

# TERMS and CONDITIONS of SALE

## 1. APPLICATION OF TERMS AND CONDITONS OF SALE

The following terms and conditions shall govern the sale by PWM CONTROLS INC. ("SELLER") of orders for all products (hereinafter "PRODUCT") sold to all CUSTOMERS. Certain additional terms may accompany the PRODUCT and shall apply.

By using pwmcontrols.com to make on-line purchases as defined herein, CUSTOMER agrees to be bound by and accepts these Terms and Conditions of Sale (referred to throughout as "Terms and Conditions"). These Terms and Conditions also apply to all PRODUCT purchases made by phone, fax, e-mail and/or mail.

SELLER reserves the right to add, delete or amend these Terms and Conditions without prior written notice at any time, at SELLER's sole discretion.

"CUSTOMER" means any person and/or company ordering PRODUCTS from SELLER.

"SELLER's PRODUCTS" means any PRODUCTS or services supplied by SELLER that is branded with the PWM CONTROLS INC. and/or pwmcontrols.com trademark.

"Third Party PRODUCTS" refers to PRODUCTS and services supplied by SELLER under the brand name of a third party.

"PRODUCTS" means collectively both SELLER's and Third Party PRODUCTS sold.

## 2. QUOTES; ORDERS; PAYMENT TERMS

Subject to the terms contained in this section, any quotation provided by SELLER will be valid for the duration stated in the quotation. If no duration is stated, such quotation will be valid for 30 days.

Although SELLER strives to provide accurate PRODUCT and pricing information, errors or misprints may occur. SELLER cannot confirm the price of a PRODUCT until after CUSTOMER order the PRODUCT. Notwithstanding anything contained in this section 2, in the event that a PRODUCT is listed at an incorrect price or with incorrect information due to an error in pricing or PRODUCT information, SELLER shall have the right, at it's sole discretion, to refuse or cancel any orders, or part of an order placed or subsequently processed by SELLER for that PRODUCT and terminate the purchase agreement without further liability. In the event that a PRODUCT is priced in error or a PRODUCT information error occurs, SELLER may, at it's sole discretion, contact CUSTOMER for instructions, cancel the order and notify CUSTOMER of such cancellation, terminate the purchase agreement and/or correct the error on SELLER's web site.

Payment shall be made by credit card or some other method of payment acceptable to SELLER. Where payment is made by credit card, such payment is subject to the approval of the financial institution issuing the credit card and SELLER shall not be liable in any way if such financial institution refuses to accept or honor the credit card for any reason. In the event of a payment by cheque, money order or equivalent, the PRODUCT remains the property of the SELLER until said cheque, money order or equivalent is cleared.

## 3. PRODUCT AVAILABILITY

PRODUCT availability may be limited. PRODUCTS ordered may not be available for immediate delivery. SELLER reserves the right, without liability or prior notice, to revise or cease to make available any or all PRODUCTS. If there are any revisions to or cessation of PRODUCTS, SELLER may, with CUSTOMER's consent, ship PRODUCTS which have similar functionality and specifications to the PRODUCTS originally ordered. CUSTOMER will be given the opportunity to either reject or accept the substitute PRODUCT and price for the substitute PRODUCT which may differ from the price of the original PRODUCT.

#### 4. PRICES, SHIPPING AND HANDLING CHARGES AND APPLICABLE TAXES

SELLER will ship to any locations worldwide. Notwithstanding any shipping terms contained herein or any promotional shipping terms, SELLER reserves the right to refuse or cancel orders where SELLER has no commercially reasonable shipping option, and SELLER shall not be liable to the CUSTOMER for cancellation of such orders. SELLER will attempt to contact the CUSTOMER to advise of such order cancellation.

PRODUCTS shipped may not be re-routed by CUSTOMER. Prices quoted do not include charges for shipping and handling, applicable federal and provincial taxes as well as customs duties and brokerage fees. Separate charges for shipping and handling, if applicable will be shown separately on the invoice. CUSTOMER is responsible for all sales, use, goods and services, harmonized sales, and other taxes associated with the order. Unless CUSTOMER provides SELLER with a valid and correct tax exemption certificate applicable to the PRODUCT ship-to location prior to SELLER's acceptance of the order, the CUSTOMER is responsible for sales and all other taxes associated with the order, however designated, except taxes on SELLER's net income. If applicable, a separate charge for taxes will be shown on SELLER's invoice.

#### 5. PRODUCTS

SELLER's policy is one of on-going PRODUCT update and revision. SELLER may revise and discontinue PRODUCTS shown on it's website at any time. SELLER will ship PRODUCTS that have the functionality and performance of the PRODUCTS ordered, but changes between what is shipped and what is described in a specification sheet or catalog are possible. SELLER branded PRODUCTS may contain used parts that are equivalent to new in performance and reliability and are warranted as new.

#### 6. TITLE AND RISK OF LOSS OR DAMAGE; DELIVERY

Title in the PRODUCT and risk of loss shall pass to CUSTOMER and acceptance will occur upon delivery to the "ship to" address or, if special shipping arrangements are agreed to, upon delivery to CUSTOMER's carrier or designee.

SELLER may deliver the PRODUCTS ordered in installments. Any delivery or shipment dates given by SELLER are estimates only and SELLER is not liable for any loss, damage, cost or expense for any failure to deliver in accordance with the given delivery or shipment date.

#### 7. RETURN POLICIES

CUSTOMER may be able to return SELLER PRODUCT for a replacement or refund if CUSTOMER strictly adheres to all of the terms and conditions below:

- \* Subject to the terms and conditions herein, PRODUCTS may be returned within thirty (30) calendar days of your invoice date. A RESTOCKING FEE OF 25% WILL APPLY TO ALL RETURNS EXCEPT WHERE PRODUCT BEING RETURNED IS DEEMED DEFECTIVE BY SELLER.

- \* All eligible returns require prior authorization by SELLER. CUSTOMER must contact SELLER at support@pwmcontrols.com to first get authorization to return (RMA), and CUSTOMER must then return the PRODUCT within 10 calendar days of being issued the RMA. Please provide a part number and serial number at that time. SELLER's warranty is FOB it's plant (ex-works), Commercial invoice for customs (and packing slip) should state temporary import for repair, goods made in Canada, no commercial value. Provide documentation with the PRODUCT to indicate: Serial number, part number, Hours of operation, Description of problem, Wiring set up diagram, application, Other comments as needed.

- \* All items must be in "as new" condition, in original packaging, and with all accessories. SELLER reserves the right to inspect returns.

- \* An additional restocking fee will be charged on all returned items which are not packaged in the original PRODUCT packaging and missing accessories.

- \* PRODUCT must be returned with all shipping and insurance charges pre-paid. CUSTOMER will not be reimbursed for such charges, except where PRODUCT is being returned because it is deemed defective by SELLER.

- \* Non-defective returns may be subject to a 25% restocking fee.

\* Refunds on purchases made with a credit card will only be credited to the same card.

\* After receipt and inspection of the PRODUCT returned in compliance with all of the above terms, a credit will be issued.

#### 8. EXCHANGES

From time to time, SELLER may, in its sole discretion, exchange PRODUCTS or portions of a PRODUCT. Any exchanges will be made in accordance with SELLER's exchange policies in effect on the date of the exchange.

#### 9. LIMITED WARRANTY ON SELLER PRODUCTS

SELLER's Limited Warranty statement is available for CUSTOMER to read prior to purchase at [pwmcontrols.com](http://pwmcontrols.com). SELLER reserves the right to modify its warranty statement at any time, in its sole discretion. Warranty is only valid upon SELLER's receipt of payment in full for the SELLER PRODUCT to be warranted.

EXCEPT AS PROVIDED IN THE LIMITED WARRANTY STATEMENT, SELLER MAKES NO OTHER WARRANTIES OR CONDITIONS AND THE WARRANTY STATEMENT IS IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, PROMISES, OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PWM CONTROLS INC. EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS NOT STATED IN THE PRODUCT'S LIMITED WARRANTY STATEMENT. ANY IMPLIED WARRANTIES AND CONDITIONS THAT MAY BE IMPOSED BY LAW ARE LIMITED IN DURATION TO THE APPLICABLE WARRANTY PERIOD.

TO THE EXTENT ALLOWED BY LOCAL LAW, SELLER'S LIABILITY FOR SELLER HARDWARE WARRANTY CLAIMS IS LIMITED TO REPAIR OR REPLACEMENT AS SET FORTH IN THE APPLICABLE LIMITED WARRANTY STATEMENT. SELLER'S LIABILITY FOR PWM CONTROLS INC. SERVICE WARRANTY CLAIMS IS LIMITED TO REMEDYING THE NON-CONFORMING SERVICE AS SET FORTH IN THE APPLICABLE LIMITED WARRANTY STATEMENT.

#### 10. THIRD PARTY PRODUCTS

Third Party PRODUCTS carry different warranty policies than SELLER PRODUCTS. Any warranty and technical support provided on a Third Party PRODUCT is provided by the original manufacturer, not by SELLER. The warranties and technical support may vary from PRODUCT to PRODUCT.

#### 11. EXCLUSION AND LIMITATION OF LIABILITY

FOR ANY BREACH OF THESE TERMS AND CONDITIONS, SELLER'S SOLE AND EXCLUSIVE MAXIMUM LIABILITY SHALL NOT IN ANY EVENT EXCEED THE TOTAL PRICE OF THE PRODUCTS ORDERED BY CUSTOMER.

IN NO EVENT WILL SELLER BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL DAMAGES OR ECONOMIC LOSS (INCLUDING BUT NOT LIMITED TO LOSS OF DATA, EXPENDITURES, INVESTMENTS, COMMITMENTS OR LOST PROFITS) ARISING FROM ANY CLAIM OR ACTION, INCIDENTAL OR COLLATERAL TO, OR DIRECTLY OR INDIRECTLY RELATED TO THE PURCHASE OF THE PRODUCTS HEREUNDER, WHETHER SUCH CLAIM IS BASED IN CONTRACT, STATUTE, TORT, IMPLIED DUTIES OR OBLIGATIONS OR OTHER LEGAL THEORY.

SELLER SHALL NOT BE LIABLE IF IT IS UNABLE TO PERFORM ANY OF ITS OBLIGATIONS CONTAINED IN THESE TERMS AND CONDITIONS DUE, DIRECTLY OR INDIRECTLY, TO MATTERS BEYOND THE CONTROL OF SELLER INCLUDING, BUT NOT LIMITED TO, THE FAILURE OF ANY MACHINE, SYSTEM OF AUTHORIZATION, DATA PROCESSING OR COMMUNICATION SYSTEM OR TRANSMISSION LINK OR ANY LABOUR DISPUTE OR ACT OF GOD.

For the purposes of this Section 11, "SELLER" includes its employees, subcontractors, and suppliers.

#### 12. GOVERNING LAW AND JURISDICTION

These Terms and Conditions shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without regard to principles of conflict of law. Without limiting the foregoing, CUSTOMER and SELLER irrevocably and unconditionally: (a) agree that any suit, action, or other

legal proceeding arising out of or relating to these Terms and Conditions or any transaction hereunder must be brought in the Ontario Superior Court of Justice, in the city of Toronto, (b) consents to the exclusive jurisdiction of such court in any such suit, action or proceeding ; (c) waives any objection to the laying of the venue of any such suit, action or proceeding in any such courts; and (d) waives any right that it may have to assert the defence of forum non-conveniens in any such suit, action or proceeding.

### 13. EXPORT CONTROL

PRODUCTS purchased or received under these Terms and Conditions of sale shall be subject to export laws and regulations of Canada and the United States of America. CUSTOMER assures that it will comply with those regulations whenever it exports or re-exports controlled PRODUCTS or technical data obtained from SELLER or any PRODUCT produced directly from the controlled technical data.

### 14. RESALE

CUSTOMER agrees and incurs responsibility of SELLER's PRODUCTS that are re-sold to an outside party.

### 15. HEADINGS

The headings of each of these terms and conditions are for convenience of reference only and shall not form part of these terms and conditions. Such headings shall be ignored in the interpretation or construction of any of these terms and conditions.

### 16. NO ASSIGNMENT

CUSTOMER may not assign its rights or obligations under this Agreement without the express written consent of SELLER

### 17. INVALIDITY OF PROVISIONS

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

### 18. GENERAL

SELLER PRODUCTS are manufactured for standard industrial uses and are not intended to be sold or licensed for use in critical safety systems or nuclear facilities. SELLER is not responsible for delay or failure to perform due to causes beyond its reasonable control.

All documents referred to in these Terms and Conditions of Sale are incorporated into these Terms and Conditions of Sale and are available from SELLER upon request.

These Terms and Conditions of Sale supersede any preprinted terms on CUSTOMER's orders and any previous written or oral communications or representations by either party related to the PRODUCTS and may not be amended by CUSTOMER without prior written consent of SELLER.

Any CUSTOMER site access requirements shall not be enforceable to either increase the obligations or liabilities or reduce the rights under these Terms and Conditions of Sale of SELLER, its employees, or subcontractors.

Please Note:

The data and application materials included with this PRODUCT are provided for information only and are believed to be reliable. SELLER cannot assume responsibility for test results achieved by others, over whose test methods and equipment we have no control. It is the user's responsibility to test PRODUCT to determine suitability for the user's purpose and to adopt such precautions as may be advisable for the protection of property and persons against hazards that may be involved in the handling and use of the PRODUCT. Our PRODUCTS are being continuously improved and therefore, data contained herein is subject to change without notice.

## **QUALITY POLICY:**

SELLER is committed to meeting and exceeding its CUSTOMERS' quality expectations throughout the design, manufacturing, service and technical support phases. SELLER will continuously improve its methods and the quality of its PRODUCTS and services through innovation, ongoing review, training, maintenance of a safe workplace, and the treatment of all with respect and dignity. Our PRODUCTS are being continuously improved and, therefore, specifications for standard PRODUCTS are subject to change without notice.

## **APPLICATION APPROVALS / LIMITATIONS:**

It is increasingly common for OEM equipment manufacturers to require of their suppliers that they participate in PRODUCT design throughout the various stages of development. This is a positive outcome of concurrent design strategies and one in which, if properly executed, should result in more robust equipment, with higher long term CUSTOMER satisfaction. As a supplier, SELLER is committed to supporting its CUSTOMERS in their efforts to make better equipment through proper application of its PRODUCTS.

Engineering of equipment is a quantitative process. Successful implementation of operation concept requires the listing of measurements and specifications. Only against comprehensive real numbers and supporting test data, therefore, can an engineer determine whether a PRODUCT is appropriate for use in an application.

SELLER will offer limited approval for an application only to the extent that the equipment developer provides application-specific hard specifications for the control PRODUCT, typically delivered in written form on engineering drawings, or other documentation. Viewing of OEM equipment operation, durability goals, and provision of applicable industry standards information by the OEM are considered by SELLER as extremely useful in the development of the specification.

However, it is its policy, herein, that any information or other aspect of intended equipment operation not transferred to written specification is ineligible for "application approval". Limited application approvals may be authorized only by SELLER, and must be in writing.

SELLER PRODUCTS are intended to be applied in a variety of commercial applications and are designed to generally conform to common industrial and mobile performance standards and practices. Contact SELLER for details on specific third party PRODUCT testing, where certifications are marked on the PRODUCT. However, SELLER specifically prohibits any Distributor, CUSTOMER, or other third party from applying SELLER PRODUCTS in the following applications, without obtaining SELLER approval: Explosive or hazardous environments, On-highway or railway vehicles carrying passengers, Aircraft or aerospace vehicles, Ordinance equipment, Nuclear facility equipment, Life-saving or support equipment. Questions regarding acceptance of applications should be directed to SELLER engineering personnel. Acceptance must be obtained in writing and does not constitute suitability for use, which is the sole decision of the equipment manufacturer, based on qualification testing of the device.

## **WARRANTY:**

SELLER warrants to the original purchaser of its PRODUCTS that the PRODUCTS are free from defects in workmanship and material when operated under normal conditions and in accordance with accepted and/or industry recommended practices. This warranty extends only to the original non-consumer purchaser of the PRODUCT and is not transferable.

This warranty shall be in effect for a period of 12 months from the date of sale by SELLER. When the date of sale information is not available, the warranty is 12 months from the date of manufacture as indicated by the serial number of the PRODUCT.

This warranty specifically excludes PRODUCTS not of SELLER's manufacture, which may be included as adjunctive PRODUCTS in systems. Where these PRODUCTS carry original manufacturers' warranties, the warranty passes through SELLER to the original user as provided within the original manufacturer's warranty. Consult factory. To be eligible for warranty consideration, all PRODUCT items must be covered by acceptable documentation and received at the SELLER factory within 3 months of the date of the claim according to the requirements of the SELLER Returned Materials Policy, which is considered to be part of this warranty.

This warranty shall not apply to PRODUCTS which, in the sole judgement of SELLER have been inadequately maintained or shelf-preserved, subjected to contamination, negligent handling, improper installation, tampering or unauthorized disassembly. This warranty is expressly in lieu of any other warranties, express or implied, including any implied warranty of merchantability or fitness for any particular purpose and of any other obligations or liability on the part of SELLER. The purchaser is solely responsible for determining suitability for use. SELLER neither assumes nor authorizes any other person to assume for it any liability in connection with a new PRODUCT. SELLER shall not be liable, under any circumstances, for any loss of profits or any other contingent, consequential, or special damages. Specifically, SELLER shall not be responsible for the cost of removal of the PRODUCT, damages due to removal, or any other costs incurred in shipping the PRODUCT to and from the plant of manufacture, or incurred in the installation or the repaired or replaced PRODUCT.

Liability under this warranty is limited to the repair or replacement, at SELLER option, of the PRODUCTS determined to be defective upon examination and to be within the warranty period. This warranty policy does not provide for a refund or credit for defective material. Repaired or replacement PRODUCT items shall be covered by the terms of this warranty.