

## **TERMS AND CONDITIONS OF SALE**

THE TERMS AND CONDITIONS CONTAINED HEREIN (THE "AGREEMENT") CONSTITUTE THE ENTIRE AGREEMENT BETWEEN WINDING AUTOMATION, INC. ("WAI" OR "SELLER") AND THE PARTY WHICH PLACES A PURCHASE ORDER WITH WAI ("BUYER") AND SHALL CONTROL ALL PURCHASES OF EQUIPMENT, DESIGNS OR SERVICES OF WAI. WAI WILL NOT BE BOUND BY ANY TERMS OF BUYER'S PURCHASE ORDER UNLESS EXPRESSLY AGREED TO IN WRITING BY WAI. NO FORM OF ACCEPTANCE EXCEPT WAI'S WRITTEN OR ELECTRONIC ACKNOWLEDGMENT PROVIDED TO BUYER OR WAI'S COMMENCEMENT OF PERFORMANCE SHALL CONSTITUTE VALID ACCEPTANCE OF BUYER'S PURCHASE ORDER. ANY SUCH ACCEPTANCE IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THE TERMS HEREOF AND EXCLUSIVE OF ALL ADDITIONAL OR DIFFERENT TERMS EXCEPT AS MAY BE SET FORTH IN A WRITTEN AGREEMENT EXPRESSLY SUPERCEDING THESE TERMS AND AGREED TO WITHIN TEN (10) DAYS OF THE QUOTATION PROVIDED BY WAI. BUYER SHALL BE DEEMED TO HAVE ASSENTED TO THE TERMS HEREOF, WHETHER OR NOT PREVIOUSLY RECEIVED, UPON ACCEPTING DELIVERY OF ANYTHING SHIPPED BY WAI. IF TENDER OF THESE TERMS IS DEEMED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THE TERMS HEREOF AND WAI HEREBY GIVES NOTICE OF ITS OBJECTION TO ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER IN ITS PURCHASE ORDER OR ANY OTHER DOCUMENTS. THE ACCEPTANCE OF A PURCHASE ORDER DOES NOT CONSTITUTE OR IMPLY A VARIATION FROM THIS AGREEMENT.

### **1. PRICING AND TERMS OF PAYMENT**

Buyer hereby acknowledges and agrees that WAI shall retain a purchase money security interest in all equipment and spare parts and services sold hereunder and all proceeds from their resale by Buyer to secure payment by Buyer of the purchase price. Buyer further acknowledges and agrees that Seller shall retain such purchase money security interest in addition to all other remedies at law. In the event of a failure by Buyer to perform in a timely manner any obligation of Buyer to Seller, Buyer hereby agrees to assemble all secured collateral for the defaulted obligation and make such collateral available to Seller at a place reasonably convenient to both parties. In the event Buyer disposes of any such collateral, any proceeds from such disposition shall be applied to the amount of Buyer's outstanding obligation as provided by law. Buyer hereby authorizes Seller to file one or more financial and continuation statements, and amendments thereto, in order to secure Seller's interest in the equipment or spare parts and services purchased hereunder without the signature of Buyer where permitted by law. A carbon, photographic or other reproduction of this Agreement or any financing statement covering the equipment or spare parts and services purchased hereunder or any part thereof shall be sufficient as a financial statement where permitted by law.

Prices are exclusive of all municipal, state, federal or any other government excise sales, use, occupational, or like taxes or duties now in force or imposed in the future. Any charge of the above nature imposed on WAI shall be paid by buyer. In the event WAI is required to pay such fees at the time of the sale, Buyer shall reimburse WAI as billed.

Terms of payment are as stated on the quotation for equipment, parts and services supplied by WAI. Should additional charges not covered by the terms of the quotation occur, these shall be paid net 30 days from billing with WAI retaining the right to assess a monthly interest rate of one and one-half percent (1 ½%) on all past-due amounts.

### **2. CANCELLATION OR MODIFICATION**

Purchase orders based on submitted quotations shall not be canceled or modified in whole or in part without written consent of WAI. In the event it becomes necessary for Buyer to cancel the purchase, Buyer is responsible to WAI for all applicable cost incurred by WAI including, but not limited to, costs of all purchased materials, machinery and products, labor charges and a reasonable allowance for profit.

Once materials, machinery and products procured, and then delivery is delayed or asked to be put on hold due to a customer issue(s), etc. and the delay is expected to be for longer than 10 business days, an invoice and

payment due net 15 days for the materials, machines or products purchased/procured may be issued and must be paid promptly.

Modifications of all orders will be re-quoted by WAI as required and as accepted by Buyer; the terms of this Agreement will apply.

**3. INFORMATION TRANSFER**

All information, concepts, designs and documentation presented by WAI are supplied in good faith and are deemed to be confidential and proprietary. The transfer of this information in whole or in part to the detriment or disadvantage of WAI may result in full or partial payment of the quoted price to WAI.

**4. GENERAL TERMS**

The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the state of Indiana, as if performed wholly within the state and without giving affect to the principles of conflict and law.

No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of this or any other right under this Agreement.

In the event that any of the terms of this Agreement become or are declared to be illegal or unenforceable by any court of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from this Agreement. All remaining terms in this Agreement shall remain in full force and effect.

This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter of this Agreement and there are no understandings, agreements, representations, conditions, warranties, or other terms, expressed or implied, which are not specified herein. This Agreement may be modified only by a written document executed by authorized representatives of seller and buyer.

**5. DELIVERY**

Unless otherwise specified by quotation, delivery will be made EXW Winding Automation, Inc., Fort Wayne, Indiana. The time of delivery is the time of pick-up by the carrier, and upon such delivery Buyer shall be responsible for and bear the entire risk of loss or damage to the product.

**6. WARRANTY**

Machines, components, materials or any other product manufactured by others and purchased by WAI for sale to Buyer will be limited to the original manufacturer's warranty. WAI DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ITS MACHINES, COMPONENTS, MATERIALS OR ANY OTHER PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**7. LIMITATION OF LIABILITY**

Buyer agrees that in no event shall WAI be liable for any damages including, but not limited to: loss of revenue, cost of capital, claims of Buyer for services, cost incurred in connection with labor or overhead of installation or removal of products, or any liability which may arise out of all other party claims against Buyer.

In any event, the total liability regardless of legal theory of any claim shall not exceed the amount paid by Buyer to WAI for the subject service or product. Liability beyond this limitation will be the responsibility of Buyer or agents of Buyer. This shall be Buyer's exclusive and only remedy.