

YASKAWA AMERICA, INC. ("YAI"), DRIVES & MOTION DIVISION - TERMS AND CONDITIONS OF SALE

**1. GENERAL:**

(a) All sales of products or services by Yaskawa America, Inc., Drives & Motion Division (hereinafter "D&M"), is governed exclusively by these Terms and Conditions of Sale ("Terms"), which supersede all inconsistent or additional terms on Buyer's purchase order or any other document. These Terms constitute the final, complete and exclusive agreement between the parties as to the subject matter hereof. These Terms may be amended only in writing signed by an authorized representative of D&M.

(b) Orders must be submitted in the form of a written purchase order or letter from Buyer, setting forth all information necessary for D&M to fill the Order, if accepted. All proposals, quotations or similar communications from D&M are considered invitations to submit an Order. A binding sales contract will result only when D&M accepts Buyer's Order, at D&M's office in Waukegan, Illinois or such other place as designated by D&M.

**2. PRICES:** D&M's quoted prices are firm for thirty (30) days from the date of D&M's written proposal. Thereafter, the applicable prices are those in effect at the time Buyer's Order is placed with D&M. D&M will notify Buyer of any price changes for incorporation into a revised Order prior to acceptance by D&M. Pricing based on volume discounts is subject to adjustment by D&M if actual shipping volumes do not meet minimum volume requirements of agreement. Clerical errors in any element of a proposal, purchase order, invoice or contract are subject to correction by D&M.

**3. TERMS OF PAYMENT:**

(a) All payments are due within thirty (30) days from date of D&M's invoice. Payment shall be made at the agreed time, to the place specified, and in the currency indicated on D&M's invoice. D&M reserves the right to require payment in advance, or satisfactory security, for any shipment or sale. D&M reserves the right to seek any other remedy available at law or equity and Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. Buyer's default constitutes a waiver of Buyer's right to demand D&M's performance under the contract.

(b) When an amount becomes past due according to its payment terms, Buyer shall pay interest on the balance due, at the greater of 1.50% per month (18% per annum) or the maximum permitted by law, until paid in full.

(c) If delivery and/or payment in installments is accepted by D&M, Buyer's failure to pay any installment when due shall give D&M the right to suspend work or delivery until such payment is made. In the event that any such default by Buyer continues for more than fifteen (15) days, D&M may then cancel the contract by written notice to Buyer.

(d) All duties, tariffs, fees, costs and other charges connected with shipment, insurance, exportation and importation of the products are the responsibility of Buyer, and, if paid by D&M, such expenses may be recovered by D&M from Buyer, and Buyer shall indemnify D&M against claims for the same. Buyer is responsible for all taxes applicable or related to this transaction, including all sales, use and excise taxes.

**4. SECURITY INTEREST:** To secure any indebtedness due and owing from Buyer from time to time, Buyer hereby grants to D&M, and D&M hereby reserves, a continuing purchase money security interest in all Yaskawa-brand and other products heretofore or hereafter sold and delivered to Buyer by D&M, and all related parts, components and accessories therefor, and all proceeds arising from the sale or other disposition of the foregoing, including, but not limited to, cash, accounts, contract rights, accounts receivable, instruments and chattel paper. Buyer shall at no time grant any security interest that conflicts with that granted to D&M herein. Buyer shall cooperate with D&M, and hereby appoints D&M as its attorney-in-fact, to execute and file, on Buyer's behalf, any documents necessary to evidence and perfect D&M's security interest. D&M reserves all rights and remedies available to it under the Uniform Commercial Code and other applicable law in the event of Buyer's default.

**5. SHIPMENT, FORCE MAJEURE, AND ERROR:**

(a) Shipment/delivery dates are approximations only. D&M shall not be liable to pay any penalty or damages, including consequential damages, for any delay in shipment.

(b) All shipments are F.O.B. D&M's (or its suppliers') manufacturing plant or warehouse. D&M will, at Buyer's expense, arrange for the transportation of the products from the manufacturing plant or warehouse designated by D&M. All products shall be packaged for domestic shipment in accordance with D&M's standard specifications. If special packaging is required, it must be clearly requested on Buyer's Order. The price for any special packaging shall be billed to Buyer. Buyer is responsible to timely procure all necessary export and import licenses and all permits required for the consummation of the transaction and to obtain insurance coverage on all shipments of products supplied by D&M. Risk of loss and/or damage to the products shall pass to Buyer upon delivery thereof to Buyer or its representative, or to a carrier for shipment to Buyer or its designated customer, as the case may be, at the FOB point.

(c) D&M shall not be liable for any damages, including consequential damages, caused by delays or non-performance resulting from or related to force majeure or other causes beyond D&M's reasonable control, including, but not limited to, war, blockade, civil disturbances, strikes and lockouts, labor shortages, fire and other casualties, acts of nature, accidents and governmental acts (including regulations concerning export and import licensing and currency exchange). In case of non-delivery, D&M's obligation shall be limited to the refund of any advance payment received from Buyer.

(d) All claims for loss of or damage to products, whether concealed or obvious, must be made, in writing, to the carrier and to D&M by Buyer as soon as possible after receipt of shipment, and in no case beyond 30 days of shipment, or such claims shall be deemed waived. D&M will render reasonable assistance in providing information necessary for Buyer to process such damage claims with the carrier or any insurance company.

(e) Buyer agrees to accept delivery within fifteen (15) days following the anticipated date of delivery. If Buyer refuses to take delivery within the fifteen (15) day period, D&M reserves the right to charge Buyer for storage charges plus interest.

**6. RETURNS/CANCELLATION CHARGES:** Buyer shall not return products to D&M without the written consent of, and upon terms agreed to, by D&M. If Buyer refuses to accept delivery, or improperly revokes acceptance of product, Buyer shall be responsible for D&M's cancellation charges and expenses. Before any returns, a Return Merchandise Authorization ("R.M.A.") number must be obtained from D&M. Products returned without an R.M.A. number clearly marked on the outside of the shipping carton will be refused. Except for approved warranty returns, D&M will only accept for return and credit new, unused, undamaged, current stock items, in the original packaging. Buyer shall be responsible for all freight charges, import/export charges, duties, tariffs, taxes, insurance and risk of loss/damage regarding return shipment to D&M.

**7. DRAWINGS/MEASUREMENTS:** All ratings, drawings, tables, graphs and the like submitted by D&M or set forth in written materials or on the company's website are approximations only. Weights, measurements, capacities and all other particulars of products or services offered by D&M are approximations only. D&M is not responsible for such approximations, including, in particular, based on data supplied by Buyer.

**8. LIMITED WARRANTY:**

(a) At the time of shipment, new and unused product sold by D&M shall be free from defects in materials and workmanship. D&M warrants that for a period of one (1) year from the date the product is first used by Buyer, or 18 months from the date of shipment, whichever occurs first, if any product or part is found by D&M to be defective, D&M will, at its sole discretion and as Buyer's exclusive remedy, either repair, replace or return the purchase price paid to D&M; provided that the subject product is used under normal conditions for which it was designed and installed, operated and maintained in accordance with D&M's instructions and in accordance with generally accepted industrial practices. Products repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period or ninety (90) days from date of the repair or shipment of the replacement, whichever is longer. D&M warrants, for a period of ninety (90) days, that services shall be performed in a workmanlike manner. Buyer's sole remedy for a breach of this service warranty is limited to further service or a refund or credit of amounts paid by Buyer, at Seller's option.

(b) D&M's warranty obligation shall be conditioned upon receipt by D&M of written notice of any alleged defects within sixty (60) days after discovery. D&M will not be responsible for unauthorized repairs to any products, even if defective. D&M shall not be responsible for any products which have been altered, abused, misused, or improperly installed or repaired, or for any loss, damage, defect, claim or non-performance resulting from or attributable to Buyer's specifications. D&M does not guarantee production rates or the quality of goods made using D&M's products or services, nor shall any longer warranty periods apply, except as agreed in writing signed by an authorized D&M representative.

(c) Where Buyer orders non-stock products or parts manufactured by a third-party, D&M will, to the extent permitted, pass through to Buyer any warranty of the manufacturer. As to such items, Buyer's sole remedy for breach of warranty shall be the remedy offered by and available from the manufacturer, if any.

(d) **D&M'S WARRANTY HEREIN IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF D&M AND ANY PARENT OR AFFILIATED COMPANIES OF D&M. D&M DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE OR USE.**

(e) **UNDER NO CIRCUMSTANCES SHALL D&M, OR ANY PARENT OR AFFILIATED COMPANY OF D&M, BE LIABLE TO BUYER OR ANY ENTITY FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM BREACH OF CONTRACT, TORT, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY OR OTHERWISE, INCLUDING FOR LOST PROFITS, IMPAIRMENT OF GOODS, WORK STOPPAGE OR OTHERWISE, IN ANY WAY ARISING OUT OF OR RELATED TO PRODUCTS OR SERVICES SUPPLIED BY D&M OR ANY TRANSACTION TO WHICH THESE STANDARD TERMS APPLY. THE MAXIMUM LIABILITY OF D&M, INCLUDING, BUT NOT LIMITED TO, WITH RESPECT TO THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, INSPECTION, ASSEMBLY, INSTALLATION, TESTING, REPAIR, REPLACEMENT, MAINTENANCE OR USE OF ANY PRODUCT OR THE PERFORMANCE OF ANY SERVICE, SHALL NOT EXCEED THE PURCHASE PRICE PAID TO D&M.**

**9. INFRINGEMENT:** The liability of D&M, any parent or affiliated company for patent infringement is limited to D&M's defense of proceeding brought against Buyer based on a claim that products, when employed in the manner intended by D&M, constitutes an infringement of any U.S. patent. If Buyer's use of the products in the manner intended by D&M is finally enjoined in such action, D&M shall, at its option, procure for Buyer the right to continue using the products, replace the same with non-infringing products, modify the products so that they become non-infringing equivalent products, or refund the purchase price (less allowance for use, damage or obsolescence). D&M makes no warranty against patent infringement resulting from portions of the products made to Buyer's specifications or the use of products in combination with any other goods or in the practice of any process, and if a claim is brought against D&M or any parent or affiliate of D&M, Buyer shall defend, indemnify and hold D&M (and its parent/affiliates) harmless from and against any and all claims, losses or damages arising therefrom.

**10. GOVERNING LAW, FORUM AND JURY WAIVER:** These Terms and the relationship of the parties are governed by the internal laws of the State of Illinois, U.S.A., without regard to its choice of law rules. For all claims or disputes arising out of or relating to the sale of products or services by D&M and/or the relationship of the parties, Buyer shall file any and all lawsuits or claims exclusively in the state or federal courts located in Cook County, Illinois. Buyer hereby submits to the personal jurisdiction of said courts and waives any claim of improper or inconvenient venue. To the fullest extent permitted by law, Buyer hereby agrees to waive the right to trial by jury for all claims or disputes arising out of or relating to the sale of products or services by D&M and/or the relationship of Buyer and D&M. The parties agree that U.N. Convention of Contracts for the International Sale of Goods shall not apply to their relationship or the sale of products by D&M.

**11. EXPORT CONTROL:** Buyer acknowledges that the products and related software and technology may be subject to export controls of the U.S. Government, including the Export Administration Regulations of the U.S. Department of Commerce. Buyer shall comply with all applicable laws, regulations, treaties and agreements regarding the use, import, export or re-export of the products and shall be solely responsible for obtaining all required licenses or approvals. The products are not intended for use in any nuclear, chemical or weapons production or environmental damage or for export, re-export, or distribution to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. Government. Buyer shall indemnify, hold harmless and defend D&M, its parent and affiliated companies from any violation of this section by Buyer or its employees, consultants, agents and customers.

**12. MISCELLANEOUS:**

(a) Failure on the part of D&M to enforce any of its rights derived from these Terms shall never be construed as a waiver of any of D&M's rights.

(b) The invalidity of one or more of the clauses herein shall not affect the validity of the other clauses, which for this purpose are considered severable.

(c) Any use by Buyer of any YAI trademark must be approved by YAI in writing.

(d) Buyer may not delegate its performance or assign its rights under these Terms except upon the express written consent of D&M. In any case, these Terms shall be binding upon the successors and legal representatives of Buyer.