

BECKHOFF AUTOMATION PTY LTD TERMS AND CONDITIONS OF TRADE

Revision and update version released June 2020

To the fullest extent legally permissible all dealings between Beckhoff Automation Pty Ltd ACN 119 627 048 of 23 Edward Street, Oakleigh, Victoria 3166 (Beckhoff), any Customer and any guarantor (where applicable) relating to any goods, products or services (Goods) are subject to the following terms and conditions of trade (Terms) unless otherwise agreed in writing:

1. Cash Before Delivery or Credit Terms

- (a) Customers who wish to apply for a credit account must complete and submit the prescribed Credit Application Form (and any other documentation) to the satisfaction of Beckhoff. If Beckhoff approves this application, the applicable customer can deal with Beckhoff on terms of a 30 day from end of month account with Beckhoff up to the prescribed credit limit set by Beckhoff with time being of the essence in respect of payment. Otherwise, all Goods are offered by Beckhoff on a cash before delivery basis.
- (b) Credit approval granted pursuant to clause 1(a) may be withdrawn by Beckhoff at any time in its discretion.
- (c) If credit approval has not been granted by Beckhoff pursuant to clause 1(a) or credit approval is withdrawn pursuant to clause 1(b), Beckhoff will supply Goods to the Customer on a cash before delivery basis.
- (d) In the event a Customer's credit account is revoked, any and all amounts owing to Beckhoff shall be paid immediately.

2. Payments

- (a) All payments are to be made by the following methods and without deduction unless otherwise agreed:
 - (i) Cash, in person or at a Beckhoff premises.
 - (ii) Cheque or bank cheque made out to Beckhoff Automation Pty Ltd with Beckhoff refusing to recognize payment being made until funds have cleared into the Beckhoff bank account).
 - (iii) Credit & Debit Cards – Visa, Master Card & Debit Cards are accepted. A surcharge of 1.5% (ex-gst) of the full payment value will apply.
 - (iv) Direct deposit into the nominated Beckhoff Automation Pty Ltd bank account.
- (b) If Beckhoff receives or recovers money in respect of debts of the customer or anyone else, Beckhoff may use it to pay off any part of those debts it chooses.
- (c) The Customer must not set-off or attempt to set-off against any amount owed to Beckhoff or any amount the Customer alleges is owed to it by Beckhoff.

3. Interest

Without prejudice to any other rights Beckhoff may have against the Customer or any guarantor, interest will be charged on overdue accounts at the rate prescribed by the *Penalty Interest Rates Act 1983* (Vic) plus 2%.

4. Property

Until payment in full has been made by the Customer and received by Beckhoff of the purchase price for the Goods and all other amounts owing by the customer to Beckhoff (and including if the Customer is subject to a credit facility granted by Beckhoff and/or where a written notice of extension of payment terms has been provided to the Customer):

- (a) Title and property in any Goods will remain with Beckhoff and Beckhoff reserves the right to take possession and dispose of Goods as it sees fit at any time until full payment has been received by Beckhoff;
- (b) The Customer shall be deemed to hold the Goods as a fiduciary bailee and agent for Beckhoff and agrees to store the Goods separately on behalf of Beckhoff so that they are clearly identifiable as Beckhoff's property;
- (c) The Customer grants permission to Beckhoff to enter a Customer's property or place of business to recover the Goods as is necessary and the Customer indemnifies Beckhoff from and against all costs, claims, demands or actions by any party arising from such action. Beckhoff will exercise its right of entry (including the use and extent of force), as granted by this clause 4(c) in accordance with applicable laws;
- (d) The Customer agrees that a certificate purporting to be signed by an officer of Beckhoff identifying Goods as unpaid for shall be conclusive evidence that Goods have not been paid for and of Beckhoff's title to those Goods;
- (e) Upon sale or disposition of any Goods prior to full payment the Customer agrees to hold all proceeds on trust for Beckhoff by depositing all proceeds in a separate bank account that is with a bank to which the Customer has not granted a security interest, the proceeds are not to be mixed with any other monies and the Customer is to account to Beckhoff for the same as fiduciary and bailee;
- (f) Without derogating from Beckhoff's rights as a creditor of the Customer or arising under these Terms if Goods are used in any construction, building, fabrication and/or manufacturing process (**Process**) which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any Goods used in the Process as invoiced to the Customer by Beckhoff upon trust for Beckhoff until payment in full for those Goods and all monies owed to Beckhoff;
- (g) Goods shall be deemed to be dealt with by the Customer on a "first in first out" basis at all times; and
- (h) Without limiting the foregoing, the Customer grants a security interest over all Goods in which title has passed to the Customer to secure any monies outstanding from the Customer to Beckhoff from time to time.

5. Personal Property Securities Act 2009 (PPSA)

- (a) Despite anything to the contrary in the Terms, the Customer acknowledges and agrees that:
- (i) the PPSA applies to these Terms;
 - (ii) any terms used in this clause 5 that are defined in the PPSA have the same meaning as in the PPSA;
 - (iii) these Terms constitute a security agreement for the purposes of section 20 of the PPSA;
 - (iv) a purchase money security interest is granted by the Customer to Beckhoff and exists in all Goods (and their proceeds) previously supplied by Beckhoff to the Customer (if any) and in all future Goods (and their proceeds) supplied by Beckhoff to the Customer;
 - (v) the security interest granted in favour of Beckhoff is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time and attaches to Goods on and from the point when the Goods are no longer physically possessed by Beckhoff and not at any later time;
 - (vi) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Beckhoff will apply only to the extent that they are mandatory or Beckhoff agrees to their application in writing; and
 - (vii) where Beckhoff has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- (b) The Customer undertakes to:
- (i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Beckhoff may reasonably require to register a financing statement or financing change statement in relation to a security interest or register any other document required to be registered under the PPSA;
 - (ii) indemnify, and upon demand reimburse, Beckhoff for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (iii) not give to Beckhoff a written demand or allow any other person to give Beckhoff a written demand requiring Beckhoff to register a financing change statement under the PPSA;
 - (iv) not register or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Beckhoff; and
 - (v) immediately advise Beckhoff of any material change in its business practices of selling the Goods which may result in a change in the nature of the proceeds derived from such sales.
- (c) The Customer and Beckhoff agree that until ownership of the Goods passes, the Customer waives its rights under the following provisions of the PPSA:
- (i) to receive a notice of intention of removal of an accession (section 95);
 - (ii) to receive a notice that Beckhoff decides to enforce its security interest in accordance with land law (section 118);
 - (iii) to receive a notice on enforcement action against liquid assets (section 121(4));
 - (iv) to receive a notice of disposal of Goods by Beckhoff purchasing the Goods (section 122);
 - (v) to receive a notice to dispose of Goods (section 130);
 - (vi) to receive a statement of account following disposal of Goods (section 132(2));
 - (vii) to receive a statement of account regarding amounts paid to other secured parties (section 132(3)(d));
 - (viii) to receive a statement of account if no disposal of Goods for each 6 month period (section 132(4));
 - (ix) to receive a notice of any proposal of Beckhoff to retain Goods (section 135);
 - (x) to object to any proposal of Beckhoff to either retain or dispose of Goods (section 137(2)); and
 - (xi) to receive a notice of any verification statement (sections 157(1) and 157(3)).
- (d) The Customer and Beckhoff agree that the following sections of the PPSA will not apply to these Terms: 96 (retention of accession), 125 (disposal or retention of collateral), 129 (disposal by purchase), 142 (redeeming collateral) and 143 (reinstating security agreement).
- (e) Beckhoff may allocate amounts received from the Customer at its absolute discretion, including the allocation of these amounts to preserve a purchase money security interest.
- (f) For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of the Goods and details of the Goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the Goods, except as otherwise required by law or that is already in the public domain.

6. Prices and GST

- (a) The purchase price of the Goods is as set out in Beckhoff's current price list at the time the Customer places an order of the Goods with Beckhoff. Beckhoff reserves the right to change the prices of Goods at any time without notice to the Customer.
- (b) Regardless of any provision of these Terms, if GST is imposed on any *Supply* made to the Customer by Beckhoff under these Terms of trade, the amount which the Customer must pay is increased by the amount of the GST. In this clause 6(b), expressions in italics have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended).

7. Risk and Insurance

- (a) The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately upon the goods being made available to the Customer at the location specified by Beckhoff.
- (b) The Goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods.

- (c) The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the goods sold by Beckhoff, unless recoverable from Beckhoff on the failure of any statutory guarantee under the Australian Consumer Law.

8. Limitation of Liability

The Customer agrees that, to the extent permitted by law:

- (a) Beckhoff shall not be liable for any damages for personal injury, any damage to property and/or any contingent, consequential, direct, indirect, special or punitive damages whether due to negligence or otherwise, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly; and
- (b) no term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any way extending to or otherwise relating to the Goods is made or given by or on behalf of Beckhoff other than by these Terms or any express warranty otherwise published by Beckhoff in relation to the Goods. To avoid doubt, all implied conditions, warranties and guarantees are excluded in so far as is permitted by law, including (without limitation) warranties of quality, fitness for purpose, title and non-infringement.

Despite anything to the contrary in these Terms:

- (c) Beckhoff's Goods come with guarantees that cannot be excluded under the Australian Consumer Law. Nothing in these terms is intended to exclude those statutory guarantees.
- (d) To the extent permitted by law however, if Beckhoff incurs any liability to the Customer under the Australian Consumer Law or as a result of any other non-excludable provisions, then Beckhoff's liability is limited to (at Beckhoff's election) the repair or re-supply of the Goods, or the payment of the cost of repairing or re-supplying the Goods.
- (e) If the Customer on-supplies the goods to a consumer and:
 - (i) the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) (limitation of liability of manufacturer to seller in certain circumstances) of the Australian Consumer Law is the absolute limit of Beckhoff's liability to the Customer;
 - (ii) the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 (indemnification of suppliers by manufacturers) of the Australian Consumer Law is the absolute limit of Beckhoff's liability to the Customer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

9. Exclusions

The Customer agrees that:

- (a) No dealing between Beckhoff and the Customer shall be or be deemed to be a sale by sample;
- (b) Where the Goods supplied to the Customer differ from the Customer's order but do so within acceptable industry tolerances, the Goods are compliant with these Terms;
- (c) The Customer shall rely on its own knowledge and expertise in selecting Goods for any purpose and any advice or assistance given by or on behalf of Beckhoff shall be accepted at the Customer's risk and shall not be deemed to have been given as expert or adviser nor to have been relied upon.

10. Returns and Wrong Delivery

- (a) If Goods are:
 - (i) incorrectly delivered by Beckhoff; or
 - (ii) missing from a delivery,the Customer must advise Beckhoff by submitting a claim in writing to Beckhoff within 14 days from the date of receipt of the Goods by the Customer (for incorrectly delivered Goods) or within 14 days from the date of receipt of the invoice (for missing Goods). If the Customer fails to make a claim within these 14 day periods (as applicable), then to the extent permitted by law, the Customer is deemed to have accepted the Goods and will be required to pay for them in full.
- (b) Without limiting any other provision of these Terms including any express or implied limitation of liability on Beckhoff, if Goods are:
 - (i) defective; or
 - (ii) contravene any applicable statutory guarantee;the Customer must notify Beckhoff within 14 days, or longer if, in the reasonable opinion of Beckhoff the notification period should be extended because the Customer did not become aware of the matter referred to in clause 10(b)(i) or 10(b)(ii) until after that 14 day period.
- (c) For any notification under 10(a) or 10(b) the Customer must specify Beckhoff's item number of the Goods (where applicable) and the invoice number upon which the Goods were purchased. If Beckhoff agrees, in its absolute discretion, to the return of the Goods, Beckhoff will provide written notice to the Customer.
- (d) The Customer shall not return any Goods without Beckhoff's prior written approval. Any Goods returned to Beckhoff under this clause 10 must:
 - (i) be in brand new and unused condition;
 - (ii) with undamaged packaging; and
 - (iii) returned within one (1) month of the original purchase date.

- (e) Subject to receiving Beckhoff's written approval, the Customer shall return the Goods (where appropriate) in brand new and unused condition with undamaged packaging and:
 - (i) Beckhoff will in return credit the Customer's account with an amount equal to the purchase price of the Goods that were incorrectly delivered by Beckhoff; or
 - (ii) in the case of missing Goods, Beckhoff's sole obligation will be to re-deliver the missing Goods; or
 - (iii) in the case of Goods being defective or contravening clause 10(b) in any minor way, Beckhoff may in its absolute discretion, repair, replace or refund the equivalent value of the Goods; or
 - (iv) in the case of Goods being defective or contravening clause 10(b) in any major way, the Customer may elect to have the Goods replaced or their equivalent value refunded.
- (f) For the purposes of clause 10(e)(iii) and 10(e)(iv), Beckhoff will determine whether such Goods contravene clause 10(a) in a major or minor way, having regard to clause 260 of the Australian Consumer Law.
- (g) The Customer shall in all cases other than the circumstances set out in clause 10, pay to Beckhoff a restocking fee as prescribed in Beckhoff's returns policy of the gross invoice value of all returns, or in agreement made with Beckhoff's management in writing.
- (h) Notwithstanding any other provisions of these Terms the Customer shall not return Goods without first providing to Beckhoff an original invoice as proof of purchase; and
- (i) Notwithstanding any other provisions of these Terms the Customer shall not return any Goods which have been:
 - (i) custom made, custom cut, custom processed or custom acquired;
 - (ii) discontinued by Beckhoff or no longer stocked by Beckhoff;
 - (iii) altered in any way;
 - (iv) used;
 - (v) where Goods include safety seals, these must be intact and untampered;
 - (vi) are not in their original condition and packaging.
- (j) The Customer acknowledges its responsibility to inspect the Goods on delivery. This responsibility remains with the Customer even where the goods are delivered to a third party.

11. Orders

The Customer agrees that:

- (a) Any quotation provided by Beckhoff to the Customer for the proposed supply of Goods is valid for 30 days, an invitation to treat only and only valid if in writing.
- (b) Customers may accept a quotation by submitting a written order to Beckhoff that is on identical terms to that of the relevant quotation, after which Beckhoff will then review the order in accordance with clause 11(e).
- (c) Quotations provided to Customers by Beckhoff and orders may contain additional terms or variations to the Terms and to the extent of any inconsistency, these additional or varied terms prevail over the Terms.
- (d) The Customer must place written orders for Goods with Beckhoff in the form specified by Beckhoff. Beckhoff will not accept phone orders.
- (e) Beckhoff may, in its discretion, accept, reject or vary any order of the Customer.
- (f) Beckhoff may, in its discretion, require the Customer to pay a deposit in connection with an order and in this case the order will be conditional on payment of the deposit to Beckhoff. Any deposit payment is to be made in accordance with clause 2.
- (g) The Customer must not cancel an order of Goods unless it has obtained the prior written consent of Beckhoff, which consent may or may not be granted in Beckhoff's absolute discretion.
- (h) Beckhoff may, in its discretion, cancel any Customer's order after that order has been accepted.
- (i) Each order it places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due; and
- (j) When any order is placed the Customer shall inform Beckhoff of any facts which might reasonably affect any decision to accept the order and/or grant credit and that any failure to do so shall be deemed to create and constitute an inequality of bargaining position, the taking of an unfair advantage of Beckhoff and to be unconscionable, misleading and deceptive.

12. Minimum Invoice Policy and Purchase Price

The Customer agrees that it shall at all times and in all respects comply with Beckhoff's minimum invoice policy as may at any time and from time to time apply on such terms as Beckhoff considers to be reasonable as notified by Beckhoff to the Customer.

13. Delivery:

- (a) Unless expressly agreed to the contrary in writing, all orders will be delivered EXW Incoterms 2020. Without limiting this, if the Customer does not nominate a carrier in an order, Beckhoff may elect to arrange loading and carriage at its discretion and without liability and at the Customer's cost and risk in all things, including any insurance whilst in transit.
- (b) Beckhoff shall not be liable for delay or any failure or inability to deliver. Time is not of the essence for any order or delivery. Any dates or timeframes for delivery are estimates only.
- (c) As soon as Goods are made ready for collection by the Customer, risk shall be deemed to have passed to the Customer.
- (d) Freight charges and all costs associated with delivery of the Goods are entirely payable by the Customer and will include any additional charges or expenses incurred by Beckhoff as a result of the Goods being unable to be delivered for any reason.

14. Forward Orders:

The Customer agrees:

- (a) To pay for so much of any forward order as is from time to time invoiced by Beckhoff;
- (b) That no delay or failure to fulfill any part of such order shall entitle any cancellation or variation of any order or delay or reduce any payment; and
- (c) To pay any demurrage and/or other costs and expenses of Beckhoff in handling and/or holding Goods once ready for delivery.

15. Force Majeure

- (a) Beckhoff shall not be or be deemed to be liable or in default or breach of any contract, including these Terms, as a result of a Force Majeure Event.
- (b) A Force Majeure Event shall include any cause beyond the reasonable control of Beckhoff including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, government sanctioned restrictions, health related events (such as epidemics and/or pandemics), acts of God, acts or threats of terrorism or war.
- (c) Where a Force Majeure Event occurs, Beckhoff may suspend or terminate any contract with a Customer by written notice.

16. Attorney

For the purpose of giving effect to the Customer's obligations under these Terms (in particular clauses 4 and 5 of these Terms) the Customer hereby irrevocably appoints the individual holding the role of 'National Credit Manager' (or like equivalent) for the time being of Beckhoff as the Customer's attorney in all things.

17. Disputes

The Customer agrees to pay into an interest-bearing trust account in the joint names of Beckhoff and the Customer any amount claimed by Beckhoff as a condition precedent to any dispute by the Customer of any such claim on the basis that upon resolution of the dispute the trust fund and any interest shall be dispersed according to the resolution. This clause shall operate as a bar to any defence or claim by the Customer until fully complied with.

18. Abnormal Payments

The Customer agrees to pay an administration fee of 2% (calculated on the amount paid) on any payment which is made other than as provided in clause 2 of these Terms which fee is agreed as the liquidated cost of processing such abnormal payments.

19. Defaults

- (a) Upon default or breach of these Terms by the Customer Beckhoff may inter alia retain all monies paid, cease further deliveries, recover from the Customer any loss of profits arising and/or, at Beckhoff's election, take immediate possession of Goods not paid for without prejudice to any other rights Beckhoff may have, including Beckhoff's right to make a claim against any guarantee provided by the Customer in connection with these Terms (where applicable), and without Beckhoff being liable in any way to any person.
- (b) Subject to any applicable statutory stay of proceedings, and without prejudice to Beckhoff's other remedies at law, clause 19(a) may also be relied upon, at Beckhoff's option:
 - (i) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (ii) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

20. Severability

Any part of these Terms being a whole or part of a clause shall be capable of severance without affecting any other part of these Terms.

21. Confidentiality

All information, data and user manuals provided to the Customer as well as all drawings, designs, techniques and improvements (whether patentable or un-patentable) made or conceived by Beckhoff or its agents or employees that relate in any way to the Goods or to Beckhoff's business (**Information**) are confidential and proprietary to Beckhoff and shall not be reproduced, quoted, distributed, or communicated to, or used by, any other person or entity without the express prior written consent of Beckhoff. The Customer agrees to take reasonable precautions to prevent unauthorized disclosure or use of the Information and shall only disclose the Information to, and permit its use by, the Customer's employees and agents necessarily involved in the use and operation of the Goods. The Customer shall inform its employees and agents receiving goods and services provided by Beckhoff of the confidential nature thereof and of the obligations of the Customer and its employees and agents acting on behalf of the Customer. The foregoing confidentiality restrictions shall survive indefinitely.

22. Copyright and Intellectual Property Rights

Any drawings and documentation provided to the Customer hereunder are furnished only for the Customer's own internal use. To the extent not inconsistent with clause 21 hereof relating to confidentiality, the Customer shall have the right to make copies of such drawings

or documentation to satisfy the Customer's internal requirements, provided that the Customer includes Beckhoff's copyright notice on each such copy. No other copies or use of any drawings or documentation or any portion thereof shall be made without the prior written approval of Beckhoff. The Customer takes no interest in any intellectual property rights in or attaching to the Goods. Without limiting the foregoing, the Customer may not reverse engineer or otherwise use or exploit such intellectual property rights independently of the Goods themselves. Any and all sales or deliveries of computer software products supplied or delivered to Customer by Beckhoff shall be governed by a separate licence agreement between Beckhoff and the Customer.

23. Infringement Claims

Beckhoff shall defend any suit or claim brought against the Customer so long as it is based on a claim that any Goods or part thereof in the particular form sold by Beckhoff infringes an Australian patent, trade mark or copyright which had issued at the time of sale. The Customer shall notify Beckhoff in writing of any such claim within five (5) business days of the Customer receiving notice of the claim and shall give Beckhoff authority for the conduct of such suit, including but not limited to (a) allowing Beckhoff to defend or control the defence of the suit, including settlement negotiations and settlement, and (b) rendering to Beckhoff whatever information and assistance may reasonably be required for such a defence. The Customer and Beckhoff shall share all expenses relating to the claim equally including damages, if any, awarded against the Customer in such suit and the costs of litigation or settlement including all legal fees. In case such Goods, or any part thereof is held to infringe and the use of such Goods or part is enjoined, Beckhoff shall have the option of procuring for the Customer the right to continue using such Goods or part, replacing the same with a non-infringing good, modifying the same so as to avoid infringement or removing the same and refunding the purchase price. The rights and obligations of the Customer under this clause 23 are limited to the period of three (3) years from date of purchase of the Goods in question, after which time Beckhoff disclaims all liability to the Customer for any claim against the Customer that any Goods infringe any intellectual property or other right of a third party.

24. Customer IP Indemnity

The Customer shall indemnify and hold Beckhoff harmless for any expense or loss resulting from infringement of patent, trade mark or copyright or other intellectual property rights arising from compliance with designs or specifications furnished or specified by the Customer and incorporated into the Goods or obtained from other manufacturers or vendors specified by the Customer.

25. Modern Slavery reporting

- (a) Beckhoff will comply with the relevant state modern slavery legislation and the Modern Slavery Act 2018 (Cth) (as amended or replaced from time to time) (**Modern Slavery Legislation**).
- (b) Beckhoff will, at the Customer's request, provide information reasonably required by the Customer or its related entity to satisfy such reporting requirements imposed, from time to time, by the Modern Slavery Legislation.

26. Notice

- (a) Any notice given by a party in connection with these Terms must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
- (b) Notwithstanding clause 26(a), the Customer agrees that it shall be deemed to have notice of any change to these Terms immediately any change is adopted by Beckhoff and whether or not the Customer has actual notice thereof. The Customer shall be bound by any terms and conditions of trade which may be adopted by Beckhoff immediately they are so adopted and notwithstanding any other purported or pre-existing terms and conditions which might otherwise have applied.

27. Indemnity

The Customer and guarantor (where application and provided in connection with the Terms) indemnifies Beckhoff and its officers, directors, employees and agents (**Representatives**) against all damages, losses, liabilities, claims, expenses and costs incurred by Beckhoff and the Representatives (including for all legal costs incurred by Beckhoff) in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal) arising directly or indirectly as a result of or in connection with a breach by the Customer of any of these Terms.

28. No Assignment

The Customer may not assign any of its obligations under these Terms without the prior written consent of Beckhoff. In the event the Customer assigns such obligations without the written consent of Beckhoff, the Customer shall remain liable in respect of all continuing indebtedness in addition to any of its other subsisting and ongoing obligations under these Terms.

29. No waiver

Any failure by Beckhoff to enforce any part of these Terms is not to be construed as a waiver of any of Beckhoff's rights.

30. Entire Agreement

Subject to law and the provisions of any written documentation approved by Beckhoff, these Terms are the entire agreement between the parties in relation to anything connected with the subject matter of these Terms.

31. Termination

Either party may terminate these Terms immediately by giving the other party written notice of termination, provided that:

- (a) all outstanding orders and deliveries have been paid for in full (including any applicable GST, interest, freight or other charges); and
- (b) the terminating party is not otherwise in breach of these Terms.

32. Relationship

Nothing in these Terms constitutes a partnership, joint venture, agency or employment relationship between Beckhoff and the Customer.

33. Governing Law and Jurisdiction

These Terms are governed by, and are to be construed with, the laws of Victoria and the Customer irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and any courts competent to hear appeals from them.

Beckhoff Automation Pty Ltd

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