



## TERMS AND CONDITIONS OF SALE OF JANDA AUTOMATION, LLC

- 1 CONTRACT.** The terms and conditions of sale set forth below apply to all sales of services or products or materials by Janda Automation, LLC (referred to as “SELLER”) to the buyer set forth in the purchase order or sales agreement under which such sale is being conducted (“BUYER”), except to the extent otherwise specifically agreed to by SELLER in writing. BUYER’S dispatch of an order, in whatever form, and whether verbally or in writing, shall constitute assent to and acceptance of these terms and conditions. Any terms in a purchase order or other document of BUYER which terms are either different from or additional to these terms and conditions of sale are objected to and are excluded unless specifically agreed to in writing by SELLER. No course of dealing or performance shall be effective to change, amend or modify in any manner whatsoever SELLER’S terms and conditions of sale. This sale shall not constitute a requirements contract with regard to the subject of any purchase order or any parts of such subject, unless SELLER expressly agrees to enter into a requirements contract with BUYER, as evidenced by a separate writing signed by SELLER.
- 2 CANCELLATION OR MODIFICATION.** Any quotation given by SELLER is subject to change or withdrawal without notice, unless otherwise indicated by SELLER in writing. Once placed with and accepted by SELLER, an order from BUYER may be cancelled or modified by BUYER only with SELLER’S written consent and only upon terms that will indemnify SELLER against any loss arising out of such cancellation or modification. At the time of cancellation or modification of an order, BUYER will be responsible for payment to SELLER, and will be invoiced accordingly, for all product shipped to BUYER but not yet paid for, all finished product not yet shipped, all work in process, and all materials and/or components (including, but not limited to, any specially ordered materials) in SELLER’S stock or on order that cannot be returned or cancelled. SELLER may cancel any order or program from BUYER or future shipments of product to BUYER upon giving BUYER reasonable written notice, with such notice period not to exceed nine (9) months in any event, unless agreed to in writing by SELLER.
- 3 PAYMENT.** Acceptance of orders is subject to the written approval of SELLER’S Credit Department. SELLER reserves the right to change or withdraw credit terms at any time without prior notice and to request guaranties, security or payment in advance. Subject to the approval of credit, Invoices shall be submitted to the BUYER as of the date of shipment of such product and the full amount of any such invoice shall be paid by the BUYER within thirty (30) days of the date of such invoice. Payment shall be made in U. S. Dollars. No cash discounts are allowed unless otherwise stated in SELLER’S proposal or other writing executed by SELLER’S authorized representative. Title to product, and all accessories to or products or proceeds of the finished product, shall remain with SELLER until payment in full of the purchase price and of other amounts owing by BUYER are received by SELLER; provided that with respect to sales to non-U.S. BUYERS, title transfers at SELLER’S dock. Such non-U.S. BUYERS will, on request, execute any and all documents necessary to perfect SELLER’S security interest in the above until SELLER is paid in full. SELLER reserves the right to charge a convenience fee for late payments. SELLER further reserves the right to charge any BUYER a late payment fee at the rate of one and one-half percent (1-1/2%) of the amount due for each month or portion thereof that the amount due remains unpaid, or such amount as may be permitted under applicable law.



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Delays: If shipments are delayed by BUYER, payments are due from date when SELLER is prepared to make such shipments.

Unpaid accounts: SELLER reserves the right to hold any molds or tools of BUYER in SELLER'S possession as security for the payment of any unpaid amount and reserve a lien in such molds or tools for such purpose.

If BUYER fails to make payment within thirty (30) days of shipment, or fails to comply with SELLER'S credit terms, or fails to supply adequate assurance of full performance to SELLER within a reasonable time after requested by SELLER (such time as specified in SELLER'S request), SELLER may defer shipments until such payment or compliance is made, require cash in advance for any further shipments, demand immediate payment of all amounts then owed, elect to pursue collection action (including without limitation, attorneys' fees and any and all other associated costs of collection), and/or may, at SELLER'S option, cancel all or any part of an unshipped order.

- 4 SHIPMENT.** All shipments are made ExWorks (Incoterms 2010) SELLER'S dock. During shipment and during any return shipment to SELLER, BUYER shall bear all risk of loss thereto, and carry adequate insurance, for any and all loss, damage or destruction. Any charges SELLER may be required to pay or collect with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any product shall be for the BUYER'S account. Method and route of shipment will be at the discretion of SELLER unless BUYER shall specify otherwise and, per ExWorks, shipments will always be at the expense of BUYER.
- 5 FULFILLMENT.** Delivery of ten (10) percent more or less than the quantity specified in BUYER'S order and/or release shall constitute fulfillment of BUYER'S order and/or release, and BUYER shall take and pay for any excess not exceeding ten (10) percent.
- 6 TAXES.** SELLER'S prices for product, equipment and/or services do not include U.S. and foreign federal, state or local excise, sales, use, value-added, stamp, property or similar taxes and fees and all export or import fees, customs, duties, tariffs or consular fees, now or hereafter enacted applicable to the product, equipment and/or services sold, which tax or taxes will be added by SELLER to the sales price where SELLER has the legal obligation to collect same, and will be paid by BUYER unless BUYER provides SELLER with a proper tax exemption certificate. If any government or body or similar authority determines that SELLER is liable for any such costs, duties, tariffs, taxes and/or fees, then BUYER shall promptly reimburse SELLER for any such liabilities paid by SELLER.
- 7 PRICES.** Prices are subject to change without prior notice, including without limitation price changes due to increases in costs to SELLER of raw materials and components. SELLER reserves the right to invoice at SELLER'S price prevailing at time of shipment, unless otherwise expressly stated in writing by SELLER.
- 8 LIABILITY FOR DELAY. ALL ORDERS ARE ACCEPTED UPON THE CONDITION THAT THE SELLER SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND FOR FAILURE TO**



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DELIVER WITHIN THE INDICATED TIME, FOR ANY REASON WHATSOEVER; ANY DATE FOR SHIPMENT MENTIONED INDICATES MERELY SELLER'S PRESENT EXPECTATIONS AND INTENTIONS IN THAT REGARD.

- 9 ALLOWANCES AND LIMITATIONS OF REMEDIES.** BUYER'S sole and exclusive remedy with respect to purchases of any kind from SELLER shall be the obtaining of any allowance in accordance with this section. Credit will be allowed for product rejected and returned to SELLER by BUYER and found by SELLER to not be in conformance with the specifications of such product set forth in SELL'S proposal, provided such product has not been used or on which no operation has been performed, and notice of such defective quality has been made to SELLER by BUYER within twenty (20) days after receipt of product by BUYER. SELLER'S sole and exclusive liability in all instances is limited to SELLER'S net unit invoicing price of the defective product regardless of the amount or extent costs and expenses incurred by BUYER from such defects. Product returned to SELLER without prior authorization by SELLER will not be accepted. SELLER is not liable for any charges for sorting or other operations performed by BUYER unless specifically agreed to, in advance, in writing by SELLER.
- 10 DISCLAIMER OF WARRANTIES.** SELLER WARRANTS THAT FOR THE ONE YEAR PERIOD BEGINNING WITH THE DATE OF SALE, THE PRODUCT WILL COMPLY WITH THE SPECIFICATIONS SET FORTH IN THE PROPOSAL PROVIDED BUYER BY SELLER, SUBJECT TO SECTION 9. OTHERWISE, ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE, CUSTOM OR OTHERWISE, WHETHER AS TO QUALITY, CONDITION, PERFORMANCE, MERCHANTABILITY, FITNESS FOR ANY PURPOSE, NONINFRINGEMENT, OR OTHERWISE, ARE HEREBY EXCLUDED AND EXPRESSLY DISCLAIMED. BUYER IS THE SOLE OWNER OF AND HAS FULL RESPONSIBILITY FOR THE PROPER INSTALLATION AND OPERATION OF THE PRODUCT SUBJECT TO SECTION 11. SELLER TRANSFERS TO BUYER THE WARRANTIES OF ALL SELLER'S VENDORS AS THEY PERTAIN TO THE PRODUCT OR ITS COMPONENTS.
- 11 MISUSE AND INSTALLATION OF PRODUCT.** Any tampering, misuse or negligence in handling or use of product or any additions or modifications to the Product renders any and all warranties provided herein or under any law or regulation or industry standard void. Further, the warranty is void if, at any time, BUYER attempts to make any internal changes to any of the comments of the product; if at any time the power supplied to any part of the Product exceeds the rated tolerance; or if any external device attached by BUYER creates conditions exceeding the tolerance of the Product. OPERATION OF THE PRODUCT THAT RENDERS THIS WARRANTY VOID WILL BE DEFINED TO INCLUDE ANY VIOLATION OF ANY OR ALL OF THE REQUIREMENTS DESCRIBED IN THIS PARAGRAPH, TOGETHER WITH ANY PRACTICE WHICH RESULTS IN CONDITIONS EXCEEDING THE DESIGN TOLERANCE OF THE PRODUCT.
- 12 LIMITATION ON DAMAGES.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR BUYER'S CUSTOMERS OR ANY OTHER PERSON FOR ANY PENALTY OR FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOST SALES AND/OR PROFITS, LOSS OF BUSINESS OPPORTUNITIES



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OR LOSS OF GOODWILL OR LOSS OR DAMAGE TO ANY PROPERTY OF BUYER TO WHICH THE PRODUCT IS AFIXED OR INSTALLED OR FOR ANY CLAIM BY THIRD PARTIES AGAINST BUYER IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCT.

- 13 LICENSE OF SOFTWARE.** SELLER hereby grants BUYER a nonexclusive, transferable and perpetual license to use any and all software that is embedded in the product, materials and/or services sold to BUYER and any and all software that is otherwise pre-installed by SELLER on the product, materials and/or services at the time of delivery, together with the documentation under each program element thereof.
- 14 INSTALLATION OF PRODUCT.** The responsibility and cost of the installation of the product on BUYER's intended equipment shall be that of BUYER and such installation is subject to section 11.
- 15 TOLERANCES, ETC.** Unless otherwise specified herein, tolerances are subject to commercial variations generally prevailing in the industry.
- 16 ENGINEERING AND DESIGN SERVICES.** BUYER may ask SELLER to either design product, parts, components, or tools or modify on BUYER'S behalf existing designs of product, parts, components, molds and tools. In all such situations, SELLER will not implement such suggestions, designs or modifications without BUYER'S prior written consent. SELLER disclaims any and all warranties associated with such design suggestions and modifications. Further, SELLER assumes no responsibility for, and BUYER shall indemnify SELLER and SELLER'S suppliers against, any damage, liability, judgment or loss (including attorney's fees) arising, directly or indirectly, from or out of BUYER'S use, implementation or adoption of such suggestions, designs or modifications.

SELLER shall exclusively own and enjoy all rights, title and interests in, and any intellectual property related to, any and all proprietary suggestions, improvements and modifications to the equipment, molds, technology and processes, and all physical manifestations thereof, developed or used by SELLER in relation to or in connection with the production of the product and fulfillment of BUYER'S order, unless otherwise agreed to in writing by SELLER.

- 17 ASSIGNABILITY.** BUYER may not assign its rights hereunder without SELLER'S prior written consent. The provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 18 REMEDIES.** SELLER SHALL HAVE ALL OF THE RIGHTS AND REMEDIES SPECIFIED IN THESE TERMS AND CONDITIONS IN ADDITION TO THOSE PROVIDED BY APPLICABLE LAW. ALL SUCH RIGHTS AND REMEDIES ARE CUMULATIVE. NO DELAY OR FAILURE BY SELLER TO EXERCISE ANY RIGHT OR REMEDY SHALL IMPAIR IN ANY MANNER WHATSOEVER ANY OF SUCH RIGHT OR REMEDIES OR BE CONSTRUED TO BE A WAIVER OF ANY BREACH OR AN ACQUIESCENCE THEREIN, AND ANY SINGLE OR PARTIAL EXERCISE OF ANY



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SUCH RIGHT OR REMEDY SHALL NOT PRECLUDE OTHER OR FURTHER EXERCISE THEREOF OR THE EXERCISE OF ANY OTHER RIGHT OR REMEDY.

- 19 **WAIVER.** NO RIGHT OR REMEDY OF SELLER SHALL BE DEEMED TO HAVE BEEN WAIVED OR RENOUNCED, IN WHOLE OR IN PART, BY SELLER'S FAILURE TO ASSERT ALL RIGHTS OR REMEDIES OR INSIST UPON COMPLIANCE WITH ANY TERM OR CONDITION, UNLESS SUCH WAIVER OR RENUNCIATION IS SUPPORTED BY CONSIDERATION AND IS IN A SEPARATE WRITING SIGNED BY SELLER. ANY SUCH WAIVER OR RENUNCIATION SHALL BE EFFECTIVE ONLY TO THE EXTENT EXPRESSED IN SUCH WRITING.
- 20 **ENFORCEABILITY.** In the event any provision hereof shall be declared unenforceable or void for any reason whatsoever the remaining provisions thereof shall remain in full force and effect and shall be fully enforceable.
- 21 **GOVERNING LAW AND ARBITRATION.** Subject to SELLER'S right to at all times seek interim injunctive relief from courts of its choice, or for SELLER at its option to seek collection remedies in the venue it wishes, all rights and obligations of SELLER and of BUYER including matters of contract formation, interpretation, construction, validity and performance shall be governed by the laws of the State of California, U.S., excluding conflict of law principles. For U.S. BUYERS, venue shall be the state courts or federal courts in California. U.S. BUYER consents to the jurisdiction of such courts. For non-U.S. BUYERS, any disputed claim arising out of, or related to, these terms and conditions or any breach hereof shall be finally settled by arbitration. The arbitration shall be administered by the American Arbitration Association ("AAA") and conducted in English in Corona, CA, U.S. in accordance with AAA International Arbitration Rules. In the event of any conflict between these terms and conditions and such rules, the provisions of these terms and conditions shall govern. The arbitral decision shall be final and incontestably binding upon the parties and not subject to any rights of appeal. Judgment upon any award may be entered in any competent court. All awards made pursuant to any arbitration proceeding conducted hereunder shall be in U.S. Dollars. All terms used in these terms and conditions, which are defined in the Uniform Commercial Code as adopted in the State of California shall have the same meaning herein as in such Code. The rights and obligations of the parties shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Product or the related Convention on the Limitation Period in the International Sale of Product. Any action arising out of or related to these terms and conditions against SELLER must be commenced within one (1) year from the date the right, claim, demand or cause of action shall first occur, or be barred forever. English is the official language of this sale and these terms and conditions shall be interpreted only in English.
- 22 **FORCE MAJEURE.** SELLER shall not be liable for any delay in, or impairment of, performance resulting in whole or in part from any force majeure event, including but not limited to acts of God, labor disruptions, acts of war, acts of terrorism (whether actual or threatened), governmental decrees or controls, insurrections, epidemics, quarantines,

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shortages, communication or power failures, fire, accident, explosion, inability to procure or ship product or obtain permits and licenses, inability to procure supplies or raw materials, severe weather conditions, catastrophic events, or any other circumstance or cause beyond the reasonable control of SELLER in the conduct of its business.

- 23 EXPORT CONTROLS AND FOREIGN CORRUPT PRACTICES ACT.** BUYER shall not, directly or indirectly, export or transmit any product covered by these terms and conditions to any country or party to which such export or transmission is restricted by applicable regulations or statutes of the United States or any agency thereof, without the prior written consent of the U.S. Department of Commerce, Washington, D.C. 20230 and of any other required governmental agency. BUYER covenants that the product purchased under these terms and conditions are not intended for any nuclear use or chemical or biological weapons production. BUYER represents and agrees that it has not offered, given, promised to give or authorized giving, and will not offer, give, promise to give or authorize giving, directly or indirectly, any money or anything else of value to any government official, political party, political official or candidate for political office in connection with any activities hereunder.
- 24 RESTRICTIONS ON RESALE AND CONFIDENTIALITY.** The products being purchased under these Terms and Conditions may be subject to a distribution agreement, confidentiality agreement or similar agreements between SELLER and BUYER, Such agreement is incorporated into these Terms and Conditions by reference.