

## Terms and conditions of Sale

### **DEFINITIONS**

- “customer”** : means the customer reflected on the order form;
- “goods”** : means the goods described in the order form;
- “order form”** : means the order form to which these terms and conditions are attached;
- “seller”** : means **Hybrid Automation CC, Registration No. 2005/145000/23**
- “these terms and conditions”** : means these terms and conditions of sale, the contents of the customer’s orders and any written acceptance of the customer’s orders by the seller.

### **GENERAL**

All goods and services supplied by the seller shall be supplied subject to these terms and conditions only. These terms and conditions shall take precedence over any terms and conditions which may be contained in the customer’s order, or other customer documentation, and may only be altered with the express prior written agreement of the seller.

Any conflicting statements or special terms contained in any acceptance order or other documentation issued by the customer shall not be effective, unless such conflicting statement or special terms have been expressly agreed to in writing by the seller.

### **ORDERS**

The customer shall purchase goods from the seller by completing an order form specifying the quantities and particulars of the goods required and, if applicable, the address to which the goods must be delivered. No order for any goods shall be binding on the seller unless and until the seller has accepted such order in writing. The seller shall be entitled in its sole discretion to decline any order placed. Each order accepted by the seller shall be and constitute a separate contract.

### **PRICES**

The prices payable by the customer to the seller for the goods shall be the ruling prices stipulated in writing by the seller at the time the order for the goods is placed by the customer in terms of clause, and such prices shall include Value Added Tax.

### **TERMS OF PAYMENT**

**Project work / CAPEX orders:** a 50% deposit is required on all Purchase orders prior to any work commencing. 40% due on installation and 10% on commissioning.

**General sales and services:** Payment terms are strictly cash upfront unless a credit facility has been approved by Hybrid Automation, For Customers with credit facilities authorised by Hybrid Automation, payment is strictly 30 (thirty) days from date of the statement (“Statement”) without set-off or deduction, and free of exchange. The purchase price for all goods or services if applicable, shall be paid by the customer to the seller into a bank account to be nominated by the seller to the customer in writing from time to time. Should the customer be unable to take delivery of the goods, payment shall nevertheless fall due. The terms of payment set out above, shall apply equally to price variation claims.



The seller shall be entitled to charge interest at two percentage points above the ruling prime overdraft rate quoted by Standard Bank in respect of any period during which payments are overdue.

#### **DELIVERY**

If the goods are delivered by road, then delivery shall be deemed to have been effected when the goods are off loaded at the customer's premises, provided that when the carrier has been nominated by the customer, delivery shall be deemed to have taken place at the time that the goods are handed to the nominated carrier. All risk in and to the goods shall pass to the customer upon delivery. The customer shall be obliged to accept the delivery of the goods at the date specified or requested by the customer in writing in the order of the customer referred to in clause and which has been accepted by the seller in terms of clause.

Should the customer fail to accept delivery on such date, the risk of loss or damage to the goods together with all and any expenses pursuant thereto, including but not limited to insurance, storage and further delivery charges shall be borne by the customer and paid to the seller by the customer on request. When delivery of the goods is spread over a period, each separate delivery thereof shall be invoiced when dispatched. Each statement shall be treated as a separate account and payable in terms of clause. Where there is a shortage in any goods delivered to the customer or where the goods so delivered are delivered in a damaged condition, the customer shall give written notice to the seller of such shortage or damage within 2 (two) days of delivery to the customer's premises.

Should the customer fail to give such notice, the customer shall have no claim in respect of any alleged shortages or damage and the goods shall be deemed to have been delivered in a complete and undamaged state.

The seller shall endeavour to deliver the goods at the earliest possible time but in no instance can the seller accept liability for any loss or damage arising from the late delivery of the goods and time shall not be of the essence of the contract. No liability shall attach to the seller as a result of the failure to deliver if such failure is due to circumstances beyond the seller's control.

It is recorded that delivery dates shall be regarded as indicative only and whereas the seller will do everything possible to keep to such dates, the seller cannot be held responsible for any failure to do so. Notwithstanding anything to the contrary in these terms and conditions, but always subject to the provisions of clauses the seller's liability in respect of any failure by it to deliver the goods, or to deliver the goods timeously, shall be limited to an amount equal to the amount of the purchase price of such goods and, in any event, the seller shall not be liable for any consequential loss, loss of profit, special damages or any indirect loss of the customer.

#### **RETURN OF GOODS**

The goods will not be accepted for return without the prior written consent of the seller first being had and obtained, and should such consent be given the goods must be returned carriage paid to the seller undamaged in the original factory sealed packing. Provided that inspection by the seller reveals that the goods are in a saleable condition, which decisions shall rest solely with the seller, credit will be passed to the customer less 15% (fifteen per centum) of the original invoice price to cover the cost of examination, handling and repacking. In the event of the seller making an incorrect delivery, then and in such event the goods shall be returned without the prior written consent of the seller being first had and obtained and such returns shall be for the account of the



seller and shall be properly marked with the order number. Should the goods be returned to the seller by the customer without the prior written consent having been given, the seller shall be entitled to store the goods at the customer's sole risk and a reasonable charge for such storage shall be made?

#### **VARIATIONS**

The seller shall not be obliged to accept or act upon any changes, modifications or additions to original customer instructions if such changes, modifications or alterations were given subsequent to the seller's acceptance of the customer's order. No variations of these terms and conditions or additions hereto shall be of any force or effect unless reduced to writing and signed by both the seller and the customer.

#### **LIABILITY**

The seller shall not be liable to the customer for any damages including, but not limited to, consequential loss or loss of profits arising from the performance or non-performance by the seller of its obligations in terms of these terms and conditions. This exclusion of liability shall relate to claims for breach of contract as well as for alleged negligence on the part of the seller.

The customer further indemnifies the seller against any claims that may be made against the seller by any third party for any damages including, but not limited to, consequential loss or loss of profits arising from the performance or non-performance by the seller of its obligations in terms of these terms and conditions or in connection with the use of the goods, whether such claims are in respect of damage to property, consequential loss, personal injury or death.

The customer agrees that the seller shall not incur any liability under the Occupational Health & Safety Act No. 85 of 1993 (specifically Section 10 of that Act).

The seller shall not be liable for any damage to or subsequent malfunctioning of goods as a result of work done on the goods or services rendered in connection with such goods by any unauthorized third party.

#### **WARRANTY**

The customer's claims against the seller for breach of warranty are restricted to the terms set forth in any warranty form furnished to the customer with the goods sold. The said warranty is given in lieu of any liability at common-law, and any other warranties or representations concerning the goods sold, whether express or implied by law, are excluded.

Any warranty given by the seller from time to time shall not apply if the customer fails to use the goods in the manner recommended by the seller or if the goods are used for any purpose other than that for which they are intended, or if the goods are modified or repaired by an unauthorised person, or are damaged by the customer in any way.

#### **BENEFIT, RISK AND OWNERSHIP**

Notwithstanding delivery of the goods to the customer, the seller shall retain ownership of the goods until whole of the purchase price, together with interest charged in terms of clause above (if any) shall have been paid in full. All other benefits and risks in and to the goods shall pass to the customer upon delivery having been affected.

#### **BREACH**

In the event of the customer committing any breach of these terms and conditions including, but not limited to, the failure to make payment of the purchase price as agreed, the seller shall be



entitled forthwith to claim repossession of the goods, for which purpose the customer hereby irrevocably authorizes the seller, through its duly authorized representative/s, to enter upon the premises where the goods are kept, to take repossession of the goods. The exercise of this right shall not preclude the seller from its right to claim damages from the customer occasioned by its breach. The seller shall, in the alternative, be entitled to enforce the provisions of these terms and conditions and claim payment of the full amount due by the customer, any instalments of the price falling due in the future to become due and payable immediately. In such event the seller shall be entitled to charge interest on overdue amounts as provided in clause above. Should the seller take legal action against the customer in the event of the customer's breach, the customer shall be liable for all legal fees incurred by the seller in the recovery of any amounts owing, including costs on the attorney and own client scale and collection commission. If the customer breaches these terms and conditions and the seller elects not to cancel the agreement of sale, the seller shall be entitled to suspend performance of any of its obligations until the customer has complied with its obligations.

**INDULGENCE**

Any relaxation, leniency or indulgence which the seller may extend to the customer shall not in any way constitute a waiver of seller's rights in terms hereof.

**ARBITRATION**

Any dispute arising out of or in connection with a sale to which these terms and conditions relate shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrator appointed in accordance with the said Rules, seating in Johannesburg, South Africa.

**HEADINGS**

The headings to the clauses in these conditions are for reference purposes only and shall not affect their interpretation.

**SUSPENSION OR CANCELLATION OF DELIVERY**

The seller reserves the right to suspend, delay or cancel the delivery of some or all of the goods or to require advance payment for them if: The customer is insolvent or is unable to pay its debts, or seeks to effect any compromise with any of its creditors or compound any of its debts; or The customer is placed under an order of sequestration, judicial management or liquidation, whether such order be provisional or final; or The customer is the subject of any resolution passed to enable it to be wound-up or

dissolved; or Any judgement is given against it in any court of law and, if appealable, is not appealed against within the period allowed for the lodging of such an appeal or, if not subject to an appeal, remains unsatisfied for a period of 10 (ten) days; or The customer is in breach of any of its obligations to the seller.

Any suspension, delay or cancellation as a result of any of the a foregoing events shall not affect any other right which the seller may have against the customer based on these terms and conditions of sale or otherwise.

**INABILITY TO SUPPLY OR DELIVER**

If the seller cannot deliver, cannot deliver timeously, some or all of the goods for any reason beyond its control, including but not limited to lack of instruction from the customer, stock shortage, industrial dispute or break-down, production delays, government action, state of war, riot, or civil disturbance, natural disasters or act of God, the seller may, in its discretion, cancel the



whole or any part of the agreement of sale forthwith. In the event of such cancellation the seller shall not be liable for any loss whatsoever (including any consequential loss of profits, special damages or any indirect loss) thereby caused.

### **INSTALLATION**

In case installation of the goods is agreed upon, the following provisions shall apply and the seller's price shall be based on the fulfilment of the following provisions by or at the expense of the customer.

The provision of adequate and lockable storage on or near the installation site for the goods to be supplied in such a way that the goods are protected against theft and any damage or deterioration; any item lost or damaged during the storage period shall be repaired or replaced at the customer's cost.

The timely execution and completion of the preparatory works at customer's sole expense and risk, in conformity with the requirements, which the seller shall indicate to the customer in due time; the site preparation shall be in compliance with all safety, electrical and building codes relevant to the equipment and its installation. Sufficiency of such plans and specifications, specifically including, but not limited to the accuracy of the dimensions described therein, shall be the sole responsibility of the customer. The installation site shall be made available to the seller without obstacles in due time to enable the seller to start the installation work at the scheduled date; the seller's installation personnel shall not be called upon to do the installation of the goods until all preparatory works have been satisfactorily completed.

The availability of the goods to be delivered in due time and in proper condition at the installation site. The timely provision free of charge of the permits, licenses, rights of way and other necessary permits of the pertinent authorities required for or in connection with the installation and putting into operation of the goods to be delivered.

The timely provision of all visa, entry, exit, residence, work or any other permits necessary for the seller's personnel and for the import and export of tools, equipment and material necessary for the installation works and subsequent testing of the goods.

The availability free of charge on or near the installation site of adequate and lockable rooms for the seller's personnel (equipped with sanitary installations) and for the storage of the tools and instruments of the seller's personnel.

In case any or all of the above provisions are not properly or not timely complied with, or the seller has to interrupt the seller's installation works and subsequent testing for reasons not attributable to the seller, the period of completion shall be extended accordingly and any and all additional costs resulting from such extension shall be for the customer's account. The seller neither assumes liability nor offers any warranty for the fitness or adequacy of the premises or the utilities available at the premises in which the goods are to be installed, used or stored.

### **ACCEPTANCE OF GOODS**

In case installation of the goods is offered, the seller shall notify the customer when the goods installed will be ready for testing and acceptance, inviting the customer to attend the seller's standard tests or such tests as may have been agreed upon in the order to demonstrate compliance with the agreed specifications and/or to inspect the installation work.

If the customer's representative fails to attend the testing on the date notified, the seller's technical staff will commence with the tests according to the seller's standard test procedures and these tests shall be considered performed in the presence of the customer's inspector and acceptance shall in such case take place on the basis of the results stated in the test certificate signed by the seller.



Should the customer wish to reject the goods installed on reasonable grounds, the customer shall submit to the seller its reasons in detail and in writing within 10 days after completion of the acceptance tests concerned, The seller shall as a sole remedy correct the installation complained of as soon as possible and the relevant parts of the acceptance test shall be repeated within a reasonable period of time in conformity with the procedures outlined above. If within 10 days after completion of the acceptance test the seller shall not have received the completion document signed by the customer or a report of rejection based on good reasons, the goods installed shall then be considered as having been accepted by the customer.

Any partial non-fulfilment of the seller's obligations solely attributable to the seller entitles the customer to withhold payment only to a corresponding, reasonable amount. The taking into operational use of any of the goods installed shall also constitute acceptance of the goods concerned. Minor defects or deviations not affecting the operational use of the goods installed shall be stated in the acceptance certificate, but shall not entitle the customer to obstruct or suspend acceptance of the goods or the installation. The seller undertakes to remedy such defects as soon as possible but subject to the provisions of this clause.

#### **GOVERNING LAW**

These terms and conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

#### **CONSENT TO JURISDICTION**

For the purpose of any legal proceedings the customer hereby consents to the jurisdiction of any Magistrate's Court having jurisdiction over the parties. This notwithstanding it shall not preclude the seller from instituting action out of any division of the High Court of South Africa having jurisdiction.

#### **ACCEPTANCE OF ORDERS**

All customer's orders are to be accompanied by instructions from the customer as, in the sole discretion of the seller, are necessary to enable the seller to supply the goods and/or render the services set out in the customer's order. Should instructions not be timeously furnished, or be deficient in any respect, then the seller shall be entitled to increase the price set out in the customer's order by such amount as may be necessary to cover the increase in costs occasioned by the delay in furnishing of the instructions.

The seller reserves the right to employ sub-contractors in respect of a portion or all of the services to be rendered or goods to be supplied to the customer. Once acceptance of a customer's order has been delivered to the customer, a binding contract on the items, subject to the conditions contained herein, will have been entered into by and between the seller and the customer, which contract shall not without the consent of the seller be capable of variation and/or cancellation. Should the seller agree to cancel the contract in whole or in part, then the customer shall upon date of cancellation pay to the seller in cash, free of bank exchange or any deduction or set-off at Johannesburg, as and by way of a payment in lieu of damages, a cancellation fee equal to an aggregate of 15% of the contact price plus any ancillary charges whatsoever nature, incurred by the seller as a result of such cancellation. Should the cancellation involve the return of goods already delivered, the provisions of clause shall apply mutatis mutandis. A certificate by a director of the seller shall, ipso facto, be proof of the amount of ancillary charges incurred and shall be sufficient to discharge the burden of proof for the purposes of pleading, and no further evidence relating thereto need to be adducted at any trial at which a document is rendered as evidence. No counter offer in respect of any of the terms of the quotation shall be accepted and any acceptance



of a quotation attached to or delivered with a counter offer shall, in itself, be determined to form part of such counter offer and shall accordingly not be valid or binding upon the seller.

#### CONSENT

The customer specifically consents that the supplier: - may carry out a credit enquiry in respect of the customer; may access a Credit Bureau's data base before granting any credit to the customer; may, where credit is granted, transmit details to a Credit Bureau of how the customer has performed in meeting with its obligations under the account, and share such information with other Credit Bureaus for the purposes of assessing further applications for credit by the customer (and its members, directors, or partners as the case may be) and for occasional debt tracing, debt collection and fraud prevention purposes; if credit is granted in favour of the customer and the customer fails to meet its financial commitments to the supplier, the supplier may record the customer's default with a Credit Bureau; may refer information relating to the customer's credit performance to a Credit Bureau for banking and credit assessment, statistical analysis, and credit scoring purposes and use such information to identify products ( including those supplied by third parties) which may be relevant to the customer; may record the existence of a customer's account with the supplier at a Credit Bureau(s).

#### PERMITS AND LICENSES

The customer acknowledges that the goods and/or documentation supplied by the seller may be subject to export regulations and the customer acknowledges that it is familiar or agrees to become familiar with such regulations. The customer furthermore agrees that it will not deal with the goods and/or documentation in violation of such regulations, more specifically will not re-export or otherwise dispose of such goods and/or documentation without the applicable, prior written authorization of South Africa or other national authorities or the seller respectively. The customer shall at its own expense obtain all necessary consents, permits, licenses or other authorities from the owner of the premises, Government, Municipal, Local or other competent authorities and others whose permission is or may be necessary for the installation or use of the system. The seller does not warrant or represent that any such consent, permits, licenses or other authorities will be granted and failure to obtain one or other of the same shall not invalidate any order accepted by the seller. In the event that an end-user statement and/or import license is required, the customer shall provide the seller with such document upon receiving the seller's written request.

#### ADDITIONAL TERMS APPLICABLE TO EXPORT SALES PRICE

All prices quoted:

- shall be exclusive of any other taxation, duty or import that may be imposed by any statutory or quasi-statutory body from time to time; are expressed in Rand currency and based on the rate of exchange applicable and ruling on the date of quotation and any variation on the quoted rate shall be for the customer's account;

- are based on the full quantities specified being accepted by the customer and any variation at the instance of the customer in the quantity orders shall, in the discretion of the seller, invalidate the price quoted;



- are exclusive of delivery charges. Any charges for export shall be separately quoted in terms of these terms and conditions and shall include transport, insurance and forwarding costs.

- any variation in the exchange rate after date of quotation, or in Value Added Tax and/or any other tax payable from time to time and/or the cost to the seller of any matter relating to delivery, installation, insurance, freight, clearance of goods from customs and/or authorities, cable reticulation and/or any other matter whatsoever upon which the price quoted has been based shall, insofar as any such variation affects the cost to the seller of complying with the quotation, result in the price as set out there in being varied in proportion to any such variation and shall be for the account of the customer. A certificate from the seller's auditors setting out the extent of the variation in respect of any of the aforesaid matters, shall be absolute and conclusive proof thereof and accordingly the seller shall not be obliged to lead any other evidence relating to such variation at any trial at which such variation is placed in dispute. All quotations are valid for 14 (fourteen) days from date hereof, where after they shall lapse and be ipso facto null and void unless the seller has agreed to an extended period of validity in writing.

