



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

2. **PAYMENT TERMS.** Net thirty (30) days from date of invoice with ongoing approved credit as determined by Seller. Seller may render partial invoices and require progressive payments. Seller reserves the right to render invoices electronically and to receive payment by way of electronic funds transfer. Payment by credit card, when permitted, is subject to credit card validation and authorization both at time of agreement and immediately prior to shipment. Seller reserves the right to suspend any further performance hereunder or otherwise in the event payment is not made when due. No payment by offset is permitted. Interest charges will be added to overdue invoices at the rate of 1.5% per month (subject to any limit imposed by applicable law).

3. **DELIVERY TERMS.** Delivery terms are Ex Works Seller's plant or warehouse (per current Incoterms) or as otherwise agreed to as evidenced by Seller's order acknowledgment. In all cases title transfers to Buyer upon the earlier of Seller's delivery to Buyer or receipt by the first carrier for transport to Buyer, except that title to all intellectual property rights associated with the Products remains with Seller or its suppliers and licensors. Acknowledged shipping dates are approximate only and based on prompt receipt of all necessary information from Buyer. Seller disclaims all liability for late delivery. Where applicable, prepaid shipping will be billed as a separate invoice item.

4. **WARRANTY.**

(a) **Hardware:** Seller warrants that new hardware Products furnished hereunder will be free from defects in material, workmanship and design for a period of one (1) year from the date of invoice from Seller or its appointed distributor, as the case may be. Repaired or replacement Products provided as a result of this warranty subparagraph are similarly warranted for a period of six (6) months from the date of shipment to Buyer or the remainder of the original warranty term for that particular Product, whichever is longer.

(b) **Software and Firmware:** Unless otherwise provided in a Seller or third party license, Seller warrants that standard software or firmware Products furnished hereunder, when used with Seller-specified hardware, will perform in accordance with published specifications prepared, approved, and issued by Seller for a period of one (1) year from the date of invoice from Seller or its appointed distributor, as the case may be. Seller makes no representation or warranty, express or implied, that the operation of the software or firmware Products will be uninterrupted or error free, or that the functions contained therein will meet or satisfy Buyer's intended use or requirements.

(c) **Non-Warranty Factory Remanufacture, Repair and Field Exchange:** Seller warrants that non-warranty factory remanufactured or field exchanged hardware Products or repaired hardware Product components will be free from defects in material and workmanship for a period of one (1) year from the date of invoice from Seller or its appointed distributor, as the case may be. Repaired or replacement Products provided as a result of this warranty subparagraph are warranted for a period of thirty (30) days from the date of shipment to Buyer or the remainder of the original warranty term, whichever is longer.

(d) **Services:** Seller warrants that Products comprised solely of services (e.g., training, on-site repair, engineering and custom application programming services) will be performed by appropriately skilled personnel employed or retained by Seller.

(e) **"Open Box" Products:** Seller warrants that hardware Products sold as "Open Box" (e.g., customer and distributor returns, factory refurbished or reconditioned, etc.) will be free from defects in material and workmanship for a period of ninety (90) days from the date of invoice from Seller or its appointed distributor, as the case may be. "Open Box" Products, while serviceable, may not reflect the latest series or revision. Repaired or replacement Products provided as a result of this warranty subparagraph are similarly warranted for a period of thirty (30) days from the date of shipment to

Buyer or the remainder of the original ninety-day warranty term for that particular Product, whichever is longer.

(f) **Buyer Specifications/Compatibility:** Seller does not warrant and will not be liable for any design, materials, construction criteria or goods furnished or specified by Buyer (including that sourced from other manufacturers or vendors specified by Buyer). Any warranty applicable to such Buyer-specified items will be limited solely to the warranty, if any, extended by the original manufacturer or vendor directly or indirectly to Buyer. Seller does not warrant the compatibility of its Products with the goods of other manufacturers or Buyer's application except to the extent expressly represented in Seller's published specifications or written quotation.

(g) **Recyclable Materials:** In keeping with environmental policies and practices, Seller reserves the right to utilize in its product manufacturing, repair and remanufacturing processes certain recyclable materials (e.g., fasteners, plastics and the like) or remanufactured parts equivalent to new in performance or parts which may have been subject to incidental use. However, such utilization will not affect any provided Product warranty or published reliability statistics.

(h) **Remedies:** Remedies under the above warranties will be limited, at Seller's option, to the replacement, repair, re-performance or modification of, or issuance of a credit for the purchase price, of the Products involved, and where applicable, only after the return of such Products pursuant to Seller's instructions. Replacement Products may be new, remanufactured, refurbished or reconditioned at Seller's discretion. Buyer requested on-site warranty service (consisting of time, travel and expenses related to such services) will be at Buyer's expense. The foregoing will be the exclusive remedies for any breach of warranty or breach of contract arising therefrom.

(i) **General:** Warranty satisfaction is available only if (a) Seller is provided prompt written notice of the warranty claim and (b) Seller's examination discloses that any alleged defect has not been caused by misuse; neglect; improper installation, operation, maintenance, repair, alteration or modification by other than Seller; accident; or unusual deterioration or degradation of the Products or parts thereof due to physical environment or electrical or electromagnetic noise environment.

(j) THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR PERFORMANCE OR APPLICATION WARRANTIES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. Rights under the above warranties (subject to noted limitations) extend to Buyer's customers if Buyer is a Seller-appointed distributor for the Products.

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

6. **INTELLECTUAL PROPERTY INDEMNITY.** Except as excluded herein, Seller will defend any suit or proceeding brought against Buyer arising out of a claim that the design or construction of the Products sold or licensed hereunder by Seller infringes any patent, copyright or trademark granted or registered in the country of Seller's shipping destination, provided (a) Buyer promptly notifies Seller in writing of any such claim and any suit or proceeding, (b) at Seller's expense, Buyer gives Seller the sole right to defend, settle and control the defense of the suit or proceeding, (c) Buyer



provides all necessary information and assistance for such defense or settlement, and (d) Buyer takes no position adverse to Seller in connection with such claim. In the event Seller is obligated to defend such suit or proceeding, Seller will pay all costs and damages finally awarded or agreed upon by Seller that are directly related thereto. Seller's obligations under this paragraph will be fulfilled if Seller, at its option and expense: (i) procures for Buyer the right to continue using such Products, (ii) replaces the same with non-infringing equipment/software having functionality similar to that of the Products, (iii) modifies the Products to make them non-infringing while retaining similar functionality, or (iv) if (i)-(iii) are not commercially practicable, refunds to Buyer the purchase price of the affected Products in exchange for their return. Seller will have no obligation to defend or for any other liability with respect to: [a] any suit or proceeding to the extent based on or arising out of a configuration or modification made, specified or requested by Buyer and which is incorporated into or constitutes the Products, [b] the use of the Products in a process or application specified, requested or controlled by Buyer or any third parties, or [c] the use of the Products in combination with other equipment, software or materials not supplied by Seller. As used in this paragraph, the term "Products" shall mean only Seller's standard hardware and software that are generally commercially available, and expressly excludes third-party-branded equipment/software. THIS PARAGRAPH IS IN LIEU OF ALL WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, THAT THE PRODUCTS WILL BE FREE OF THE RIGHTFUL CLAIM OF ANY THIRD PARTY BY WAY OF INFRINGEMENT OR THE LIKE.

7. RESALE OF THIRD-PARTY BRANDED PRODUCTS AND SERVICES. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, SELLER MAKES NO REPRESENTATIONS, PROVIDES NO INDEMNITIES (INTELLECTUAL PROPERTY OR OTHERWISE), AND DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED RELATIVE TO ANY THIRD-PARTY BRANDED PRODUCT OR SERVICE (INCLUDING TRAINING) WHICH MAY BE RESOLD OR SUBLICENSSED BY SELLER AS A DISCRETE ITEM HEREUNDER.

8. LICENSED SOFTWARE AND FIRMWARE. Use of Products comprised of software or firmware may be subject to Buyer's acceptance of additional terms and conditions set forth in separate Seller or third-party license agreements that will control to the extent necessary to resolve any conflict with the terms and conditions stated or otherwise referenced herein. In the absence of a separate Seller's license agreement, Buyer is granted a non-exclusive, non-transferable license to use provided Seller's software or firmware only in object code form and solely in conjunction with Seller-provided Products, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software or firmware.

9. PACKING AND MARKING. Buyer-specified packing or marking may be subject to additional charges not otherwise included in the price of the Products.

10. WEIGHTS AND DIMENSIONS. Published or advertised weights and dimensions are estimates or approximations only and are not warranted.

11. PRICES. Prices and other information shown in any Seller publication (including product catalogs and brochures) are subject to change without notice and to confirmation by specific quotation. Such publications are not offers to sell and are maintained only as a source of general information. Prices do not include sales, use, excise, customs, value-added or similar taxes. Buyer will pay or reimburse Seller for all such taxes as may be applicable. Time and material services will be provided in accordance with Seller's published service rates (including applicable overtime and travel expenses) in effect as of the date such services are provided, unless otherwise confirmed by Seller's written quotation or order acknowledgment. Billable service time includes travel time to and from the job site and all time Seller's representatives are available for work and waiting (whether on or off the job site) to perform the services.

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

13. RETURNS. All returns of Products will be pursuant to Seller's instructions. Non-warranty returns of unused and resalable Products for credit will be subject to Seller's return policies in effect at the time, including applicable restocking charges and other conditions of return. Products

returned under warranty must be properly packed and shipped to Seller-specified locations. Shipping containers must be clearly marked per Seller's instruction and shipped freight prepaid by Buyer. Notwithstanding the foregoing, all sales of "Open Box" Products and any third-party branded products are final and do not qualify for non-warranty return.

14. ORDER CANCELLATION. Cancellation by Buyer prior to shipment is permitted only by written notice and upon payment to Seller of reasonable cancellation and restocking charges, including reimbursement for direct costs. Cancellation charges associated with orders for custom Products or Products specifically manufactured to Buyer's specification may equal the actual selling price of the Products. Seller has the right to cancel an order for cause at any time by written notice, and Seller will be entitled to cancellation and restocking charges as identified above. No termination by Buyer for cause will be effective unless and until Seller has failed to correct such alleged cause within forty-five (45) days after receipt of Buyer's written notice specifying such cause.

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

16. GOVERNMENT CLAUSES AND CONTRACTS. Application of government contract regulations and clauses to the Products or the agreement evidenced by these terms and conditions are subject to the separate review and consent by an authorized representative at Seller's headquarters. Products sold or licensed hereunder are not intended to be used, nor should they be used, in any nuclear-related application either as a "Basic Component" as defined under United States nuclear regulations or under similar nuclear laws and regulations of any other country or otherwise.

17. EXPORT CONTROL. Products and associated materials supplied or licensed hereunder may be subject to various export laws and regulations. It is the responsibility of the exporter to comply with all such laws and regulations. Notwithstanding any other provision herein to the contrary, in the event that U.S. or local law requires export authorization for the export or re-export of any Product or associated technology, no delivery can be made until such export authorization is obtained, regardless of any otherwise promised delivery date. In the event that any required export authorization is denied, Seller will be relieved of any further obligation relative to the sale and/or license and delivery of the Product(s) subject to such denial without liability of any kind relative to Buyer or any other party. Seller will not comply with boycott related requests except to the extent permitted by U.S. law and then only at Seller's discretion.

18. DISPUTES. The parties will attempt in good faith promptly to resolve any dispute arising hereunder by negotiations between representatives of the parties who have authority to settle the dispute. If unsuccessful, the parties further will attempt in good faith to settle the dispute by non-binding third-party mediation, with mediator fees and expenses apportioned equally to each side. Any dispute not so resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in accordance with the terms hereof. These procedures are the exclusive procedures for the resolution of all such disputes between the parties.

19. GOVERNING LAW AND FORUM. The agreement evidenced hereby and all disputes arising thereunder will be governed by and interpreted in accordance with the internal laws and will be subject to the exclusive jurisdiction of the courts of the state, province or other governmental jurisdiction in which Seller's principal place of business resides, but specifically excluding the provisions of the 1980 UN Convention on Contracts for the International Sales of Goods. Should any term or provision hereof be held wholly or partly invalid or unenforceable under applicable law, the remainder of the agreement evidenced hereby will not be affected thereby.

20. ASSIGNMENT. The agreement evidenced hereby may not be assigned by either party without the written consent of the other (which consent will not be unreasonably withheld). However, consent will not be required for internal transfers and assignments as between Seller and its parent company, subsidiaries or affiliates as part of a consolidation, merger or any other form of corporate reorganization.

21. LANGUAGE. The parties acknowledge that they have required that the agreement evidenced hereby be drawn up in English. Les parties reconnaissent avoir exigé la rédaction en anglais du Contrat. In the event of a conflict between the English and other language versions, the English version will prevail.