

Omron Purchase Terms and Conditions

Terms and Conditions: Acceptance; Etc. Buyer offers to purchase the goods and services (the "**Products**") specified in this Order subject to these terms and conditions. Seller's starting work on this Order, or delivery of the Products, whichever is first, constitutes acceptance of these terms and conditions. Acceptance of this Order is limited to acceptance of its express terms. Any additional or different terms Seller proposes in its acknowledgment or otherwise are deemed material and Buyer hereby objects to such terms. If this Order is deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms hereof.

Changes. At any time Buyer may change the Specifications, packaging, time and place of delivery and method of transportation. If any such changes cause a material increase or decrease in the cost or time required for performance, the parties agree to make an equitable adjustment and modify this Order accordingly. Seller agrees to accept any such changes.

Payment; Inspection; Etc. Payment terms are as provided on the face hereof or otherwise stated by Buyer; provided Buyer is deemed to accept and be qualified for all applicable prepayment discounts. Payment (in part or whole) for the Products shall not constitute acceptance. Buyer may inspect the Products and reject any which in Buyer's judgment are Noncomplying Products. Products rejected and Products supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such Products. If Buyer receives Products whose defects or nonconformity are not apparent on examination, Buyer reserves the right to require replacement as well as payment of damages.

Warranties. Seller warrants that all Products: (a) are merchantable and fit for the particular purpose intended by Buyer; (b) conform to applicable Specifications, including Governmental Requirements regarding importation, the environment, safety and health; and labor, employment and discrimination; (c) do not (and their use or incorporation in other products by Buyer will not) infringe any patent, copyright, trademark or other intellectual property right (unless the Product is designed by Buyer); and (d) will be free of latent and patent defects in design, materials and workmanship as well as in shipping, handling, packaging and processing. **Seller shall reimburse Buyer for all expenses, costs and liabilities (including labor charges and attorney's fees and disbursements) incurred by Buyer in connection with the sale or use of any Products claimed to be defective or Seller's breach of warranty hereunder, including all liabilities, costs and expenses of Buyer: (i) incurred as a result of returning, disposing of, repairing or replacing any Noncomplying Product; (ii) arising in any way in connection with any Buyer Customer Claim; (iii) arising in connection with problems in other parts of a completed product resulting from Noncomplying Products; (iv) liabilities or costs arising from personal injury or property damage caused directly or indirectly by Noncomplying Products; and (v) any of the foregoing as they relate to a recall or service campaign of any type.**

Delivery. Time is of the essence with respect to any Order and Seller shall deliver strictly in accordance with delivery schedule(s) set forth herein or otherwise by Buyer.

Prices. Pricing is as agreed to in writing by Buyer; provided that Seller warrants that the prices are not less favorable than those currently extended to any other customer. If Seller reduces its prices to any entity during the term hereof, Seller agrees to reduce prices correspondingly hereunder. Prices shown on this Order are complete, and no additional charges (including shipping, packaging, labeling, custom duties, taxes, storage and insurance) of any type shall be added.

Indemnities. Seller shall indemnify and hold harmless Buyer and its officers, employees, agents and affiliates from and against all liabilities, losses, claims, actions, costs, expenses and disbursements (including attorney's fees and disbursements), related to any investigation, litigation or other proceeding which arises or is alleged to arise in connection with the Products or otherwise from Seller's acts or omissions under this Order (the same to apply whether or not (i) Buyer is a party thereto, (ii) Buyer was negligent in connection therewith or (iii) the foregoing are based on contract, tort or strict liability). Without limiting the foregoing, Seller (at its own expense) shall indemnify and hold harmless Buyer and defend or settle any action brought against Buyer to the extent that it is based on a claim that any Product infringes a patent, copyright, trademark or other intellectual property right.

Insurance. Seller shall maintain public liability, products liability, property damage and workers' compensation insurance in commercially reasonable amounts with reputable insurers approved by Buyer. All such policies of insurance shall contain appropriate endorsements naming Buyer as an additional insured and requiring the insurer to give Buyer 30 days' prior written notice of any cancellation or substantial change of coverage. Annually, Seller shall provide Buyer an insurance certificate evidencing the foregoing.

Buyer's Property. Unless Buyer agrees in writing, all tools, tooling equipment, dies, jigs, Specifications and other materials Buyer provides to Seller shall (a) remain the sole property of Buyer, (b) be plainly marked or otherwise clearly identified by Seller as "Property of Omron" and (c) be stored, used and insured in accordance with Buyer's instructions.

Confidentiality; Inventions; Etc. (a) **Confidentiality.** All information and materials supplied by Buyer relating to the Products are proprietary to, and may contain trade secrets of, Buyer. Seller may not reproduce or distribute such information to any third party or any other person except its own employees who require such information as part of their duties. Seller shall strictly maintain the confidentiality of all such information furnished by Buyer (except information previously available to Seller and information in the public domain or disclosed pursuant to a binding governmental requirement). Seller shall not sell, transfer or loan to any entity (except Buyer) or otherwise make use of (i) Products manufactured from Specifications or other information originating from or furnished by Buyer; or (ii) Products identified with Buyer's trademarks or trade names or contained in containers or wrappings so identified. In addition, without Buyer's prior written consent, Seller shall not advertise or publish in any manner that Seller has contracted with or has furnished Products to Buyer. (b) **Inventions; Etc.** Seller agrees that, in connection herewith, if it (i) makes a discovery or invention pertaining to any research, development or design work called for hereunder, (ii) adapts the Products to satisfy Buyer's purposes, (iii) first conceives any of the same or (iv) first reduces any of the same to practice, Seller promptly shall notify Buyer of such discovery or invention, and at the expense and direction of Buyer, shall cause the applicable inventor(s) or discoverer(s) to apply for patents or other intellectual property protection in jurisdictions designated by Buyer. Seller agrees to assign, or cause to be assigned, to Buyer such applications and all domestic and foreign patent and other rights to such discovery or invention. Seller further agrees that all information, knowledge or skill pertaining to any such research, development or design work shall be the sole property of Buyer to be governed by clause (a) of this paragraph.

Excusable Delay. Either Buyer or Seller may suspend performance during an Excusable Delay; provided that Seller may not suspend performance for more than two weeks hereunder. If Seller discovers facts reasonably likely to result in an Excusable Delay, Seller promptly shall (a) advise Buyer of the same and (b) use its best efforts to reduce the effect of the Excusable Delay on Buyer. In addition, upon Buyer's request, Seller shall furnish to Buyer (i) information Buyer requests about possible Excusable Delays and (ii) Seller's assurance or contingency plans with respect thereto.

Termination; Cancellation. Buyer may cancel this Order if: (a) Seller breaches any agreement, representation or warranty hereunder; (b) Seller is subject to action by a Governmental Authority suspending or terminating its business, makes a general assignment for the benefit of creditors, suspends business or commits any act amounting to business failure, makes a voluntary assignment or transfer of all or substantially all of its property, discontinues its corporate existence, or files, or has filed against it, any bankruptcy, insolvency or like petition by any Governmental Authority; or (c) an Excusable Delay suspends or materially impairs Seller's performance hereunder for more than two weeks. In addition, notwithstanding any other provision hereof, Buyer reserves the right to cancel this Order or any part hereof for its sole convenience. Upon such cancellation, Seller immediately shall, and shall cause each of its suppliers and subcontractors to, stop all work hereunder.

Liability Limits; Etc. In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages or penalties. Buyer's liability on any claim for loss or damage arising in connection with this Order shall not exceed the price allocable to the Products which give rise to the claim. Any action resulting from any breach by Buyer must be commenced within one year after the cause of action has accrued.

Miscellaneous. (a) **Waiver.** No failure or delay by Buyer in exercising any right under this Order and no course of dealing between Buyer and Seller shall constitute a waiver of any of Buyer's rights. (b) **Assignment.** Seller shall not assign, delegate or subcontract its rights or obligations hereunder without the prior written consent of Buyer. (c) **Law.** This Order is governed by Illinois law (without regard to conflict of law principles) and applicable federal and state courts in Illinois shall have exclusive jurisdiction with respect to any matter related in any way hereto. (d) **Amendment.** This Order constitutes the entire agreement between the parties and may not be amended, discharged or waived without the prior written agreement of Buyer. (e) **Severability.** If any provision is found to be ineffective or invalid under law, such provision shall be severed here from without affecting any other provision. (f) **Setoff.** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer for any counterclaim arising out of this or any other transaction with Seller. (g) **Risk of Loss.** Risk of loss shall pass to Buyer upon delivery of the Products at the location specified by Buyer. (h) **Definitions.** "**Buyer Customer Claims**" means claims against Buyer made by or through Buyer's customers arising, or alleged to arise, from Noncomplying Products being incorporated in products of Buyer's customers. "**Excusable Delay**" means any delay not caused by the material fault or negligence of the delayed party and which results from acts of God or public enemy, restrictions, prohibitions, priorities or allocations imposed by a Governmental Authority or embargoes, floods, fires, typhoons, earthquakes, epidemics or other like causes; provided that "Excusable Delay" shall not include lockouts, shortages of labor, lack of or inability to obtain raw materials, fuel or supplies (unless caused solely by Government Requirements) or other industrial disturbances. "**Governmental Authority**" means any federal, state, local, municipal or other governmental entity, domestic or foreign. "**Governmental Requirements**" means any laws, rules, regulations, required consents or any other like requirements, guidelines or standards imposed by a Governmental Authority. "**Including**" is deemed to mean "including without limitation." "**Noncomplying Product**" means any Product, which upon delivery to Buyer, does not comply with the Specifications, Buyer's requirements or any warranty or term or condition hereof. "**Specifications**" mean (i) drawings, descriptions, samples, models and other specifications or standards furnished by Buyer or furnished by Seller and approved by Buyer; and (ii) industry standards; (iii) quality control standards established by Buyer; (iv) Government Requirements; and (v) descriptions, schedules, affirmations of function or performance or other statements by Seller.