

## 1. Scope

These General Terms and Conditions are applicable to the purchase and sale of BELIMO Aircontrols (CAN), Inc. (hereinafter "BELIMO") products and services by the Client. As used herein, Client refers to the individual or entity that purchases BELIMO products or services directly from BELIMO. If the Client requests a delivery or service abroad, the contract will be concluded with the local BELIMO company in that country or with a BELIMO company named by BELIMO in the order confirmation. In such case, the General Terms and Conditions of the BELIMO company appointed in the order confirmation will be applicable. In case our delivery includes software and accompanying documentation, the terms of the license agreement are applicable in addition to these General Terms and Conditions. However, in case of any conflict between the two documents, the license agreement shall prevail.

Client's order of any BELIMO product, or BELIMO providing any service to Client, is expressly conditioned on Client's acceptance of these General Terms and Conditions, and the parties agree that Client's order of any BELIMO product, or BELIMO's performing of any service to Client, constitutes Client's acceptance of these General Terms and Conditions. No additional or different terms or conditions delivered to BELIMO from Client apply. BELIMO deems such additional or different terms or conditions material alterations to these General Terms and Conditions, and BELIMO hereby notifies Client of its objection to and rejection of such additional or different terms or conditions. Unless there is express consent in relation to different or additional terms, the General Terms and Conditions shall prevail in case of inconsistencies between the order and these General Terms and Conditions.

## 2. Conclusion of the contract

The contract is deemed to be concluded upon receipt of an order confirmation by the Client or, upon absence of such confirmation, upon the segregation of the ordered products by BELIMO. All catalogues, brochures and publications on the Internet are considered to be an invitation to treat from BELIMO to Client, which acceptance is expressly limited to these General Terms and Conditions. Modifications or additions to these General Terms and Conditions or to the contract are not valid without written approval by BELIMO. Orders that deviate from the specifications published by BELIMO or contain additions or modifications made by the Client will only be effective if they have been expressly approved by BELIMO with a written order confirmation.

## 3. Cancellation of the contract

Orders of products according to catalogue (standard products) may be cancelled by the Client until the segregation of the ordered products by BELIMO provided that BELIMO has received the statement of cancellation prior to the time of segregation. Orders of customers' products (special designs etc.) may be cancelled only up to 4 hours after receipt of the order by BELIMO. In that case, a service charge of 10% of the net order amount will be invoiced to the Client. In case of customized products or configured actuators, a service charge of 20% of the net order amount will be invoiced to the Client.

## 4. Prices

If not expressly specified otherwise, all price information is net, excluding GST/HST or any other sales tax as applicable.

The standard packaging of the ordered products is included in the net price. All other costs, such as for transport, insurance, taxes, customs duties as well as export, import or other necessary approvals will be invoiced as additional charges. The net price does not include any additional services performed by BELIMO, such as installation, commissioning and compilation of diagrams etc.

BELIMO reserves the right to change prices at any time until the conclusion of the contract.

## 5. Delivery conditions

All times, dates and delivery deadlines are considered non-binding, unless their binding nature has been expressly agreed in writing. Binding delivery deadlines and dates that have been agreed upon in writing are met when the product is made available in the distributing warehouse before the corresponding dates have passed. If BELIMO has a delay in delivery, it is assumed that the Client continues to demand the delivery. Compensation for late delivery or for replacement is excluded.

If not otherwise indicated on the order confirmation, delivery of the Goods shall be made in accordance with Incoterms® 2020 DAP Goods recipient (DAP = Delivered At Place, delivery address ship-to-party)

BELIMO reserves the right not to deliver the ordered products if they are unavailable; in this case, BELIMO will promptly notify the Client of the non-availability and, if necessary, reimburse any payment already made.

## 6. Payment conditions

BELIMO invoices must be paid in full within 30 days after the date of invoice. If the Client is in delay, BELIMO reserves the right to withhold further deliveries.

The Client is not entitled to offset outstanding accounts from BELIMO with any counterclaims.

## 7. Application, installation and use of BELIMO products

BELIMO products are intended for professional use only. BELIMO products may only be installed and replaced by skilled qualified personnel. BELIMO products must be used in accordance with the specifications of the respective currently valid data and assembly sheet. The use of Belimo Cloud Services is subject to the "Terms of Use for Belimo Cloud Services" as amended from time to time ([https://www.belimo.com/mam/corporate-communications/privacy/BELIMO-Cloud-Terms-of-use\\_EN.pdf](https://www.belimo.com/mam/corporate-communications/privacy/BELIMO-Cloud-Terms-of-use_EN.pdf)).

## 8. Specifications

Except as provided in 13, the non-technical specifications or technical specifications that are not part of the data sheets as provided for a particular product at the time of order, published by BELIMO in text or picture form (e.g. illustrations or drawings) in catalogues, brochures, websites, data and assembly sheets or other publications are only to be regarded as a guideline. The specific characteristics of the delivered products can deviate from that of images or samples in respect to material, colour or shape. BELIMO reserves the right to change the communicated product specifications or to deliver corresponding products from third-party suppliers in place of the ordered products.

## 9. Reservation of title

The title of supplied products remains with BELIMO until the Client has fully paid all invoices.

## 10. Passing of risk

Benefit and risk with regard to the products purchased pass to the Client in accordance with agreed Incoterms® 2020.

## 11. Redemption of products

BELIMO may, upon prior agreement at its sole and absolute discretion, redeem standard catalogue products provided that these products are still contained in the product range, virgin, i.e. not older than max. 6 months, unused, and originally packed at the time of return. BELIMO does not have any duty of redemption. Redemption of customers' products (special designs, Designed to Order, configured actuators), Openline-products or products that have been procured on Client's specific demand is excluded. The return of products according to catalogue shall be made enclosing a copy of the invoice and stating the reason for the return, free of all charges to BELIMO Aircontrols (CAN), Inc., 2495 Meadowpine Blvd., Unit #2 Mississauga, ON L5N 6C3.

From the credit as agreed with the Client, a service charge of at least 20% of the net catalogue price will be deducted. A payment of the credit in cash is excluded. It can only be credited against future orders.

## 12. Duty of examination/Acceptance

The Client shall examine all products for defects within 5 working days of receipt. Any defects are to be reported to BELIMO within 5 working days of receipt in writing; the product will otherwise be deemed to be accepted. Hidden defects must be reported in writing within 5 working days after they are discovered.

## 13. Warranty

With its warranty, BELIMO guarantees during the warranty period in accordance with this section 13, that the delivered products meet the technical specifications that are explicitly listed on the corresponding data sheets as at the time of order.

However, the applicable warranty for a Belimo product is null and void in the event of damage resulting from or partly caused by the Client or by third parties acting within the scope of responsibility of the Client when:

- a) Products are used in areas that are not specified in the data and assembly sheets, especially in aircraft and any other airborne means of transport;
- b) Products are used contrary to applicable laws, official regulations or the instructions of BELIMO (especially regarding installation, commissioning, operating regulations and information on the data and assembly sheets);
- c) Products are used under special conditions, especially under the continuous influence of aggressive chemicals, gases or liquids or outside of the permissible operating parameters or conditions for use;
- d) Products are assembled, handled or installed incorrectly or without due care or not according to the respective authoritative state-of-the-art or are not used or installed by skilled qualified personnel;
- e) Products are modified or repaired without prior written approval of BELIMO;
- f) Products become worn out as a result of inappropriate or unintended use or excessive stress;
- g) Products are stored inappropriately; or
- h) The Client or third parties are responsible for damage.
- i) Belimo also provides no warranty for normal wear and tear, including all types of corrosion, operational or environmental wear and tear and the like, as long as this is not due to defects in materials or workmanship.

For Openline-products further limitations of liability according to the applicable framework agreement, concluded between BELIMO and the Client, will apply.

The Client is liable for actions or omissions of auxiliary personnel as if these were his own actions.

BELIMO products are covered by a warranty period of five years, starting from the date of manufacture. OpenLine products carry a warranty period of two years, beginning from the date of delivery. For trade products, those not manufactured by BELIMO, the warranty period is generally one year from the date of delivery, though in exceptional cases it may extend to two years. The specific warranty duration for trade products is indicated in the order confirmation, and such products are clearly identified by the manufacturer's name and/or logo.

The warranty period begins automatically on the date of manufacture or delivery, as applicable, and does not require acceptance or testing by the Client. Upon discovering a defect, the Client is obligated to promptly take all reasonable measures to minimize any resulting damage. Provided that the defect is reported in a timely manner in accordance with Section 12 above, BELIMO retains sole discretion to determine the appropriate remedy. This may include repairing the product, replacing it with one of equal or equivalent value, or refunding the net purchase price through account credit or other means. Repairs may be carried out either by BELIMO or by authorized third parties at BELIMO's expense. The Client does not have the right to choose between repair, replacement, or refund; the decision rests entirely with BELIMO.

The replacement of a defective product does not restart the warranty period for that product. BELIMO can require the Client to replace particular defective products or parts of products in a system to prevent damage, whereby reasonable Client expenditures in this context that are approved in advance in writing by BELIMO will be reimbursed by BELIMO.

**WARRANTY DISCLAIMER:** EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION, BELIMO MAKES NO CONDITION OR WARRANTY, AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY (A) CONDITION OR IMPLIED WARRANTY OF MERCHANTABILITY; (B) CONDITION OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) CONDITION OR WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

## 14. Indemnification

CLIENT AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS BELIMO, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, ASSIGNS, AFFILIATES, PARENT, AND SUCCESSORS ("BELIMO INDEMNIFIED PARTIES") FROM AND AGAINST ALL CAUSES OF ACTION, COMPLAINTS, CLAIMS, DEMANDS, JUDGMENTS, SUITS, LOSSES, LIABILITIES, LIENS, DAMAGES, FINES, PENALTIES, ASSESSMENTS, COSTS, ATTORNEYS FEES, AND EXPENSES THAT ARISE OUT OF, RELATE TO, OR ARE CONNECTED WITH ANY THIRD-PARTY CLAIM, SUIT, ACTION, OR PROCEEDING, RELATING TO (I) CLIENT'S ADVERTISING, MARKETING, PURCHASE, SALE, OR USE OF BELIMO PRODUCTS AND SERVICES, (II) CLIENT'S ACTUAL OR ALLEGED BREACH OF ANY REPRESENTATION, WARRANTY, COVENANT, OR OBLIGATION UNDER THESE GENERAL TERMS AND CONDITIONS, AND (III) BELIMO OR THE BELIMO INDEMNIFIED PARTIES' NEGLIGENCE. AT ITS OPTION, BELIMO WILL HAVE THE RIGHT TO CONTROL THE DEFENSE OF ANY LEGAL PROCEEDING, AND CLIENT SHALL NOT ENTER INTO ANY SETTLEMENT WITHOUT THE PRIOR WRITTEN CONSENT OF BELIMO OR THE BELIMO INDEMNIFIED PARTIES, WHICH SHALL NOT BE REASONABLY WITHHELD.

## 15. LIMITATION OF LIABILITY

IN NO EVENT SHALL BELIMO AND THE BELIMO INDEMNIFIED PARTIES, HAVE ANY LIABILITY TO CLIENT OR ANY THIRD PARTY FOR ANY (I) LOST PROFITS, LOST REVENUE, DIMINUTION IN VALUE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR (II) ANY DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL AND PUNITIVE DAMAGES) RESULTING FROM THE PERFORMANCE OF A PRODUCT, A TEMPORARY OR PERMANENT LOSS OF USE OF A PRODUCT, OR ARISING OUT OF ANY SERVICE PROVIDED TO CLIENT OR A THIRD PARTY, HOWEVER CAUSED UNDER ANY THEORY OF LIABILITY, AND WHETHER BASED IN CONTRACT, TORT (INCLUDING BELIMO OR THE BELIMO INDEMNIFIED PARTIES' NEGLIGENCE), STATUTE, OR OTHERWISE. BELIMO'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING FROM, OR IN CONNECTION WITH THE SALE OF ITS PRODUCTS AND PROVIDING SERVICES TO CLIENT SHALL BE LIMITED TO THE AMOUNT PAID BY CLIENT FOR THE PRODUCT OR SERVICE DEEMED RESPONSIBLE FOR THE LOSS OR DAMAGE,

THE FOREGOING LIMITATION SHALL APPLY EVEN IF BELIMO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.

## 16. Force majeure

Neither BELIMO nor the Client shall have any liability to the other party for damages of any kind that result from the failure or delay in the performance of its obligations under these General Terms and Conditions, if such failure or delay is due to obstacles that are beyond either party's reasonable control irrespective of whether these occur at BELIMO, the Client or a third party. Such obstacles are, for example, epidemics, pandemics, mobilisation, war, revolts, severe interruptions of operations, accidents, labour disputes, delayed or faulty delivery of the required raw materials, semi-finished or finished goods, non-availability of important work pieces, magisterial injunctions or omissions, embargos, export or import restrictions, acts of

God or any other circumstances which are, to a large extent, beyond the control of BELIMO or the Client. In such cases, both parties shall, without delay, undertake all effective measures which can be expected of them to prevent damage, or if damage occurs, to minimise the degree of this damage as far as possible.

However, in no event shall payment of any money due to BELIMO be excused or delayed by reason of the foregoing.

## 17. Resale

If the product is resold, the Client must impose at least the same limitations of warranty restrictions upon the buyer.

## 18. Privacy policy

BELIMO places great value on the implementation of lawful data processing to protect your personal data. BELIMO is obliged to process your personal data in accordance with current legislation. We are dependent on the services of third parties for the provision of our services. These third parties will only process your data in connection with the services agreed with BELIMO, will ensure the same level of data protection as BELIMO, and will not pass on your data to other third parties without your agreement. When processing your data and transferring your data to third parties, BELIMO will ensure that an appropriate level of data protection is guaranteed and that appropriate organizational and technical measures are implemented to protect your data. More detailed information on our data protection guidelines is available from the following Internet address: [www.belimo.com/privacy](http://www.belimo.com/privacy).

## 19. Modifications

BELIMO reserves the right to modify these General Terms and Conditions at any time.

## 20. Severability clause

The provisions of these General Terms and Conditions are severable, and if any provision is found to be illegal, invalid, or unenforceable, the validity of the remaining provisions shall not be affected, and the illegal, invalid, or unenforceable provisions shall be replaced by such valid provisions that reflect the purpose and intent of these General Terms and Conditions.

## 21. Applicable law and jurisdiction

Any matter or dispute (whether in contract, tort, or statute) based upon, arising out of, or relating to these General Terms and Conditions or BELIMO products, shall be governed by the laws of the State of Delaware, including its laws regarding the statute of limitations, without regard to the State of Delaware's conflicts of law principles. BELIMO and Client agree to submit to the exclusive jurisdiction of the federal and state courts located in the State of Connecticut with respect to any dispute arising from the subject matter hereof.

**WAIVER OF JURY TRIAL: BELIMO AND CLIENT HEREBY WAIVE ALL RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY ACTION, PROCEEDING, OR CLAIM RELATING TO THESE GENERAL TERMS AND CONDITIONS OR BELIMO PRODUCTS.** All causes of action arising out of or connected to the sales of Products under these General Terms and Conditions shall be resolved individually, with no right by Client to participate in a representative capacity, or as a member of any class action.

The UN Convention on the International Sale of Goods of 11 April 1980 (CISG) shall not apply to Client's purchase of BELIMO products.

## 22. Waiver

The failure of either party to enforce at any time any of the provisions of these General Terms and Conditions, or the failure to require, at any time, performance by the other party of any of the provisions of these General Terms and Conditions, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either party to enforce each and every such provision thereafter.

## 23. Intellectual Property

All intellectual property, included but not limited to, inventions, patents, copyrights, trade secrets, know-how, test results, tooling, jigs and fixtures, or other industrial property, associated with, discovered in, or used in or for, the manufacturing of the Products shall be identified herein as "Property." All Property owned by BELIMO prior to selling products or providing services to Client shall remain owned by BELIMO and no rights, title or interest to such shall pass or be assigned to the Client at the time of the sale and/or delivery and any Property and intellectual property rights created by BELIMO or contributed by Client in connection with the customization or the sale of products and performing services for Client shall remain owned by BELIMO and the Client hereby assigns any and all right, title or interest to such to BELIMO, including a waiver of moral rights if applicable, and shall not be considered a work for hire.

## 24. Entire Agreement

These General Terms and Conditions, including the applicable BELIMO documents referenced herein, plus any accompanying BELIMO documentation relevant to Client's order for BELIMO products or BELIMO providing services to Client, constitutes the entire agreement between the parties with respect to the BELIMO products ordered by Client, or services provided by BELIMO. These General Terms and Conditions and applicable BELIMO documents supersede all of the parties prior and contemporaneous agreements, understandings, negotiations, inducements, representations, or conditions, whether oral or written, whether express or implied, with respect to the purchase and sale of BELIMO products and services.

## 25. California Proposition 65

**WARNING:** Some Belimo Products can expose you to chemicals which are known to the State of California to cause cancer, birth defects, or other reproductive harm. Please refer to the Product specific Technical Data sheet at [www.belimo.com](http://www.belimo.com) for details. For more information see [www.p65warnings.ca.gov](http://www.p65warnings.ca.gov)