

# TERMS & CONDITIONS

These terms and conditions apply to your purchase and use of all products from Control Concepts, Inc. ("CCI"). By ordering such products you agree to these terms and conditions.

**1. Payment Terms and Prices.** For domestic and international customers, payment in U.S. Dollars (USD) is due at the time of shipment without any setoff or deduction. CCI may offer limited open account terms to customers. If an open account has been granted to a customer, the invoice payment is to be received within the period of days agreed to from the date of invoice FOB (EXWORKS) plant in Chanhassen, MN, USA. The due date is printed on the invoice. CCI will charge 1.5% interest per month on all invoices not paid in full by the due date. In the event CCI incurs any costs, expenses or attorney fees as a result of customer's failure to timely pay invoices, customer shall be responsible for all such costs, expenses and attorney fees. CCI reserves the right to alter or suspend credit or change credit terms based solely on CCI's discretion. CCI objects to and is not bound by any terms or conditions on Buyer's order which attempt to impose on CCI any terms or conditions at variance with CCI's terms and conditions. CCI's prices are subject to change without notice. Unless otherwise stated, all quotations from CCI are firm for a period of 60 days. Such prices quoted do not include federal, state or local taxes, VAT, customs, transportation costs or surcharges, or duties; all of which shall be paid by Buyer. CCI participates in the national Streamlined Sales Tax Program "SST" thus agreeing to collect state and local sales tax in the US jurisdictions participating in SST program. A Sales Tax Exemption Certificate is required on tax exempt orders prior to shipment (as required by law). Invoices over \$4000.00 USD paid by PayPal or credit card will be charged a processing fee<sup>1</sup>. Changing payment terms after shipment for invoices of any amount to use PayPal or a credit card will be subject to a processing fee<sup>1</sup>.

<sup>1</sup> Processing fees and limits on orders over \$4,000 apply to the following states:

- MA & CT: we will not accept credit card orders over \$4,000. Contact CCI for other payment options.
- CO & OK: will be charged a 2% credit card transaction fee.
- In all other states a 3.5% credit card transaction fee will be applied.

**2. Limited Warranty.** CCI provides a two year warranty to the original user: CCI products will be free from defects in materials and workmanship for a period of two years after the date CCI ships such products. If any CCI products are found to be defective in material or workmanship during the applicable warranty period, CCI's entire liability, and Buyer's sole and exclusive remedy, shall be the repair, replacement or return of purchase price as determined in CCI's sole discretion. CCI shall not be liable for any costs, expenses or damages, whether direct or indirect, associated with the installation, operation, removal or re-installation of any defective product. All shipping and freight costs are the responsibility of the Buyer. CCI's limited warranty shall not be effective or actionable unless Buyer complies with all installation and operating instructions furnished by CCI, or if the products have been modified or altered without the written consent of CCI, or if such products have been subject to accident, misuse, mishandling, tampering, negligence, improper installation, or improper maintenance. Any warranty claim must be submitted to CCI in writing within the stated warranty period and as soon as such alleged defect is known to Buyer. Warranty repairs are to be performed at CCI's factory with the transportation cost of returning material to be repaired or considered for replacement under warranty to be the obligation of Buyer.

**3. Disclaimer.** CCI's limited warranty is made in lieu of, and CCI disclaims all other warranties, whether expressed or implied, including but not limited to any implied warranty of merchantability, any implied warranty of fitness for a particular purpose, or any implied warranty arising out of a course of dealing or of performance, custom or usage of trade.

**4. Limitation of Liability.** CCI shall not, under any circumstance, be liable for direct, indirect, incidental, special, consequential or punitive damages (including, but not limited to, loss of profits, revenue or business) or damage or injury to persons or property in any way related to the manufacture or the use of its products. The exclusion applies regardless of whether such damages are sought based on breach of warranty, breach of contract, negligence, strict in tort, or any other legal theory, even if CCI has notice of the possibility of such damages.

**5. Ownership of Work.** CCI shall be the owner of all work created for Buyer under this agreement or any purchase orders. CCI shall be the exclusive owner of all ownership rights in such products created under such purchase order or agreements. Buyer agrees to not reverse engineer or in any other way copy, or hire a 3<sup>rd</sup> party to reverse engineer or in any other way copy, such products provided hereunder.

**6. Buyer's Rights Related to Shipments, Rescheduling and Cancellation.** All statements of prospective date of shipments are estimated. Firm orders that have been accepted are subject to cancellation by Buyer, or changes in specifications only on the basis of CCI being reimbursed for the costs incurred. The Buyer shall specify the method of shipment. If no method is specified, CCI will determine the best compromise between delivery times, transportation costs and will ship accordingly. All transportation costs of products or material shipped from CCI

or returned to CCI will be the obligation of the Buyer. Cancellation by Buyer cannot be effective except on terms which will indemnify Seller from loss of the order. Buyer's proposed terms as to such indemnity and not as to other matters relating to cancellation are accepted, if they fulfill this condition. Orders for special material and quantities that exceed four times the average monthly shipment of a single item are non-cancellable, non-returnable. No material (except defective material) will be taken back and credited or replaced except upon consent and upon terms and conditions agreed upon by the Seller in writing. Buyer remains responsible for freight charges, duties, VAT and sales taxes in the event that Buyer's preferred shipping method is not used. Buyer requested schedule changes from the original accepted purchase order will be reviewed on a case-by-case basis. Buyer will be solely responsible for any expedite charges, overtime, or other expenses necessary for "Pull-ins". "Push-outs" will be accepted for up to 6 months from original delivery date provided the reschedule is received 4 weeks prior to original shipment date.

**7. Returns.** Authorization, in the form of a Returned Material Authorization number (RMA#) and shipping instructions for the return of any product must be obtained by the Buyer from CCI. Returned materials will be accepted only if CCI's RMA form has been completed, authorized in advance, and transportation pre-paid. A restocking fee of up to 20% may be charged in addition to any expense incurred to restore goods to as-new condition. This fee will be deducted from the credit to be issued covering the return unless the cost is covered by the warranty. In the event the cost to restore to as-new condition exceeds 50% cost of a new unit, the returned unit will be considered scrap and no credit will be issued. Special goods, quantities that exceed four times the average monthly shipment or obsolete designs differing from the current standard product are not subject to return for credit. Final determination as to whether a product is actually defective or in warranty rests with CCI.

**8. Risk of Loss.** Unless otherwise agreed in writing by CCI, delivery will be made and title will pass EXWORKS at the point of shipment. The transportation expenses shall be paid by the Buyer. Risk of loss or damage shall fall upon the Buyer. The Buyer assumes full responsibility to apply for any shipment insurance deemed necessary and to file any claims for loss or damage with the carrier.

**9. Relationship.** The relationship between the parties is as an independent contractor. As such, neither party is an employee, agent or representative of the other party nor has the power to bind the other party. Each party is responsible for its own taxes.

**10. Governing Law.** All orders in this agreement shall be construed and enforced in accordance with the laws of the state of Minnesota with exclusive venue for any such conflicts being in Carver County District Court, Minnesota, U.S.A.

**11. Waiver.** Failure by CCI to exercise any rights under these Terms and Conditions or any order shall not be deemed a waiver of any future rights.

**12. Confidentiality.** Confidential Information means information that is not known to the general public and proprietary to CCI and material to CCI's business or that CCI is obligated to treat as proprietary or confidential including, but not limited to, CCI's business operations, customers, contacts, developers, pricing information, employee information, drawings, plans, specs, database, data, know how, discoveries, production methods or any other confidential information. CCI/User acknowledges and agrees that such information is confidential, greatly affects the success of the business of CCI and that CCI/User will not disclose or use any such Confidential Information outside of the current transaction with CCI.

**13. Arbitration.** Any controversy or claim arising out of or relating to these Terms and Conditions, or the making, performance or interpretation thereof, shall be settled by binding arbitration in Carver County, Minnesota, U.S.A.

**14. Seller's Rights Related to Delays, Rescheduling or Cancellation.** Notwithstanding anything above, it shall not be considered a breach or default of this Agreement if CCI, in its reasonable discretion has to reschedule or cancel a shipment to the extent that such delay or failure is caused by an occurrence beyond the control of CCI, including but not limited to acts of governmental authorities, acts of god, the discovery of materially different conditions related to the availability of materials or labor to fulfill the shipment, wars, riots, rebellions, sabotage, fire, explosions, accidents, floods, strikes, lockouts, changes in laws, regulations, ordinances, health concerns, pandemics, epidemics or any other reason in the reasonable discretion of CCI that is not able to provide shipment as initially set forth in its order confirmation. In the event CCI intends to invoke this provision, CCI shall provide notice to the Buyer as soon as possible after the occurrence of an event giving rise to the use of this provision. CCI's delay, rescheduling, or cancellation of any such orders of Buyer shall not constitute a breach or default of these terms and conditions, any purchase order or any order confirmation and will not give a rise to any claim for damages.