

## Terms and Conditions of Sale

These terms and conditions, the related quotation or acknowledgment, and all documents incorporated by reference therein, bind Equipment & Controls, Inc. (hereinafter Seller) and the buyer (hereinafter Buyer) and constitute the entire agreement (Agreement) between Buyer and Seller for the provision of technical services (Services) and consulting services (Consulting Services) and/or the sale of goods (Goods).

1. **PRICES.** Unless otherwise specified by Seller, Seller's price for the Goods and/or Services shall remain in effect for 30 days after the date of Seller's quotation or acceptance of the order for the Goods/Services, whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and/or shipment of the Goods and/or provision of Services pursuant to Seller's standard order processing procedures is received and accepted by Seller within such time period. If such authorization is not received by Seller within such 30-day period, Seller shall have the right to change the price for the Goods/Services to Seller's price in effect at the time the order is accepted. Prices for Goods do not cover storing, installing, starting up or maintaining Goods unless expressly stated in Seller's quotation. Notwithstanding the foregoing, the price for Goods/Services sold by Seller, but manufactured by others, shall be Seller's price in effect at the time of shipment to Buyer.

2. **DELIVERY, ORDER ACCEPTANCE AND DOCUMENTATION.** All shipping dates are approximate and are conditioned upon Seller's prompt receipt of all necessary information from Buyer to properly process the order. Notwithstanding any provisions in this Agreement, and regardless of how price was quoted (whether FOB, FAS, CIF or otherwise), legal title to the Goods and risk of loss thereto shall transfer to Buyer as follows: for sales in which the end destination of the Goods is within the United States, upon delivery to the freight carrier at the shipping point; for sales in which the end destination of the Goods is outside of the United States, immediately after the Goods have passed beyond the territorial limits of the United States. Seller shall provide Buyer with that data/documentation which is specifically identified in the quotation. If additional copies of data/documentation or non-standard data/documentation are to be provided by Seller, they shall be provided at Seller's prices then in effect. Data/documentation marked as "confidential" or "proprietary" may not be reproduced or used for any purpose other than the purpose for which it was provided and may not be disclosed to third parties without the prior written permission of Seller.

3. **EXCUSE OF PERFORMANCE.** Seller shall not be liable for delays in performance or for non-performance due to failure or interruption of computer or telecommunication systems, acts of God, war, riot, fire, terrorism, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, goods manufactured by others or other unforeseen circumstances or causes beyond Seller's reasonable control. In the event of any such delay, the time for performance or delivery shall be extended by a period of time reasonably necessary to overcome the effect of the delay.

4. **CHANGES, TERMINATION AND SUSPENSION.** Buyer may terminate or suspend its order for any or all of the Goods/Services covered by the Agreement only upon Seller's written consent or pursuant to Seller's applicable policy or practices covering such termination or suspension. Any changes affecting the Goods or Services must be accepted by Seller, and resulting adjustment to price and/or schedule shall be mutually agreed in writing.

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5. **LIMITED WARRANTY.** Subject to the limitations contained in Section 6 hereof, Seller warrants that any licensed firmware embodied in the Goods will execute the programming instructions provided by Seller, and that the Goods manufactured by Seller will be free from defects in materials or workmanship under normal use and care, and the Services will be performed by trained personnel using proper equipment and instrumentation for the particular Services provided. The foregoing warranties will apply until the expiration of the applicable warranty period. Except as specified below, Goods are warranted for 12 months from the date of initial installation or 18 months from the date of shipment by Seller, whichever period expires first. Except for CSI-brand Models 4500 and 9200 Series products, which shall be warranted for the period specified above, CSI-brand products are warranted for twelve (12) months from the date of purchase. Consumables and Services (except as specified below) are warranted for a period of 90 days from the date of shipment or completion of the Services. CSI-brand Services and PlantWeb Services are warranted for a period of twelve (12) months from the date of provision of the Services. Goods purchased by Seller from a third party for resale ('Resale Products') shall carry only the warranty extended by the manufacturer. Buyer agrees that Seller shall have no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. If Buyer discovers any warranty defects and notifies Seller thereof in writing during the applicable warranty period, Seller shall, at its option, correct any errors that are found by Seller in the Goods or Services or repair or replace F.O.B. point of manufacture that portion of any Goods found by Seller to be defective, or refund the purchase price of the defective portion of the Goods/Services. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources or environmental conditions, accident, misuse, improper installation, modification, repair, use of unauthorized replacement parts, storage or handling, or any other cause not the fault of Seller are not covered by this limited warranty, and shall be at Buyer's expense. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by Seller. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel and representatives for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Seller. Goods repaired and parts replaced by Seller during the warranty period shall be in warranty for the remainder of the original warranty period or 90 days, whichever is longer. This limited warranty is the only warranty made by Seller and can be amended only in a writing signed by Seller. THE WARRANTIES AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE. THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SERVICES.

**Warranty – Consulting Services.** Seller warrants that the Consulting Services shall be performed in accordance with the terms of the Agreement, in a professional manner and in accordance with sound, generally accepted engineering and professional practices in effect at the time the Consulting Service is performed. If within ninety (90) days after performance of a Consulting Service, such Consulting Service is found to be deficient to the standards set forth above, Buyer shall notify Seller in writing of the deficiency and Seller shall thereupon re-perform such Consulting Services, which are shown to be deficient at no cost to Buyer. The warranty shall not apply to defects resulting from (i) software modifications performed by the Buyer, (ii) Buyer specifications, or (iii) Buyer's directions.

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6. **LIMITATION OF REMEDY AND LIABILITIES.** SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT (INCLUDING BREACH OF WARRANTY), INFRINGEMENT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS MANUFACTURED OR SERVICES PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR USE, AND COSTS INCURRED INCLUDING, WITHOUT LIMITATION, FOR CAPITAL, FUEL AND POWER, AND CLAIMS OF BUYER'S CUSTOMERS.

7. **PATENTS.** Subject to the limitations contained in Section 6, Seller shall defend any suits brought against Buyer based on a claim that use of the Goods manufactured by Seller constitutes an infringement of a valid United States patent, and shall pay any damages awarded therein against Buyer, provided that Buyer promptly notifies Seller in writing of the filing of such suit or the threat thereof, permits Seller to control completely the defense or compromise of such claim of infringement, and provides all reasonable assistance and cooperation requested by Seller for the defense of such suit. In the event that only the Goods manufactured by Seller are held to be infringing in such suit and their use is enjoined, Seller shall, at its sole option and expense, provide a commercially reasonable alternative, including, but not limited to, procuring for Buyer the right to continue using the Goods, replacing them with non-infringing products or modifying them so they become non-infringing. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefore, if infringement is based upon the use of Goods in a manner for which the Goods were not designed by the Seller or if the Goods were modified by or for the Buyer in a manner to cause them to become infringing.

8. **TAXES.** Any tax or governmental charge payable by the Seller because of the manufacture, sale or delivery of the Goods or provision of Services may, at Seller's option, be added to the price herein specified. The foregoing shall not apply to taxes based upon Seller's net income. Prices do not include any sales, use, excise, value added or similar taxes. Taxes shall be the responsibility of Buyer and Seller shall include them on all invoices, absent the receipt of an appropriate exemption certificate from Buyer.

9. **TERMS OF PAYMENT.** Unless otherwise agreed by Seller, and subject to the approval of Seller's Credit Department, payment terms are net 30 days from date of Seller's invoice in U.S. currency, except for applicable milestone payments or export shipments for which Seller may require other arrangements. Seller reserves the right to modify payment terms (including by requiring payment in advance of delivery) at any time if Seller has reasonable grounds for insecurity concerning timely payment. Freight charges may include shipping and handling charges, and Buyer shall pay all such charges. If any payment owed to Seller hereunder is not paid when due, it shall bear interest, at a rate equal to the lesser of 1.5% per month or the maximum rate permitted by law, from the date on which it is due until it is received. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further deliveries under this and/or other agreements with Buyer in the event Buyer fails to make any payment hereunder when due. Buyer shall be liable for all expenses attendant to collection of past due amounts, including attorneys' fees.

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10. **SOFTWARE AND FIRMWARE.** Notwithstanding any other provision herein, Seller (or the applicable owner) shall retain all rights of ownership and title in its firmware and software, including all copyrights. Buyer is hereby granted a nonexclusive, royalty free license to use firmware and software incorporated into the Goods only in conjunction with such Goods. Buyer's use of certain firmware (as specified by Seller) and software shall be governed by the terms of any applicable license.

11. **BUYER SUPPLIED DATA.** To the extent that Seller has relied upon any data or information supplied by Buyer to Seller ("Data") in the selection or design of the Goods and/or provision of the Services or the preparation of Seller's quotation, and such Data is inadequate or inaccurate, any related warranties or other provisions contained herein shall be null and void.

12. **EXPORT/IMPORT.** Buyer agrees to comply with all applicable import and export control laws, regulations, orders and requirements, including, without limitation, those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods may be supplied. Notification of destination and end user is required of all Goods to be shipped overseas.

13. **RESTRICTIONS ON RESALE.** Goods are sold hereunder for Buyer's use or resale to customers of Buyer that are not in the business of reselling the Goods. Buyer is not authorized to appoint any distributors or resellers of the Goods.

14. **GENERAL PROVISIONS.** (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent. (b) There are no understandings, agreements or representations, express or implied, not specified in the Agreement. (c) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action has occurred. (d) Any modification of these Terms and Conditions must be set forth in a written instrument signed by a duly authorized representative of Seller. (e) The Agreement shall be construed, performed and enforced under the laws of the Commonwealth of Pennsylvania, without regard to its principles of conflicts of law. Buyer and Seller agree that the exclusive venue for all actions arising under the Agreement shall be only in the United States in the state courts of Allegheny County, Pennsylvania and the United States District Court for the Western District of Pennsylvania. (f) UNLESS OTHERWISE SPECIFICALLY PROVIDED IN SELLER'S QUOTATION, GOODS AND SERVICES HEREUNDER ARE NOT INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR-RELATED APPLICATIONS. Buyer (i) accepts Goods and Services in accordance with the restriction set forth in the immediately preceding sentence, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users, and (iii) agrees to defend, indemnify and hold harmless Seller from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of Goods and Services in any nuclear or nuclear-related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability. (g) The 1980 United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement.

15. **BUYER'S RESPONSIBILITIES.** Buyer shall provide Seller ready access to the site where Consulting Services or Services are to be performed and adequate workspace and facilities to perform same as provided in these terms and conditions. Buyer shall not require Seller or its employees, as a condition to site access or otherwise, to further agree or enter into any agreement, which waives releases, indemnifies or otherwise limits or expands any rights or obligations whatsoever. Any such agreements shall be null and void. Buyer shall inform Seller, in writing, at the time of order placement, of any known hazardous substance or condition at the site, including, but not limited to, the presence of asbestos or asbestos containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding same. Buyer shall appoint a representative familiar with the site and the nature of the services to be performed by Seller to be present at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer. Goods are sold hereunder for Buyer's use or resale to customers of Buyer that are not in the business of reselling the Goods. Buyer is not authorized to appoint any distributors or resellers of the Goods.

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16. **COMPLIANCE WITH LAWS AND SAFETY RULES.** Seller shall comply with and make known to its employees all safety, security, and health rules issued to Seller by Buyer.

17. **HIRING OF EMPLOYEES.** Buyer agrees that during the execution of the Consulting Services by Seller, and for a period of twelve (12) months after performance of the Consulting Services, it shall not hire any employee(s) of Seller or its project team and shall not entice or counsel any such employee(s) to leave Seller's employ. Buyer agrees that this covenant shall extend to its agents and affiliates. In the event that an employee of Seller is hired or leaves the employ of Seller in such circumstances, the Buyer shall pay Seller, as compensation for the cost incurred by Seller in recruiting and training the employee, the sum equivalent to six (6) months salary for each employee hired from or leaving the employment of Seller.

