



HERMITAGE AUTOMATION & CONTROLS GENERAL TERMS AND CONDITIONS

1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of goods (“**Product**”) by HERMITAGE AUTOMATION & CONTROLS, INC. (the “**Hermitage Automation**”) to the individual or entity (the “**Customer**”) identified on a purchase order and the corresponding invoice issued by Hermitage Automation (each an “**Invoice**”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Product covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) These Terms are incorporated into each Hermitage Automation quotation, Invoice, and any other document related to a sale of Product by Hermitage Automation to Customer expressly incorporated herein (collectively, the “**Agreement**”). The Agreement comprises the entire agreement between the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of a conflict between the terms of any quotation or Invoice and these Terms, these Terms shall govern. **HERMITAGE AUTOMATION HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY CUSTOMER, WHETHER OR NOT CONTAINED IN ANY OF CUSTOMER’S BUSINESS FORMS, INCLUDING PURCHASE ORDERS, OR ON CUSTOMER’S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. THESE TERMS PREVAIL OVER ANY OF CUSTOMER’S TERMS AND CONDITIONS OF PURCHASE REGARDLESS OF WHETHER OR WHEN CUSTOMER HAS SUBMITTED ITS PURCHASE ORDER OR SUCH TERMS.** Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms.

2. Quotations. Quotations are only valid in writing and for 30 days from the date of the quotation. All quotations are subject to change or withdrawal without prior notice to Customer. Hermitage Automation may refuse orders and has no obligation to supply Product unless Hermitage Automation issues an Invoice or upon the shipment of Product.

3. Price. Customer shall purchase the Product from Hermitage Automation at the price(s) (the “**Price(s)**”) set forth in Hermitage Automation’s Invoice. Prices are in U.S. Dollars and are subject to change without notice before a purchase order has been accepted by Hermitage Automation. Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs and taxes, as well as providing a valid sales tax exemption certificate when applicable; provided, that, Customer shall not be responsible for any taxes imposed on, or with respect to, Hermitage Automation’s income, revenues, gross receipts, personnel or real or personal property or other assets.

4. Payment Terms.

(a) Customer shall pay all invoiced amounts due to Hermitage Automation as specified on Hermitage Automation’s Invoice. Customer shall make all payments hereunder in U.S. Dollars and by wire transfer, automated clearing house (ACH), major credit card, or such other payment method as expressly approved by Hermitage Automation.

(b) Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse Hermitage Automation for all costs incurred in collecting any late payments, including, without limitation, attorney fees. In addition to all other remedies available under these Terms or at law (which Hermitage Automation does not waive by the exercise of any rights hereunder), Hermitage Automation shall be entitled to suspend the delivery of any Product if Customer fails to pay any amounts when due hereunder.

(c) Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Hermitage Automation, whether relating to Hermitage Automation's breach, bankruptcy or otherwise.

(d) If at any time, including after issuance of an Invoice, in Hermitage Automation's sole discretion, the financial condition of Customer at the time Product is ready for shipment does not justify the payment terms originally specified, Hermitage reserves the right to modify those terms and/or require full payment or partial payment in advance. All open account sales are subject to the approval of Hermitage Automation's finance department.

5. Delivery.

(a) The goods will be delivered in accordance with the shipping information detailed on the Invoice. Hermitage Automation shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Hermitage Automation shall deliver the Product to the location identified on the Invoice (the "**Delivery Point**") using Hermitage Automation's standard methods for packaging and shipping such Product. Customer shall take delivery of the Product immediately upon delivery. Customer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Product at the Delivery Point.

(c) Unless otherwise specified, the Product provided by Hermitage Automation to Customer shall be: (a) packed, packaged, marked and otherwise prepared for shipment in a manner which is in accordance with good commercial practice; (b) acceptable to common carriers at the lowest rate for the particular products and in accordance with applicable regulations; and (c) adequate to insure safe arrival at the named destination. Hermitage Automation shall mark all containers with necessary lifting, handling and shipping information. Where such packing must conform to definite specifications that differ from Hermitage Automation's standard provided above in this paragraph, then the Customer shall be charged for the extra cost incurred by Hermitage Automation for such packing. If Customer purchases from Hermitage Automation Product for resale by Customer and to which Customer, directly or indirectly, is to apply its own label (or its content), Customer shall ensure that the label contains the content and form as specified by Hermitage Automation in writing, and as may be supplemented or amended by Hermitage Automation from time to time. In the event Customer shall fail to comply with this paragraph, or any other provision of this Agreement, or shall otherwise fail to comply with any labeling requirements existing as a matter of law, Customer shall defend, indemnify and hold Hermitage Automation harmless from all costs, expenses, liability, damages, fines, penalties, judgments or losses arising with respect thereto.

(d) Published weights of Product are careful estimates but are not warranted. Dimensions of Product shown in catalogs are approximate. For construction purposes, certified dimension drawings for Product can be obtained upon written request to Hermitage Automation.

(e) Hermitage Automation may, in its sole discretion, without liability or penalty, make partial shipments of Product to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer's purchase order.

(f) **IF SHIPMENT OR DELIVERY OF PRODUCT IS DELAYED BY OR AT THE REQUEST OF CUSTOMER, PAYMENT WILL REMAIN DUE IN FULL IN ACCORDANCE WITH THE APPLICABLE INVOICE. IN SUCH EVENT, HERMITAGE AUTOMATION MAY IMPOSE, AND CUSTOMER SHALL PAY, STORAGE CHARGES AND OTHER INCIDENTAL EXPENSES INCURRED BY HERMITAGE AUTOMATION AS A RESULT OF THE DELAY IN ADDITION TO ANY INTEREST ON LATE PAYMENTS AS DESCRIBED ABOVE, AT SUCH RATE AS DETERMINED BY HERMITAGE AUTOMATION IN ITS SOLE BUT REASONABLE DISCRETION.**

6. Quantity. If Hermitage Automation delivers more or less than the quantity of Product ordered, Customer may reject all or any excess Product. Any such rejected Product shall be returned to Hermitage Automation at Hermitage Automation's sole risk and expense. If Customer does not reject the Product and instead accepts the delivery of Product at the increased or reduced quantity, the Price for the Product shall be adjusted on a pro-rata basis.

7. Technical Support. Unless otherwise specifically provided on an Invoice, the Agreement does not include any services of Hermitage Automation in connection with installation, testing, or evaluation of the Product. Hermitage Automation will, however, consistent with its capabilities and subject to scheduling acceptable to Hermitage Automation, make available to Customer, at Customer's expense, technical support services relating to the Product at the rates then imposed by Hermitage Automation, together with any out-of-pocket expenses to Hermitage Automation in connection with the technical support. The sole remedy of Customer in connection with any acts or omissions of Hermitage Automation in the provision of technical support will be the provision of further technical support to Customer reasonably required to correct the act or omission. Hermitage Automation shall have no other liability or obligation with respect thereto. Customer will pay all reasonable travel, living expense and mileage associated with rendering Customer on-site service, as well as, service charges for personnel at the then-current rate. Overtime, weekend and holiday hours of service are subject to premium charges. Special travel rates may apply to travel in excess of 100 miles one-way from and to the Hermitage Automation base location of such service provider.

8. Shipping Terms. Hermitage Automation shall make delivery in accordance with the terms on the face of the Invoice.

9. Title and Risk of Loss. Title and risk of loss passes to Customer upon delivery of the Product at the Delivery Point unless otherwise provided on the Invoice. As collateral security for the payment of the purchase price of the Product, Customer hereby grants to Hermitage Automation a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Product, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code.

10. Inspection and Rejection of Nonconforming Product.

(a) Customer shall inspect the Product within seven (7) days of receipt ("**Inspection Period**"). Customer will be deemed to have accepted the Product unless it notifies Hermitage

Automation in writing of any nonconforming Product during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Hermitage Automation.

(b) If Customer timely notifies Hermitage Automation of any nonconforming Product, Hermitage Automation shall, in its sole discretion, (i) replace such nonconforming Product with conforming Product, or (ii) credit or refund the Price for such nonconforming Product, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer shall ship the nonconforming Product to such location as directed by Hermitage Automation; however, Customer shall first obtain Hermitage Automation's written authorization before any such shipment. If Hermitage Automation exercises its option to replace nonconforming Product, Hermitage Automation shall ship to Customer the replaced Product to the Delivery Point. Any claim related to damage resulting during shipment must be made by Customer to the applicable courier, if other than Hermitage Automation, and Customer agrees that Hermitage Automation shall not be liable for any such damages.

(c) Customer acknowledges and agrees that the remedies set forth in Section 10(b) are Customer's exclusive remedies for the delivery of nonconforming Product. Except as provided under Section 10(b), all sales of Product to Customer are made on a one-way basis and Customer has no right to return Product purchased under this Agreement to Hermitage Automation.

11. Limited Warranty; Disclaimer.

(a) The warranty obligations of Hermitage Automation for Product sold by Hermitage Automation will in all respects conform and be limited to the warranty extended by the manufacturer of the Product, if transferable. **THE SOLE REMEDY AVAILABLE TO CUSTOMER WITH RESPECT TO DEFECTS IN THE PRODUCT WILL BE AGAINST THE MANUFACTURER UNDER ANY APPLICABLE MANUFACTURER'S WARRANTY TO THE EXTENT AVAILABLE TO THE CUSTOMER. TO THE EXTENT THE MANUFACTURER'S WARRANTY IS NOT TRANSFERABLE TO CUSTOMER, HERMITAGE AUTOMATION MAKES NO WARRANTY WITH RESPECT TO OR IN ANY WAY RELATING TO THE PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY (a) WARRANTY OF MERCHANTABILITY, (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) WARRANTY OF TITLE, OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, IN ANY CASE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(b) In the event that Product purchased by Customer from Hermitage Automation is resold, Customer agrees to include in its applicable agreement for resale provisions that limit recoveries in accordance with these Terms. Should Customer fail to include in any agreement for resale the terms providing for such limitations, Customer agrees to indemnify and hold Hermitage Automation harmless against any liability, loss, cost, damage, or expense (including reasonable attorney fees) arising out of or resulting from such failure.

12. Limitation of Liability.

(a) IN NO EVENT SHALL HERMITAGE AUTOMATION BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT HERMITAGE AUTOMATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL HERMITAGE AUTOMATION'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCT AS TO WHICH THE CLAIM IS MADE.

(c) The limitation of liability set forth in Section 12(b) above shall not apply to liability resulting from Hermitage Automation's gross negligence or willful misconduct.

13. Compliance with Law. Customer shall comply with all applicable laws, regulations and ordinances and shall indemnify and hold Hermitage Automation harmless from and against any and all claims of violations of laws, regulations, or ordinances or other claims of personal injury or property damage directly or indirectly related to the possession, use or operation of the Product, unless such claim results from the improper act of Hermitage Automation. Customer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Customer shall comply with all export and import and anti-corruption laws of all countries involved in the sale of the Product under this Agreement or any resale of the Product by Customer. Customer assumes all responsibility for shipments of Product requiring any government import clearance. Hermitage Automation may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Product.

14. Termination. In addition to any remedies that may be provided under these Terms, Hermitage Automation may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (i) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Customer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. Waiver. No waiver by Hermitage Automation of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Hermitage Automation. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. Confidential Information. All non-public, confidential or proprietary information of Hermitage Automation, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Hermitage Automation to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in

connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Hermitage Automation in writing. Upon Hermitage Automation's request, Customer shall promptly return all documents and other materials received from Hermitage Automation. Hermitage Automation shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

17. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party. Notwithstanding the foregoing, Hermitage Automation reserves the right from time to time to unilaterally correct any typographical or clerical errors, including errors in mathematical computations, that may exist in the Agreement or any related documentation. Hermitage Automation shall notify Customer of any such corrections.

18. Force Majeure. Hermitage Automation shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Hermitage Automation including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

19. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Hermitage Automation. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

20. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

22. Governing Law. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Virginia without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.

23. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in either the United States District Court for the Eastern District of Virginia, Richmond Division, or the courts of the Commonwealth of Virginia located in the City of

Richmond, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The parties hereto expressly release and waive any rights to a jury trial.

24. Alternative Dispute Resolution. The parties shall attempt in good faith to resolve by mediation any claim, dispute or controversy arising out of or relating to this Agreement. Either party may institute a mediation proceeding by a request in writing to the other party. Thereupon, both parties will be obligated to engage in mediation. The proceeding will take place within thirty (30) miles of the City of Richmond, VA, or as otherwise agreed between the parties, in accordance with the then-current Mediation Procedures of the American Arbitration Association (“AAA”), or as otherwise agreed between the parties. In the event that the parties are unsuccessful in resolving the dispute via mediation, the parties agree promptly to resolve any such claims, disputes, and/or controversies through binding confidential arbitration conducted within thirty (30) miles of the City of Richmond, VA, or as otherwise agreed between the parties, in accordance with the AAA’s then-current Commercial Arbitration Rules, or as otherwise agreed between the parties; provided, one neutral arbitrator shall be chosen in accordance with such rules to arbitrate the dispute. The parties irrevocably consent to such jurisdiction for purposes of said arbitration and judgment may be entered thereon in any state or federal court in the same manner as if the parties were residents of the state or federal district in which said judgment is sought to be entered. Notwithstanding the foregoing, nothing contained in this Section shall (1) prevent Hermitage Automation from proceeding directly to litigation in the event Customer fails to make payment for Product when due and does not cure within thirty (30) days from such due date; or (2) bar the right of any of the parties to seek and obtain temporary injunctive relief from a court of competent jurisdiction in accordance with applicable law against threatened conduct that will cause loss or damage, pending initiation and/or completion of the arbitration.

25. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Invoice or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

26. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

27. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.