

## Active Automation Solutions - ABN 83 568 635 539

("Active")

### Terms and Conditions of Sale ("Terms")

These Terms and Conditions ("Terms") and any amendments published from time to time on Active's website at <http://www.activeautomationsolutions.com.au> apply whenever Active supplies any products or services ("Goods") to any person (the "Customer"), unless expressly agreed otherwise by Active in writing. The "Customer" shall mean any person acting on behalf of and with the authority of the Customer. By requesting, ordering, purchasing or receiving delivery of any Goods, the Customer is deemed to have accepted these Terms. The Customer also agrees that these Terms apply to the exclusion of all others.

#### 1. General

- 1.1 A quotation made by Active shall not be construed as an offer or obligation to supply in accordance with the quotation. Active reserves the right to accept or reject, at its discretion, any order for Goods.
- 1.2 Quotations provided by Active are valid for a period of 30 days unless otherwise specified. Prices agreed between Active and the Customer in respect of an order will be fixed from the date of acceptance of the order, subject to any rise and fall provisions specified within the quotation.
- 1.3 Placement of an order, either verbally or in writing, will constitute acceptance of Active's quotation and of these Terms.
- 1.4 These Terms apply to, and are incorporated into any quote or order between The Customer and Active, to the exclusion of the Customer's terms and conditions of purchase or any other document.

#### 2. Conditions of Supply

- 2.1 Where the Customer is a Limited Company, Active reserves the right to request an indemnity from the Directors of that Company. Where the Customer is a Proprietary Limited Company, the Directors of that Company agree to personally guarantee any amounts payable to Active in accordance with clause 4 of this agreement. Additionally, the Customer agrees to pay the account in accordance with Active's Terms.

#### 3. Change of Ownership

- 3.1 In the event the ownership or legal entity of the Customer changes, Active must be immediately notified in writing. Until such notification is received and acknowledged by Active, liability for any unpaid account will remain with the Customer as disclosed in Active's records.

#### 4. Payment

- 4.1 Payment is to be by cash unless Active has granted the Customer a credit facility.
- 4.2 If Goods are sold to the Customer on credit then payment of all invoiced amounts must be received on or before the expiration of 30 days from the date of invoice.
- 4.3 At Active's sole discretion a deposit may be required. The amount of the deposit will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 4.4 Goods brought in specifically or manufactured specifically by a supplier of Active for the Customer, whether or not the Customer has been granted a credit facility, may require deposit at time of order.
- 4.5 If the Customer defaults in making payment to Active in accordance with these Terms, Active may in its absolute discretion charge the Customer interest calculated on the portion of the Customer's account overdue at the rate of 5% per month from the date on which the default arose.
- 4.6 If any account remains unpaid at the end of 60 days from the date of invoice, an immediate amount of 10% of the amount overdue shall be levied for administration fees, which sum shall become immediately due and payable.
- 4.7 The Customer hereby agrees to indemnify and/or reimburse Active in relation to any costs incurred by Active in attempting to recover amounts owed by the Customer to Active pursuant to these Terms.

#### 5. Warranties

- 5.1 Active warrants that all Goods supplied by it to the Customer:
  - a) are free from any encumbrance, other than any encumbrance created under these Terms; and
  - b) are of merchantable quality and are fit for their intended purpose.
- 5.2 If any of the Goods delivered to the Customer do not meet the standards set out in clause 5.1, the Customer must notify Active in writing within seven days of delivery. Active's responsibility for any non-compliant Goods will be determined in accordance with clause 6.1. Any claims not made within this timeframe will be invalid and Active will have no liability whatsoever in respect of such claims.
- 5.3 Except for the warranties provided in clause 5.1 and subject to any warranties which may be provided by the manufacturer of specific Goods, to the extent permitted by law Active excludes all warranties of whatsoever kind or nature, either express or implied in connection with the supply of Goods by Active to the Customer.

#### 6. Limitation of Liability

- 6.1 In respect of the express warranties in clause 5.1 and any non-excludable warranties, Active's liability for breach of such conditions or warranties and the Customer's sole and exclusive remedy in relation to such breaches shall be limited, at Active's discretion, to either:
  - a) replacing the Goods;
  - b) repairing the Goods; or
  - c) refunding the price paid for the relevant Goods.
- 6.2 The warranties provided by Active and a manufacturer of Goods are void on all Goods sold where those Goods have not been properly installed in accordance with the instruction manual for the Goods, and/or where the

Goods have been altered or otherwise misused or damaged in any way or repaired by others.

- 6.3 Notwithstanding any provision in these Terms, the Customer must not make a claim or demand against Active or its agents for consequential, indirect, special, incidental, exemplary or economic damage or loss (including loss of use, loss of revenue, loss of profit, business interruption, costs of procurement or substitution of goods, technology or services or loss of information) arising in connection with the supply of Goods pursuant to these Terms (including any claim in negligence, equity or otherwise).
- 6.4 The Customer indemnifies Active from and against any damages that it or its related bodies corporate suffer, incur or are liable for as a direct or indirect result of any breach of these Terms, or any conduct which may be considered misleading or deceptive, by the Customer or its agents.

#### 7. Risk and Title and Delivery of Goods

- 7.1 Risk in the Goods passes to the Customer on delivery.
- 7.2 Ownership of and title to the Goods is retained by Active and shall not pass to the Customer until Active receives payment in full for the Goods, and any other money owing by the Customer to Active has been paid in full.
- 7.3 Until title in the Goods passes to the Customer:
  - a) the Customer must: (i) hold the Goods as bailee of Active; and (ii) insure the Goods against all risks for their full price from the date of delivery.
  - b) Active authorises the Customer, in the ordinary course of the Customer's business, to use the Goods or sell them for full consideration, provided that the proceeds of such sale or use (in whatever form) shall be the property of Active and the Customer must hold such proceeds on trust for Active and deal with them as Active directs. This authority to use and sell the Goods automatically terminates if the Customer breaches these Terms, the Customer becomes insolvent or Active decides, in its absolute discretion, to revoke such authority;
  - c) upon termination of the authority granted under sub-clause (b) above, Active may take possession of any Goods for which it has not yet received payment and enter any premises where such Goods may be located;
  - d) the Goods are inventory for the purposes of the PPSA; and
  - e) Active retains a security interest in all Goods supplied by Active to the Customer.
- 7.4 Active shall not be liable for any loss or damage whatsoever due to failure by Active to deliver the Goods (or any of them) promptly or at all.

#### 8. Personal Property Securities Act 2009 ("PPSA")

- 8.1 The Customer acknowledges that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all of the Customer's present and afteracquired Goods supplied by Active.
- 8.2 Active and the Customer agree that nothing in sections 130(1)(a) and 143 of the PPSA will apply to these Terms and Conditions.
- 8.3 The Customer waives its rights as a debtor under sections 92, 93, 94, 95, 97, 118, 121, 132, 135, 137, 140 and 142 of the PPSA.
- 8.4 The Customer further agrees that where Active has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.
- 8.5 In this clause:
  - a) "security agreement" means the security agreement under the PPSA created between the Customer and Active; and
  - b) "security interest" has the meaning given to it by the PPSA.

#### 9. Force Majeure

- 9.1 Active shall not be liable for any delay or failure to perform its obligations pursuant to these Terms if such delay is directly or indirectly caused by any event or circumstance beyond Active's reasonable control including, but not limited to, any act of God, fire, explosion, flood, drought, accident, crime, terrorism, war or national emergency, blockade, civil commotion, strike, lockout or labour dispute, inability to procure stock or transport, or acts or omissions by regulatory authorities ("Force Majeure Event").
- 9.2 If a delay or failure by Active to perform its obligations due to Force Majeure Event exceeds 60 days, either party may terminate these Terms by providing written notice to the other party.

#### 10. Confidentiality

- 10.1 All intellectual property ("IP") (irrespective of being registered under copyright, patent or trademark) and software licenses relating to Goods and Services supplied (or proposed to be supplied) by Active, will remain the property of Active (and/or the Manufacturer) unless Active provides written agreement (signed by an authorized officer) to the customer. The Customer has no right to use IP provided by Active, in the course of submitting a proposal or quote, unless Active supplies the Goods and Services listed within that proposal/quote. The Customer has no right to re-use, re-license, or re-sell IP obtained from Active unless such use was understood by Active at the time of supply.

10.2. The Customer accepts and understands that product pricelists/pricing, product catalogues and any discounting information is commercially sensitive. Where the Customer receives commercially sensitive information they warrant to maintain this information on a strictly confidential basis. The customer agrees to never distribute, disseminate or circularize any commercially sensitive information.

**11. User responsibility in Goods selection and disclaimer in regard to advice**

11.1. The Goods are inherently technical in nature and warranted to perform to tolerances specified by the supplier in relation to load, volume, air temperature etc. Due to the wide variety of conditions in which applications may operate, it is not possible for Active to contemplate all technical parameters that are necessary in selecting Goods. The Customer is required to provide all relevant information in relation to the intended use of the Goods and to ensure the Goods they order from Active are suitable for and are used only for their intended use in accordance with any instructions on their use.

11.2. Active accepts no responsibility for the provision of advice unless that advice has been provided in writing and is in direct response to a written request from the Customer, detailing the scope of the intended use and operating environment of the component or application.

11.3 The Customer through its own analysis and testing is solely responsible for:

- a) making the final selection of the Goods;
- b) ensuring that the incorporation of the Goods within an application will not provide any safety risk; and
- c) assuring compliance with all applicable legislation and industry standards.

**12. Safety measures or compliance with standards**

12.1 To the extent permitted by law, unless agreed to specifically in writing by a supplier, any control circuit or control system, including hardware or software, does not in any way claim to offer any safety measures or compliance with any standard. It is the sole responsibility of the Customer to ensure safety and compliance with all applicable legislation, the prevailing best practices, and the standards applicable to any individual application.

**13. Miscellaneous**

13.1. Where Goods are sold to approved Customers on credit, the Customer agrees and acknowledges that Active may acquire information about the customer from credit reporting agencies.

13.2. The Customer undertakes to give Active 14 days written notice of any change in the Customer's name and/or any other change in the Customer's details previously supplied to Active, including but not limited to changes in the Customer's address, contact details or business practice. Where such notification has not occurred Active may deem all amounts outstanding from the customer, to be immediately due and payable (irrespective of any payment terms agreed to outside of this clause).

13.3. The Customer must pay GST on any Taxable Supply made by Active to the Customer under these Terms. The payment of GST is in addition to any other

consideration payable by the Customer for a Taxable Supply. The GST amount is payable by the Customer in addition to and at the same time as the consideration payable for the supply excluding GST.

13.4. Active may transfer any right or liability under these Terms at its absolute discretion. The Customer may not transfer any right or liability under these Terms without the prior written consent of Active.

13.5. These Terms are governed by and construed under the law in the State of New South Wales. The Customer submits to and consents to the jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

13.6. Active may vary these Terms from time to time. Any such variation will be effective from the date specified by Active in any written notice provided to the Customer or published on Active's website. By requesting, or continuing to request, any Goods after such effective date, the Customer accepts and agrees to be bound by such variation.

13.7. Any amendment to these Terms has no force or effect, unless effected by a document executed by Active.

13.8. Any failure by any party to exercise any right under these Terms does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

13.9. If a party enters into these Terms as trustee of a trust, that party and its successors as trustee of the trust will be liable under these Terms in its own right and as trustee of the trust. Nothing releases the party from any liability in its own capacity.

13.10. These terms and conditions constitute the entire agreement between Active and the Customer.

**14. Competition and Consumer Act 2010**

14.1. Where these Terms would otherwise be subject to the Competition and Consumer Act 2010 ("Act"), the Customer agrees that the Customer is acquiring the Goods for business purposes and that the Act does not apply to the supply of the Goods to the Customer.

14.2. If the Customer is a consumer as defined in section 4B of the Act, and the Customer has not contracted out of the Act under clause 14.1 of these Terms, nothing in these Terms will limit any rights the Customer may have under this Act.

**15. Privacy**

15.1. Active will adhere to the Australian Privacy Principles as they apply to the collection of personal information and any obligations arising from the Privacy Act 1988 (Cth).

**16. Severance**

16.1. Should any part of these Terms be held to be void or unlawful, these Terms will be read and enforced as if the void or unlawful provisions have been deleted.