

**Applicability** – These general terms and conditions shall apply to all orders unless a fully executed written document containing other more specific or supplemental terms of agreement between Seller (Quantum Automation) and Customer exists. Seller reserves the right to change its terms and conditions of sales at any time and without prior notice. The terms and conditions in effect on the date an order is accepted by Seller shall apply. All orders are subject to final acceptance by Seller at its designated California office.

**Acceptance** – By placing an order with Seller, Customer accepts and agrees to be bound by these terms and conditions of sale.

**Price** – Prices are subject to change without notice. Once a Customer order is received and accepted by the Seller, Seller shall generate and provide Customer with an Order Acknowledgement. With limited exception, prices shall be those set forth in the Order Acknowledgement.

**Taxes** – Prices and license fees are exclusive of all federal, state, municipal, or other political subdivision excise, sales, use, property, occupational, or like taxes now in force or enacted in the future and are, therefore, subject to increase equal to any such taxes Seller may be required to collect or pay upon the sale or delivery to Customer. In order to exempt any sale from sales or use tax liability, Customer must provide Seller with a tax exemption certificate either when setting up its credit account or at the time of placing an order.

**Terms of Shipment** – All orders are shipped FOB point of shipment. In the absence of specific instructions, Seller shall select the carrier, but the carrier shall not be construed to be an agent of Seller. If the Customer prefers to utilize a particular carrier for its order, the Customer must specify the carrier by name, provide the carrier's phone number, Customer's account number and shipping method. Non preferred freight charges are prepaid and are added to the invoice. Seller reserves the right to make partial shipments.

**Shipment and Delivery** – Shipment and delivery dates are estimates only, based upon the best information available to Seller at the time the estimate is made. Seller shall not be liable for changes in freight charges or for any damages caused by delays in shipping or performance due to causes beyond its reasonable control or the reasonable control of its suppliers, including by not limited to acts of God, acts of Customer, acts of civil or military authority, fires, labor disturbances, riots, war, or delays in transportation.

**Insurance on Shipment** – Seller does not provide and does not automatically include insurance on orders. The risk of loss passes to Customer once the goods are delivered to the carrier. If insurance is required by Customer, it must be specified in Customer order. Additional charges may apply.

**Cancellation of Order** – Most orders are shipped the same day on which Seller provides its Order Acknowledgement to Customer. Seller shall not accept the cancellation of any order for custom or specialized goods. In the event that Customer cancels an order, or reschedules and subsequently cancels an order, the Customer agrees that it shall pay Seller a cancellation fee in an amount equal to the percentage which Seller is charged by its vendor. This percentage shall be applied to Customer's purchase price for each item involved.

**Payment and Credit** – (a) Payment for orders shall be made based on the Seller's accounting terms. Net 30 days terms shall be paid no later than 30 calendar days following the date of Seller's invoice.

(b) If in the Seller's judgment the financial condition of the Customer at any time does not justify the commencement or continuance of delivery on these terms and conditions, Seller may, in addition to all other remedies it may have at law or in equity, demand full or partial payment in advance, suspend performance until that payment is made, or cancel the Customer's order.

(c) If Customer fails to pay any charges when due and payable, Customer agrees that Seller shall have the right to invoice and Customer shall pay all costs and a late payment charge of one and one-half percent per month but not in excess of the lawful maximum rate on the unpaid balance.

**Receipt of Shipments** – Customer shall inspect all deliveries promptly. Customer must notify Seller in writing within forty-eight hours of receipt of any discrepancies or shortages, or that the goods do not conform to Customer's specifications.

**Return Policy** – Return of any order, in whole or in part, must be requested by Customer to Seller. Returned goods are accepted only after receiving a Return Material Authorization Number from Seller. If replacement parts are requested, Customer will be invoiced for new parts. Credit for returned goods shall be issued to Customer at such time as the manufacturer issues a credit to Seller. If parts are not received by Quantum Automation within 30 days of issuing the RMA, the RMA will be closed with no credit issued.

#### **In Warranty Returns**

#### **30 day money back guarantee for most Automation Direct Parts (see exceptions below)**

31-90 days–20% restocking fee on new parts

Over 90 days–return not accepted

Returned products that aren't sealed or in "like new" condition are subject to greater restocking fee.

**Non Automation Direct products subject to a minimum 20% restocking fee**

For 30-day money back guarantee returns of any order, in whole or in part, must be requested and returned no later than 30 calendar days after the shipping date. ALL SOFTWARE ONCE OPENED CANNOT BE RETURNED.

Marathon motors cannot be returned to Quantum Automation. For motor returns please contact Marathon Electric Sales and Support. Suspected defective IronHorse motors 50hp and larger must be inspected and serviced by an EASA-approved motor shop. This requires authorization from our technical support staff to initiate such service.

Search here to find a local shop nearest you: [hht://www.easa.com](http://www.easa.com). Seller reserves the right to refuse the return of goods that do not comply with these requirements.

**WARRANTY DISCLAIMER – WITH RESPECT TO GOODS COVERED BY ANY ORDER, INCLUDING REPAIR ORDERS, ASSEMBLY, OR MODIFICATION, SELLER MAKES NO WARRANTY, EXPRESSED OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE, OR AS TO INFRINGEMENT. SELLER DOES NOT SEEK TO LIMIT THE CUSTOMER'S WARRANTY RIGHTS TO ANY EXTENT NOT PERMITTED BY APPLICABLE LAW.** Seller shall provide the manufacturer's warranty, if any, and Customer's rights in respect to any goods covered by its order shall exclusively be against the manufacturer, under the manufacturer's warranty. Goods which Customer elects to return to Seller and which Seller elects to receive for transmittal to the manufacturer under the manufacturer's warranty, may only be returned to Seller with transportation charges to Seller and to the manufacturer prepaid. Seller shall not be obligated to assist Customer in pursuing any manufacturer warranty.

**Out of warranty returns are for repair only** and will require a PO from Customer for repair costs. Repair costs will be quoted after manufacturer assesses repair.

**Return Shipping Instructions:**

1. Use completed RMA form as a packing slip. Write the RMA number on the outside of the shipping box (not the product box). Please return the product within 2 weeks after the RMA number is issued.
2. Product MUST be returned in the original box in like new condition if credit is required. (In warranty returns required.)
3. Do not mark or write on the original product box.
4. Shipment should be packaged appropriately to avoid damage.
5. Return must be complete. Do not ship partial shipments.
6. Return only products that are issued to that RMA number. Additional products that are sent without approval will be returned to Customer at Customer's expense.
7. If Quantum Automation is the cause for an error causing an RMA, Quantum Automation will pay for **freight** both ways. Otherwise, the Customer is responsible for freight costs to Quantum Automation.

**Credit for Returns** – Credit issued for returned goods shall be applied to the Customer's account balance or held in Customer's account for one year. In the event no activity occurs in Customer's account for a period of one year, Customer may, at any time during the year, request a refund by check, in the amount of the credit held in the account.

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**LIMITATION OF LIABILITY – IN NO EVENT, INCLUDING BUT NOT LIMITED TO THE SALES OF GOODS MANUFACTURED BY OTHERS, REPAIRS, OR MODIFICATION OF GOODS, SHALL SELLER BE LIABLE FOR ANY SPECIAL INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFITS, REVENUE, OR DATA, EVEN IF THE SELLER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.** In any case, the Seller's liability, whether based on contract, negligence, or any other cause of action, shall not exceed the cost of correcting the defects or the purchase price of the goods covered by the order, whichever is less. Prior to resorting to the Seller based upon any cause of action, Customer shall first exhaust all manufacturer's warranties.

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**Trademark and Trade Name** – No order or agreement between the parties shall be construed to give either party any ownership rights or interest in the other party's trade name or trademarks, unless such rights or interests are expressly given in writing.

**Delays** – In the event that performance of the part of Seller shall be delayed or suspended as a result of circumstances beyond both parties' reasonable control, without either party's fault or negligence, then the period of

performance shall be extended to the extent of any such delay and neither party shall incur any liability to the other party as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder shall include, but not be limited to: Acts of God; acts of force majeure, civil or military authority; acts of public enemy; war; acts of terrorism; insurrection; acts of the Federal Government or any unit of State or Local Government beyond Customer's control in either sovereign or contractual capacity; fires; floods; accidents; explosions; epidemics; earthquakes; the elements; quarantine restriction; strikes; labor disputes; interruption of electrical power or other public utility; freight embargoes or delays in transportation.

Seller's performance hereunder is contingent upon the full cooperation of Customer. If any delays in Seller's performance that occur as a result of failure or untimely performance by Customer which prevents the completion, in whole or in part, of services to be performed by Seller, then the time for performance shall be extended to the extent of any such delay and Seller shall not incur any liability to Customer as a result of such delay.

**Relationship** – Nothing herein contained shall be construed to imply a joint venture, partnership or principal-agent relationship between Seller and Customer, and neither party shall have the right, power or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing.

**Non-Waiver** – No waiver shall be deemed to have been made by Seller or Customer unless expressed in writing and signed by the waiving party. The failure of either party to insist in any one or more instances upon strict performance or any of the terms or provisions of these terms and conditions, order, or applicable agreement, or to exercise any option or election herein or therein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue and remain in full force and effect, and no waiver by any party or any one or more of its rights or remedies under these terms and conditions shall be deemed to be a waiver of any prior or subsequent rights or remedy hereunder or at law. All remedies afforded in these terms and conditions, order, or applicable agreement, shall be taken and construed as cumulative; that is, in addition to every other remedy available at law or in equity.

**Non-Solicitation of Personnel** – Customer agrees not to engage in any attempt whatsoever, to hire, or to engage as independent contractors, Seller's employees or independent contractors during the term of any applicable order or agreement between the parties, and for a period of twelve (12) months following expiration or termination of the order or agreement term except as may be agreed to in writing by both parties, or as results from Seller's employee independently responding to Customer's public posting of an available position. Any violation of this provision will be considered a material breach of these terms and conditions.

**Customer's Hold Harmless Agreement** – Customer shall hold Seller harmless against any expense, judgment, or loss for infringement of any patents, copyrights, or trademarks that result from Seller's use of designs, plans and specifications, or computer programs furnished by Customer.

**Support Services** – Customer may be entitled to limited support services for goods purchased pursuant to these terms and conditions or, in some cases, these services may be provided by Seller for a fee. Support services may include assistance in implementation planning, systems analysis and design, evaluation, and training of Customer personnel. Support services do not include the installation of any goods. Installation is the responsibility of the Customer.

**Assignment and Delegation** – Neither party shall assign or delegate any purchase order or any similar document this Agreement or any rights, duties or obligations hereunder, except as otherwise provided herein, to any other person and/or entity without prior express written approval of the other Party. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, legal representatives and assignees of the parties hereto.

**Personnel** – Seller reserves the right to determine which of its personnel shall be assigned to perform services, and to replace or reassign such personnel during the term thereof; provided, however, that Seller will, subject to scheduling and staffing considerations, attempt to honor Customer's request for specific individuals.

**Governing Law** – These terms and conditions shall be governed by, and shall be construed pursuant to and in accordance with, the laws of the State of California and the United States of America. The venue of any disputes shall be Orange County, California.

**Statute of Limitations** – Any claim to enforce any right of either party hereunder or arising as a result of an alleged breach of these terms and conditions must be commenced within twelve (12) months after the claim arises or the breach occurs, except a claim for payment which shall be commenced twelve (12) months from the date of last payment.

**Effect of Purchase Order** – In the event of any conflict between these terms and conditions of Seller and any terms and conditions of any purchase order or any similar document by which Customer may place an order, the terms and

conditions of Seller shall control. Seller may process the order of Customer, however, such activity shall not be construed as an acceptance by the Seller of any Customer terms set forth thereon.

**Dispute Resolution** – Seller and Customer agree to resolve all disputes arising out of or relating to the interpretation, application, breach, or enforceability of these terms and conditions and/or other factual or legal matters in question arising out of or relating to these terms and conditions by mediation or arbitration as set forth below:

(a) **Mediation.** Any dispute arising out of or relating to the interpretation, application, breach, or enforceability of this Agreement and/or other factual or legal matters in question arising out of or relating to this Agreement shall be submitted first for mediation with Judicial Arbitration and Mediation Services (“JAMS”) in Orange County, California. If mediation is unsuccessful or waived, then the dispute shall be submitted to arbitration pursuant to sub-section (b) below. Costs and expenses, including attorneys’ fees, related to the mediation shall be borne by each Party; however, the Parties shall equally split the costs and fees charged by the mediator and JAMS.

(b) **Arbitration.** If mediation identified in sub-section (a) above is unsuccessful or waived, then the dispute shall be settled by binding arbitration conducted in accordance with JAMS Expedited Arbitration Procedures as then in effect, except as provided herein. Any arbitration shall be held in Orange County, California, before one independent arbitrator mutually selected by the parties from JAMS. Costs and fees of the arbitrator shall be borne by the non-prevailing party. The award of the arbitrator, which may include equitable relief, shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Any demand for arbitration shall be in writing. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based upon such claim, dispute, or other matter would be barred by the applicable statute of limitations.

**Attorneys’ Fees** – In the event of any action, suit or proceeding between the parties relating to the subject matter hereof, except mediation, the prevailing party shall be entitled, in addition to any other rights and remedies it may have, to recover its reasonable attorneys’ fees and related costs from the non-prevailing party.

**Entire Agreement** – These terms and conditions together with all documents incorporated by reference herein as applicable, constitute the entire and sole agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations, understandings, or other matters, whether oral or written, with respect to the subject matter hereof. These terms and conditions cannot be modified, changed or amended, except for in writing signed by a duly authorized representative of each of the parties.

**Severability** – If any provision of these terms and conditions is held by a court of competent jurisdiction to be unenforceable, in whole or in part, the remainder of the provision and the whole of these terms and conditions is severable and shall remain in full force and effect.

**Paragraph Headings** – The paragraph headings set forth in these terms and conditions are for the convenience of the parties, and in no way define, limit, or describe the scope or intent of these terms and conditions and are to be given no legal effect.