

CONTROL MICROSYSTEMS INC. - TERMS AND CONDITIONS

The following terms and conditions shall govern all sales of product of Control Microsystems Inc. ("CMI") to a purchaser (the "Purchaser") by a purchase order or any other agreement, in writing or otherwise (a "Purchase Order").

1) **Pricing** – Unless otherwise set forth in a Purchase Order accepted by CMI, prices for all product shall be in accordance with CMI's then current price list. Unless otherwise expressly stated, all prices of CMI are expressed in U.S. dollars. CMI reserves the right to amend its price list at any time or times without notice to the Purchaser. The Purchaser shall pay for all freight, insurance, taxes, duties, levies, customs or similar charges eligible on such product, whether or not the same is set forth in the Purchase Order.

2) **Purchase Orders** - All Purchase Orders from a Purchaser must be in writing or, in the case of telephone orders, followed by confirmation in writing, by fax or other electronic means acceptable to CMI. CMI reserves the right to delay shipment until written confirmation of the Purchase Order has been received by CMI. A Purchase Order is not a commitment on the part of CMI to supply the product, and is not an agreement of CMI to supply, until accepted by an authorized officer of CMI, evidenced by either a signed acknowledgement of order form or other written confirmation from CMI, or by delivery of product to the carrier.

3) **Cancellation Policy** - All accepted Purchase Orders shall be final and the Purchaser shall have no right to terminate any such order, regardless of whether or not the product has then been delivered to a carrier. The Purchaser shall have no right to return any product. CMI may, but is not obligated, to accept termination of a purchase order, or accept a return of product from the Purchaser, on terms and conditions acceptable to CMI and acknowledged in writing by CMI.

4) **Payment** - Invoices for payment are due on issuance subject to authorized credit. Except as otherwise agreed to by CMI in writing, all invoices on authorized credit are due net 30 days. Overdue invoices bear interest at a rate of 1.5% per month, compounded monthly, (equivalent to 26.8% per annum) from the date of invoice. CMI reserves the right to require payment of the purchase price for product prior to delivery to a carrier. CMI reserves the right to require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to CMI. Where payment is made by letter of credit or guarantee, all costs of collection shall be for Purchaser's account. In the event that CMI is required to bring legal action to collect delinquent accounts, Purchaser agrees to pay reasonable attorneys fees and costs of suit. Notwithstanding delivery to a carrier, CMI shall retain title to all product until payment in full is received.

5) **Delivery and Shipment** - All product supplied are delivered FCA (Free Carrier) CMI's plant (currently for shipments destined for the U.S.A. – Ogdensburg, New York, U.S.A., and for all other shipment destinations - Kanata, Ontario, Canada). Risk of loss passes to the Purchaser on safe delivery to the carrier. Purchaser to arrange and pay for freight unless included in the accepted Purchase Order and in such case product will be shipped by ground transport insured for full replacement value, except as otherwise agreed by CMI in writing.

6) **Delays in Shipment** - Promises of shipment date made by CMI shall not constitute a binding legal commitment by CMI to ship on or before such date. CMI makes every reasonable effort to ensure shipment on the promised date.

7) **Separate Shipments** - Each shipment of product shall be treated for billing and collection purposes as a separate and independent contract and CMI shall have the right to invoice and collect payment on each shipment.

8) **Non-Conforming Delivery** - Purchaser shall notify CMI of any visible defects, quantity shortages or incorrect product shipments within seven (7) days of receipt of the shipment. Failure to notify CMI in writing of any visible defects in the products or of quantity shortages or incorrect shipments within such period shall be deemed an unqualified waiver of any rights to return products on the basis of visible defects, shortages or incorrect product.

9) **Software License**. Notwithstanding anything else herein contained, title to any software products, or any software installed with products or delivered with products, shall remain with CMI and its licensors. All software is subject to the applicable license agreement which is included with the product. Purchaser shall be bound by the license agreement once the software is opened or installed.

10) **Warranties** - Except as specified below, products sold hereunder shall be free from defects in materials and workmanship and shall conform to CMI's published specifications or other specifications accepted in writing by CMI for a period of three (3) years parts and labor F.O.B. CMI's plant, except for the SCADAPack Vision, Operator Displays, Antennas and batteries which carry a one (1) year warranty and the Siemens probes integrated with the Accutech FL10 level sensors which are warranted by Siemens, not Control Microsystems. The foregoing warranty does not apply to any products which have been subject to misuse, neglect, accident or modification or which have been soldered or altered such that they are not capable of being tested under normal test conditions. CMI shall make the final determination as to whether its products are defective. CMI's sole obligation for products failing to comply with this warranty shall be, at its option, to either repair, replace or issue credit for the nonconforming product where: on or prior to the expiration of the warranty period CMI has received written notice of any defect or nonconformity; (ii) after CMI's written authorization, Purchaser has returned the defective or nonconforming product to CMI; and (iii) CMI has determined that the product is defective or nonconforming and that such defect or nonconformity is not the result of improper installation, repair or other misuse. **THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CMI DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON**

TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS. All product returned under warranty shall be accompanied by a Returned Material Authorization ("RMA") number which number must be clearly visible on the outermost package of the returned product. The RMA number is obtained by contacting CMI prior to return of such product. Returned product without an RMA number will not be accepted by CMI.

11) **Mission Critical Disclaimer** - CMI does not warrant that Purchaser's use of its products will be error free or that its products will not be subject to failure. The products of CMI are not designed for use in: mission critical applications; in applications where error or non-performance might lead to catastrophic consequences including injury, death or property damage; or in applications where there is no design redundancy and periodic system verification protocols to verify system and component operation and failure.

12) **Limited Liability** - IN NO EVENT SHALL CMI BE LIABLE FOR GENERAL OR SPECIFIC DAMAGES OTHER THAN THE COST OR REPLACEMENT OF PRODUCT SUPPLIED. IN NO EVENT SHALL CMI BE LIABLE FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR OTHER GENERAL OR SPECIFIC DAMAGES OR ANY LOSSES OR EXPENSES SUFFERED BY THE PURCHASER OR ANYONE ELSE, WHETHER OR NOT CMI, OR ITS EMPLOYEES, OFFICERS, AGENTS, DEALERS OR INSTALLERS HAS BEEN INFORMED OF THE RISK OF SUCH LOSS OR EXPENSE AND WHETHER OR NOT SUCH LOSSES OR EXPENSES WERE FORESEEABLE AND WHETHER OR NOT SUCH DAMAGES OR LOSSES OR CLAIMED UNDER ANY THEORY OF LAW OR UNDER CONTRACT, STATUTE, TORT, IMPLIED DUTIES OR OTHERWISE OR DIRECTLY OR INDIRECTLY RELATED TO THE SUPPLY OF PRODUCT OR THIS AGREEMENT. THE AGGREGATE LIABILITY OF CMI IN ANY WAY RELATING TO A SUPPLY OF PRODUCTS, IN ANY OCCURRENCE OR SERIES OF OCCURRENCES, SHALL BE LIMITED TO THE CONTRACTUAL VALUE OF THE PRODUCTS SUPPLIED IN THE PURCHASE ORDER.

13) **Indemnity from Purchaser** - The Purchaser shall indemnify and hold CMI, its directors, officers, employees and agents harmless with respect to any general, specific, indirect, consequential, incidental, exemplary or punitive damage, liability or claim of any kind in connection with the loss of or damage to property and personal injury, including death, resulting from or in connection with the product supplied by CMI or any act or failure to act by CMI. The Purchaser shall defend at its own cost and expense any and all suits or proceedings brought against CMI, its directors, officers, employees and agents or any of them, in connection with this indemnity.

14) **Entire Agreement** - These Terms and Conditions together with the order information constitute the entire agreement between CMI and Purchaser pertaining to the supply of product by CMI and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein. No supplement, modification, amendment, waiver or termination of these Terms and Conditions shall be binding unless executed in writing by CMI and the Purchaser. In the event of a conflict between the provisions of these Terms and Conditions and any other agreement between CMI and the Purchaser, other than one that explicitly overrides these Terms and Conditions, the provisions of these Terms and Conditions shall prevail. No provision or term or limitation set forth in these Terms and Conditions shall be excluded by any agreement between CMI and the Purchaser unless the provision of these Terms and Conditions to be excluded is specifically identified. Any standard conditions of purchase, or provision, term, condition, right, warranty, acknowledgment, or obligation set forth in the Purchaser's purchase order, other than the order for product of CMI, shall be deemed excluded and of no force or effect.

15) **Laws of Ontario** - This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada excluding the law of conflicts and excluding the United Nations Convention of Contracts for the Sale of Goods and shall be treated in all respects as an Ontario contract. The Parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario, Canada with respect to any and all disputes arising out of, pursuant to or relating to this Agreement or the supply of product and waives any right that it may have to assert the defence of forum non-conveniens in any suit, action or proceeding.

16) **Excusable Delay** - Where CMI is delayed in performing or observing a covenant or obligation which is to be performed or observed by a specified date or within a particular time by reason of excusable delay, the date or period of time by or within which CMI is to perform or observe such covenant or obligation will be extended by a period of time equal to the duration of the delay. As used herein "excusable delay" means any delay which is beyond the reasonable control of CMI and which is not caused by any default or act of commission or omission of CMI and is not avoidable by the exercise of reasonable effort or foresight by CMI (including without limiting the generality of the foregoing, strikes or labor or industrial disturbances, civil disturbances, acts, orders, legislation, regulations or directives of any governmental or other public authorities, acts of public enemies, war, terrorist attacks, riots, sabotage, blockades, embargoes, lightning, earthquakes, fire, storms, hurricanes, floods, wash-outs, explosions, acts of God and delays caused by the Purchaser).

17) **Export Regulations**. Purchaser agrees to comply fully with all laws and regulations concerning the purchase and sale of products. In particular, the Purchaser agrees to comply with the export laws and regulations of the United States and Canada in so far as they apply to the sale of products. The products are licensed for delivery to the ultimate destination as shown on the shipment/invoice address and any contrary diversion is prohibited.

18) **Partial Invalidity** - If any provision of these Terms and Conditions or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of these Terms and Conditions, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby and each provision of these Terms and Conditions will be valid and enforced to the fullest extent permitted by law and be independent of every other provision of these Terms and Conditions.