

Beyond Automation Limited Terms of Trade

Terms of trade

1. Application of conditions of sale

- 1.1 These conditions of sale form part of all contracts.
- 1.2 If there is any inconsistency between the conditions of sale and a provision in the order confirmation, then the provision in the order confirmation will prevail to the extent of the inconsistency.
- 1.3 Notwithstanding clause 1.2, no terms or conditions of the customer, including any terms or conditions printed on or referred to in the customer's offer to purchase or order, will be binding on **Beyond Automation Ltd.** or have any legal effect unless expressly agreed to in writing by **Beyond Automation Ltd.**
- 1.4 Order cancellation: Orders may only be cancelled with written consent from Beyond Automation Ltd. If cancellation is permitted, the customer shall pay:
- Reasonable costs incurred (e.g., materials, labour, design charges) up to the cancellation date;
 - A cancellation fee, which is a minimum of 20% of the deposit, proportionate to actual losses.
 - Any advance payment exceeding these costs will be refunded.

2. Quotations

- 2.1 The customer acknowledges that a quotation will be construed as an invitation to the customer to make an offer to **Beyond Automation Ltd.** to purchase products or request the supply of services subject to the terms and conditions in the quotation. A customer's order will be construed as an offer to purchase products or request the supply of services subject to the conditions of sale and any additional terms in the applicable quotation.
- 2.2 **Beyond Automation Ltd.** reserves the right to accept or refuse any offer to purchase or order by a customer.

3. GST

- 3.1 The prices for products or services specified in any contract are exclusive of GST.
- 3.2 In relation to any GST that is payable in respect of a taxable supply (as defined in the GST Act) under a contract, the customer must pay to **Beyond Automation Ltd.** the applicable GST upon receipt from **Beyond Automation Ltd.** of a tax invoice (as defined in the GST Act) in relation to the taxable supply.

4. Taxes, duties, levies and charges

- 4.1 The prices for products or services specified in any contract are exclusive of, and the customer must pay, all applicable taxes, duties, levies, tariffs or other government charges payable in relation to the sale, use or possession of the products or supply of the services.

5. Confidentiality and copyright

- 5.1 All information included in a quotation or contract is confidential information and must not be disclosed by the customer to any other person without the written consent of **Beyond Automation Ltd.** or used by the customer for any purpose not contemplated by the contract.
- 5.2 All drawings, plans, layouts, specifications, illustrations, photographs or logos included in a quotation or contract are confidential and must not be reproduced in whole or in part without the written consent of **Beyond Automation Ltd.**

6. **Intellectual Property and Design Ownership**

- 6.1 All intellectual property rights in any designs, drawings, specifications, software, PLC programs, HMI configurations, control logic, firmware, and other technical works created or developed by Beyond Automation Ltd. in connection with any contract ("BA Intellectual Property") shall remain the exclusive property of Beyond Automation Ltd., notwithstanding delivery to or use by the customer.
- 6.2 Beyond Automation Ltd. grants the customer a non-exclusive, non-transferable licence to use BA Intellectual Property solely for the operation and maintenance of the specific equipment supplied under the relevant contract. The customer shall not copy, modify, reverse-engineer, decompile, disassemble, or sub-licence any BA Intellectual Property without the prior written consent of Beyond Automation Ltd.
- 6.3 Where a contract involves the development of custom designs or software to the customer's specifications, Beyond Automation Ltd. retains ownership of all underlying tools, methods, modules, and generic components, and may reuse these in other projects. The customer's right is limited to use of the finished deliverable as specified in the contract.
- 6.4 The customer shall not modify, tamper with, or authorise any third party to modify any software or PLC program supplied by Beyond Automation Ltd. without prior written consent. Any unauthorised modification will void all warranties and Beyond Automation Ltd. accepts no liability for any resulting loss or damage.

7. **Software and PLC Programs**

- 7.1 Any software, PLC programs, SCADA configurations, HMI screens, or other programmable content supplied by Beyond Automation Ltd. is licensed, not sold, to the customer. Title to all such software remains with Beyond Automation Ltd. at all times.
- 7.2 The customer acknowledges that software supplied may contain proprietary algorithms and trade secrets of Beyond Automation Ltd. The customer shall take all reasonable steps to protect the confidentiality of such software and shall not permit access to it by any unauthorised person.
- 7.3 Beyond Automation Ltd. does not warrant that software will be entirely free from defects or will operate without interruption. Where a software defect is reported within the warranty period, Beyond Automation Ltd. will use reasonable endeavours to correct the defect within a reasonable time. Software corrections do not extend the warranty period.
- 7.4 If Beyond Automation Ltd. provides remote access to the customer's systems for the purpose of diagnostics, updates, or commissioning, such access shall be limited to the agreed scope. The customer is responsible for ensuring its own network and cybersecurity arrangements are adequate. Beyond Automation Ltd. accepts no liability for any loss arising from vulnerabilities in the customer's network infrastructure.

8. Privacy and data handling

- 8.1 Beyond Automation Ltd. collects and uses customer data solely for the purpose of fulfilling orders, providing support, and improving its services. All personal information will be handled in accordance with the New Zealand Privacy Act 2020.
- 8.2 Customers have the right to access and request correction of their personal information held by Beyond Automation Ltd.
- 8.3 Beyond Automation Ltd. does not share personal data with third parties except as required to deliver services (e.g., couriers, payment processors) or by law.
- 8.4 By placing an order, the customer consents to the collection, storage, and use of their data as outlined in Beyond Automation Ltd.'s Privacy Policy (available on request).

9. Delivery periods

- 9.1 **Beyond Automation Ltd.** will use reasonable endeavours to comply with any delivery period or completion date specified in the contract but any such period or date is a bona fide estimate only and is not to be construed as a fixed period or date.
- 9.2 Unless specified otherwise in the order confirmation, any delivery period or completion date will commence to run from the later of:
- (a) Receipt by **Beyond Automation Ltd.** of the deposit payment; and
 - (b) Receipt by **Beyond Automation Ltd.** from the customer of all information, instructions, specifications or approvals specified in the contract.
- 9.3 Any extension to the delivery period or completion date necessitated by altered instructions from the customer after entering into a contract may at **Beyond Automation Ltd.**'s option be added to the delivery period or completion date specified in the contract.

10. Delivery terms

- 10.1 The customer must ensure that its carrier's vehicle is suitable for loading and transporting the products to the customer if the customer is arranging transport.
- 10.2 **Beyond Automation Ltd.** will take all reasonable endeavours to notify customers of any delays in goods and services within agreed timeframes. Beyond Automation Ltd. shall not be liable for delays or non-delivery caused by events beyond its reasonable control. However, this exclusion does not apply if the delay is a direct result of Beyond Automation Ltd.'s negligence or failure to take reasonable steps to mitigate foreseeable risks. For delays due to Beyond Automation Ltd.'s negligence, liability is limited to delivery cost refunds.
- 10.3 Any claims for shortages of deliveries must be notified to **Beyond Automation Ltd.** within five (5) business days of the date of arrival of the products at the customer's premises specified in the contract.
- 10.4 **Beyond Automation Ltd.** reserves the right to make partial deliveries of any products and to invoice such partial deliveries separately.
- 10.5 If any products are not collected by the customer or its servants, agents or contractors within ten (10) business days of notification by **Beyond Automation Ltd.** that the products are ready for delivery, **Beyond Automation Ltd.** will be entitled to store the products at its premises or

elsewhere and in either case the customer agrees to pay all costs incurred by **Beyond Automation Ltd.** including storage, insurance, transportation and handling charges. **Beyond Automation Ltd.** will be entitled to require the customer to pay such costs prior to delivery of the products to the customer.

- 10.6 If **Beyond Automation Ltd.** agrees to arrange delivery of the products to the customer's premises, it will do so as the agent of the customer and all costs, including freight and insurance, will be to the customer's account.
- 10.7 **Beyond Automation Ltd.** will be entitled, without incurring any liability to the customer, to withhold delivery of any products or supply of services while any amount owed by the customer to **Beyond Automation Ltd.** for products or services remains unpaid.

11. Terms of payment

11.1 Unless specified otherwise in the order confirmation:

(a) The terms of payment for products are:

- (i) 50% of the total price (Deposit) plus 100% of any applicable taxes at order confirmation.
- (ii) 40% of the total price plus 100% of any applicable taxes and any shipping costs before shipment to the customer.
- (iii) The balance of the total price plus 100% of any applicable taxes or government/import duties together with installation charges, commissioning charges, training charges and any other amounts payable by the customer under the contract within seven (7) days of completion of commissioning of the products.

(b) The terms of payment for services will be stated on the invoice along with the due date.

11.2 If the customer defaults in the due payment of any monies owing to **Beyond Automation Ltd.** under a contract or otherwise, **Beyond Automation Ltd.** shall have the right, in addition to any other rights under the conditions of sale or at law, to charge the customer interest which shall accrue daily on the outstanding amount at the rate per annum which is the lesser of:

- (a) Two percent (2%) above the rate charged to **Beyond Automation Ltd.** by its major banker for overdraft accommodation; and
- (b) The highest amount permitted by law,

11.3 If any amount owing to Beyond Automation Ltd. remains unpaid after the due date, Beyond Automation Ltd. reserves the right to engage a debt collection agency or commence legal proceedings to recover the outstanding amount. All reasonable costs of debt collection, including legal fees on a solicitor-client basis and collection agency fees, shall be payable by the customer in addition to the overdue amount and any accrued interest.

Calculated from the due date for payment of the outstanding amount until the date of payment by the customer. Any payment made by the customer to **Beyond Automation Ltd.** will be credited first against any accrued interest.

12. Risk and title

12.1 Risk of loss or damage to the products shall remain with **Beyond Automation Ltd.** only until the

first to occur of the following events:

- (a) The passing of title of the products to the customer;
- (b) Delivery of the products in accordance with clause 9;
- (c) The products otherwise leaving **Beyond Automation Ltd.**'s premises at the request of the customer;
- (d) The expiration of ten (10) business days from the date of notification by **Beyond Automation Ltd.** to the customer that the products are ready for delivery

And thereafter risk of loss or damage to the products from any cause shall be the responsibility of the customer.

12.2 Title to the products will not pass to the customer until all amounts owing to **Beyond Automation Ltd.** for the products are paid in full.

12.3 Until title to the products passes to the customer, the customer agrees that the products are held by it as a bailee for **Beyond Automation Ltd.**

12.4 If freight is arranged by the customer, then the customer is liable for loss of or damage to products during freight.

13. **Pre-delivery factory testing**

13.1 To enable **Beyond Automation Ltd.** to undertake pre-delivery factory testing of the products, the customer must, within the period specified in the contract and at its own cost, supply all materials specified in the contract or notified by **Beyond Automation Ltd.**

13.2 Any delay in completing pre-delivery factory testing of the products caused by the customer's failure to comply with clause above may, at **Beyond Automation Ltd.**'s option, be added to the delivery period or completion date specified in the contract.

14. **Installation, commissioning and training**

14.1 Where a contract specifies that **Beyond Automation Ltd.** will supervise installation of the products, **Beyond Automation Ltd.**'s sole obligation will be to furnish a representative to provide supervisory assistance to the customer in relation to the installation of the products. The customer will be solely responsible for choosing the installation site for the products ("the site") and must at its own cost:

- (a) Furnish all labour, tools and equipment required for the installation of the products;
- (b) Undertake all necessary alterations or modifications to its premises to accommodate the products;
- (c) Provide clear and uninterrupted access to the site;
- (d) Provide suitable lifting and transportation equipment and scaffolding to position, assemble and install the products;
- (e) Provide secure storage facilities for use by **Beyond Automation Ltd.**;
- (f) Provide any other facilities or equipment specified in the contract or notified by **Beyond Automation Ltd.**;

- (g) Supply to the site all electrical wiring, pneumatic hook-ups, plumbing, rigging and hoisting specified in the contract or notified by **Beyond Automation Ltd.;**
 - (h) Supply to the site ready for connection to the products all utilities and services required for the installation and operation of the products;
 - (i) Provide all necessary fencing and/or screens to prevent access to the site by unauthorised persons;
 - (j) Obtain all required approvals and permits for the installation and use of the products;
 - (k) Obtain all required union approvals and clearances for **Beyond Automation Ltd.**'s servants, agents and contractors;
 - (l) Provide a safe working environment and comply with all applicable workplace and occupational health and safety laws;
 - (m) Co-operate fully with **Beyond Automation Ltd.**'s servants, agents and contractors.
- 14.2 Prior to Beyond Automation Ltd.'s personnel attending the customer's premises, the customer must provide a current site safety induction and any site-specific health and safety information required by law or applicable WorkSafe New Zealand guidelines. The customer warrants that the site complies with all applicable health and safety legislation, including the Health and Safety at Work Act 2015.
- 14.3 The customer must disclose to Beyond Automation Ltd. in advance any known or reasonably foreseeable hazards at the installation site, including but not limited to: wet or slippery surfaces, food allergens, chemical substances, confined spaces, electrical hazards, and lockout/tagout requirements. The customer shall be liable for any injury to Beyond Automation Ltd.'s personnel, servants, agents or contractors caused by hazards that were not disclosed or that arose from the customer's failure to maintain a safe working environment.
- 14.4 **Beyond Automation Ltd.**'s price for supervising installation of the products is based on all necessary work that is required to be undertaken by the customer having been completed before the installation date specified in the contract or otherwise notified by **Beyond Automation Ltd.** and installation proceeding during normal working hours without interruption. Any additional costs incurred by **Beyond Automation Ltd.** as a consequence of interruptions, delays, errors, additional work or the requirement to work overtime or unusual hours that are not due to an act or omission of **Beyond Automation Ltd.** must be paid by the customer to **Beyond Automation Ltd.**
- 14.5 If **Beyond Automation Ltd.** is engaged by the customer to commission the products, the customer must, at its own cost:
- (a) Make available such personnel, materials, utilities, services and other things as are specified in the contract or notified by **Beyond Automation Ltd.;**
 - (b) Make available an adequate and consistent supply of the full range of the customer's products and packaging materials.
- 14.6 Any delay in commissioning the products due to the customer's failure to comply with any of its obligations in clause 14.5 must be paid by the customer to **Beyond Automation Ltd.** at **Beyond Automation Ltd.**'s rate that is current at the time of the commissioning.
- 14.7 On completion of commissioning of the products, Beyond Automation Ltd. will notify the customer in writing that the products are ready for hand-over. The customer shall, within five (5)

business days of such notification, provide Beyond Automation Ltd. with written notice specifying any outstanding deficiencies that must be remedied before acceptance. If the customer fails to respond within five (5) business days of the hand-over notification, or if the customer uses the products in commercial production, the customer will be deemed to have accepted that commissioning has been completed to its satisfaction.

- 14.8 The customer indemnifies **Beyond Automation Ltd.** against claims by any person against **Beyond Automation Ltd.** in respect of personal injury or death or loss of or damage to any property that occurs during installation or commissioning of the products except to the extent that the negligent act or omission of **Beyond Automation Ltd.** or its servants contributed to the loss, damage, death or injury.
- 14.9 If **Beyond Automation Ltd.** is engaged by the customer to train the customer's personnel in the proper operation and/or maintenance of the products, the customer must make available suitably qualified operating and maintenance personnel when requested by **Beyond Automation Ltd.** and such facilities as are specified in the contract or notified by **Beyond Automation Ltd.**
- 14.10 Any delay in training the customer's personnel due to the customer's failure to comply with any of its obligations in clause 14.9 must be paid by the customer to **Beyond Automation Ltd.** at **Beyond Automation Ltd.**'s rate that is current when training actually takes place.

15. Subcontracting

- 15.1 Beyond Automation Ltd. may subcontract the performance of all or any part of its obligations under a contract to any suitably qualified subcontractor without the prior consent of the customer. Beyond Automation Ltd. remains responsible for the performance of any work subcontracted under this clause and the customer's rights under the contract are not affected by any subcontracting arrangement.

16. Warranties

- 16.1 Beyond Automation Ltd. warrants that:
- (a) Subject to any qualifications, limitations or exclusions set out in the contract, the performance of the products will comply with the performance figures under normal use;
 - (b) All **Beyond Automation Ltd.** Supplied products will be free from defects in materials and manufacture under normal use for a period of twelve (12) months from the date of delivery to the customer (the "warranty period"); and
 - (c) It will perform the services with reasonable care and skill.
 - (d) The warranty period is based on single-shift operation (up to 8 hours per day). If the equipment is operated for more than one shift per day, the warranty period shall be reduced as follows: two-shift operation (8-16 hours/day) — 6 months; three-shift or continuous operation (more than 16 hours/day) — 3 months. Multi-shift operation must be disclosed to Beyond Automation Ltd. in writing prior to or at the time of order. Failure to disclose multi-shift operation will void the warranty.
 - (e) The warranty does not cover normal wear & tear parts, electrical, electronic, and plastic & rubber parts.
 - (f) Warranty on bought out components will be restricted to the original manufacturer's terms

only.

- (g) Any defect arising out of improper use, repairs, modifications carried out by unauthorised personnel and/or use of parts manufactured by third parties will make the warranty null and void.
- (h) Warranty on used equipment sourced or supplied by Beyond Automation Ltd. will be stated in the contract.

16.2 **Beyond Automation Ltd.** does not warrant or enter into any other term that the products or their performance will comply with any descriptions, illustrations, performances or other information contained in **Beyond Automation Ltd.** Brochures, product catalogues, other advertising material or any document other than as set out in the contract.

16.3 Where products are manufactured or dealt with in accordance with the customer's designs, drawings, specifications or instructions, the customer warrants that such manufacture or dealing will not cause **Beyond Automation Ltd.** to infringe any right including copyright, patent, registered design, trade mark or other intellectual property right of any third party or otherwise incur any liability to any third party. The customer indemnifies **Beyond Automation Ltd.** Against all claims, damages, costs, losses and expenses that **Beyond Automation Ltd.** suffers or incurs or may suffer or incur by reason of any such infringement, alleged infringement, liability or alleged liability.

16.4 If the customer establishes to **Beyond Automation Ltd.**'s satisfaction that:

- (a) Products do not comply with the warranty in clause 16.1(a), **Beyond Automation Ltd.** shall, at its option and within a reasonable time:
 - (i) Modify the product at **Beyond Automation Ltd.**'s cost to achieve the performance figures;
 - (ii) Replace the product with a product that achieves the performance figures;
 - (iii) Refund the purchase price paid by the customer for the product.
- (b) Products do not comply with the warranty in clause 16.1(b), **Beyond Automation Ltd.** shall, at its option and within a reasonable time:
 - (i) Repair the product free of charge using new or refurbished replacement parts;
 - (ii) Replace the product or any defective part with a product or part that is new or has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original product or part. **Beyond Automation Ltd.** may require the customer to replace a defective part with a new or refurbished user-installable replacement part that **Beyond Automation Ltd.** supplies to the customer.
 - (iii) Refund the purchase price paid by the customer for the product.

16.5 If the customer establishes to **Beyond Automation Ltd.**'s satisfaction that the services or any of them do not comply with the warranty in clause 16.1(c), **Beyond Automation Ltd.** shall, at its option and within a reasonable time:

- (a) Supply the non-complying services again;
- (b) Pay the cost of having the non-complying services supplied again; or
- (c) Refund the price paid by the customer for the non-complying services.

- 16.6 If **Beyond Automation Ltd.** complies with clauses 16.4 or 16.5 (as applicable) then this shall be the customer's exclusive remedy for breach of any of the warranties in clause 16.1 and **Beyond Automation Ltd.** shall have no further liability for a breach of the warranties in clause 16.1 in respect of such product or such services. Replacement products or parts, including new or refurbished replacement parts, will assume the unexpired portion of the warranty period of the original product or ninety (90) days from the date of replacement or repair, whichever provides longer coverage for the customer.
- 16.7 **Beyond Automation Ltd.** shall not be liable for a breach of the warranty in clause 16.1(b) unless the customer:
- (a) Notifies **Beyond Automation Ltd.** of the defect within the warranty period and within seven (7) days of the defect first coming to its attention;
 - (b) Has fulfilled all its obligations under the contract including the payment of all monies due in relation to the product or other products or services supplied under the same contract;
 - (c) Pays all costs, including transportation and insurance, for the return of the defective product or part to **Beyond Automation Ltd.** or, at **Beyond Automation Ltd.**'s option, to the works where the product or part was manufactured; and
 - (d) Pays all costs, including transportation and insurance for the return to the customer of the repaired or replacement product or part.
- 16.8 Notwithstanding clause 16.7(c), if it is impracticable for the customer to return a defective product or part, **Beyond Automation Ltd.** may, at its option, repair the product or part at the customer's premises subject to the customer paying to **Beyond Automation Ltd.** all travel and accommodation expenses for **Beyond Automation Ltd.**'s servants, agents or contractors to attend the customer's premises to undertake the repair or replacement. **Beyond Automation Ltd.** will be entitled to require the customer to pay these expenses in advance.
- 16.9 Where a refund is given by **Beyond Automation Ltd.** pursuant to clause 16.4(a)(iii) or clause 16.4(b)(iii):
- (a) The product for which the refund is given will become **Beyond Automation Ltd.**'s property and must be returned to **Beyond Automation Ltd.** by the customer at the customer's expense;
 - (b) **Beyond Automation Ltd.** will be entitled to withhold payment to the customer of the refund until the product is returned to **Beyond Automation Ltd.** by the customer;
 - (c) **Beyond Automation Ltd.** will not be liable to refund to the customer any amounts paid by the customer to **Beyond Automation Ltd.** or any other person for consumable parts purchased by the customer for the product prior to the refund or for any services supplied by **Beyond Automation Ltd.** in relation to the product including project design, installation, commissioning or training.
- 16.10 **Beyond Automation Ltd.** shall have no liability to a customer:
- (a) Under the warranty in clause 16.1(a) in respect of any variation in performance of a product from the performance figures, if the variation in performance is due to:
 - (i) Any change in conditions in the customer's premises or to the specifications or tolerances of the customer's products or packaging materials from those disclosed in writing by the customer to **Beyond Automation Ltd.** prior to **Beyond Automation Ltd.**

providing the performance figures;

- (ii) Any other matter or thing likely to affect the performance of the product that was known or ought to reasonably have been known to the customer but was not disclosed in writing by the customer to **Beyond Automation Ltd.** prior to **Beyond Automation Ltd.** providing the performance figures; or
- (iii) Any other event or circumstance which is Beyond the reasonable control of **Beyond Automation Ltd.** including:
 - (A) Misuse, abuse or incorrect operation of the product by the customer or its employees, agents or contractors or the product being used for a purpose for which it was not designed;
 - (B) Damage to the product caused by modifications or repairs (including upgrades or expansions) carried out by any person who is not an authorised representative of **Beyond Automation Ltd.;**
 - (C) Incorrect installation of the product (unless **Beyond Automation Ltd.** was engaged to supervise installation of the product);
 - (D) The product not being serviced or maintained by the customer in accordance with **Beyond Automation Ltd.**'s recommendations;

(b) Under the warranty in clause 16.1(b) if the defect is due to:

- (i) Damage to the product after the product was delivered to the customer, except where the damage was caused by the negligent act or omission of **Beyond Automation Ltd.** or its servants;
- (ii) The product being used for purposes other than those for which is was designed or in abnormal operating conditions (unless made known to **Beyond Automation Ltd.** prior to acceptance of the customer's offer to purchase the products);
- (iii) Modifications or repairs to the product (including upgrades or expansions) carried out by any person who is not an authorised representative of **Beyond Automation Ltd.;**
- (iv) Modifications to the product that alter the functionality or capability of the product made without **Beyond Automation Ltd.**'s prior written permission;
- (v) Damage to a consumable part unless the consumable part is defective in materials or manufacture;
- (vi) Damage caused by incorrect installation of the product (unless **Beyond Automation Ltd.** supervised installation of the product);
- (vii) Normal wear and tear of the product or part; or
- (viii) The product not being serviced and maintained by the customer in accordance with **Beyond Automation Ltd.**'s recommendations; or

(c) Under either warranty in clause 16.1(a) or clause 16.1(b) in respect of products that are manufactured or dealt with in accordance with the customer's designs, drawings, specifications, or instructions.

16.11 The warranties in clauses 16.1(a) and 16.1(b) do not apply to non-**Beyond Automation Ltd.**

supplied products. **Beyond Automation Ltd.** undertakes no liability and gives no warranty or enters into any other term in relation to defects in non-**Beyond Automation Ltd.** supplied products and in particular, but without prejudice to the generality of the foregoing, it shall have no such liability regarding the fitness for purpose, quality or merchantability of non-**Beyond Automation Ltd.** supplied products, whether express or implied, statutory or otherwise. **Beyond Automation Ltd.** shall use its reasonable endeavours to extend to the customer, if requested, the benefit of any guarantee, condition or warranty concerning non-**Beyond Automation Ltd.** supplied products given to **Beyond Automation Ltd.** provided that any expense reasonably incurred by **Beyond Automation Ltd.** in extending such benefit shall be reimbursed to it by the customer unless otherwise agreed in writing.

17. Limitation of liability

- 17.1 Notwithstanding any other provision of the conditions of sale or the terms of any order confirmation, **Beyond Automation Ltd.**'s liability for breach of any condition as to title or warranties as to quiet enjoyment and freedom from encumbrances implied by section 135 of the Contract and Commercial Law Act 2017 shall be limited to direct damages not exceeding the purchase price of the products. This limitation applies only to the extent permitted by law and shall not affect any non-waivable statutory rights.
- 17.2 **Beyond Automation Ltd.** shall have no liability under or in connection with any contract (whether such liability arises due to negligence, breach of contract, misrepresentation, indemnity, strict liability or for any other reason) for any of the following, even if **Beyond Automation Ltd.** has been advised of the possibility of such damage:
- (a) Loss of profits;
 - (b) Loss of sales;
 - (c) Loss of business;
 - (d) Loss of revenue;
 - (e) Loss of or damage to reputation or goodwill;
 - (f) Loss of opportunity;
 - (g) Wasted management or other staff time;
 - (h) Losses or liabilities under or in relation to any other contract; or
 - (i) Indirect, consequential or special loss or damage.

For the purpose of this clause, the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

- 17.3 Subject to clauses 17.1 and 17.2, **Beyond Automation Ltd.**'s total liability under or in connection with any contract (whether such liability arises due to negligence, breach of contract, misrepresentation, indemnity, strict liability or for any other reason) shall be limited to the amount paid or payable by the customer for the product or services the subject of the contract.
- 17.4 To the maximum extent permitted by applicable law, **Beyond Automation Ltd.** neither makes nor gives any express or implied (whether by statute, custom or otherwise) warranties, conditions or any other terms in relation to products, services or anything else under or in connection with a contract (including any implied terms as to quality and/or fitness for purpose) and hereby excludes and disclaims any liability in respect of any such express or implied

warranties, conditions or other terms.

17.5 Limitation of Liability Period

- (A) Notwithstanding any other provision in these conditions of sale or any contract between the parties, the liability of Beyond Automation Ltd. for any claims arising from the sale of machinery or products shall be limited to a period of one (1) year from the date of sale including any manufacturing defects.
- (B) Similarly, for any claims arising from services provided by Beyond Automation Ltd.—including but not limited to machinery repair, installation, commissioning, and training—the liability of Beyond Automation Ltd. shall be limited to a period of three (3) months from the date on which such services were provided.
- (C) Any claim for damages or liabilities arising outside these respective time periods shall be deemed waived by the customer, except where such waiver is precluded by applicable mandatory legal provisions.

18. Consumer Guarantees Act Exclusion

18.1 Where the customer is acquiring goods or services for the purposes of a business, the parties agree that the Consumer Guarantees Act 1993 does not apply to the supply of those goods or services. This exclusion is made pursuant to section 43 of the Consumer Guarantees Act 1993.

19. Entire agreement

19.1 The contract constitutes the entire agreement between the parties about the subject matter thereof and supersedes all earlier understandings and agreements between the parties and all earlier representations by any party about such subject matter.

19.2 The customer acknowledges that it has not entered into the contract in reliance upon any representation, warranty or promise (other than those contained in the contract) and no such representation or warranty or any other term is to be implied in the contract whether by virtue of any usage or course of dealing or otherwise except as expressly set out in it.

19.3 If **Beyond Automation Ltd.** has given any representation, warranty or promise then, except to the extent that it has been set out in the contract, the customer waives any rights or remedies which it may have in respect of it.

20. Suspension or termination

20.1 If the customer:

- (a) Breaches any of its obligations under a contract; or
- (b) Suffers an insolvency event,

Beyond Automation Ltd. may by notice to the customer, at its option and without prejudice to any other right it may have under any contract or at law, immediately suspend or terminate performance of **Beyond Automation Ltd.**'s obligations under the contract or require payment before or on delivery of the products notwithstanding the terms of payment applicable to the products or cancel any undelivered or uncompleted products outstanding under the contract and may retain any monies paid by the customer in relation to the contract and apply such monies against any loss or damage incurred by it in relation to the default by the customer.

21. Force majeure

- 21.1 If by reason of a force majeure event a party is unable, wholly or in part, to perform any obligation under a contract (not being an obligation to pay money and/or take out and maintain insurance) that party:
- (a) Must give the other party prompt notice of the force majeure event with reasonable particulars and an estimate of the likely duration of the force majeure event.
 - (b) Will be relieved of that obligation to the extent and for the period that it is unable to perform the obligation and will not be liable to the other party in respect of such inability;
 - (c) Must use reasonable efforts to remove or overcome the force majeure event as quickly as possible.
- 21.2 The requirements under this clause will not require the party seeking to rely on the force majeure event to settle any strike, lockout or other labour dispute or claim or demand by any government, quasi-government or competent authority on terms contrary to its wishes or to contest the validity or enforceability of any law, regulation, decree or order by way of legal proceedings.

Where a force majeure event ceases, the parties must as soon as is reasonably practicable commence performing the obligations that were affected by the force majeure event.

22. Waiver

- 22.1 Any failure by **Beyond Automation Ltd.** to insist upon strict performance by the customer of any provision in these conditions of sale shall not be taken to be a waiver of the provision or of any rights of **Beyond Automation Ltd.** in relation to the provision and shall not be taken to be a waiver of the provision on any subsequent occasion.

23. Notices

- 23.1 Any notice in connection with a contract must be in writing in the language of the order confirmation and may be given by an agent of the sender.
- 23.2 In addition to any other lawful means, a notice may be given by being:
- (a) Personally delivered;
 - (b) Left at the party's current address;
 - (c) Sent to the party's current address by pre-paid ordinary mail or, if the address is outside New Zealand, by pre-paid air mail; or
- 23.3 A notice is given, if posted:
- (a) Within New Zealand to a New Zealand address, three business days after posting; or
 - (b) In any other case, ten business days after posting.
- 23.4 A notice may also be given by email to the party's current email address. A notice sent by email is deemed to have been received on the next business day after transmission, unless the sender receives an automated delivery failure notification. The sender bears the burden of proving successful transmission.

24. Severance

- 24.1 If the whole or any part of a provision in the conditions of sale or a contract is declared void, unenforceable or illegal then:
- (a) Where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the extent necessary to achieve that result; and
 - (b) In any other case the offending provision must be severed from the conditions of sale or the contract.
- 24.2 Where a provision is read down or severed pursuant to clause 24.1, the remainder of the conditions of sale or the contract has full force and effect.
- 24.3 A provision must not be read down under clause 24.1(a) if the reading down of the provision alters the basic nature of the conditions of sale or the applicable quotation or contract or is contrary to public policy.

25. **Non-assignment**

- 25.1 The customer shall not assign, transfer, charge nor purport to assign, transfer or charge, any contract or its rights thereunder (including the benefit of any warranty) or any part thereof without obtaining the prior consent in writing of **Beyond Automation Ltd.**

26. **Dispute Resolution**

- 26.1 If a dispute arises out of or in connection with any contract (including any question regarding its existence, validity or termination), the parties must first attempt to resolve the dispute through good faith negotiation. Either party may initiate this process by giving written notice to the other party describing the dispute in reasonable detail.
- 26.2 If the dispute is not resolved within 20 business days of the notice referred to above (or such longer period as agreed in writing), either party may refer the dispute to mediation administered by a mediator agreed between the parties, or failing agreement, appointed by the Arbitrators' and Mediators' Institute of New Zealand (AMINZ).
- 26.3 If the dispute is not resolved by mediation within 30 business days of the appointment of the mediator (or such longer period as agreed), either party may commence legal proceedings. Nothing in this clause prevents either party from seeking urgent interlocutory relief from a court.

27. **Governing law**

- 27.1 The conditions of sale and all contracts will be construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand and the courts entitled to hear appeals from those courts.
- 27.2 Notwithstanding clause 27.1, if but for this clause the United Nations Convention on Contracts for the International Sale of Goods ("the Convention") would apply to a contract, the parties agree that the application of the Convention to the contract is completely excluded.