



## Standard Terms of Sale and Delivery

### 1. Application

1.1 These standard terms of sale and delivery shall apply to the extent that they are not waived by written agreement by the parties concerned. Any terms specified by the purchaser which conflict with these standard terms of sale shall not be binding on Progressive Automations, even though Progressive Automations fails to make any complaint against them. No deviation from the terms shall apply without the explicit written consent of Progressive Automations.

1.2 The international trade terms specified in "Incoterms 2010" shall apply between Progressive Automations and the purchaser.

### 2. Prices

Although we make every effort to maintain lead times and same pricing, prices and shipping lead times are subject to change without notice for any reason, including without limitation, changes related to the cost of raw materials for the Goods. They are prepared for the purpose of furnishing general information and are not quotations or offers to sell on the part of the Seller. No payment discounts are offered, and minor inadvertent administrative errors contained in an invoice are subject to correction and shall not constitute reason for untimely payment. Goods will be billed at the prices in effect at the time of shipment. Partial shipments on quantity orders shall be deemed a separate and independent contract for billing. Freight charges will be "Prepaid and added to the invoice" unless specified otherwise. Prepaid charges will be invoiced using Seller's freight and handling charge rate list. Courier service will be prepaid and added to the invoice using current rates. Seller does not accept COD orders.

### 3. Ordering

3.1 No final agreement concerning sale or delivery shall exist between Progressive Automations and the customer until Progressive Automations has given its acceptance as an order confirmation or other explicit written confirmation.

3.2 If Progressive Automations' order confirmation does not match the purchaser's order, the purchaser must complain immediately. Failure to do so means that the purchaser shall be bound by the contents of the order confirmation.

3.3 Quotations, pro forma invoices and other associated correspondence shall not be binding on Progressive Automations.

3.4 No cancellation or alteration of orders is regarded as having been accepted until Progressive Automations has confirmed the fact in writing. In case of cancellation or alteration the purchaser shall reimburse Progressive Automations for all reasonable costs incurred in connection with the cancellation or alteration of orders.

### 4. Terms of delivery

4.1 The purchaser shall bear all risks in case of loss, damage or delay during transport. In the absence of any agreement to the contrary, transport will be performed using the means Progressive Automations deems best without any liability for PROGRESSIVE AUTOMATIONS. Insurance will only be taken out in the event of a written request by the purchaser.

4.2 Progressive Automations undertakes to take appropriate measures to deliver on time. If a delay nevertheless occurs, Progressive Automations shall be entitled to postpone the time of delivery for up to 35 days without the purchaser being entitled to cancel the order. A late delivery shall not entitle the purchaser to claim compensation.

### 5. Blanket Orders

All Goods are eligible for scheduled shipments under the following terms:

Releases to be entered into the Progressive Automations' system are limited to shipment requested within 12 months of receipt of the order by Progressive Automations.

Releases will be entered into Progressive Automations' system with firm release dates only, subsequent change of the release date is allowable in range of 30 days.

After an order is received, booked and scheduled in the Progressive Automations' system, any delivery schedule changes may be subject to additional charges.

Any cancellation of a scheduled order will be subject to cancellation charge of at least 25% of the price of the Goods.

### 6. Terms of payment

6.1 Payment shall be made no later than at the time of delivery ex works, unless otherwise specifically agreed in writing.

6.2 Net terms start from the day the shipment has been invoiced. They are counted in calendar days not business days.

6.3 If payment is delayed, Progressive Automations shall be entitled to claim 2% interest on the purchase price per month or part of a month, as well as to withhold all future consignments. If payment is delayed, Progressive Automations shall be entitled to demand that the purchaser pays all reasonable costs incurred in connection with legal or non-legal steps taken with a view to collecting payment.

6.4 The purchaser shall not be entitled to withhold any payments in respect of alleged claims against Progressive Automations, unless such claims have been accepted in writing by Progressive Automations in advance.

6.5 If the purchaser fails to take delivery of consignments or part-consignments, which are ready for delivery on the agreed day, the purchaser shall make payment anyway as if delivery had been effected, in the absence of any agreement to the contrary

### 7. Technical changes and approval

7.1 Progressive Automations reserves the right to make technical and other changes in products including ordered products without notice, if it can be done without changing the agreed technical specifications.

7.2 Progressive Automations is not liable for absence or misinterpretation of information in catalogues and other written material drawn up by Progressive Automations.

7.3 The purchaser shall be fully liable for the application, use and operation of any Progressive Automations product, whether or not such application, use or operation has been approved by Progressive Automations.

### 8. Limited Warranty

Seller warrants that the Goods sold hereunder will be free from defects in material and workmanship for the Warranty Period set forth below. Seller warrants its Good(s) only to the original Buyer ("Warranty"). Additionally, in the event that Goods are manufactured based upon Buyer's designs or specifications or are not installed in accordance with Seller's instructions or guidelines, Buyer accepts the Goods "As Is, With All Faults."

The Warranty in this Section is in lieu of and excludes all other warranties, express or implied, by operation or law or otherwise, including but not limited to THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (WHETHER KNOWN TO SELLER OR NOT). All other such warranties are hereby expressly disclaimed by Seller and waived by Buyer. Without limiting the foregoing, Seller does not warrant that the goods will be suitable for Buyer's specific needs, will work in any particular environment, will perform without interruption or be error free, or will work in conjunction with Buyer's equipment.

If Buyer makes a warranty claim, written notice of claimed defect must be given to Seller within thirty (30) days from the date any such defect is first discovered, or in the exercise of reasonable care should have been discovered. In no event whatsoever may a claim be made later the end of the 18-month warranty period. Buyer shall be deemed to have waived any claim not made within thirty (30) days from when the defect is first discovered or in the exercise of reasonable care should have been discovered. The Good or parts claimed to be defective must be returned to Seller, accompanied by a Return Material Authorization (RMA) issued by Seller's facility responsible for supplying Goods, with transportation prepaid by Buyer, and must include a detailed description of the claimed defect. If a warranty claim is valid, Seller shall pay reasonable one-way costs of transportation of the defective Goods from either the original destination or the location where defect occurred, whichever is closest to Seller's facility.

Should any of the Goods fail to conform with the foregoing Warranty during the Warranty Period, Seller shall, at its discretion, either (a) repair or replace the Goods, or (b) provide Buyer with a credit equal to the price paid by Buyer for the Goods. THIS SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND BUYER SHALL NOT BE ENTITLED TO ANY OTHER DAMAGES REGARDLESS OF THE NATURE OF BUYER'S CLAIM, BE IT IN CONTRACT, WARRANTY, TORT OR OTHERWISE. Further, the Seller's warranty on the Goods is void in the event the Goods are not properly (i) used, stored, handled, installed and maintained and (ii) de-installed, packed and shipped back to Seller by Buyer. If the Warranty return is "No Fault Found," the Buyer is responsible for any RMA evaluation and return shipping charges. Under no circumstances shall Seller be liable for removal of Seller's Goods from Buyer's equipment or re-installation into Buyer's equipment. No person including any agent, distributor, or representative of Seller is authorized to make any additional or different representation or warranty on behalf of Seller concerning any Goods manufactured by Seller. The remedies of Buyer with respect to the Warranty are exclusive and in lieu of any and all remedies available under applicable law. This Section shall survive the expiration or termination of any agreement between the Buyer and Seller.

### 9. Confidentiality

9.1 The purchaser shall keep strictly secret and not disclose to any third party any confidential information received through doing business with Progressive Automations.

### 10. Limitation Of Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING OUT OF THE PERFORMANCE, DELAYED PERFORMANCE OR BREACH OF PERFORMANCE OF THIS ORDER REGARDLESS WHETHER SUCH LIABILITY BE CLAIMED IN CONTRACT, EQUITY, TORT OR OTHERWISE. SELLER'S OBLIGATION IS LIMITED SOLELY TO REPAIRING OR REPLACING (AT ITS OPTION AND AS SET FORTH IN SECTION 8), AT ITS APPROVED REPAIR FACILITY, ANY GOODS OR PARTS WHICH PROVE TO SELLER'S SATISFACTION TO BE DEFECTIVE AS A RESULT OF DEFECTIVE MATERIALS OR WORKMANSHIP. IN ACCORDANCE WITH SELLER'S STATED WARRANTY EVEN IN THE EVENT THAT BUYER'S SOLE AND EXCLUSIVE REMEDY SHALL FAIL OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCT THAT GAVE RISE TO SUCH LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THE AGREEMENT AND SHALL APPLY REGARDLESS OF THE BASIS OF BUYER'S CLAIM, BE IT IN CONTRACT, WARRANTY, TORT OR OTHERWISE.

### 11. Inspection and Acceptance of Goods

Final inspection and acceptance of Goods provided under this order shall be made by Buyer within fourteen (14) days of receipt of the Goods at Buyer's facility, except in the case where Buyer's source

inspector or authorized representative inspects the Goods at Seller's facility. Failure of Buyer to inspect and reject in writing, said Goods within the above time period (where source inspection is not applicable) shall be deemed to mean acceptance has occurred. In the event Buyer's source inspector is delegated to perform inspection and acceptance, then sign-off of the relevant test documentation by the source inspector or authorized representative shall constitute acceptance of the Goods by Buyer.

#### **12. Installation**

All Goods shall be installed by and at the expense of Buyer. Should Buyer request the services of Seller, such service shall be rendered and charged at the established rate at the time of performing said service, plus all other expenses including travel, hotel bills and living expenses.

#### **13. Governing Law; Severability.**

13.1 These Terms and Conditions of Sale shall be governed by the laws of the Province of British Columbia, Canada, without reference to the choice of law, conflicts of law, or principles of any other province or country which might otherwise be applied. If any provision of these Terms and Conditions of Sale is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired, and the parties shall use their best efforts to substitute a valid, legal and enforceable provision, which, insofar as practical, implements the purpose of these Terms and Conditions of Sale.