

Aim Lab Automation Technologies Pty Ltd

OEM CUSTOMER TERMS AND CONDITIONS OF SALE

1. Definitions

In these terms and conditions ("terms"), 'ALAT' refers to Aim Lab Automation Technologies Pty Ltd and the 'OEM Customer' refers to the company, organisation or person using product manufactured by ALAT as a component in their own finished product.

2. Application of Terms

These terms govern the supply of goods and services by ALAT to the OEM Customer. They supersede all prior representations and agreements and override any inconsistent terms unless agreed to in writing by ALAT.

3. GST, Sales Tax & Duty

Where applicable, GST will be charged to the OEM Customer. Sales Tax & Duty, if applicable, of the OEM CUSTOMER's country will be the responsibility of the OEM Customer.

4. Prices

Prices are valid from a specified validity date, and are in the currency specified in the quotation. In the event of any changes in laws or regulations, or the enactment of new laws or regulations, that result in increased costs to ALAT, ALAT reserves the right to impose a regulatory surcharge on the OEM Customer. The amount of the surcharge will be determined based on the additional costs incurred by ALAT due to the changes in laws or regulations. ALAT will provide the OEM Customer with written notice of the surcharge, including the effective date and the amount or percentage of the surcharge. ALAT reserves the right to adjust the surcharge amount as necessary to reflect any further changes in the regulatory environment.

5. Information and drawings

All descriptive and technical specifications, illustrations, drawings, data, dimensions, and weights contained in brochures and literature are typical only and are subject to change without notice. These details do not form part of the quotation unless specified by ALAT in writing.

6. Order

ALAT may refuse to accept an order. If an order has not previously been accepted, supply of goods and services will constitute acceptance.

7. Cancellation

(i) No cancellation or suspension of any order or part thereof by the OEM Customer shall be binding on ALAT unless accepted in writing by a duly authorised officer of ALAT and upon payment of ALAT's cancellation charges, which may include a restocking charge.

(ii) In the event of ALAT agreeing to suspend or cancel an order or part thereof, ALAT reserves the right to demand what it considers to be a fair or reasonable price and/or compensation, at ALAT's option.

8. Delivery and Transportation

(i) ALAT will use its best efforts to supply goods and services by dates identified in accepted orders but does not represent or warrant that it will do so.

(ii) ALAT will arrange transportation of goods to the OEM Customer at the OEM Customer's cost. All goods shall be packed for shipment and storage in accordance with ALAT's standard commercial practices. It is the OEM's obligation to notify ALAT of any special packaging requirements for the goods (which shall be at the OEM's expense).

(iii) ALAT may allow an OEM Customer to arrange transportation at ALAT's discretion.

(iv) If ALAT reasonably anticipates a delay in the delivery of the goods or services, ALAT shall notify the OEM as soon as reasonably practical of such delay, the reason for such delay and the new scheduled delivery date, and follow the reasonable instructions of the OEM in connection with such delivery delay. OEM agrees to take all commercially reasonable action to mitigate any additional costs or expenses that the OEM may incur as a result of such delay.

(v) Delays with respect to ALAT's originally committed shipment dates which result from OEM requested and ALAT's approved modifications to the goods or services in question shall be considered the OEM's responsibility.

(vi) IN NO EVENT SHALL ALAT BE RESPONSIBLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM A DELAY IN SHIPMENT.

(vii) If the OEM is unable to accept delivery of the goods at the scheduled time, ALAT shall be deemed to have delivered the goods, and ALAT shall be authorized to invoice the OEM for the goods as if shipment had been made and: (a) if ALAT is able to store such goods in its own facilities, the OEM will pay ALAT reasonable transportation, handling, storage and insurance charges for the period of such storage; or (b) if ALAT is unable to store such goods in its own facilities, ALAT reserves the right to arrange handling and storage in

a suitable warehouse with a reputable company on behalf of the OEM at the OEM's expense.

9. Payment

(i) The OEM Customer must pay the amount invoiced and any GST and fees within the time specified in the quotation unless otherwise agreed and confirmed by ALAT in writing. ALAT reserves the right to withhold any goods from the OEM Customer until they have paid all outstanding debts on underlying and other agreements.

(ii) The OEM Customer must pay interest on overdue amounts calculated daily at an annual rate being the Westpac Corporation Business Overdraft Rate plus 3% from the due date to the date of payment.

(iii) The OEM shall also be responsible for reasonable attorneys' fees and other costs of collection, if any, incurred by ALAT in attempting to collect any amounts due from the OEM. ALAT reserves the right to require from the OEM full or partial payment in advance, or other security, that is satisfactory to ALAT, at any time that ALAT believes in good faith that the OEM's financial condition does not justify the terms of payment specified. All claims for monies due or to become due from the OEM under these terms are subject to deduction by ALAT for any setoff or counterclaim that ALAT may have against the OEM.

10. Risk and Title

Notwithstanding the trade terms or anything to the contrary herein, title to and risk of loss of the goods will pass to OEM Customer upon delivery of possession of the goods by ALAT to the carrier; provided, however, that title to any software incorporated within or forming a part of the goods shall at all times remain with ALAT or the licensor(s) thereof, as the case may be. Until full payment, the OEM Customer holds the goods as a bailee of ALAT. The OEM Customer owes fiduciary obligations to ALAT in respect of goods until full payment is received. At any time before full payment is received, ALAT may enter the premises of the OEM Customer and take possession of the goods. The OEM Customer must pay to ALAT the proceeds of sale of any goods for which ALAT has not received payment and the OEM Customer holds those proceeds in trust for ALAT until paid to ALAT.

11. Warranty

(i) ALAT warrants its products to be free from defective materials or workmanship for a period of 15 months from the date of invoice unless otherwise agreed. The warranty is only applicable if any non-conformities are found in the ALAT goods by the OEM or the OEM Customer, and reported to ALAT in writing, during the warranty period. It covers all parts that can be reasonably considered as non-consumable as well as the labour to repair and/or replace these parts and freight to the OEM Customer's site. It does not cover packing, freight & insurance from the OEM Customer's site to ALAT's nominated repair location (except for out of box failures as long as ALAT is notified within 90 days of the invoice date). If repairs are effected on site, it does not cover travel, living expenses or insurance on the shipment while in transit, consumable parts or damaged parts (whether caused by shipping or the operator). Warranty also does not include preventative maintenance servicing of equipment. Parts replaced under warranty become the property of ALAT.

(ii) Consumables or components that come in contact with heat, reagents, chemicals or samples are warranted for defects for a period of 90 days from the date of supply.

(iii) Components or modules sourced locally to fulfill an OEM Customer's order, such as computer systems, will be warranted by the local supplier according to their respective warranty conditions unless otherwise specified.

(iv) Warranty is void when the OEM Customer makes alterations on the warranted product or when the product is used outside specification, when abusing the product or using this product without sufficient knowledge of it, when maintenance and site preparation are shown to be improper, when modification by the OEM Customer has taken place without authorisation from ALAT or when the OEM Customer doesn't meet any of their obligations. The warranty cannot be extended to instrument computer systems, where such systems are not protected by power conditioners. Instrument failures caused by corrosive environmental conditions are excluded from the warranty.

12. Claims and Liability

(i) The OEM Customer shall inspect the goods immediately upon arrival and shall, within 7 days from receipt of goods, give notice to ALAT in writing of any matter or thing or reason whereof the OEM Customer may allege that the goods are not in accordance with the contract. If the OEM Customer should fail to give such notice, the goods shall be deemed to be in all respects in accordance with the contract and the OEM Customer shall be bound to accept and pay for the goods accordingly.

No claim shall be made against ALAT unless at the time, the goods in question are intact as a whole.

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(ii) Except in special circumstances, ALAT will not accept returns. For goods that are accepted for return, a 20% re-stocking fee will be charged. All returned goods are to be returned at the OEM Customer's expense.

(iii) Any liability incurred by ALAT is expressly limited to the repair or replacement of the goods, supplying of the services again or to refund the price paid by the OEM Customer. The OEM Customer accepts all risk and responsibility for consequences arising from the use of goods whether singly or in combination with other products. No claims for consequential damages will be entertained. THE FOREGOING WARRANTIES IN SECTION 11 ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE GOODS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN ALAT WITHOUT ALAT'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY ALAT, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED GOODS.

(iv) ALAT accepts no liability or responsibility for damage to goods or shipping containers or packages and the like, or for labour charges in the counting and assessing of claims.

(v) Out of box failures - if an instrument proves to be defective within 90 days of invoicing, ALAT will pay for return freight. The faulty instrument must be returned in its original packaging and must be returned using an ALAT nominated carrier and freight account.

(vi) Goods cannot, in any circumstances, be returned to ALAT without prior written consent by ALAT.

13. Intellectual Property

ALAT will own any copyright, specifications, software, materials, special dies, molds, patterns, jigs, fixtures, designs, inventions, drawings, and data resulting from goods or services supplied to the OEM Customer, and the OEM Customer must co-operate in taking any step necessary to ensure that ALAT has ownership. Nothing in these terms convey to the customer any rights to make or have made the goods supplied by ALAT. No rights or licenses with respect to the goods are granted or deemed granted hereunder or in connection herewith, other than those rights expressly granted in these terms. The OEM Customer indemnifies ALAT against any claim for infringement of patent, design, copyright, trade mark or other rights where the claim results from information supplied by the OEM Customer or as a result of ALAT complying with requirements of the OEM Customer or for any claims not attributable to ALAT.

14. Confidentiality

Except as required by law, the OEM Customer must keep any confidential information imparted to the OEM Customer as a result of the supply of goods or services by ALAT and must not use any such confidential information except for the purpose to which it was imparted.

15. Force Majeure

ALAT's obligation to perform in accordance with these terms will be suspended for the duration of any delay outside of ALAT's control including, but not limited to, fire, epidemic, storm, flood, earthquake, accident, war, materials or labour shortage, failure or delay in transportation, and act or omission of any government or government agency

16. Governing Law

These terms and all supply of goods and services by ALAT's to the OEM Customer on these terms will be governed by the laws of the state of Delaware; excluding: (i) its conflicts of laws principles; (ii) the United Nations Convention on Contracts for the International Sale of Goods; (iii) the 1974 Convention on the Limitation Period in the International Sale of Goods (the "1974 Convention"); and (iv) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980.

17. Acceptance of "Terms and Conditions of Sale"

Acceptance of goods by the OEM Customer will be deemed as acceptance of these "Terms and Conditions of Sale".

18. Limitations on Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF ALAT UNDER THESE TERMS AND CONDITIONS OF SALE (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF ALAT FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 12 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THERETOFORE PAID BY THE OEM TO ALAT WITH RESPECT TO THE GOOD(S) OR SERVICE(S) GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL ALAT BE LIABLE FOR

ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER ALAT (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

19. Changes and Discontinuance

ALAT reserves the right to make changes in the specification of the goods or parts thereof, or to discontinue manufacturing the goods. ALAT shall provide sixty (60) days written notice to the OEM prior to such change or discontinuance. ALAT shall not incur any liability thereby or any obligation to provide such changes or improvements on goods previously purchased or sold by the OEM.

20. Export Control

The OEM will not knowingly export or re-export, directly or indirectly through the OEM's affiliates or licensees any goods provided hereunder or under any ancillary agreements hereto in violation of any portion of any applicable export rules or regulations.

21. Use of Trademarks and Internet

The OEM shall not alter, remove from the goods, or interfere with trademarks, trade names and service marks owned by ALAT (the "Marks"). The OEM's use of the Marks hereunder shall be subject to such requirements as ALAT believes are appropriate to protect such Marks and ALAT's ownership rights therein, and ALAT shall have the right to monitor such use. The OEM hereby does and shall at all times acknowledge ALAT's right, title and interest in and to the Marks and shall not in any manner represent that it has any ownership interest therein nor will it adopt or use any trademarks, trade names or service marks confusingly similar thereto. The OEM shall not at any time do or permit any act to be done which may in any way impair the rights of ALAT in the Marks. The OEM shall not use any of the Marks on or in connection with any goods or services other than the ALAT goods.

22. Insurance

ALAT and the OEM shall each maintain:

- (i) Comprehensive general liability insurance covering bodily injury, property damage, contractual liability, products liability and completed operations, and
- (ii) Worker's compensation and employer's liability insurance.

Upon request of the other party, each party shall furnish to the other certificates evidencing such insurance. Each party shall notify the other at least thirty (30) days prior to the cancellation or change of any of the foregoing policies.

23. Survival Clauses

The expiration or termination of these terms shall not relieve either party of any liability which accrued prior to the termination or expiration date. Sections which by their nature shall extend beyond these terms shall survive the termination or expiration hereof.

24. Miscellaneous

- (i) These terms may not assignable or transferable by the customer in whole or in part, except with the written consent of ALAT.
- (ii) The failure of the OEM or ALAT to enforce any of the terms or conditions of these terms shall not be deemed a waiver of any right to enforce any terms and conditions herein.

(iii) In case any one or more of the provisions, or portions of provisions, of these terms shall be deemed by any governmental authority to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions, or portions of provisions, contained herein shall not be in any way affected or impaired thereby.

(iv) The parties hereto agree that the OEM shall operate as an independent contractor and not an agent or employee of ALAT. OEM has no expressed or implied authorization to incur any obligation or in any manner otherwise make any commitments on behalf of ALAT. OEM shall employ its own personnel and shall be responsible for them and their acts and in no way shall ALAT be liable to the OEM, its employees or third parties for any losses, injuries, damages or the like occasioned by the OEM's activities in connection with these terms, except as expressly provided herein.

(v) It is the responsibility of the OEM to obtain, at its own expense, any non-United States government consents, authorizations, approvals, filings, permits or licenses required for each of it or ALAT to exercise its rights and to discharge its obligations under these terms.

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(vi) These terms may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(vii) Headings in these terms are for reference purposes only, and shall not be used to interpret or construe these terms.

25. Software

(i) With respect to any software products incorporated in or forming a part of the goods hereunder, ALAT and the OEM intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, ALAT or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

(ii) The grant to the OEM and OEM's Customer of rights to the ALATs software embedded in the goods which the OEM purchases from ALAT hereunder is a non-exclusive royalty-free perpetual license to use such software in the operation of such ALAT goods. The OEM and OEM Customer may use the software only in machine readable form. A separate license is required for each ALAT good on which a copy of the software will be used. Neither the OEM nor the OEM Customer shall sell, assign, transfer, copy or sublicense such software, provided that a single copy may be made for archival and systems recovery purposes. The OEM and OEM Customer must reproduce and include the original copyright notice and other proprietary notices on any copy, in whole or in part, made of the software programs and related documentation.

(iii) It is recognized that in the course of the transactions contemplated by these terms, ALAT software may be delivered to the OEM on a licensed basis in printed form, or in any of several possible machine-readable forms, including but not limited to magnetic tape or disk, paper tape or read-only memory (ROM) device. Such software and any copies thereof, and all copyright, trade secret, patent, trademark and other intellectual or industrial property rights therein, is and shall remain the sole property of ALAT.

(iv) The warranties described in Section 11 of these terms shall only apply to the current release of the software and shall not apply to any custom software or customer specific changes to the software. Software that contains bug fixes and error corrections, as determined in ALAT's sole discretion, are included in warranty.

(v) It is understood and agreed by the OEM and OEM Customer that the software, and any enhancements thereto, including without limitation, unless otherwise expressly agreed to in writing between ALAT and the OEM, those resulting from any tasks, work, assignments or services supplied by ALAT to the OEM or its suppliers or customers (including training), shall be and remain the sole and exclusive property of ALAT.

(vi) Upon termination of these terms, the OEM shall forthwith pay all sums invoiced to the OEM by ALAT and return or destroy all copies of the ALAT software at ALAT's instruction and shall certify in writing by an officer of the OEM that all copies and systems recovery copies thereof have been destroyed and/or deleted from the customer's computer libraries or storage facilities and are no longer in use.