

1 Interpretation

1.1 In these Conditions the following words have the following meanings:

“Buyer”

the person firm or company who accepts a quotation from the Company for the sale of the Goods or whose order for goods is accepted by the Company (including any of its representatives, personnel and agents)

“Company”

BELIMO AUTOMATION UK LIMITED (Company No. 1534607) whose registered office address is at 51 Clarendon Road, Watford, Herts WD17 1HP

“Conditions”

the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Buyer

“Configured Drives”

products configured with a defined program or standard assortment of components

“Contract”

any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions

“Goods”

any goods agreed in the Contract to be supplied to the Buyer by the Company (including any instalments or parts of them)

“Openline Products”

components which are supplied under a separate framework agreement to Buyers who manufacture their own specific products

“Price List”

the Company’s published price list at the date of delivery or deemed delivery

“Software”

A computer program (which may be may be stored on a microchip, a magnetic disc, tape, punched card or other medium or, alternatively, fixed permanently in a computer) or programs and, where appropriate, associated documentation.

“Software Licence Agreement”

The agreement for the lawful grant of the permission to use the Software.

“Specific Design Goods”

all Buyer specific products

2 Basis of Sale, Orders and Specifications

2.1 Save for the exception contained in Condition 2.2 below, unless otherwise agreed by the Company in writing the Contract will be on these Conditions, as amended from time to time by the Company, to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any enquiry, order, acceptance, specification or other document). These Conditions replace all earlier terms and conditions.

2.2 Should the Contract be for the sale of Software the terms of the accompanying Software Licence Agreement will be applicable in addition to these Conditions. In the event of conflict between these Conditions and the Software Licence Agreement, the latter shall prevail.

2.3 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to

these Conditions and no order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer and any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order.

2.4 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract and, particularly in the event of non-availability of the Goods, the Company reserves the right to change the specifications or to deliver products of equal quality and value sourced from a third-party supplier in place of the ordered Goods.

2.5 These Conditions apply to all sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing. In entering into a Contract the Buyer acknowledges that it does not rely on any such representations unless so agreed.

2.6 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and upon terms of an indemnity of the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation and work done to the date of cancellation.

2.7 The quantity, quality and description of and any specification for the Goods shall be as set out in the Company’s quotation or data sheet. Any typographical, clerical or other error or omission in any sales literature, quotation, Price List, acknowledgement of order, invoice or other document issued by the Company is subject to correction by the Company without liability on the part of the Company.

2.8 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.9 The Buyer shall be responsible for providing all necessary information so that the Company may draw up a complete specification and drawings, if required, for the Goods and the Company shall have no responsibility to the Buyer in respect of such specifications and drawings and the Buyer shall indemnify the Company (also if the Goods are to be manufactured by the Company in accordance with a specification submitted by the Buyer), against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the preparation of such specification and drawings and/or Company’s use of the Buyer’s specification. All intellectual and industrial property rights in all specifications and drawings and in the Goods are and shall remain vested in the Company.

2.10 The Company reserves the right to alter or change the specification, design or details of any Goods provided that these do not materially affect quality or performance.

3 Price and Payment

3.1 The price of the Goods shall be the Seller’s

quoted price or, where no price has been quoted (or a quote is no longer valid), the price listed in the Price List. A small administration charge may be applied for orders of a value of less than £250 net. Any quotation is valid for 30 days only unless previously withdrawn. The Company reserves the right to revise the price of Goods to reflect, for instance, any change in delivery dates, quantities or specifications for the Goods requested by the Buyer, delay caused by instructions of the Buyer or failure by the Buyer to give the Company adequate information or instructions.

3.2 The price of the Goods shall include the price of packaging but shall be exclusive of any VAT and extra costs, such as transport, insurance, taxes and duties. Extra services, such as installation, commissioning, compilation of diagrams etc shall be charged separately.

3.3 Payment for the Goods is within 30 days net monthly of the date of invoice notwithstanding that delivery may not have taken place. Time of payment shall be of the essence. No payment shall be deemed to have been received until received in full in cleared funds.

3.4 The Buyer shall make all payments without any deduction whether by way of set-off, deducting, counterclaim, discount, abatement or otherwise and notwithstanding any other Conditions, all payments become due immediately upon termination of the Contract.

3.5 If the Buyer fails to pay the Company any sum due to the Company, the Company shall be entitled to:

(a) cancel the contract or suspend any further deliveries to the Buyer;

(b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and

(c) the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the monthly rate of 2% accruing on a daily basis until payment is made in full, whether before or after any judgement. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

3.6 In respect of export shipments all prices quoted are the actual amounts payable free of all deductions whatsoever and the Buyer shall be responsible for all tariffs taxes customs duties and all other charges and payments which may be levied charged assessed or imposed in respect of the Goods.

4 Delivery

4.1 If not otherwise indicated on the order confirmation, delivery of the Goods shall be made in accordance with Incoterms® 2010, DAP (Shepperton UK).

4.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are specified, delivery will be within a reasonable time. This Condition shall not be deemed to have been waived by the Company agreeing after its acceptance of an order to deliver by a specified date.

4.3 Any delay will not entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.

4.4 Subject to the other provisions of the Conditions, the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence)

4.5 The Company shall not be liable for any non-delivery of Goods unless written notice is given to the Company within 5 days of the date when the Goods would in the ordinary course of events have been received and any liability of the Company for non-delivery of the Goods (or any instalment) shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

4.6 If the Buyer fails to accept delivery of the Goods, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations then:

- (a) the Goods will be deemed to have been delivered; and
- (b) the Company may store the Goods until actual delivery and the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

4.7 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5 Risk & Title

5.1 In accordance with the Incoterms® 2010, DAP (Shepperton UK), the Goods are at the risk of the Buyer from the time of delivery to the carrier or upon collection by the Buyer.

5.2 Ownership of the Goods shall not pass to the Buyer until the Company has received payment of all sums due to it in respect of:

- (a) the Goods; and
- (b) all other sums which are or which become due to the Company from the Buyer on any account.

5.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
- (e) hold the proceeds of the insurance referred to in Condition 5.3(d) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

5.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course

of the Buyer's business at full market value;

- (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and
- (c) any resale agreement must contain the same warranty terms and limitation of liability restrictions on the third party as those contained in Conditions 7 and 8 below.

The Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any third-party claim made against the Company.

5.5 The Company may at any time revoke the Buyer's power of sale referred to in Condition 5.4 above by written notice to the Buyer if the Buyer shall for 7 days or more be in default in the payment of any sum whatsoever due to the Company.

5.6 The Buyer's right to possession of the Goods shall terminate immediately if:

- (a) a bankruptcy order is made against the Buyer or the Buyer makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statute for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows an execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

(c) the Buyer encumbers pledges or in any way charges any of the Goods.

5.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

5.8 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Buyer's right to possession and/or power of sale has terminated, to recover them in either of which case the Buyer shall place the Goods at the disposal of the Company.

6 Returns

6.1 Goods received by the Buyer cannot be returned unless previously agreed with the Company in writing at the Company's entire discretion.

6.2 Specific Design Goods, Configured Drives and Openline Products may not be returned.

6.3 All returns must be made within 6 months of delivery, and only unused Goods, in their original packing, may be accepted if they are still contained in the current product range of the Company as set out in the Company's catalogue.

6.4 A copy of the invoice must be enclosed with the Goods, together with a note stating the reason for the return.

6.5 The Company will issue a credit note in the invoice amount less an overhead amount of at least 20% of the invoice amount which will be deducted.

7 Quality / Guarantee

7.1 The Company warrants that on delivery the Goods shall:

- (a) conform in all material respects with their description and any applicable specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

7.2 Immediately upon delivery, the Buyer shall examine the Goods for defects and shall immediately report any defects, including any claim in respect of damage in transit., to the Company in writing. Hidden defects must be reported to the Company in writing as soon as they are discovered.

7.3 Upon the discovery of damage, the Buyer is required to take all the measures available to it to minimise any further damage to the Goods and the Company shall reimburse the Buyer for any pre-approved costs incurred for that purpose.

7.4 If the Buyer does not notify the Company pursuant to these Conditions, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

7.5 Any claim in respect of any defect in the quality or condition of the Goods due to faulty material or workmanship shall be notified to the Company within 24 months from the date of delivery for Openline Products and/or for Goods manufactured up to and including 31st December 2004. For Goods manufactured on or after 1st January 2005 notification to the Company is required within 60 months from the date of manufacture.

Subject always to Condition 7.7(e), the warranty period (if any) for products that have not been manufactured by BELIMO (Trade Products) can be derived from the order confirmation. Trade products are specified as such, either by the name or by the logo of the manufacturer. The warranty period for trade products shall be such manufacturer's warranty as is capable of being passed to the Buyer by the Company in accordance with Condition 7.7(e) and, subject to the warranty passing to the buyer, shall be on such terms and for such period as that manufacturer offers by way of warranty. By way of example only, generally such manufacturer's warranties have a duration of one year from the date of delivery but in exceptional cases may have a duration of two years from the date of delivery. The warranty period usually starts at the time of manufacture or delivery of the product, retrospectively, without requiring acceptance from or testing by the client, but this will depend on the individual terms of the warranty concerned.

- 7.6 Where any valid claim in respect of any defect in the quality or condition of the Goods or their failure to meet specification or in respect of damage in transit is notified in accordance with these Conditions, the Company shall at its sole discretion be entitled to:
- (a) replace the Goods (or the part in question) or repair the Goods free of charge or;
 - (b) refund to the Buyer the price of the Goods (or a proportionate part of the price) and the Company shall have no further liability to the Buyer; or
 - (c) issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- Where any Goods have to be repaired at the Company's Works, the Buyer shall bear the risk and costs of having the Goods or parts thereof returned to the Buyer or any other destination on the Buyer's instructions.
- Please note the repair and/or replacement of the faulty Goods does not trigger the start of a new warranty period.,
- 7.7 The liability of the Company under this Condition 7 does not extend to:
- (a) the use of Goods in fields which are not specified or listed in the data or assembly sheets; in particular for use in aircraft and any other airborne means of transport etc. or
 - (b) Goods that have not been installed by skilled qualified personnel;
 - (c) defects or deterioration of the Goods arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions, misuse, improper cleaning, alteration or repair of the Goods without the Company's approval or attributable to the act or default of some person other than the Company and its employees, agents or sub-contractors; or
 - (d) defects in Goods manufactured to the Buyer's own specification or requirements if not approved by the Company; or
 - (e) parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company which is capable of assignment or transfer by the Company to the Buyer, the Company on the Buyers written request using such endeavours as the Company deems reasonably appropriate (but at no additional cost or expense to the Company) to assign or transfer such Warranty or guarantee to the Buyer; or
 - (f) in relation to Openline Products, any other limitations as may be specified in the relevant framework agreement, a copy of which shall be made available to the Buyer.
- The Buyer will be fully responsible for all resulting damage, costs liabilities and/or losses incurred in such cases.
- 7.8 In cases where repairs, which are not covered by this Condition 7, are undertaken charges in respect of labour, material and transport will be made.
- 7.9 The consequences of ordinary wear and tear, damage due to negligence or improper use or other causes beyond the Company's control shall be excluded from this guarantee.
- 7.10 This guarantee shall be null and void should the Buyer or any other persons (other than the Company's employees or agents) modify or repair or attempt to repair any part of the Goods.
- 8 Limitation of Liability**
- 8.1 Subject to Conditions 4 and 7 the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of these Conditions and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 8.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 8.4 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) and the Company shall not be liable to the Buyer or deemed to be in breach of Contract by reason of delay or any failure to perform if the Company is prevented from or delayed in performing due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to its workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. Provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 8.5 The Company will not be liable if payment for the total price of the Goods has not been received by the Company in full in cleared funds by the due date.
- 8.6 Subject to Conditions 8.2 and 8.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price for the Goods; and
 - (b) the Company shall not be liable to the Buyer for any indirect or consequential loss nor damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 9 Insolvency of the Buyer**
- 9.1 The Company shall be entitled either to terminate wholly or in part any or every Contract or to suspend work and/or delivery of Goods under any or every Contract in any of the following events without any liability to the Buyer:
- (a) if any debt is due and payable by the Buyer to the Company but is unpaid;
 - (b) the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - (c) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - (d) the Buyer ceases, or threatens to cease, to carry on business;
- 9.2 The Company shall be entitled to exercise its rights of termination or suspension at any time during which the event or default giving rise thereto has not ceased or been remedied and in the event of any such suspension the Company shall be entitled as a condition of resuming work or delivery under any contract between it and the Buyer to require pre-payment of or such security as it may require for the payment of the price of any further work or delivery.
- 10 Severance.**
- 10.1 If any court or competent authority finds that any provision of these Conditions is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Conditions shall not be affected.
- 11. Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Conditions shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 11(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- 12 Privacy policy**
- 12.1 The Company places great value on the implementation of lawful data processing to protect your personal data. The Company is obliged to process your personal data in accordance with current legislation. We are dependent on the services of a third party for the provision of our services. This third party will only process your data in connection with the services agreed with the Company, will ensure the same level of data protection as the Company, 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, the Company will ensure that an appropriate level of data protection is guaranteed and that appropriate organisational 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.
- 13 Law and Jurisdiction**
- 13.1 These Conditions and the Contract shall be subject to and construed in accordance with English Law and the parties agree to submit all disputes arising herefrom to the non-exclusive jurisdiction of the English Courts.