



Terms and Conditions

Conditions of Sale:

1 The Contract

- a. WM Automation Limited (Company Number: 14273257) whose principal place of business is at Whitbrook Way, Middleton M24 2SS ("**we**" or "**us**" or "**our**") is a supplier of material handling systems, products and services. The person, company or organisation who purchases the Products and/or Services from us is the "**customer**".
- b. The customer's order constitutes an offer to purchase the products ("**Products**") and/or installation services ("**Services**") detailed in our quotation in accordance with these Conditions. The order shall only be deemed to be accepted when we issue written acceptance of the order at which point and on which date the contract "**Contract**" shall come into existence.
- c. These Conditions apply to the Contract to the exclusion of any other terms that the customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- d. All plans, drawings, illustrations and descriptions are intended to give a general outline of our proposals and are not part of the Contract or contractually binding. All dimensions, weights, powers, capacities or other particulars of machinery or other goods are given approximately unless otherwise stated, and minor deviations may occur. Any particulars given are subject to correction at any time.

2 The Products

- a. Unless otherwise stated electrical equipment included in any quotation is suitable only for three-phase supply of standard AC voltage.
- b. Owing to the uncertainty of requirements in respect of guarding and other protective equipment, only our standard guards and equipment will be provided, but should the customer's local conditions or other requirements necessitate additional protection, the customer must notify us in advance of delivery and the price of materials and labour will be added to the Contract price.
- c. The customer is responsible for conducting appropriate risk assessments for the use of the product.
- d. Official permission may be required to erect Products purchased. The customer is responsible for ensuring that all the necessary permits permissions and licences have been secured by the customer and that our specification satisfies any applicable regulations and conditions of such permits permissions and licences.
- e. We reserve the right to make changes to the Products if required by any applicable statutory or regulatory requirement, and we shall notify the customer in the event of any material change.
- f. The customer is responsible for ensuring that the order is complete and accurate and that the Products are suitable for the intended use.

3 Delivery

- a. Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence.
- b. We shall not be liable for any delay in delivery of the Products that is caused by strikes, lock outs, war, fire, accident, or other causes beyond our reasonable control or by the customer's failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- c. Delivery is ex works unless otherwise agreed in writing.
- d. Where Products are sent by passenger train or by special transport at the customer's request, the carriage must be paid in advance by the customer.
- e. Where delivery is included in the price, the customer will be responsible for taking delivery at the place and time appointed by us and for unloading the Products. Where we agree in writing to deliver Products by lorry or other vehicle(s) to a specified place ("**Delivery Location**"), the customer will be responsible for ensuring the suitability of the Delivery Location, unloading and taking delivery of the Products from the lorry or other vehicle(s) on delivery at the Delivery Location. Should the customer fail or be unable to take delivery or unload at the appointed time, the customer will pay all expenses or losses incurred thereby, including without limitation loss sustained through storage detention or additional journey.
- f. We may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the customer to cancel any other instalment.
- g. Products must be examined on delivery, and subject to condition 3h, once signed for (including if signed "not examined" or other similar exclusion) or accepted, both ourselves and the carriers are absolved from any further liability for non-delivery.
- h. If Products are found on examination to be damaged, they must be identified as such on the delivery and we must be notified immediately, and within three days of delivery otherwise we shall have no liability.
- i. If a Product is lost or damaged in transit, the order may not be cancelled on account of the delay thus caused. In the event of non delivery we must be notified within 14 days of the date of the delivery note, otherwise we cannot accept any responsibility.

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4 Risk and Title

- a. Risk of damage to or loss of the Products shall pass to the buyer at the time of delivery or, where the customer fails or is unable to take delivery of the Products, at the time we tendered the Products for delivery not withstanding title in the Products may have remained with us pursuant to condition 4b.
- b. Title to the Products shall not pass to the customer until the:
 - i. payment of the price for the Products by the customer is received by us in full in cash or cleared funds together with any other monies payable to us in respect of the Products and any other products supplied by us in which case title to the Products shall pass at the time of payment of all such sums.
- c. Until title to the Products has passed to the customer, the customer shall:
 - i. store the Products separately from all other goods held by the customer so that they remain readily identifiable as our property;
 - ii. not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - iii. maintain the Products in satisfactory condition and keep them insured against all risks for their full price with our interest in the Products noted on the same insurance policy from the date of delivery;
 - iv. notify us immediately if it becomes subject to any of the events listed in condition 11a.iii to condition 11a.v; and
 - v. give us such information relating to the Products as we may require from time to time.
- d. If the customer resells the Products:
 - i. it does so as principal and not as our agent; and
 - ii. title to the Products shall not pass from us to the customer until all the Customer's obligations under this contract have been fulfilled.
- e. If before title to the Products passes to the customer the customer becomes subject to any of the events listed in condition 11a.iii to condition 11a.v, then, without limiting any other right or remedy we may have:
 - i. the customer's right to resell Products or use them in the ordinary course of its business ceases immediately and the parties acknowledge that title in the Products will be immediately transferred to us without notice from either party; and
 - ii. we may at any time:
 1. require the customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
 2. if the customer fails to do so promptly, enter any premises of the customer or of any third party where the Products are stored in order to recover them.

5 Services: Installation

- a. Where we undertake assembly of Products, the customer shall provide all necessary information, facilities, including without limitation suitable access to the site, proper foundations ready for the plant when delivered, adequate lighting, power and suitable protection and shall co-operate fully with us.
- b. Unless expressly stated in writing in the quotation, the price is exclusive of builders, joiners, masons, plumbers, painters, electricians, or any other trades' work. Any such work upon which installation of the Products is dependent shall be carried out in advance by the customer.
- c. If our performance of the Services or delivery of Products is prevented or delayed by any act or omission of the customer or its agents or sub-contractors or any failure by the customer its agents or sub-contractors to perform any obligation ("**Customer Default**"), then:
 - i. without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Services until the customer remedies the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations in each case to the extent the Customer Default prevents or delays our performance of any of its obligations;
 - ii. we shall not be liable for any costs or losses sustained or incurred by the customer arising directly or indirectly from our failure or delay to perform any of its obligations as set out in this condition 5c;
 - iii. the customer shall reimburse us immediately on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.
- d. Where plant is to be started by us, all fuel, water, steam, electricity and other necessary provisions and facilities needed for testing shall be supplied by the customer free of charge.
- e. Where we are doing work or installing machines for our customers upon any premises site or foundations, the customer warrants that the premises, site, access are adequate sufficiently strong and of appropriate build and condition that the work of installation can safely be carried out in the normal way.
- f. We do not undertake responsibility for the satisfaction of any planning permissions or conditions, local bye-law or statutory regulations or for any special or third party contractual requirements which customers may be bound to observe or fulfil whether or not communicated to us, unless such requirements have been expressly agreed by us in writing.
- g. If any tests or inspections are required, these will be paid for by the customer in addition to the price. If tests or inspections are to be made in the presence of the customer or the customer's representative and there is delay in attending after seven days' notice of our readiness, we shall carry out the tests which shall be deemed to have been made in the customer's presence and any right to inspection shall be waived by the customer.
- h. We shall use reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

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- i. We reserve the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and we shall notify the customer in the event of any material change.
- j. We will provide the Services using reasonable skill and care.
- k. The customer shall comply with all applicable laws including health and safety laws.

6 Price

- a. The price payable by the customer shall be the price set out in our written acceptance of the customer's order.
- b. All quotations may be altered without notice, and are subject to confirmation by us on receipt of order.
- c. We reserve the right to amend the prices in the written acceptance of the customer's order in the following circumstances:
 - i. Alteration of design, delivery, quantities installation instructions or specification at the customer's request;
 - ii. Suspension of manufacture or Services on customer's instructions or failure to give instructions;
 - iii. Occurrence of any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increased cost of labour, materials or other manufacturing costs);
 - iv. **Price of storage and associated labour and plant hire at our rates from time-to-time after the expiration of thirty days from the date when we notify the customer that the Products are ready for despatch or assembly;**
 - v. Any loss or damage suffered whilst the Products are at the customer's site awaiting assembly.
- d. Unless otherwise stated by us terms of payment is due 30 days after date of invoice. Time for payment shall be of the essence of the Contract.
- e. All amounts payable by the customer under the Contract are exclusive of amounts in respect of value added tax ("VAT") or other applicable taxes chargeable from time to time which shall be paid by the customer in addition to the price at the same time as payment is due for the Products and Services.
- f. Without limiting any other remedy available to us, interest at the rate of 8% per annum over National Westminster Bank Plc base rate shall be paid on overdue accounts from the due date until payment of the overdue sum, whether before or after judgment.
- g. Should a customer default, become bankrupt, enter liquidation or become subject to a receivership or make a voluntary arrangement with its creditors or become the subject of an administration order; or if the customer ceases or threatens to cease carrying on business, or if we reasonably believe that any of the events mentioned above is about to occur in relation to the customer and notify the customer accordingly, we may, at our option, cancel any undelivered portion of the Contract but shall be entitled to claim for any loss or damage sustained in consequence of non-completion of the Contract.
- h. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7 Warranty

- a. Precautions are taken by us to ensure the quality of material and workmanship. Should a material defect of materials or workmanship arise within twelve months of the date of installation in the product manufactured by ourselves, then PROVIDED THAT:
 - i. the customer gives notice in writing to us during the warranty period within a reasonable time of discovery of such defect;
 - ii. we are given a reasonable opportunity of examining the product and, acting reasonably, agree the defect; and
 - iii. the defective part is forwarded to our works, carriage paid within 28 days of notification to us of the defect in accordance with condition 7a.i.,

THEN we will at our sole option, repair or replace the part ("Warranty").
- b. We shall not be liable for defects in the product if:
 - i. the customer makes any further use of the product after giving notice under condition 7a;
 - ii. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - iii. the defect arises because the customer failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the product or (if there are none) good trade practice;
 - iv. the defect arises as a result of our following any drawing, design or specification supplied by the customer;
 - v. alterations (of any nature) or repairs have been executed or replacement parts fitted other than our own make without our prior knowledge and consent;
 - vi. the defect arises in whole or in part in connection with the services provided by a third party contractor engaged by the customer.
- c. Except as provided in this condition 7, we shall have no liability to the customer in respect of the product's failure to comply with the Warranty.
- d. The repaired, or new part, will be delivered subject to the same conditions as the Contract for the remainder of the twelve month Warranty period.
- e. Packing will be charged for if the product is not returned completely assembled in good condition (save for the apparent defect), carriage paid, within 28 days.
- f. Where we supply goods not of our own manufacture, the customer is entitled to the benefit of any guarantee given to us by the manufacturer concerned.
- g. Cancellation of orders is not accepted.

8 LIMITATION OF LIABILITY:

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- a. Nothing in these Conditions shall limit or exclude our liability for:
 - i. death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;

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- ii. fraud or fraudulent misrepresentation;
 - iii. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - iv. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - v. defective products under the Consumer Protection Act 1987.
- b. Subject to condition 8a, we shall not be liable to the customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the product for:
- i. repairs which cannot reasonably be effected;
 - ii. a fault or breakdown occurring in the parts or portion not repaired during repair, after repair or after partial repair, save where such fault or breakdown is caused by our negligence;
 - iii. any damage to any part in the process of dismantling and assembling, or the cost of any further work necessitated thereby, which shall be met by the customer;
 - iv. any loss or damage caused in whole or in part by the services provided by or workmanship of third party contractors engaged by the customer;
 - v. loss of profits;
 - vi. loss of sales or business;
 - vii. loss of agreements or contracts;
 - viii. loss of anticipated savings;
 - ix. loss of use or corruption of software, data or information;
 - x. loss of or damage to goodwill; or
 - xi. any indirect or consequential loss.
- c. Subject to conditions 7a and 7b, our total liability to the customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the product, shall be limited to the price paid for the product.
- d. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- e. This condition 8 shall survive termination of the Contract.
- f. All statements, representations and promises made by our agents, representatives, or servants are made without our authority, and shall not bind us in contract nor effect a waiver or partial waiver of any of these Conditions, unless such statement has been authorised or approved in writing by a Director or Senior Executive of our company.
- g. All conditions, warranties or guarantees, whether implied or expressed by statute, common law, trade custom or otherwise, are hereby expressly excluded.

9 Intellectual property rights

- a. All patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world ("Intellectual Property Rights") in or arising out of or in connection with the Products or Services (other than Intellectual Property Rights in any materials provided by the customer) shall be owned by us or our licensors.
- b. We grant to the customer, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to such of the Intellectual Property Rights in the Products as are necessary for the purpose of using the Products in its business.
- c. The customer shall not sub-license, assign or otherwise transfer the rights granted by condition 9b.
- d. The customer grants us a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the customer to us for the duration of the Contract for the purpose of providing the Products and Services to the customer.
- e. Where a Product or part of a Product are supplied to the customer's designs the customer shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by us arising out of or in connection with any claim made against us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with our use of the designs provided by the customer.
- f. The customer has no right to and shall not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make repairs to the Product in whole or in part except and to the extent that any such activity is necessary for the purposes of integrating the operation of the Product with the operation of other products or software or systems used by the customer, unless we are prepared to carry out such action at a reasonable commercial fee or have provided the information necessary to achieve such integration within a reasonable period, and the customer shall request us to carry out such action or to provide such information (and shall meet our reasonable costs in providing that information) before undertaking any such action.

10 Confidentiality

- a. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients, suppliers, Products or Services of the other party, except as permitted by condition 10c.
- b. For the avoidance of doubt, all drawings [and specifications] supplied by us are confidential information.
- c. Each party may disclose the other party's confidential information:

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- i. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this condition 10; and
- ii. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- d. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11 Termination

- a. Without affecting any other right or remedy available to us we may terminate the Contract if the customer:-
 - i. fails to pay any amount due under the Contract on the due date for payment; or
 - ii. commits any material breach of an obligation to us and, if such breach is capable of remedy, fails to remedy such breach within 14 days of being notified of the breach; or
 - iii. takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - iv. suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - v. financial position deteriorates to such an extent that in our opinion the customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- b. Without affecting any other right or remedy available to us, we may suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between us and the customer if the customer fails to pay any amount due under the Contract on the due date for payment, the customer becomes subject to any of the events listed in condition 11.a.i to condition 11.a.v, or we reasonably believe that the customer is about to become subject to any of them.

12 Consequences of termination

- a. On termination of the Contract for whatever reason:
 - i. the customer shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services and Products supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by the customer immediately on receipt;
 - ii. the customer shall at its own cost return all of Products which have not been fully paid for in full. If the customer fails to do so, then we may enter the customer's premises and take possession of them and invoice the customer for the costs of so doing and for transit to our premises. Until they have been returned to us, the customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- b. Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- c. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

13 Force majeure

- a. Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

14 General

- a. Assignment and other dealings
 - i. We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under the Contract.
 - ii. The customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without our prior written consent.
- b. Notices.
 - i. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number.
 - ii. Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting or at the time recorded by the delivery service; or, if sent by fax, at 9.00 am on the next working day after transmission.
 - iii. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- c. Severance.
 - i. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant

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provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- d. Waiver.
 - i. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- e. No partnership or agency.
 - i. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- f. Entire agreement.
 - i. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - ii. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
 - iii. Nothing in this clause shall limit or exclude any liability for fraud.
- g. Third parties rights.
 - i. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- h. Variation.
 - i. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- i. Governing law.
 - i. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- j. Jurisdiction.
 - i. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

END

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