

# GENERAL TERMS AND CONDITIONS FOR THE SUPPLY (GTCS) OF GOODS AND SERVICES



BECKHOFF AUTOMATION PRIVATE LIMITED, INDIA (BAPL)

## 1. GENERAL PROVISIONS

- 1.1. Legal relations ("Contract") between BAPL ("Company") and the party for whom the products and services are supplied to ("Customer") in connection with the supply of products and/or services of the Company ("Supplies") shall be solely governed by these General Terms and Conditions for Supply ("GTCS"). The Customer's general terms and conditions shall apply only if expressly accepted by the Company in writing. The Customer's purchase order is subject to a written order confirmation ("Order Confirmation") by the Company.
- 1.2. All purchase orders for Supplies shall be deemed to be an offer by the Customer to purchase Supplies pursuant to these GTCS. Acceptance of Supplies shall be deemed conclusive evidence of the Customer's acceptance of these GTCS.

## 2. PRICE

- 2.1. The Quotation issued by the Company, shall remain valid for the period stated in the Quotation or when no such period is stated, for thirty (30) days from the date of the Quotation.
- 2.2. Prices agreed to as a consideration of the Contract ("Contract Price"), shall be in Indian Rupees, on the basis of "Ex-Works" (Incoterms 2020) or such other Incoterms 2020 as stated in quotation of the Company, and shall exclude packaging and any indirect taxes including but not limited to GST, Excise or similar taxes and duties applicable to the Supplies. The Customer agrees to pay or reimburse the Company for any such taxes, which the Company or its subcontractors are required to pay.
- 2.3. Products to be delivered will be packed in accordance with the Company's customary standard of packing and the cost thereof will be included in the Contract Price. Any special packing, either required by the Customer or necessary due to delivery being delayed or interrupted for reasons beyond the Company's reasonable control, will be charged to the Customer separately. Upon the Customer's request, the Company shall insure the Supplies against the usual risks of transport at the Customer's expense to be reimbursed separately to the Company.
- 2.4. The prices quoted are non-binding; In the event of an announced price change, the order will be reconfirmed with a Supply Continuity Surcharge. Within the scope of the reconfirmation, we grant the right of withdrawal from the order. The withdrawal must be exercised in text form via email within three (3) weeks, beyond which the reconfirmation shall be deemed accepted.

## 3. TERMS OF PAYMENT

- 3.1. Unless otherwise agreed, all invoices issued by the Company are due immediately and payable within fourteen (14) days from the date of each invoice. Payment is considered as made when the money has been credited to the designated bank account of the Company and such payment is to be made free of/without any deduction including but not limited to withholding taxes.
- 3.2. If the Customer does not pay within the agreed time, a default interest charge shall be applicable without specific reminder, calculated from the due date of the invoice at the rate of 2.0 % per month on the outstanding sum.
- 3.3. The Customer shall comply with the dates of payment even if transportation, delivery, erection, commissioning or acceptance or otherwise of the Goods are delayed or prevented for reasons beyond the control of the Company. The Customer is not entitled to withhold, set off or reduce payments unless it is specifically agreed to by the Company in writing.

## 4. DELIVERY

- 4.1. Times set for delivery or performance related to the Supplies shall only be binding if all required documentation to be furnished by the Customer, such as necessary permits and approvals, plans, drawings and schedules to be provided by the Customer, are received in time and subject to fulfilment of the agreed terms of payment and other obligations by the Customer. To the extent that these conditions are not fulfilled on time, the time for delivery shall be extended accordingly.
- 4.2. If non-observance of any obligation of the Company is due to Force Majeure, defined as impediments or other circumstances beyond the Company's reasonable control, the time for delivery, installation, completion and other performance shall be extended accordingly. The Company is entitled to claim from the Customer for all its reasonable costs incurred in connection with the Force Majeure. Force Majeure events include but not limited to: natural disasters or catastrophic events such as acts of God, epidemics, fire, flood, damage or destruction by lightning, typhoons, tsunami or earthquakes; nuclear accidents; acts or omissions by civil or military government authorities, such as foreign currency restrictions, revocation or suspension of export or import licenses, governmental priority orders, allocations or restrictions upon the use of materials or manpower; war (whether governmentally declared or otherwise), riots, sabotage or revolutions; terrorist acts; strikes or lockouts. A Party seeking relief shall notify the other Party as soon as practicable after the Force Majeure event and its effects on its ability to perform become known to him. Each Party shall make its reasonable efforts to minimize the consequences of the Force Majeure event.
- 4.3. In addition to Section 4.2, the Company shall be entitled to extension of time for delivery / performance if the delivery / performance is delayed due to acts / omissions of the Customer, its agents and contractors; or the carrying out of variation works as requested by the Customer. The Company shall notify the Customer of any additional costs resulting from such delay or variation, and actual costs incurred by the Company shall be reimbursed by the Customer.
- 4.4. In view of the volatile supply situation as presented in recent years since the onset of the pandemic, the delivery dates represent the known planning status at time of order confirmation and shall be subject to reasonable changes in some cases. Such known cases include the late or non-delivery of critical components to the production site of the Supplies or raw materials necessary for the fabrication of the semi-finished assemblies. Such delays caused shall not be deemed as sole responsibility of the Company.
- 4.5. Subject to Sections 4.2, 4.3 and 4.4, if the Company is solely responsible for the delay and the Customer can prove that it has demonstrably suffered a loss there from, the Customer may claim a compensation as liquidated damages of 0.5% of the price of that

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part of the Supplies which due to the delay could not be put to the intended use, for every completed week of delay ("Liquidated Damages"). Payment of the Liquidated Damages shall be the exclusive remedy of the Customer for delay and under no circumstances shall the total aggregate liquidated damages payable by the Company under this Contract, whether for delay or performance (if specifically agreed to in writing), exceeds 5% of the Contract Price. All other claims exceeding the rights stated in this Section 7 shall be excluded.

- 4.6. Unless otherwise agreed in writing, the Company is allowed to make partial deliveries against an order and to separately invoice the same. Payment thereof will fall due in accordance with Section 3.

## 5. ACCEPTANCE

- 5.1. Acceptance by the Customer takes place once the delivery of the Supplies has been affected, and the Customer does not raise any written notification of defects / objection under Section 5.2, provided that the Customer shall not refuse to receive and accept Supplies due to minor defects.
- 5.2. Upon receipt of Supplies or shipping documents and not later than two (2) weeks after receipt, the Customer shall check the quantity and conditions of the Supplies and notify the last carrier with a copy to the Company of
- any damage caused to the Supplies by the transport and / or
  - objections regarding forwarding or transport; as well as secure evidence including but not limited to making photographs of any damage.
- 5.3. Acceptance is also deemed to have been affected if the Supplies are put to use by the Customer, or the Customer refuses to accept the Supplies without providing written reasons and specific details of such refusal within the said two (2) week period.
- 5.4. The Customer shall not be entitled to refuse acceptance in the case of
- defects which only insignificantly impair the use of the respective Supplies;
  - minor deviations;
  - defective installation or erection not carried out by the Company; or
  - reasons for which are not within reasonable control of the Company.

## 6. WARRANTY AND DEFECTS LIABILITY

- 6.1. Company warrants that the Goods shall correspond with the specification as set out in the order acknowledgement or published on Supplier's website at the time of delivery and will be free from defects in design, material and workmanship under normal use and service during the warranty period stated in Section 6.3. A defect shall be a deviation of the goods from the warranty stated above, which materially affects the commercial use of the Goods.
- 6.2. A defect shall be, at the Company's discretion, repaired, replaced, re-performed free of charge, provided that the defect is due to reasons or circumstances already existed before the acceptance (Section 5) has occurred. For defective services, the Company shall at its sole option, choose to rectify or re-perform the services.
- 6.3. Unless otherwise agreed in writing, the liability period for the Defects under Warranty ("Defects Liability Period") shall be twelve (12) months for all Supplies. The Defects Liability Period shall commence from the date of delivery.
- 6.4. The Defects Liability Period for repaired / replaced /re-performed Supplies shall be six (6) months commencing from the date when the repair / replacement / re-performance has been completed, provided that the Defects Liability Period for the Supplies as a whole has not expired at an earlier date. The Defects Liability Period shall in no event restart or be prolonged by a repair or replacement of any part of the Supplies.
- 6.5. The Customer shall notify any claims for Defects to the Company within seven (7) days of the alleged Defect occurring. Such claims are to be made in writing by the Customer and to be notified in accordance with agreed terms and claim procedures under the Contract. The Company is not obliged to fulfil any claims for repair or replacement which do not comply with the aforementioned requirements. All written Defects claims are to be received by the Company within the Defects Liability Period.
- 6.6. The Company shall be given the opportunity to repair or to replace the Defective Supplies within a reasonable period.
- 6.7. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation, unsuitable soil conditions, or claims based on particular external influences not assumed under the Contract, or from nonreproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Customer or third parties and the consequences thereof are likewise excluded.
- 6.8. The Company shall not be responsible for additional expenses incurred (including costs of travel, transport, labour and material), to the extent that such expenses are increased because the subject matter of the Supplies has subsequently been brought to another location on the Customer's own accord, other than the stated location for delivery/performance in the Contract.
- 6.9. The rights of the Customer for any Defects shall be limited to and be in accordance with what is expressly provided in this Section 6.
- 6.10. The above Warranty is exclusive and no other warranty whether written or oral, is expressed or implied in the Contract. the Company specifically disclaims the implied warranties of merchantability and fitness for a particular purpose.
- 6.11. The expiration of Defects Liability Period shall mark the end of all contractual obligations of the Company save as otherwise expressly provided in the Contract.

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## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. Unless otherwise agreed, the Company warrants that with reference to the Supply Company does not have knowledge of any claim of any third party asserting that any intellectual property rights of a third party impede the offer for sale and sale of the Supplies.
- 7.2. If a third party asserts a justified claim against the Customer based on an infringement of an IPR by the Supplies made by the Company and used in conformity with the Contract, the Company shall choose, at its own election and expense, whether to acquire the right to
- use the IPR with respect to the Supplies concerned; or
  - modify the Supplies such that they no longer infringe the IPR; or
  - replace them. the Company shall be given the opportunity to rectify the defective title within a reasonable period of time.
- 7.3. The obligations of the Company under Section 7.2 shall apply only if the Customer
- immediately notifies the Company of any such claim asserted by the third party in written form, and
  - does not concede or acknowledge the existence of an infringement and
  - leaves any protective measures/defence and settlement negotiations to the Company's sole discretion.
- If the Customer stops using the Supplies in order to reduce the damage or for other reasons, it shall be obliged to make clear in writing to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
- 7.4. Claims of the Customer shall be excluded if:
- Customer (including its agents, employees or contractors) is responsible for the infringement of an IPR; or
  - the infringement of the IPR is caused by specifications made by the Customer; or
  - the infringement of the IPR is caused by a type of use not foreseeable by the Company or by the Supplies (or any part thereof) being modified by the Customer or being used together with products not provided by the Company.
- 7.5. This Section sets forth the Company's entire liability for infringement of third party IPR. Any further rights and remedies of the Customer (including right to claim damages) for whatever reason (whether in contract, tort including negligence, wilful default or otherwise) resulting in whatsoever losses or claims of the Customer against the Company or its agents shall be excluded.

## 8. LIABILITY

- 8.1. The Customer has no claim except as otherwise expressly stated in the Contract, irrespective of the legal grounds they may be based on.
- 8.2. The Company's liability for damage to property and other assets of the Customer, regardless of whether under contract, tort, strict liability or any other legal grounds shall in no event exceed INR 2 Crores per occurrence and shall cease at the end of the Defects Liability Period.
- 8.3. The Company's entire liability and the Customer's exclusive remedy for damages from any cause whatsoever (including negligence or for wilful default or otherwise of the Company and resulting in whatsoever damage and/or loss or injury to the Customer and/or its employees and/or agents), and regardless of the form of action, whether liability in contract or in tort, arising from or related to this Contract, shall not exceed an amount equal to 10% of the Price, or INR 2 Crores, whichever is lower. All liabilities of the Company in connection with the Contract shall end latest upon the expiry of the Defect Liability Period unless expressly provided otherwise.
- 8.4. Without prejudice to the generality of the foregoing, all claims for direct, indirect or consequential damages, including but not limited to loss of profit, loss of production, interruption of operations, loss of information and data, loss of interest, indirect and consequential damage resulting from contracts concluded by the Customer with third parties, are hereby excluded.
- 8.5. This Section 8 shall also apply for the benefit of the Company's subcontractors, suppliers, agents, directors, officers and employees.
- 8.6. The limitations and exclusions of liability contained in these Conditions shall apply to the fullest extent permitted by law, and shall therefore, not apply in the event and to the extent of proven gross negligence and wilful misconduct on the part of the Company. Any proven liability of the Company regarding personal injury or death shall be unlimited.

## 9. TITLE

- 9.1. Title to ordered Goods shall remain the property of the Company until each and every claim the Company has against the Customer on account of the business relationship has been fulfilled.
- 9.2. For the duration of the retention of title, the Customer may not pledge the retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
- 9.3. After delivery but prior to the transfer of title, the Customer shall, at its expense, take out necessary insurance to protect the retained Goods against theft, total loss, fire, water and other risks and take all further measures in order to ensure that title of the Company is not prejudiced.
- 9.4. The Customer shall inform the Company immediately in writing of any seizure or other act of intervention by third parties which may result in the Company losing title to or security interest in the Goods.
- 9.5. Where the Customer fails to fulfil its duties, or fails to effect payment upon payment due date in accordance with the terms of payment stated in Section 3 above, or otherwise violates its obligations under this Conditions, and after the lapse of a reasonable cure period which has been given to the Customer to rectify the breach in writing, the Company shall be entitled to terminate the Contract for the supply of the Retained Goods and take back the Retained Goods. The Customer shall be obliged to return the Retained Goods and render all necessary assistance including allowing the entry of the employees and / or agents of the Company into all premises where the Retained Goods are kept so as to facilitate the retaking of possession by the Company of the Retained Goods.

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## 10. TERMINATION/SUSPENSION

- 10.1. A Party shall be entitled to terminate the Contract by written notice to the other Party, if:
- there exist a Force Majeure event as defined in Section 4.2 which subsist for a period of more than six (6) months; or
  - the other Party voluntarily files a petition in bankruptcy or voluntarily resolves to wind up, or a petition in bankruptcy or winding up is involuntarily filed against the other Party (which petition is not discharged within thirty (30) days after filing); or
  - there is a change in control (the ability to direct the affairs of another whether by virtue of contract, ownership of shares, or otherwise howsoever) of the Customer which in the reasonable opinion of the Company adversely affects the position, rights or interests of the Company.
- Any accrued rights to which either Party is already entitled at the date of such termination shall remain unaffected.
- 10.2. The Customer shall not be entitled to terminate the Contract solely on the ground that the aggregate limit of Liquidated Damages specified in Subsection 7.4 has been reached.
- 10.3. The Company shall, at its own option, suspend the provision of its obligations under this Contract, in the event that:
- the Customer fails to make payment due under this Contract, within sixty (60) days after it has become due and payable; or
  - the Customer fails to perform its obligations necessary for the Company to deliver / perform in accordance with the Contract.
- If the Customer fails to remedy its default after the lapse of a reasonable cure period has been given by the Company, the Company is entitled to terminate the Contract.
- 10.4. In the event of suspension of the Contract due to reasons that the Company is not responsible for, the Customer shall reimburse the Company for all additional costs, expenses and loss due to such suspension.

## 11. DISPUTE SETTLEMENT; APPLICABLE LAW

- 11.1. This Agreement shall be governed by the provisions of laws applicable throughout the territory of India and Parties submit themselves exclusively to the courts of Mumbai, Maharashtra. All disputes arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall at first instance, be resolved amicably through good faith negotiations to be conducted by the representatives of the Parties. Upon request of a Party, a senior management representative of each Party shall participate in the negotiations. Each Party shall be entitled to terminate these negotiations by written notification to the other Party at any time.
- 11.2. If the dispute is not resolved in accordance with Section 11.1 hereinabove, then the same shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act 1996, as amended from time to time and the rules made thereunder. A sole arbitrator shall be appointed mutually by both the Parties in case the value of claim under dispute is less than INR 5,00,00,000/- (Indian Rupees Five Crores) and if the value of claim under dispute is more than the aforesaid amount, the dispute shall be referred to and adjudicated by a forum of three arbitrators with one arbitrator nominated by each Party and the presiding arbitrator selected by the nominated arbitrators. The language to be used in the arbitration proceedings shall be English and the seat and venue of arbitration shall be Mumbai, India.

## 12. ASSIGNMENT; SUBCONTRACT

- 12.1. Neither Party shall assign its rights or delegate its duties under the Contract without prior written consent of the other Party provided that the Company shall be allowed to assign its rights or delegate its duties to its parent company, subsidiaries or associate companies by way of prior written notification only, without the need for such consent.
- 12.2. The Company may subcontract for the performance of any part of its obligations under the Contract to others without the need to obtain prior consent from the Customer.

## 13. CONFIDENTIALITY

- 13.1. Unless the Company has given its prior written consent, the Customer shall not reproduce or disclose to any third party any Confidential Information (as defined in Section 13.2 below), and shall undertake all necessary measures to prevent the Confidential Information from being disclosed to or used by unauthorized persons or parties. In the event that the Company has consented to the disclosure of the Confidential Information to a third party by the Customer, the Customer shall procure that such third party undertakes to be bound by similar confidential obligations. The Customer shall indemnify and hold harmless the Company from any damage incurred through the breach of said confidentiality obligation by the third party.
- 13.2. "Confidential Information" means any information which is disclosed by the Company to the Customer in oral form or in writing or contained in any form or medium and may or may not be expressly stated to be confidential or marked as such. Without limiting the generality of the foregoing, Confidential Information may include or relate to information concerning the Supplies and/or the Company and/or the business of the Company such as pricing information, manufacturing processes, business methods, technology, software, drawings, know-how, products specifications, inventions, employees, suppliers, customers, business and market forecasts, research, development, accounting, finances, marketing, and other purchasing and sales information.
- 13.3. This Confidentiality obligation shall not apply to information which:
- is or becomes part of the public domain through no fault of the Customer; or
  - is disclosed to the Customer in good faith by a third party who has a right to make such disclosure; or
  - as evidenced by Customer's written records, is/becomes developed independently by the Customer without reliance on the Confidential Information or is /has been known to the Customer prior to its disclosure by the Company; or
  - is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order and subject to the Customer's obligation to notify the Company of the requirement in a timely manner.

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13.4. Notwithstanding anything to the contrary in the Contract, the provisions contained in this Section 13 shall survive the termination of the Contract.

### **14. MISCELLANEOUS**

14.1. The legal invalidity of one or more provisions of this GTCS in no way affects the validity of the remaining provisions of the GTCS and the Contract. In such case, the Parties shall by mutual agreement substitute for the provisions concerned a provision considered substantially equivalent in economic terms. This shall not apply if it would be unreasonable for one of the parties to be obligated to continue the Contract.

14.2. No waiver by the Company or any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provisions. If the Company delays, targets or chooses not to enforce its rights under the Contract, it shall not affect its right to do so at a later date.

14.3. Any notice required or permitted to be given by either Party to the other shall be in writing and signed by the authorized representatives.