



General Terms and Conditions 2015 (U.S.)

1. Preamble

1.1 These General Terms and Conditions (these “**Terms**”) apply to all sales of products and services (“**Products**”) by HMS Industrial Networks, Inc. (“**HMS**”) to any purchaser thereof (the “**Customer**”). Deviations from these General Terms and Conditions shall not apply unless agreed in writing by HMS. Standard terms on any Customer-provided purchase order are hereby rejected. The terms of HMS’ purchase order or order confirmation, together with these Terms, shall constitute the “**Agreement**”.

2. Terms of Delivery

2.1 The terms of delivery shall be CIP, or such other trade term as has been agreed in writing by HMS, according to the Incoterms in force at the formation of the order.

3. Delivery Time

3.1 The Products shall be shipped at the time stated in HMS’s order confirmation. The Customer may change an order within three days of its placement.

3.2 If HMS fails to deliver the Products on time due to any act or omission on the part of the Customer, the time for shipment shall be extended by a reasonable period of time, which shall not be less than the period during which the act or omission was continuing.

3.3 If HMS fails to deliver the Products on time, the Customer may, by giving written notice to HMS, communicate a final reasonable time for shipment, stating the Customer’s intention to cancel the order if shipment does not take place within such final time.

3.4 If shipment has not taken place within the final time communicated by the Customer in accordance with Clause 3.3, the Customer may cancel the relevant order by giving written notice thereof to HMS.

3.5 Should HMS find that it cannot ship within the agreed time, HMS shall as soon as possible provide a new shipment date.

3.6 If the Customer objects to the new shipment date, it shall inform HMS thereof within 48 hours of receiving notice from HMS in accordance with Clause 3.6. If the Customer does not inform HMS within the stated time, the new shipment date shall be considered accepted by the Customer.

3.7 The Customer’s right to cancel an order in accordance with Clause 3.4 shall be the only remedy available to the Customer in case of delay and the Customer shall not be entitled to any compensation for HMS’s failure to deliver on time.

4. Payment

4.1 Unless otherwise agreed in writing by HMS, payment shall be made by the Customer net 30 days of invoice date (which in most circumstances will be the date of Product shipment); provided, however, that HMS shall have the right to demand pre-payment or other assurance of payment prior to shipment in the event HMS deems itself insecure in the Customer’s ability or other likelihood to make timely payment.

4.2 In the event Customer fails to pay any amount owed HMS when due, HMS shall be entitled to interest as of the due date at a rate equal to 1.5% per month or the highest amount permitted by law, whichever is less. Additionally, HMS shall be permitted to suspend any future orders to the Customer in the event of a past-due balance owed by the Customer to HMS.

5. Retention of Title

5.1 Title to the Products shall not pass to the Customer until payment in full thereof and until such time the Customer shall not be entitled to resell the Products and shall keep the Products clearly marked as belonging to HMS and separated from other property of the Customer or its other suppliers.

6. Product Warranty

6.1 HMS warrants Product supplied by HMS against defects in design, material and workmanship for the

warranty period for the applicable Product, which may range from 1 year up to 3 years of the date of shipment of Product from HMS (the “**Warranty**”).

6.2 Should any failure to conform with the Warranty develop during the specified period under normal and proper use and provided the Product has been properly stored, installed and maintained, HMS shall, if given prompt notice of the alleged failure to conform, which notice must at least be given within 10 days of the Customer becoming aware of the alleged failure and such failure is confirmed by HMS, correct such non-conformity at the option of HMS by replacement, or by refund of the purchase price of the non-conforming Product. Return of the defective Product to HMS pursuant to this Section 6 shall be at the Customer’s risk and expense. Replaced Product shall become the property of HMS.

Replacements pursuant to the Warranty shall not renew or extend the applicable original Warranty period; provided, however, that any such replacement Product shall be warranted for the time remaining under the original Warranty period or for 30 days, whichever is longer.

6.3 The Warranty contained herein shall not apply to defects in materials provided by the Customer or per design requirements stipulated by the Customer. The Warranty contained herein shall terminate if the Product failure giving rise to a claim under the Warranty results from: (a) unauthorized modification, repair or alteration; (b) improper operation, application, maintenance or installation; (c) damage during shipment; (d) operation, handling or other dealings with Product in a negligent manner; or (e) abnormal conditions or temperature, moisture, dirt or corrosive matter.

6.4 If the Customer gives HMS notice of a defective Product and if it is subsequently discovered that there is no defect for which HMS is liable, the Customer shall compensate HMS for its work and for all costs in relation to the Customer’s notice.

6.5 THE WARRANTIES, RIGHTS AND REMEDIES SET FORTH IN THIS SECTION 6 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, RIGHTS AND REMEDIES WITH RESPECT TO ANY PRODUCT, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND WHETHER WRITTEN OR ORAL; ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, RIGHTS AND REMEDIES, INCLUDING, BUT NOT LIMITED TO, **ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY DISCLAIMED,**

EXCLUDED AND WAIVED BY THE CUSTOMER TO THE FULLEST EXTENT PERMITTED BY LAW.

7. Indemnity and Waiver of Certain Damages

7.1 UNDER NO CIRCUMSTANCES SHALL HMS BE LIABLE HEREUNDER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, WHETHER ARISING UNDER BREACH OF CONTRACT, NEGLIGENCE, TORT OR OTHERWISE AND WHETHER OR NOT CAUSED BY HMS’S OWN NEGLIGENCE OR ANY OTHER CAUSE WHATSOEVER.

7.2 HMS shall at its own expense defend any suits or proceedings brought against the Customer by a third-party alleging that Product manufactured by HMS (or its parent company) and furnished hereunder infringes upon any U.S. patent (a “**Patent Infringement Claim**”). Notwithstanding the foregoing, HMS shall have no indemnification obligations hereunder to the extent a claim: (i) is based upon a process performed by the Customer utilizing a Product, (ii) relates to Product supplied according to the Customer’s detailed design, and/or (iii) arises out of any modification of a Product or combination of a Product with any other items not provided by HMS in connection therewith. The Customer’s indemnification rights are conditioned upon it having made all payments due hereunder, and its compliance with the provisions of this Section 7.

Within ten (10) days of receipt of notice or knowledge of a Patent Infringement Claim, the Customer shall so notify HMS, which notification shall be accompanied by: (a) a copy of any and all pleadings, notices and correspondence pertaining to the Patent Infringement Claim, and (b) authorization from the Customer to defend the Patent Infringement Claim. The Customer shall cooperate fully with HMS in the defense of the Patent Infringement Claim and shall provide such assistance and information to HMS, its attorneys or its agents as they may request.

HMS shall not be responsible for any settlement of such suit or proceedings made without its written consent. If in any suit or proceeding defended hereunder any parts is held to constitute infringement, and its use is enjoined, HMS shall, at its option and its own expense, either: (x) procure for the Customer the right to continue using said Product, or (y) replace the infringing Product with non-infringing parts; or (z) remove the Product and refund the purchase price thereof. Regardless of the option selected by HMS, its liability hereunder will in no event exceed the purchase price of the allegedly

infringing Product. THE FOREGOING STATES THE ENTIRE LIABILITY OF HMS WITH RESPECT TO PATENT INFRINGEMENT.

If the Customer elects, it may retain counsel of its choice for its legal representation; provided, however, that the Customer shall bear all costs and fees for and incurred as a result of such representation.

7.3 To the extent that a Product is supplied according to the Customer's detailed design or instruction, or modified by the Customer, or combined by the Customer with parts or things not furnished by HMS or is used by the Customer to perform a process, or produce a product and by reason of said design, instruction, modification, combination, performance, or production, a suit or proceeding is brought against HMS or any of its affiliates, the Customer shall indemnify and defend HMS in the manner HMS is obliged to indemnify the Customer under this Section 7.

8. Grounds for Relief (Force Majeure)

8.1 Neither HMS nor the Customer shall be liable for failure to perform any obligations under this Agreement, other than the payment of money, when the failure is caused by circumstances beyond the reasonable control of the affected party, including but not limited to flood, fire, strike or other labor

disputes, accidents, war, riot, insurrection, acts of government, governmental regulation, shortage of energy, transport or supplies or delays or failure to perform by suppliers and subcontractors.

9. Disputes and Applicable Law

9.1 Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered into any court having jurisdiction thereof. The arbitrators shall issue a written opinion explaining the reasons for the award. The arbitrators shall award the prevailing party reimbursement of reasonable attorney's fees. The arbitration shall be conducted in Cook County or DuPage County, State of Illinois. Notwithstanding the foregoing, either party may bring an action in court in respect of an undisputed claim for payment.

9.2 The construction and performance of the Terms and the rights and remedies of the parties hereto shall be governed by the internal laws of the State of Illinois, without regard to principals governing conflicts of law.

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