

OPTIMA CONTROL SOLUTIONS LIMITED (2 pages)

1. Interpretation

1.1 In these conditions unless the context otherwise permits-

"THE COMPANY" means Optima Control Solutions Limited (registered in England No 3068713).

"CUSTOMER" means the person, firm or company who accepts a quotation of the Company for the sale of the goods and/or the supply of services, or whose order for the goods and/or the supply of services is accepted by the Company.

"CONDITIONS" means the standard conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company.

"CONTRACT" means the contract for the purchase and sale of the goods and/or the supply of services.

"WRITING" includes telex, cable, facsimile transmission and comparable means of communication.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the Sale

2.1 No order from the Customer shall be binding on the Company unless that such order is accepted in writing by the Company on its printed Acknowledgement of Order confirming all contracts between the Customer and the Company are subject to these Conditions of Sale. The Company's Acknowledgement of Order together with these Conditions of Sale (i) shall override and operate to the exclusion of all terms and conditions contained in any document emanating from the Customer and (ii) shall not be validly varied except as may be agreed by the Company in writing.

2.2 The Company's employees or agents are not authorised to make any representations concerning the goods unless confirmed by the Company in writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.3 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 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 Company shall be subject to correction without any liability on the part of the Company.

3. Orders and Specifications

3.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company any necessary information relating to the goods and/or services within a sufficient time to enable the Company to perform the contract in accordance with its terms.

3.2 The quantity, quality and description of and any specification for the goods and/or services, shall be those set out in the Company's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Company).

3.3 The Company reserves the right to make any changes in the specification of the goods and/or services which do not materially affect their quality or performance.

3.4 No order which has been accepted by the Company may be cancelled by the Customer, except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

4. Price of the Goods

4.1 Subject to the remaining provisions of this clause 4 the price of the goods shall be the Company's quoted price. All prices quoted are valid for thirty days unless previously withdrawn by the Company or until earlier acceptance by the Customer.

4.2 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in writing between the Customer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the goods otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance. All prices are exclusive of any applicable value added tax which the Customer shall be automatically liable to pay to the Company at the appropriate rate and are subject to adjustment (a) in accordance with the appropriate NEDO or BEAMA formulas to reflect changes in cost which occur up to the date when goods are delivered or services performed and (b) at the discretion of the Company to take account of any changes in design specification or quality requested by or on behalf of the Customer.

5. Terms of Payment

5.1 The Company shall be entitled to invoice the Customer for the price of the goods and/or the supply of services on or at any time after delivery of the goods or any separate instalment of the goods or on notification to the Customer that the goods are ready for collection by the Customer or as agreed with the Customer before the delivery of the goods.

5.2 Unless otherwise agreed in writing the Customer shall pay the price of the goods within 30 days of the date of the Company's invoice, notwithstanding that delivery may not have taken place and the property in the goods has not passed the Customer. The time of payment of the price shall be of the essence of the contract.

5.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to: (i) cancel the contract or suspend any further deliveries to the Customer; (ii) appropriate any payment made by the Customer to such of the goods (or the goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer) (iii) charge the Customer interest (both before and after judgement) on the amount unpaid at the rate of 8 per cent above Barclays Bank Plc base rate from time to time until payment in full is made calculated on a daily basis.

6. Delivery

6.1 Delivery of the goods shall be made by the Customer collecting the goods at the Company's premises at any time after the Company has notified the Customer that the goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the goods to that place. No liability in respect of goods lost or damaged in transit will attach to the Company unless:

(a) in the case of goods delivered by independent contractors a claim is made on the Company within three days of delivery or within such other period as will enable the Company to make effective claim upon the carriers; (b) where the goods are delivered by the Company a claim is made in accordance with condition 8 hereof; (c) in the case of a whole consignment failing to arrive the Company is notified in writing within ten days of the dispatch date.

6.2 Any dates quoted for delivery of the goods are approximate only and no liability will attach to the Company for any delay or loss from failure to maintain them. Time for delivery shall not be of the essence unless previously agreed by the Company in writing.

6.3 Where the goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract as a whole as repudiated.

6.4 If the Company fails to deliver the goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the goods.

6.5 If the Customer fails to take delivery of the goods then, without prejudice to any other right or remedy available to it, the Company may: (i) store the goods until actual delivery and charge the Customer for the reasonable costs (including insurance); (ii) sell the goods at the best price readily obtaining and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the contract or charge the Customer for any shortfall below the price under the contract.

7. Risk and Property

7.1 Risk of damage to or loss of the goods shall pass to the Customer at the time of dispatch by the Company unless the Order terms provide for installation by the Company at premises nominated by the Customer in which case risk shall pass upon delivery to site. In the case of goods to be delivered at the Company's premises, risk shall pass at the time when the Company notifies the Customer that the goods are available for collection.

7.2 Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property in the goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Company to Customer for which payment is then due, together with any interest in any such case payable under this agreement.

7.3 Until such time as the property in the goods passes to the Customer, the Customer shall hold the goods as the Company's fiduciary agent and bailee and shall keep the goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time, the Customer shall be entitled to re-sell or use the goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.4 Until such time as the property in the goods passes to the Customer (and provided the goods are still in existence and have not been re-sold) the Company shall be entitled at any time to require the Customer to deliver up the goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the goods are stored and re-possess the goods and the Customer hereby grants to the Company an irrevocable licence to enter the Customer's premises at any time for the purpose of recovering possession of the goods.

7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Company, but if the Customer does so, all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

8. Notice of Defects

The Customer shall inspect the goods immediately upon delivery. Subject to condition 9 hereof, the Customer must give written notice to the Company within fourteen days of such delivery of any defect in the goods, which ought to have been apparent upon inspection, or (in the case of defects not so apparent) within fourteen days of such defect becoming apparent. Should the Customer fail to notify the Company as aforesaid it shall be conclusively deemed for all purposes that the goods comply in all respects with the contract and are of merchantable quality and reasonably fit for the purpose for which the Customer required them and further the Customer shall not be entitled to make any claim to the contrary. No goods shall be accepted by the Company for repair or replacement unless the Customer has obtained a return repair authorisation reference from the Company.

9. Warranties and Liabilities

9.1 Save as provided in these Conditions, all representations, warranties or conditions whether expressed, implied or statutory, are expressly excluded.

9.2 In the event that goods supplied or services performed by the Company prove defective under proper use within 12 months following delivery or practical completion where goods are to be installed by the Company and the defect is due to faulty workmanship then the same will be rectified by the Company at its expense if the defective parts are returned carriage paid to the Company provided however that the Company shall not be responsible for the cost of labour involved in removing and replacing any defective parts at the Customer's works and provided however notification has been given to the Company in accordance with condition 8 hereof arising solely from faulty design, materials or workmanship.

9.3 Any goods not of the Company's manufacture supplied under this contract are sold with such warranty as the makers give to the Company (available upon request) and the Company is able without expense to enforce, but are not guaranteed by the Company in any other way.

9.4.1 The Company's responsibility under Clauses 9.2 and 9.3 shall cease if any repair is made or attempted to be made or components not of the Company's manufacture or supply are installed otherwise than by the Company.

9.4.2 The Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions or failure to follow instructions.

9.5 The Company will compensate the Customer or his personal representative for personal injury or death and will indemnify the Customer against any legal liability to others for personal injury or death to the extent that such personal injury or death is caused by the breach of contract of the Company, or the negligence of the Company, its servants or agents for whose negligence the Company is liable at law.

9.6 Save as hereinbefore provided the Company will not in any circumstances be liable for any loss or damage, whether direct or indirect or consequential, howsoever arising, including, but without prejudice to the foregoing caused by: (i) the negligence of the Company, its servants or agents or sub-contractors; (ii) the Company's breach of contract.

9.7 For avoidance of doubt consequential damage includes, but is not limited to, loss of market, loss of profit, additional haulage or shipping costs or the cost of effecting any replacement of goods more extensive than that hereinbefore set out.

9.8 The Customer warrants that these Conditions are freely accepted on his part, knowing that: (i) the contract price would be higher were the Company under any liability or potential liability other than set out in these Conditions; (ii) any liability or potential liability upon the Company other than as set out in these Conditions would be disproportionate in the contract price.

9.9 The Company shall not be liable to the Customer or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the goods if the delay or failure was due directly or indirectly to any cause beyond the Company's reasonable control including, without prejudice to the generality of the foregoing, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party and whether official or unofficial), legislation or official regulation, willful damage, the unavailability of transport, power or materials or to natural causes such as, but not limited to act of God, earthquake, flood or tempest or to fire or accident or theft or any other event outside the Company's control. In any such case the Company may forthwith suspend or postpone its obligations or any of them under this contract until such delay or cause has ceased or determined this contract without prejudice to any right of action which may have accrued prior to such termination. Wherefore such reasons the availability of the goods to the Customer is delayed, the Customer shall take delivery of the goods when so requested by the Company.

10. Copyright

All drawings and written material emanating from the Company shall, as between the Company and the Customer be and remain the property of the Company and shall not be reproduced, used or disclosed to third parties without the express permission of the Company.

11. Software Ownership/License/Term

11.1 The Customer acknowledges and agrees that any computer programs/software and associated documentation provided by The Company to the Customer ("the Software") are owned exclusively by The Company and the Software is protected under copyright and the intellectual property rights of the United Kingdom and international copyright treaties and that the price paid by the Customer for the Software is a licence fee granting the Customer only the rights set out hereafter.

11.2 The Company grants to the Customer a limited, non-exclusive and revocable licence to use the Software, in machine-readable object code form only. The Customer agrees to use the Software only as authorised in this Agreement.

11.3 This is a single user licence. A valid licence must be purchased for each installation of the Software. The Software must only be installed on one computer. You may take one backup copy of the software for backup/archival purposes. You must not make any changes, modifications, decompile, reverse engineer or otherwise interfere with the Software.

11.4 This licence becomes effective on the date that you purchase the Software and continues until terminated. The Company is entitled to terminate this Licence forthwith by giving notice in writing in the event that the Customer commits any breach of these terms and conditions.

12. Insolvency of Customer

12.1 This clause applies if:

(i) The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

(ii) An encumbrancer takes possession or a Receiver is appointed of any of the property or assets of the Customer or any distress or execution is levied on the Customer's property or assets; or

(iii) The Customer ceases or threatens to cease to carry on business; or

(iv) The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

12.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled at its option to cancel the contract or suspend any further deliveries under the contract without any liability to the Customer, and if the goods have been delivered but not paid for, the price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary. On cancellation before completion of delivery of all the goods and without prejudice to any other rights the Company may possess the Company shall be entitled to payment for such goods as the Company shall have supplied.

12.3 In placing an order with the Company, the Customer without prejudice, expressly acknowledges that title of any goods and intellectual property supplied as part of the order remains with Optima Control Solutions Ltd. until the whole order is paid for in full and will either cease using the equipment or return the equipment and associated documentation upon demand.

13. No Solicitation of Staff

The Customer acknowledges that the Company has made a significant investment in recruiting and training its staff and agrees that while the Company is providing goods or services to the Customer and for a period of 12 months after the Company shall have ceased to supply goods or services to the Customer the Customer will not directly or indirectly employ or engage offer employment to or in any way solicit any employee or agent of the other party who has been engaged in or connected with the supply of any goods or provision of any services to the Customer without the prior written consent of, and upon such terms as may be specified by, the Company.

14. Export

Where the goods are supplied for export from the United Kingdom the Customer shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon.

15. General

15.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing, addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time, have been notified pursuant to this provision to the party giving the notice.

15.2 No waiver by the Company of any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

15.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

15.4 The contract shall be governed by the laws of England and the Courts of England and Wales shall deal with all disputes.