



# MOTION TECHNOLOGIES PTY LTD

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September 2008 (subject to alteration without notice)

## CREDIT APPLICATION

DATE:.....

COMPANY NAME:.....

INVOICE ADDRESS:.....

STREET/DELIVERY ADDRESS:.....

TELEPHONE NUMBER:..... FAX NUMBER:.....

ACCOUNTS PAYABLE CONTACT:.....

NAME OF ACCOUNTANT/COMPANY SECRETARY:.....

NAME OF OWNERS/DIRECTORS:.....

CORPORATION: YES/NO                      PROPRIETORSHIP: YES/NO                      PARTNERSHIP: YES/NO

IF CORPORATION:    1) Year incorporated.....  
                             2) State incorporated.....  
                             3) Authorised capital.....  
                             4) Paid up capital.....  
                             5) A.B.N .....

ESTIMATED MONTHLY PURCHASES: .....

### BANK REFERENCE

NAME:..... BRANCH..... A/C NO:..... PH:.....

### TRADE REFERENCES

| NAME | ADDRESS | PHONE NUMBER | FAX NUMBER |
|------|---------|--------------|------------|
| 1.   |         |              |            |
| 2.   |         |              |            |
| 3.   |         |              |            |
| 4.   |         |              |            |

### ACCEPTANCE OF TERMS OF TRADE

I/we understand that:

- 1) The information furnished on this page hereof is for the purpose of obtaining credit from your firm.
- 2) I am/we are authorised, in my (our) capacity to bind my (our) firm accordingly.
- 3) If credit is approved all monies will be due and payable at your place of business on or before 30 days past invoice date.
- 4) All goods supplied remain the property of Motion Technologies Pty Ltd till payment in full is made.
- 5) Our standard Terms & Conditions of Sale apply. See attached for full details.

NAME ..... TITLE:.....

SIGNATURE:.....

# **MOTION TECHNOLOGIES PTY LTD**

## **TERMS AND CONDITIONS OF SALE**

29 Oct 2004

*(These superseded all previous versions and subject to change without prior notice)*

### **1) GENERAL:**

- a) These terms and conditions of sale shall apply to the exclusion of all others, including any terms and conditions of customer (whether on customer's order form or otherwise). No goods or services will be supplied by Motion Technologies Pty Ltd on any terms or conditions other than those set out herein and by taking delivery of goods customer shall be deemed to agree that these terms and conditions shall apply to exclusion of all others.
- b) No servant, agent or contractor of Motion Technologies Pty Ltd has any authority to alter any terms and conditions contained herein.
- c) These conditions form part of Motion Technologies Pty Ltd invoice(s).
- d) Invoicing errors and omissions are avoided and regretted but we reserve the right to issue amended invoice(s) if applicable.
- e) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect to guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

### **2) PRICES QUOTED:**

- a) The prices quoted cover only the quantity shown.
- b) GST is payable on all goods purchased from Motion Technologies Pty Ltd.
- c) Quoted prices exclude G.S.T. unless otherwise noted.

### **3) TERMS OF PAYMENT:**

Full payment with order or deposit with order or duly completed credit application form. We reserve the sole right to determine payment terms at our sole discretion and at any time retain the right to vary any term and condition of payment. For warranty purposes payment must be made within the terms as stated on our invoice. Any deposit or advance payment made is subject to refund at Motion Technologies Pty Ltd sole discretion.

### **4) OWNERSHIP:**

Motion Technologies Pty Ltd reserves the following rights in relation to goods until all accounts owed by the customer to Motion Technologies Pty Ltd are fully paid:-

- a) legal ownership of the goods;
- b) to enter the customer's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the goods; and
- c) to keep or resell any goods repossessed pursuant to b) above.

If the goods are resold, or products manufactured using the goods are sold, by the customer, the customer shall hold such part of the proceeds of any such sale as represents the invoice price of the goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of Motion Technologies Pty Ltd and shall pay such amount to us upon request. Notwithstanding the provisions above Motion Technologies Pty Ltd shall be entitled to maintain an action against the customer for the purchase price and the risk of the goods shall pass to the customer upon delivery.

### **5) ORDER ACCEPTANCE:**

Receipt by us of an order does not constitute acceptance of any terms contained therein. Also, we reserve the right to vary purchasers order terms at any time after receipt of those terms and any other will only be accepted upon receipt of written confirmation by the customer of acceptance by the customer of the variations required by Motion Technologies Pty Ltd.

### **6) DELIVERY:**

- a) We will always try to deliver or complete a contract on time. We cannot, however, accept responsibility for delays arising from strikes, lockouts, trade disputes, fires, riot, terrorism and default(s) of a supplier/subcontractor and other factors beyond our control. Claim for penalty for late or non-delivery will not be accepted unless previously agreed in writing and then subject to substantiation and verification.
- b) Times stated for delivery shall not be deemed to be an essential condition of the Contract.
- c) The acceptance of the Goods by Buyer shall constitute a waiver of all claims for delay. Buyer and Seller agree that time is not of the essence in the Seller's performance of an order.

### **7) CANCELLATION OF ORDERS:**

Orders accepted by us cannot be cancelled except by agreement and such agreement must be confirmed by us in writing. In the event of such cancellation we shall assess at our discretion the rate of completion and invoice the customer the assessed percentage of the full price. Payment against such invoice will be due on presentation in the absence of manifest error in our calculation of the percentage payable.

/..

**8) GOODS SPECIALLY MANUFACTURED:**

If the goods ordered have to be manufactured to customer specification and are in the process of manufacture or completed, cancellation of an order or part payment in accordance with clause 7) will not be accepted.

**9) PERFORMANCE GUARANTEE:**

- a) Whilst every care has been taken in any figures and calculations contained in our offer, Motion Technologies Pty. Ltd. will not accept any liability for errors or omissions except where those errors or omissions are due to wilful neglect on the part of Motion Technologies Pty Ltd.
- b) No goods supplied by Motion Technologies Pty Ltd are to be used in lifting devices used for human cargo, including but not limited to elevators, lifts and aircraft, without the express written approval of Motion Technologies Pty Ltd. The customer indemnifies Motion Technologies Pty Ltd in respect to any claim arising of unauthorised use of goods supplied by Motion Technologies Pty Ltd.
- c) The customer acknowledges and accepts that Motion Technologies Pty Ltd has produced goods in accordance with the customer's requirements. Motion Technologies Pty Ltd is not responsible should the goods sold not perform in accordance with the customer's expectations or to a level anticipated by the customer.
- d) The customer also acknowledges that it is not Motion Technologies Pty Ltd's practice to recommend that goods are suitable for particular purposes or uses and customer acknowledges it does not rely, and that it is not reasonable for it to rely, on skill or judgement of Motion Technologies Pty Ltd in establishing the suitability for the customer's purposes of the product to be supplied.

**10) RETURNED GOODS:**

No returns will be accepted by us without prior agreement in writing. Unauthorised returns will be sent back to the returning customer at the expense of the customer. Our liability for any defect in supplied goods shall not exceed the cost of repairs or the replacement of the goods shown defective or, at our option, reimbursement of the price received by us for the goods. The customer shall on discovering any defect in the goods give immediate written notice to us to enable the complaint to be investigated before any remainder of the consignment is used or returned and if any liability attaches to us it shall not attach unless and until this procedure has been carried out. Any goods or parts replaced by us shall become our property. Our liability if any under this condition shall be conditional on:

- a) notice of any alleged defect being given to us within seven days of receipt of the goods.
- b) the alleged defects not being due to wear and tear or the use of injurious substances.
- c) full compliance by the customer with our recommendation for maintenance or use of the goods.
- d) when goods are ordered for a particular purpose notice of such purpose having been given to us before acceptance of the order by us.

**11) GOODS RETURNED FOR CREDIT:**

No returns will be accepted by us without prior agreement in writing. Unauthorised returns will be sent back to the returning customer at the expense of the latter at our option. Goods received by us without prior approval will be subject to a 30% restocking fee less freight expenses incurred in either supply or receipt of goods providing goods and packaging is in the identical state when initially shipped by us. Goods received by us with prior approval will be subject to a 15% restocking fee less freight expenses incurred in either supply or receipt of goods providing goods and packaging is in the identical state when initially shipped by us.

**12) GOODS RECTIFICATION:**

If goods require any repair or rectification after receipt by our customer for any reason including warranty or transit damage, then Motion Technologies Pty Ltd will not accept or be held liable for back charges from our customer or their agent for repair or rectification of any fault.

**13) DEFAULT:**

If the customer fails to make payments as they become due or commits any act of Bankruptcy, or makes any assignment with another party, or if we have reason to believe that he is unable to meet his debts as they mature or being a Corporation is unable to pay its debts or a petition is presented or a Resolution is passed for the winding up of the Corporation or a Provisional Liquidator is appointed to the Corporation, we shall then be entitled to payment of Cash for any further goods before delivery, or may, at our option, cancel the Contract, reserving any claim for the consequent loss ascertained.

**14) WARRANTY:**

- a) We will replace or repair any goods that are defective in material or workmanship on receiving written notice within twelve months of delivery for new goods, 6 month for factory service exchange goods and 3 months for repaired goods. The goods supplied hereunder are warranted to accord with specification set out in our offer or if there is no such specification, to be within normal limits of industrial quality, but otherwise there is no guarantee, warranty, representation or condition expressed or implied as to the quality, usage or description (statutory or otherwise) of the goods, or as to the fitness of the goods for any particular use or otherwise. We shall not be liable for loss or damage to any property of the customer that has been supplied to us. This condition shall be the limit of our liability and except as to the extent expressly provided by such condition, we shall not be liable for any direct or indirect loss or damage caused by, or arising out of, any defect in or failure of goods supplied by us or the use of such goods or any acts or omission (whether negligent or otherwise) of us or our servants or agents in connection with such goods or the supply thereof.

- b) Where we supply goods to a customer's specification, we shall have no liability for the unsuitability or inadequacy of such specification and the customer shall indemnify us against all actions, costs or demands in respect of any infringement or alleged infringement of patents, copyright or design rights resulting from compliance with the customer's instructions express or implied in the customer's specification.
- c) If the customer or their agent carries out any warranty rectification work then Motion Technologies Pty Ltd will not be held liable for any costs associated with the rectification and all future warranty will become null and void.
- d) If goods are not manufactured by Motion Technologies Pty Ltd the warranty of the manufacturer shall be accepted by the customer and is the only warranty given to the customer in respect to the goods.
- e) Our obligation is contingent upon proper use in accordance with factory recommendations and instructions and shall not apply to equipment which has been subject to misapplication, misuse, negligence, accident or tampering in a way so as to affect its normal performance.
- f) Products suspected of being faulty should be returned to our nominated office (freight pre-paid) for our examination. We will repair or replace any component that in our opinion is of defective materials and/or workmanship, and return goods freight collect. We shall not be responsible for any dismantling, re-assembling or re-installation.
- g) Where our contract includes installation or commissioning of plant on the buyer's premises, our liability is limited to correct installation and proper operation of equipment by us. We cannot accept responsibility for the proper functioning of any equipment or services provided by others, and if damage to our equipment is caused through others the cost of repairs will be to the buyer's account.
- h) Where goods supplied by Motion Technologies Pty Ltd are proved to reasonable satisfaction of Motion Technologies Pty Ltd to be defective through faulty materials or workmanship and where such goods are returned to Motion Technologies Pty Ltd within seven days of receipt thereof by customer (and otherwise subject to receipt of written notice in accordance with clause 10), Motion Technologies Pty Ltd will at its option either repair or replace same or credit customer with purchase price thereof.
- i) The customer also acknowledges that it is not Motion Technologies Pty Ltd's practice to recommend that goods are suitable for particular purposes or uses and customer acknowledges it does not rely, and that it is not reasonable for it to rely, on skill or judgement of Motion Technologies Pty Ltd in establishing the suitability for the customer's purposes of the product to be supplied.
- j) Warranty is void if payment for goods is later than the due date shown on the invoice.
- k) SOFTWARE: Computer software programs that may be included in material or Goods sold to a Buyer have been designed to perform a given set of tasks as defined in the documentation provided and are offered AS IS. It is the Buyer's responsibility to determine if the features of the software programs are suitable for Buyer's requirements and must confirm that the software programs operate correctly. Buyer understands that such software program are of such complexity that they may have inherent defects and that Seller makes no warranty that all software features will perform correctly as supplied. For Seller's software utilising automation servers, improper reading and writing data to the automation server can cause the automation server software to malfunction and may cause the automation server and/or the program writing to the automation server to crash. Improperly reading and writing data to an automation server may cause the device controlled by the automation server to malfunction. Seller shall not be responsible for damage to any device or damage caused by any device due to the improper reading and/or writing of data to an automation server.

**15) CONSEQUENTIAL LOSS OR DAMAGE:**

Save as herein expressly provided, we shall not be liable for any loss or damage direct or consequential, whether in contract, tort, or otherwise of whatsoever nature or to whomsoever or whatsoever caused, arising out of or through the use of any goods supplied by Motion Technologies Pty Ltd. The customer shall indemnify us against all claims made against us by any third party in respect thereof. We shall be at liberty to terminate any order or the balance thereof without Motion Technologies Pty Ltd being liable for loss or damage, direct or indirect, arising from any such termination.

**16) LIABILITY:**

- A) Our liability for a breach of a condition or warranty implied by Division 2 of part 5 of the Trade Practices Act 1974 (other than section 69) is hereby limited to:-
  - (i) in the case of goods, any of the one or more of the following:-
    - a) the replacement of the goods or the supply of equivalent goods;
    - b) the repair of the goods
    - c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
    - d) the payment of the cost of having the goods repaired; or
  - (ii) in the case of services:-
    - a) the supplying of the services again; or
    - b) the payment of the cost of having the services supplied again.
- B) Our liability under Section 74H of the Trade Practices Act 1975 is expressly limited to a liability to pay the customer an amount equal to:-
  - i) the cost of replacing the goods;
  - ii) the cost of obtaining equivalent goods'
  - iii) the cost of having the goods repaired;
 whichever is the lowest amount.

**17) VALIDITY:**

Insofar as any provision here of is inconsistent with or repugnant to any part of the Trade Practices Act 1974 such provision shall be null and void.

**18) JURISDICTION:**

Proper law of all contracts arising between Motion Technologies Pty Ltd and customer shall be the law of the State of NSW, Australia and the customer agrees that any contract with Motion Technologies Pty Ltd shall be deemed made in New South Wales.

**19) DEBT RECOVERY:**

The cost of recovery of any debts due by the customer to Motion Technologies Pty Ltd shall be added to the debt due and shall form part of the liquidated amount payable to Motion Technologies Pty Ltd by the customer from time to time.

**20) INTEREST:**

Any amounts due to Motion Technologies Pty Ltd shall incur interest at the rate of 12% p.a. form the date of invoice to the date of payment where payment has not been made within sixty (60) days of the date of invoice.