1. Application

1.1. These Conditions together with the Company's acknowledgement of Order or written acceptance of Order, the Warranty Conditions and any other document referred to in these Conditions form the Contract for the sale of the Products set out in the Order by the Company to the Buyer and shall constitute the entire agreement between the parties. These Conditions apply in place of and prevail over any terms and/or conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The parties agree that any other terms and conditions that may be contained or referred to in the Buyer's Order or in other correspondence will not form part of the Contract.

1.2. The Buyer acknowledges that in agreeing to these Conditions it does not rely on any statement, representation, assurance, or warranty given by the Company (whether made innocently or negligently) that is not set out in these Conditions or the Warranty Conditions.

1.3. The Buyer agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement or representation in any pre-contractual correspondence (including any quotation) and/or these Conditions.

1.4. For the avoidance of doubt, the Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.

1.5. No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives). The Company may update the Warranty Conditions from time to time by publishing the updated version at www.benincauk.co.uk/warranty, and the version in force on the date of the Order applies to that Order.

2. Definitions

2.1. **"Buyer"** shall mean the person or firm who purchases Products from the Company in the course of its business.

2.2. **"Company"** shall mean BENINCA AUTOMATION UK LIMITED (registered in England and Wales with company number 07129841) whose registered office is at Unit H Venture House, Bone Lane, Newbury, Berkshire, RG14 5SH.

2.3. **"Conditions"** shall mean the terms and conditions set out in this document as amended from time to time in accordance with Clause 1.5.

2.4. **"Confidential Information"** shall mean any information of a confidential nature concerning the business, assets, affairs, customers, clients or suppliers of the Company or of any member of its Group, including information relating to the Company's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

2.5. **"Contract"** shall mean the contract between the Company and the Buyer for the sale and purchase of Products in accordance with these Conditions.

2.6. **"Data Protection Legislation"** shall mean all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal information relating to a living individual ("Data") as contemplated by the Data Protection legislation; and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory or supervisory authority and applicable to a party.

2.7. **"Group"** shall mean in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

2.8. **"Intellectual Property Rights"** shall mean patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, brand and brand names, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

2.9. **"Order"** shall mean the Buyer's order for the Products in the Buyer's purchase order or the Buyer's order submitted orally by phone or otherwise.

2.10. "**Products**" shall mean the products (or any part of them) set out in the Order.

2.11. "**Warranty Conditions**" shall mean the Company's Returns Policy & Warranty Conditions published at www.benincauk.co.uk/warranty, in the version in force on the date of the Order.

2.12. "**Working Day**" shall mean a day other than a Saturday, a Sunday or a public holiday in England.

3. Quotations and Acceptance

3.1. The Order constitutes an offer by the Buyer to purchase the Products in accordance with these Conditions. The Buyer is responsible for ensuring that the Order is complete and accurate, and the Company will not be liable for any loss the Buyer suffers as a result of incomplete or inaccurate information contained in the Order.

3.2. The Contract shall come into existence upon acceptance of the Order (by way of written acceptance, acknowledgement of Order or despatch of the Products) by the Company.

3.3. A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise the same at any time prior to the Company's acceptance of the Buyer's Order.

3.4. All descriptions and illustrations contained in catalogues, price lists, proposals, quotations, advertising matter and all other publications and/or literature issued by the Company are intended to be illustrative only and shall not form part of a Contract unless specifically incorporated therein by written agreement between the Buyer and the Company.

3.5. The Company reserves the right to update any specification of Products without prior notice to any Buyer; however, such changes shall not materially impair performance.

4. Prices

4.1. The prices payable for the Products shall be those contained in the Company's trade price list in force at the time of despatch or as varied in the Company's acceptance and/or acknowledgment of Order. Subject to 3.3 quotations given in writing by the Company shall remain valid for 30 days from the date of quotation.

4.2. The price of the Products excludes the costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to the Buyer in addition to the price.

4.3. The Company shall have the right at any time to withdraw any discount from its trade price list and/or to revise prices to take into account any increase in the cost of the Products due to:

a. Any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes, tariffs and duties, and increases in labour, materials and other manufacturing and logistics costs);

b. Any request by the Buyer to change any of the details in the Order, including but not limited to the delivery date(s), quantities or types of Products ordered and if such change is accepted by the Company; or

c. Any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instruction within the Order.

4.4. All prices for the Products are exclusive of VAT which the Buyer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice.

5. Terms of Payment

5.1. The Company reserves the right to request a deposit on Orders. The deposit amount will be decided by the Company. When a deposit is requested, the deposit must be paid before the Company will process the relevant order. The deposit shall be treated as a prepayment of part of the purchase price and may be retained if the Buyer cancels the order for any reason, where permitted.

5.2. Payment of invoices shall, unless otherwise agreed in writing, be made in full without any deduction, set-off, counterclaim, withholding or lien within 30 days starting from the first day of the month immediately after the date of the invoice unless the Company specifies otherwise or requires full payment with the Order. All payments should be made by interbank transfer in cleared funds to a bank account nominated in writing by the Company. Time for payment shall be of the essence of the Contract.

5.3. Interest shall be payable on overdue accounts at the rate of 5% per annum over the Bank of England's base rate to run from the due date for payment thereof until receipt by the Company of the full amount in cleared funds whether or not after judgment.

6. Delivery

6.1. Delivery dates mentioned in any quotation, acknowledgement of Order or elsewhere are approximate only and not contractually binding and the Company shall have no liability to the Buyer in respect of any failure to deliver on any particular date or dates. As such, time for delivery is not of the essence.

6.2. Delivery shall take place at the location specified by the Buyer in the Order, or as otherwise agreed between the parties.

6.3. Each delivery of the Products is accompanied by installation instructions.

6.4. If the Buyer refuses or fails to take delivery of Products tendered or fails to take any action necessary on its part for delivery and/or shipment of the Products the Company shall be entitled to terminate the Contract with immediate effect, to dispose of the Products as the Company may determine, to retain any deposit and to recover from the Buyer any loss and/or additional costs incurred as a result of such refusal, failure, storage and subsequent disposal of the Products save that the Company will credit any amount it receives for the Products if resold by the Company.

6.5. Where the Buyer has failed to take delivery of the Products on the agreed delivery date, the Company may charge reasonable storage costs. If the delay exceeds 14 days, the Company reserves the right to resell the Products (without liability to the Buyer) and recover any associated losses from the Buyer.

6.6. Unless otherwise expressly agreed between the parties, the Company may effect delivery in one or more instalments. Where delivery is effected by instalment each instalment shall be treated as a separate contract for delivery. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

7. Storage Guidance

7.1. All Products must be stored indoors and in an environment that is:
clean and dry, free of any chemical interaction, free from any vibration, free of insects and airborne debris, and a constant temperature over dew point to prevent condensation.

7.2. All Products should be kept upright and protected from dust, bumps and scratches whilst stored.

7.3. Where the Products include batteries, it is necessary to keep such Products in a cool, dry and well-ventilated area. Batteries should be kept between 10°C and 25°C and the temperature of the room should not exceed 30°C.

7.4. The Buyer agrees to follow all storage guidance set out in this Clause 7 together with those provided on the box/packaging and/or in the instruction manual to the Products.

8. Title and Risk

All Products are supplied to the Buyer by the Company on the following terms:

8.1. Risk of loss or damage to any consignment of the Products shall pass to the Buyer on delivery.

8.2. Title of the Products shall not pass until the earlier of:

a. the Company receives payment in full and cleared funds in accordance with Clause 5 for the Products and any other products that the Company has supplied to the Buyer in respect of which payment has become due.

b. The Buyer resells the Products to any third party (including but not limited to an end-user) in the ordinary course of its business (but not otherwise) and subject to Clause 8.5, in which title to the Products shall pass to the Buyer immediately before the time at which resale by the Buyer occurs subject to clause 8.5.

8.3. Until title to the Products has passed to the Buyer, the Buyer shall:

a. store those Products in accordance with clause 7 and separately from all other products/goods held by the Buyer so that they remain readily identifiable as the Company's property;

b. not remove, deface or obscure any identifying mark or packaging on or relating to those Products;

c. maintain those Products in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks with a reputable insurer. On request the Buyer shall allow the Company to inspect those Products and the insurance policy; and

d. give the Company such information as the Company may reasonably require from time to time relating to the Products and the ongoing financial position of the Buyer.

8.4. Until such time as all outstanding invoice(s) have been paid in full and in cleared funds under the terms of this Contract or resale of the Products to a third-party, the Buyer acknowledges that it is in possession of the Products solely as bailee in a fiduciary capacity for the Company.

8.5. If the Buyer decides to, in the ordinary course of its business, sell and deliver the Products to any third party (including an end-user) prior to making payment to the Company for the Products or any other products that the Company has supplied to the Buyer in respect of which payment has become due, the entire proceeds of sale are held in trust for the Company and shall at all times be identifiable as the Company's monies. The Buyer agrees immediately upon being so requested by the Company to assign to the Company all rights and claims which the Buyer may have against the third party arising from such sale(s) until payment is made in full as aforesaid.

8.6. In the event that the sale proceeds from the sale of the Products to any third-party do not cover the full balance due to the Company, including any accrued interest, the Buyer remains liable to the Company for payment of the outstanding balance that remains due and shall continue to pay any interest on the overdue sum from the date until payment of the overdue sum.

8.7. Until title to the Products has passed to the Buyer, the Company may at any time inspect the Products and may at any time, upon demand, repossess them and for this purpose the Buyer shall procure the right for the Company to enter upon any premises where they are stored or where they are reasonably thought to be stored to remove such products in any of the following circumstances:

a. the Buyer commits a material breach of any term of the Contract;

b. the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

c. the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;

d. the Buyer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

e. a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
f. the Buyer (being an individual) is the subject of a bankruptcy petition or order;
g. a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
h. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer (being a company);
i. the holder of a qualifying charge over the assets of the Buyer (being a company) has become entitled to appoint or has appointed an administrative receiver;
j. a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the assets of the Buyer;
k. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
l. the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Contract is in jeopardy.
m. any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 8.7a to Clause 8.7l inclusive.

9. Compliance with Laws and Policies

9.1. The Buyer shall and shall procure that each member of its Group complies with all applicable laws, statutes, regulations and codes from time to time in force that apply to its use of the Products in the ordinary course of its business.
9.2. The Company may terminate this Contract and any other agreement between the Company and the Buyer with immediate effect by giving written notice to the Buyer if the Buyer commits a breach of clause 9.1.

10. Third Party Rights

10.1. The Company shall have no liability to the Buyer in the event of Products infringing or being alleged to infringe the rights of any third party including but not limited to any Intellectual Property Rights. In the event that the Products are or may be the subject of third-party rights the Company shall be obliged to transfer to the Buyer only such title as the Company may have in the Products.
10.2. This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

11. Liability

11.1. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
11.2. Nothing in these Conditions or the Contract limits or excludes the Company's liability for death or personal injury arising from the Company's negligence or for fraud by the Company or where, by law, liability cannot be so limited or excluded. The following provisions of this clause 11 shall be subject to this clause 11.2.
11.3. The Company shall not be liable to the Buyer for any losses suffered by the Buyer arising from: -
a. shortages in quantity delivered unless the Buyer notifies the Company of any claim for short delivery within 3 Working Days of receipt of the Products.
b. damage to or loss of the Products or any part thereof in transit (where the Products are carried by the Company's own transport or by a carrier on behalf of the Company) unless the Buyer notifies the Company of any such claim within 3 Working Days of receipt of the Products (or, in the case of damage that could not reasonably have been discovered on inspection at the time of delivery, within 7 days of receipt) and in such case the Company's liability is limited to amount actually recovered from the carrier. Where the carrier is the Buyer or a third party for the Buyer then the Company shall have no liability. Unless agreed otherwise, it is the responsibility of the Buyer to ensure it has sufficient insurance in place to cover the transportation of the Products.
c. defects in the Products caused by fair wear and tear, abnormal conditions of storage or use or any act, neglect or default of the Buyer or of any third party.
d. any defect in the Products which have arisen as a result of the Buyer failing to comply with the Company's oral or written instructions as to storage (as set out at clause 7), installation, use and/or maintenance of the Products.
e. any difference in the Product's description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements or in accordance with Clause 3.5.
f. any of the following heads of claim (each one shall be a distinct and separate head of claim severable from the others)
i. any indirect, special, or consequential loss or damage;
ii. any loss of business;
iii. any loss of profit;
iv. any loss of goodwill;
v. any loss of contract; or
vi. any third-party claims arising from or in connection with this Contract
11.4. Where liability is established or accepted by the Company the Company's only obligations shall be at its option to make good any shortage or non-delivery and/ or as appropriate to replace or repair any Products found to be damaged or defective and/or to refund or credit the cost of such Products to the Buyer in accordance with the Warranty Conditions only which shall be binding on the parties to the Contract.
11.5. The Company's aggregate liability to the Buyer whether arising under tort (including negligence), breach of contract, misrepresentation, breach of statutory or common law duty, rescission or otherwise shall in no circumstances exceed the cost of the defective, damaged or undelivered Products which give rise to such liability as determined by net price invoiced to the Buyer in respect of any occurrence or series of occurrences (together with any carriage charges that the Warranty Conditions provide are to be refunded).
11.6. Subject to the foregoing and save for the express warranty given in the Warranty Conditions, all conditions warranties and representations expressed or implied by statute common law or otherwise in relation to the Products are hereby excluded to the greatest extent permitted by law.
11.7. These Conditions shall apply equally to any repaired or replacement Products supplied by the Company.

12. Intellectual Property

12.1. All Intellectual Property Rights subsisting in the Products and/or generated by the sale of the Products and as may be contained in any drawings, literature, equipment and/or any other materials produced or supplied by the Company are owned by the Company and or AUTOMATISMI BENINCA SpA (the "**Parent Company**").
12.2. The Company grants the Buyer a non-exclusive right to use the trademarks of the Company for the purposes of marketing the Company's Products. The Buyer acknowledges and agrees that all rights in the trademarks shall remain in the Company and the Parent Company and the Buyer has and will acquire no right in them except for the right to use the trade marks as expressly provided in this Contract.
12.3. All representations of the trade marks that the Buyer intends to use shall be submitted to the Company for written approval before use.
12.4. The Buyer must not:
a. make any modifications to the trademarks;
b. use the trademarks in any way that might prejudice their distinctiveness or validity or the goodwill of the Company and Parent Company;
c. use the trademarks for any products other than the Company's products;

d. use in relation to the Company's Products any trademarks other than the Company's trademarks without the prior written consent of the Company;
e. use the trademarks as part of any marketing promotion which uses the Company's products as an inferior comparison; or
f. use the trademarks to hold themselves out as the Company and/or Parent Company.

12.5. The Buyer shall have no rights in respect of any trade names or Intellectual Property Rights used by the Company and/or its Parent Company in relation to the Products or the goodwill associated with them. The Buyer acknowledges that except as expressly provided above the Buyer will not acquire any rights in respect of such rights and goodwill and that they are, and shall remain, vested in the Company and/or its Parent Company.

12.6. The Company authorises the Buyer to use the marketing literature produced by the Company for the purposes of marketing the Products but the distribution of any such material to a third party is forbidden except with the written consent of the Company.

13. Data Protection

13.1. Where in the supply of the Products under a contract or otherwise the Company processes personal information supplied by the Buyer the Company will comply with all applicable requirements of the Data Protection Legislation and will process the personal information in accordance with the Company's privacy notice (as may be amended from time to time). A copy of the Company's privacy notice can be obtained by visiting the Company's website at https://benincauk.co.uk/privacy-policy/

14. Confidentiality

14.1. The Buyer undertakes that it shall not at any time during this Contract and for a period of two years after, disclose to any person the Company's Confidential Information, except as permitted under clause 14.2 below.

14.2. The Buyer may disclose the Company's Confidential Information:

a. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Buyer's rights or carrying out its obligations under or in connection with the Contract. The Buyer shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the Company's Confidential Information comply with this Clause 14, and
b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3. The Company reserves all rights in its Confidential Information. No rights or obligations in respect of the Company's Confidential Information are granted to the Buyer, or to be implied from the Contract.

15. Force Majeure

The Company shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of Products by the Company being prevented, hindered, delayed, or rendered uneconomic by reason, circumstance, cause or event beyond the Company's reasonable control including but not limited to:

a. An act of God, war, riot, strike, pandemic/epidemic, lock-out, trade dispute or labour disturbance, accident, break-down of plant or machinery, fire, flood, storm, difficulty or increased expenses in obtaining workmen, materials or transport; or
b. any other circumstance or cause beyond the Company's control

16. Termination

16.1. Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Buyer if:

a. the Buyer commits a material breach of any term of the Contract or any other agreement between itself and the Company, including but not limited to the Buyer's failure to pay any amount due under the Contract on the due date for payment.
b. the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
c. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
d. the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

16.2. In all other circumstances not referred to in clause 16.1 above, the Company may terminate the Contract by giving the Buyer 1 week's notice.

16.3. On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt.

16.4. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

16.5. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect. The Warranty Conditions shall continue to apply after termination in respect of Products delivered to and paid for in full by the Buyer before termination.

17. Waiver

Failure by the Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

18. Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this Clause 18 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

19. Notices

Any notice hereunder shall be deemed to have been duly given if sent by prepaid first class post, email or fax to the party concerned at its last known address. Notices sent by first class post shall be deemed to have been served two days after posting and notices sent by email and fax shall be deemed to have been served on the next Working Day following the date of despatch of it.

20. Assignment and other dealings

20.1. The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

20.2. The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

21. Governing Law and Jurisdiction

The Contract shall be governed by and construed in accordance with the Laws of England and Wales and the parties hereby submit to the jurisdiction of the English Courts.