

## AUTOMATION PRODUCTS TERMS OF TRADE

### 1. APPLICATION

- (a) Unless otherwise agreed in writing by Superstructureglobal Limited trading as Automation Products (**Company**), the following terms of trade (**Terms**) will apply in respect of the supply of any spare parts or control system parts and/or completed boxes and/or any products supplied by the Company (**Equipment**) and/or software (**Software**) and/or parts (**Parts**) and the provision of any related services (**Service**) more specifically described in the quote provided by the Company to the Customer (**Customer**). The Customer acknowledges that the supply of Equipment and/or Software and Services by the Company will be subject to these Terms.
- (b) If there is any inconsistency between a provision of these Terms and any provision in any other written agreement between the Customer and the Company, the provisions will apply in the following descending order of priority:
  - (i) the provisions in any written agreement between the Customer and the Company; and
  - (ii) these Terms,provided that these Terms will prevail over any other terms and conditions stipulated by the Customer or included as part of any of the Customer's documentation.
- (c) The Company may amend these Terms at any time. The amended Terms will apply in respect of any order accepted by the Company for the supply of any Equipment, Software and/or Services to the Customer following the date the amended Terms are provided to the Customer in writing.

### 2. QUOTE

The Company may provide a written quote to a Customer in relation to the Equipment, Software and/or Services. Any quote forms part of these Terms. A contract is formed between the Company and the Customer on acceptance of the quote by the Customer or by the Customer otherwise committing to purchase any Equipment, Software and/or Services.

### 3. PRICE AND PAYMENT

- (a) The Price payable for any Equipment, Software and/or Services supplied by the Company to the Customer (**Price**) shall be:
  - (i) the price agreed between the parties in writing (including as part of any quote); or
  - (ii) in the absence of any agreement between the parties, the Company's standard prices applicable for the Equipment, Software and/or Services at the time the relevant quote is accepted by the Customer.
- (b) The Price will be payable by the Customer:
  - (i) on or before the date, or dates, agreed between the parties in the manner specified or accepted by the Company; or
  - (ii) in the absence of agreement, by the 20<sup>th</sup> day of the month following the date of any invoice. Provided that the Company may, in its absolute discretion, require immediate payment of the Price in full without set-off or deduction.
- (c) The Customer agrees that the cost Price shall be determined by the Company, and shall take into consideration "one-off" costs such as design and production.
- (d) Unless expressly stated in writing, all amounts quoted by the Company will be deemed to exclude GST, which will be payable by the customer at the same time as the Price in addition to the Price. The Company reserves the right to implement a surcharge for alterations to specifications of products after the order has been placed and for increased costs of goods or services to the Company, delays and any other costs and causes beyond the Company's control. Any proposed alteration of the price will be notified in writing to the Customer prior to taking effect.
- (e) The method of payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Company.
- (f) The Company shall be entitled to charge interest on any amount overdue for payment by the Customer, together, with actual costs (legal or otherwise) incurred by the Company for the enforcement of payment of such overdue amounts. Interest will be charged on overdue accounts at the rate of 18% per annum calculated on a daily basis from the date that interest first became payable.

### 4. DELIVERY AND FREIGHT

- (a) For the Equipment supplied from outside New Zealand, the Equipment may be sold on any delivery term defined in Incoterms 2010; or such other basis as may be agreed between the Company and the Customer at time of formation of the Contract.
- (b) For the Equipment supplied in New Zealand, "delivery" shall be deemed to occur at the earlier of the following times:
  - (i) the time at which a consignment note or equivalent document is signed by or on behalf of the Customer at the agreed place of delivery;
  - (ii) the time of collection of the Equipment by or on behalf of the Customer or its agent; or
  - (iii) the time one working day after the Customer has been notified that the Equipment is ready and available for collection.
- (c) The Equipment shall be supplied to the place indicated in the quote or invoice or in the absence of any such indication, to the Customer's last known address. The Company reserves the right to deliver the Equipment by instalments.
- (d) The delivery date on the quote or invoice is indicative only. The Company will make every effort to keep to delivery schedules, but will take no responsibility for delivery delays beyond its control.

The Company shall not be liable for damages or for delay in delivery or for failure to give notice of delay when such delay is due to conditions beyond the Company's reasonable control.

### 5. SITE PREPARATION

- (a) Where the Company installs the Equipment for the Customer, the Customer shall, prior to delivery, at its own expense, prepare the site in accordance with the site specifications provided by the Company in the quote.
- (b) The Company shall provide such information and assistance as the Customer may reasonably request so as to enable the Customer to prepare the site in accordance with the site specifications.

### 6. INSTALLATION

- (a) Where the Company installs the Equipment and/or Software for the Customer, the Customer shall provide the Company with such assistance at the site, including the provision of personnel and equipment, as is reasonably necessary to ensure delivery and installation of the Equipment and/or Software. The Customer shall ensure the Company is granted all reasonable access, including necessary security clearances, for the purposes of complying with this clause.
- (b) Where requested and when the Company accepts the Company shall issue a written certificate to the Customer, when it is satisfied that the installation and testing of the Equipment, Software or provision of Services has been completed.
- (c) Where requested and when the Company accepts the Company shall provide the Customer's personnel with the agreed level of training.
- (d) Where the Company enters upon any Customer's property the Company will, and will ensure that all of its employees, agents and sub-contractors (if any) will, at all times comply with:
  - (i) all relevant policies and procedures of the Customer including, without limitation, those relating to health and safety, environmental and risk management as notified by the Customer to the Company;
  - (ii) all relevant legislation and regulations in force including, but not limited to, the Health and Safety in Employment Act 1992; and
  - (iii) all directions given by the Customer relating to, or for the purposes of, the Customer's operational and health and safety requirements.

### 7. INTELLECTUAL PROPERTY

- (a) Nothing in these Terms shall confer upon the Customer any ownership of any intellectual property right (including, without limitation, trade marks, copyright, patents or registered designs) associated with the Equipment or Software. The Customer shall not at any time take any action inconsistent with the Company's or any Software licensor's intellectual property rights in the Software. The Customer shall not change, remove or obscure any labels, legends, plates, insignia, lettering or other markings which

are on any item of the Software or Equipment at any time before or after its installation.

- (b) The Customer may ask the Company to specifically modify certain Software for the Customer (**Bespoke Software**). Unless the parties agree otherwise in writing, the Company will license the Bespoke Software to the Customer on a non-exclusive basis, and the Customer acknowledges the Company's ownership of and rights in the Bespoke Software.

## 8. CANCELLATION OR SUSPENSION OF CONTRACT

- (a) Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Equipment and/or Software to the Customer and any of its other obligations under the terms and conditions.
- (b) The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
- (c) In the event that:
  - (i) any money payable to the Company becomes overdue, or
  - (ii) in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
  - (iii) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (iv) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer;

then without prejudice to the Company's other remedies at law the Company may:

- (A) cancel all or any part of any order of the Customer that remains unperformed in addition to, and without prejudice to any other remedies;
  - (B) enter into any premises where the Equipment and/or Software supplied by it are located, repossess and sell such Equipment and/or Software;
  - (C) retain all monies paid;
  - (D) require that all monies invoiced to the Customer become immediately due and payable;
  - (E) suspend further deliveries to the Customer; and
  - (F) recover from the Customer any damages or loss of profit arising from such cancellation.
- (d) Should the Company be delayed in performing or be unable to perform its obligations due to any cause not within its control, the Company may cancel or suspend any outstanding obligations under these Terms of Trade without incurring any liability for any loss or damage suffered by the Customer or any other person.

## 9. GOVERNING LAWS

These Terms will be governed and construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts.

## 10. DISPUTE RESOLUTION

The Company will endeavour to resolve any dispute between the Customer and itself without the need for Court proceedings. Any such attempt is without legal prejudice.

## 11. RISK, RETENTION OF TITLE AND PPSA

- (a) Unless otherwise agreed in writing, all risk of loss, damage, deterioration or destruction to the Equipment will pass to the Customer on delivery. Title to any Equipment will not pass to the Customer until the Company has received payment in full in cleared funds for all Equipment supplied to the Customer.
- (b) Until title to the Equipment passes to the Customer under clause 11(a), the Customer will:
  - (i) hold the Equipment as a bailee only;
  - (ii) clearly designate the Equipment as the Company's property and store the Equipment in such a way that they are identified as the Company's property; and

- (iii) maintain the Equipment in good order and condition and preserve the Equipment in their present form.

- (c) Without prejudice to the Company's other rights and remedies, the Company will be entitled to retake possession of any Equipment at any time prior to payment in full being received for those Equipment. The Customer grants the Company an irrevocable right and authority to enter onto any place where such Equipment is situated, or thought to be situated at any time and to take and resell the Equipment and to retain the proceeds from such sale. Any shortfall arising from such sale will be a debt due and owing to the Company by the Customer.
- (d) The Customer acknowledges that the retention of title in these Terms gives rise to a security interest (as defined under the PPSA) in all present and after acquired Equipment, and all proceeds of such Equipment, supplied by the Company to the Customer under these Terms to secure the Customer's performance of its obligations under these Terms.
- (e) The Customer undertakes to:
  - (i) promptly do all things, execute all documents and/or provide any information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its security interest (including by registering a financing statement);
  - (ii) give the Company not less than 14 days prior written notice of any proposed change in its name and/or any other change of its details; and
  - (iii) immediately on request by the Company (and at the Customer's expense) obtain from any third party such agreements and waivers of any security interest that third party has in respect of the Equipment to ensure that at all times the Company has a first ranking security interest in the Equipment.
- (f) The Customer waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between the Company and the Customer:
  - (i) the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA; and
  - (ii) where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

## 12. WARRANTY

The Company warrants that it will repair or make good any defects in the Equipment and/or Software, if written notice of the claim is received by the Company within seven (7) days from the date the Equipment and/or Software were delivered. No claim shall be accepted under such warranty if any attempt to repair the defective Equipment and/or Software is made by any person not authorised by the Company, or if the defective Equipment and/or Software have been modified or incorrectly stored, maintained or used. If the Company elects to repair or replace any defective Equipment and/or Software, such work shall be undertaken at such place as the Company may reasonably specify and the Customer shall be responsible at its cost and risk for shipment of the defective Equipment and/or Software to the place specified. Except as specified in these Terms of Trade, to the maximum extent permitted by law, the Company gives no representations, warranties or warranties (whether express or implied) with respect to the Equipment and/or Software.

## 13. LIMITATION OF LIABILITY

- (a) To the maximum extent permitted by law, the liability of the Company for the loss or damage or injury arising directly or indirectly from the Equipment and/or Software and related services supplied is limited to replacement or repair of the Equipment and/or Software, or to damages not exceeding the contract price of such Equipment and/or Software at the option of the Company. The Company shall not be liable for any loss, damage, or injury caused by improper or incorrect operation or use of the Equipment and/or Software supplied. The Company shall not be liable for any consequential indirect or special damage or loss of any kind whatsoever.

The Customer shall indemnify the Company, its employees, officers, agents and contractors from and against any loss, costs, claims, damages, expenses (including legal costs and expenses on a solicitor/client basis), liabilities, proceedings or demands, whether direct or indirect, incurred or suffered by any of them as a result of any breach by the Customer (or its employees, officers, agents or contractors) of these Terms of Trade; or any wilful, negligent or unlawful act or omission of the Customer (or its employees, officers,

agents or contractors); or any infringement of any design, or method of manufacture supplied by the Customer to the Company; or the Company recovering any Equipment and/or Software or payment for those Equipment and/or Software in accordance with these Terms.

#### **14. WAIVER, VARIATION AND ENTIRE AGREEMENT**

These Terms, together with any other terms and conditions agreed in writing between the Company and the Customer will constitute the whole terms of the Contract and will not be deemed waived or varied unless in writing and signed by an authorised representative of the Company.

#### **15. INFORMATION AND PRIVACY ACT**

- (a) The Customer acknowledges that:
  - (i) any information provided by the Customer to the Company may be collected and used by the Company for any purpose connected with the Company's business including (but not limited to) direct marketing, debt collection and credit reporting or assessment;
  - (ii) the Company is authorised to carry out credit checks in relation to the Customer, and where the Customer is a company, about the directors of the Customer and to provide such information to any external agency or party for credit information and assessment purposes necessary for those purposes; and
- (b) The information will be collected, held and used on the condition that:
  - (i) it will be held securely at the Company's main head office;
  - (ii) it will be accessible to any of the Company's employees and agents who need access to it for the efficient running of the Company's business; and
  - (iii) The Customer has rights of access to, and correction of, their personal information held by the Company. These may be exercised by contacting the Company. If you do not wish to provide the information requested, unfortunately the Company may be unable to provide you with the Equipment and/or Software and/or Services.

The Customer may view our Privacy Policy on request.

#### **16. MISCELLANEOUS**

- (a) If any provision of these Terms of Trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected.
- (b) The Company may substitute Equipment and/or Software of like quality which are functionally equivalent for any Equipment and/or Software which are unavailable.