



## FCS-D0016 – Terms and Conditions of Sale

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*Fife Control Systems Ltd*

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## DEFINITIONS

"Acceptance Notice" means the notice signed by the Customer following inspection of the Goods confirming its acceptance of the Goods.

"the Company" means Fife Control Systems Ltd, a company incorporated under the Companies Acts (Company No SC722103) and having its registered office at Bass Rock Business Park, Station Road, St Monans, Fife, KY10 2BN.

"Customer" means the person, firm, company or corporation who accepts quotations or on whose behalf quotations are accepted from the Company for the sale of goods or whose order for goods is accepted by the Company.

"Goods" means any goods sold by the Company to a Customer under a contract governed by these conditions or otherwise.

All deliveries and collections are subject to the following conditions unless otherwise agreed in writing. For the avoidance of doubt, these conditions override any conditions stipulated, incorporated or referred to in the Customer's order form, quotation or otherwise.

1. INFORMATION. The acceptance of the Company's quotation must be accompanied by sufficient information to enable the Company to proceed with the order forthwith. In the event of work on the order being suspended by the instructions of the Customer or lack of instructions, the quoted price given in the quotation shall be increased to cover any extra expenses incurred by the Company as a result.

2. PRICES. Prices quoted are exclusive of VAT. The Company reserves the right to increase prices to reflect any increase in the cost to the Company of materials necessary to fulfil an order.

3. PAYMENT. Terms of Payment stated in the quotation are to be strictly adhered to. The Company reserves the right to withhold deliveries in the event of the Customer's account being in arrears. The Company reserves the right to decline any order without stating a reason.

4. FREE ISSUE PARTS. Where parts or components are supplied to the Company as a free issue by or on behalf of any Customer for incorporation by the Company by bonding or otherwise in parts to be manufactured by the Company, such free issue parts or components included in a Customer's Goods are supplied at the Customer's risk and the Company shall have no liability in relation to the Goods incorporating such free issue parts or components. Whilst reasonable care will be taken by the Company to avoid damaging free issue parts in the Company's possession the Company cannot accept any liability for such damage nor can the Company accept liability for any costs or losses attributable to defects in free issue components after despatch from the Company's premises.

5. EXECUTION & DELIVERY. The Company shall proceed to execute the order for the Goods once it has received from the Customer confirmation in writing to proceed together with all necessary information and drawings to enable the Company to manufacture and supply the Goods. Delivery dates are offered purely as a guide to the Customer and the Company accepts no liability should delivery not coincide with the guide dates given.

6. MEASUREMENTS & SPECIFICATIONS. The Customer, upon placing an order with the Company, is deemed to have satisfied itself as to the contents and provisions of the specification. Wherever reasonably necessary, the Company reserves the right to alter Goods specifications without notice to the Customer, provided that the overall standard of the Goods shall not be prejudiced by such alteration. Exact conformity of the Goods delivered by the Company with any samples which have been previously submitted cannot be guaranteed. Any recommendation or suggestion relating to the use of the Goods made by the Company is given in good faith but it is for the Customer to satisfy itself as to the suitability of the Goods for the particular purpose intended and the Customer shall not rely on any representations, express or implied, made by or on behalf of the Company. All weights, measurements and specifications quoted by the Company are nominal and subject to manufacturing tolerances. Photographs and other illustrations or other advertisement matter, supplied by the Company represent generally the goods specified therein, but shall not be taken as a representation of the Goods.

7. FORCE MAJEURE. The Company shall have the right to cancel or delay delivery or to reduce the amount delivered if it is prevented, hindered or delayed in manufacturing or delivering by normal means of manufacture or delivery the Goods of the description covered by the contract through circumstances beyond its reasonable control including but not limited to strikes, lockouts, accidents, war, fire, unavailability of power at the manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply (a "Force Majeure Event"). No such cancellation, delay or reduction shall entitle the Customer to cancel any order or refuse delivery when full deliveries are resumed. The Company shall not be in breach of these conditions nor liable for delay in performing, or failure to perform, any of its obligations under these conditions if such delay or failure results from a Force Majeure Event.

8. CLAIMS. No liability is accepted by the Company in the event of non-arrival, shortages, damage or losses in transit of the Goods unless the Customer notifies the Company in writing within 3 days of the date of delivery of the loss or damage. A claim for shortages, damage or loss in transit will only be possible if the Goods to which the claim relates are still available for inspection by the Company at the address to which they were delivered by the Company. Goods which are the subject of a claim may only be returned to the Company with the Company's prior agreement. The Company shall not be responsible for any injury, loss or damage whatsoever caused either directly or indirectly by the Goods. All recommendations and advice given by or on behalf of the Company to the Customer or its representative as to the mode of storing, applying or using the Goods are given without liability on the part of the Company. No liability will be accepted by the Company where the Goods supplied have been altered or modified in any way by the Customer.

9. FRUSTRATION. If by virtue of circumstances beyond our control the contract is frustrated and the goods in respect thereof cannot be delivered the contract may be terminated by the Company and it is expressly agreed as follows: -

9.1 If any sum has been paid on account to the Company by the Customer and is repayable to him by operation of law, the Company shall be entitled to deduct therefrom all expenses incurred by the Company in connection with the manufacture and supply of the Goods, and

9.2 If no sum has been paid on account, the Customer shall be bound to pay to the Company all expenses so incurred in connection with the manufacture of the said Goods.

10. RISK AND ACCEPTANCE. The Goods shall become the risk of the Customer when the Goods leave the Company's premises and unless notice to the contrary has been received by the Company in terms of Clause 8 hereof, the Goods shall be deemed to have been received complete and in a satisfactory condition. Goods returned by the Customer shall remain at the Customer's risk except where the Goods have been returned with the agreement of the Company, in which event, the Goods will be at the risk of the Company from the time of receipt of the Goods by the Company. The Customer shall be deemed to have accepted the Goods upon signature of the Acceptance Notice on behalf of the Customer by the representative of the Customer sent by the Customer to the Company's premises to inspect the Goods.

## 11. LIMITATION OF LIABILITY.

11.1 The Company shall have no liability to the Customer in any of the following events:-

a) a defect in the Goods arises because the Customer failed to follow the Company's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

b) a defect in the Goods arises as a result of the Company following any drawing, design or specification supplied by the Customer;

c) the Customer alters or repairs the Goods without the written consent of the Company;

d) a defect arises in the Goods as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

e) the Goods differ from the specification provided by the Customer as a result of changes made by the Company to ensure the Goods comply with applicable statutory or regulatory requirements; or

f) subject to clause 10 and the other provisions of this clause 11, the Customer has notified the Company of a defect but has not given the Company a period of [3] months following receipt of a notice under these conditions to repair such defect (and also provided the Company with all assistance reasonably necessary in order to carry out such repair).

11.2 The Company shall not under any circumstances whatever be liable to the Customer for any loss of profit, loss of business, loss of goodwill, loss of business opportunity, loss of anticipated saving or any special, indirect or consequential damage suffered by the Customer that arises under or in connection with these conditions.

11.3 The Company's total liability arising under or in connection with these conditions shall in all circumstances be limited to an amount equal to the price paid to the Company by the Customer for the Goods to which any claim against the Company by such Customer relates.

12. DISPUTES. All disputes or questions between the Company and the Customer with respect to any matter or thing arising out of or relating to these conditions may, after written notice by one party to the other, be referred to a single Arbitrator mutually agreed for the purpose, or, in default of such agreement, to be appointed by the Chairman of the British Automation and Robotics Association (BARA). The seat of arbitration shall be Scotland and the Scottish Arbitration Rules (as set out in the Arbitration (Scotland) Act 2010 or any statutory re-enactment thereof for the time being in force) shall apply.

## 13. TITLE OF GOODS

Property in and the ownership of all Goods delivered by the Company to the Customer shall remain with the Company until payment of all sums due by the Customer to the Company have been made in full by the Customer to the Company. Title to the Goods shall not pass to the Customer until all such payments have been received by the Company.

Until such payment has been made and Title to the Goods has passed to the Customer, the Customer shall store the Goods in a warehouse or other suitable premises in such a manner that they will be readily identifiable at all times as the property of the Company and, until such payment has been made, the Company or its agent may (without prejudice to its other rights) recover the Goods. The Customer will allow and procure the Company any necessary access to enable the Company to exercise its rights hereunder. The Customer shall hold the Goods not paid for as the Company's fiduciary agent and custodian insured for full value as the Company's property and maintain the Goods in satisfactory condition.

Without prejudice to any other rights or remedies of the Company, the Customer's right to use, sell or otherwise dispose of the Goods shall automatically terminate in the event that the Customer becomes subject to any of the events listed in clause 14.1 of these conditions and the Company may at any time following the occurrence of such an event require the Customer to deliver up all of the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Goods are stored to recover them.

## 14. TERMINATION

14.1 The Company shall have the right immediately to terminate any contract with the Customer to which these conditions apply at any time upon occurrence of any of the following events:-

- a) if the Customer fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- b) if the Customer commits a breach of any other term of these conditions and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- c) if the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2);
- d) if the Customer begins negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- e) if a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
- f) if an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- g) if a person becomes entitled to appoint a receiver or an administrative receiver over all or any of the assets of the Customer or a receiver or administrative receiver is appointed over all or any of the assets of the Customer;
- h) if a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- i) if there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010);
- j) if any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(c) to clause 14.1(i) hereof inclusive; or
- k) if the Customer ceases, or threatens to cease, to carry on all or substantially the whole of its business.

14.2 The Customer shall be bound to give to the Company immediate notification of the occurrence of any act or event referred to in clause 14.1 (c) hereof,

14.3 Termination pursuant to this clause 14 shall not affect any rights, remedies, obligations or liabilities of the Company that have accrued up to the date of termination, including the right to claim damages for any breach of these conditions that existed at or before the date of termination.

14.4 Clauses 8, 11, 13, 16, 17, 18, 24 and 25 shall continue in force following termination of these conditions.

14.5 The Customer shall not be entitled to cancel the order in whole or in part without the Company's written consent unless the Company is in breach of its obligations in terms of these conditions. In the event of an order being cancelled, the Customer will be charged for

- a) All work carried out up to the date of cancellation.
- b) All purchases, materials and sub-contract work up to the date of cancellation.
- c) Any cancellation charges incurred by the Company.
- d) A cancellation charge on the following scale:-

\* Within one week from receipt of order, 5% of the outstanding order balance.

\* After one week from receipt of order, 20% of the outstanding order balance.

15. INSTALMENT PAYMENTS. In the event that the Customer has made payments to account to the Company in respect of work in progress for manufacturing the Goods and the Customer is thereafter unable to perform its obligations in terms hereof, provided that the Company is in a position to meet its obligations, then the Company (together with any rights or remedies available to the Company) shall:-

15.1 Make reasonable commercial efforts to sell the Goods to a third party at reduced price as in the circumstances reasonable and shall thereafter seek to claim damages from the Customer for the difference in value between the agreed price for the Goods and the reduced value obtained from the third party and any instalment payments held on account shall be used to offset the said difference in value; and

15.2 In the event that the Goods cannot be sold in terms of clause 15.1, the Company shall be entitled to retain the Goods and in addition, claim from the Customer the agreed price of the Goods and any instalment payments held on account shall be treated as liquidated damages in settlement of the claim.

16. INDEMNITY. The Customer shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature made by third parties and caused in whole or in part by or arising out of any act or omission of the Customer in connection with the use of shortage of the Goods. Without prejudice to the foregoing generality in the event of any claim being made or action being brought against the Company in respect of infringements of patents by the manufacture or sale by the Company of goods supplied to specifications or designs supplied by the Customer, the Customer shall indemnify the Company against all such claims or actions.

17. SET OFF. The Customer shall not be entitled to withhold payment of any sum due to the Company under this or any other contract in respect of a claim made against the Company whether under this contract or otherwise unless that claim has been agreed in writing by the Company or established by the decision of a competent court or Arbitrator. Except in such circumstances, the Customer has no right of set off or compensation whatsoever.

18. INTEREST. The Customer shall pay to the Company interest on all sums due by the Customer to the Company in terms of the contract which are not paid on the due date for payment, such interest to be charged at the rate of five per cent per annum above the base rate of The Royal Bank of Scotland plc from time to time on such amount as is outstanding from time to time from the due date of payment of such outstanding amount (together with interest thereon) in full.

19. DISCLAIMERS. Nothing in these conditions shall limit or exclude the liability of the Company for (i) death or personal injury resulting from negligence or (ii) fraud or fraudulent misrepresentation.

20. SEVERABILITY. If any provision of these conditions is held to be invalid or unenforceable, such provision shall be struck out and the remaining provisions shall be enforced.

21. WAIVER OF COMPANY'S RIGHTS. The Company's failure to act with respect to a breach by the Customer or others does not waive its right to act with respect to subsequent or similar breaches.

22. DATA PROTECTION. In submitting an order to the Company the Customer will be asked to provide certain information. The Customer consents to the Company making use of such information for the purposes of future marketing of Goods and services.

23. VARIATION. No amendment will be made to these standard conditions or specifications of the Goods unless in writing and signed by a duly authorised official of the Company.

24. CONFIDENTIALITY. The Customer undertakes and undertakes to procure that its employees, agents and sub-contractors will keep confidential and will not use for their own purpose, without the prior written consent of the Company, any confidential information of the Company which may become known to the Customer under or in connection with these conditions and shall return to the Company all confidential information of the Company in written or tangible form or any other media on demand.

25. LAW. These conditions shall be governed by Scottish Law and the parties submit themselves to the non-exclusive jurisdiction of the Scottish courts.