



**Alpha Tubular Motors LLC
GENERAL TERMS & CONDITIONS OF SALE**

Last Updated: August 1, 2022

These General Terms & Conditions of Sale (hereinafter these “**Terms**”) only apply to purchases of Alpha Tubular Motors branded products and related services made directly from Alpha Tubular Motors LLC, a California limited liability company (hereinafter “**Alpha Tubular Motors**” or “**Seller**”). Any person or entity purchasing such products or services from Alpha Tubular Motors will be referred to herein as “**Buyer**”. Purchases made from appointed distributors or other independent resellers will be subject to terms and conditions of sale as may be separately established by each such distributor or reseller, which will in no event be binding upon Alpha Tubular Motors unless otherwise expressly agreed to by Alpha Tubular Motors. However, Alpha Tubular Motors extends its standard Limited Warranty (expressly provided in Section 7 below) to customers purchasing Alpha Tubular Motors branded products and related services from their local authorized Alpha Tubular Motors distributor. Such Limited Warranty is in lieu of all other warranties, which are expressly disclaimed.

These Terms are as in effect at the time of publication and are subject to change at any time, in the sole discretion of Alpha Tubular Motors. Any changes to these Terms will be in effect as of the “**Last Updated Date**” referenced on the version of these Terms accessible on the Alpha Tubular Motors website. You should review the version of these Terms accessible on the Alpha Tubular Motors website prior to purchasing any product or services that are sold subject to these Terms.

Buyer should take care to carefully review the Alpha Tubular Motors Privacy Policy before placing an order for Products from Alpha Tubular Motors (see Section 16 below).

1. General. These Terms (along with any associated written specification, quotation and/or supplemental terms and conditions provided by Seller) exclusively will govern the sale or licensing by Seller of all goods and services (including without limitation, hardware, firmware and software products, training, programming, maintenance, engineering, parts, repair and remanufacturing services – hereinafter, “**Products**”) furnished to Buyer pursuant to these Terms, whether such sale or licensing is effected by paper-based transactions or via facsimile or other forms of electronic data interchange or electronic commerce, and represents the entire agreement between Buyer and Seller with respect thereto. Buyer’s receipt or acceptance of delivery of any of the Products ordered or purchased hereunder will constitute its acceptance of these Terms. No addition or modification to these Terms will be binding on Seller unless agreed to in writing signed by an authorized representative of Seller, and Seller objects to and rejects other terms and conditions that may be proposed by Buyer or that appear on or are referenced in Buyer’s purchase order or requisition that are in addition to or otherwise not consistent with the Terms set forth or referenced herein.

2. Quotes; Pricing. Any quotation of the price of any specified amount of Products issued by an authorized representative of Alpha Tubular Motors will be deemed an invitation for the party receiving the quotation to submit an offer to purchase the applicable Products, unless otherwise expressly agreed by Alpha Tubular Motors. All such quotations are non-binding and subject to change at any time at the discretion of Alpha Tubular Motors prior to acceptance by Alpha Tubular Motors of such order for

Products. Unless clearly specified, pricing does not include taxes on the sale of the Products (as applicable), charges for shipping and handling or credit card processing fees (as applicable). All such taxes, charges and credit card processing fees (as applicable) will be added to Buyer's total price and will be the responsibility of Buyer.

3. Orders and Order Acceptance. Buyer agrees that Buyer's order for Products is an offer to buy, pursuant to these Terms, all Products listed in Buyer's order. All orders must be accepted by Seller or Seller will not be obligated to sell the Products to Buyer. Seller may choose not to accept orders at Seller's absolute discretion, even after Seller has sent Buyer a confirmation email with Buyer's order number and details of the items Buyer has attempted to order.

4. Payment Terms. The terms of payment are within Seller's sole discretion and, unless otherwise agreed by Seller in writing, payment must be received by Alpha Tubular Motors before any order for Products will be deemed accepted by Seller or be required to be produced and/or delivered by Seller. Seller may render partial invoices and require progressive payments (as applicable). Seller reserves the right to render invoices electronically and to receive payment by way of electronic funds transfer. Payment by credit card, when permitted, is subject to credit card validation and authorization both at time of agreement and immediately prior to shipment. Buyer will be charged a 3.00% processing fee if Buyer opts to pay via credit card. Seller reserves the right to suspend any further performance hereunder or otherwise in the event payment is not made when due. No payment by offset by Buyer is permitted. Interest charges will be added to overdue invoices at the rate of 2.00% per month (subject to any limit imposed by applicable law). Buyer shall reimburse Seller for Seller's reasonable fees and expenses incurred if Seller must hire an attorney or collections agency to assist Seller with collection of past due amounts owed to Seller according to these Terms.

5. Delivery Terms. Buyer is responsible for all shipping and handling charges applicable to Buyer's orders for Products. Delivery terms are FCA Seller's plant or designated location (per current Incoterms 2020) and Seller will arrange, prepay and add all shipping, handling, custom, insurance and similar charges incurred by Seller or as otherwise agreed to as evidenced by Seller's order acknowledgment. In all cases, title and risk of loss transfers to Buyer upon the earlier of Seller's delivery to Buyer or receipt by the first carrier for transport to Buyer, except that title to all intellectual property rights associated with the Products remains with Seller or its suppliers and licensors. Acknowledged shipping dates are approximate only and based on prompt receipt of all necessary information from Buyer. Seller will make reasonable efforts to deliver the Products as soon as commercially practicable. Notwithstanding the foregoing, Seller disclaims all liability for late delivery, loss or damage in transit.

6. Inspection and Rejection of Nonconforming Products.

a. Buyer shall inspect the Products within fourteen (14) calendar days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Products**" means only the following: (i) the Product shipped is different than identified in Buyer's purchase order; or (ii) a Product's label or packaging incorrectly identifies its contents.

b. If Buyer timely notifies Seller of any Nonconforming Products, Seller shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Products to a facility designated by Seller. If Seller exercises its

option to replace Nonconforming Products, Seller shall, after receiving Buyer's shipment of Nonconforming Products, ship to Buyer, at Buyer's expense and risk of loss, the replaced Products.

c. Buyer acknowledges and agrees that the remedies set forth in subsection (b) above are Buyer's exclusive remedies for the delivery of Nonconforming Products. Except as provided under subsection (b) above all sales of Products to Buyer are made on a one-way basis and Buyer has no right to return Products purchased pursuant to these Terms to Seller.

7. Limited Warranty.

a. **Limited Warranty:** Subject to these Terms, and specifically the limitations and exclusions set forth herein, Alpha Tubular Motors warrants to purchasers of Products directly from Alpha Tubular Motors or its authorized distributors that Alpha Tubular Motors's Products will be free from defects in materials and workmanship under normal and proper use for the duration of the Warranty Period (as set forth below) for the applicable Products.

b. **Warranty Period:** The "**Warranty Period**" applicable for each of the Products commences on the date the applicable Product is manufactured (determined by reference to the date stamp on the applicable Product) and terminates at the expiration of the time period specified below:

i. The Warranty Period for the interior DC roller blind motors with internal batteries (e.g., WSERD30B 2/31) is 7 years on the motors, with the exclusion of the internal batteries, which have a Warranty Period of 3 years. The foregoing applies to motors with a manufacture date after January 1, 2019. Motors of this type made prior to January 1, 2019, have a Warranty Period of 3 years.

ii. The Warranty Period for Alpha AC tubular motor models is 7 years.

iii. The Warranty Period for accessories and controls that are used in non-exterior applications is 7 years.

iv. The Warranty Period for all curtain motors is 3 years.

v. The Warranty Period for exterior DC motors (e.g., WSERD50 15/12) is 3 years.

vi. The Warranty Period for exterior solar panels, including those with internal battery storage, is 3 years.

vii. The Warranty Period for motors, controls and accessories used for residential garage doors and residential gates is 3 years.

viii. The Warranty Period for any Alpha Tubular Motors Products that do not fall within any of the categories described in subsections i. through vii. above is 3 years.

c. **Buyer Specifications/Compatibility:** Alpha Tubular Motors does not warrant and will not be liable for any design, materials, construction criteria or goods furnished or specified by Buyer (including that sourced from other manufacturers or vendors specified by Buyer). Any warranty applicable to such Buyer-specified items will be limited solely to the warranty, if any,

extended by the original manufacturer or vendor directly or indirectly to Buyer. Alpha Tubular Motors does not warrant the compatibility of its Products with the goods of other manufacturers or Buyer's application except to the extent expressly represented in Alpha Tubular Motors's published specifications or written quotation.

d. Remedies: Remedies under the above limited warranty will be limited, at Alpha Tubular Motors's sole discretion, to the replacement, repair or modification of, or issuance of a credit for the purchase price of, the Products involved, and where applicable, only after the return of such Products pursuant to Alpha Tubular Motors's instructions. Replacement Products may be new, remanufactured, refurbished or reconditioned at Alpha Tubular Motors's sole discretion. Buyer will be responsible for all installation, reinstallation, shipping, freight and other costs and expenses associated with the return of the Products to Alpha Tubular Motors and any replacement and/or repair of the Products. Buyer will be responsible for making a claim under this limited warranty directly with Alpha Tubular Motors and Alpha Tubular Motors will not be responsible for any costs or expenses paid by Buyer to third parties for repair, modification, remanufacturing, refurbishing or reconditioning. The foregoing will be the exclusive remedies for any breach of warranty or breach of contract arising therefrom.

e. Notice and Exclusions: The foregoing limited warranty is available only if both (I) Alpha Tubular Motors is provided prompt written notice of the warranty claim and (II) an Exclusion does not apply. An "**Exclusion**" will apply, and the foregoing limited warranty will not be available to Buyer, if Alpha Tubular Motors's examination of a limited warranty claim discloses that any of the following circumstances apply:

i. any alleged defect has been caused by: improper use, storage or maintenance by Buyer or third parties; unauthorized repairs, enhancements, alterations or modifications to the Products by Buyer or third parties; neglect by Buyer or third parties; accident; or unusual deterioration or degradation of the Products or parts thereof due to physical environment or electrical or electromagnetic noise environment.

ii. usage, maintenance, selection, adaptation, alteration, installation, storage, operation, repair or wiring of the Products or any electrical connections not conducted in accordance with Alpha Tubular Motors's written selection guides, installation, operating instructions, professional standards and wiring diagrams.

iii. the Products have been opened, dismantled or returned with clear evidence of abuse, negligent use or other damage.

iv. the Products have been used to perform functions other than the functions they were designed for, as specified in Alpha Tubular Motors's catalogues and selections guides, being, in summary: motorizing windows, window coverings, retractable shading devices, doors, door coverings, gates, garage doors and projection screens and any other functions that Alpha Tubular Motors notifies to the Buyer in writing in its absolute discretion.

v. the Products are used with any inappropriate products, software or other goods that have not been previously approved in writing by Alpha Tubular Motors.

vi. any damage, defect or failure has been caused by an external source regardless of its nature (including damage caused by penetration of by liquid or power surge).

vii. any damage, defect or failure arises from or directly relates to the failure or defect of batteries or other consumables that are not part of the construction of the Products (i.e., that are not hard-wired into the Products).

viii. the invoice or other order information pertaining to the purchase of the applicable Product(s) is not provided by Buyer to Alpha Tubular Motors such that Alpha Tubular Motors may verify the applicable Warranty Period.

f. **DISCLAIMER: THE ABOVE LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR PERFORMANCE OR APPLICATION WARRANTIES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.**

g. **Claimants: Rights under the above limited warranty (subject to noted limitations and exclusions) extend to purchasers of Products directly from Alpha Tubular Motors or its authorized distributors.**

8. Disclaimer and Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALPHA TUBULAR MOTORS WILL NOT BE LIABLE FOR ANY BUSINESS INTERRUPTION OR LOSS OF PROFIT, INDEMNIFICATION, REVENUE, MATERIALS, ANTICIPATED SAVINGS, DATA, CONTRACT, GOODWILL OR THE LIKE (WHETHER DIRECT OR INDIRECT IN NATURE) OR FOR ANY OTHER FORM OF INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND. ALPHA TUBULAR MOTORS'S MAXIMUM CUMULATIVE LIABILITY RELATIVE TO ALL OTHER CLAIMS AND LIABILITIES, INCLUDING OBLIGATIONS UNDER ANY INDEMNITY, WHETHER OR NOT INSURED, WILL NOT EXCEED THE COST OF THE PRODUCT(S) GIVING RISE TO THE CLAIM OR LIABILITY. ALPHA TUBULAR MOTORS DISCLAIMS ALL LIABILITY RELATIVE TO GRATUITOUS INFORMATION OR ASSISTANCE PROVIDED BY, BUT NOT REQUIRED OF ALPHA TUBULAR MOTORS HEREUNDER. ANY ACTION AGAINST ALPHA TUBULAR MOTORS MUST BE BROUGHT WITHIN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES. THESE DISCLAIMERS AND LIMITATIONS OF LIABILITY WILL APPLY REGARDLESS OF ANY OTHER CONTRARY PROVISION HEREOF AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, AND FURTHER WILL EXTEND TO THE BENEFIT OF ALPHA TUBULAR MOTORS'S VENDORS, APPOINTED DISTRIBUTORS AND OTHER AUTHORIZED RESELLERS AS THIRD-PARTY BENEFICIARIES. EACH PROVISION HEREOF WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTY OR CONDITION OR EXCLUSION OF DAMAGES IS SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND IS TO BE ENFORCED AS SUCH.

9. Resale of Third-Party Branded Products and Services. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, SELLER MAKES NO REPRESENTATIONS, PROVIDES NO INDEMNITIES (INTELLECTUAL PROPERTY OR OTHERWISE), AND DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED RELATIVE TO ANY THIRD-PARTY BRANDED PRODUCT OR SERVICE (INCLUDING TRAINING) WHICH MAY BE RESOLD OR SUBLICENSED BY SELLER AS A DISCRETE ITEM HEREUNDER.

10. Licensed Software and Firmware. Use of Products comprised of software or firmware may be subject to Buyer's acceptance of additional terms and conditions set forth in separate Seller or third-

party license agreements that will control to the extent necessary to resolve any conflict with the Terms stated or otherwise referenced herein. In the absence of a separate Seller's license agreement, Buyer is granted a non-exclusive, non-transferable license to use provided Seller's software or firmware only in object code form and solely in conjunction with Seller-provided Products, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software or firmware.

11. Packing and Marking. Buyer-specified packing or marking may be subject to additional charges not otherwise included in the price of the Products.

12. Weights and Dimensions. Published or advertised weights and dimensions are estimates or approximations only and are not warranted.

13. List Prices. Prices and other information shown in any Seller publication (including product catalogs and brochures) are subject to change without notice and to confirmation by specific quotation. Such publications are not offers to sell and are maintained only as a source of general information. Prices do not include sales, use, excise, customs, value-added or similar taxes. Buyer will pay or reimburse Seller for all such taxes as may be applicable.

14. Changes and Substitutions. Buyer-requested order changes, including those affecting the identity, scope and delivery of the Products, must be documented in writing and are subject to Seller's prior approval and adjustments in price, scheduling and other affected terms and conditions. In any event, Seller reserves the right to reject any change that it deems unsafe, commercially unreasonable, technically inadvisable or inconsistent with established engineering or quality guidelines and standards, or incompatible with Seller's design or manufacturing capabilities. Seller further reserves the right to substitute using the latest superseding revision or series or equivalent Product having comparable form, fit and function.

15. Order Cancellation. Cancellation of an order by Buyer prior to shipment is permitted only by written notice and upon advance payment to Seller of reasonable cancellation and restocking charges as determined by Seller, including reimbursement for direct costs incurred by Seller in connection with the applicable order. Cancellation charges associated with orders for custom Products or Products specifically manufactured to Buyer's specification may equal the actual selling price of the Products.

16. Privacy. Alpha Tubular Motors may collect, use, store and/or disclose information made available to Alpha Tubular Motors by Buyer in connection with the transactions contemplated by these Terms in accordance with the Alpha Tubular Motors's Privacy Policy, which is available on the Alpha Tubular Motors website and will be made available by Alpha Tubular Motors to Buyer upon request.

17. Confidentiality. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with the transactions that are the subject of these Terms is confidential, solely for the use of performing the transactions contemplated by these Terms and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

18. Intellectual Property. Each of Buyer and Seller shall retain ownership of all confidential or proprietary information and intellectual property that each respective party had prior to the transactions contemplated by these Terms. All new intellectual property conceived or created by Seller in the performance of the transactions contemplated by these Terms, whether alone or with any contribution from Buyer, shall be owned exclusively by Seller. Buyer agrees to deliver assignment documentation to Seller as necessary to achieve that result.

19. Indemnification; Third Party Claims.

a. Each of Buyer and Seller (each an “**Indemnified Party**” and an “**Indemnifying Party**”, as applicable) shall indemnify the other party from and against claims brought by a third party, for bodily injury or damage to the third party’s tangible property, to the extent such injury and/or damage is caused by the negligence of the Indemnifying Party, provided that the Indemnified Party gives the Indemnifying Party prompt notice of any such claim and all necessary information and assistance so that the Indemnifying Party, at its option, may defend or settle such claim and the Indemnified Party does not take any adverse position in connection with such claim. In the event that the injury or damage is caused by joint or concurrent negligence of Buyer and Seller, the loss or expense shall be borne by each party in proportion to its degree of negligence. For purposes of Seller’s indemnity obligations hereunder, Products shall not be considered third party property and the facility in which a Product is used shall not be considered third party property.

b. If Buyer supplies Products a third party, uses at a facility owned by a third party, and/or transfers Products to a third party, Buyer shall indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in Sections 7 “Limited Warranty” and 8 “Disclaimer and Limitation of Liability.” For purposes of this subsection, “Seller” means Seller, its affiliates, suppliers, contractors, licensors and their employees.

20. Force Majeure. Seller will not be liable for any loss, damage or delay arising out of its failure (or that of its subcontractors) to perform hereunder due to causes beyond its reasonable control, including without limitation, acts of God, acts or omissions of Buyer, acts of civil or military authority, fires, strikes, floods, epidemics or pandemics, quarantine restrictions, war, riots, acts of terrorism, delays in transportation, supply chain issues, or transportation embargoes. In the event of such delay, Seller’s performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the delay.

21. Government Clauses and Contracts. Application of government contract regulations and clauses to the Products or the agreement evidenced by these Terms are subject to the separate review and consent by an authorized representative at Seller’s headquarters. Products sold or licensed hereunder are not intended to be used, nor should they be used, in any nuclear-related application either as a “Basic Component” as defined under United States nuclear regulations or under similar nuclear laws and regulations of any other country or otherwise.

22. Export Control. Buyer acknowledges that the Products may be subject to various export controls and regulations. Buyer agrees to comply with all applicable laws and regulations to the Products and Buyer in general as well as with all applicable export and re-export laws and regulations, embargoes and sanctions including, but not limited to, those of the United. Buyer represents and warrants that Buyer is not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, and is not owned 50% or more or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury’s Specially

Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.

23. Disputes. All disputes arising in connection with these Terms, including any question regarding the applicability or validity of these Terms, shall be resolved in accordance with this Section. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management of the parties, to be held within twenty (20) business days after the giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of such notice, or such later date as may be mutually agreed, either party may commence litigation in a court of competent jurisdiction in accordance with these Terms. These procedures are the exclusive procedures for the resolution of all such disputes between the parties.

24. Publicity. Buyer shall not make any statement (whether oral or in writing) in any press release, external advertising, marketing or promotion materials regarding Seller or its business unless: (a) it has received the express written consent of Seller/the other Party; or (b) it is required to do so by law or under the rules of any stock exchange to which it is subject.

25. Governing Law; Forum; Severability. The agreement evidenced by these Terms and all disputes arising thereunder will be governed by and interpreted in accordance with the internal laws of the State of California (USA) and will be subject to the exclusive jurisdiction of the courts of the County of San Bernadino, State of California (USA). Notwithstanding any provision to the contrary herein, Buyer and Seller agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the transactions that are the subject of these Terms. Should any term or provision of these Terms be held wholly or partly invalid or unenforceable under applicable law, the authority holding such term invalid or unenforceable will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.

26. Relationship. The relationship between Buyer and Seller is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between Buyer and Seller, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

27. Waiver. No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

28. Assignment; Successors and Assigns. The agreement evidenced hereby may not be assigned by Buyer without the advance written consent of Seller (which consent will not be unreasonably withheld). The agreement evidenced hereby is binding on and inures to the benefit of Buyer and Seller and their respective permitted heirs, representatives, successors and permitted assigns.

29. Survival. Provisions of these Terms which by their nature should apply beyond the period of performance of the transactions contemplated by these Terms will remain in force after completion of performance of the transactions contemplated by these Terms.

30. Language. The parties acknowledge that they have required that the agreement evidenced by these Terms be drawn up in English. In the event of a conflict between the English and other language versions, the English version will prevail.