

## CONDITIONS OF SALE

**IMPORTANT:** Contactile products are intended for use with robotic and/or automated machines, Contactile does not recommend the use of its products for applications wherein failure or malfunction of a Contactile component or system threatens life or makes injury possible. Anyone who uses or incorporates Contactile components within any potentially life- or bodily threatening system must obtain Contactile's prior written consent based upon assurance to Contactile that a malfunction of Contactile's component does not pose direct or indirect threat of injury or death, and (even if such consent is given) shall indemnify Contactile from any claim, loss, liability, and related expenses arising from any injury or death resulting from use of Contactile components. Please read the other warnings set out in the Installation and Operation Manual and product documents for further information.

### 1. Definitions

- 1.1. Capitalised terms or expressions used in this agreement have the meanings set out in this clause 1.1:

**Agreement** means the instrument of contracting, such as an Order, contract, subcontract, or other such type designation, and includes these Conditions of Sale and all referenced documents, exhibits, and attachments.

**Delivery Location** means the delivery address as set out in the Order.

**GST** has the same meaning as "GST" in the A New Tax System (Goods and Services Tax) Act 1999 or similar applicable tax in any market.

**Order** means an order for Products placed by the Customer.

**Product(s)** means the products to be provided by or on behalf of the Supplier as set out in the Order in accordance with the terms of this Agreement.

**Intellectual Property Rights** means all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights subject of any lapsed application or registration.

**Specification(s)** means the Installation and Operation Manual, data sheets and related documentation delivered with the Product.

### 2. Supplying Products

- 2.1. We agree to supply and you agree to purchase the types and quantities of Products specified in the Order agreed by both of us in writing, on the terms and conditions of this Agreement.
- 2.2. You may, at any time up to two weeks before the scheduled delivery date, amend or cancel an Order by written notice to us. If you amend or cancel an Order you must pay us all costs we have reasonably incurred in fulfilling the Order before your amendment or cancellation (but you are not responsible for costs where the amendment or cancellation is because we have not complied with our obligations under this Agreement).

### 3. Delivery

- 3.1. We will arrange for the Products to be delivered to the specified Delivery Location. We will use reasonable efforts to deliver by the delivery time set out in the Order (or advised by us in writing), but you acknowledge delivery times depend on factors outside our control, and late delivery does not entitle you to refuse to take delivery, claim damages, or terminate this Agreement.
- 3.2. Unless otherwise specified in the Order, delivery shall be DAP (Incoterms 2020) to the Delivery Location specified in the Order. Delivery is completed when the Products are unloaded at the Delivery Location, at which point the risk of loss of, or damage to, the Products — and title in the Products — will pass to you.
- 3.3. If a single order covers multiple Products, we may deliver by instalments and invoice you separately for each instalment.
- 3.4. We will ensure that the Products are properly packed and secured in a manner to enable them to reach the Delivery Location in good condition. Packaging materials become your property at the same time as the Products.

### 4. Warranties and disclaimers

- 4.1. The Products we supply to you under this Agreement must conform to the Specifications set out in the Order and be free from defects in design, material and workmanship and remain so for three months after delivery.
- 4.2. We do not assurance or guarantee that the Product is suitable for any particular application or use case, other than what the Specifications set out. The Products are not suitable for use in production lines or other industrial applications.
- 4.3. You acknowledge that the Products are of a prototype nature, have not been subject to rigorous testing and are subject to changes, including but not limited to claims, physical properties, availability and pricing.
- 4.4. You acknowledge that the use of the Products could result in damage of equipment, parts, material, process, including but not limited to production down time, equipment stoppages, damage, discolouration, corrosion, process system failure, etc. Improper use of Products beyond the Supplier's recommendations could result in health hazard, injury and/or loss and other damages.

4.5. We exclude all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Products to the maximum extent permitted by law, including the warranty of fitness for any particular purpose.

4.6. We will comply with all applicable laws relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Products. We will also maintain all licences and permits needed to manufacture and supply the Products.

4.7. You warrant that you will not use the Products to manufacture or produce or aid in the manufacture or production of weapons. You undertake and agree to ensure the Products will not be used by any terrorist organisation identified by the Australian Government from time to time.

## **5. Acceptance and defective products**

5.1. Within three months of delivery, you may reject as defective any Products delivered to you that do not comply with clause 4.1, provided that: (a) you give us notice of rejection: (i) in the case of a defect that is apparent on normal visual inspection, within one week of delivery; (ii) in the case of a latent defect, within one week of the latent defect having become apparent; and (b) none of the events listed in clause 5.2 apply. If you don't give notice as required by this clause you are deemed to have accepted the Product's.

5.2. We are not liable for a Product's failure to comply with the warranty in clause 4.1 in any of the following events: (a) you make any further use of those Products after giving notice in accordance with clause 5.1; (b) the defect arises because you did not follow our oral or written instructions for the storage, commissioning, installation, use or maintenance of the Products or best industry practice; (c) if applicable, the defect arises as a result of us following any drawing, design or Specification supplied by you; (d) you alter or repair those Products without our written consent; (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or (f) the Products differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.3. If you reject Products under clause 5.1 then we may, at our option: (a) replace the rejected Products or supply equivalent goods; (b) repair the rejected Products; (c) release you from any obligation to pay the Charges for the rejected Products (if you have not already paid); or (d) if you have already paid, refund to you the Charges for the rejected Products, subject to you first restoring to us unencumbered title to the rejected Products.

5.4. Once we have complied with clause 5.3, we are not liable to you, and you have no further remedy arising out of or in connection with the rejected Products' failure to comply with clause 4.1.

5.5. The terms of this Agreement apply to any repaired or replacement Products supplied by us.

## **6. Charges and Payment**

6.1. You agree to pay the Charges set out in each Order. Unless otherwise set out in the applicable order we will invoice you 50% on acceptance of each Order and 50% on delivery. You agree to pay us within 30 days of our invoice, in the currency set out in our invoice.

6.2. Charges are quoted exclusive of any taxes. Invoices will be increased to take account of any taxes, including GST in Australia.

6.3. If your payment is overdue, we may suspend delivery of Products and, by giving at least one week's notice, charge interest on amounts owing but unpaid at the then-current pre-judgement interest rate set by the New South Wales local court.

## **7. Confidentiality**

7.1. Confidential Information means any information provided by one party (**Discloser**) to the other party (**Recipient**) or its personnel, or otherwise obtained by the Recipient (whether oral, written or viewed by inspection), before or during this Agreement, which is marked as "proprietary" or "confidential" or similar language or which the Recipient knows or should know is proprietary or confidential. Confidential Information includes our intellectual property, product designs and specifications, and future product development plans, and information about your planned use of the products, and your operations.

7.2. The Recipient must keep Confidential Information confidential; not use, disclose or reproduce the information for any purpose other than the purposes of this Agreement; and ensure that its employees, agents and representatives do not do, or omit to do anything, which done or omitted to be done by it, would breach this clause.

7.3. The Recipient must use all commercially reasonable efforts to protect the Confidential Information from unauthorised access, use, copying or disclosure and must immediately notify the Discloser of any potential, suspected or actual unauthorised use, copying or disclosure of it.

7.4. Clause 7.2 does not apply to Confidential Information which is in or becomes part of the public domain other than through breach of an obligation of confidence; is required to be disclosed by law or the requirements of a regulatory body (including a stock exchange), or for use in legal proceedings regarding this Agreement; was known to the Recipient at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence; or is acquired from a third party who was entitled to disclose it.

## **8. Intellectual Property**

8.1. You retain all Intellectual Property Rights in materials you own (or licence) and which you give to us during this Agreement, such as your requirements, specifications or product configurations. You grant us a personal, perpetual licence to use, copy and modify those materials, to the extent needed for us to perform this Agreement and for our internal business purposes (but not to commercialise those materials, and subject to the confidentiality obligations in clause 7).

8.2. We retain all intellectual property rights in the Products and our existing materials, or materials we create in the course of performing this Agreement, including our designs, software (including embedded software), customisations, operating instructions and other documentation.

8.3. You agree not to reproduce, redesign, reverse-engineer or manufacture any of our Products or materials. Your use of software provided for use with the Products are subject to the applicable EULA for the Products which will be presented to you before using

the Product. You accept the EULA by downloading, using or accessing such software.

## 9. Limitation of liability

- 9.1. Subject to clauses 9.3 and 9.4, our maximum aggregate liability to you is limited to: (a) the remedies in clause 5.3 in respect of defective Products rejected by you under clause 4.1; and (b) the amount of \$100,000 for any other loss or damage or injury arising out of or in connection with this Agreement, including any breach by us of this Agreement however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis.
- 9.2. Subject to clause 9.4, each party excludes any liability to the other, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this Agreement, including any: loss of profits; loss of sales or business; loss of production; loss of agreements or contracts; loss of business opportunity; loss of anticipated savings; loss of or damage to goodwill; loss of reputation; or loss of use or corruption of software, data or information.
- 9.3. Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the Australian Consumer Law (as set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth)) (ACL), or the exercise of a right conferred by such a provision, or any liability of us in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
- 9.4. Nothing in this Agreement limits or excludes our liability: (a) for death or personal injury caused by our negligence or wilful misconduct or that of our employees; (b) for our fraud or fraudulent misrepresentation; or (c) where liability cannot be limited or excluded by applicable law.
- 9.5. Each party will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement (except an obligation to pay the Charges) as a result of any cause or condition beyond that party's reasonable control.

## 10. Force Majeure

- 10.1. We will not be liable for any failure or delay in performing our obligations where such failure or delay results from any cause that is beyond our reasonable control including, but not limited to: power failure, internet service provider failure, industrial action, civil

unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war or governmental action.

## 11. General

- 11.1. **Entire Agreement.** This Agreement contains everything the parties have agreed in relation to the matters it deals with. You acknowledge that you have not relied on any warranty or representation by us except for the warranties or representations specifically stated in this Agreement. **Notwithstanding any acknowledgment by us of a purchase order or other document submitted by you, any term of such purchase order or other document which is inconsistent with, or which adds to the terms of this Agreement, is null and void.**
- 11.2. **Interpretation.** Words like *including*, *for example*, *such as* or similar expressions are to be interpreted as meaning including, without limitation. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.
- 11.3. **Variation & Waiver.** A variation of this Agreement is only effective if it is in writing and signed by both of us. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing.
- 11.4. **Assignment.** Neither of us may assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of our rights or obligations under this Agreement without the prior written consent of the other party, whose consent must not be unreasonably withheld.
- 11.5. **Notices.** A notice or other communication to us under this Agreement (**Notice**) must be (a) in writing and in English; (b) signed by you or a person authorised to sign on your behalf; (c) and addressed to our contact details as detailed in the Cover Sheet of this Agreement.
- 11.6. **Severability.** If the whole or any part of a provision in this Agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.
- 11.7. **Governing law.** This Agreement is governed by the laws of New South Wales, Australia. Each of the parties submits to the non-exclusive jurisdiction of courts with jurisdiction there.