

# STANDARD TERMS AND CONDITIONS OF SALE

**1. Contract and Acceptance.** These terms and conditions of sale (the "Agreement") and any and all drawings, specifications, descriptions and other documents attached hereto and made a part hereof constitute the entire agreement between Customer and Fairmount Automation Inc. (the "Seller"). These terms and conditions, together with Seller's offer, written order confirmation or proposal (if any) shall prevail over any conflicting or different terms contained in any Customer issued document, including any purchase order, no matter when issued, unless Customer notifies Seller, in writing, of its objections thereto within fifteen (15) days of receiving Seller's acknowledgement and acceptance of Customer's purchase order, whereupon the Seller's acceptance shall be void. Seller's failure to object to conflicting provisions contained in Customer's purchase order, or, in any other document issued by Customer, shall not be construed as a waiver of the provisions hereof, or, as an acceptance by Seller of such conflicting provisions. **SELLER'S ACCEPTANCE OF CUSTOMER'S PURCHASE ORDER IS EXPRESSLY CONDITIONED ON CUSTOMER'S ASSENT TO THESE TERMS AND CONDITIONS OF SALE.**

**2. Purchase Orders.** Purchase orders may be placed by Customer in any commercially reasonable manner that Customer and Seller determine is appropriate, including facsimile or electronic transmission. The purchase order shall indicate the specific product(s) being ordered, any specifications related thereto, quantity, price, total purchase price, shipping instructions, requested delivery dates, "bill to" and "ship to" addresses, tax exempt certifications, if applicable, and any other special instructions. Any contingencies contained in such order are not binding upon Seller unless and until accepted by Seller. All purchase orders are subject to acceptance by Seller. In the event Customer cancels all or any portion of a previously accepted order, Seller shall have the right to charge Customer for all reasonable losses, costs and expenses incurred by it up to the time of such cancellation, including a reasonable allowance for overhead and profit. Any Seller-issued specification referred to herein or annexed hereto represents a standard form of specification covering products substantially identical in type and character to that ordered/purchased by Customer hereunder; however, there may be some variation in the details of design and construction of any particular product. The provisions of any Seller-issued specification are merely descriptive in nature and are not to be construed as warranties of any kind. Seller reserves the right to make such changes in details of design and construction as shall, in its judgment, constitute an improvement over such former practice as may be shown or described in the specifications. Seller does

not, nor shall it be required to supply detailed or shop working drawings of its products.

**3. Prices.** Until a purchase order is confirmed and accepted by Seller, all prices quoted by Seller are subject to change without notice. Should Customer require any changes to be made in the specifications, quantities, or drawings contained in any purchase order that has been accepted by Seller, then Seller shall be entitled to an equitable adjustment in the price, delivery date, or both contained in such purchase order.

## **4. Payment Terms, Title & Remedies for Non-Payment.**

(a) Payment terms for all products supplied to Customer under this Agreement shall be net on Invoice/Delivery without any right of set off. All invoices shall reflect and payments shall be made in U.S. Dollars or Euros as specified in the purchase order, unless otherwise agreed by the parties in writing. Payment shall be sent to the location indicated in the invoice. Seller's prices do not include any applicable sales, use, excise, value added or similar taxes. If, under any applicable law or regulation, Seller is required to pay or collect any tax upon any product(s) supplied to Customer hereunder, which tax is based upon the sale, transport, delivery, use, or, consumption of such product(s), the price to be paid by Customer for such product(s) shall be increased by the amount of any such tax and Customer shall pay such tax as part of the purchase price for such products unless Customer provides a complete and accurate exemption certificate in advance as prescribed by applicable law. If Customer fails to make any payment when due, there will be a service charge of one and one-half percent (1 1/2%) of the total amount due per month or the maximum legal rate allowed by law, whichever is less.

(b) At Seller's request, payments shall be made through the medium of an irrevocable Letter of Credit established by the Customer at the time of placing the order, in favor of and acceptable to Seller and confirmed by a bank satisfactory to Seller. Such Letter of Credit shall provide for payment of partial shipments and any cancellation charges and failure to provide such Letter of Credit shall be grounds for Seller to terminate the order.

(c) To the extent permitted by applicable law, Seller reserves a security interest in all products until payment in full has been collected and Customer agrees to notify Seller prior to relocation of any product in which Seller has a security interest. Customer shall execute any and all document(s), including a financing statement, necessary to perfect Seller's security interest in any product supplied to Customer hereunder, which has not yet been paid in

full by Customer. Customer authorizes Seller to file at Customer's expense any financing statement relating to such products without Customer's signature, except where prohibited by law.

(d) Should Customer fail to make any payment hereunder when due, then, in addition to all other remedies available at law or specified herein, Seller shall be entitled to take possession of the products for which payment has not been made, wherever located, and remove same, without legal process, at Customer's expense and Customer grants Seller a license to enter any premise necessary to take such possession.

**5. Availability.** Customer acknowledges and agrees that the products are subject to availability. Seller will try to make the products available as far as this is reasonable. Seller may cancel any order or any part of an order without cause at any time and without penalty, and Seller's sole obligation shall be to return any down payment paid by Customer. If Customer is delinquent in the payment of any invoice, or is otherwise in breach of this Agreement, Seller may, at its option, withhold shipment (including partial shipments) of any order, or require Customer to prepay for further shipments. Seller shall retain the right to suspect performance of any order or require payment in cash, security or other adequate assurance satisfactory to Seller when, in its opinion, the financial condition of Customer, or other grounds for insurance, warrant such action.

**6. Shipment/Delivery/Acceptance.**

(a) All products purchased by Customer pursuant to these terms and conditions will be shipped F.O.B. Seller's manufacturing facility. Freight will be prepaid and added to the invoice based on common carrier rates.

(b) An approximate delivery date will be established by Seller upon receipt of each purchase order. The established delivery date is the best estimate possible based on current and anticipated factory operations of when product will be shipped. If Seller has reason to believe that delivery of products will not be completed by the approximated delivery date, Seller will notify Customer of the duration of the anticipated delay. Seller assumes no liability whatsoever to Customer or to any third party for any loss or damage, including any indirect or consequential damage, such as, but not limited to loss of production, loss of business or loss of profits, resulting from any delay or deviation in delivery. If shipment of any product or the performance of any act required hereunder is delayed on account of Customer, payment shall become due when Customer is notified that Seller is ready to ship and the products to be shipped shall, thereafter, be held by Seller at Customer's risk and expense. Seller reserves the right to ship any product(s) ordered hereunder in advance of the scheduled delivery date,

unless Customer has specifically stipulated in the purchase order for such product(s) that such product(s) are not to be shipped in advance of the scheduled delivery date.

(c) Delivery shall occur and risk of loss shall pass to Customer upon delivery of the products to the carrier regardless of F.O.B. location. Any claims for loss, breakage or damage of products (whether concealed or obvious) are Customer's responsibility and should be directed to the carrier. Seller will render Customer reasonable assistance in securing satisfactory adjustment of such claims. Any notices of shortages or other errors must be made by Customer within fifteen (15) days of receipt of product shipment. Failure to provide such notice shall constitute an unqualified acceptance of the shipped order and a waiver of all claims by Customer concerning the condition, quantity or correctness of the subject order.

FOR PRODUCTS TO BE EXPORTED, THE FOLLOWING ADDITIONAL PROVISIONS SHALL APPLY:

Unless otherwise agreed by the parties, Customer shall be responsible for obtaining any licenses and permits required for exporting or re-exporting any products from any jurisdiction, including from the United States. In no event shall Seller be liable to Customer or to any third party if any required license or permit is delayed, denied, revoked, restricted or not renewed, nor, shall Customer be relieved of its obligation to accept delivery of or to pay for any products requiring such license or permit.

If Seller agrees to make the export shipment from its factory, all fees and expenses, including, but not limited to, those covering the preparation of consular invoices, storage costs, marine and war risk insurance, forwarders' fees and inland freight charges, shall be payable by the Customer upon submission of invoices therefor. Unless otherwise instructed by Customer, Seller will prepare consular documents according to its best judgment, but without liability for fines or other charges due to error or incorrect declarations.

It is Customer's obligation to comply with all applicable national and international export, and/or economic sanctions laws and regulations and to obtain necessary government approval prior to the export and/or re-export of products and/or technology. Diversion of any products is strictly prohibited. Failure to comply with all applicable export and/or economic sanctions laws and regulations may result in serious consequences including, without limitation, monetary fines, loss of export privileges, imprisonment and/or blacklisting by government bodies.

**7. Software.**

(a) Customer acknowledges and agrees that products supplied hereunder may include embedded computer software ("Software") and related technology, which Seller either owns or licenses from third parties. Customer agrees that, in such event, the following shall apply: (i) Customer is granted a non-transferable, royalty-free license to use the Software in object code form only; (ii) any license so granted is limited to the use of the product containing the Software only in the manner authorized by Seller; (iii) Customer may not sublicense the Software to any other entity nor assign its license rights; and (iv) nothing contained herein shall cause Customer to acquire any right, title, or interest in the Software anywhere in the world, except as authorized herein; however, in the event Customer transfers title to any product containing the Software, the license granted hereby shall transfer to Customer's transferee.

(b) Any license granted to Customer hereunder shall continue: (i) until terminated in accordance with this Agreement, or, (ii) for the useful life of the Product in which the Software is embedded or is otherwise an integral part, or, (iii) for the useful life of the Software, whichever is shorter. The alteration, modification, removal or unauthorized use of any Software contained in any product supplied hereunder constitute a breach of this Agreement and shall automatically terminate any license granted hereby.

**8. Installment Shipments.** Seller reserves the right to deliver the products in installments. Each installment may be invoiced separately, and Customer will pay each invoice when due, without regard to delivery or non-delivery of subsequent installments. Delay in delivery of any installments shall not relieve Customer of its obligations to accept remaining installments. Requests to reschedule deliveries will be subject to acceptance by Seller.

**9. Product Use and Installation.** Products shall be used and installed in a manner and in an environment that conforms to the manufacturer's operating specifications and requirements. Customer will bear all cost and expense for any additional necessities required for such proper use and installation. Upon request, Seller may provide a competent technical representative to supply technical advice and assistance on the installation and/or operation of any product(s) supplied hereunder, subject to the terms and conditions of a written consulting services agreement executed by each party's duly authorized representatives. In no event shall Customer use any Products supplied by Seller for creating, handling or using atomic energy or any activity associated therewith. Customer agrees that it shall be strictly liable for any breach of the foregoing provision and shall indemnify, defend and hold Seller harmless from and against any and all liability, loss, or, damages arising from the use of any Products that is not in accordance with the provisions of this paragraph.

## **10. Non-Infringement & Product Warranties.**

(a) Seller warrants that each product purchased hereunder, insofar as of its own design and manufacture, shall not infringe upon the intellectual property rights of any third party. Seller agrees to indemnify, defend and hold Customer harmless for all damages or costs resulting from any claim or suit alleging that products supplied to Customer hereunder infringe upon the intellectual property rights of any third party, provided, however, that Seller is promptly notified of any such claim and that Customer cooperates with Seller in the investigation, defense or settlement of any such claim. In the event that any product supplied hereunder is found to be infringing, Seller shall, at its sole option and discretion either: (i) procure for Customer the right to continue using such product(s), (ii) replace the product(s) with a similar, non-infringing product, or (iii) refund to Customer the full purchase price paid for such product(s). The foregoing sets forth Seller's sole liability to Customer for any product supplied hereunder that is found to be infringing. This warranty shall not apply to any products that are supplied hereunder pursuant to a Customer issued design specification, in which case, Customer shall indemnify, defend and hold Seller harmless as to any claim or action that its design specification infringes upon the intellectual property rights of a third party.

(b) Seller warrants that each product purchased hereunder, insofar as of its own manufacture, will be free from defects in material and workmanship. If, within the earlier of one year of installation or the date of shipment, any product or part thereof is found to be defective when installed, maintained and/or used in accordance with the installation and operating guidelines in effect for such product(s) at the time of sale, Seller will repair or replace said product or part, f.o.b. its factory, provided Customer returns the original product or part to Seller's factory, transportation prepaid, and Seller's inspection reveals it to have been defective or nonconforming within the terms of this warranty. No product or part thereof shall be returned by Customer pursuant to this warranty without Customer first giving prompt notice of nonconformance or defect to Seller and obtaining Seller's prior written authorization. Should the foregoing warranty fail of its essential purpose, Seller's sole liability to Customer shall be to refund to Customer the full purchase price paid by for the nonconforming or defective product. Customer acknowledges and agrees that Seller's warranty does not extend to:

- (i) Corrosive or erosive related failures and/or damage;
- (ii) Failures not reported to Seller within the stated warranty period;
- (iii) Failures or damage due to misapplication, abuse, improper

- installation, abnormal conditions of temperature, water, dirt or corrosive matter;
- (iv) Failures or damage due to operation above rated capabilities or in an otherwise improper manner;
  - (v) Products which have been in any way tampered with or altered by anyone other than an authorized representative of Seller;
  - (vi) Products damaged in shipment, storage, or, otherwise without fault of Seller; and
  - (vii) Labor and/or material expenses incurred by Customer, which relate in any manner to any alleged defective products, unless Customer incurs such expenses under express written authorization from Seller.

(c) Any equipment and accessories not of Seller's manufacture are warranted only to the extent of the original manufacturer. Seller shall not be liable for damage of any kind resulting from erosive, corrosive, or, other harmful action of any gases, liquids, or any other substance handled by the Products. Seller assumes no responsibility for damage to products sold hereunder that are due to deterioration during periods of storage by the Customer. Customer, and any person claiming by or through Customer, assumes all liability for the consequences of misuse by it or its personnel.

(d) In the event any product(s) or part(s) thereof supplied hereunder are altered or modified by Customer without the express written consent of Seller, any and all warranties extending thereto, whether stated hereinabove or contained in any documentation accompanying such products, shall immediately cease and terminate.

(e) Any defect shall be brought to Seller's attention in writing and without delay, however, not later than 14 calendar days after receipt of the products and, in the case of latent defects, no later than 14 calendar days after the defect has been detected.

**SELLER MAKES NO OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES REGARDLESS OF THE CAUSE.**

**11. Product Returns.** Products shall not be returned to Seller without its written consent. All costs of return shall be the responsibility of Customer, unless the product is being returned pursuant to a valid warranty

claim. Any products returned to Seller for any reason shall be thoroughly cleaned and any hazardous or toxic substances completely removed and/or neutralized.

**12. Required Insurance, Indemnification, Limits of Liability:**

(a) Fire and extended coverage insurance in an amount sufficient to protect Seller's interest in the products is to be obtained from and maintained with an insurer satisfactory to Seller by and at the expense of Customer from the time of delivery until the products have been paid for in full. Customer shall assume all losses resulting from any cause that may not be covered by insurance.

(b) Customer shall bear all risk of theft, loss or damage not caused by Seller for all product(s) acquired pursuant to this Agreement. In addition, Customer shall indemnify, defend and hold Seller, its officers, directors, employees, affiliates and agents, harmless from all loss, liability, claims or expenses (including reasonable attorneys' fees) arising out of Customer's use, storage, transfer or disposal of the products, including but not limited to, liabilities arising from bodily injury, including death, or property damage to any person, unless caused as the result of a negligent or intentional act or omission of Seller.

(c) The liability of Seller in respect of all damages, losses, costs or expenses, whether suffered or incurred by Customer or by any third party, arising in any manner incident or related to this contract, to the performance of Seller's obligations hereunder, or, to the use or operation of any product(s) supplied hereunder, shall be limited in the aggregate to the actual price paid by Customer for the products giving rise to such liability. The foregoing limitation shall not apply, however, to Seller's obligations under any warranty of non-infringement.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR ELSEWHERE, SELLER SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY (AND CUSTOMER SHALL INCLUDE ANY SUCH DISCLAIMER IN THE TRANSFER OR SALE OF GOODS TO ANY THIRD PARTY), WHETHER OR NOT CLAIMING BY OR THROUGH CUSTOMER, FOR ANY SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUCH AS, BUT NOT LIMITED TO, DAMAGES FOR: (I) LOSS OF THE USE OF THE PRODUCTS OR ANY EQUIPMENT CONTAINING SUCH PRODUCTS, (II) INJURY TO ANY SUCH EQUIPMENT, (III) LOSS OF PROFITS, (IV) LOSS OF REVENUE, (V) LOSS OF PRODUCTION, OR (VI) REPLACEMENT OR REPAIR COSTS (OTHER THAN AS PROVIDED IN CONNECTION WITH THE ABOVE STATED WARRANTY), REGARDLESS OF WHETHER SUCH**

**DAMAGES ARE BASED UPON CONTRACT, TORT, STRICT LIABILITY IN TORT, NEGLIGENCE OR INDEMNITY.**

**14. Confidentiality:** Each party shall keep confidential and shall not disclose any information it receives from the other party, which is designated as proprietary and/or confidential, and shall protect such information using at least the same degree of care it uses to protect its own proprietary and confidential information of like importance, but in no event may either party use less care than a reasonably prudent business person in a like or similar situation. Neither party shall disclose or permit any third person or entity access to the confidential or proprietary information of the other party without the disclosing party's prior written permission, except for each party's legal, insurance and accounting advisors, as appropriate. Any proprietary information concerning Seller, its products, data, documentation, services, or manufacturing processes which is disclosed to the Customer incident to the performance of this Agreement shall remain the property of Seller and no rights are granted to Customer to: (a) produce or have produced any such products, or, (b) practice or cause to be practiced any such processes, or, (c) reveal, disclose, or publish any such data and documentation. Seller's confidential and proprietary information may be used by Customer solely to use or service the products sold hereunder.

**15. Assignment:** Customer shall not assign this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld.

**16. Force Majeure:** Neither party shall be responsible for delays or failure in performance of this Agreement (other than failure to pay any amounts due) to the extent that such party was hindered in its performance by any act of God, civil commotion, labor dispute, unavailability or shortages of materials or any other occurrence beyond its reasonable control. For contracts or orders with a price of \$200,000 or more and/or for development contracts of a special nature, where Seller's performance or completion of such contracts or orders is delayed or suspended for a protracted period, directly or indirectly, as the result of war, national emergency, federal or state statute of government rules or regulation, priority controls, defense efforts, or any like cause (as distinguished from the normal delays in manufacturing caused by factors beyond the control of the Manufacturer, such as strikes, fires, traffic embargoes, etc.), either Seller or Customer, at any time after the end of 180 days following the start of such delay or suspension, may terminate the contract or order upon 10 days' written notice to the other and, upon the giving of such notice, the Customer shall pay Seller for all costs and expenses incurred and commitments made in connection with performance to the date of such suspension, plus a reasonable profit thereon. Title to

all material paid for by Customer shall thereafter vest in Customer, and such material shall thereafter be held at Customer's risk and expense. In the event that the contract or order has not been so terminated, Seller will, promptly after the cessation of the cause of such delay or suspension, notify Customer of the revised shipping schedule and proceed with performance in accordance therewith.

**17. Seller's Agents:** Customer acknowledges that it has been advised that no agent, employee, representative or dealer of Seller has any authority to bind Seller to any affirmation, promise, representation, or warranty concerning any of the products and, unless such affirmation, promise, representation, or warranty is specifically set forth in this Agreement, it does not form a basis of this bargain and shall not be enforceable against Seller.

**18. Notices:** Any notice required to be given under this Agreement shall be in writing and shall be given by certified mail, return receipt requested, postage prepaid, or guaranteed overnight delivery service to the address provided to Seller by the other party.

**19. Severability:** If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of the remaining provisions of this Agreement.

**20. Entire Agreement/Modifications:** Nothing contained in any purchase order or other Customer issued document will in any way serve to modify or add any new terms or conditions to this Agreement or to the sale of any product(s) to Customer made hereunder. The parties agree that the terms and conditions of any purchase order issued by Customer shall be subject to the terms and conditions of this Agreement. Unless the parties have executed Seller's Master Supply and Purchase Agreement, this Agreement is the full and complete statement of the obligations of the parties relating to the subject matter hereof, and supersedes all previous agreements, understandings, negotiations and proposals. Any representation, promise, course of dealing or trade usage not contained or referenced herein, will not be binding on Seller. No provisions of this Agreement shall be deemed waived, amended, or modified by any party unless such waiver, amendment or modification shall be in writing and signed by a duly authorized representative of all parties.