

**1. Interpretation.**

In these conditions "Direct Automation" means Direct Automation Pty Ltd and "Buyer" means the person, or body, firm or company with whom DIRECT AUTOMATION enters into a contract for the sale of goods and/or supply of services.

**2. Incorporation**

**2.1** These conditions govern every contract of sale of goods and/or supply of services by Direct Automation to Buyer and, except as modified in accordance with Clause 2.2 constitute all the terms and conditions agreed between them to the exclusion of all other terms and conditions.

**2.2** No modification to these Conditions, whether put forward in Buyers purchase order, specification or otherwise, shall bind Direct Automation unless agreed to in writing by its authorised employee.

**2.3** These Conditions supersede any terms and conditions which have previously governed contracts for the sale of goods or supply of services by Direct Automation to the Buyer.

**3. Quotations**

Any quotation given by Direct Automation is a mere invitation to do business and does not constitute contractual offers. All quotations lapse (30) days after issue, but Direct Automation may vary or withdraw a quotation at any time.

**4. Orders**

**4.1** Orders for goods or services shall not be binding upon Direct Automation until accepted in writing by its authorised employee. Direct Automation reserves the right to accept orders in whole or part. Any part order not accepted in the manner prescribed shall be regarded as having been refused.

**4.2** Once Direct Automation has accepted an order, Buyer may not alter or modify it unless the written consent of an Direct Automation's authorised employee is first obtained.

**5. Price and Payment**

**5.1** In the absence of contrary express agreement, the price for goods supplied shall be the Direct Automation list price ruling at the date of shipment and the charge for services supplied shall be at Direct Automation's prevailing rates at the time of supply. Prices quoted in published price lists or by Direct Automation representatives are subject to change without notice and are not binding on Direct Automation.

**5.2** All prices are expressed net of any applicable freight charges, sales tax and customs duty, which shall be added to the amount to be paid by the Buyer.

**5.3** If Buyer has an approved credit account with Direct Automation, the goods and services supplied must be paid for within thirty (30) days of the date of invoice or thirty (30) days of date of shipment, whichever occurs first. Where Buyer is overdue with any payment, Direct Automation is in receipt of credit references which it regards as unsatisfactory, Direct Automation reserves the right to change Buyer to a COD account. Where Buyer has a COD account, all goods and services shall be paid for, before they are supplied.

**5.4** All payments shall be made in the currency specified in the invoice, without deduction or set off of any kind.

**5.5** Without prejudice to any other remedy, Direct Automation reserves the right to charge a default charge on any overdue payments at an annual rate equal to 2% above the rate notified by the Westpac Banking Corporation from time to time, as being that Bank's indicator lending rate.

**6. Delivery and Risk**

**6.1** Risk in the goods will pass to the Buyer ex Direct Automation's warehouse upon the goods being placed upon the vessel or vehicle which is to deliver the goods to the Buyer. Buyer shall be responsible for arranging delivery insurance of the goods.

Direct Automation shall not be liable to Buyer in the event of any failure to arrange insurance.

**6.2** While Direct Automation shall use all reasonable endeavours to meet agreed delivery dates, Direct Automation shall not be liable to Buyer for any loss or damage whatsoever should it be delayed or prevented from delivering goods, supplying services or otherwise performing any of its contractual obligations due to any cause or circumstances of any kind whatsoever. In the event of any delay in delivery or supply, as aforesaid, the due date shall be deferred for a period equal to the time lost by reason of the intervening cause or circumstance.

**6.3** Direct Automation reserves the right to deliver in instalments and all such instalments, when separately invoiced, shall be paid for without regard to the delivery of subsequent instalments.

#### **7. Retention of Title**

Direct Automation shall retain title to goods supplied to Buyer until it has received payment in full for them. If payment is overdue, or Buyer enters into bankruptcy, liquidation, a composition with its creditors, has a receiver or manager appointed over all or any part of its assets or becomes insolvent, Direct Automation shall be entitled, without prejudice to any other remedy, to repossess goods belonging to it and to enter any premises, without notice, for this purpose.

#### **8. Claims**

Buyer shall inspect all goods supplied upon delivery. Direct Automation shall not be liable for shortages or other errors in delivery, unless Buyer submits a written claim to Direct Automation within seven (7) days of the delivery to which the claim relates.

#### **9. Cancellation and Returns**

**9.1** Buyer may return goods supplied for a credit against subsequent orders within seven (7) days of delivery, provided the following conditions are satisfied:-

- (a) Direct Automation's written approval has first been obtained and the invoice number and date have been quoted for reference.
- (b) The goods are returned in their original condition, and
- (c) Buyer agrees to pay Direct Automation a handling charge equal to 15% of the price paid for the goods

**9.2** Buyer may cancel, in whole or in part, any contract for the supply of goods or services before supply has been made, provided the following conditions are satisfied:-

- (a) Direct Automation's written approval has first been obtained, and
- (b) Buyer agrees to pay any cancellation charge, being a genuine pre-estimate of Direct Automation's loss, that Direct Automation shall specify.

**9.3** Direct Automation reserves the right immediately to cancel any contract for the supply of goods and services, or suspend any such supply without incurring any liability to Buyer, in any of the following circumstances:-

- (a) Buyer is overdue with any payment or otherwise in breach of these conditions,
  - (b) Buyer enters into bankruptcy, liquidation or a composition with its creditors, has a receiver or manager appointed over all or any part of its assets or becomes insolvent, or
  - (c) Contractual performance is delayed or prevented due to any cause or circumstances.
- Cancellation by Direct Automation under this clause 9.3 shall be without prejudice to Direct Automation's right to Recover payment from Buyer for the goods and services previously supplied.

#### **10. Warranty**

**10.1** Goods not manufactured by Direct Automation are supplied by Direct Automation to Buyer on an "as is" basis without warranty of any kind. However Direct Automation shall assign to Buyer, insofar as it is able to do so, the benefit of any condition, warranty or guarantee, express or implied, in Direct Automation's contract with its own supplier.

**10.2** Direct Automation warrants to perform services with reasonable care and skill and shall investigate any bona fide complaint that any services have been performed unsatisfactorily. If satisfied that such a complaint is justified and as its sole liability to Buyer in respect of that warranty, Direct Automation shall supply those services again at no extra charge to Buyer.

**10.3** Certain legislation, including the Trade Practices Act 1974, imply warranties or conditions or impose obligations upon Direct Automation which cannot be excluded, restricted or modified or which cannot be excluded, restricted or modified except to a limited extent. These conditions must be read and construed subject to such statutory provisions. Where such statutory provisions apply, to the extent to which Direct Automation is entitled to do so, its liability shall be limited at its option to:-

- (a) In the case of supply of goods,
  - (i) The replacement of the goods or supply of equivalent goods.
  - (ii) The payment of the cost of replacing the goods or acquiring equivalent goods.
  - (iii) The payment of the cost of having the goods repaired, or
  - (iv) The repair of the goods, and
- (b) In the case of services,
  - (i) The supply of the services again, or
  - (ii) The payment of the cost of having the services supplied again.

**11. Limitation of Liability**

To the extent permitted by law and subject only to any express exceptions contained in these conditions, Direct Automation shall under no circumstances be liable in any way whatsoever to Buyer for any form of loss, damage or expense sustained or incurred by Buyer or any other party in consequence of or resulting in, directly or indirectly, out of the supply of goods or services by Direct Automation, the use or performance thereof, any breach by Direct Automation of any contract incorporating these conditions or the negligence of Direct Automation.

**12. Infringement Claims**

**12.1** Direct Automation shall at its own expense and with the legal representatives of its choice, defend or at its option settle any action brought against Buyer to the extent that it consists of a claim that Buyer's use or re-sale of goods supplied by Direct Automation infringe any Australian intellectual property right belonging to a third party, provided that:-

- (a) Buyer notifies Direct Automation in writing of such claim within thirty (30) days of receiving notice of it.
- (b) Buyer allows Direct Automation complete control of the defence and settlement of the claim, and
- (c) The goods in question have not been modified without Direct Automation's approval or used for a purpose other than that for which they were supplied. Direct Automation shall pay any final award costs and/or damages in any claim defended by Direct Automation under this clause 12.1.

**12.2** Buyer shall indemnify Direct Automation from or against any award of damages and/or costs made against Direct Automation in respect of any claim that goods manufactured or supplied by Direct Automation in Accordance with specifications or designs proposed by Buyer, infringe the intellectual property rights of a third Party. **12.3** This clause 12 states Direct Automation's entire liability and the sole remedy of Buyer with respect to any claim that Buyer's use or re-sale of goods supplied by Direct Automation, infringe any intellectual property right belonging to a third party.

**13. Law and Jurisdiction**

The construction, validity and performance of any contract incorporating these conditions shall be governed by the laws of the state of Queensland and Buyer shall submit to the jurisdiction of the courts of that state.

**14. General**

The Buyer shall comply with all laws and regulations of the Commonwealth and State and Territories of Australia and provide all necessary information to, and obtain all necessary permits, approvals, licences, consent, authorisation and exemptions from, any government authority or other appropriate body in respect of the Buyer's use, marketing, distribution or re-supply of goods acquired from Direct Automation under these conditions of trading, including, but not limited to all applicable export control laws and regulations, such as the customs (Prohibited Exports) regulations.



Direct Automation Pty Ltd  
 ABN: 86 641 073 458  
 22 Leonard Parade  
 Currumbin Waters, QLD, 4223

[www.directautomation.com.au](http://www.directautomation.com.au)  
[sales@directautomation.com.au](mailto:sales@directautomation.com.au)  
 +61 7 55353 217 (Int)  
 1800 633 040 (Aus) 0800 633 040 (NZ)