



Howland Technology, Inc. Tel: 847-965-9808
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Morton Grove, IL 60053 USA howlandtechnology.com

ELECTRIC DRIVES – Industrial Components & Systems

Terms and Conditions of Sale Rev. April, 2017

In the following Terms and Conditions of Sale (“Terms and Conditions”) the term “Seller” shall refer to Howland Technology, Inc. and the term “Buyer” shall refer to the entity placing an order for products from Seller.

1. **PRICES:** Prices shown on any Seller quotation, proposal or acknowledgment of an order which references these Term and Conditions (herein, a “Proposal”) are valid for 60 days from date hereof, unless otherwise noted in writing on the face of the Proposal. Any applicable sales tax, manufacturer’s tax, occupational tax, or other tax applicable to any products supplied hereunder (except for tax assessed on Seller’s income) shall be in addition to quoted prices and shall be paid by Buyer.
2. **SHIPPING TERMS:** All prices are F.O.B. Seller’s facility, and all responsibilities and obligations of Seller hereunder (except as provided for in Paragraph 4) are completed when Seller delivers the goods, properly consigned, to a common carrier at Seller’s facility. Unless designated by Buyer and confirmed in writing by Seller, selection of said common carrier shall be at Seller’s discretion. Risk of loss as to any products or goods supplied hereunder shall pass from Seller to Buyer upon delivery to said common carrier. Any shipping dates provided to Buyer in any other manner are approximate, and Seller shall not be liable for failure to adhere to any such dates. Seller reserves the right to limit the value and/or quantity of any one shipment.
3. **CHANGES:** No change in drawings or specifications or terms of sale may be made unless specifically agreed to in writing by an officer of Seller. If such changes cause a material increase or decrease in Seller’s cost or in the time for performance, equitable adjustment in the price and time for performance will be made by Seller, and the Proposal will be modified in writing accordingly. Prices quoted are based on continuous manufacture for rates of delivery specified. Any requested delay of more than 30 days from the original requested ship date shall result in additional charges assessed to Buyer.
4. **LIMITED WARRANTY:** Seller shall pass through to Buyer all applicable warranties furnished by Seller’s suppliers. In addition, Seller hereby warrants that products supplied hereunder shall be free from defects in material and workmanship for a period of one year from the date of manufacture (the “Warranty Period”). If, during the Warranty Period, (i) Buyer advises Seller in writing as to a defect in a product provided hereunder; (ii) such product is returned to a receiving point designated by Seller; and (iii) an examination of such product discloses to Seller’s reasonable satisfaction that such product is defective and such defect was not caused by accident, abuse, neglect, alteration, improper installation, lightning damage, submersion, short circuits due to improper handling, repair, improper testing or use contrary to any instruction issued by Seller, Seller will repair or replace (at Seller’s option) the defective product at no cost to Buyer, except that Buyer shall be responsible for all shipping to and from the designated delivery point. Replacement shall mean furnishing Buyer with a new or reconditioned (at Seller’s option) product equivalent to the defective product. All defective products returned to Seller and subsequently replaced under this warranty shall become the property of Seller. All products returned to Seller for repair or replacement pursuant to this warranty must be properly packed to prevent physical damage. Any such returns not authorized in advance by Seller shall be rejected, and Seller shall have no liability for any warranty repair or replacement relating thereto. Seller does not warrant that any product is suitable for use in any particular application. Buyer shall be solely responsible for evaluating the appropriateness of the use of any specific product for a particular application. Notwithstanding the foregoing, Buyer shall notify Seller of Buyer’s intended use of any such product, and Seller shall be entitled to rely upon such representation in furnishing any product to Buyer.
5. **WARRANTY LIMITATIONS:** THE FOREGOING WARRANTY CONSTITUTES THE EXCLUSIVE WARRANTY PERTAINING TO ANY PRODUCT FURNISHED HEREUNDER, AND SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). THE FOREGOING REMEDY OF BUYER FOR ANY NONCONFORMITY OF THE PRODUCTS COVERED BY THIS WARRANTY IS BUYER’S EXCLUSIVE REMEDY FOR ANY FAILURE OF SELLER TO ADHERE TO ITS WARRANTY OBLIGATIONS SET FORTH ABOVE. PRODUCTS SOLD HEREUNDER ARE INTENDED TO BE USED ONLY IN THE APPLICATION SPECIFIED BY BUYER TO SELLER IN ACCORDANCE WITH PARAGRAPH 4, AND ANY INCONSISTENT USE SHALL RENDER THE LIMITED WARRANTY EXPRESSED HEREIN NULL AND VOID.
6. **CUSTOM DEVELOPED VEHICLE CONTROL LANGUAGE AND MODIFICATIONS:** To the extent that any product being sold by Seller to Buyer contains any variations in the original product provided by the manufacturer or that contains any custom developed vehicle control language, or other hardware or software variations (“VCL product”), it is agreed that the VCL product was developed in whole or in part by Seller for Buyer. It is agreed by both parties that Buyer is responsible for the final validation of the VCL product to ensure its safe operation in its application. Seller does not guarantee the safe operation of any vehicle or product, including the possibility that the VCL product could allow a vehicle or product to operate in such a way as to cause injury or damage to property or persons. Buyer hereby releases and indemnifies Howland Technology, Inc., its subsidiaries, employees and agents from any actions or claims (legal or otherwise) resulting from any injury or damage, of any nature whatsoever, in any way connected with the use of the VCL product and further agrees to indemnify and hold Howland Technology, Inc., its subsidiaries, employees and agents harmless from any claims or obligations that may be incurred as the result of any such injury or damage resulting from the use of any VCL product.



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7. **PRODUCT SOFTWARE MODIFICATIONS LICENSE:** To the extent that any product being sold by Seller to Buyer contains any variations made to the original software that is provided by the manufacturer, or contains any custom developed software coding by Seller (“Software Modifications”), Seller grants to Buyer a personal, non-transferable, and non-exclusive license (“Software Modifications License”) to use the Software Modifications only within the specific product purchased from Seller and in no other products. In the event that Buyer wishes to sell the specific product purchased from Seller that contains Software Modifications, it shall first notify Seller in writing, at least five days prior to transferring ownership or use of the product to a third party, and shall also notify the new buyer of the product that this Section 7 shall apply to use by any new owner or user of the product containing Software Modifications. Seller reserves the right to disallow any party purchasing the product from Buyer from using the Software Modifications at its sole and absolute discretion. Seller expressly acknowledges and agrees that any Software Modifications are the sole property of Seller and are of a proprietary nature. Buyer expressly agrees that it will not, and will not cause any third party to, disassemble, decompile, copy, back up, reproduce, or reverse engineer, in whole or in part, any of the Software Modifications, unless expressly agreed to by Seller in writing, which agreement may be withheld at the sole and absolute discretion of Seller. If any suit or action is brought by Seller to enforce the terms of this Section 7 against Buyer or a subsequent owner/user of the product, and Seller prevails, Buyer shall pay to Seller all of its costs incurred to enforce the terms of this Section 7, including but not limited to its reasonable attorneys’ fees.
8. **LIMITATIONS ON USE OF SOFTWARE MODIFICATION TOOLS:** To the extent that Seller provides Buyer with any tool from Seller, the manufacturer, or otherwise that can be used in creating Software Modifications (“Software Modifications Tool”), Buyer expressly warrants and represents that it shall not use the Software Modifications Tool for any purpose other than for Software Modifications to products sold to it from Seller. Buyer expressly agrees that it will not allow or cause any third party to use the Software Modifications Tool provided to Buyer from Seller, unless expressly agreed to by Seller in writing, which agreement may be withheld at the sole and absolute discretion of Seller. If any suit or action is brought by Seller to enforce the terms of this Section 8 against Buyer or a subsequent owner/user of the product, and Seller prevails, Buyer shall pay to Seller all of its costs incurred to enforce the terms of this Section 8, including but not limited to its reasonable attorneys’ fees.
9. **PRODUCT USE DISCLAIMER:** Seller hereby disclaims any representation, recommendation or claim, whether written or oral, regarding the utility, safety and effectiveness of the products sold to Buyer for any particular purpose. Buyer hereby expressly acknowledges and agrees that Buyer is solely responsible for the proper testing and validation of all products sold by Seller to Buyer to ensure that the products comply with necessary specifications for its intended application and that the use of the products sold by Seller to Buyer are being used in a way that does not cause harm, injury or damage to any persons or property.
10. **LITHIUM BATTERY CHARGING DISCLAIMER:** Seller hereby disclaims any representation, recommendation or claim, whether written or oral, regarding the utility and effectiveness of any battery charger that is sold from Seller to Buyer that may be used to charge lithium battery packs. Buyer expressly acknowledges and agrees that (a.) many battery chargers require a battery management system in order to properly and safely charge lithium battery packs; and (b.) Buyer is solely responsible for the proper testing and validation of all battery chargers sold by Seller to Buyer to be used in a way that does not cause harm, injury or damage to any persons or property.
11. **INDEMNIFICATION AND LIMITATION ON LIABILITY:** Buyer hereby releases, indemnifies and holds harmless Seller, its affiliates and their respective officers, directors, employees and agents from and against any actions or claims (legal or otherwise, and whether brought by Buyer or by any third party) resulting from any injury or damage, of any nature whatsoever, in any way connected with the use of a product provided hereunder in a manner which is inconsistent with the use specified by Buyer to Seller in accordance with Paragraph 4. In addition, and without limiting the foregoing, UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER, OR ANY THIRD PARTY CLAIMING UNDER BUYER, FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR OTHER DAMAGES WHETHER IN AN ACTION BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, ARISING OUT OF OR RELATED TO THE PRODUCTS SOLD TO CUSTOMER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF SELLER IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. SELLER’S TOTAL LIABILITY, IF ANY, FOR ANY DAMAGES SUFFERED BY BUYER, OR ANY THIRD PARTY CLAIMING UNDER BUYER, OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, SHALL BE LIMITED TO DIRECT MONEY DAMAGES ACTUALLY INCURRED, AND SHALL NOT EXCEED THE AMOUNT OF MONEY PAID BY BUYER TO SELLER FOR THE PRODUCT GIVING RISE TO SUCH CLAIM. NO ACTION, REGARDLESS OF FORM OR BASIS ARISING OUT OF THE TRANSACTIONS HEREUNDER MAY BE BROUGHT BY BUYER AFTER THE SOONER TO OCCUR OF (A.) THE RUNNING OF ANY APPLICABLE STATUTE OF LIMITATIONS; OR (B.) ONE (1) YEAR FOLLOWING THE TIME IN WHICH BUYER KNEW OR REASONABLY SHOULD HAVE KNOWN THE OCCURRENCE OF THE EVENT THAT GAVE RISE TO SUCH ACTION. SELLER HEREBY DISCLAIMS ANY DUTY TO INDEMNIFY BUYER, OR ANY THIRD PARTY CLAIMING UNDER BUYER, OR ANY OTHER PARTY.
12. **DEFAULT OF BUYER:** In the event Buyer cancels any order hereby governed, in whole or in part, or such order is cancelled by Seller because of default by Buyer, Buyer shall pay Seller upon demand, all direct damages sustained by Seller as a result of such cancellation including for completed units, shipped or unshipped, at the current price applicable to the total quantity completed at the time of cancellation.



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13. **FORCE MAJEURE:** Seller shall not be liable for any default or delay in delivery due to causes beyond its control, such as acts of God, acts of Buyer, acts of civil or military authority, fires, strikes, floods, delays in transportation, government regulation (whether valid or not), or inability due to causes beyond the control of Seller to obtain necessary labor or materials.
14. **SPECIAL TOOLS:** Buyer agrees to pay for any special tools, machines, dies, fixtures and other items necessary for the manufacture of the product and/or components as may be detailed by Buyer's order, but same shall be and remain Seller's property. Seller agrees to maintain any such special tools, machines, dies, fixtures and other property for their normal productive life; *provided, however*, that any such items that have been inactive for three years may be scrapped without notice to Buyer.
15. **PUBLICATION PRICES:** Prices shown in any Seller publication are subject to change without notice, and are not to be construed as a definite quotation or offer to sell by Seller. Such literature is maintained only as a source of general information, and any prices shown therein are subject to confirmation with a specific quotation.
16. **INCONSISTENT PROVISIONS:** In the event of an inconsistency with Seller's Proposal and these Terms and Conditions, Seller's Proposal shall control. If Buyer's purchase order, acceptance of a quotation, proposal, acknowledgment or any other similar such notice which pertains to any order hereby governed contains terms (whether verbal, written, printed or stamped) which are inconsistent with these Terms and Conditions and/or any Proposal, these Terms and Conditions and Seller's Proposal shall apply. Any acceptance of a Proposal or acknowledgement of an order hereby governed is expressly made conditional on Buyer's assent and acceptance to these Terms and Conditions.
17. **PAYMENT TERMS:** To Buyers of established credit satisfactory to Seller, payment shall be Net 30 days. For all other Buyers, payment shall be cash with order or credit card payment in advance, unless or until satisfactory credit is established with Seller, as confirmed by Seller in writing. All invoices that are not paid within 30 days of issuance shall incur interest at a rate of 18% per annum or 1.5% per month.
18. **CHANGES TO TERMS AND CONDITIONS:** The foregoing Terms and Conditions may not be changed or amended except in writing executed by the duly authorized representatives of Seller and Buyer. Without limiting the generality of the foregoing, Seller's President or Vice President are the only representatives of Seller that may approve any exceptions or amendments to the limited warranty provisions provided for herein. Except for amendments or changes approved as provided for in this Paragraph 16, any purported modification to these Terms and Conditions shall be null and void.
19. **INSPECTION AND ACCEPTANCE.** Upon delivery, Buyer shall be entitled to inspect any products delivered hereunder and may reject any nonconforming products within ten (10) days following delivery. In order to be effective, any such rejection shall be in writing, delivered to Seller within the foregoing period and setting forth in detail the reason for the rejection. Unless such notice is provided in accordance herewith, Buyer shall be deemed to have accepted all such products, and other than claims covered under Paragraph 4, any claims relating nonconformance of any such product are thereafter waived by Buyer.
20. **GOVERNING LAW.** These Terms and Conditions and performance hereunder by Seller and Buyer shall be governed by and construed in accordance with the laws of the state of Illinois without regard to conflict of law principals. Buyer and Seller hereby irrevocably agree that venue for any litigation arising hereunder shall lie in the state or federal courts located in Cook County, Illinois.