

# Standard Terms and Conditions Of Sale – Products & Services

## 1. DEFINITIONS:

In these Terms and Conditions of Sale, "Seller" means Emerson Process Management GmbH & Co. OHG; "Buyer" means the person, firm, company or corporation by whom the order is given; "Goods" means the goods (including any Software and Documentation, as defined in Clause 9) described in Seller's Acknowledgement of Order form; "Services" means the services described in Seller's Acknowledgement of Order Form; "Contract" means the written agreement (including these Terms and Conditions) made between Buyer and Seller for the supply of the Goods and/or provision of Services; "Contract Price" means the price payable to Seller by Buyer for the Goods and/or Services and "Seller Affiliate" means an Emerson Process Management Group company which is an affiliate within the meaning of Section 15 AktG [German Stock Corporation Act.

## 2. THE CONTRACT:

**2.1** All orders must be in writing and are accepted subject to these Terms and Conditions of Sale. No terms or conditions put forward by Buyer and no representations, warranties, guarantees or other statements not contained in Seller's quotation or Acknowledgement of Order nor otherwise expressly agreed in writing by Seller shall be binding on Seller.

**2.2** The Contract shall become effective only upon the date of acceptance of Buyer's order on Seller's Acknowledgement of Order form. If the details of the Goods or Services described in Seller's quotation differ from those set out in the Acknowledgement of Order Form the latter shall apply.

**2.3** No alteration or variation to the Contract shall apply unless agreed in writing by both parties. However, Seller reserves the right to effect minor modifications and/or improvements to the Goods before delivery provided that the performance of the Goods is not adversely affected and that neither the Contract Price nor the delivery date is affected.

## 3. VALIDITY OF QUOTATION AND PRICES:

**3.1** Unless previously withdrawn, Seller's quotation is open for acceptance within the period stated therein or, when no period is so stated, within thirty days after its date.

**3.2** Prices are firm for delivery within the period stated in Seller's quotation and are exclusive of (a) Value Added Tax and (b) any similar and other taxes, duties, levies or other like charges arising outside Germany in connection with the performance of the Contract.

**3.3** Prices (a) are for Goods delivered EXW (Ex works) Seller's shipping point, exclusive of freight, insurance and handling and (b) unless otherwise stated in the Seller's quotation, are exclusive of packing. If the Goods are to be packed, packing materials are non-returnable.

## 4. PAYMENT:

**4.1** Payment shall be made: (a) in full without set-off, counterclaim or withholding of any kind (save where and to the extent that this cannot by law be excluded); and (b) in the currency of Seller's quotation within thirty days of receipt of invoice unless otherwise specified by Seller's Finance Department. Goods will be invoiced at any time after their readiness for despatch has been notified to Buyer. Services will be invoiced monthly in arrears or, if earlier, upon completion. Without prejudice to Seller's other rights, Seller reserves the right to: (i) charge interest on any overdue sums at 8% above the base lending rate of Section 247 BGB (German Civil Code) during the period of delay; (ii) suspend performance of the Contract (including withholding shipment) in the event that Buyer fails or in Seller's reasonable opinion it appears that Buyer is likely to fail to make payment when due under the Contract or any other contract; and (iii) under the same conditions require reasonable security for payment.

**4.2** Customer may set off counterclaims only if recognised or non-appealable. A right of retention may be exercised by Customer only if as it concerns the same contractual relationship.

## 5. DELIVERY PERIOD:

**5.1** Unless otherwise stated in Seller's quotation, all periods stated for delivery or completion run from the Effective Date and are to be treated as estimates only not involving any contractual obligations.

**5.2** If Seller is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer or its agents (including but not limited to failure to provide specifications and/or fully dimensioned working drawings and/or such other information as Seller reasonably requires to proceed expeditiously with its obligations under the Contract), the delivery/completion period and the Contract Price shall both be adjusted accordingly.

**5.3** If delivery is delayed due to any act or omission of Buyer, or if having been notified that the Goods are ready for despatch, Buyer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the Goods into a suitable store at Buyer's expense. Upon placing the Goods into the store, delivery shall be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Seller accordingly.

## 6. FORCE MAJEURE:

**6.1** The Contract (other than Buyer's obligation to pay all sums due to Seller in accordance with the Contract) shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, including but not limited to: Act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, sabotage; governmental decisions or actions (including but not limited to prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licenses), or labour trouble, strike, lockout or injunction. Seller shall have no obligation to supply hardware, software or technology or to provide services in the absence of government permits or fulfilment of statutory conditions of exemption from such permits within the framework of import and export control (in particular, according to the regulations applicable in the United States, the European Union and the jurisdiction in which Seller has its registered office or from which components of the Goods are supplied) and the underlying circumstances could not be foreseen by Seller and are outside of Seller's sphere of influence. In the event of revocation of issued government permits or in the event of a change in the applicable statutory import and export control regulations such that Seller is prevented from fulfilling the contract, Seller is discharged from the contractual obligation without any liability of Seller.

**6.2** If either party is delayed or prevented from performance of its obligations by reason of this Clause for more than 180 consecutive calendar days, either party may terminate the then unperformed portion of the Contract by notice in writing given to the other party, without liability provided that Buyer shall be obliged to pay the reasonable cost and expense of any work in progress and to pay for all Goods delivered and Services performed as at the date of termination.

## 7. INSPECTION, TESTING, AND CALIBRATION:

**7.1** Goods will be inspected by Seller or manufacturer and, where practicable, submitted to Seller's or manufacturer's standard tests before despatch. Any additional tests or inspection (including inspection by Buyer or its representative, or tests in the presence of Buyer or its representative and/or calibration) or the supply of test certificates and/or detailed test results shall be subject to Seller's prior written agreement and Seller reserves the right to charge therefor; if Buyer or its representative fails to attend such tests, inspection and/or calibration after seven days' notice that the Goods are ready therefor, the tests, inspection and/or calibration will proceed and shall be deemed to have been made in the presence of Buyer or its representative and the Seller's statement that the Goods have passed such testing and/or inspection and/or have been calibrated shall be conclusive.

**7.2** Buyer's warranty rights are subject to Buyer's proper compliance with Buyer's inspection and complaint obligations set forth in Section 377 of the German Commercial Code (HGB)..

## 8. DELIVERY, RISK & TITLE:

**8.1** Unless otherwise expressly stated in the Contract, the Goods will be delivered Carriage Paid To (CPT) the destination named in the Contract; freight, packing and handling will be charged at Seller's standard rates. Risk of loss of or damage to the Goods shall pass to Buyer upon delivery as aforesaid and Buyer shall be responsible for insurance of the Goods after risk has so passed. Alternatively, if it is expressly stated in the Contract that Seller is responsible for the insurance of the Goods after their delivery to the carrier, such insurance will be charged at Seller's standard rates. "Ex-works", "FCA", "CPT" and any other delivery terms used in the Contract shall be defined in accordance with the latest version of Incoterms.

## 9. DOCUMENTATION AND SOFTWARE:

**9.1** Title to and ownership of the copyrights in software and/or firmware incorporated into or provided for use with the Goods ("Software") and documentation supplied with the Goods ("Documentation") shall remain with the relevant Seller Affiliate (or such other party as may have supplied the Software and/or Documentation to Seller) and is not transferred hereby to Buyer.

**9.2** Except as otherwise provided herein, Buyer is hereby granted a non-exclusive, royalty-free licence to use the Software and Documentation in conjunction with the Goods, provided that and for so long as the Software and Documentation are not copied (unless expressly authorised by applicable law) and Buyer holds the Software and Documentation in strict confidence and does not disclose them to others, or permit others to have access to them (other than Seller's standard operating and maintenance manuals). Buyer may transfer the foregoing licence to another party which purchases, rents or leases the Goods, provided the other party accepts and agrees in writing to be bound by the conditions of this Clause 9.

**9.3** Notwithstanding Sub-clause 9.2, Buyer's use of certain Software, (as specified by Seller and including but not limited to control system and AMS Software) shall be governed exclusively by the applicable Seller Affiliate or third party licence agreement.

**9.4** Seller and Seller Affiliates shall retain ownership of all inventions, designs and processes made or evolved by them and save as set out in this Clause 9 no rights in intellectual property are hereby granted.

## 10. LIABILITY FOR DEFECTS OF QUALITY

**10.1** Seller warrants that upon passing of the risk the Goods and Services will have the quality agreed upon. Unless otherwise agreed, the quality agreed upon shall meet Seller's specifications as valid and published at the time of the order confirmation.

**10.2** If, upon passing of the risk, the Goods or Services do not have the quality agreed upon, Seller warrants to provide subsequent performance by either, at its option, repairing or replacing the concerned parts (subsequent rectification) or by replacing the Goods or Services by such Goods or Services which are free from defects (subsequent delivery).

**10.3** Seller may rectify any defect several times and may decide at its discretion to change from rectification to subsequent delivery. Seller shall be responsible for all costs incurred in connection with its subsequent performance, especially the transport, shipping, labour and material cost, unless such costs are incurred as a result of the Goods being taken to a place other than the place of performance.

**10.4** Buyer may set a reasonable period of at least four (4) weeks to Seller for him to provide subsequent performance and, if subsequent performance fails during such period, may demand reduction of the Contract Price after expiry of that period or, unless the defect is insignificant, may rescind the Contract. Damages may only be claimed in line with Clause 14.

**10.5** Any claims and rights based on defects will become time-barred, except in the case of intent, after expiry of twelve (12) months since taking into operation of the Goods, however no later than eighteen (18) months since delivery. Claims to damages based on defects will become time-barred after expiry of the statutory period if they result from a violation of another's life, health or body, or from Seller's gross negligence.

**10.6** Seller assumes no warranty for normal wear and tear, material provided by Buyer, processing of the Goods made by Buyer, damage due to improper storage, installation or operation or due to inadequate maintenance, or damage resulting from any modification or repair not approved beforehand by Seller in writing. Seller will not be liable where any non-authorised software or non-authorised spare or replacement parts are used. Any costs incurred by Seller for examining and removing such defects will be borne by Buyer upon demand. Buyer will always be responsible alone for the completeness and correctness of any information provided by it.

**10.7** Regarding products or Services sourced by Seller from a third party (other than a Seller Affiliate) for resale to Buyer, Seller assigns to Buyer all warranty rights against such third party. In addition, Seller remains obliged to assume the guarantee set forth the preceding clauses towards Buyer, however, only under the restriction that Buyer has beforehand unsuccessfully tried to execute the assigned warranty rights against the third party.

## 11. LIABILITY FOR PROPRIETARY RIGHTS INFRINGEMENTS

**11.1** Seller warrants that upon passing of the risk no patents or other proprietary rights of third parties exist which may be claimed with respect to the Goods or

Services if these are used as intended. Clauses 10.2 to 10.5 and 10.7 shall apply correspondingly.

**11.2** Seller's liability shall be excluded where a third party patent or proprietary right is infringed because Seller has adhered to a design provided by Buyer or has complied with an instruction given by Buyer, or because the Goods are used in a manner, for a purpose, in a country, or in connection with other goods or services, without this having been communicated to Seller before execution of the Contract.

**11.3** During the period of Seller's warranty, Buyer has the obligation to inform Seller in writing as promptly as possible in the event that a third party claims any patent or other proprietary right or asserts any claims in or out of court with respect to the Goods or Services. Before recognising any claim advanced by a third party in or out of court, Buyer shall give Seller the opportunity to comment. At its request, Seller shall be given the authority to handle the negotiations or legal dispute with such third party at its own cost and responsibility. Buyer shall be liable to Seller for any damage sustained by it as a result of a culpable violation of said obligations.

**11.4** Buyer warrants that the use of a design provided by it or compliance with an instruction given by it will not lead to Seller infringing any patents or other proprietary rights when performing its contractual obligations. Buyer agrees to indemnify and hold Seller harmless against any reasonable cost and damages incurred by Seller as a result of Buyer's breach of this warranty.

## **12. DAMAGES**

**12.1** Seller shall be liable to Buyer only for damage caused with intent or gross negligence. In the event of breach of material contractual obligations, Seller shall, however, be liable for each fault of its personnel (statutory representatives, executive employees and other persons employed in the performance of its obligations) causing damage.

**12.2** Except in case of intentional causation of damage by personnel of Seller or causation of damage with gross negligence by statutory representatives or executive employees of Seller, Seller shall not be liable for compensation for indirect damage and, in particular, Seller shall not be liable for compensation for loss of profit, unless such damage is covered by the protective purpose of a warranty explicitly assumed.

**12.3** Except in case of intentional causation of damage by personnel of Seller or causation of damage with gross negligence by statutory representatives or executive employees of Seller, the liability of Seller shall, in each case, be limited in terms of amount to the damage which is typically foreseeable in the time of conclusion of the contract.

**12.4** Claims to damages which result from the violation of another's life, body or health, from the violation of a guaranty given by Seller expressly in writing as well as damage claims under the Product Liability Act shall remain unaffected.

## **13. STATUTORY AND OTHER REGULATIONS:**

**13.1** If Seller's obligations under the Contract shall be increased or reduced by reason of the making or amendment after the date of Seller's quotation of any law or any order, regulation or bye-law having the force of law that shall affect the performance of Seller's obligations under the Contract, the Contract Price and delivery period shall be adjusted accordingly and/or performance of the Contract suspended or terminated, as appropriate. A price adjustment shall not be implemented if the delivery is to be carried out within 4 months after the closing of the Contract.

**13.2** Except to the extent otherwise required by applicable law, Seller shall have no responsibility for the collection, treatment, recovery or disposal of (i) the Goods or any part thereof when they are deemed by law to be 'waste' or (ii) any items for which the Goods or any part thereof are replacements. If Seller is required by applicable law, including waste electrical and electronic equipment legislation, European Directive 2002/96/EC (WEEE) and related legislation in EU Member States, to dispose of 'waste' Goods or any part thereof, Buyer shall, unless prohibited by applicable law, pay Seller, in addition to the Contract Price, either (i) Seller's standard charge for disposing of such Goods or (ii) if Seller does not have such a standard charge, Seller's costs (including all handling, transportation and disposal costs and a reasonable mark-up for overhead) incurred in disposing of such Goods.

**13.3** Buyer's personnel shall, whilst on Seller's premises, comply with Seller's applicable site regulations and Seller's reasonable instructions, including but not limited to those relating to safety, security and electrostatic discharge.

## **14. COMPLIANCE WITH LAWS**

Buyer agrees that all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time,

including without limitation those of the United States, the European Union and the jurisdictions in which Seller and Buyer are established or from which items may be supplied, and the requirements of any licenses, authorisations, general licences or licence exceptions relating thereto will apply to its receipt and use of hardware, software, services and technology. In no event shall Buyer use, transfer, release, export or re-export any such hardware, software or technology in violation of such applicable laws, regulations, orders or requirements or the requirements of any licences, authorisations or licence exceptions relating thereto. Buyer agrees furthermore that it shall not engage in any activity that would expose the Seller or any of its affiliates to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any customer or supplier. Buyer agrees to comply with all appropriate legal, ethical and compliance requirements.

## **15. DEFAULT, INSOLVENCY AND CANCELLATION:**

Seller shall be entitled, without prejudice to any other rights it may have, to cancel the Contract forthwith, wholly or partly, by notice in writing to Buyer, if Buyer is in default of any of its obligations under the Contract and fails, within 30 (thirty) days of the date of Seller's notification in writing of the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period or, if the default is not reasonably capable of being rectified within such period, to take action to remedy the default.

## **16. SUPPLEMENTARY TERMS AND CONDITIONS:**

If the Goods comprise or include a control system, Seller's Supplementary Terms and Conditions Applicable to the Supply of Control Systems and Related Services shall apply to the control system and related services only. Such Supplementary Terms and Conditions shall take precedence over these Standard Terms and Conditions of Sale; copies are available from Seller upon request.

## **17. MISCELLANEOUS:**

**17.1** No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

**17.2** If any clause, sub-clause or other provision of the Contract is invalid or unenforceable, this shall not affect the validity of the remainder of the Contract. Should one of the clauses be invalid or unenforceable, the parties obligate themselves to replace the invalid or unenforceable clause by such a clause which comes closest to the intended economic purpose of the invalid clause.

**17.3** Buyer shall not be entitled to assign its rights or obligations hereunder without the prior written consent of Seller.

**17.4** Seller enters into the Contract as principal. Buyer agrees to look only to Seller for due performance of the Contract.

**17.5 GOODS AND SERVICES PROVIDED HEREUNDER ARE NOT SOLD OR INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS.** Buyer (i) accepts Goods and Services in accordance with the foregoing restriction, (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 and Seller's Affiliates from any and all claims, losses, liabilities, suits, judgements 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.

**17.6** The Contract shall in all respects be construed in accordance with the laws of the Federal Republic of Germany excluding, however, any effect on such laws of the 1980 Vienna Convention on Contracts for the International Sale of Goods, and to the fullest extent permitted by law, shall be without regard to any conflict of laws or rules which might apply the laws of any other jurisdiction. All disputes arising out of the Contract shall be subject to the exclusive jurisdiction of the Munich courts. However, Seller is entitled to sue Buyer in the court of Buyer's residence as well.

**17.7** The headings to the Clauses and paragraphs of the Contract are for guidance only and shall not affect the interpretation thereof.

**17.8** All notices and claims in connection with the Contract must be in writing.