



Process Control Equipment Group

Terms and Conditions of Sale (v4 March 2021)

Definitions

1. These Terms and Conditions of Sale include the following defined words or phrases:
 - a. “Seller” – meaning one of the Process Control Equipment Group companies, being either Process Control Equipment Limited, Process Control Equipment Scotland Limited, HT Process Control Limited, Process Control Equipment Benelux B.V. or Process Control Equipment Iberica S.L. as relevant;
 - b. “Customer” – meaning the individual, firm, partnership, company or other party with whom the Seller contracts;
 - c. “Force majeure” – meaning any event beyond the reasonable and direct control of the Seller, including, but not limited to, act of God, fire, storm, flood, drought, earthquake, malicious damage, embargo, riot, strike, lock-out, trade dispute, civil disturbance, war, compliance with any law, rule or direction or any other event or accident;
 - d. “Loss” – meaning any and all direct or indirect financial loss, damages (including time-based or liquidated damages), loss of business, loss of goodwill or reputation, or any other economic cost.

Conditions of Sale

2. Any contract made between the Seller and the Customer shall be subject to these conditions. No employee or representative of the Seller has authority to agree to any terms, or to enter into any contract except on the basis of these terms. In particular, any terms and conditions included or referred to by the Customer during any quotation, pre-contract negotiation or order, are explicitly excluded.
3. No order placed by a Customer shall be binding on the Seller unless accepted by the Seller in writing (including email). No contract will arise until such acceptance. These conditions shall apply even where no written acknowledgement is given.
4. Any descriptions contained in marketing materials are a guide only and do not form a contractual representation.
5. The law governing the contract will be that of the country of the respective Seller.

Customer requirements

6. Where the Customer requests a particular specification, design or build of goods to be supplied, the suitability and accuracy of such design is entirely the Customer's responsibility. The Customer agrees to indemnify and hold the Seller harmless where any Loss arises as a result of incorrect specification being provided by the Customer.
7. The Customer will also indemnify and hold the Seller harmless in any instance that the specification provided by the Customer breaches the intellectual property rights of a third party.

Quotation and Pricing

8. The Seller is entitled to amend its pricing up to the date of despatch of goods, even where prices had previously been agreed, where its cost of supply has increased for any of the following reasons:
 - a. A change in exchange rates;
 - b. A change in raw material cost;
 - c. A change in specification by the Customer;
 - d. A change in the delivery place, time or method requested by the Customer;
 - e. Inadequacy of information provided by the Customer resulting in the Seller incurring additional or unforeseen costs.
9. Prices quoted exclude all national and international taxes and duties, which shall be payable by the Customer.

Delivery

10. Delivery dates set out in quotations, customer orders, or the final contract are intended as a guide and are given in good faith. The Seller will do all it reasonably can to meet such delivery dates, but the Customer acknowledges that dates cannot always be met. Failure by the Seller to meet such dates will not constitute a breach of these terms, and the Customer agrees to indemnify and hold the Seller harmless against any Loss resulting from late delivery.
11. Where delivery is delayed due to Force Majeure, the Seller will have no liability to the Customer. The Seller and the Customer agree that, under these circumstances, either party may cancel the contract without further liability to the other. Any rights and obligations accrued up to that point, for example due to partial delivery, shall not be affected.
12. Where the Seller and the Customer agree that delivery shall take place at the Customer's premises:
 - a. The Seller shall be entitled to charge the Customer separately for such delivery, including packing, insurance, transport, loading and unloading costs;
 - b. The Customer shall make themselves available to receive such delivery during normal business hours (Monday to Friday, 0800 to 1800 inclusive). The Seller is entitled to charge for any additional delivery attempts required where the Customer was not available during such hours;
 - c. Unless otherwise stated, the Seller will have discharged its obligations to the Customer when a delivery attempt is made at any premises where the Customer carries on its business.
13. Where the Seller and the Customer agree that delivery shall take place at the Supplier's premises:
 - a. Loading and transportation (including associated costs) will be organised by the Customer;
 - b. The Seller will be entitled to charge a reasonable storage fee if the Customer does not collect goods on the agreed date.

14. Risk in the goods shall pass to the Customer at the point of delivery. The Customer shall insure such goods appropriately until legal title passes to the Customer.
15. Where supply of goods is international (that is, where the Seller is delivering outside of its own national territory), the provisions of the latest Incoterms may be incorporated into this agreement if agreed by the Seller and the Customer. Where there is inconsistency between the Incoterms and these Terms and Conditions of Sale, these terms will prevail.
16. The Seller may make deliveries in instalments. Where this happens, the contract will be deemed to be divisible. As such, each instalment shall be considered to arise from a separate Contract and shall be invoiced separately. Any defects or delay with one instalment shall not preclude payment of other instalments; for clarity, invoices raised for instalments that are properly delivered shall be payable in full.

Payment

17. Legal title to goods shall pass at the point of payment.
18. The Seller shall raise an invoice to the Customer:
 - a. Where delivery is to the Customer's premises, upon the point of delivery;
 - b. Where delivery is at the Seller's premises, at the point that the Customer was notified that the goods were available for collection;
 - c. Where delivery is governed by Incoterms, at the point that the Seller is entitled to raise an invoice according to the agreed terms.
19. Standard payment terms are 30 days from date of invoice. If other terms are agreed, the agreed payment date will be included by the Seller on the invoice. Failure by the Customer to receive or process an invoice promptly will not affect the payment date.
20. Failure to pay within the agreed time period will result in interest being applied at:
 - a. For sales in the UK, the Bank of England base rate of interest plus 8%;
 - b. For sales in Spain and the Netherlands, the European Central Bank base rate of interest plus 8%;
 - c. In the event that these rates exceed the maximum rate enforceable from time to time by the applicable governing law, then the maximum legal rate shall be applied.
21. If the Customer fails to pay, or if the Seller has reasonable grounds to believe that the Customer will fail to pay, the Seller has the right to withhold all further deliveries until such payment is received. If no payment is received within 30 days of the original due date, the Customer agrees that the Seller has the right to enter the Customer's premises and remove goods for which payment was delayed. If these goods have been moved, the Customer agrees to return them immediately to the Seller at the Customer's expense.
22. The Customer has the right to request cancellation of a contract. The Seller will only agree to such cancellation if the Customer makes fair payment for the value of work done to the point of cancellation sufficient to cover the Seller's incurred or unavoidable costs and any loss of profit on the contract. Any request to cancel the contract by the Customer can only be accepted by the Seller in writing (or email).

Liability, and Limitation of Liability

23. The Seller will only accept legal liability for the following:
- a. Damage to or loss of goods before the point of delivery;
 - b. A defect in goods which is found by the Customer when inspecting at the point of delivery. Any such defect must be reported by the Customer to the Seller no more than seven days after delivery;
 - c. Failure of the goods within the first twelve months of being put into use, but only where such failure occurs within eighteen months of delivery ("Warranty Period"). Any such failure must be reported by the Customer to the Seller no more than seven days after discovery.
24. Where a defect or failure is notified to the Seller, the Customer agrees that the Seller has fourteen days to inspect the goods affected to verify the defect or failure.
25. The Seller will only have liability to the Customer where any defect or failure has been notified within the agreed periods set out above, and where that defect or failure materially affects the ability of the goods supplied to perform as envisaged.
26. Where the Seller has liability to the Customer, that liability will be limited to:
- a. Replacing any lost, damaged, defective or failed goods;
 - b. Repairing (or meeting the cost of repairing) the lost, damaged, defective or failed goods;
or
 - c. Refunding the price of the lost, damaged, defective or failed goods.
27. The Seller excludes to the fullest extent possible under the relevant governing law any liability for any Loss other than as set out at Clause 25. The Seller alone shall choose which of the remedies set out in Clause 25 shall be pursued.
28. Where goods are replaced or repaired, the Warranty Period for the affected goods will re-commence at the point of replacement or repair.

General terms

29. These Terms and Conditions of Sale will be the only terms governing the contract. All other terms are explicitly excluded.
30. Failure by the Seller to enforce particular terms in this agreement does not constitute a waiver of the Seller's rights.
31. If any provision in these Terms and Conditions of Sale is found to be incompatible with the governing law of the contract, the Customer and the Seller agree that only those items which are incompatible should be disregarded, and all other terms shall stand.

Signed 9 March 2021
Richard Jackson, Director

