

APG Terms of Sale - Terms & Conditions

1. Application

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL ORDERS, SALES, AND OTHER TRANSACTIONS BETWEEN AUTOMATION PRODUCTS GROUP, INC. (APG) AND THE BUYER OF APG PRODUCT (Buyer) SHALL BE GOVERNED BY AND SUBJECT TO THESE TERMS AND CONDITIONS. Buyer agrees to be bound by and to comply with these terms and conditions in all particulars. No other terms or conditions, whether additional or contradictory, shall be binding upon APG unless accepted by APG in a signed writing. APG hereby objects to any Buyer terms and conditions, including those terms and conditions contained in Buyer's purchase order or any other document issued by Buyer, that are inconsistent with or otherwise attempt to alter or modify these terms and conditions in any way, and such contrary or additional terms are hereby rejected and shall not be binding upon APG, and, in such event, these terms and conditions shall constitute a counter offer and shall not be effective as an acceptance of Buyer's terms and conditions. Buyer's written acceptance of the price quotation and/or order acknowledgement or Buyer's acceptance of the subject product or APG's commencement of the services provided hereunder shall constitute Buyer's unqualified acceptance of all of these terms and conditions.

2. Acceptance

Acceptance of orders by Automation Products Group, Inc. (APG) is subject to credit approval and other terms that may be set by APG.

3. Limited Warranty and Warranty Restrictions

APG warrants its products to be free from defects in material and workmanship under normal use and service of the product for 24 months from the date of shipment from APG, unless otherwise specified by APG in writing. APG's obligation under this warranty is limited to repairing or replacing (at APG's sole option) any product that is covered by warranty and is found defective by APG in APG's sole and absolute discretion, which shall be the sole and exclusive remedy of Buyer under this warranty. To obtain warranty coverage, the product alleged to be defective must be approved in advance by APG for return (see paragraph 4) then returned to APG, transportation prepaid, within the applicable warranty period. Buyer assumes all costs of removing, reinstalling, and shipping/transporting any alleged defective products to APG. For any product which is repaired or replaced under this warranty, the cost of returning such product to Buyer shall be paid by APG. For any product which is not found to be defective by APG in APG's sole and absolute discretion, Buyer will be required to pay for return of such product. This warranty shall not apply to any product which has been subjected to modification, misuse, neglect, improper service, accidents of nature, or shipping damage.

THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

No representation or warranty, express or implied, made by any sales representative, distributor, or other agent or representative of APG which is not specifically set forth herein shall be binding upon APG, and will not form part of the contract between APG and Buyer.

The warranty is specifically limited to repairs at APG. Any requested onsite service will be provided at the sole expense of the Buyer at standard field service rates.

All APG products must be protected by properly rated electronic/electrical protection devices. APG shall not be liable for any damage due to improper electronic/electrical protection, engineering, or installation by the Buyer or third parties. Proper installation, operation, and maintenance of the product are the responsibility of the Buyer, and any failure to properly install, operate, or maintain the product will invalidate the warranty.

The warranty on repaired products or replacement products does not renew or extend the warranty expiration date and is expressly limited to the remaining warranty, if any, on the original product.

In the event the warranty service involves the replacement of a product or the replacement of a part, the replaced product or replaced part becomes the property of APG.

4. Returns/Restocks

Returns and allowances must be authorized by APG in advance, which authorization may be granted or withheld by APG in APG's sole and absolute discretion. If a return is authorized, APG will assign a Return Material Authorization (RMA) number which must appear on all related papers and on the outside of the shipping carton. All returns are subject to final inspection and authorization by APG. Returns are subject to restocking charges as determined by APG's customary practice.

ALL PRODUCTS RETURNED TO APG MUST BE CLEAN AND FREE OF ANY HAZARDOUS MATERIALS OR POTENTIALLY HAZARDOUS MATERIALS. Any product returned to APG that shows any evidence of hazardous material or potentially hazardous material, which determination shall be made by APG in APG's sole and absolute discretion, may be disposed of by APG, and no refund or credit shall be provided to Buyer for said returned product.

All products returned to APG in exchange for a refund or credit of the purchase price become the property of APG.

5. Unclaimed Returns

If APG requests direction from Buyer with respect to returned products and Buyer fails to provide such direction in writing within 30 days of the request, then the product shall be deemed abandoned by the Buyer, shall become the property of APG, no credit shall be allowed for the return of the same, and no further action will be taken by APG with respect to the same.

6. APG Retained Rights

Tooling, set-up, fitting-up drawings, design information, and partial preparation charges, when invoiced, cover only part of the cost thereof to APG. Buyer does not acquire any right, title, or interest in any tooling, set-up, fitting-up drawings, design information, preparation, or invention resulting therefrom.

7. Limitation of Liability

The entire liability of APG and the exclusive remedy of Buyer shall be limited to the Limited Warranty set forth herein. In no event shall APG's aggregate liability for any claim exceed the aggregate amount of the corresponding order. To the extent not prohibited by law, APG SHALL NOT BE LIABLE FOR PERSONAL INJURY, OR FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOSSES OR EXPENSES DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING, IMPROPER APPLICATION OR USE OF THE PRODUCT OR FROM ANY OTHER CAUSE RELATING THERETO, LOSS OF INCOME, LOSS OF BUSINESS, DIMINUTION OF GOODWILL, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO BUYER'S USE OR INABILITY TO USE THE PRODUCT, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY. APG'S LIABILITY HEREUNDER, IN ANY CASE, IS EXPRESSLY LIMITED TO THE REPAIR OR REPLACEMENT (AT APG'S OPTION) OF PRODUCT. BUYER ACKNOWLEDGES THAT APG HAS ENTERED INTO THIS AGREEMENT TO SELL PRODUCT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY SET FORTH HEREIN AND THAT THE SAME IS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

8. Indemnification

Buyer shall indemnify, defend, and hold harmless APG, its subsidiaries, affiliates, and their respective officers, directors, shareholders, and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demand, losses, costs and expenses (including, without limitation, reasonable attorney fees, disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a product in combination with equipment or software not supplied by APG where the product itself would not be infringing; (iii) APG's compliance with designs, specifications, or instructions supplied to APG by Buyer; (iv) use of a product in an application, environment, or way for which it was not designed; or (v) modifications of a product by anyone other than APG without APG's written approval.

9. Force Majeure Clause

Fulfillment of any order is contingent upon the availability of materials. APG shall not be liable for any delay in delivery or for non-delivery in whole or in part caused by the occurrence of any contingency beyond the control of either APG or its suppliers including, but not limited to, war, sabotage, acts of civil disobedience, failure or delay in transportation, act of any government or agency or subdivision thereof, judicial action, labor dispute, fire, accident, explosion, epidemic, quarantine, restrictions, storm, flood, Earthquake or acts of God, shortage of labor, fuel, raw material or machinery or technical failure. If any contingency occurs, APG may allocate production and deliveries among APG's Buyers.

If APG, in its sole discretion, determines that APG's performance hereunder would result in a loss to APG on this sale, as computed under APG's normal accounting

procedures, because of causes beyond APG's control, then APG may terminate this agreement in whole or in part without liability for any delay in the delivery of or failure to deliver the goods sold hereunder.

10. Terms and Credit

For accounts with established credit (to be determined by APG in its sole and absolute discretion), payment shall be made Net 30 days after date of invoice, unless specifically agreed upon otherwise in writing by APG. For other accounts, payment is required with or prior to the order.

All invoices paid after the date due may be assessed a late payment service charge of 18% per annum or the maximum allowed by applicable law, whichever is lower. By acceptance of product, Buyer hereby grants APG a security interest in the product sold hereunder in accordance with the Uniform Commercial Code until the applicable invoice covering the product is paid in full, and APG shall have all rights and remedies of a secured party under applicable law.

Buyer shall be responsible for any and all collection costs, attorney fees, and other reasonable costs incurred by APG in pursuing collection of any past due amounts, including those incurred by APG in initiating a collection lawsuit, which amounts shall be added to the balance due by Buyer and paid by Buyer.

If, in APG's sole judgment, Buyer's financial condition at the time the product is ready for shipment does not justify the terms specified, APG reserves the right to change these terms or to require full or partial payment in advance. APG may, at any time, cancel and/or suspend performance of any order or require payment in cash, security, or other adequate assurance satisfactory to APG when, in APG's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action. All sales are subject to the approval of APG's credit department.

11. Prices

APG's prices are subject to change without notice. APG's prices, unless earlier withdrawn or changed by APG, shall be open only to unqualified acceptance by Buyer, including unqualified acceptance of these terms and conditions. All prices are F.O.B. (Ex Works for foreign sales) APG's offices, unless otherwise specified. APG prices are exclusive of all applicable taxes. Accordingly, in addition to the APG price, Buyer is responsible for payment of all applicable taxes (sales, use, value added, etc.) and Buyer agrees to immediately reimburse APG for any taxes relating to the product that APG is required to pay, if any

12. Risk of Loss and Title

Delivery shall occur and risk of loss or damage to the product shall pass to the Buyer upon delivery of the product to the carrier at the point of shipment. Transportation shall be at Buyer's sole risk and expense, and any claim for loss or damage in transit shall be against and made to the carrier only.

Title of the product shall not pass to the Buyer until APG has received payment in full for the product and all other sums due to APG from the Buyer on any account. Until transfer of title in the product, Buyer shall ensure that the product is kept safe, secure and insured, and identified as APG property.

13. Delivery

The anticipated delivery date is the best estimate possible based upon current and anticipated manufacturing capabilities of when the product will be shipped, and APG will use its best efforts to meet said delivery dates. However, any such dates are intended to be approximate and time shall not be of the essence with respect to such delivery. APG assumes no liability for loss, damage, or consequential damages due to delays. Order cancellations must be agreed to in advance, and, if agreed to, may be subject to cancellation fees to cover work in progress.

14. Choice of Law and Venue

The commercial relationship and all transactions between APG and Buyer shall be construed in accordance with and governed by the laws of the State of Utah, USA, without giving effect to the principles of conflicts of law. APG and Buyer hereby submit to the exclusive jurisdiction and venue of any appropriate court of the State of Utah, USA, to resolve any disputes or controversies which may arise between APG and Buyer.

15. Default Remedies

Upon default by Buyer, Buyer agrees to reimburse APG all attorney fees and court costs incurred by APG in connection therewith. Buyer agrees that any of the following shall constitute an event of default which shall enable APG, at its option, to cancel any unexecuted portion of any order, or to exercise any right or remedy which it may have by law: (a) the failure of Buyer to perform any term or condition contained herein; (b) any failure of Buyer to give required notice; (c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment for the benefit of its creditors, the appointment of a receiver for Buyer, or the filing of any bankruptcy petition; (d) the death, incompetence, dissolution or termination of Buyer; (e) if APG, in good faith, believes that Buyer's prospect of performance under this Agreement is materially impaired. All rights and remedies of APG herein are in addition to, and shall not exclude, any rights or remedies that APG may have by law.

16. General Provisions

Any cause of action arising from this agreement, or breach of it, must be commenced within one year after the event giving rise to the cause of action occurs. APG has the right to correct any stenographical or clerical errors in any of the writings issued by it. These terms and conditions of sale constitute a complete and exclusive statement of the terms and conditions of the sale of the goods by APG to Buyer. There are no other promises, conditions, understandings, representations, or warranties. This agreement may be modified only in writing signed by APG. No waiver of any right will be effective against APG unless supported by consideration and expressly stated in the writing signed by APG. The failure of APG to enforce any right will not be construed as a waiver of APG's rights to performance in the future. Buyer may not assign any rights to, or delegate any performance owed under, the agreement without the written consent of APG. APG shall have the right to credit toward Buyer's account any sums which may now or hereafter be owed to Buyer by APG.

17. Application of APG Products

The applications and products described in APG's catalogs and other printed or published materials are for informational and instructional purposes only and may not represent actual usage. Such printed materials and publications have been carefully checked for accuracy and are thought to be fully consistent with the product described. However, such printed materials and publications will not form part of the contract between the parties, will not bind APG in any way, and APG makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability, or availability with respect to the same for any purpose. APG does not assume liability for the contents of such printed and/or published materials or for the use of any products described therein. APG reserves the right to make changes to products and/or printed or published materials without further notification. In no event will APG be liable for any loss or damage arising out of, or in connection with, the use of or reliance upon such materials.

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