



Standard Terms and Conditions of Purchase

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1. **General.** All transactions with Clayton Controls Inc. (the “Company”) for the purchase and sale of all products (the “Products”) and services (the “Services”) supplied by the Company to the customer (the “Customer”) named in the attached (the “Quote”) or acknowledgment provided to the Customer hereunder are governed by these terms and conditions of sale (the “Terms and Conditions”). These Terms and Conditions are hereby incorporated as part of each purchase order from Customer for the purchase of Products (“Order”). Any Order that includes different or additional terms that may vary from these Terms and Conditions are objected to and disallowed. An Order is deemed by the Company to be an offer to purchase, which the Company may accept or reject in its sole discretion and such acceptance is expressly conditioned on Customer’s assent solely to the terms of these Terms and Conditions. If the Company’s Quote is deemed to constitute an offer, it may be accepted by Customer only on these Terms and Conditions and Customer’s acceptance is expressly conditioned on Customer’s assent solely to Terms and Conditions. An acceptance of any part of the Products or Services covered hereunder shall be deemed to constitute such assent. Unless otherwise specified in writing, the Quote shall expire thirty (30) days from the date thereof. Any minimum order threshold shall be determined by the applicable manufacturer of the Products.

2. **Prices; Payment Terms.**

2.1. Unless otherwise agreed by the Company in writing, the purchase price for Products (“Price[s]”) shall be set out in the applicable Quote. Prices exclude sales tax. It has been assumed that the customer shall provide a tax certificate. Prices are subject to change in the event of any material increase in the costs of energy or raw materials between the date of the Order and the date of shipment. Prices are also subject to change or adjustment if the imposition of new tariffs, duties, taxes, or similar charges, or the increase in existing tariffs, duties, or charges, (collectively, “Tariff Changes”), result in an increase to the Company’s cost for the goods or products. The Company is not obligated to deliver the goods and/or services until an agreement on a new Price has been reached.

2.2. Payment in full shall be made in United States currency following date of invoice in accordance with the terms set forth on the applicable Order. Invoices shall be sent to the address specified in the Order. Should the Customer dispute any invoice, Customer shall notify the Company of the nature of the dispute in writing within fifteen (15) days of the invoice date. If Customer does not notify the Company of any dispute within fifteen (15) calendar days of the invoice date, then the invoice is deemed to have been accepted and invoice payment is required to be made on the payment due date per these Terms and Conditions. Notwithstanding any dispute regarding an invoice, the Customer shall timely pay the undisputed portion of the disputed invoice.

2.3. If Customer is delinquent in its payment obligations, Customer shall pay, in addition to the delinquent payment, a late charge equal to the lesser of one and one-half percent (1.5%) per month or any part thereof or the highest applicable rate allowed by law on all such delinquent amounts plus the Company’s attorneys’ fees and court costs incurred in connection with collection.

2.4. Customer acknowledges that the Company has the right to reassess Customer’s creditworthiness from time to time. Unless expressly prohibited by law, in the event there is a decline in Customer’s creditworthiness in the Company’s reasonable discretion, the Company may, upon fifteen (15) days’ written notice, revise the payment terms between the parties.

3. **Delivery of Products.**

3.1. Unless otherwise agreed in writing by the parties, the Company shall deliver the Products to the Customer using the Company’s standard methods for packaging and shipping such Products. The Customer shall bear the costs of delivery of the Products. Delivery terms are F.O.B. shipping point for destinations in the United States and EXWORKS FACTORY (INCOTERMS 2010) for destinations outside of the United States.

3.2. Any specified delivery dates are approximate only and not guaranteed. The Company shall not be liable for any delays howsoever caused, nor can the delivery dates be made of the essence by any written notice or communication. Reasonable endeavors will be made to meet delivery dates, but the Company shall not be liable for any failure to do so and any consequent right of Customer to repudiate the Order is expressly excluded.

3.3. In the event the Products arrive to the Customer damaged, the Customer must note such damages on the bill of lading issued by the carrier. If the Customer does not include a note regarding such damages on the bill of lading with the carrier, the Company shall not be liable for any such damages however caused.

3.4. The Company may, at its option and in its sole discretion, deliver the Products in one or more installments. If the Products are delivered/completed in installments, the Company shall be entitled to invoice for each installment as and when each instalment is delivered/completed.

4. **Transfer of Property; Risk of Loss.** The Company shall retain the right and title to the Products sold to the Customer until the Company receives payment in full for the Products. The Customer shall obtain the right and title to the Products upon payment to the Company of the full Price of the Products and any taxes, excise or other charges. The risk of loss, including, but not limited to the risk of loss, theft, damage or destruction of the products, transfers to the Customer F.O.B. the Company’s facility.

5. **Inspection; Rejection of Products.** Except set forth in Section 3.3, Customer shall have five (5) business days from the Company’s delivery of Products at the destination point set forth in the applicable Order to inspect the Products and notify the Company of rejection of Products for non-conformity with the Order. Any notice of rejection must be in writing, identify the Order and describe all non-conforming aspects of the Products. If Customer timely notifies the Company of any nonconforming Products, the Company shall, in its sole discretion, (a) replace such nonconforming Products with conforming Products, or (b) credit or refund the Price for such nonconforming Products, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Upon any express written instructions from the



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Company, Customer shall ship the nonconforming Products to the Company's facility from which such Product was originally shipped. If the Company exercises its option to replace nonconforming Products, the Company shall, after receiving Customer's shipment of nonconforming Products, ship to Customer, at Customer's expense and risk of loss, the replaced Products. Customer acknowledges and agrees that the remedies set forth in this Section 5 are Customer's exclusive remedies for the delivery of nonconforming Products.

6. **Cancellation.**

6.1. The Company may cancel an Order if Customer becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against the Company under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership, or assignment for the benefit of creditors.

6.2. In the event Customer cancels an Order or a portion of an Order, the Company shall invoice Customer for material, labor and restocking costs incurred by the Company as of the date of cancellation, and Customer shall pay such invoice within thirty (30) days after receipt of such invoice.

7. **Limited Warranty.**

7.1. **Warranty for Third-Party Products** – With respect to Products and parts not manufactured by the Company, the Company agrees to pass through the applicable manufacturer's warranty and any licenses, so long as such manufacturer does not prohibit such assignment.

7.2. **Warranty for Company Products and Services** –

The Company warrants equipment and parts manufactured by it and supplied hereunder will (a) for 12 months from the date of delivery be free from defects in design, workmanship, and materials, (b) be manufactured, sold, and delivered in compliance with all applicable state and federal laws; (c) not infringe the intellectual property rights of a third party, and (d) be free of all liens, security interests, and encumbrances. The Company warrants that all services hereunder will be performed in a good, safe, and workmanlike manner, in conformity with generally accepted industry standards, including applicable environmental, health and safety laws, and that the services will be free from defects in workmanship. The Company's sole obligation under these warranties is repair or replacement of defective goods or parts and or re-performance of defective services. The Company will not be liable if the goods or services have been exposed to (a) improper maintenance, repair, installation, packaging, transportation, storage, operation or use; (b) corrosion, contamination or negligence after shipment; or (c) use of parts not manufactured or approved by the Company for use in the Goods; and (d) normal wear and tear.

7.3. THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR SERVICES (OR PARTS SUPPLIED IN CONNECTION WITH THE SERVICES), WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, AND THE COMPANY SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

8. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, WHETHER OR NOT BASED UPON THE COMPANY'S NEGLIGENCE, BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION ARISING, DIRECTLY OR INDIRECTLY, IN RESPECT TO THE PRODUCT OR SERVICES PURCHASED FROM THE COMPANY, OR THE USE OR FAILURE THEREOF, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF OPPORTUNITY OR PROFITS. UNDER NO CIRCUMSTANCES SHALL THE COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH AN ORDER EXCEED THE AMOUNT PAID UNDER THE ORDER FOR THE PRODUCTS AND SERVICES PROVIDED BY THE COMPANY.

9. **Applicable Law; Forum.**

9.1. The parties agree that unless otherwise agreed in writing, these Terms and Conditions shall in all respects be governed by and construed in accordance with the laws of the State of California. Customer agrees to comply with all legal requirements applicable to Customer.

9.2. Any legal suit, action, or proceeding arising out of or relating to an Order or these Terms and Conditions shall be instituted in the federal courts of the United States of America or the courts of the State of California, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. No action in law or equity arising out of any Quote, Order or these Terms and Conditions may be brought by Customer more than one (1) year after the cause of action has first arisen. The rights and obligations herein shall survive completion of the final payment under an Order.

10. **Force Majeure.** The Company shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control, including but not limited to acts of war (declared or undeclared), Acts of God, fire, strike, pandemic, labor difficulties, acts or omissions of any governmental authority or of Customer, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of a delay due to any such cause, the date of delivery will be extended by a period equal to the delay plus a reasonable time to resume production.

11. **Confidentiality.** Any Quote provided by the Company (including any accompanying documents) contains information proprietary to the Company. No part of the Quote information may be reproduced or transmitted in any form without the prior written permission of the Company. Customer shall treat the details of the Quote or any information made available in relation hereto as private and confidential and shall not publish or disclose the same or any particulars therefore (save as may be required by law) without the previous consent of the Company, providing nothing in this section shall prevent the publication or disclosure of any such information that has come within the public domain otherwise than by breach of this section which is required to be disclosed by law.

12. **Intellectual Property Rights.**

12.1. Notwithstanding delivery of and the passing of title in any Products to Customer, nothing in these Terms and Conditions shall have the effect of granting or transferring to, or vesting in, Customer any intellectual property rights in or to any Product.



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13. **Security Interest.** To secure Customer's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of Customer to the Company, Customer hereby grants to the Company a purchase money security interest in all Products purchased under this Agreement by Customer from the Company, 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. Customer hereby authorizes the Company to file Uniform Commercial Code financing statements, amendments, and continuation statements in connection therewith and to take all other actions the Company deems necessary or desirable to evidence the Company's security interest in such Products, and to perfect, maintain, protect, and foreclose on the security interest granted herein.
14. **Assignment.** Customer shall not assign an Order without the prior written consent of the Company, and any purported assignment shall be void. The Company may assign an Order and its rights and obligations in connection therewith at any time without notice to the Customer.
15. **Export Control Laws.** The Products may be subject to certain Export Control Laws. Customer agrees to comply with all applicable Export Control Laws. Customer has obtained and will comply with, as applicable, all material licenses, agreements, authorizations license exceptions or exemptions required for Customer's sale, resale or other disposition of the Products. Customer agrees to indemnify, defend, and hold harmless the Company from, or in connection with, any violation of this section by Customer, its employees, agents or customers. "Export Control Laws" means all laws and executive orders of any governmental entity relating to the import or export of goods, technology, or services or trading embargoes or other trading restrictions, including without limitation, the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Act, the Export Administration Regulations, the International Economic Emergency Powers Act and executive orders and regulations administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, and comparable foreign laws.
16. **Waiver.** No waiver by the Company of any breach of these Terms and Conditions by Customer shall be considered as a waiver of the subsequent breach of the same or any other provision.
17. **Severability.** If any provision or portion of these Terms and Conditions shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, that provision or portion of these Terms and Conditions shall be deemed omitted and the remaining provisions and portions shall remain in full force and effect.
18. **Miscellaneous:** These terms and any accompanying Quote or invoice from the Company constitute the entire agreement between the parties and supersedes any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between the parties concerning the subject matter hereof.

I have read, understand, and accept the Terms and Conditions provided with this form.

***** I am an authorized agent for the Company listed below *****

Customer:		Date:	
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Name:		Signature:		Title:	
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***Please fax back to (714) 241-9203
Or e-mail to info@claycon.com***