

P & S Automation Ltd

Effective from: 12th August 2004

1) GENERAL

a) In these Conditions:

“COMPANY” is P & S AUTOMATION LIMITED (Company Number 2840724) whose registered office is at Middleborough House, 16 Middleborough, Colchester, Essex CO1 1QT and

includes any sub-contractor of Company;

“CONTRACT” the contract for the provision of the Goods and/or Services stated in the acknowledgement of order;

“CUSTOMER” the person, firm or company purchasing Goods or Services

from the Company;

“GOODS” means the goods, products or parts which the Company is to supply to the Customer specified in the acknowledgement of Order;

“ORDER” means the order (whether written or oral) placed by the

Customer for the supply of Goods or Services; and

“SERVICES” the service(s) to be provided by the Company to the Customer.

b) Unless otherwise agreed in writing by the Company, these Conditions of Sale, which supersede any earlier sets of conditions issued by the Company, shall override any terms or conditions stipulated incorporated or referred to by the Customer at any stage, even if these are stated to take precedents over the Company’s conditions.

c) Unless forming part of the Company’s quotation and order acknowledgement the Company shall not be bound by any variations waiver of or addition to these Conditions of Sale accept as agreed by the Company in writing and signed by a Director of the Company.

d) Every contract is between the Customer and the Company and is not assignable by the Customer without the consent in writing of the Company.

e) The headings in these Conditions are included for convenience and shall not be considered in construing these Conditions.

2) SUPPLY OF SERVICES AND SALE OF GOODS

a) All quotations and orders are given subject to acknowledgement by the Company in writing, on receipt of the Order and no binding contract shall be, or deemed to have been, effected by the Customer’s acceptance of the Company’s quotation until the Order has been confirmed in writing by the Company.

b) The Company’s quotations are valid only for the period stated on them or when no period is given for 28 days from the date of issue unless withdrawn by the Company before that date.

c) The Company’s quotations include only the items and works specified in them.

d) The Company shall not provide start dates for the manufacture of the Goods or for the start of the Services until the Contract is created.

e) The Customer shall at its own expense supply the Company with all necessary documentation, plans or other information necessary to enable the Company to provide the Goods or Services in accordance with the Contract. The Customer shall ensure the accuracy of all such documentation or information.

f) Contracts are made subject to the Company receiving any necessary licence to purchase or to use goods or material specified in the contract and to the company being able to obtain such goods or raw materials

g) In respect of work carried out other than at the Company’s premises the Customer shall provide safe working conditions for the employees, agents or sub-contractors of the Company and all reasonable facilities required in connection therewith. The Customer undertakes to inform the Company and its representatives of any latent hazards on its property or premises.

3) THE GOODS, DESCRIPTION AND SPECIFICATION

a) All descriptions and illustrations contained in any catalogue, advertisements or on the Company’s website are intended to present merely a general idea of the Goods described and shall not form part of the contract.

b) Unless expressly agreed in writing by the Company, all drawings, designs, specification and particulars of weights and dimensions submitted by the Company are approximate only and the Company shall have no liability in respect of any deviation from them. The Company shall be entitled to make modifications to any contract description of Goods provided that these modifications do not materially or substantially affect performance or cost.

c) The Company accepts no responsibility for any errors, omission or other defects in any drawings, designs or specifications not prepared by the Company. The Company shall be indemnified by the Customer against any and all claims, liabilities, costs and expenses incurred by the Company arising from such errors or omissions.

d) Corrections to Goods required by the Customer following inspection and approval by the Customer of specifications or designs for Goods or Services shall be at the Customer’s expense and will be charged for separately.

e) Any samples or materials supplied to the Customer in relation to any specification are supplied solely for information and in no way import any express or implied conditions or warranties as to merchantable quality, description or fitness for purpose of such items or materials.

f) In the event of any new design or process evolving in performance of or as a result of the Contract, the Customer acknowledges that the same shall belong to the Company.

g) The specifications and designs of the Goods or Services (including the copyright, design right or other intellectual

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property in them) shall as between the parties be the property of the Company. The Customer shall not be entitled to use the specification or design, or anything similar to or based on the design, separate from any contract for Services unless the Customer has purchased the specification or design from the Company at a price to be agreed between the parties.

h) All specifications, drawings, technical descriptions and other material or information supplied to the Customer by the Company or relating in any way to these Goods are confidential and copyright. No such material or information shall be disclosed to any third party without the Company's prior written consent.

i) Where any designs or specifications have been supplied by the Customer for manufacture by the Company, the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

4) CANCELLATION

a) The Customer may not cancel the contract without the written consent of the Company. If such consent is given, it is made on the express condition that the Customer shall indemnify the Company against all loss, damage, claims or actions arising out of such cancellation unless otherwise agreed in writing and immediately reimburse the Company for all costs and expenses incurred by the Company under the Contract to the date of cancellation and immediately pay to the Company the profit element of the Contract as per the Company's invoice for such costs and charges.

b) Goods returned without the Company's consent will not be accepted for credit and will remain on the Company's premises at the Customer's risk.

5) PRICES

a) Unless expressly agreed in writing between the parties or included in any quotation for the goods the prices quoted are exclusive of delivery charges.

b) The Customer shall not be released from the contract by any increase in duty or taxes to be borne by the Customer whether arising before or after the making of the contract.

c) Prices shown in a quotation shall not be binding on the Company until such a time as they are confirmed by the Company in writing. Thereafter the price may be varied if other clauses in these Conditions provide for such variation.

d) Prices and other charges of the Company are exclusive of Value Added or any other Taxes payable on the supply of goods, which will be charged at the rate in force at the date of the applicable Tax Point.

e) The Customer authorises the Company to i) carry out and charge for the incidental work in addition to that described in any acknowledgement of Order and to charge for the provision of specialised tools, test equipment and tackle (if the same are not provided by the Customer free of charge) where reasonably necessary or prudent in order to comply effectively with the Order and Customer's

instructions and ii) supply all such parts and materials as are reasonably required for such incidental work.

f) Where working conditions (in respect of work executed) other than at the Company's premises are, or become dangerous or exceptionally dirty or special risks are involved or for any reason conditions are not normal the Company's quotations estimates or rates will be subject to increase or surcharge for reason.

6) DELIVERY & DELAY

a) Any time or date specified for delivery of the Goods or Services is given in good faith as an estimate only and the Company shall not be liable (either in contract or tort) for any direct or indirect loss, damage or expense however arising from any delay in delivery (including without limitation loss of profit, consequential losses and other losses of a similar nature) and, unless otherwise stated, time is not of the essence for delivery. Accordingly any delay in delivery shall not entitle the Customer to repudiate the contract.

b) The Company may deliver by instalments and may treat each delivery as a separate contract. The Customer shall pay for the Goods so delivered, the price pro-rata to the Goods delivered provided that the Customer shall not be required to accept and pay for such part delivery if the nature of the purchase is such as to render part delivery totally valueless to the Customer. Failure of the Customer to accept any instalment, or pay for any instalment, may be treated by the Company as a repudiation of the Contract, or any other contracts between the parties.

c) The performance of the Contract is subject to availability, and therefore in the event that the Company is unable to supply any specific Goods or any particular materials for the Goods or Services, the Company reserves the right to provide suitable alternatives or suitable alternative quantities, and to make such reasonable adjustments (upwards or downwards) to the Contract price as are necessary to reflect the change. Such alterations shall not entitle the Customer to repudiate the contract.

d) The Customer shall accept deliveries of Goods at the delivery address stated on acknowledgement of Order, when offered and shall be liable for any additional costs (including but not limited to storage and re-delivery costs) suffered by the Company in the event of wrongful refusal or delay in accepting delivery, in failing to provide access to premises, services or information for the Company to effect safe delivery, or in the event of future deliveries being withheld through the Customer's non-payment.

7) LOSS OR DAMAGE IN TRANSIT

a) The quantity of any consignment of Goods as recorded by the Company upon dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

b) The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 5 days of non-

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delivery.

c) Any liability of the Company for damaged, faulty or non-delivery of the Goods shall, at the Company's option, be limited to repair or replacement of the Goods within a reasonable time and free of charge.

d) Upon delivery the Customer shall immediately notify the Company of any damaged or faulty Goods, or any shortfall of Goods and confirm such notification in writing. The Company shall not be liable for such damage, fault or shortfall unless:

i) written notice is given to the Company within 7 days of delivery;

or

ii) where the Goods are transported by an independent freight carrier the Customer complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.

e) All faulty or damaged Goods are to be returned promptly at the Customer's expense.

f) The Company shall investigate all complaints, claims of faulty or damaged Goods, or shortfall of Goods, notified to the Company in writing within the specified notice period. Complaints must be made in writing within 5 days of delivery.

g) The Customer shall provide the Company with all information, documentation or other evidence reasonably requested for the purposes of its investigation. The Company reserves the right to reject any complaint, claim of faulty or damaged Goods or other claim by the Customer if the Customer shall fail to supply adequate evidence in support of such claim.

h) A claim in respect of any defect, failure to comply with the specification, non-delivery of any order or any part of the order shall not entitle the Customer to cancel any Order or Contract, or refuse delivery of or payment for the Goods or any other Order or Contract.

i) Nothing in this clause shall make the Company liable for the repair or replacement of Goods lost or damaged in transit where the Customer is responsible for the insurance of Goods during transit.

8) FREIGHT CHARGES

If included in the quotation freight and (if applicable) insurance charges will be based on the Company's quotation but may be varied without any requirement for the Company to notify the Customer in accordance with the rates ruling at the time of despatch and any such rate chargeable at the time will be payable by the Customer.

9) PAYMENT TERMS

a) Unless otherwise agreed in writing all sums due as shown on the Company's invoice must be paid within 30 days of the date of invoice.

b) Where deposit payment is required the Company must be in receipt of the deposit in cleared funds prior to commencement of any work being undertaken. If payment is not received prior to commencement of works in accordance with the Contract, this may delay any works being completed within the proposed timescales and the Company will not be liable to the Customer or any third party if works are delayed for this reason.

c) The Company's charges and any additional sums payable shall be paid by the Customer (together with any applicable Value Added Tax, and without any set-off or other deduction) in accordance with sub-clause b).

d) Any agreed variations to the Goods or Services shall be chargeable in addition to the Contract price if the any amendments are individually priced.

e) The Company shall be entitled to invoice the Customer following practical completion of the Service, or at other times agreed with the Customer.

f) In the case of overdue payment, the Company may charge interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 to the Customer on the amount overdue calculated on a daily basis at the statutory rate per annum until payment is made in full, whether before or after judgment, without prejudice to any other rights of the Company.

10) WARRANTY AND LIABILITY

a) The Company hereby warrants that the Goods have been produced from sound materials and are, at the date of delivery, free from any material defect in workmanship, and will remain free from any material defect in workmanship, for a period of 12 calendar months from the date of delivery to the Customer and correspond with any agreed written specification, but the Company's liabilities under this warranty shall be limited to making available free of charge the labour and materials required to make good any such defects or any failure to perform the Services with reasonable skill and care, or (at the Company's option) replacing any defective Goods. The Company further warrants that any Services shall be provided with reasonable skill and care. The Company's liability under these Warranties is also subject to the following conditions and limitations:

i) the Company will not accept any liability for any defective or faulty Goods supplied, unless the Customer gives the Company written notice of the defect or defects in question within 7 days of delivery (save where the defect or defects are of a nature which would not normally be apparent upon a reasonable inspection, in which case the notice of defect or defects must be given within 7 days of discovering the same);

ii) the Goods having been properly stored, used and cared for by the Customer prior to the defect occurring;

iii) if the Goods are left on site while other preparatory work is completed, such storage being secure, dry and frost-free and the risk of damage or loss to the Goods will belong to the Customer;

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- iv) the Goods not having been subjected to any incorrect, abnormal or improper load use accident or unauthorised modification repair or application, whether by the Customer or any third party;
- v) the Goods having been used in accordance with the Company's instructions whether written or oral;
- vi) the Company having received the total price for the Goods or Services by the due date for payment; and
- vii) the Company or manufacturer's trade mark or serial number not having been removed, defaced or altered.

The warranty contained in this clause 10a) does not extend to cosmetic defects occurring after supply of the Goods or conclusion of the Contract for Services. Without prejudice to the provisions of clause 10a) above, all Goods that are returned to or replaced by the Company, shall become the property of the Company.

- b) Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence.
- c) Subject to clauses 10a) and 10b):
 - i) the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of any agreement, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatever (whether caused by the Company's negligence or that of its employees, agents or subcontractors or otherwise) which arise out of or in connection with the supply of the Goods or Services (including any delay in supplying or any failure to supply the Goods or Services in accordance with any agreement or at all) or the use of the Goods by the Customer;
 - ii) the entire liability of the Company in contract, tort (including negligence or breach of statutory duty), misrepresentation (unless fraudulent) or otherwise arising in connection with the supply of the Goods or resulting from their use or the performance or contemplated performance of the Services shall not exceed the £2,000,000 per claim, or series of claims arising from one occurrence, where the Supplier's liability for the loss or damage is covered by the Supplier's insurance cover. If for any reason the loss or damage is not covered by the Supplier's insurance cover then the entire liability of the Supplier in accordance with this sub-clause shall not exceed the Contract price and where there is a long-term contract in place for the provision of ongoing Goods or Services, the Contract price shall be the price for each individual Contract within the main Contract or, where the Contract is for Services only, the Contract price shall be equal to the Contract price divided by the number of years and part years of the duration of the Contract; and
 - iii) **The Customer is encouraged to take out insurance to cover itself against losses greater than the limits set out in these Conditions and for risks where the Customer has no rights of recourse against the Company.**

d) The Company will at the request and expense of the Customer use its reasonable endeavours to transfer to the Customer the benefit of any warranty, guarantee or undertaking given to the Company by the manufacturer, producer or processor of the Goods, in relation to any Goods or parts or materials.

e) The Customer agrees to indemnify the Company against all claims relating to Goods sold to the Customer in respect of any loss damage or expense, whether direct or consequential, sustained by any third party save only in respect of death or personal injury caused by the negligence of the Company or any of its employees, agents or subcontractors.

f) In respect of international supply contracts (as defined by Section 26 of the Unfair Contract Terms Act 1977 only) the Seller shall have no liability to the Customer in the event of Goods infringing or being alleged to infringe the rights of any third party.

g) The Company shall be at liberty without prior authority to entrust to other companies, firms or individuals ("Sub-contractors") the performance or part performance of any contract for the supply of Goods or any installation repairs or adaptations the subject of any contract.

11) TITLE / RISK

a) The risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery, or, if the Customer wrongfully fails to take delivery of the Goods, at the time when the Company has tendered delivery of the Goods, save that the Customer shall not be liable for any damage caused by the Company's negligence before any Contract for Services relating to the Goods has been concluded.

b) Notwithstanding paragraph 11a) property in the Goods shall not pass to the Customer until the Customer has paid to the Company all sums owed (under this or any other contract) by the Customer to the Company.

c) The Customer will indemnify the Company against any loss or deterioration in the Goods while they remain the property of the Company and will keep the Goods properly insured for not less than their Contract value.

d) The Company's ownership of Goods shall subsist until payment in full by the Customer as aforesaid notwithstanding that the Customer incorporates the same or part thereof (with or affixes or attaches the same to) any other goods or property (whether real or personal) in the ownership or possession of the Customer. Any such use by the Customer of the Goods shall not by operation of law or otherwise divest the Company of its legal and beneficial title to the Goods howsoever the same may be so incorporated with, affixed or attached to other goods or property.

e) The Customer shall be fiduciary bailee of the Company with respect to the Goods shall until use of the same by the Customer as aforesaid keep and store the same separate and distinct from goods which are the property of the Customer or any third party and in such manner as enables the same to be identified as the property of the Company and the Customer shall not remove obscure or tamper with any identifying marks thereon; and

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f) The Customer shall not process or use in any manufacturing operation, sell, agree to sell, hire or make any other disposition of the Goods or any part of them nor, without prejudice to the generality of the foregoing, pledge, charge or create any other form of security over or part with possession with Goods supplied or any part of them without the express written consent of the Company and the Company may give or withhold its consent, in writing, as it thinks fit.

g) If payment in full for all Goods or Services supplied under any Contract is not made by the Customer upon the due date or any termination event has occurred as set out in clause 12):

(i) the Company shall be forthwith discharged from any obligation performing any of its obligations to the Customer under any Contract then subsisting but shall (without prejudice to any other rights which the Company may have and arising from any Contract or otherwise, however arising in law or in equity) become immediately entitled to recover possession of any Goods supplied to the Customer under all unpaid Contracts; and

(ii) the right and liberty of the Customer to sell or make use in any way of Goods supplied under any Contract shall forthwith determine without the Company being required to give any notice to the Customer of such determination;

(iii) the Customer shall forthwith place any Goods supplied to it at the disposal of the Company and thereby irrevocably license the Company, its servants or agents (together with any requisite vehicular transport) to enter upon all or any premises where the Goods are stored or located for the purposes of :

(1) locating any Goods supplied by the Company; and

(2) removing or securing to the Company's control of all Goods including detaching or removing the same from any other Goods or property (whether real or personal) in the ownership or possession of the Customer or any other person with which the same have been incorporated or to which the same have been affixed or attached.

iv) the Customer shall indemnify the Company against all claims for costs or damages however arising from the exercise by the Company of its right under this clause.

h) If, pending the passing of title in the Goods, the Customer sells or otherwise disposes of the Goods in such manner as to pass valid title to a third party, the Customer shall hold the full proceeds of such a sale (and pending payment the right to receive the proceeds of such a sale) on trust for the Company in a separate and identifiable bank account. During the same period, the Customer will pay the said proceeds to the Company on demand notwithstanding any period of credit extended to the Customer may not have expired. In addition the Customer agrees that it will assign to the Company upon the Company's request all of its rights (under such a contract of sale) against any subsequent purchaser of the Goods.

i) If payment of any sum is overdue the Company shall have the right to commence proceedings against the Customer for the price, notwithstanding that property in the Goods has not yet passed to the Customer.

12) TERMINATION

The Company shall have the right to immediately determine any Contract then subsisting and upon written notice of such determination being posted to the Customer's last known address any subsisting Contracts shall be deemed to have been determined, without prejudice to any claim or right the Company may have, if:

a) The Customer makes default in or commits a breach of the contract or in any other of its obligations to the Company;

b) if distress or execution shall be levied upon the Customer's property or assets;

c) the Customer shall make or offer to make any arrangement or composition with creditors, or commit any act of bankruptcy,

d) any petition or receiving order in bankruptcy shall be presented or made against him, or if the Customer is a limited company, any resolution or petition to wind up such a company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of such Company's undertaking property or assets or any part thereof shall be appointed,

13) EXPORT TERMS

a) Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail:

b) Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 12 shall (subject to any special Conditions agreed in writing between the Customer and the Company) apply notwithstanding any other provision of these Conditions.

c) The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

d) Unless otherwise agreed in writing between the Customer and the Company, the Goods shall be delivered fob the air or sea port of shipment and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

e) The Customer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

14) WAIVER

The rights of the Company shall not be affected or restricted by any indulgence or forbearance to the Customer. No waiver by the Company of any breach shall operate as a waiver of any later breach.

15) NOTICE

Notices documents and requests which are required under the terms of these Conditions will be sent by pre-paid registered or recorded post cable or fax to the Company at its registered office and to the Customer at the address set out in the acknowledgement of Order and any such notice document or request will be deemed to have been properly given or served when it would have been received in the normal course of transmission.

16) PUBLICITY

The Company shall have the right on notice to the Customer, to publish, with or without illustrations, any aspect of the project for future projects or promotional material or any other such purpose.

17) MEDIATION

In the event that any dispute or difference between the parties arising out of or in connection with any Contract cannot be agreed the matter shall first be referred to mediation in accordance with the mediation procedures of IDR Europe Ltd. The mediator shall be agreed on by the parties and failing such agreement within 15 days of a party requesting the appointment of a mediator and suggesting a name, the mediator shall be appointed by the President for the time being of the Suffolk and North Essex Law Society. Unless otherwise agreed the cost of mediation shall be borne by the parties equally. The use of mediation shall not be construed under the doctrine of laches, waiver or estoppel, to affect adversely the rights of either party.

18) SEVERABILITY

If any provision of these Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

19) ENTIRE AGREEMENT

These Conditions (together with the terms, if any, set out in the Quotation) constitute the entire agreement between the parties and all other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law. The parties agree that no statements or representations made by either party have been relied upon by the other in agreeing to enter in to any Contract.

20) FORCE MAJEURE

The Company shall not be liable to the Customer or be deemed to be in breach of Contract for any default, damage or delay due to any circumstances beyond the reasonable control of the Company including, but not limited to, Acts of God, war, civil unrest, riot, strike, lock-out, acts of civil or

military authorities, fire, flood, earthquake or shortage of supply.

21) LEGAL CONSTRUCTION

Unless otherwise stated these Conditions and any Contracts made under them shall be governed by and construed exclusively in accordance with the law of England and Wales and any litigation arising from the contracts shall take place in an English court and not in any other country.