

Automated Control Solutions Terms and Conditions

These Terms and Conditions of sale apply to any goods and services supplied by Automated Control Solutions Pty Ltd to the customer except where they are varied and agreed to by notice in writing by the company to the customer prior to the supply of goods or services rendered.

Any products, goods and services are sold and provided by Automated Control Solutions on these Terms and Conditions.

1. Definitions and Interpretation:

- a. In the following terms and conditions "The Company" shall mean Automated Control Solutions Pty Ltd (ACS) its assigns, or any person acting on behalf of and with the written authority of Automated Control Solutions.
- b. "Agreement" shall mean this agreement with the company and the customer for the supply of goods and services of which these terms and Conditions shall form main part.
- c. "Client" shall mean the purchaser of the goods and or services, Furthermore, a client is a client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation, work order form or other form as provided by Automated Control Solutions.
- d. "Goods" shall mean any product supplied by Automated Control Solutions to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work order, work authorisation or any other forms as provided by Automated Control Solutions to the Client.
- e. "Services" shall mean all Services supplied by the company to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above) and are as described on the invoices, quotation, work order, work authorisation or any other forms as provided by Automated Control Solutions to the Client.
- f. "Price" shall mean the price to be paid by the Customer to the Contractor for the performance of the Works in accordance with the terms and conditions set out hereinafter.
- g. "GST" shall mean any state and federal goods and services tax that is imposed.
- h. "Site" means where the works under the Contract are carried out;
- i. "Works" means the work to be carried out under the Contract including Variations;
- j. "Quotation" means the written quotation given by the Contractor to the Customer which must set out:
 - the scope of the Works,
 - the commencement and completion dates of the Works
 - the price of the Works
 - the insurance cover held by the Contractor in relation to the performance of the Work

- k. "Variation" means to vary the Works by:
 - Carrying out additional work;
 - Omitting any part of the Works;
 - Or changing the scope of the Works.
- l. "Base Work" means the Site conditions including work carried out by others in, on, or over which the Contractor is to carry out the Works;
- m. "Business Day" means any day except Saturday or Sunday or a day that is a public or bank holiday in New South Wales
- n. "Contract Documents" include all drawings, plans and specifications and all other information provided by the Customer to the Contractor;
- o. "Completion Date" means the date for completion of the Works under the Contract.
- p. "Contract" means the contract to carry out the Works between the Customer and the Client by the acceptance of the Quotation by the Customer.

2. Headings and Interpretation:

- a. All headings throughout this agreement have been inserted for the purpose of ease of reference only and will not define, limit or affect the meaning or interpretation of this agreement or of any instrument created pursuant to or in accordance with this agreement.
- b. The singular includes the plural and vice versa;
- c. A reference to a person includes an individual and a corporation, partnership, joint venture, association, authority, trust, State or Government and vice versa;
- d. A person includes the legal personal representatives, successors and assigns of that person;
- e. A reference to any gender includes all genders;
- f. A reference to a recital, clause, schedule, annexure, appendix or exhibit is to a recital, clause, schedule, annexure, appendix or exhibit of or to this agreement;
- g. A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time.
- h. Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- i. Where an expression is defined anywhere in this agreement it has the same meaning throughout;
- j. A reference to "dollars" or "\$" is to an amount in Australian currency.

3. Law

- a. In this agreement and in any instrument created pursuant to or in accordance with this agreement, unless the context otherwise requires.
- b. A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under, that legislation or legislative provision.
- c. This agreement and any Contract made between the parties shall be governed by and construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the jurisdiction of the Courts of that State in all matters arising out of this agreement and any Contract made between the parties.
- d. It is agreed by all parties privy to this agreement and any other contract made between the parties that if, any part of any provision in these terms and conditions should be void, invalid, unenforceable or illegal for any reason, by any court in a competent jurisdiction, then such a determination shall not affect the remainder of the provisions and each such other provision shall remain in full force and effect.

4. GST registration:

- a. The company warrants that as at the date of this Agreement, the Company is registered under the GST Act and that the Company is not aware of any circumstances existing which would require the Commissioner of Taxation to cancel the registration.

5. Quotation:

- a. All quotations are based on the companies estimated cost of production manufacture or supply at the time of the quotation.
- b. All quotations may be the subject to variations before or after acceptance without notice to the customer
- c. All quotations are quoted exclusive of GST, unless otherwise clearly stated.
- d. All prices are quoted in Australian dollars unless expressly stated otherwise.
- e. Quotations, or orders given or placed by the company is not to be construed as an offer by the company to sell or supply goods or services.
- f. The Customer must accept or reject a Quotation within thirty (30) days of its receipt. The Company may, at its option, extend this period by notification in writing to the Customer.
- g. The Company may, at its absolute discretion, and without incurring any liability to the Customer whatsoever, revise or withdraw the Quotation at any time before communication by the Customer to the Contractor of its acceptance of the Quotation in writing.

- h. The Customer may accept a Quotation by sending to the Company a letter or email acknowledging and agreeing to the terms of the Quotation (an “Order”), or if the Customer acknowledges the agreement by signing and returning a copy of the Quotation to the Company
- i. The parties will be deemed to have formed a Contract upon the communication by the Customer to the Contractor of its acceptance of the Quotation.
- j. In the event the Customer provides the Contractor with a written or oral Order, such Order is subject to these terms and conditions of quotation and any other terms and conditions that are agreed by the parties in writing to become part of the Contract.

6. Payment and Price:

- a. At Automated Control Solutions sole discretion the price shall be indicated on invoices, quotes or written statement provided by Automated Control Solutions and signed by one of the directors to the client in respect of Goods and services supplied.
- b. Unless other wise agreed in writing all accounts are payable within 30 days from the date in which the goods and services are invoiced
- c. Payment shall be made in Australian currency unless other wise agreed in writing by the company and the client.
- d. Payment will be made by cash, or by cheque, or by bank cheque, or by credit card with the exception of Diners or American Express which a surcharge may be applicable, or by direct credit, or by any other method as agreed to in writing between the Client and the company.
- e. Default by the customer in payment of monies due to the company will be a breach of these terms and conditions.
- f. Goods, Services and Part-payment
 - I. Goods
 - i. The company reserves the right to vary the terms of payment, in regards to goods and require payment in cash full prior to delivery should the credit worthless of the customer at any time become in the companies opinion unsatisfactory
 - ii. The company shall not be obliged to sell goods to the customer if the customer defaults in its payment obligation under this agreement
 - II. Services
 - i. The Company reserves the right to vary the terms of payment, in regards to services provided and require alternate payment options should the credit worthless of the customer at any time become in the companies opinion unsatisfactory.
 - ii. Should the Client neglect or refuse to pay the total amount payment by the due date, then the Company may, at its option, with or without notice to the Client, take workers of site and suspend performance of the works until such payment has been received in full.

III. Progress Payments

- i. Payments can be made in instalments to approved Customers; this agreement will be agreed to in writing by the company. The Customer shall submit to the Company written requests for progress payments upon completion of each stage of the Works.
 - ii. To approved clients only, clients shall pay to the Company progress payments in accordance with the written claims supplied by the company.
 - iii. Should the Client neglect or refuse to pay the amount of any progress payment by the due date, then the Company may, at its option, with or without notice to the Client, suspend performance of the Works until such payment has been received in full.
- g. The client may not withhold payment of any part of the price because of any dispute or claim.
- h. GST and other taxes will be added to the final price, except when they are expressly included in the initial price.

7. Property and Ownership Retention of Title

- a. Title of the goods will not pass to the client until the customer has made payment in full of all monies owing by the client to the company.
- b. Until such a time where payment is received, the goods supplied to the customer are by way of loan only, the customer agrees to hold the goods as a bailee for the company until the price is paid in full.
- c. The customer shall store and identify the products so as to indicate that they are the property of the company, the company reserves therefore the right to enter the clients premises (or the premises of any associated party or agent where the products are located) without liability for trespass and conversion or any resulting damage and retake the product. In addition to the above, the customer acknowledges that, should the product be lawfully repossessed by the company the company reserves the right to keep or resell the product. Should the product be resold to a third party the customer agrees to hold all monies received on trust in a separate identifiable account for the company.
- d. Until the customer pays the price in full no legal or equitable interest in the goods passes to the customer except for the right to hold the goods as bailee.
- e. If the customer does not pay the price in full on the due date, or, prior to payment of the price deals with the goods in a manner inconsistent with the rights granted in sub clause 7D it shall return the goods to the company immediately upon request and its bailment shall therefore cease.
- f. The customer will not sell the goods to a third party before payment of the price in full without first obtaining the written consent of the company to do so. Such sale by the customer shall be as an agent for the company and the customer shall hold the proceeds of the resale on trust separate account for the company.

8. Delivery, Installation and Risk

- a. The company will use its best endeavours to deliver the goods and services on the time agreed. Delivery times made known to the client are estimates only and the company shall not be liable for late delivery or non delivery and under no circumstances shall the company be liable for any loss or damage or delay occasioned to the customer arising from late or non delivery or late installation of the product.
- b. The customer shall be liable for all delivery charges in relation to goods unless otherwise agreed or specified.
- c. In the event that the customer is unable or unwilling to accept the delivery of the products as agreed, then the customer shall be liable for all storage costs, charges, expenses, and additional delivery charges, such amount to be paid on delivery.
- d. The company reserves the right to deliver the products via 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 customer to cancel the balance of the order. In the event of the customer making default in payment in any instalments, the company may elect to treat the default as a breach of contract relating to each other instalment.

9. Acceptance and Claims

- a. The customer shall inspect the goods on delivery.
- b. Should the customer consider that it has any claim, the customer must
 - i. Notify the directors of the company immediately in writing within fourteen (14) days of delivery of the goods to the customer, making the company aware of the nature of the claim
 - ii. Allow the company, its servants or agents full and free access to the goods in relation to which the claim has been made or the place where the goods have been applied, installed or used, for the purpose of conducting such tests and examinations as the company may in its absolute discretion consider necessary to determine whether the claim is or is not justified.
- c. If the customer fails to give such a notice within the time aforementioned (time being of the essence) then to the extent permitted by statute, the goods shall be deemed to have been accepted by the customer and the customer shall pay for the goods in accordance with this agreement.
- d. The company will only return goods if they are in a sealable condition, if the company accepts the return of the sealable goods from the customer a handling and freight charge will be imposed in accordance with the freight and handling charges of the company; in accordance with company handling charges set from time to time, unless the return of such goods are found to be due to the error of the company.

- e. No goods can be returned for any reason without first obtaining written permission for the company. Goods returned without the authorisation are subject to being returned to the customer at the customers expense.

10. Force Majeure

- a. If the company is unable to sell, perform or deliver any goods or services covered by these terms and conditions, or the customer is unable to accept delivery, buy or use any goods or services covered by this contract, as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence, then any delay or failure to perform under this Contract that results from such event or occurrence will be excused for only so long as such event or occurrence continues.
- b. The affected party gives written notice of each such delay (including the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence (but in no event more than three (3) days thereafter). Such events and occurrences may include, by way of example and not limitation, natural disasters, fires, floods, windstorms, severe weather, explosions, riots, wars, sabotage, labour problems (including lockouts, strikes and slowdowns),

11. Working hours:

- a. All work will be carried out during normal working hours (7.00am-5.30pm Monday to Friday) unless otherwise stated. The Customer agrees that should the Customer require the Company to carry out any of the Works outside of the nominated hours, then the Price will be increased to reflect award penalty rates for that part of the Works performed outside of the nominated hours and the Customer shall pay the increased Price to the Contractor in accordance with the provisions of this clause