

GENERAL TERMS AND CONDITIONS OF NS AUTOMATION SERVICES PTY LTD

Clause 1. General

- 1.1 These General Terms and Conditions apply to all agreements entered into between NS Automation Services Pty Ltd (hereinafter to be referred to as: "NS Automation"), and the Customer hereinafter to be referred to as: "the Customer").
- 1.2 The applicability of the Customer's General Terms and Conditions is explicitly excluded.

Clause 2. Quotations

- 2.1 Unless expressly agreed otherwise, all quotations issued by NS Automation shall be non-binding until NS Automation has confirmed an order in writing or has executed an order.

Clause 3. Execution of the agreement

- 3.1 NS Automation shall endeavour to execute the agreement entered into to the best of its abilities within the period or periods specified in the agreement. If execution or timely execution proves to be impossible, NS Automation shall inform the Customer as soon as possible. NS Automation shall not be in default by the mere expiry of the period or periods specified in the agreement.

Clause 4. Price and payment

- 4.1 Unless expressly agreed otherwise, NS Automation Services Pty Ltd shall charge its usual prices for the goods it sells and the work it carries out.
- 4.2 Unless agreed otherwise, NS Automation may charge fixed prices for repair orders.
- 4.3 For urgent and emergency repairs, NS Automation may charge an additional surcharge in addition to its usual fixed price.
- 4.4 If, contrary to clause 4.2, it is agreed that repairs shall not be made on the basis of a fixed price, NS Automation charge its usual prices based on its hours worked and materials used.
- 4.5 If a price has been agreed and NS Automation's execution of the agreement requires more time or leads to more costs than it could reasonably expect because more expensive parts are needed for the repairs, or if the Customer has provided incorrect information, or because, after entering into the agreement, the Customer has made changes to the original agreement, NS Automation shall be entitled to increase the price agreed upon by a reasonable amount.
- 4.6 NS Automation shall inform the Customer as promptly as possible of a price increase in accordance with Clause 4.5.
- 4.7 All prices given by NS Automation shall be excluding GST and the parties recognise that NS Automation shall add GST onto the price.
- 4.8 Prior to the execution of the agreement, NS Automation shall be entitled to demand payment of the (expected) price in advance. In addition, NS Automation shall be entitled to raise interim invoices during the term of the agreement.
- 4.9 All invoices sent by NS Automation are to be paid within fourteen days of the invoice date, unless otherwise specified on the invoice or otherwise agreed upon. In default of prompt payment, the Customer shall be in default by operation of law, without further notice of default being required. As long as the Customer is in default, NS Automation shall be entitled to interest on the outstanding sum as interest at the rate fixed under Section 2 of the Penalty Interest Rates Act 1983 applicable at the time of default shall be payable on the whole debt calculated from the time of default until the date the amount outstanding has been paid. In addition, NS Automation shall be entitled to compensation for any out of pocket expenses it incurs, including but not limited to legal costs.
- 4.10 The Customer may not rely on suspension or set-off in relation to the invoices sent by NS Automation.

Clause 5. Cancellation

- 5.1 An agreement already executed may only be cancelled by the Customer only after written permission from NS Automation.
- 5.2 If the Customer cancels an order given to NS Automation either in full or in part in accordance with clause 5.1, it shall be obliged to compensate NS Automation for all costs incurred by NS Automation and to purchase any parts and/or materials already ordered by NS Automation. In such a case, NS Automation shall also be entitled to

demand from the Customer compensation for any loss of profit incurred by NS Automation.

Clause 6. Performance / non-performance

- 6.1 In the event that the Customer takes the view that NS Automation has failed to perform its obligations under the agreement in full or in part, the Customer must give written notice of default within twelve months of the date of the final invoice sent under the agreement. If the Customer fails to give notice of default within this period of time, it shall forfeit any of its rights in respect of the non-performance.
- 6.2 NS Automation shall in no event be liable for failure to perform its obligations if the failure results from:
- a) an act out of its control;
 - b) acts of God;
 - c) wars;
 - d) strikes;
 - e) accidents;
 - f) transport blockages;
 - g) a delay in the supply by gas;
 - h) electricity and water suppliers;
 - i) fire
 - j) machine breakdown;
 - k) non-delivery of necessary materials by third parties;
 - l) an intentional act or negligence or gross negligence on the part of servants or agents;
 - m) international or national armed conflicts and preparations therefore;
 - n) measures taken by domestic or foreign governments;
 - o) if the customer attempts to repair the product without the consent or authority of NS automation; and
 - p) and other, similar circumstances.
- 6.3 Without prejudice to the provisions of clauses 6.1 and 6.2, if there are any immediately noticeable defects in the goods delivered or repaired by NS Automation, the Customer must submit a written notice to NS Automation within 5 days of their delivery. In the absence of such a notice, the Customer shall forfeit any of its rights in this respect.
- 6.4 In the event that the Customer takes the view that NS Automation has failed to perform its obligations under the agreement in full or properly, the Customer shall, without prejudice to the provisions of clause 6.1 up to and including 6.3, always be obliged to return to NS Automation the goods repaired by NS Automation at the Customer's cost, in order to allow NS Automation to fulfil its obligations properly. If the Customer fails to perform this obligation, it shall forfeit any of its rights in respect of the non-performance.
- 6.5 If in accordance with Clauses 6.1, 6.2, 6.3 and 6.4, the goods are returned to NS Automation, NS Automation shall carry out the relevant repairs without further charge to the Customer.

Clause 7. Retention of title

- 7.1 NS Automation shall retain the ownership of the goods produced and/or delivered by NS Automation until the Customer has paid to NS Automation all sums due in respect of goods already delivered or yet to be delivered under an agreement with NS Automation, and the Customer has completely fulfilled any obligations in respect of work carried out by NS Automation or any obligations to pay compensation for damage.
- 7.2 The Customer shall be obliged to keep the goods delivered by NS Automation separate, and to mark them in such a manner that it is clear that they originate from NS Automation. In the event that the Customer fails to comply with this obligation, all goods present at the Customer's premises that match the goods delivered by NS Automation shall be presumed to have been delivered by NS Automation and to be included in the goods in which title has been retained as set out in Clause 7.1.
- 7.3 The Customer shall be obliged to keep the goods delivered by NS Automation insured against the usual perils (including fire, explosion and water damage, and theft). The Customer shall be obliged to pledge any of its claims on its insurer(s) to NS Automation as additional security for its debts to NS Automation, as soon as NS Automation informs the Customer that it considers this appropriate.

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- 7.4 In respect of goods of which, as a result of payment, the ownership has passed to the Customer, but that are still held by NS Automation, NS Automation hereby reserves a pledge as additional security for the amounts the Customer owes to NS Automation for whatever reason.
- 7.5 Any goods in which NS Automation has retained title may be sold on by the Customer only as part of its normal business operations. In the event that the Customer sells the relevant goods on in this manner, it shall be obliged to pledge to NS Automation, on first demand, the amounts receivable from third parties in respect of these deliveries, as additional security for the amounts the Customer owes to NS Automation for whatever reason. The Customer shall not be permitted to assign or pledge to third parties the debts it has on account of these deliveries, unless it has been given express permission by NS Automation to do so. The right of onward delivery as set out in this paragraph shall cease as soon as NS Automation sends a written notice to that effect to the Customer, and shall in any case cease as soon as the Customer goes bankrupt or is granted a moratorium.
- 7.6 In the event that the Customer fails to perform its obligations towards NS Automation, or if NS Automation has reason to believe that is a reasonable probability that the Customer will fail to carry out its obligations, NS Automation shall be entitled to remove or cause to remove any goods delivered in which title has been retained from the premises of the Customer or of any third parties that are keeping the goods for the Customer. The Customer shall fully cooperate with NS Automation for this purpose, failing which the Customer shall be liable to pay to NS Automation an immediately payable NS Automation shall be entitled to interest on the outstanding sum as interest at the rate fixed under Section 2 of the Penalty Interest Rates Act 1983 applicable at the time until the time the amount outstanding has been paid in full.
- 7.7 The Customer undertakes to immediately inform NS Automation in the event that any third parties wish to establish or enforce rights to goods in which NS Automation has retained title, and to inform the third parties involved of NS Automation's retention of title.
- 7.8 The Customer undertakes to fully cooperate in any measures NS Automation wishes to take in order to protect its ownership rights in respect of the goods.
- 7.9 In the event that NS Automation's retention of title ceases to exist, whether or not by operation of law, an undisclosed pledge is hereby established on the relevant goods for NS Automation's benefit. The goods shall continue to be pledged in this manner until the Customer has fulfilled all of its payment obligations to NS Automation. The Customer undertakes to fully cooperate to the extent required to establish the pledge referred to in this paragraph.
- Clause 8. Delivery and transfer of risk**
- 8.1 Unless agreed otherwise, the delivery costs shall be charged to the Customer.
- 8.2 NS Automation shall choose the means of transport to be used to make the deliveries referred to in Clause 8.1. Delivery shall be made at the address specified by the Customer in advance.
- 8.3 The risk of the goods delivered, repaired or produced by NS Automation shall pass to the Customer upon delivery.
- 8.4 The Customer shall bear the risk of the goods also for the period during which, under Clause 7, NS Automation has retained title to the goods referred to in Clause 7.
- Clause 9. Intellectual property**
- 9.1 The Customer warrants that NS Automation's execution of a repair order will not infringe any intellectual property rights of any third parties, and that performance of this work will not otherwise constitute a wrongful act towards any third parties. The Customer shall indemnify NS Automation against any claims from any third parties in this respect.
- 9.2 If NS Automation suspects infringement of any rights of third parties as referred to in the first paragraph, it shall be entitled to either suspend the performance of its obligations under the agreement until it has been firmly established that no rights of third parties are infringed, or to dissolve the agreement. In either case, NS Automation shall not be liable to pay compensation to the Customer, and the costs incurred by NS Automation shall be for the account of the Customer.
- 9.3 If during NS Automation's performance of the agreement, intellectual property rights arise (whether new or otherwise), such rights shall become the property of NS Automation.
- 9.4 Any intellectual property rights in the goods developed and/or sold by NS Automation shall be the property of NS Automation. The Customer undertakes not to infringe such rights, and shall be liable to pay compensation if such infringement does occur.
- 9.5 NS Automation shall grant to the Customer a non-exclusive and non-transferable right to use the intellectual property rights referred to in Clauses 3 and 4.
- Clause 10. Liability**
- 10.1 NS Automation does not warrant that its repairs will solve the Customer's problems. NS Automation shall not be liable if its repairs have not solved the problems.
- 10.2 NS Automation's liability to the Customer shall never exceed the price the Customer owes to NS Automation in relation to the agreement in question.
- 10.3 NS Automation's liability shall never exceed the sum reimbursed by its liability insurer.
- 10.4 NS Automation shall not be liable for any damage caused by any acts on the part of NS Automation itself, its employees and/or persons engaged by NS Automation, unless the damage was caused by an intentional act or gross negligence on the part of NS Automation itself or any of its executive subordinates.
- 10.5 NS Automation shall not be liable for damage resulting from any defects in goods delivered to NS Automation which NS Automation has then delivered on to the Customer, unless and to the extent that NS Automation is able to recover such damage from its supplier.
- 10.6 NS Automation shall not be liable for consequential damage and/or pure financial loss.
- 10.7 NS Automation shall not be liable for software or hardware damage or to any other machinery.
- Clause 11. Changes to the General Terms and Conditions**
- 11.1 No changes or additions to these General Terms and Conditions shall be valid unless agreed in writing.
- 11.2 If any provision in this General Terms and Conditions is found by any court or authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed not to form part of this Agreement and the validity and enforceability of the other provisions of this Agreement shall not be affected. Where such a provision is found to be illegal, invalid or unenforceable, the parties will negotiate in good faith to amend the provision so that in its amended form it is legal, valid and enforceable and achieves the party's original commercial intention.
- Clause 12. Termination of the agreement**
- 12.1 NS Automation shall be entitled to terminate this agreement immediately by registered letter, email or facsimile addressed to the Customer where:
- a) the Customer has been adjudicated a bankrupt;
 - b) the Customer being a company enters liquidation (whether voluntary or compulsory) or has a receiver and/or manager, administrator or administrative receiver appointed;
 - c) a petition is presented to any court for the winding up of the Customer;
 - d) the Customer enters into or attempts to enter into any arrangement or composition with its creditors;
 - e) the Customer suffers or allows any execution to be levied on its property or obtained against it or is unable to pay its debts in the ordinary course of business;
 - f) the Customer ceases to trade;
 - g) NS Automation is unable to perform any obligations because of force majeure.
- Clause 13. Applicable law and competent court**
- 13.1 This Agreement takes effect, is governed by, and shall be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.