proceeds are so paid, they shall be held by the purchaser in trust for the Company. The power of sale hereby conferred on the purchaser shall automatically cease if a receiver or receiver and manager is appointed over any of the purchaser's assets or if a winding up order is made against or a resolution is passed for the winding up of the purchaser or if the Company at any time revokes the power of sale by notice to the purchaser.
- 13.5 Upon determination of the purchaser's power of sale under 13.4 above the Company shall become entitled to possession of the goods and the new products. The purchaser shall place the goods and the new products at the disposal of the Company who shall be entitled to enter upon any premises of the purchaser and remove the goods and the new products.
- 13.6 The purchaser grants to the Company, upon the Company giving notice to the purchaser, the right to bring proceedings in the name of the purchaser to recover monies owing to the purchaser as a result of sales of the goods or the new products. Any amounts recovered as a result of such proceedings shall be retained by the Company to the purchaser.
- 13.7 If any provision of this Clause creates or constitutes a charge or other security right requiring registration under the provisions of any legislation, such provision shall be severed from this Clause.
- 13.8 Should the goods (or any part of them) be converted into or incorporated in a new product or products (the "new products") whether or not the admixture of any other goods or thing whatsoever and in whatever proportions is involved, the conversion or incorporation (as the case may be) shall be deemed to have been effected on behalf of the Company and the new product shall be the property of the Company. The right of the purchaser to convert or incorporate the goods in a new product or products shall automatically cease if a receiver or receiver and manager is appointed over any of the purchaser's assets or if a winding up order is made against or a resolution is passed for the winding up of the purchaser or if the Company at any time revokes such rights by notice to the purchaser.
- 13.9 Where any Equipment is delivered to the Company for repair, modification or other Work, this at the risk of the Customer whilst it is in the possession of the Company, and the Company is not liable for any damage to the Equipment, whether resulting from accident, fair wear and tear or otherwise, unless as a result of the Company's negligence. The Company's liability will not in any event exceed the cost of repair or replacement, whichever is the lesser.
- 13.10 Insurance. - The Customer must insure the Equipment against all risks whilst it is in the Company's possession.
- 13.11 Costs of Alterations. All costs of alterations to the Equipment authorised by the Customer and all risk of damage resulting from such alteration shall be borne by the Customer.
- 13.12 Special Equipment. Special gauges, fixtures or other small items required must be furnished by the Customer, or paid for by the Customer
- 13.13 Retention Period. If the Equipment is furnished by the Customer it will be held by the Company and used in all respects at the Customer's risk and expense. If the Customer does not call for the Equipment furnished by it within two (2) years of completion of Works utilising or made on that Equipment, the Company may scrap the Equipment, or charge the Customer for storage of the Equipment not scrapped.
- 13.14 Drawings, Samples and Models. The Company is not responsible for drawings, samples or models left with the Company for more than thirty (30) days after notification by the Company to the Customer that the Company has no further need for the drawings, samples or models.
- 13.15 Lien. The Company has a lien over such of the Equipment as may be supplied by or is otherwise the property of the Customer for the whole of the amount owing by the Customer to the Company from time to time (including, without limitation, the Company's costs in storing such Equipment).

14. Warranties and Liability

- 14.1 Subject to this clause 14, the Company will use its best endeavours to comply with its obligations under these conditions. However, it will not be liable to the Customer for any reason whatsoever including for breach of these conditions unless such breach is serious and deliberate, and in that case, its liability is limited to the amount contained in the Company's quotation.
- 14.2 Where the Trade Practices Act 1974 implies conditions or warranties into the contract arising from or incorporating these conditions, the liability of the Company in the event of a breach of such a condition or warranty (other than a condition or warranty implied by section 69 of that Act) shall be limited, subject to section 68A of that Act, to:-
 - 14.2.1. in the case of goods or equipment, the repair or replacement of the Goods or Equipment, at the Company's option ; and
 - 14.2.2. in the case of services, the re-supply of the services.
- 14.3 All other implied conditions and warranties are hereby excluded to the full extent permitted by law.
- 14.4 The Customer acknowledges that its attention has been specifically drawn to this clause 14, and that this clause applies notwithstanding

14.5 any other provision of these Conditions.

15. Force Majeure.

The Company is not Liable for any breach or non-performance of this Agreement caused or contributed to by any act or thing beyond its reasonable control.

16. Credit and Return Policy.

Subject to any non-excludable legal requirements to the contrary:-

16.1 the Company will credit to the Customer's account the value of such of the Goods as are found by the Company to be defective, provided;

16.2 the allegedly defective goods are returned to the Company within thirty (30) days of their shipment from the Company's premises;

and

16.3 such return is formally authorised by the Company in writing; and

16.4 The Company will not credit the Customers' account with the value of any allegedly defective Goods which have been altered or marked in any way after their shipment from the Company's premises;

16.5 Notwithstanding clause 15.1, but subject to any non-excludable legal requirements to the contrary, the Company reserves the right to repair or replace any defective goods rather than credit the Customer's account.

17. Default in Payment

The Company will treat any default by the purchaser in payment of any moneys due to the Company as a breach of these terms or conditions.

18. Waiver

failure by the Company to insist upon strict performance of any term warranty or condition of the contract shall not be deemed as a waiver thereof or of any rights the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty and condition.

19. Purchaser's Acknowledgement

The purchaser acknowledges that the goods are not of a kind ordinarily acquired for private use or consumption.

20. Intellectual Property Rights

the purchaser warrants that any design or instruction furnished to the Company shall not be such as will cause the Company to infringe any intellectual property rights (patents, registered designs, trademarks, copyright, confidential information and the like) in the execution of the purchaser's order and the purchaser agrees to indemnify the Company against any infringement or unauthorised use of intellectual property rights arising out of the manufacture or use of the goods and it is specifically agreed that the sale and purchase of the goods does not confer on the purchaser any licence or rights under any intellectual property rights which is the property of the Company.

21. Substitution

Where the Customer has specified a particular brand of product to be used, wherever practicable, the Company will adhere to this. However, on occasions this may not be practicable and the Company will therefore elect to use products of similar quality and capability without claim from the Customer.

22. Subcontracting

The Company reserves the right to subcontract the production, manufacture or supply of the whole or any part of the goods or of any materials or services to be supplied.

23. Safety

Although the company will provide equipment to its best endeavours that is safe, it is the responsibility of the user to ensure machine safety compliance, with all the required guarding, safety measures and interlock functions as dictated by Australian Standard "AS4024 - Safeguarding of Machinery".

24. Notices

Any notice to be given by the purchaser to the Company shall be sent to the Company's address. No notice shall be deemed to have been given until it is actually received at such address.

25. Severance

It is agreed that if any provision of these terms and conditions should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and each such other provision shall remain in full force and effect.

26. Governing Law

All contracts shall be governed by and construed in accordance with the laws of South Australia.