

BECKHOFF AUTOMATION LIMITED TERMS AND CONDITIONS OF TRADE

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To the fullest extent legally permissible all dealings between Beckhoff Automation Limited ["Beckhoff"] and any Customer relating to any goods, products or services ["Goods"] are subject to the following terms and conditions of trade ["these Terms"] unless otherwise agreed in writing:

1. Cash Before Delivery or Credit Terms

- a. Customers who wish to apply for a credit account must complete and submit the prescribed Credit Application Form (and any other documentation) to the satisfaction of Beckhoff. If Beckhoff approves this application, the applicable customer can deal with Beckhoff on terms of a 30 day from end of month, account with Beckhoff up to the prescribed credit limit set by Beckhoff. Otherwise, all Goods are offered by Beckhoff on a cash before delivery basis.
- b. Credit approval granted pursuant to clause 1(a) may be withdrawn by Beckhoff at any time in its discretion.
- c. If credit approval has not been granted by Beckhoff pursuant to clause 1(a) or credit approval is withdrawn pursuant to clause 1(b), Beckhoff will supply Goods to the Customer on a cash before delivery basis.
- d. In the event a Customer's credit account is revoked, any and all amounts owing to Beckhoff shall be paid immediately.

2. Payments

All payments are to be made by the following methods and without deduction unless otherwise agreed:

- a. Cash, in person or at a Beckhoff premises.
- b. Cheque or bank cheque made out to Beckhoff Automation Limited (with Beckhoff refusing to recognize payment being made until funds have cleared into the Beckhoff bank account).
- c. Direct deposit into the nominated Beckhoff Automation Limited bank account.

If Beckhoff receives or recovers money in respect of debts of the customer or anyone else, Beckhoff may use it to pay off any part of those debts it chooses.

3. Interest

Interest will be charged on overdue accounts at the rate of 19.95% per annum; calculated on a daily basis and charged on the last business day of the month.

4. Property and Risk

Until payment in full has been made by the Customer to Beckhoff of the purchase price for the Goods and all other amounts owing by the customer to Beckhoff (and including if the Customer is subject to a credit facility granted by Beckhoff and/or time to pay):

- a. Property in any Goods will remain with Beckhoff until payment in full of the purchase price and of all moneys owed to Beckhoff are received by Beckhoff and Beckhoff reserves the right to take possession and dispose of Goods as it sees fit at any time until full payment;
- b. Once Beckhoff has received full payment, the Customer can elect for the Goods to be delivered through Beckhoff's nominated courier (approximately 3-5 working days) or collect the Goods from Beckhoff's premises. The Customer must make it known to Beckhoff which method of delivery it has selected. If no method of delivery is selected the Goods will be deemed to be deliverable via Beckhoff's nominated courier pursuant to clause 12;
- c. The Customer shall be deemed to hold the Goods as a fiduciary bailee for Beckhoff and agrees to store the Goods separately on behalf of Beckhoff so that they are clearly identifiable as Beckhoff's property;
- d. The Customer grants permission to Beckhoff to enter any property to recover the Goods as is necessary; (where the goods have not been fully paid for, and Beckhoff reasonably believes that the goods have been or will be destroyed, damaged, disposed -of, sold, endangered, disassembled, removed, or concealed or that the Customer is in breach of any part of clauses 4 or 5 of this agreement, Beckhoff or Beckhoff's agent(s) may enter the Customer's premises without further notice to the Customer or any other person, to remove any goods which are Beckhoff's property, including goods or software which are incorporated into any other goods, using such force as is necessary and without prejudice to any of our other rights.)
- e. The Customer agrees that a certificate purporting to be signed by an officer of Beckhoff identifying Goods as unpaid shall be conclusive evidence that Goods have not been paid for and of Beckhoff's title to those Goods;

- f. Upon sale or disposition of any Goods prior to full payment the Customer agrees to deposit all proceeds in a separate bank account, not mix such proceeds with any other monies and account to Beckhoff for the same as fiduciary and bailee;
- g. Without derogation from Beckhoff's rights as a creditor of the Customer or arising under these Terms if Goods are used in any construction, building, fabrication and/or manufacturing process ["the Process"] which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any Goods used in the Process as invoiced to the Customer by Beckhoff UPON TRUST for Beckhoff until payment in full for those Goods and all monies owed to Beckhoff; and
- h. Goods shall be deemed to be dealt with by the Customer on a "first in first out" basis at all times.

5. Personal Property Securities Act 1999 (PPSA)

- a. In this clause:
 - i. "financing statement" has the meaning given to it by the PPSA;
 - ii. "financial change statement" has the meaning given to it by the PPSA;
 - iii. "security agreement" means the security agreement under the PPSA created between the Customer and Beckhoff by these terms and conditions; and
 - iv. "security interest" has the meaning given to it by the PPSA.
- b. The Customer acknowledges that these Terms constitute a security agreement for the purposes of section 36 of the PPSA and that a security interest exists in all Goods (and their proceeds) previously supplied by Beckhoff to the Customer (if any) and in all future Goods (and their proceeds) supplied by Beckhoff to the Customer.
- c. The Customer undertakes to:
 - i. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Beckhoff may reasonably require to register a financing statement or financing change statement in relation to a security interest or register any other document required to be registered under the PPSA;
 - ii. indemnify, and upon demand reimburse, Beckhoff for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - iii. not give to Beckhoff a written demand or allow any other person to give Beckhoff a written demand requiring Beckhoff to register a financing change statement under the PPSA;
 - iv. not register or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Beckhoff; and
 - v. immediately advise Beckhoff of any material change in its business practices of selling the Goods which may result in a change in the nature of the proceeds derived from such sales.
- d. The Customer and Beckhoff agree that until ownership of the Goods passes, the Customer waives its rights under the following provisions of the PPSA:
 - i. to receive a notice of intention of removal of an accession, s129 PPSA;
 - ii. to receive a notice that Beckhoff decides to enforce its security interest in accordance with land law;
 - iii. to receive a notice on enforcement action against liquid assets;
 - iv. to receive a notice of disposal of Goods by Beckhoff purchasing the Goods;
 - v. to receive a notice to dispose of Goods, s109 PPSA;
 - vi. to receive a statement of account following disposal of Goods, s116 PPSA;
 - vii. to receive a statement of account if no disposal of Goods for each 6-month period;
 - viii. to receive a notice of any proposal of Beckhoff to retain Goods, s120(2) PPSA;
 - ix. to object to any proposal of Beckhoff to either retain or dispose of Goods, s121 PPSA;
 - x. to redeem the Goods, s132 PPSA;
 - xi. to reinstate the security agreement, s133 PPSA; and
 - xii. to receive a notice of any verification statement.

6. Goods Prices and GST

- a The purchase price of the Goods is as set out in Beckhoff's current price list or quotation at the time the Customer places an order of the Goods with Beckhoff. Beckhoff reserves the right to change the prices of Goods at any time without notice to the Customer.
- b The purchase price is displayed in New Zealand Dollars.
- c In the event the Customer is purchasing the Goods from overseas via credit card, the purchase price processed will be in New Zealand Dollars. Beckhoff takes no responsibility for any overseas bank charges nor the foreign exchange rate that is applied at the time of processing.
- d Regardless of any provision of these Terms, if GST is imposed on any Supply made to the Customer by Beckhoff under these Terms and Conditions of Trade, the amount which the Customer must pay is increased by the amount of the GST. In this clause 6, expressions have the same meaning as in A New Tax System (Goods and Services Tax) Act 1985 (as amended).

7. Limitation of Liability

The Customer agrees that, to the extent permitted by law, and subject to clause 8 of these Terms:

- a all Goods supplied by Beckhoff benefit from the warranty given by the manufacturer, if any, and this benefit shall be passed onto the Customer accordingly.
- b Beckhoff's liability in respect of the Goods shall be limited to the replacement of faulty Goods or the issue of a credit note in respect thereof or the granting of refund or equivalent compensatory measure as Beckhoff considers appropriate at its discretion.
- c that Beckhoff shall not be liable for any loss or expense arising after seven days from delivery (or at all once Goods have been unpacked, affixed and/or otherwise used or applied) after which there shall be deemed to be unqualified acceptance.
- d Beckhoff shall not be liable for any damages for personal injury, any damage to property and/or any contingent, consequential, direct, indirect, special or punitive damages whether due to negligence or otherwise and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly.
- e no other term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any way extending to, otherwise relating to or binding upon Beckhoff other than these Terms and Conditions is made or given by or on behalf of Beckhoff other than by these Terms and Conditions save and except to the extent otherwise required by law.
- f whilst Beckhoff makes every effort to ensure that all Goods sold are of acceptable quality, these Goods are sold on the understanding that Beckhoff is not responsible for any losses caused through the failure of these Goods to function as the manufacturer intended, or their failure to be delivered within a reasonable time frame from placement of the Customer's order.

8. Exclusions

The Customer agrees that:

- a No dealing between Beckhoff and the Customer shall be or be deemed to be a sale by sample;
- b The Customer shall rely on its own knowledge and expertise in selecting Goods for any purpose and any advice or assistance given by or on behalf of Beckhoff shall be accepted at the Customer's risk and shall not be deemed to have been given as expert or adviser nor to have been relied upon;
- c Goods that are manufactured by Beckhoff Automation GMBH & Co. KG are sold subject to the relevant manufacturer's warranty and Beckhoff shall only be liable for these Goods required by law; and
- d Beckhoff shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of any Goods and/or otherwise) which are not precisely and accurately communicated in writing directly to the appropriate personnel at Beckhoff prior to the entry by Beckhoff into any relevant sale contract.

9. Incorrectly Delivered, Missing or Defective Goods

- a. If Goods are:
- i. incorrectly delivered by Beckhoff; and/or
 - ii. missing from a delivery,
- the Customer must advise Beckhoff by submitting a claim in writing to Beckhoff within 14 days from the date of receipt of the Goods by the Customer (for incorrectly delivered or ordered Goods) or within 14 days from the date of receipt of the invoice (for missing Goods). If the Customer fails to make a claim within these 14-day period (as applicable), then to the extent permitted by law, the Customer is deemed to have accepted the Goods and will be required to pay for them in full.
- b. If Goods are:
- i. defective; or
 - ii. contravene any applicable statutory guarantee;
- the Customer must notify Beckhoff within 14 days, or longer if, in the reasonable opinion of Beckhoff the notification period should be extended because the Customer did not become aware of the matter referred to in clause 9(b)(i) or 9(b)(ii) until after that 14-day period.
- c. For any notification under clause 9(a) or 9(b) the Customer must specify Beckhoff's item number of the Goods (where applicable) and the invoice number upon which the Goods were purchased.
- d. The Customer shall not return any Goods without Beckhoff's prior written approval. Any Goods returned to Beckhoff under clause 9 must:
- i. be in brand new and unused condition;
 - ii. with undamaged packaging; and
 - iii. returned within 1 month of the original purchase date.
- e. Subject to receiving Beckhoff's written approval, the Customer shall return the Goods (where appropriate) in brand new and unused condition with undamaged packaging and:
- i. Beckhoff will in return credit the Customer's account with an amount equal to the purchase price of the Goods that were incorrectly delivered by Beckhoff or incorrectly ordered by the Customer; or
 - ii. in the case of missing Goods, Beckhoff will re-deliver the missing Goods; or
 - iii. in the case of Goods that are deemed to have been supplied to a "Consumer" within the meaning of the Consumer Guarantees Act 1993 ("Consumer Goods") contravening clause 9(b):
 - a. in any minor way, Beckhoff may in its absolute discretion, repair or replace the Goods; or
 - b. in any major way, the Customer may elect to have the Goods replaced or their equivalent value refunded.
- f. For the purposes of clause 9(e)(iii), Beckhoff will determine whether such Goods contravene clause 9(b) in a major or minor way under the Consumer Guarantees Act 1993.
- g. The Customer shall in all cases, pay to Beckhoff a restocking fee as prescribed in Beckhoff's returns policy for the gross invoice value of all returns, or in agreement made with Beckhoff's management in writing.
- h. Notwithstanding any other provisions of these Terms the Customer shall not return Goods without first providing to Beckhoff an original invoice as proof of purchase; and
- i. Notwithstanding any other provisions of these Terms the Customer shall not return any Goods which have been custom made, custom cut, custom processed or custom acquired.

10. Orders

The Customer agrees that:

- a. The Customer must place written orders for Goods with Beckhoff in the form specified by Beckhoff. Beckhoff will not accept phone orders.
- b. Beckhoff may, in its discretion, accept or reject any order of the Customer.
- c. The Customer must not cancel an order of Goods unless it has obtained the prior written consent of Beckhoff, which consent may or may not be granted in Beckhoff's absolute discretion.
- d. Each order placed shall be deemed to include a representation that the Customer is solvent and able to pay all of its debts as and when they fall due; and

- e. When any order is placed the Customer shall inform Beckhoff of any facts which might reasonably affect any decision to accept the order and/or grant credit and that any failure to do so shall be deemed to create and constitute an inequality of bargaining position, the taking of an unfair advantage of Beckhoff and to be unconscionable, misleading and deceptive.

11. Minimum Invoice Policy and Purchase Price

The Customer agrees that it shall at all times and in all respects comply with Beckhoff's minimum invoice policy. This may at any time, and from time to time apply on such terms as Beckhoff considered to be reasonable that Beckhoff notified to the Customer.

12. Delivery

- a. Beckhoff accepts no responsibility or duty to deliver but may elect to arrange delivery at its discretion and without liability and at the Customer's cost and risk in all things.
- b. All orders placed with Beckhoff without a nominated delivery method and or freight provider will be deemed to be deliverable via Beckhoff's nominated courier and charged out at Beckhoff's standard freight pricing applicable to the size and weight.
- c. Beckhoff shall not be liable for delay or any failure or inability to deliver.
- d. Goods shall be deemed to be delivered as soon as they are ready for delivery at which time risk shall be deemed to have passed to the Customer.
- e. Beckhoff may charge for frustrated delivery to cover Beckhoff's reasonable expenses.

13. Forward Orders

The Customer agrees:

- a. To pay for so much of any forward order as is from time to time invoiced by Beckhoff;
- b. That no delay or failure to fulfil any part of such order shall entitle any cancellation or variation of any order or delay or reduce any payment; and
- c. To pay any demurrage and/or other costs and expenses of Beckhoff in handling and/or holding Goods once ready for delivery.

14. Force Majeure

Beckhoff shall not be or be deemed to be in default or breach of any contract as a result of Force Majeure. Force Majeure shall include any cause beyond the reasonable control of Beckhoff including

- a. Natural disasters such as earthquakes, land subsidence, geothermal or volcanic eruptions, fires, floods, tidal waves or tsunamis, lightning strike, tornados, hurricanes, snow or dust storms.
- b. Significant human conflict such as war or similar hostilities, embargos, blockades, insurrection, riots, civil disobedience or industrial action
- c. Plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions
- d. Governmental or quasi-governmental intervention such as a declaration of a state of emergency, martial law, confiscation or seizure of private property
- e. Procurement difficulties or logistical obstacles such as shortage of labour, materials, specialist contactors, transportation, energy or essential plant or equipment that could not reasonably have been foreseen prior to its occurrence.

15. Attornment

For the purpose of giving effect to the Customer's obligations under these Terms, the Customer hereby irrevocably appoints the National Credit Manager (or like equivalent) for the time being of Beckhoff as the Customer's attorney in all things.

16. Disputes

Beckhoff do not have to give a refund if the Customer changes their mind about purchasing any Goods. It is expected that the Customer will choose carefully.

The Customer agrees to pay into an interest-bearing trust account in the joint names of Beckhoff and the Customer 50-75% of any amount claimed by Beckhoff as a condition precedent to any dispute by the Customer of any such claim on the basis that upon resolution of the dispute the trust fund and any interest shall be dispersed according to the resolution.

This clause shall operate as a bar to any defence or claim by the Customer until fully complied with.

In the event of any dispute arising between the parties, either party must notify the other of the nature of the dispute in writing. Both parties must endeavour to resolve the matter in good faith. If the parties fail to resolve the matter as described above within 7 days of the notice of the dispute, the dispute must be referred to mediation for resolution:

- a. Both parties' agreement to mediate must be in writing
- b. Both parties will agree to a chosen mediator. If both parties cannot agree to a mediator within 7 days of the written agreement to mediate, either party may request the President or relevant nominating officer of the Arbitrators' and Mediators' Institute of New Zealand Inc. (AMINZ) or of LEADR (NZ) Inc. to select a mediator.
- c. Each party will bear their own legal costs and the costs of the mediator shall be borne equally by Beckhoff and the Customer.

In the event that resolution by mediation is not successful for both parties within 30 days of referral to days mediation, either party may undertake legal proceedings to resolve the dispute in the appropriate Court or if both parties agree, in Arbitration under the Arbitration Act 1996. If both parties cannot agree to an Arbitrator within 21 days of the written agreement to Arbitrate, either party may request the President or relevant nominating office of the AMINZ or of LEADR (NZ) Inc. to select an Arbitrator.

If the matter has been filed in the appropriate Court or Arbitration, both parties agree that will act as a stay and neither party may bring an action in the appropriate Court or Arbitration (where applicable).

17. Abnormal Payments

The Customer agrees to pay an administration fee of 2% (calculated on the amount paid) on any payment which is made other than as provided in clause 2 of these Terms and Conditions; which fee is agreed as the liquidated cost of processing such abnormal payments.

18. Use of TwinSAFE products

This clause only applies to Customers that purchased Goods including TwinSAFE products.

TwinSAFE products may only be used for their intended purpose, by a sufficiently qualified and authorised specialist staff and may only be operated if they are in a flawless and fully functional condition. The Customer must familiarise themselves with the [TwinSAFE operating manual](#) and [TwinSAFE certifications](#).

The system manuals must always be available in their entirety and in a legible condition during installation, configuration of safety functions and test operation. Failure to comply with the TwinSAFE manuals will lead to loss of warranty and exclusion of liability.

A TwinSAFE product must not be used by the Customer if it is delivered to the Customer and has a damaged seal or opened packaging. Clause 9 must be followed to return the TwinSAFE product back to Beckhoff. If the Customer proceeds to use the TwinSAFE product despite being delivered to them damaged this will lead to loss of warranty and exclusion of liability.

Nothing in this clause affects the TwinSAFE Licence Agreement. The TwinSAFE Licence Agreement continues to operate in its entirety.

19. Defaults

Upon default or breach of these Terms by the Customer Beckhoff may inter alia retain all monies paid, cease further deliveries, recover from the Customer any loss of profits arising and/or at Beckhoff's election take immediate possession of Goods not paid for without prejudice to any other rights Beckhoff may have and without Beckhoff being liable in any way to any person.

Beckhoff is entitled to recover from the Customer all costs that Beckhoff may reasonably incur in attempting to collect the amount owing (including actual legal costs and expenses and costs of collection) any other monies owing by the Customer to Beckhoff, whether in relation to any contract or on any other account whatsoever.

20. Severability

Any part of these Terms being a whole or part of a clause shall be capable of severance without affecting any other part of these Terms.

21. Warranty Policy

Save and except as required by law or as provided in these Terms, no warranty is given where Beckhoff is not the manufacturer of Goods other than the warranty offered by the manufacturer and to the fullest extent legally permissible Beckhoff's liability shall in all cases be strictly limited in accordance with clause 7 of these Terms. Where Beckhoff is or might be deemed to be a manufacturer then the Beckhoff Standard Warranty applies for the period applicable to specific Goods. Details of the Beckhoff Standard Warranty and the schedule of periods applicable are available upon request from Beckhoff's Head Office. To the extent any Goods are Consumer Goods, these Goods come with guarantees that cannot be excluded under the New Zealand Consumer Law, and the Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage, and is entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

22. Privacy Policy

Beckhoff requires the Customer to provide personal information to it through its website and/or payment portal and has appropriate security measures to protect the Customer's personal information. Beckhoff maintain a privacy policy which can be found at <https://www.beckhoff.com/en-nz/data-privacy-policy/>.

The Customer consents to the release of your personal information to Beckhoff and third parties in connection with the uses contemplated by the privacy policy. If you have questions or comments about our privacy policy, please contact Beckhoff at: dataprotection@beckhoff.com

23. Notice

Beckhoff may change these Terms from time to time by notice to the Customer in writing, which may be by email, if by email on receipt of a "delivery receipt and/or read receipt" is deemed effective notice. The customer shall be bound by any terms and conditions of trade as adopted by Beckhoff immediately they are so adopted and notwithstanding any other purported or pre-existing terms and conditions which might otherwise have applied.

24. Indemnity

The Customer indemnifies Beckhoff and its officers, directors, employees and agents (Representatives) against all damages, losses, liabilities, claims, expenses and costs incurred by Beckhoff and the Representatives (including for all legal costs and debt collection costs incurred by Beckhoff) in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal) arising directly or indirectly as a result of or in connection with a breach by the Customer of any of these Terms and Conditions.

25. No Assignment

The Customer may not assign any of its obligations under these Terms without the prior written consent of Beckhoff. In the event the Customer assigns such obligations without the written consent of Beckhoff, the Customer shall remain liable in respect of all continuing indebtedness.

26. Entire Agreement

Subject to law and the provisions of any written documentation approved by Beckhoff, these Terms and Conditions are the entire agreement between the parties in relation to anything connected with the subject matter of these Terms and Conditions.

27. Termination

Either party may terminate these Terms immediately by giving the other party written notice of termination, provided that:

- a all outstanding orders and deliveries have been paid for in full (including any applicable GST, interest, freight or other charges); and
- b the terminating party is not otherwise in breach of these Terms and Conditions.

28. Relationship

Nothing in these Terms constitutes a partnership, joint venture, agency or employment relationship between Beckhoff and the Customer.

29. Governing Law and Jurisdiction

These Terms and Conditions are governed by, and are to be construed with, the laws of New Zealand and Beckhoff and the Customer irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts competent to hear appeals from them.