

Supplementary Terms And Conditions Applicable To The Supply Of Control Systems And Related Services

Control Techniques Drives Limited.

UK:CT Edition 11/2005

These Supplementary Terms and Conditions shall 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 Conditions of Sale"); in the event of any conflict between these Supplementary Terms and Conditions and the Standard Conditions of Sale, the former shall prevail.

Part 1 - Applicable in all cases:-

S1. DEFINITIONS:

S1.1 In these Supplementary Terms and Conditions the following words shall have the following meanings:

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 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 Specifications (as applicable).

Contract Price - the total price payable for the System and, where appropriate, licence 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 Affiliates and/or Seller's subcontractors.

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 Licence - the software licence 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 Conditions of Sale "Goods" shall have the same meaning as "System".

S2. PAYMENT:

S2.1 Seller shall 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 shall not be withheld on account of minor defects or omissions which do not materially affect the functionality of the System.

S2.3 Buyer shall be deemed to have waived the right to dispute any of Seller's invoices unless Buyer shall 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 shall 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, it shall advise Buyer of same; it being recognised by Buyer that Seller shall have no obligation to verify or otherwise assess the correctness of Data provided to it. Buyer shall 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 shall 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 shall 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 shall be submitted. Such specifications and drawings submitted shall be approved within the periods agreed, or when no periods are agreed, within fourteen (14) days from the date of submission. They shall be deemed to have been approved upon expiry of such period if Buyer shall not have 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's Affiliate(s), 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's Affiliate(s). In no event shall Seller be obliged to supply manufacturing drawings of Equipment or source code or object code for Software.

S4.3 Buyer shall 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 shall be responsible to Buyer for the care and control of all material free-issued by Buyer under the Contract. Seller shall replace at its cost all such material which is lost, or destroyed or damaged by reason only of Seller's negligence. In all other circumstances Buyer shall bear the risk of all loss and/or damage to such materials at all times and shall 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 shall promptly notify Buyer of any defects in such materials as and when Seller becomes aware of any such defect and Buyer shall 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 shall be submitted to the Factory Acceptance Tests before despatch. If Buyer wishes to inspect the Equipment or to witness any tests, such viewing shall be mutually agreed and Seller will give Buyer 7 (seven) days' notice in writing of when the System will be available for the performance of Factory Acceptance Tests. If the Buyer wishes any tests to be repeated or any additional tests to be performed the cost of such testing will be charged to the buyer.

S6.2 In the event that Buyer or his representative fail to attend the Factory Acceptance Tests on the due date, Seller shall be entitled to proceed in their absence and the results of such tests shall be deemed to be in accordance with the Factory Acceptance Test certificate issued by Seller. Such certificate may record that the Factory Acceptance Tests had been carried out in the absence of Buyer or its representative and/or that the System had 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 shall promptly remedy the defect. Thereafter (save in the case of minor defects not affecting the functionality of the System) the Factory Acceptance Tests shall 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 his representative has attended the Factory Acceptance Test, then Buyer or his representative shall sign an Acceptance Certificate accordingly. The Acceptance 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 shall 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 Acceptance 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 shall be amended to read "that Goods manufactured by Seller and/or Seller's affiliates shall conform to the requirements of the Specification and shall be free of defects". Clause 10 shall not apply to Software; the warranty for Software is set out in the appropriate Software Licence.

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

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S8.3 Seller shall 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 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, shall 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 for a period of ten (10) years 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 shall for a period of ten (10) years from the date 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 shall 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 Both parties agree 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 they keep like information of their own.

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

- in its possession (with no restriction on disclosure) prior to receiving it from the other, or
- which is or later becomes public knowledge other than by breach of this clause, or
- which it may independently receive from a third party with no restriction on disclosure, or
- 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 Affiliates have expended considerable resources in selecting and training employees and independent contractors 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 shall not, and shall procure that each Buyer Affiliate shall not, at any time during the term of this Contract and for a period of 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 employees or independent contractors of Seller or any Seller Affiliate who have been engaged in a technical or managerial capacity during the 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 shall 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 shall 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 shall apply:

S11. SCOPE OF SITE WORK: The Site Work to be provided by Seller shall 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 shall at no cost to Seller provide all facilities and assistance required by Seller which may include but shall not be limited to the following:

- suitable access to the Site, satisfactory foundations and environmental conditions for the Equipment, adequate lifting facilities and scaffolding, all unskilled labour, 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.
- permanent and suitable electrical and/or air supplies for the Equipment, terminated in accordance with Seller's requirements.
- convenient continuous and unrestricted access to the Plant and to the System.
- qualified operators and attendants for the Plant.
- a safe working environment for Seller's Personnel (including where appropriate, safety induction procedures and special protective clothing).
- 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 shall 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 shall be appropriately extended. If the System has suffered loss, damage or deterioration after delivery and before Site Work commences, the System shall be put in a satisfactory condition at Buyer's cost before Seller shall be obliged to proceed.

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

- suitable accommodation and messing facilities to a suitable international standard at or near the Site.
- 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.
- assistance with obtaining any licences, 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 shall provide the services of one or more competent personnel to give instruction to the skilled and unskilled labour provided by Buyer to secure:-

- the reception and unpacking of the Equipment
- 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 shall 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 shall be responsible for the loading of the Configuration software.

S13.2 The skilled and unskilled labour provided by Buyer shall remain the servants of and under the control of Buyer. Seller shall not be liable for any act or omission of such labour, but if in giving or omitting to give orders or instructions to such labour, Seller's supervisory personnel fail to use proper skill and care, Seller shall 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 7 (seven) 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 shall be deemed to have been taken over and the Site Acceptance Certificate referred to in Sub-Clause S14.4 shall be deemed to have been signed by Buyer. In either event the Site Acceptance Tests, or repeats thereof, shall be conducted at a time to be agreed and any additional costs incurred by Seller shall 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 shall promptly make good the defect. Thereafter the Site Acceptance Tests shall be repeated in accordance with this Clause S14, insofar as is necessary to demonstrate that the System conforms with the Specification.

S14.4 When the System has passed Site Acceptance Tests, Buyer shall sign a Site Acceptance Certificate. The Site Acceptance 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 Certificate by Buyer shall, 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 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 shall assist Buyer with Commissioning. Buyer shall be responsible for the operation of the System and of the Plant during Commissioning and shall 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 shall be paid within 30 (thirty) days of Seller's invoices rendered monthly in arrears and in any event the balance of any monies due to Seller shall be payable not later than 30 (thirty) days from the completion of Site Work.

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

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