

# GENERAL CONDITIONS OF SALE OF WORK

**1. GENERAL.** This Agreement is the entire agreement of the parties, superseding any previous agreements and understandings, whether oral or written. It exclusively will govern the sale and/or licensing by Rockwell Automation of the WORK and any other Products furnished under this Agreement. No addition or modification to this Agreement will be binding unless mutually agreed to in writing. Each party rejects any other terms and conditions that are in addition to or not consistent with this Agreement that may be proposed by the other party or that appear or are referenced in Buyer's purchase order or other requisition or in Rockwell Automation's invoice.

**2. PRICE.** As provided in the Statement of Work, exclusive of applicable taxes and duties unless otherwise specified.

**3. PAYMENT.** Net 30 days from date of invoice issued in accordance with the Pricing and Payment Schedule that is part of the Statement of Work unless otherwise set forth in the Statement of Work.

**4. DELIVERY.** Ex Works Rockwell Automation's plant or warehouse (per current Incoterms) or as otherwise specified in the Statement of Work (Delivery). In all cases, title transfers to Buyer upon the earlier of Rockwell Automation'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 WORK remains with Rockwell Automation or its suppliers and licensors.

**5. ACCEPTANCE.** (a) Acceptance occurs (i) on the date the WORK conforms to acceptance criteria in the Statement of Work or is otherwise beneficially used by Buyer, but in no event later than 120 days following Delivery; or (ii) if otherwise unspecified, upon Delivery.

(b) *Interim Approvals.* Any Rockwell Automation submittal or deliverable requiring Customer approval pursuant to the Scope of Work will be deemed accepted if formal Customer approval, written or as otherwise required, is not received by Rockwell Automation within two calendar weeks after the date submitted.

**6. CHANGES.** Any change resulting from any of the following circumstances is subject to equitable adjustments to price, scheduling, and other affected terms and conditions:

(a) Buyer requested order changes, including those affecting the identity, scope, and delivery of the WORK or Products;

(b) Concealed or otherwise unknown physical conditions differing materially from those indicated or anticipated in the Statement of Work or that otherwise differ materially from those ordinarily found under similar circumstances;

(c) Any delays caused by Buyer, its employees, affiliates, other contractors to Buyer, or any other party within Buyer's reasonable control;

(d) Any emergency endangering persons or property. In such circumstances, Rockwell Automation may act at its discretion to prevent damage, injury, or loss.

All changes, except actions necessitated by emergencies as provided in (d) above, must be executed by a written change order signed by both parties or otherwise definitively authorized by both parties, and Rockwell Automation will not begin work on a change until a change is authorized. All claims must be made within a reasonable time after the occurrence giving rise to the claim. If the parties can not agree on a change in pricing or schedule, it will be resolved pursuant to Section 26, Disputes.

Rockwell Automation reserves the right to substitute using the latest superseding revision or series or equivalent Product having comparable form, fit, and function, and such substitutions shall not be considered changes subject to the other terms of this section.

**7. RETURNS.** All returns of Products will be pursuant to Rockwell Automation's instructions.

## **8. DEFAULT, DELAYS, AND TERMINATION.**

(a) *Default by Rockwell Automation.* If Rockwell Automation is in material default of its obligations in the Agreement, Buyer shall give Rockwell Automation written notice, and Rockwell Automation shall have five business days to begin action and 90 days (or longer if agreed to in writing) to cure the default. If Rockwell Automation fails to cure the default, Buyer may terminate this Agreement to the extent that Rockwell Automation is in default. Rockwell Automation's liability shall be limited to (a) the proportionate Contract price of the

terminated portion of the WORK and (b) any documented direct excess procurement costs incurred by Buyer to complete the WORK to a capability not exceeding that provided in the Statement of Work, but Rockwell Automation's liability for documented direct excess procurement costs shall not exceed an additional 10% of the proportionate Contract price for the terminated portion of the work.

(b) *Convenience of Buyer.* Buyer may terminate this Agreement for convenience prior to shipment by giving written notice to Rockwell Automation. Buyer shall pay for work performed before receipt of notice and any additional costs of cancellation (including third-party commitments, reasonable profit, and overhead as may be more specifically provided in the Statement of Work) upon submission of Rockwell Automation's invoices.

(c) *Delays or Default by Buyer.* If Buyer, its employees, affiliates, other contractors to Buyer, or any other party within Buyer's reasonable control causes the delivery, installation, or acceptance of the WORK to be delayed beyond the Project Schedule in the Statement of Work, or if Buyer materially fails to fulfill any condition of the terms of this Agreement, Rockwell Automation may elect to (a) withhold deliveries and suspend performance, or (b) place the Products in storage at Buyer's risk and cost. If such delay or other non-fulfillment is not rectified by Buyer within a reasonable time upon notice, Rockwell Automation may cancel this Agreement, and Buyer shall pay all costs of cancellation (including third-party commitments, reasonable overhead, and profit) upon submission of Rockwell Automation's invoices.

(d) *Temporary Suspension of Work by Buyer.* Notwithstanding the above, Buyer, by providing prior written notice, may request Rockwell Automation to temporarily suspend performance and delivery of the Work, in whole or in part. The notice shall specify the portion of the work to be suspended, the effective date of suspension, Buyer's anticipated duration of suspension, and the reasons for the suspension. Rockwell Automation shall suspend performance as requested, except as necessary for the care or preservation of Work previously executed. On or before the date the suspension begins, Buyer must pay Rockwell Automation the unpaid balance of the portion of the Work previously executed plus any additional costs incurred by Rockwell Automation as a result of the suspension. Rockwell Automation shall resume the suspended Work after a change order is executed covering adjustments to the contract price, schedule, and any other affected terms or conditions resulting from the suspension. Unless otherwise agreed, the maximum cumulative period for suspension is 60 days. Upon expiration of this or any shorter period agreed upon as provided above, Rockwell Automation may cancel this Agreement, and Buyer shall pay all costs of cancellation (including third-party commitments, reasonable overhead, and profit) upon submission of Rockwell Automation's invoices.

**9. FORCE MAJEURE.** Neither party will be liable for any loss, damage or delay arising out of its failure (or that of its subcontractors) to perform due to causes beyond its reasonable control, including without limitation, acts of God, 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, performance date(s) will be extended as reasonably necessary to compensate for the delay.

## **10. WARRANTY.**

(a) *Warranty:* Rockwell Automation warrants to Buyer for the lesser period of 18 months from delivery or 12 months from startup, that the WORK will perform as stated in the Statement of Work and the Products will be free of defects in material, fabrication, and workmanship provided that: (1) the operating conditions and use of the WORK are in accordance with any standards set forth in the Statement of Work, Rockwell Automation's published specifications, and applicable recommendations of Rockwell Automation; and (2) the installation, adjustment, tuning, and start-up of the WORK have been properly performed in accordance with Rockwell Automation's published specifications and any applicable recommendations of Rockwell Automation. Repaired or replacement Products provided pursuant to subparagraph (b) below are similarly warranted for the longer period of six months from date of shipment or the remainder of the original warranty term.

(b) *Remedies:* Remedies under this warranty will be limited to, at Rockwell Automation's discretion, replacement, repair, re-performance, modification, or issuance of a credit for the purchase price of the Products involved, but only after the

return of such Products pursuant to Rockwell Automation's instructions. Replacement Products, at Rockwell Automation's discretion, may be new, remanufactured, refurbished, or reconditioned. If the repair, re-performance, or replacement does not cure the defective performance, Buyer may request emergency on-site service, which will be at Rockwell Automation's expense (consisting of time, travel, and expenses incurred by Rockwell Automation related to such services). If the defective performance is not due to warranted defects in the WORK or Products, the on-site service will be at Buyer's expense. On-site warranty services performed at Rockwell Automation expense shall not include removal or reinstallation costs related to large-scale assemblies such as motors or transformers. The foregoing will be the exclusive remedies for any breach of warranty or breach of contract arising from warranted defects.

(c) *General*: Warranty satisfaction is available only if (a) Rockwell Automation is provided prompt written notice of the warranty claim, and (b) Rockwell Automation'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 Rockwell Automation, accident, or unusual deterioration or degradation of the Products or parts thereof due to physical environment or electrical or electromagnetic noise environment.

(d) *Services*: Rockwell Automation warrants that service (including, but not limited to, training, installation, modifications, additions, software programming, engineering, startup, or repairs) shall be performed in a workmanlike manner conforming to standard industry practice. Rockwell Automation must receive written notification of non-conforming services within 30 days after the services are provided. If such services are confirmed to be non-conforming, Rockwell Automation will, at its option, re-perform the service or provide a refund or credit to Buyer in the amount paid for the service. The foregoing will be the exclusive remedies for any breach of warranty or breach of contract arising from warranted non-conforming services.

(e) 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.

#### 11. INTELLECTUAL PROPERTY LICENSE AND OWNERSHIP.

(a) *Firmware and Standard Software*. Software comprised of firmware or Standard Software (including, but not limited to packaged software, Seller's preexisting templates and library files, and commercially available software) is subject to Buyer's acceptance of additional terms and conditions set forth in separate Rockwell Automation or third-party license agreements. In the absence of a separate Rockwell Automation license agreement, Rockwell Automation hereby grants Buyer a non-exclusive, non-transferable license to use such firmware or Standard Software solely in conjunction with the WORK, without the right to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the firmware or software. Ownership of the respective Rockwell Automation or third-party firmware or Standard Software shall remain with Rockwell Automation or the third party.

(b) *Documentation and Other Software*. Rockwell Automation hereby grants to Buyer a non-exclusive, non-transferable license to modify and use solely in conjunction with the WORK all documentation and any application software created by Rockwell Automation as specified in the Statement of Work. Except for any Buyer or third-party confidential information, Rockwell Automation retains all right, title, and interest to documentation and application software developed by Rockwell Automation. Buyer shall not sublicense or assign the documentation or the software except to a customer who purchases the WORK from Buyer. Buyer may make an additional archival copy of such documentation and application software for backup.

(c) *Ownership of Pre-existing Intellectual Property*. Each party shall continue to own all right, title, and interest in all patents, trademarks, copyrights, confidential information, trade secrets, mask rights, and other intellectual property rights as it owned on the Effective Date of this Agreement.

(d) *No Other Licenses*. Except as expressly set forth in this Agreement, no license under any patents, trademarks, copyrights, confidential information, trade secrets, mask rights, or other intellectual property rights is granted or implied under this Agreement by either party.

12. **INTELLECTUAL PROPERTY INDEMNITY**. Rockwell Automation will pay costs and damages finally awarded in any suit against Buyer to the extent based on a finding that the design or construction of any WORK or Products manufactured by Rockwell Automation, infringe any patent, utility model, copyright, or trademark granted or registered in the country of Rockwell Automation's shipping destination, provided that, Buyer: (i) promptly informs Rockwell Automation of the alleged infringement in writing; (ii) provides Rockwell Automation the exclusive right to defend and settle the suit, at Rockwell Automation's expense; and, (iii) provides all reasonable information and assistance

requested for the defense. Rockwell Automation shall have no liability for any infringement that is based upon or arises out of: (a) compliance with Buyer's instructions, specifications or designs; (b) use of WORK or Products in a Buyer or third-party process; or, (c) combinations with other equipment, software or materials not supplied by Rockwell Automation. The foregoing states the sole and exclusive obligations of Rockwell Automation for intellectual property infringement.

13. **GENERAL INDEMNITY**. Rockwell Automation agrees to indemnify the Buyer from any suit or proceeding by third parties (which are not Rockwell Automation employees) for damage to third-party tangible property and for bodily injury to the percentage extent directly caused by Rockwell Automation's negligence in the performance of this Agreement. This indemnity is contingent upon Buyer giving Rockwell Automation prompt notice of any such suit or proceeding and all necessary information and assistance so that Rockwell Automation may defend or settle such claim and provided Buyer does not take any adverse position in connection with such claim. If any such damage or injury is caused by the joint or concurrent negligence of Rockwell Automation and Buyer, or any agent, subcontractor, or supplier to Buyer, each party shall pay for its own defense, and the liability of each party shall be borne in proportion to the party's negligence.

14. **DISCLAIMER AND LIMITATION OF LIABILITY**. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY 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. EACH PARTY'S MAXIMUM CUMULATIVE LIABILITY RELATIVE TO ALL OTHER CLAIMS AND LIABILITIES, INCLUDING OBLIGATIONS UNDER ANY INDEMNITY, WHETHER OR NOT INSURED, WILL NOT EXCEED THE LESSER OF \$1,000,000 (or Euro equivalent) OR THE COST OF THE WORK. ROCKWELL AUTOMATION DISCLAIMS ALL LIABILITY RELATIVE TO GRATUITOUS INFORMATION OR ASSISTANCE PROVIDED BY BUT NOT REQUIRED OF ROCKWELL AUTOMATION BY THE STATEMENT OF WORK. ANY ACTION BY EITHER PARTY MUST BE BROUGHT WITHIN 18 MONTHS AFTER THE CAUSE OF ACTION ACCRUES. THESE DISCLAIMERS AND LIMITATIONS OF LIABILITY WILL APPLY REGARDLESS OF ANY OTHER CONTRARY PROVISION AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTY OR CONDITION OR EXCLUSION OF DAMAGES IS SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION. THIS PROVISION EXTENDS TO THE BENEFIT OF ROCKWELL AUTOMATION'S PARENT, SUBSIDIARIES, AFFILIATES, VENDORS, APPOINTED DISTRIBUTORS, AND OTHER AUTHORIZED RESELLERS AS THIRD-PARTY BENEFICIARIES.

15. **BUYER SPECIFICATION**. Unless otherwise specified in the Statement of Work, Rockwell Automation does not warrant or indemnify and will not otherwise be liable for (i) design, materials, or construction criteria furnished or specified by Buyer and incorporated into the WORK or Products, (ii) products made by or sourced from other manufacturers or vendors specified by Buyer; or (iii) commercially available computer software, hardware, and electrical components. (Such Buyer-specified products shall include but not be limited to any identified in the Statement of Work.) Any warranty or indemnity applicable to such Buyer-specified products will be limited solely to the warranty or indemnity, if any, extended by the original manufacturer or vendor other than Rockwell Automation to the extent permissible thereunder.

16. **INSURANCE**. During the term of this Agreement, Rockwell Automation shall maintain, at its sole expense, the following minimum insurance coverages:

(a) *Workers' Compensation*: statutory in accordance with applicable law;

(b) *Employer's Liability*: \$1,000,000 (or Euro equivalent) per accident, per employee, per disease;

(c) *Commercial General Liability*: \$2,000,000 (or Euro equivalent) per occurrence single limit of liability, \$2,000,000 (or Euro equivalent) general aggregate that shall include but not be limited to contractual liability, premises liability, advertising liability, and product liability; and

(d) *Commercial Automobile Liability*: \$2,000,000 (or Euro equivalent) per occurrence combined single limit of liability, covering all owned, leased, and non-owned vehicles.

17. **CUSTOMER INFORMATION**. Buyer represents and warrants that it

has the rights to the information provided or made available by Buyer to Rockwell Automation, including but not limited to technical specifications, drawings, source code, application code, communication interfaces, protocols, and all other documentation, for Rockwell Automation to perform its obligations under this Agreement and that such access to and use of the information under this Agreement will not infringe or violate any license terms, confidentiality obligations, copyrights, or other intellectual property rights of the original vendor or any other third party.

#### 18. SAFETY AND STANDARDS.

(a) Rockwell Automation is responsible for compliance of the WORK with laws, regulations, and standards, including safety regulations and standards, of the country where the WORK will be located that are applicable to the WORK at the effective date of this Agreement.

(b) Buyer must inform Rockwell Automation of any other laws, regulations, or standards that may apply to the WORK. Rockwell Automation will be responsible for compliance with such other safety or other standards only if documented in the Statement of Work.

(c) Rockwell Automation is not responsible for laws, regulations, or standards that apply to Buyer's (or end user's, if different from Buyer) facility, equipment, process, information system, or data.

#### 19. SITE RULES, LICENSES, PERMITS, SITE PREPARATION.

(a) Rockwell Automation agrees to comply with all applicable posted site rules of Buyer (unless inconsistent with the obligations set forth in the Statement of Work) and any additional Buyer's site rules that have been incorporated into the Statement of Work.

(b) Buyer is responsible for:

(1) all licenses, permits, clearances, and site access rights;

(2) all sites being ready and equipped with all necessary Buyer furnished equipment and facilities;

(3) any required customer fixtures or facilities being hazard free, structurally sound, and sufficient; and

(4) reasonable access to the worksite

as required for installing, commissioning or using the WORK.

#### 20. QUALITY, INSPECTIONS AND TESTING.

(a) Rockwell Automation maintains ISO 9001-2000 certified quality systems globally at its major production facilities.

(b) Unless otherwise agreed in the Statement of Work, customer inspection and testing prior to delivery will be limited to witnessing Rockwell Automation's standard factory tests of the WORK or Products on the date scheduled by Rockwell Automation. All such tests will be subject to reasonable advance notice and may be subject to additional charges.

21. **GOVERNMENT CLAUSES AND CONTRACTS.** No government contract clauses, specification, or regulations apply to the WORK, Products, or otherwise to this Agreement except to the extent agreed in writing by Rockwell Automation.

22. **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 to the contrary, if 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. If any required export authorization is denied, Rockwell Automation will be relieved of any further obligation relative to the sale and/or license and delivery of the Product(s) or WORK subject to such denial without liability of any kind to Buyer or any other party. Rockwell Automation will not comply with boycott related requests except to the extent permitted by U.S or local laws and then only at Rockwell Automation's discretion.

23. **ASSIGNMENT.** This Agreement may not be assigned in whole or in part by either party without the written consent of the other. However, consent will not be required for internal transfers and assignments between either party and its parent company, subsidiaries, or affiliates as part of a consolidation, merger, or any other form of corporate reorganization.

24. **EMPLOYEE SOLICITATION.** During the term of this Agreement and for 12 months following its termination, Buyer agrees that if it hires any employee of Rockwell Automation with whom the Buyer has had contact as a result of this Agreement, it will pay

Rockwell Automation 50% of the hired Rockwell Automation employee's annual salary at Rockwell Automation.

25. **INDEPENDENT CONTRACTORS.** The parties at all times will be independent. Neither party is an employee, joint venturer, agent or partner of the other; neither party is authorized to assume or create any obligations or liabilities, express or implied, on behalf of, or in the name of the other. The employees, methods, facilities, and equipment of each party at all times will be under the exclusive direction and control of that party.

26. **DISPUTES.** The parties will attempt in good faith to promptly resolve any dispute by negotiations between representatives who have authority to settle the dispute. If unsuccessful, the parties 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 resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in accordance with the terms provided in this Agreement. These procedures are the exclusive procedures for the resolution of disputes between the parties.

27. **GOVERNING LAW AND FORUM.** This Agreement and all disputes arising under it 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 Rockwell Automation's principal place of business resides but specifically excluding the provisions of the 1980 UN Convention on Contracts for the International Sales of Goods.

#### 28. CONFIDENTIALITY.

(a) During the term of this Agreement and for a period of three years thereafter, each party will maintain in strict confidence all technical and business data and information disclosed by one party to the other that is marked "Confidential" and will not use or reveal such information without the prior written authorization of the other.

(b) The obligations of confidentiality and non-use will not apply to information (i) that is published or becomes part of the public domain other than by means of a breach of this Agreement; (ii) that a party can prove by written documentation was known to it prior to disclosure by the other party; (iii) that a party subsequently rightfully receives from a third party without an obligation of confidentiality; (iv) that a party discloses to a third party on a non-confidential basis; or (v) that was independently developed by the receiving party.

(c) Each party will take reasonable precautions to instruct its employees and consultants of its obligation under this section. Additionally, each party shall protect the exchanged information of the other against unauthorized use or disclosure with the same degree of care as it accords its own proprietary information of a similar type, but not less than reasonable care.

(d) Disclosure of confidential information will not be precluded if it is: (i) in response to a valid order of a court or governmental body of the United States or any political subdivision thereof; provided, however, that the disclosing party will first have made a reasonable effort to obtain a protective order requiring that the confidential information be used only for the purpose for which the order was issued; or (ii) otherwise required by law.

29. **SEVERABILITY.** If a provision of this Agreement is found unenforceable by law, the remainder of this Agreement shall continue in full force and effect. A delay or failure in enforcing any right or remedy under this Agreement shall not prejudice or operate to waive that right or remedy.

30. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts.

31. **NOTICE.** Written notice will be deemed to have been given when the notifying party delivers such notice to the other party or has sent such notice to the other party by certified or registered mail or facsimile (with confirming letter to follow), directed as specifically agreed by the parties (unless written notice of a change of address has been given in accordance with this paragraph):