

# MIDWEST AUTOMATION LLC

## TERMS, CONDITIONS AND LIMITED WARRANTIES OF SALE

### 1. ACCEPTANCE AND TERMS.

These Terms, Conditions & Limited Warranties of Sale (these "Terms and Conditions") are the exclusive terms, conditions and warranties applicable to quotations made and orders accepted by Midwest Automation LLC ("Midwest") for the sales of products, equipment and parts relating thereto ("Product(s)"). The quotation into which these Terms and Conditions are incorporated (the "Quotation") constitutes an offer by Midwest to sell to the addressee ("Buyer") the Product(s) only on the terms set out in the Quotation, including these Terms and Conditions. Buyer is invited to accept the offer on its exact terms by signing the Quotation where indicated and returning a copy of it to Midwest (hereafter "Resulting Agreement"). Any changes to the offer or any purchase order or other document containing Buyer's terms and conditions which are in addition to or different from those contained herein, which are not separately and specifically agreed to in writing by Midwest in an acknowledgment of order, are hereby objected to and shall be of no effect. Receipt by the Buyer of an acknowledgment of order from Midwest shall be deemed acceptance by the Buyer of the terms and conditions therein and herein set forth (also hereafter "Resulting Agreement") and any objections to any or all of them shall be deemed waived unless Midwest receives written notice of any objection within twenty (20) days after the date Buyer receives such acknowledgment. Buyer in any event will conclusively be deemed to have assented to these Terms and Conditions if Buyer makes any payments for Product(s) according to the Resulting Agreement or accepts delivery of any Product(s) covered by the Resulting Agreement. If Buyer uses Product(s) for production, Buyer will be conclusively presumed to have accepted the Product(s).

### 2. PRICES; PAYMENT TERMS.

The price(s) quoted in the Quotation is (are) valid for thirty (30) days from the date of the Quotation; thereafter, it (they) is (are) subject to change at any time without notice. Buyer shall make payments according to the schedule set out in the Resulting Agreement. Any amount remaining unpaid thirty (30) days after its due date under that schedule shall bear interest at 1.5% per month or the maximum rate allowed by law, whichever is less. Installation and training are not included in the price unless specifically described in the Resulting Agreement. Midwest's prices do not include any sales, use, excise or other taxes, all of which are the responsibility of Buyer. Midwest's prices do not include any export crating, freight or insurance, unless specifically set out in the Resulting Agreement.

### 3. SPECIFICATIONS; PERFORMANCE.

Midwest reserves the right to change its Product(s) and their specifications at any time without notice. Specifications, depictions and descriptions in any picture, catalogue, brochure or other literature are subject to change without notice and do not constitute a sample, representation, warranty or guaranty, and do not become a part of any Resulting Agreement or of the purchase of Product(s).

### 4. SHIPPING DATES.

Shipping dates set out in the Resulting Agreement are estimates based upon current production schedules and do not mean that "time is of the essence." Buyer's failure to promptly make advance or interim payments, supply technical data, drawings or approvals will result in a commensurate delay in delivery.

### 5. LIMITED WARRANTIES.

Midwest warrants that it will, according to the following coverages, repair or replace, at its option, any component part of a Product that is found under normal operating conditions and prescribed maintenance to be defective in materials or workmanship, or that does not conform to the specifications set forth in the Resulting Agreement. Warranty coverage begins on the date the machine shipped from the Midwest factory.

#### 5a. NEW MACHINE COVERAGE.

DOMESTIC / CANADIAN CUSTOMERS:

**One (1) Year Coverage.** Any part that is defective will be repaired or replaced at Midwest's expense, including labor, for a period of up to one (1) year. *Note: Warranty coverage does not include travel time, travel expenses or expedited freight on warranty parts.*

INTERNATIONAL CUSTOMERS:

**One (1) Year Coverage.** Any part that is defective will be repaired or replaced at Midwest's expense, for a period of up to one (1) year. *Note: Warranty coverage does not include travel time, travel expenses, labor to replace the part or freight on parts.*

#### 5b. NIAGARA WET DUST COLLECTORS

**Five (5) Year Coverage.** Any stainless steel housing or stainless steel component part that is defective, excluding the impeller, will be repaired or replaced at Midwest's expense for a period of up to five (5) years. *Note: Warranty coverage does not include travel time, travel expenses, or expedited freight on warranty parts. Warranty coverage does not include labor to replace the part after the first year of warranty.*

#### 5c. CONSUMABLE PARTS.

Warranty coverage does not include consumable parts. *Note: CONSUMABLE PARTS are items consumed in normal use, such as but not limited to membranes, chain pads, clutch plates, heater elements, fuses, filters, spray nozzles, saw blades, router bits, and abrasive belts, brushes, or any other cutting, cleaning or polishing media, are not covered by this warranty.*

#### 5d. WEAR PARTS.

**One (1) Year Prorated Coverage.** Any wear part that is defective, where the life of the part is reduced over time through normal use, will be repaired or replaced at Midwest's expense, prorated over a one (1) year period of time. Warranty coverage excludes labor, travel, and freight. Wear parts include, but are not limited to, such items as drive belts, conveyor belts, contact drums, rubber coated rollers, chains, sprockets, heaters, and motor brushes.

#### **5d. WEAR PARTS, cont'd.**

*Note: SILICONE SPREADING ROLLERS used in hot melt PUR roll coaters are specifically not covered under this warranty due to the extreme nature of typical applications. However, during the first thirty (30) days of operation, any silicone spreading roller that delaminates from the core, as determined by an inspection of our molded rubber supplier, and determined to be defective in materials or workmanship, will be resurfaced at Midwest's expense.*

#### **5e. REPLACEMENT PART COVERAGE.**

Any replacement part that is ordered from Midwest and found to be defective will be repaired or replaced at Midwest's expense for a period up to ninety (90) days from the ship date from Midwest's factory, or for the remainder of the coverage for the original Product warranty described above, whichever is longer. Warranty coverage does not include consumable parts, travel time, travel expense or labor to replace the part.

THE EXPRESS WARRANTIES MIDWEST MAKES IN THIS PARAGRAPH 5 ARE THE ONLY WARRANTIES MIDWEST WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Buyer waives any rights under the warranties set forth in this Paragraph 5, and Midwest shall have no obligations therefore, if any portion of the purchase price remains unpaid or if Buyer's account with Midwest is in arrears. Product failures or defects caused by accidental damage, negligence, unreasonable use, misuse, abuse, or failure to maintain in accordance with maintenance schedules provided in an applicable Midwest Operating Manual, are not covered by the warranties in this Paragraph 5. Such warranties shall be null and void for any Product (including any component part), which is modified or altered in any way by any person not authorized by Midwest. Midwest is not responsible for, and will not pay for, work performed or repairs made by any other party unless prior written approval is obtained from Midwest. For machines sold outside the United States or Canada, warranty coverage under this Paragraph 5 is for parts only, and excludes labor, freight, duty or taxes, or any travel expenses.

#### **6. WARRANTY CLAIM PROCEDURE.**

To initiate a warranty claim, Buyer must contact the Midwest Customer Service Department or the distributor that sold the Product. Notice of any warranty claim must be received in writing by Midwest within the warranty coverage time specified under Paragraph 5 above, otherwise the warranty claim will be denied.

#### **6a. WARRANTY FREIGHT POLICY.**

Warranty parts will be shipped freight pre-paid using Fed-Ex, UPS or LTL ground at Midwest's discretion during the first year of warranty coverage. Shipments that require next day, air or expedited services will be shipped freight collect. Other than as specified above, the shipping terms and passage of title for parts shall be as provided in Paragraph 13 below.

#### **6b. RETURN GOODS POLICY.**

If a warranty determination cannot be made at the time the replacement part is ordered, or Midwest requires the part to be returned, Buyer must issue a purchase order and will be invoiced for the replacement part. A Return Materials Authorization (RMA) will be issued by Midwest for the return of the original part, freight prepaid. Midwest will issue a credit memo when the original part is returned and found to be defective, provided it is received within thirty (30) days of the original part shipment. *Note: PARTS returned without a Return Materials Authorization (RMA) will not be accepted by Midwest.*

#### **7. LIMITS OF LIABILITY.**

Except as expressly set forth herein, Midwest shall not be bound by any representation, promise or inducement made by its agent or employee. The remedies of Buyer set forth in these Terms and Conditions are Buyer's exclusive remedies. The aggregate liability of Midwest for any claim of any kind for any loss or damage resulting from, arising out of or connected with these Terms and Conditions or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any Products, whether based on contract, WARRANTY, tort (including negligence), strict liability, indemnity, or otherwise, shall in no event exceed the price allocable to the Product(s) which gave rise to the claim. In no event shall Midwest be liable to Buyer or any other party for compensatory, punitive, special, incidental or consequential damages, or any similar damages, whether foreseeable or not, arising from or related to any Product failure, including but not limited to: Loss of profits, revenue or business opportunity; loss by reason of shutdown of facilities; loss because of inability to operate any machinery or facility at full capacity; damage to materials processed using the Product(s); and delamination of or defect in any product produced using the Product(s). The provisions of this Paragraph 7 shall supersede any inconsistent provisions in any document involving Buyer's purchase of Product(s) or forming a part of the Resulting Agreement.

Customer assumes the sole responsibility for determining whether any particular Product is suitable for the Customer's contemplated use, whether or not such use is known to Midwest. Customer assumes all risks and liabilities arising from the operation, performance and use of any Product.

The Customer's exclusive remedy for breach of any warranty under Paragraph 5 above is repair or replacement of the defective Product, whichever Midwest elects. In the event that a court determines that the sole remedies stated in these Terms and Conditions or in any Resulting Agreement between the parties have failed of their essential purpose, then Buyer's exclusive remedy for breach of any warranty under Paragraph 5 shall be the return of the Product(s) freight prepaid, for refund of the purchase price less a depreciation/restocking charge of 2% per month or part thereof between (a) the time of delivery to Buyer under Incoterms or other terms specified in the Resulting Agreement, and (b) receipt of the entire Product(s) in question by Midwest at the premises designated by Midwest.

## **8. PERFORMANCE.**

Production rates and capacities of the Product(s) depend on a variety of factors beyond Midwest's control, including but not limited to operator skill, quality of materials being processed, the production and capacity of other equipment in Buyer's factory and atmospheric conditions. As a result, each Buyer's optimum production will often not be achieved for an extended period of time after installation and start up. Production rates or capacities (if any) specified above or referenced in any catalogue, brochure or other literature are only estimates, assume ideal conditions, and are not warranties or guaranties of future performance.

## **9. SECURITY INTEREST.**

Regardless of any passage of title, where retention of a security interest is legally permissible Midwest shall retain a security interest in the Product(s) until all payments hereunder have been made in full. Buyer agrees to do all acts necessary to perfect and maintain such security interest in Midwest, including but not limited to signing any financing statements or other customary documents. Buyer hereby grants to Midwest a limited power of attorney to prepare, execute, and file all such financing statements and other customary documents on Buyer's behalf if Buyer is unable or unwilling to sign and file the same or fails to do so within a time period reasonably deemed appropriate by Midwest, not exceeding ten (10) days following execution of the documentation evidencing the sale in question. Buyer shall protect Midwest's interest in the Product(s) by adequately safeguarding and insuring them.

## **10. SETOFF.**

Neither Buyer nor any of its affiliates shall have any right to set off claims against Midwest or any of its affiliates for the amounts owed under the Resulting Agreement or otherwise.

## **11. WAIVER OF INSURED CLAIMS AND SUBROGATION.**

Buyer and Midwest, for themselves, for all other insured under any applicable insurance policy, and for their insurers under any applicable insurance policy, hereby waive any claim against each other for any loss by fire, flood, explosion, mechanical breakdown or otherwise, which loss is covered by any property insurance, boiler insurance, or the like. Both Buyer and Midwest, to the fullest extent permitted by each such policy, waive any right of subrogation against each other and against their respective employees, agents, officers, suppliers and affiliates.

## **12. BUYER'S COVENANTS AND INDEMNIFICATION.**

Buyer covenants to Midwest that Buyer: Will use Product(s) only for their intended uses; will not use Product(s) for personal, family or household purposes; will keep Product(s) level and balanced and in good repair; will keep all guards, safety devices and sensors in place; will train in the safe use of the Product(s) all operators, service personnel, other employees and third parties who deal with Product(s); will implement and enforce a Lockout/Tagout program per OSHA; will otherwise comply with OSHA regulations and the National Electric Code (NEC), with applicable industry

standards, including without limitation, any standards set forth by the National Fire Protection Association (NFPA), the American National Standards Institute (ANSI) and the American Society of Mechanical Engineers (ASME) and with any other applicable state, federal, national, regional, provincial, municipal, and other safety laws or regulations; will conduct a process hazard analysis and risk assessment of its process and will comply with the findings thereof; will install fire and explosion detection and suppression equipment appropriate to Buyer's products and process; has determined without reliance on Midwest that Product(s) are suitable components in Buyer's process; will comply with the terms of the Resulting Agreement without limiting the foregoing, has properly represented to Midwest in writing the true destination, use, and ownership of the Product(s) and will comply with all applicable requirements and restrictions of United States export laws and regulations; and, if ownership of Product(s) is(are) transferred, will notify Midwest of the name and address of the new owner and will furnish the new owner with all manuals, instructions and guards.

Recognizing that under some circumstances Midwest can be held liable to third parties because of actions by the Buyer, the Buyer agrees that if any damage or injury (including death) to any person or to any property (including loss of use thereof) results, or is alleged to have resulted, in whole or in part from any modification or alteration of the Product(s) (including but not limited to the removal of any guards), from the improper or abnormal operation of Product(s) without Midwest's written consent or approval, or from breach of any covenants in this Paragraph 12 or of other provisions of the Resulting Agreement, then Buyer will defend, indemnify, and hold Midwest harmless from all liability, costs, and expenses (including attorneys' fees and all other costs of litigation and defense) for which Midwest is or may be held liable in connection with such injury or damage, whether Midwest's liability or alleged liability be in contract, negligence, strict tort, or otherwise. In the event that a portion of this provision be deemed unlawful, then that portion and the remainder of this provision shall remain enforceable to the fullest extent permitted by law.

## **13. SHIPPING.**

Unless otherwise stated in the Resulting Agreement or otherwise agreed in writing by Midwest, the Products are shipped Ex-Works, Midwest, Minneapolis, Minnesota 55406 USA (EXW, Incoterms 2010), except that Buyer assumes responsibility for the Product(s), including all risk of loss or damage thereto, when the relevant bill of lading is signed by the carrier. As an accommodation to Buyer, Midwest may pre-pay the cost of freight and add such cost to the invoice, but such prepayment shall not affect the risk of loss or damage, which shall remain with Buyer.

## **14. FORCE MAJEURE.**

Midwest shall not be liable for any loss or delay due to acts of governmental authority, laws or regulations, strikes, fires, floods, earthquakes, severe weather, epidemics, quarantine restrictions, war, riot, acts of Buyer, wrecks, delays in transportation, inability to

obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of Midwest. In the event of any delays in performance due to such causes, the date of delivery or performance shall be deferred for a period equal to the time lost by the reason of the delay.

#### **15. INSTALLATION AND TRAINING.**

If included in the Resulting Agreement, any installation and training will be governed by the enclosed Installation and Training Policy (01.01.2012), which is incorporated herein, including the provisions "Buyer's Responsibility" and "Seller's Responsibility".

#### **16. GENERAL.**

(a) The Resulting Agreement contains the entire and only agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written offers, negotiations, and understandings between Buyer and Midwest concerning the Product(s), and any prior course of dealings or usage of the trade are excluded unless they are expressly incorporated in the Resulting Agreement. Neither the Resulting Agreement nor any change, modification, or waiver of these Terms and Conditions shall be binding on Midwest unless signed in writing by a duly authorized representative of Midwest.

(b) Should Midwest retain an attorney to recover any sums Buyer may owe to Midwest or to enforce any other provision of the Resulting Agreement, then Buyer shall reimburse Midwest for all costs of such recovery and/or enforcement, including but not limited to reasonable attorneys' fees.

(c) Paragraph headings are for convenience only and shall not be construed to limit or modify the text in any paragraph.

(d) Interpretation and enforcement of any Resulting Agreement and the performance thereof will be governed by and construed according to the laws of the State of Minnesota, USA, without reference to the

rules of any jurisdiction concerning conflicts of law and without application of the United Nations Convention on Contracts for the International Sale of Goods. With regard to any and all conflicts, controversies, and disputes between the parties arising out of or in relation to the Resulting Agreement: (a) if Buyer is a United States entity or person, including an entity or person of any State, Territory, or Protectorate of the United States, the parties hereto irrevocably submit to the exclusive jurisdiction of the Federal and State courts sitting in Hennepin, County, Minnesota, for final adjudication of the matter in controversy, and they waive any claims as to inconvenient forum; and (b) if Buyer is not a United States entity or person, the parties hereto irrevocably submit the matter to final and exclusive determination through arbitration in English, in Minneapolis, Minnesota, USA, under the auspices and International Rules of the International Centre for Dispute Resolution, under a single arbitrator, who is hereby authorized and instructed to award damages and issue injunctions, as well as to award costs to the party prevailing in such arbitration, and the parties consent to the jurisdiction of any court for the exclusive purpose of enforcement of the arbitral award.

(e) Unless otherwise agreed in writing by the parties, all documentation, signs, warnings, explanations, information and training materials shall be provided by Midwest only in English; Buyer at its cost shall supply, in a timely fashion, translations of all such items into the language(s) of the country where the Product(s) will be installed and operated and shall promptly place warnings and signs on the Product(s) and supply translated documentation to users, operators, and others as reasonably expected or needed for safety, information, and compliance with applicable laws. Buyer shall indemnify Midwest with respect to any costs, damages, and other losses suffered by Midwest, including but not limited to attorneys' fees, for Buyer's failure of the timely and accurate supply of documentation and interpretation as provided in this Paragraph (16e).

© 05.01.2021 Midwest Automation LLC  
TERMS, CONDITIONS & LIMITED WARRANTIES OF SALE