

1. DEFINITIONS:

In these Terms and Conditions of Sale, "Seller" means Nidec Industrial Automation USA, LLC "Buyer" means the person, firm, company or corporation by whom the order is given; "Goods" means the goods, products or components (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 (which incorporates these Standard Terms and Conditions of Sale) 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 supplied under each individual order and "Seller Affiliate" means any company which is for the time being directly or indirectly controlled by the ultimate parent company of Seller. For the purposes of this definition, a company is directly controlled by or is a subsidiary of another company or companies which holds 50% or more of the shares carrying the right to vote at a general meeting of the first mentioned company and a particular company is indirectly controlled by another company or companies if a series of companies can be specified, beginning with that company or those companies and ending with the particular company, so related that each company in the series is directly controlled by one or more of the companies earlier in the series.

2. THE CONTRACT:

2.1 All orders must be in writing and are accepted subject to these Standard Terms and Conditions of Sale. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of Seller's terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. 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 Form nor otherwise expressly agreed in writing by Seller will be binding on Seller.

2.2 Where Buyer requires the Goods to comply with standards, specific regulations and/or be received by control and inspection agencies, Buyer's price request or order must be accompanied by the technical specification and all terms and conditions that Buyer requests Seller must comply with. Buyer's specifications and any terms and conditions will only apply if (and to the extent) accepted by Seller in writing on Seller's quotation or offer provided to Buyer. All costs arising out of or in connection with Seller's compliance with Buyer's specifications or terms and conditions will be borne by the Buyer.

2.3 The Contract will become effective only upon the date of acceptance of Buyer's order on Seller's Acknowledgement of Order Form or upon the date of fulfillment of all conditions precedent stipulated in the Contract, whichever is the later (the "Effective Date"). 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.

2.4 No alteration or variation to the Contract will 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 (30) days after its date.

3.2 Prices are firm for delivery within the period stated in Seller's quotation or are subject to a revision formula pertaining to the Goods or materials attached to the quotation and are exclusive of (a) Value Added Tax and (b) any similar and other taxes, duties, levies or other like charges arising outside the United States of America in connection with the performance of the Contract. Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of production, sale, or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

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 Seller's quotation, are exclusive of packing. If the Goods are to be packed, packing materials are non-returnable.

4. PAYMENT:

Payment must 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 (30) days of date of invoice unless otherwise specified by Seller's Finance Department. Goods will be invoiced at any time after their readiness for delivery 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 4% (per cent) above the base lending rate of Barclays Bank plc (or such higher rate as permitted by applicable law) from the date when payment is due from Buyer until the date when payment is received by Seller and such interest will be calculated on an annual, compounded monthly basis and/or; (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/or (iii) at any time require such reasonable security for payment as Seller may deem reasonable and/or (iv) terminate the Contract.

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. Exceeding delivery time will not entitle Buyer to damages and/or penalties.

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 will both be adjusted accordingly.

5.3 If delivery is delayed due to any act or omission or by request of Buyer, or if having been notified that the Goods are ready for shipment, Buyer fails to take delivery or provide adequate shipping instructions, Seller will be entitled to place the Goods into a suitable store at Buyer's expense. Upon placing the Goods into the store, delivery will be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer will 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 licences or other circumstances set out in Clause 14), or labour trouble, strike, lockout or injunction. Seller will be relieved without liability of all obligations under the Contract unless and until the aforesaid circumstances no longer prevent and/or delay Seller's ability to perform its Contract.

6.2 If either party is delayed or prevented from performance of its obligations by reason of this Clause for more than one hundred and eighty (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 will 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, CALIBRATION AND QUALIFICATION:

7.1 Goods will be inspected by Seller or the manufacturer of the Goods ("Manufacturer") and, where practicable, be submitted to Seller's or Manufacturer's standard tests before delivery. 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 will be specified by Buyer in writing in the order and will be subject to Seller's prior written agreement and Seller reserves the right to charge for these; if Buyer or its representative fails to attend such tests, inspection and/or calibration after seven (7) days' written notice that the Goods are ready therefor, the tests, inspection and/or calibration

will proceed and will be deemed to have been made in the presence of Buyer or its representative and Seller's or Manufacturer's statement that the Goods have passed such testing and/or inspection and/or have been calibrated will be conclusive.

7.2 Prototypes for Goods specially developed or adapted for Buyer must be qualified and approved in writing by Buyer before Seller or Manufacturer will start with serial production of the relevant Goods in order to ensure that they are compatible with the other components that make up their equipment, and that they are adapted to the intended use. Such written approval will confirm Buyer's acceptance of the prototype and acceptance that the prototype meets Buyer's technical specification and other terms and conditions or specifications. In this respect, Buyer and Seller will sign two originals of a "Product Approval Form", one original to be retained by Buyer and one by Seller.

7.3 In the event that Buyer requires delivery without having first qualified and approved the Goods, said Goods will be delivered as they stand and will be deemed prototypes specifically approved and acceptable to Buyer and Seller makes no representations, warranties or conditions, implied or otherwise, in relation to such prototypes. Buyer shall then be solely liable for using the Goods or delivering them to its own clients. Buyer must indemnify Seller against any and all claims by third parties in respect to the prototypes. Seller may also decide not to deliver the Goods that have not received Buyer's prior approval.

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 will pass to Buyer upon delivery to the carrier as aforesaid and Buyer will 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 will be defined in accordance with the latest version of ICC Incoterms.

8.2 Seller may deliver by installments and if so each delivery will constitute a separate contract and failure by Seller to deliver any one or more of the installments in accordance with their terms will not entitle Buyer to terminate the whole Contract or treat it as repudiated.

8.3 Claims for shortfalls in quantity or for incorrect delivery will be void if made more than fourteen (14) days after delivery.

8.4 Subject to Clause 9, title to the Goods will pass to Buyer upon delivery in accordance with Sub-clause 8.1.

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 prepared by Seller, Manufacturer and/or Seller Affiliate or supplied with the Goods ("Documentation") will remain with Seller, manufacturer and/or relevant Seller Affiliate (or such other party as may have supplied the Software and/or Documentation to Seller) and is not transferred to Buyer with delivery of the Goods.

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. Other than Seller's standard operating and maintenance manuals (and except and to the extent that any law prevents Seller restraining Buyer from doing so), Buyer must not copy the Software and/or Documentation (unless expressly authorized by applicable law) and must hold the Software and/or Documentation in strict confidence and not disclose them to others, or permit others to have access to them. 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 Software (including but not limited to Control System Software) will be governed exclusively by the applicable licence agreement.

9.4 Seller, manufacturer and/or Seller Affiliates will retain ownership of all inventions, designs and processes made or evolved by them and save as set out in this Clause 9 no Intellectual Property Rights are hereby granted.

10. DEFECTS AFTER DELIVERY:

10.1 Seller warrants (i) subject to the other provisions of the Contract, good title to and the unencumbered use of the Goods; (ii) that, Goods manufactured by Seller and/or Seller Affiliate will conform with Seller's written specifications therefore at time of shipment and be free of defects in materials and workmanship and (iii) that Services provided by Seller or Seller Affiliates will be performed with reasonable skill, care and due diligence and in accordance with good engineering practice. Seller will make good, by repair or at Seller's option by the supply of a replacement part or parts, or refund the purchase price for that portion of the Goods with, any defects which, under proper use, care and maintenance, appear in Goods of Seller or Seller's Affiliates' manufacture and which are reported to Seller within twelve (12) calendar months from their delivery (the "Warranty Period") and which arise solely from faulty materials or workmanship. Within the Warranty Period, Buyer will request and Seller will approve and authorize in advance any return of defective items, which will be sent at Buyer's cost, including the cost of insurance to any address provided by Seller. Where in Seller's reasonable determination, defects in returned Goods are not found to arise solely from faulty materials or workmanship, or where the defects are found to arise from improper use, care and maintenance, Seller will return the Goods at the cost of Buyer or the end user. Replaced items will become the property of Seller. Repaired or replacement items will be delivered by Seller at Seller's cost to Buyer's site in the United States of America or, if Buyer is located outside the United States of America, FCA in the United States of America. Seller will correct defects in Services provided by Seller or Seller Affiliate and reported to Seller within ninety (90) days after completion of such Services. Goods or Services repaired, replaced or corrected in accordance with this Sub-clause 10.1 will be subject to the foregoing warranty for the unexpired portion of the Warranty Period.

10.2 Goods or Services sourced by Seller from a third party (not being a Seller Affiliate) for resale to Buyer will carry only the warranty extended by the original Manufacturer.

10.3 Notwithstanding Clauses 10.1 and 10.2, neither Seller nor Seller Affiliate will be liable for any defects caused by: wilful damage, negligence, abnormal use of the Goods or use of the Goods for a purpose other than that intended by the manufacturer, or failure by Buyer to disclose the purpose or conditions of use of the Goods; fair wear and tear; materials or workmanship made, furnished or specified by Buyer, non-compliance with Seller's or Manufacturer's storage, installation, operation or environmental requirements; lack of proper maintenance; any modification or repair not previously authorized by Seller in writing; the use of non-authorized software or spare or replacement parts. Seller's costs incurred in investigating and rectifying such defects will be paid by Buyer upon demand. Buyer will at all times remain solely responsible for the adequacy and accuracy of all information supplied by it.

10.4 This warranty will apply to Goods that are made readily available and therefore does not cover the costs of disassembly and reassembly of said Goods in the equipment into which they are mounted.

10.5 TO THE FULLEST EXTENT PERMITTED BY LAW, AND WITHOUT LIMITING CLAUSE 10.3 AND SUBJECT TO CLAUSE 12, THE FOREGOING CONSTITUTES SELLER'S SOLE WARRANTY AND BUYER'S EXCLUSIVE REMEDY FOR BREACH THEREOF AND NO REPRESENTATION, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, WILL APPLY TO SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SERVICES.

11. INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT:

11.1 This indemnity is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement.

11.2 Subject to the limitations in Clause 12, Seller will indemnify Buyer in the event of any claim for infringement of a valid U.S. Patent, Letter Patent, Registered Design, Design Right, Trade Mark or Copyright ("Intellectual Property Rights") existing at the date of formation of the Contract arising from the use or sale of the Goods, against all reasonable costs and damages awarded against Buyer in any action for such infringement, or for which Buyer may become liable in any such action, provided always that Seller will not be liable to so indemnify Buyer in the event that:

(i) such infringement arises as a result of Seller and/or Manufacturer having followed a design or instruction furnished or given by Buyer, or the Goods having been used in a manner or for a purpose or in a country

not specified by or disclosed to Seller prior to the date of the Contract or in association or combination with any other equipment or software, or

- (ii) Seller and/or Manufacturer has at its expense procured for Buyer the right to continue to use the Goods or has modified or replaced the Goods so that the Goods no longer infringe, or
- (iii) Buyer has failed to give Seller the earliest possible notice in writing of any claim made or to be made or of any action threatened or brought against Buyer and/or Buyer has failed to permit Seller and/or Manufacturer, at Seller's expense, to conduct and control any litigation that may ensue and all negotiations for a settlement of the claim, or
- (iv) Buyer has made without Seller's prior written consent any admission which is or may be prejudicial to Seller and/or Manufacturer in respect of any such claim or action, or
- (v) the Goods have been modified without Seller's prior written authorization.
- (vi) such Goods are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods, or replace them with non-infringing Goods, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods, without liability

11.3 Buyer warrants that any design or instructions furnished or given by it will not cause Seller and/or Manufacturer to infringe any Intellectual Property Rights in the performance of Seller's obligations under the Contract and will indemnify Seller against all reasonable costs and damages which Seller may incur as a result of any breach of such warranty.

12. LIMITATION OF LIABILITY:

SELLER AND SELLER'S AFFILIATES 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, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) SHALL SELLER'S AND SELLER'S AFFILIATES LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S AND SELLER'S AFFILIATES LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

13. STATUTORY AND OTHER REGULATIONS:

13.1 If Seller's obligations under the Contract will 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 by-law having the force of law that will affect the performance of Seller's obligations under the Contract, the Contract Price and delivery period will be adjusted accordingly and/or performance of the Contract suspended or terminated, as appropriate.

13.2 Except to the extent otherwise required by applicable law, Seller will 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, in particular European Directive 2012/19/EU (WEEE) and 2003/108/EC related legislation in EU Member States, to dispose of 'waste' Goods or any part thereof, Buyer will, 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 will, whilst on Seller's, Manufacturer's and/or Seller Affiliate's premises, comply with Seller's, Manufacturer's and/or Seller Affiliate's applicable site regulations and Seller's, Manufacturer's and/or Seller Affiliate's reasonable instructions, including but not limited to those relating to safety, security, confidentiality and electrostatic discharge.

14. COMPLIANCE WITH LAWS

14.1 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 Goods and/or other items may be supplied, and the requirements of any licences, authorisations, general licences or licence exceptions relating thereto will apply to its receipt and use of Goods, hardware, software, services and technology. If Seller or Seller Affiliate should fail to receive any necessary or advisable licences, authorizations or approvals, even arising from inaction by any relevant government authority, or if any such licences, authorizations or approvals are denied or revoked, or if there is a change in any applicable laws, regulations, orders or requirements that would prohibit Seller or Seller Affiliate from fulfilling the Contract, or would in the reasonable judgment of Seller otherwise expose Seller or Seller Affiliate to a risk of liability under such laws, regulations, orders or requirements if it fulfilled the Contract, Seller and Seller Affiliate will be relieved without penalty of all obligations under the Contract. In no event may Buyer use, transfer, release, export or re-export any such Goods, 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.

14.2 Buyer agrees furthermore that it will not engage in any activity that would expose Seller or any Seller Affiliate 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 will be entitled, without prejudice to any other rights it may have, to cancel the Contract immediately (or at its option on greater notice) wholly or partly, by notice in writing to Buyer (a) if Buyer is in default of any of its obligations under the Contract and fails, within thirty (30) 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 or (b) on the occurrence of an Insolvency Event in relation to Buyer. "Insolvency Event" in relation to Buyer means any of the following: (i) any event occurs which, in the opinion of Seller, may materially and adversely affect the business, assets or financial condition of Buyer; (ii) a meeting of creditors of Buyer being held or an arrangement or composition with or for the benefit of its creditors being proposed by or in relation to Buyer; (iii) a chargeholder, receiver, administrative receiver, judicial manager or similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven (7) days) on the whole or a material part of the assets of Buyer; (iv) Buyer ceasing to carry on business or being unable to pay its debts; (v) Buyer or its directors or the holder of a qualifying floating charge or like encumbrances giving notice of their intention to appoint, or making an application to the court for the appointment of an administrator; (vi) a petition being presented (and not

being discharged within twenty eight (28) days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of Buyer; or (vii) the happening in relation to Buyer of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets. Seller will be entitled to recover from Buyer or Buyer's representative all costs and damages incurred by Seller as a result of such cancellation, including a reasonable allowance for overheads and profit (including but not limited to loss of prospective profits and overheads). In the event the Contract is cancelled, any amounts due will become payable, any down payments or amounts already paid by Buyer will remain in Seller's hands, and unpaid Goods must be returned to Seller immediately, regardless of where they are located, at Buyer's risk and expense under charge of 10% (ten per cent) of the value thereof, per week's delay. No order which has been accepted by Seller may be cancelled by Buyer except with Seller's prior written consent and on terms that Buyer will indemnify Seller in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by Seller and/or Seller Affiliate as a result of cancellation.

16. CONFIDENTIALITY:

Each of the parties undertakes to maintain the confidentiality of all technical, trade, financial or other information received from the other or from Manufacturer or a Seller Affiliate, whether orally, in writing or by any other means of communication when any order is negotiated and/or fulfilled ("Confidential Information"). The terms of and obligations imposed by this Clause 16 will survive the completion of the Contract but will not apply to any Confidential Information which either party can demonstrate: (i) is or becomes public other than as a result of a breach of any obligations of confidence; (ii) was lawfully obtained from a third party not under any obligations of confidence; (iii) was already known to a party before its disclosure under the Contract other than as a result of a breach of any obligations of confidence. A party may disclose Confidential Information to the extent required by law, regulation or order of a competent authority provided that the other party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

17. 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 will apply to the Control System and related services only. Such Supplementary Terms and Conditions will take precedence over these Standard Terms and Conditions of Sale; copies are available from Seller upon request.

18. MISCELLANEOUS:

18.1 No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing or performance, will 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.

18.2 If any clause, sub-clause or other provision of the Contract is rendered invalid or unenforceable under any statute or rule of law, such provision, to that extent only, will be deemed to be omitted without affecting the validity of the remainder of the Contract.

18.3 Buyer will not be entitled to assign its rights or obligations hereunder without the prior written consent of Seller.

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

18.5 UNLESS OTHERWISE AGREED TO IN WRITING BY BOTH PARTIES AND COMBINED WITH AN EXECUTED NUCLEAR INDEMNIFICATION AGREEMENT, GOODS AND SERVICES PROVIDED HEREUNDER ARE NOT SOLD OR INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Regardless whether Buyer is the owner/operator of the nuclear facility, 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 Affiliate(s) 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 Seller's liability is based on negligence or strict liability.

18.6 The Contract will in all respects be construed in accordance with the laws of the State of Minnesota, and to the fullest extent permitted by law, will be without any conflict of laws or rules which might apply the laws of any other jurisdiction. All disputes arising out of the Contract will be subject to the exclusive jurisdiction of the state courts in Minnesota or in the federal court in Minnesota and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Contract.

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

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

18.9 No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Contract by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein.

These Supplementary Terms and Conditions Applicable to the Supply and Control Systems and Related Services ("Supplementary Terms and Conditions") will apply to the supply of control systems and related services and they are supplementary to Seller's Standard Terms and Conditions of Sale - Product & Control Systems set out above ("Standard Terms and Conditions of Sale"). In the event of any conflict between these Supplementary Terms and Conditions and the Standard Terms and Conditions of Sale, the former will prevail.

Part 1 - Applicable in all cases:-

S1. DEFINITIONS:

S1.1 In these Supplementary Terms and Conditions the following words will have the following meanings and other defined terms will have the meaning ascribed to them in the Standard Terms and Conditions of Sale:

Buyer Affiliate - means any company which is for the time being directly or indirectly controlled by the ultimate parent company of Buyer. For the purposes of this definition, a company is directly controlled by or is a subsidiary of another company or companies which holds fifty percent (50%) or more of the shares carrying the right to vote at a general meeting of the first mentioned company and a particular company is indirectly controlled by another company or companies if a series of companies can be specified, beginning with that company or those companies and ending with the particular company, so related that each company in the series is directly controlled by one or more of the companies earlier in the series.

Commissioning - the checking, adjusting, testing and proving of the System following Installation and/or the setting to work of the System in conjunction with the Plant, all as specified in the Contract.

Configuration - the application of the Equipment and/or Software to the specific requirements of the Contract, as detailed in the Functional and/or Detailed Design Specification (as applicable).

Contract Price - the total price payable for the System and, where appropriate, license fees for Software and lump sum payments for Site Work (if applicable), as identified in the Contract.

Data - information, instructions, specifications, drawings, designs, technical details, literature, Software, marketing and advertising literature, catalogues, computer printouts and any other type of documentation.

Detailed Design Specification - if expressly required by the Contract, the specification which details the Configuration, including the functionality of the System, particularly with respect to interfaces between the System and the Plant, the features of the System and the interaction between such interfaces and features.

Equipment - all machinery, apparatus, articles, materials and things (not including Software) provided by Seller.

Factory Acceptance Tests - the inspection and tests performed on the System at Seller's or Manufacturer's works after Staging/Assembly and before delivery, in accordance with the Factory Acceptance Test Specification.

Factory Acceptance Test Specification - the specification which details the Factory Acceptance Tests.

Functional Design Specification - the specification which details the extent of supply of Equipment and Software and includes, where applicable, an outline description of Buyer's process to be controlled by the System and the control functions to be incorporated into the System.

Installation - the fixing into position of the various items of the System, their connection to the Plant and to the electrical power and/or air supplies (as applicable).

Plant - all facilities, machinery, apparatus, articles, materials and things to be provided by Buyer on the Site to be used in conjunction with or in association with the System and/or the Installation and/or Commissioning of the System.

Seller's Personnel - employees of Seller, Seller Affiliate and/or Seller's subcontractor.

Site - the place(s) identified in the Contract where the System is to be installed.

Site Acceptance Tests - the tests (if any) to be carried out on Site to demonstrate that the System is capable of achieving the functions set out in the Specification.

Site Acceptance Test Specification - the specification which details the Site Acceptance Tests.

Site Work - Services (if any) to be provided by Seller on Site in accordance with the Contract.

Specification - the specification of the System incorporated into the Contract, as supplemented, amended and/or qualified by the Functional Design Specification and (if applicable) the Detailed Design Specification.

Software License - the software license agreement(s) applicable to the Software.

Staging/Assembly - the assembly of the System in Seller's or Seller Affiliate's works, including the interconnection of the separate items of Equipment and where applicable the integration of Equipment and Software (and if required under the Contract, any items of Plant free issued to Seller in accordance with Clause S5 - Free Issue Materials) into the System.

System - the combination of Equipment, Software and Configuration, as detailed in the Specification.

S1.2 Subject to Clause 9 thereof, throughout the Standard Terms and Conditions of Sale "Goods" will have the same meaning as "System".

S2. PAYMENT:

S2.1 Seller will render invoices as follows:
15% of the Contract Price - on receipt of Buyer's written order or written instruction to put work in hand, whichever is the sooner.

20% of the Contract Price - on delivery by Seller of the Functional Design Specification for Buyer's approval.

35% of the Contract Price - on receipt by Seller of materials for Staging/Assembly of the System.

15% of the Contract Price - at start of Factory Acceptance Tests.

15% of the Contract Price - on Seller's notification of readiness to deliver the System.

(Where the implementation programme is phased, Seller may submit invoices as above for the portion of the Contract Price applicable to each such phase).

Any sums other than the Contract Price - monthly in arrears.

S2.2 Payment will not be withheld on account of minor defects or omissions which do not materially affect the functionality of the System.

S2.3 Buyer will be deemed to have waived the right to dispute any of Seller's invoices unless Buyer will have notified Seller of any dispute (stating in full the reason for the dispute) in writing within thirty (30) days of the date of submission of the invoice to Buyer. All undisputed invoices will become due and payable in accordance with Clause 4 of the Standard Conditions of Sale or S16, as the case may be.

S3. BUYER'S DATA:

S3.1 Should Seller become aware of any errors, inaccuracies, inconsistencies or ambiguities in the Data provided by Buyer, Seller will advise Buyer of same; it being recognised by Buyer that Seller will have no obligation to verify or otherwise assess the correctness of Data provided to it. Buyer will promptly advise Seller if Buyer becomes aware of any inaccuracy or error in Seller's interpretation of Buyer's Data.

S3.2 If the System is or incorporates an emergency shutdown, fire and gas detection or other safety system (hereinafter referred to as a "Safety System"), Buyer will be solely responsible for the definition of the parameters of the shutdown, detection or other safety process in question and of the methodology to be employed (hereinafter referred to as the "Logic") to effect the safe shutdown or other operation of the Safety System.

S3.3 Buyer will indemnify and hold Seller fully harmless against all claims, liabilities, costs, losses and/or expenses of any kind whatsoever arising directly or indirectly as the result of Seller having acted upon, or carried out the Configuration of the System in accordance with Buyer's or its representative's, agent's or servant's instructions, Data, or (in the case of Safety Systems) Logic.

S4. SUPPLY OF DATA BY SELLER:

S4.1 If, under the Contract, Seller is required to submit to Buyer for Buyer's approval copies of Specifications and/or drawings, unless otherwise stated in the Contract one copy only will be submitted. Such Specifications and drawings submitted will be approved within the periods agreed, or when no periods are agreed, within fourteen (14) days from the date of submission. They will be deemed to have been approved upon expiry of such period if Buyer has not given his approval or otherwise in writing before expiry thereof.

S4.2 Seller will, as provided in the Contract, provide Buyer with the following:-

a) Drawings - One copy of dimensional drawings of items manufactured by Seller or Seller Affiliate and one copy of dimensional drawings of all other items, for Installation purposes;

b) Instruction books - One set of applicable instructions for the routine operation and maintenance of the System;

c) Test certificates - One certificate for each item of Equipment;

d) Software - One set of Software on the appropriate medium as defined by Seller.

Additional copies of these items may be requested at prices to be agreed, subject to availability in the case of items not manufactured by Seller or Seller Affiliate. In no event will Seller be obliged to supply manufacturing drawings of Equipment or source code or object code for Software.

S4.3 Buyer will promptly advise Seller if Buyer becomes aware of any inadequacy or error in Seller's Data.

S5. FREE-ISSUE MATERIAL:

Whilst it is in Seller's custody, Seller will be responsible to Buyer for the care and control of all material free-issued by Buyer under the Contract. Seller will replace at Seller's cost all such material which is lost, or destroyed or damaged by reason only of Seller's negligence. In all other circumstances Buyer will bear the risk of all loss and/or damage to such materials at all times and will indemnify Seller against any and all claims, losses, damages, actions, costs and expenses arising as a result of damage, death or injury to Seller or to any third party caused directly or indirectly to or by any such materials. Seller will promptly notify Buyer of any defects in such materials as and when Seller becomes aware of any such defect and Buyer will be responsible for arranging for the rectification or removal of such defects. Seller undertakes, where appropriate, to use such materials in accordance with the Manufacturer's instructions (to the extent they have been made known to Seller by Buyer).

S6. INSPECTION AND WORKS TEST:

S6.1 The System will be submitted for the Factory Acceptance Tests before delivery. If Buyer wishes to inspect the Equipment or to witness any tests, such viewing will be mutually agreed and Seller will give Buyer seven (7) days' notice in writing of when the System will be available for the performance of Factory Acceptance Tests. If Buyer wishes any tests to be repeated or any additional tests to be performed the cost of such testing will be charged to Buyer.

S6.2 In the event that Buyer or Buyer representative fail to attend the Factory Acceptance Tests on the due date, Seller will be entitled to proceed in their absence and the results of such tests will be deemed to be in accordance with the Factory Acceptance Test certificate issued by Seller. Such certificate may record that the Factory Acceptance Tests were carried out in the absence of Buyer or Buyer representative and/or that the System passed the Factory Acceptance Tests subject to reservations relating to minor defects, which are to be remedied by Seller at a time to be agreed.

S6.3 If during the Factory Acceptance Tests any of the System is found not to be in accordance with the Specification, Seller will promptly remedy the defect. Thereafter (save in the case of minor defects not affecting the functionality of the System) the Factory Acceptance Tests will be repeated in accordance with this Clause S6, insofar as it is necessary to demonstrate that the System fully conforms with the Specification.

S6.4 If the Factory Acceptance Tests show that the System meets the Specification and if Buyer or Buyer representative has attended the Factory Acceptance Test, then Buyer or Buyer representative will sign a Factory Acceptance Test certificate accordingly. The Factory Acceptance Test certificate may record that the System has passed the Factory Acceptance Tests but subject to reservations relating to minor defects which will be remedied by Seller at a time to be agreed.

S6.5 Buyer will be deemed to have accepted the System upon issue of the test certificate referred to in Sub-Clause S6.2 or, as the case may be, upon signature of the Factory Acceptance Test certificate referred to in Sub-Clause S6.4.

S7. PACKING

If specified in the Contract the System will be packed in accordance with Seller's or Manufacturer's standard packing specification for delivery. Such packing is included in the Contract Price; however, packing materials are non-returnable.

S8. WARRANTY:

S8.1 Seller's warranty given in Clause 10.1 (ii) of the Standard Terms and Conditions of Sale will be amended to read "that Goods manufactured by Seller and/or Seller Affiliate will conform to the requirements of the Specification and will be free of defects". Clause 10 will not apply to Software; the warranty for Software is set out in the appropriate Software License.

S8.2 The Warranty Period for the System of Seller and/or Seller Affiliate manufacture is twelve (12) calendar months from putting such Goods into operation or eighteen (18) calendar months after their delivery, whichever period expires the sooner.

S8.3 Seller will not be liable for failure to attain any specific availability levels quoted unless it has guaranteed them subject to a limitation of its liability in respect thereof, subject to agreed tolerances, and, where appropriate, subject to a bonus for improvement in performance levels quoted.

S8.4 To the fullest extent permitted by law, the provisions of Clause 10 of the Standard Terms and Conditions of Sale, together with the foregoing, constitutes Seller's sole warranty and Buyer's exclusive remedy for breach thereof. No representations, warranties or conditions of any kind, express or implied, will apply as to merchantability, fitness for any particular purpose or any other matter with respect to any part of the System or Services.

S9. CONFIDENTIALITY:

S9.1 Seller undertakes from the date of formation of the Contract to keep confidential and not to disclose to any third party without Buyer's written consent any Data supplied by Buyer relating to the Plant or Buyer's processes which have been designated in writing by Buyer as confidential, except as may be necessary for the proper performance of the Contract or where required by law to do so.

S9.2 Buyer from the date of formation of the Contract keep confidential and not disclose to others without Seller's prior permission in writing any Data whether of a commercial or technical nature, acquired from Seller and will use the same only for the purpose of (a) carrying out the Contract, and (b) the installation, operation and maintenance of the System.

S9.3 Each party agrees to keep Data received from the other party and which is the subject of Sub-Clauses S9.1 and/or S9.2 in the manner in which it keeps like information of its own.

S9.4 Nothing contained in Sub-Clauses S9.1, S9.2 and S9.3 will apply to prevent either party from disclosing Data:-

- a) in its possession (with no restriction on disclosure) prior to receiving it from the other, or
- b) which is or later becomes public knowledge other than by breach of this Clause S9, or
- c) which it may independently receive from a third party with no restriction on disclosure, or
- d) which is independently developed by an employee who has not benefited from the Data referred to in Sub-Clause S9.1 or, as the case may be, S9.2.

S10. NON-SOLICITATION:

S10.1 Buyer acknowledges and agrees that Seller and Seller Affiliate have expended considerable resources in selecting and training Seller's Personnel to perform the specialised work contemplated by this Contract. Accordingly, unless otherwise agreed in writing by Seller (such consent not to be unreasonably withheld or delayed) Buyer agrees that it will not, and will procure that each Buyer Affiliate will not, at any time during the term of this Contract and for a period of six (6) months following completion of the Services, either on its own behalf or in association with any other person, directly or indirectly, approach, canvass, solicit, hire, engage or employ any Seller's Personnel or any Seller Affiliate who have been engaged in a technical or managerial capacity during the six (6) months immediately prior to the completion of the Services with the performance of the Services.

S10.2 Buyer acknowledges that nothing in this Clause will restrict Seller from seeking any remedy available to it pursuant to applicable laws to compensate it for breach of this provision, including but not limited to injunctive relief.

S10.3 To the extent that Buyer is unable to ensure compliance by any Buyer Affiliate with the terms of this Clause S10 then Buyer will indemnify Seller in respect of any loss, costs, claims or expenses incurred as a result of such non-compliance.

Part 2 - Additional terms and conditions applicable only when Seller is responsible for Site Work:-

When under the Contract Seller is responsible for the provision of Site Work, the following additional terms and conditions will apply:

S17. STATUS OF SELLER'S PERSONNEL: Nothing in the Contract will establish the relationship of master and servant as between Buyer and Seller's Personnel, and Seller's Personnel will not be required to perform any tasks not falling within Seller's responsibility under the Contract.

S11. SCOPE OF SITE WORK: The Site Work to be provided by Seller will be as detailed in the Contract.

S12. SITE FACILITIES:

S12.1 To enable Seller's obligations under the Contract in respect of Site Work to be expeditiously and properly carried out Buyer will provide the facilities set out in the Contract at no cost to Seller, as and when required; if no such facilities are stated in the Contract, Buyer will at no cost to Seller provide all facilities and assistance required by Seller which may include but will not be limited to the following:

- a) suitable access to the Site, satisfactory foundations and environmental conditions for the Equipment, adequate lifting facilities and scaffolding, all unskilled labor, any masons', joiners' or builders' work necessary, suitable security and protection for the Site and for the System from time of delivery, any electrical power, lighting and heating needed, suitable sanitation facilities and drinking water (reasonably close to the point(s) of installation of the System) and all other necessary facilities and assistance;
- b) permanent and suitable electrical and/or air supplies for the Equipment, terminated in accordance with Seller's requirements;
- c) convenient continuous and unrestricted access to the Plant and to the System;
- d) qualified operators and attendants for the Plant;
- e) a safe working environment for Seller's Personnel (including where appropriate, safety induction procedures and special protective clothing);
- f) adequate first-aid and medical facilities at or adequately close to the Site.

S12.2 Buyer will be responsible for ensuring that the Plant is correctly installed and fit for its purpose and that any necessary minor adjustments to be made to the Plant are carried out expeditiously.

S12.3 Unless otherwise agreed in writing Seller will not be responsible for unloading the System and moving it to the place of Installation. If, in Seller's sole opinion, the Site environmental conditions are not suitable for the Installation of the System, a safe working environment does not exist on Site or if Buyer fails to have provided any facility or assistance to be provided by it under the Contract, Seller's obligations to provide Site Work will be suspended (without liability to Seller) until the conditions have been rectified to Seller's satisfaction and any time limits for completion of the Site Work will be appropriately extended. If the System has suffered loss, damage or deterioration after delivery and before Site Work commences, the System will be put in a satisfactory condition at Buyer's cost before Seller will be obliged to proceed.

S12.4 Where the Contract calls for the carrying out of Site Work outside the United States, Buyer will also provide at no cost to Seller:-

- a) suitable accommodation and messing facilities to a suitable international standard at or near the Site.
- b) assistance with obtaining (in sufficient time not to cause delay) visas, residence permits, work permits and any other necessary authorities for any of Seller's Personnel (and their dependants if appropriate) required to attend at the Site for the purposes of the Contract.
- c) assistance with obtaining any licenses, authorities or permits necessary for the importation into the foreign country, and subsequent re-export, of any test equipment and tools necessary for the performance of the Contract, if these are to be provided by Seller.

S13. SUPERVISION OF INSTALLATION:

S13.1 Where Seller is responsible for supervision of Installation or part thereof, Seller will provide the services of one or more competent Seller's Personnel to give instruction to the skilled and unskilled labor provided by Buyer to secure:-

- a) the reception and unpacking of the Equipment
- b) the moving to the place or places of Installation of the various items of Equipment and their Installation.

If called for by the Contract, Seller will load the Software and (if provided by Seller) the Configuration Software onto the Equipment. If the Configuration has been performed by Buyer or others, Buyer will be responsible for the loading of the Configuration Software.

S13.2 The skilled and unskilled labor provided by Buyer will remain the servants of and under the control of Buyer, and Buyer must provide all benefits to and maintain valid insurance in respect of (including without limitation workers' compensation and public liability insurance) such skilled and unskilled labor, and Buyer indemnifies Seller against any and all claims made by such skilled and unskilled labor against Seller in relation to any benefit in the nature of an employment related benefit, including without limitation wages, award and statutory benefits, superannuation, leave, termination payments, and workers' compensation benefits. Seller will not be liable for any act or omission of such labor, but if in giving or omitting to give orders or instructions to such labor, Seller's supervisory Personnel fail to use proper skill and care, Seller will be liable for the consequences of such failure in accordance with the Contract.

S14. SITE ACCEPTANCE TESTS:

Where Seller is responsible under the Contract for the performance of the Site Acceptance Tests:-

S14.1 When Installation is complete to Seller's satisfaction, Seller will give seven (7) days' notice to Buyer of the commencement of the Site Acceptance Tests. Unless otherwise agreed in the Contract, the Site Acceptance Tests will be conducted in accordance with Seller's standard test procedures.

S14.2 If Seller is unable to proceed with Site Acceptance Tests on the due date for commencement thereof due to reasons within the control of Buyer, or if the System fails to pass the Site Acceptance Tests due to reasons outside Seller's control, the System will be deemed to have been taken over and the Site Acceptance Certificate referred to in Sub-Clause S14.4 will be deemed to have been signed by Buyer. In either event the Site Acceptance Tests, or repeats thereof, will be conducted at a time to be agreed and any additional costs incurred by Seller will be to the account of Buyer.

S14.3 If during the Site Acceptance Tests any of the System is found not to be in accordance with the Specification, Seller will promptly make good the defect. Thereafter the Site Acceptance Tests will be repeated in accordance with this Clause S14; insofar as is necessary to demonstrate that the System conforms to the Specification.

S14.4 When the System has passed Site Acceptance Tests, Buyer will sign a Site Acceptance Test certificate. The Site Acceptance Test certificate may record that the System has passed the Site Acceptance Tests but subject to reservations related to minor defects, which defects will be rectified by Seller at a time to be agreed.

S14.5 The signature of the Site Acceptance Test certificate by Buyer will, save in the case of fraud or dishonesty relating to or affecting any matter dealt with therein, and save for any continuing liabilities of Seller as detailed in Clause 10 of the Standard Terms and Conditions of Sale, or the remedying of minor defects referred to in Sub-Clause S14.4, be conclusive evidence of the sufficiency of the System and any Site Work provided by Seller in connection with the Contract.

S15. COMMISSIONING: If specified in the Contract, Seller will assist Buyer with Commissioning. Buyer will be responsible for the operation of the System and of the Plant during Commissioning and will provide suitably qualified personnel to perform such work.

S16. PAYMENT FOR SITE WORK:

S16.1 Unless otherwise agreed, any sums payable in respect of Site Work will be paid within thirty (30) days of Seller's invoices rendered monthly in arrears and in any event the balance of any monies due to Seller will be payable not later than thirty (30) days from the completion of Site Work.

S16.2 If under the Contract, Buyer or Buyer Affiliate is required to countersign Seller's timesheets or other related documentation, such countersignature will be conclusive proof that the Site Work concerned has been performed and that Seller is entitled to claim payment for such Site Work.