



AUTOMATION INTERNATIONAL LTD

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## *Automation International Ltd. – General Terms and Conditions*

Automation International Ltd. (**Seller** or **we**) distributes, but does not manufacture, several automation products lines (**Products**). We are glad to offer those Products for sale to you (**Customer** or **you**) upon the express condition that any sale is subject to these General Terms and Conditions (**T&Cs**). These T&Cs are incorporated into and made a part of each of our quotation forms, order confirmations and invoices (**Contract Documents**).

**1. These T&Cs Govern:** Seller's quotation constitutes our offer to sell to Customer the Products, subject to our order confirmation with respect to specific Products, prices, quantities, delivery times, and payment and delivery terms, and subject to our invoice with respect to amounts due. Customer may accept our offer by issuing its purchase order (**PO**), but only as expressly limited to the terms of our offer. Seller expressly objects to and rejects any different, conflicting or additional terms or conditions in Customer's PO or other documents. You agree, including by issuing your PO, taking delivery or paying for or using any Product, to these T&Cs to the exclusion of any contrary, additional or different terms, provisions or conditions in the PO. (The Contract Documents with the non-preprinted terms of the PO shall be the agreement between the parties (**Agreement**)).

**2. Prices:** All prices are in and all payments shall be made in U.S. dollars. All prices, transfer of title, and risk of loss are FCA at Seller's facility (Incoterms 2000), or as otherwise stated in Seller's Contract Documents. (Please contact us if you would like a quote for different Incoterms for an additional charge.) Prices exclude all taxes, duties, tariffs, assessments, and other charges (including without limitation any countervailing duty or duties[, and all export taxes imposed by the manufacturer's country]), which shall be Customer's sole responsibility. Customer agrees to indemnify and hold Seller harmless from any liabilities and expenses resulting from Customer's failure to timely pay all such taxes, duties, tariffs, assessments, and other charges.

**3. Payments:** Payments are to be made by check only, sent by mail to the address specified in the Invoice. Payment terms are Net 30 days (with approved credit) from the earlier of date of shipment or invoice date unless otherwise specified in Seller's invoice. If payment is not made when due, Customer agrees to pay an administrative late fee at the rate of the lesser of: 1½% per month, or the maximum rate allowed by law, on the balance due from the due date, and Seller may suspend or cancel further deliveries or sales or service until the account is brought current, and shall not be liable for any resulting direct or indirect damages or expenses. Nonetheless, if at any time, Seller, in good faith determines that Customer's credit has become impaired, Seller may decline to ship Products to Customer, except for cash in advance or sight draft attached to a bill of lading (until such time as said credit has been re-established to Seller's satisfaction), or declare the price immediately due and payable, or both. If Customer fails to take delivery, the Products shall be held by Seller at Customer's sole risk in all respects, but Seller may nevertheless, acting as Customer's agent and at its expense, thereafter store, insure or otherwise protect the Products or may resell them for Customer's account.

**4. Cancellation and Termination:** There can be no termination of a PO or this Agreement without Seller's express written agreement. Most Intelligent Actuator Inc. (**IAI**) products are custom made at the factory after your order, therefore neither Seller nor IAI can accept design or order changes, suspensions, or cancellations after we accept your order. In the event of Customer's wrongful termination of a PO or this Agreement, Customer shall be liable to Seller for Seller's lost or anticipated profits; however, Customer's liability for such termination shall not exceed the sum of the PO plus Seller's direct costs incurred as a result of the termination plus any amounts under Sections 12 and 14, below.

Corporate headquarters:  
13006 Mula Lane, Stafford, TX 77477, USA  
Phone: 1-281-879-9505 Fax: 1 281-879-9510  
sales@ail-us.com www.ail-us.com

Regional offices:  
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**5. Packing and Shipping:** In most instances, Seller will use the original factory packaging for its shipments. We will generally try to accommodate reasonable Customer special packing and shipping requests, including paperwork requests.

**6. Delivery:** Delivery times are not guaranteed. As a distributor and not a manufacturer, we cannot accept any "time is of the essence" or similar clause, or pay any penalties for any "late" deliveries. All delivery times are non-binding good faith estimates only. Our policy is to try to notify customers promptly, though, if we learn of any delays in shipment. Expedited shipping may be available for an additional charge.

**7. Inspection; Rejection:** Customer shall provide the Seller with written notice of non-conforming Products within fifteen (15) days of receipt. Prior to returning any Product, Customer shall obtain from Seller a Return Materials Authorization number. Customer must return any non-conforming Product within thirty (30) days of receipt to Seller at Customer's sole cost and expense. All authorized returns which are accepted by Seller in its sole discretion shall be subject to a 5% (of original sales price) restocking fee.

**8. Manufacturer's Warranty:** Seller will honor only as to Customer the Products' respective manufacturers' warranties only, which warranties are available on the manufacturers' website. Seller does not separately warrant any Products. The manufacturer warranties apply only to Products that have not been damaged, altered or neglected, and are used, handled, stored, and maintained under normal use, conditions and serviced by properly trained personnel. No warranty covers: (a) deterioration, wear or damage, including but not limited to paint fading, rubber hardening, or other changes naturally occurring over time; (b) consumable components that wear out with use (batteries, moving parts, etc.); (c) freight to or from the factory; (d) noise or similar impressions that do not affect machinery performance; or (e) unauthorized modifications or alterations.

**9. WARRANTY DISCLAIMERS:** *Except for the manufacturers' warranties, all Products are provided "AS IS," without warranty or representation of any kind, either express or implied, including without limitation any implied warranties of merchantability, capacity, fitness for a particular purpose, non-infringement, or durability, compliance with standards or requirements (including but not limited to certifications, RoHs, WEEE directives, and REACH), or arising under any course of dealing or usage of trade, and any express warranties by representation, description, or other affirmation of fact, sample, or illustration, whether oral, written, or contained in any letter, brochure, website, image or other medium. Customer agrees that no agent, employee or representative of Seller has authority to bind Seller to any affirmation, warranty or representation concerning any Products other than as expressly set forth herein. Seller does not warrant the suitability of any goods for any specific end use.*

**10. LIMITATIONS OF LIABILITIES AND REMEDIES:** *In no event shall Seller be liable for consequential or special damages, loss of profits, loss of opportunity, loss of use or other damages, including but not limited to, bodily injury or property loss, resulting from the sale or use of the Products even if either or both of the above remedies fail of their essential purpose. Customer's exclusive remedy for any breach of warranty or breach by Seller of this Agreement shall be, in the Seller's sole discretion, replacement or repair of the defective Products without charge, a refund of the purchase price or a fair allowance against the price for the Products.*

**11. TIME LIMIT FOR CLAIMS.** *Customer agrees to promptly unload and properly store, insure, and keep safe any Products which are the subject of a dispute. In all cases, Customer agrees to make payment when*

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*due under the terms of the Agreement. Any action or proceeding arising out of or related to the Agreement or any Products must be commenced within one year after the cause of action has accrued.*

**12. Indemnification:** Customer shall indemnify Seller from and against all claims, liabilities, losses, damages, legal fees and expenses directly or indirectly resulting from arising out of or related to: (i) Customer's breach of the Agreement or (ii) any use, redistribution, or resale of the Products, including, but not limited to, personal injuries (including death) and property damage or loss, except that caused by Seller's willful misconduct.

**13. Independent Contractors:** The relationship between the parties is solely that of independent contractors. No party is the representative, agent, partner, or joint venturer of the other, and neither has any authority, right or ability to bind or commit the other in any way, and will not attempt to do so or imply that it may do so.

**14. Governing Law and Exclusive Jurisdiction:** This Agreement and any disputes between the parties shall be governed by the laws of the State of Texas other than its choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction and venue for any legal suit, action or proceeding arising out of this Agreement shall be Harris County, Texas. In any action or proceeding to enforce Seller's rights under this Agreement, Customer shall pay all of Seller's associated costs and expenses, including attorney's fees and costs, collection expenses, and other expenses in addition to any other relief to which Seller may be entitled.

**15. Force Majeure.** Seller's performance shall be excused where it is prevented or delayed by force majeure, including, but not limited to, war, threatened or actual act of terrorism, piracy, act of God, actual or potential strike or other labor dispute, inability to obtain labor or materials, unavailability or delay of carriers or transportation, government restrictions or regulations, or other causes beyond Our reasonable control. In such case, Seller shall give written notice of such force majeure event to the Customer, and Seller shall be relieved of liability and shall suffer no prejudice for failure to perform during such period. In such event, the time of performance shall be extended by such length of time as may be reasonably necessary to compensate for the delay, but the time extended shall not be less than the time actually lost. In the force majeure event continues for more than thirty (30) calendar days, Seller may, upon notice to Customer, cancel the sale with no further obligation.

**16. Entire Agreement; Amendments:** The Agreement is intended by the parties as a final and complete expression of their agreement with respect to the subject matter hereof, and shall supersede all prior understandings, writings, negotiations, and agreements with respect thereto. The Agreement may be amended only by a writing specifically referencing that which it is intended to modify and signed by duly authorized agents of the parties. The express terms hereof shall not be varied by any course of dealing, performance or usage of trade. Customer may request in writing changes in the Products or their delivery, but Seller shall proceed with the order only in accordance with the Agreement or upon such other terms and conditions as it may agree in a writing signed by its authorized representative. If such change increases or decreases the price or Seller's costs, or the time of performance, a reasonable adjustment, including, but not limited to, Seller's customary and usual amount for overhead and profit for change orders, shall be made in the purchase price or delivery schedule, and the Agreement shall be deemed so modified.

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