

ROBERTSHAW CONTROLS PRIVATE LIMITED – CONDITIONS OF SALE

The Buyer's attention is drawn in particular to the provisions of clauses 11 (Seller's Warranty) and 14 (Limitation of Liability).

1. INTERPRETATION

1.1 In these Conditions, the following terms shall have the following meanings: *Affiliate* means in respect of the Seller, any entity which controls, is controlled by or is under common control with the Seller, and *control* means the ability, directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise; *Buyer* means the person(s) so described in the Order; *Confidential Information* means information in any form whether oral, documentary, magnetic, electronic, graphic or digitised as relates to the Seller's business, including information relating to patents, trademarks, registered/unregistered rights, design rights, copyright formulations, engineering drawings, specifications, data, know-how, inventions, models, sample components, formulae, manufacturing methods, analytical and quality control methods, sales data, anticipated sales volumes, information relating to potential or actual customers, business structure, assets, liabilities, operations, budgets and strategies; *Contract* means the contract for the sale and purchase of Goods, arising pursuant to these Conditions; *Goods* means any goods agreed in the Contract to be bought by the Buyer from the Seller pursuant to these Conditions; *Order* means the Buyer's purchase order; *Seller* means Robertshaw Controls Private Limited with its registered office and principal place of business at 197/Part, Viman Nagar, Nagar Road, Pune 411 014, India, Corporate Identification Number U29253MH2014PTC253650.

2. GENERAL

2.1 Any quotation or tender made by the Seller, and any Contract, shall be governed only by these Conditions to the entire exclusion of all other terms or conditions unless otherwise agreed in writing by the Seller. An Order for goods from the Buyer constitutes an offer from the Buyer to purchase the goods subject to these Conditions.

2.2 Unless otherwise stated in writing quotations and tenders shall be considered as an invitation to treat and shall in any case lapse after 30 days from their date. The Seller will only be deemed to have accepted an Order, and a Contract deemed arisen, when a written acknowledgement is issued or (if earlier) the Goods are delivered to the Buyer. Orders based on quotations or tenders shall not be binding on the Seller until the Seller accepts such Orders and notifies the Buyer in writing of such acceptance.

2.3 Times quoted for despatch, delivery or completion shall run from the date of a Contract arising.

2.4 Delivery terms such as EXW, FCA, FOB, CIF, used in the quotation, tender or Contract shall be interpreted in accordance with Incoterms 2010 Edition as amended or superseded from time to time.

2.5 The Seller may impose a surcharge to cover handling costs, in respect of Orders which are below a minimum consignment value; likewise the Seller shall have the right to impose a surcharge for expedited delivery (defined as a delivery requirement at variance with the Seller's normal carriage arrangements) to reflect the additional logistic and transport costs incurred in meeting the Buyer's requirements. The sum of such costs may be varied by the Seller from time to time.

2.6 In the event that the Seller for any reason accepts the cancellation of all or part of Goods the subject of a Contract, the Buyer shall be liable for payment in full of all costs incurred by the Seller up to the point of cancellation or, if the manufacture of the Goods has been completed, for the full price of the Goods.

3. VARIATIONS TO A CONTRACT

3.1 No variation to a Contract shall be permissible by the Buyer without the Seller's prior written consent, which the Seller may withhold at its discretion. If any variation agreed with the Buyer increases or reduces the cost or time to the Seller of performing the Contract, then the price, delivery time and any other relevant considerations shall be adjusted accordingly.

3.2 Variations to a Contract shall, if not the subject of a quotation from the Seller which has been accepted by the Buyer prior to the variation being ordered, be priced by reference to the price or where this is not relevant, by cost plus 25 percent.

4. SPECIFICATION

4.1 The Buyer is responsible for satisfying itself as to the suitability of the Goods for the Buyer's application. The Seller shall not be bound by any statement concerning the scope of supply, performance or characteristics of the Goods unless expressly incorporated in the Contract, although nothing in these Conditions shall be construed as attempting to limit either party's liability for fraud or fraudulent misrepresentation.

4.2 All specifications, drawings and particulars of weights and dimensions and other information relating to the Goods submitted with the Seller's quotation or tender are approximate only. Descriptions and illustrations contained in the Seller's catalogues, price lists and other advertisement material are intended merely to present a general description of the Goods described therein and none shall form part of a Contract.

4.3 The Seller reserves the right to make changes to the specification of the Goods at any time, including changes required to conform to applicable legislation, but shall not make changes to Goods the subject of a Contract unless the change once implemented will have no material affect on the quality or characteristics of the Goods.

5. PRICE

5.1 Unless otherwise agreed by the Seller in writing the price of the Goods will be the price set out in the Seller's published price list or (if the Seller has accepted an Order) the price set out in the Seller's Order acceptance.

5.2 Except where expressly stated otherwise, the Seller's price shall be exclusive of any value added tax or similar sales tax, any import tax or other tax payable in the country of the Buyer and/or relating to the destination country of the Goods, and (depending on the delivery terms) all costs or charges in relation to loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition to the Contract's price when it is due to pay for the Goods supplied.

5.3 If any law or regulation comes into force after the date of the Seller's acceptance of an Order which increases the cost of performing the Contract, the Contract's price shall be adjusted accordingly.

5.4 In the event of an increase in the cost to the Seller of materials required to fulfil the Contract, of more than 5% from the date of Order acceptance, the Seller reserves the right at any time up to 30 days after the date of the acceptance to increase the price of the Contract by a percentage equivalent to the percentage rise in the cost of materials. The Seller shall notify the Buyer in writing of such a price increase. The Buyer will be entitled to cancel the Contract by written notice to the Seller within 5 working days of the date of any Seller's notice of a price increase pursuant to this clause 5.4. In the absence of such notice, the price increase will be binding on the Buyer.

6. PAYMENT

6.1 All payments shall be made in the currency indicated in the Order acceptance and/or (in the case of deliveries fulfilled in response to an Order before the order is formally accepted) in the Seller's invoice, to the designated account of the Seller. Unless otherwise indicated in writing by the Seller, payments from sources originating outside of India shall be paid by telegraphic transfer, the costs of which shall be borne by the Buyer. All sums due to the Seller shall be payable within 30 days of the date of the Seller's invoice and time for payment shall be of the essence. No deduction whether by way of set-off, counterclaim or otherwise, shall be made by the Buyer or permitted.

6.2 If any amount due and payable to the Seller under the Contract is overdue for reasons for which the Seller is not responsible, the Seller may, without prejudice to any other right it may have and at its own option, suspend (where applicable) any further deliveries due under the Contract and/or reject any Order, charge the Buyer simple interest on amounts overdue at an annual rate of 10% above the EURIBOR rate from time to time in force during the period that any such amount is overdue, and the Buyer agrees that the Seller shall be entitled to treat and recover the sum owed as a debt.

6.3 Where payment is to be secured by a letter of credit, then except as otherwise agreed by the parties in writing, such letter of credit shall: (i) be an irrevocable letter of credit; (ii) allow for partial deliveries; (iii) be advised through and confirmed by a bank acceptable to the Seller within 30 days of formation of the Contract; (iv) conform to the latest edition of the International Chamber of Commerce's Uniform Customs and Practices for Documentary Credits (UCP 600); and (v) be valid for at least 60 days beyond the latest despatch or delivery date stated in the Contract. The Buyer shall at its own expense extend the letter of credit, if any variation or other event entitles the Seller to an extension of time for despatch or delivery.

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- 6.4 All bank charges arising outside of India (including but not limited to the cost of establishing or extending any letter of credit) and charges relating to a bank's confirmation of the letter of credit shall be paid by the Buyer. All other bank charges arising within India shall be paid by the Seller with the exception of those arising within the Buyer's bank, which shall be paid by the Buyer.
- 7. BUYER'S GENERAL OBLIGATIONS**
- 7.1 The Buyer shall provide on time any approval, instruction, material, facilities, equipment or other thing which may be required in relation to the performance of the Seller's obligations and which is not expressly stated to be the Seller's responsibility.
- 7.2 Any authorisation, licence, permit or approval required from any regulatory authority for which the Seller is not expressly made responsible in the Contract, shall be obtained in due time by the Buyer.
- 7.3 The Buyer shall be responsible for obtaining any necessary customs import clearance and shall at no cost to the Seller provide assistance in obtaining any work letter of invitation, permit, visa or similar document which the Seller or any of its employees or agents may require.
- 7.4 The Buyer shall promptly respond to any and all requests or submissions of documents, drawings or information for comment or approval.
- 8. DELIVERY**
- 8.1 Unless otherwise agreed in writing by the Seller, delivery of Goods shall be made EXW at the Seller's place of business. The Seller may deliver the Goods by separate instalments.
- 8.2 Unless expressly agreed to the contrary in writing, dates cited for delivery shall be approximate only, and time for delivery shall not be of the essence. If no delivery dates are specified, delivery shall be made within a reasonable time.
- 9. STORAGE**
- 9.1 If the Buyer does not take delivery of the Goods within 7 days of notification from the Seller that they are ready for delivery, or the Seller is unable to deliver the Goods because the Buyer has failed to comply with its general obligations under clause 7, the Seller shall be entitled to put the Goods into storage at the Buyer's expense, and risk in the Goods shall pass to the Buyer. Delivery to storage shall constitute delivery to the Buyer and the Seller shall become entitled to payment upon such delivery.
- 10. TRANSFER OF TITLE AND RISK**
- 10.1 Legal title to and beneficial ownership in any consignment of the Goods shall pass to the Buyer upon receipt by the Seller of all sums due from the Buyer in respect of the Goods. All risks of loss or damage to the Goods shall, unless the Contract explicitly provides for some other arrangement, pass to the Buyer on delivery and the Buyer shall maintain the Goods in satisfactory condition and keep them adequately insured on the Seller's behalf for their full price and on request provide evidence of such insurance.
- 10.2 Until the passing of title in the Goods to the Buyer, the Buyer shall hold the Goods as bailee for the Seller and clearly identify them as belonging to the Seller. The Seller may at any time until the passing of title in the Goods require the Buyer to return the Goods. If this requirement is not complied with within a period of 8 days the Seller may (without prejudice to its other rights and remedies) repossess the Goods and remove, use or dispose of them, and for this purpose if permitted under local law, may enter the premises where they are and sever them from any other property to which they may be attached without liability for any resulting damage, except where such damage arises directly as a result of negligence on the part of the Seller.
- 10.3 The Buyer shall maintain accurate records to ensure the continued traceability of the Goods purchased from the Seller and shall provide reasonable assistance to the Seller in the event that any of the Goods it has purchased are affected by a product recall or corrective action procedure implemented by the Seller.
- 11. SELLER'S WARRANTY**
- 11.1 The Seller warrants that the Goods supplied shall, under proper use, be free from defects in design, material and workmanship and conform to the specification in the Contract for a period of 12 months from the date of manufacture of the Goods. "Proper use" means storage, installation, commissioning, operation and maintenance in accordance with the Seller's specifications and good industry practice.
- 11.2 The Seller's obligation under this warranty shall be limited to making good by repair or replacement at the Seller's option any defect in the Goods which appears before the expiry of the period of 12 months from the date of manufacture of the Goods or, at the Seller's option, reimbursing the price received by the Seller for the Goods. Where the Seller opts to repair the Goods the Buyer shall at its own cost return the Goods to the Seller's premises. In respect of items repaired or replaced by the Seller pursuant to this clause 11 the Seller shall warrant such items up to the end of the original warranty period. Replaced items shall become the property of the Seller. The Seller's obligation is subject to: (i) the Seller being given notice by the Buyer of the defect within 7 days of the date of delivery or, when the defect was not apparent on reasonable inspection, within a reasonable time after the discovery of the defect; (ii) the Seller being given a reasonable opportunity after receiving notice of the defect, to examine the Goods; and (iii) where the Goods are returned by the Buyer to the Seller, compliance with the provisions of clause 11.7. The Seller shall have no liability for the costs of dismantling, transportation, re-assembly, and re-testing of any of the Goods affected under this warranty.
- 11.3 The Seller's obligation shall not extend to failure caused by wear and tear, misuse, neglect, or repairs or modifications to the Goods which have been made without the Seller's approval or result from designs and specifications provided by the Buyer, instructions given by the Buyer, software and firmware programs developed by the Buyer and used in or with the Goods, and more generally to defects for which the Buyer is culpable or which are caused by activities performed by the Buyer without the Seller's written consent.
- 11.4 SUBJECT TO CLAUSE 14.3, THIS WARRANTY IS IN PLACE OF AND EXCLUDES TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. THE SELLER'S LIABILITIES AND THE BUYER'S REMEDIES IN RESPECT OF DEFECTS IN THE GOODS AND ANY DAMAGE TO THE GOODS RESULTING THEREFROM AND WHETHER ARISING FROM BREACH OF CONTRACT, STATUTORY DUTY, WARRANTY, NEGLIGENCE OR OTHERWISE, ARE SOLELY AND EXCLUSIVELY AS STATED IN THIS CLAUSE 11 AND THE SELLER SHALL HAVE NO LIABILITY OF ANY KIND FOR ANY SUCH DEFECTS OR DAMAGES WHICH APPEAR AFTER THE EXPIRY OF THE WARRANTY PERIOD SET FORTH IN THESE CONDITIONS.
- 11.5 If the Seller did not manufacture the Goods (or parts or components thereof) which are subject to any warranty claim, then the Buyer is only entitled to such warranties that the Seller receives from the actual manufacturer.
- 11.6 Goods not the subject of a warranty claim may only be returned by the Buyer with the prior written consent of the Seller.
- 11.7 Prior to returning any Goods the Buyer shall inform the Seller's 'Quality' department of its intention to do so, and provide the following data: (i) manufacturing part numbers, serial numbers and manufacturing dates shown on the Goods' labels; (ii) the quantity of Goods intended for return; and (iii) the reason for their return. Only when the Seller's Quality department has authorised the return and given a reference number (which must be printed on all correspondence) are the Goods to be returned. If the Goods are out of warranty an estimate in respect of the cost of repairs may be provided. Returned Goods must be accompanied by: a "Pro-forma" invoice indicating the value of the Goods for custom requirements if the Buyer is not located in India, or a despatch note if the Buyer is located outside of India; and a statement declaring that the Goods are being returned for examination/repair.
- 12. INTELLECTUAL PROPERTY RIGHTS**
- 12.1 No title or any other rights of any nature whatsoever and howsoever pertaining to the Seller's industrial or intellectual property and/or to industrial or intellectual property in the Goods supplied, is transferred to the Buyer under these Conditions or the Contract (where intellectual property includes but is not limited to patents, design rights, copyrights, trademarks, database rights, know-how, software, firmware and proprietary information), and the Buyer shall not seek, assert, confer or imply any in relation to the same. No designs, drawings or goods supplied by the Seller shall be reproduced, disclosed, copied or reverse engineered without the Seller's prior written permission.

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- 12.2 The Buyer will not without the consent of the Seller cover, obscure or in any way alter any distinctive mark (including brand names and/or trademarks) forming part of or impressed on or affixed to the Goods received by the Buyer from the Seller, and any of the Goods which will have been so covered, obscured or altered without such consent will not be sold.
- 13. TRADE COMPLIANCE**
- 13.1 The Buyer warrants that it shall observe and comply with all applicable laws in relation to its purchase and use of the Goods.
- 13.2 The Buyer further warrants without prejudice to the generality of clause 13.1, that it shall not sell the Goods or through its acts and/or omissions and/or absence of reasonable diligence allow them to be sold, in countries against whom trade sanctions (including trade sanctions instigated by the United States of America, the United Nations and the European Commission) operate to preclude such sales; and, in particular the countries of Iran, Syria, Cuba, Sudan and North Korea, as well as the Crimea republic.
- 13.3 The Buyer shall indemnify the Seller for any and all liabilities, costs, penalties or otherwise as the Seller may incur for reason of the Buyer's breach of warranty set out in clauses 13.1 and 13.2.
- 13.4 The Buyer shall also be liable to the Seller on the Seller's written demand, and without prejudice to the generality of clause 13.3, for any costs incurred by the Seller in relation to the procurement of materials for Goods and the manufacturing and production of Goods that were intended for the Buyer but for the occurrence of a breach of warranty or anticipated breach of the Buyer's warranty under this clause 13.
- 13.5 The Seller shall be immediately entitled to suspend without any liability whatsoever to the Buyer, any and all activities relating to the procurement and/or manufacture of Goods, and to withhold deliveries of Goods, if it discovers or has reasonable cause to believe that the shipment of Goods would or could give rise to a breach of the sanctions referred to in clause 13.2.
- 14. LIMITATION OF LIABILITY**
- 14.1 Subject to clause 14.3, the Seller shall not in any circumstances be liable for any loss of use, production, profit, business, contracts, revenues or anticipated savings, any increase in operating costs, any product recall or corrective action costs or any other financial or economic loss or any indirect or consequential loss or damage whatsoever, whether suffered by the Buyer or by any third party.
- 14.2 The exclusions and limitations of liability contained in these Conditions shall apply to all claims of any kind whether in contract, tort or otherwise on the part of the Seller and its employees, and to the fullest extent permitted by law its agents, sub-contractors and suppliers.
- 14.3 No limitation or exclusion contained in these Conditions shall apply in cases of fraud or fraudulent misrepresentation or in cases of death or personal injury caused by the negligence of the Seller, or for any other matter for which it would be illegal to exclude or to attempt to exclude the Seller's liability.
- 14.4 Except as provided under clause 14.3 and notwithstanding anything else in these Conditions or otherwise, the total aggregate liability of the Seller to the Buyer for all claims of any kind for any loss or damage resulting from its acts and omissions under all and any Contracts shall in any one calendar year be capped at an amount not exceeding 50% of the value of the Goods delivered to the Buyer in the preceding calendar year.
- 14.5 If the Buyer is not the sole end user and ultimate owner of the Goods, then the Buyer shall use its reasonable endeavours to ensure by its contract with the end user or ultimate owner or its customer that the Seller is given the benefit of the exclusions and limitations set out in these Conditions by all such users, owners and customers.
- 15. CONFIDENTIALITY**
- 15.1 The Buyer is obliged not to divulge or communicate any Confidential Information to any third party without the Seller's prior written consent. This obligation shall continue to apply at all times during the continuance of any Contract incorporating these Conditions and for a period of 5 years after the expiration or termination of such a Contract or Contracts, but will cease to apply to information which is at the date of the disclosure public knowledge through no fault of the Buyer or is disclosed subject to a legal or regulatory requirement.
- 15.2 The Seller shall have the right at any time and for any reason, to demand the return of any and all Confidential Information in the Buyer's possession.
- 16. FORCE MAJEURE**
- 16.1 In this clause 16 'Force Majeure' shall mean any cause beyond the reasonable control of the party whose performance is delayed or affected, which may in that context include (but not be limited to) an act of God, an act or omission of government; war (whether declared or not) or other hostilities, industrial disputes and/or strikes, fire, explosion, and accident.
- 16.2 A party's delay or non-performance of any obligation arising under the Contract shall, if the delay or non-performance is for reason of Force Majeure, be excused for a duration commensurate to the duration that the Force Majeure event is affecting it, provided always that the party affected shall have promptly notified the other party of such event.
- 16.3 If an event of Force Majeure prevails for a continuous period exceeding three months the Contract may be terminated by either party giving to the other 30 days' notice in writing to that effect.
- 17. TERMINATION AND SUSPENSION**
- 17.1 A party may immediately terminate a Contract by giving written notice to the other, if the other: (i) commits a material breach of the Conditions which is not capable of remedy; (ii) commits a continuing breach of the Conditions and fails to remedy it within 15 days of a written notice requiring the breach to be remedied; (iii) is dissolved, becomes insolvent, fails or is unable to or admits in writing its inability to pay its debts, institutes or has instituted against it proceedings seeking a judgment of insolvency or bankruptcy, has a resolution passed for its winding up or liquidation, or seeks or becomes the subject of the appointment of an administrator, receiver or similar official in respect of its assets; or (iv) ceases or threatens to cease to carry on business.
- 17.2 The Seller may at its option suspend performance of the Contract at any time: (i) during which there are events which could give rise to the exercise of its rights of termination under clause 17.1(ii); and/or (ii) if in the Seller's bona fide opinion, the Buyer has failed to make payment when due or to perform on time any of its other obligations under the Contract; or (iii) pursuant to clause 13.5. No suspension of performance by the Seller shall preclude its right still to terminate a Contract for reasons pursuant to clause 17.1. If the Seller elects to suspend its performance its overall time for performance shall be extended commensurate to the period of suspension and any cost incurred by the Seller as a result of or in connection with such suspension shall be reimbursed to the Seller by the Buyer.
- 17.3 No notice of termination may be given by either party except in accordance with these Conditions.
- 17.4 Termination or expiration of a Contract shall be without prejudice to: (i) either party's obligations stated in these Conditions as surviving the termination or expiration of a Contract; and (ii) any rights which either party has accrued pursuant to these Conditions prior to the termination or expiration of the Contract, including the Seller's right to be paid for any Goods and/or any other costs and/or charges it has incurred which at the date of termination are payable by the Buyer but not yet paid.
- 18. MISCELLANEOUS**
- 18.1 The Seller may perform its obligations and exercise the rights granted under these Conditions through any Affiliate or carry out its obligations through any agents or sub-contractors appointed by it for that purpose.
- 18.2 No variation to these Conditions shall have effect unless expressly agreed in writing by the Seller.
- 18.3 If any provision of a Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and (as may be the case) the remainder of such provision shall continue in full force and effect.
- 18.4 Failure or delay by a party in enforcing or partially enforcing any provision of a Contract shall not be construed as a waiver of any of its rights under the Contract.

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- 18.5 Any waiver by a party of any breach of, or any default under, any provision of the Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 18.6 The Seller may assign its rights and benefits (including receivables) arising from this Contract, without the Buyer's consent, but the parties agree that no condition or benefit conferred by this Contract will be enforceable by any third party unless rights are conferred on it pursuant to this clause 18.6.
- 18.7 Notices must be in writing and delivered by hand, first class post, or facsimile to the other party at its registered office or trading address at the date of the Contract.
- 18.8 This Contract shall be governed by and construed in accordance with the laws of India without regard to any conflict of laws' provisions. Any disputes arising out of or in relation to this Contract shall be heard and settled by arbitration proceedings applying the Rules of the International Chamber of Commerce at a venue in Pune, India, with the arbitration committee comprising a sole arbitrator appointed by the Seller.
- 18.9 The United Nations 'Convention on Contracts for the International Sale of Goods' signed in Vienna in 1980 shall not apply to this Contract.