

# *Terms and Conditions*

**TERMS AND CONDITIONS** for NORPAC Controls Ltd. and NORPAC Automation

## **1. DEFINITIONS:**

- a. **“Agreement”** means the Buyer’s agreement to purchase the Product(s) and/or Services from the Seller;
- b. **“Buyer”** means the company, partnership, person or entity purchasing the Product(s) and/or Services from the Seller identified in the Purchase Documents;
- c. **“Product(s)”** means the equipment parts and materials being purchased by the Buyer identified in the Purchase Documents;
- d. **“Purchase Documents”** means the documents accompanying these Terms and Conditions which more fully describe the Products and/or Services being purchased from the Seller, including, as applicable, the Buyer’s request for quotation, purchase orders, and the Seller’s quotation;
- e. **“NORPAC”** and **“Seller”** means NORPAC Controls Ltd., NORPAC Automation and any affiliate or related company identified in the Purchase Documents;
- f. **“Services”** means any and all engineering, technical and mechanical services of any description or kind to be provided by the Seller
- g. **“Software”** means the executable file of the computer programs, and not the source code, to be provided by the Seller to the Buyer which is more particularly described in the Purchase Documents.

## **2. APPLICATION:**

These Terms and Conditions apply to every sale of Product(s) and every supply of Services by the Seller to the Buyer. The Buyer specifically agrees and acknowledges that unless the Seller agrees in writing to a modification of these Terms and Conditions, these Terms and Conditions apply and take precedence over any of the Buyer’s Terms and Conditions whether set out in the Purchase Documents or otherwise.

## **3. PRICES:**

Unless otherwise specified by the Seller, the Seller’s price for the sale of the Product(s) will remain in effect for thirty (30) days from the date of the Seller’s quotation. Unless otherwise specified, the Services provided by the Seller will be charged at the prices quoted in the Seller’s quotation, if accepted within thirty (30) days from the date of the quotation, otherwise the prices charged will be at the rates set out in the Seller’s published rate schedule in effect at the time the Services are actually rendered. The Seller’s prices do not include applicable taxes which will be added to the price quoted and appear as a separate line item on the Seller’s invoice.

## **4. TERMS OF PAYMENT:**

Subject to approval of the Seller’s credit department, the Buyer shall pay the Seller the price of the Product(s) and/or Services provided within thirty (30) days from the date of the Seller’s invoice. In the event that the Seller and the Buyer have agreed to a milestone payment schedule, the payment specified in the milestone payment schedule shall be paid on the dates that each milestone is achieved. All overdue payments bear interest commencing on the day on which the amount became payable, calculated at the rate of 1.5% per month compounded monthly (19.5618%) per annum.

## **5. DELIVERY AND TRANSFER OF TITLE AND RISK:**

All delivery dates of the Product(s) and/or Services to be provided by the Seller are approximate only and are based on the Seller having received from the Buyer all information required by the Seller to provide the Product(s) and/or Services. All Product(s) shall be delivered to the Buyer at the location indicated in the Purchase Documents or if no location is indicated in the Purchase Documents, EX WORKS at the point of the manufacture of the Product(s). All risk of loss or damage to the Products while in transit shall be borne by the Buyer. Title to the Product(s) shall pass to the Buyer on the Buyer making payment in full for the Product(s) or on the Product(s) being delivered to the Buyer, whichever occurs later.

## **6. DOCUMENTATION:**

The Seller shall supply the Buyer with the documentation specified in the Seller’s quotation. Any additional copies of the documentation or the supply of the documentation on alternative media will be provided by the Seller to the Buyer at the Seller’s price then in effect.

## **7. INSTALLATION:**

The Buyer shall be responsible for transporting, receiving, storing, installing, starting up and maintaining all Product(s). If requested, the Seller may, at its option, provide Services to assist the Buyer in the installation of the Product(s) at a price to be agreed to between the Buyer and the Seller or at the rates set out in the Seller's published rate schedule in effect at the time the Services are actually rendered.

## **8. EXCUSE OF PERFORMANCE:**

The Seller shall be excused from the performance of any term or condition of this sale or the provision of Services when and to the extent that the performance is delayed or prevented by any cause beyond its reasonable control including, without limitation, acts of God, wars, riots, fire, labour unrest, inability to obtain materials or components, explosions, accidents, governmental requests, laws, regulations, orders or actions. If such an event occurs, the delivery date and the price of the Product(s) and/or Services to be provided by the Seller may be revised by agreement made between the Buyer and the Seller or the Seller may at its option cancel the sale of the Product(s) or agreement to provide Services in which case the Buyer will pay the Seller any and all losses, damages, dismantling, restocking fees, and any other costs or expenses incurred by the Seller arising from such a termination.

## **9. TERMINATION AND SUSPENSION:**

The Buyer may terminate or suspend its purchase of any and all of the Product(s) and/or Services provided that it pays the Seller for any and all losses, dismantling, restocking fees and any other costs or expenses arising from such termination or suspension. The Seller shall have the right, in addition to any other remedy, to either terminate its agreement to sell the Product(s) or provide the Services or suspend further deliveries of the Product(s) or provision of the Services to the Buyer in the event the Buyer fails to make any payment required to be made to the Seller when due.

## **10. WARRANTY:**

Subject to the limitations of liability and remedies set out in Section 12, the Seller warrants its Product(s) and/or Services as follows:

### **Seller's Products:**

The Seller will, at its option, repair or replace any defects in materials or workmanship in any Product(s) manufactured by the Seller which appear within the earlier of twelve (12) months from the date of the initial installation of the Seller's Product(s) by the Buyer or eighteen (18) months from the date the Seller's Product(s) were delivered to the Buyer.

### **Re-Sale Products:**

The Product(s) manufactured by any third party (including the Seller's principals and their affiliated companies) provided by the Seller to the Buyer as the manufacturer's distributor shall be subject to the manufacturer's standard warranty. The Buyer agrees that the Seller shall have no liability for correcting any defect in the materials and workmanship in any re-sale Product(s) and that the Seller's only obligation is to make a reasonable commercial effort to assist the Buyer in making a warranty claim as against the manufacturer's standard warranty.

### **Services:**

Any Services supplied by the Seller, including component integration, device configuration and the repair of Product(s) are warranted against defects in workmanship for a period of the earlier of ninety (90) days from the date of the installation of the Product(s) or one hundred and twenty (120) days from the date of the delivery of the Product(s) to the Buyer. Any interpretative services provided by the Seller are not warranted either as to the accuracy or correctness of any such interpretations or any recommendations made by the Seller based upon these interpretations.

### **Software:**

- a. The Seller does not warrant that any software provided by it in connection with the Product(s) and/or Services will be free from defects or that the software will run uninterruptedly;
- b. The only warranty provided for software or any upgrades to any software not developed by the Seller is the warranty provided by the original supplier of the software. The Buyer agrees that the Seller has no

liability for the repair or correction of any defect in any such software and that the Seller's only obligation is to make a reasonable commercial effort to arrange for the supplier of the software to make corrections to the program of any defect in it;

- c. Any software developed by the Seller, including any original software applications based upon the source code provided by others, and any upgrades to such software, is not warranted.

**On-Site Warranty Support:**

If the Buyer requires the Seller to provide any Services relating to any defect in the Product(s) and/or Services provided or any warranty claim made by the Buyer in respect of the Product(s) and/or Services, including diagnosis, dismantling and reinstallation of Product(s), at the Buyer's site, all costs of travel to and from the Buyer's site and of these Services shall be paid by the Buyer at the rates set out in the Seller's published rate schedule in effect at the time the Services are actually rendered.

**11. WARRANTY EXCLUSIONS:**

- a. The Seller does not warrant the performance of any Product(s) and/or Services provided by it to the extent that the actual operating or other conditions differ from the specifications, information, representation of operating conditions or other data supplied by the Buyer for the purpose of the selection or design of the Product(s) and/or Services to be provided by the Seller;
- b. This limited warranty shall not apply to any repair or replacement of Product(s) caused by abuse, accidental damage, misuse, improper installation, and improper application, corrosion or inadequate or improper preventative maintenance of the Product(s);
- c. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERE ARE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE PRODUCT(S), SOFTWARE OR SERVICES.

**12. LIMITATION OF REMEDY AND LIABILITY:**

The Seller shall not be liable for any kind of consequential damages including loss of anticipated profits, loss of use of equipment or any associated equipment, the loss of product from the Buyer's facility(s) or the loss of capital however caused. The Buyer agrees that the Seller's sole and exclusive liability for any and all losses and damages arising out of or connected in any way with the Product(s) and/or Services provided by the Seller shall be limited to the repair, correction or replacement of the Product(s) and/or Services in accordance with the terms of the limited warranty set out in Section 10 herein. The Buyer further agrees that the Seller's total liability arising out of or connected in any way with the provision of the Product(s) and/or Services is limited to the value of the Product(s) and/or Services provided by the Seller under this Agreement.

**13. INDEMNITY:**

The Seller agrees to protect, defend and indemnify the Buyer, its respective officers, directors, employees and consultants from and against any and all claims, demands, losses, causes of action, liability and costs (including all legal costs and attorney fees) of every kind and nature arising out of or connected in any way with damage to property, personal injury or death of the Buyer's employees, or third parties alleged to have been caused by any act or omission of the Seller connected with the Product(s) and/or Services provided by the Seller. The Buyer agrees to protect, defend and indemnify the Seller, its respective officers, directors, employees and consultants from and against all claims, demands, losses, causes of action, liability and costs (including all legal costs and attorney fees) of every kind and nature arising out of or connected in any way with damage to property, personal injury or death of the Seller's employees, or third parties alleged to have been caused by any act or omission of the Buyer.

**14. INSURANCE:**

The Buyer shall provide at its expense property damage insurance or "all risk" builder's risk insurance covering all of its property on the basis of full replacement cost value without depreciation which will name the Seller and any manufacturer of the Product(s) as additional insureds with a waiver of subrogation against all insured parties thereunder.

**15. SOFTWARE LICENSE:**

The Buyer is granted a non-exclusive, royalty free license to use any Software and with the express written approval of the Seller, adapt any Software for use in connection with the Product(s) provided by the Seller. It is recognized and agreed that this non-exclusive royalty free license is granted solely to the Buyer, is not

transferable by the Buyer without the Seller's express written consent, that the Buyer may only copy the Software to the extent required to create back-up copies of the Software and that all title and ownership of the Software remains with the Seller.

**16. PATENTS:**

Subject to the limitations of liability set out in Section 12, the Seller shall defend any suits brought against the Buyer based upon a claim that the use of the Product(s) manufactured by the Seller or the use of any software computer programs provided by the Seller constitutes an infringement on a valid patent of Canada or the United States and the Seller shall pay any damages awarded therein as against the Buyer, provided that the Buyer promptly notifies the Seller in writing of such a suit or threat thereof; permits the Seller to control completely the defence or compromise of such a claim; and provides all reasonable assistance and co-operation requested by the Seller for the defence of such a claim. In the event that the Product(s) manufactured by the Seller are held to be infringing a patent in any such suit and their use is enjoined, the Seller shall, at the Seller's option and expense, procure for the Buyer the right to continue using the Product(s), replace them with non-infringing Product(s) or modify them so they become non-infringing. The Buyer agrees that the Seller shall not be liable for any action for an infringement, and that the Buyer shall fully indemnify the Seller in respect thereof, if the infringement action is based upon the use of the Product(s) in connection with other products or equipment not manufactured by the Seller, the use of the Product(s) in any manner for which the Product(s) were not designed by the Seller, or if the Product(s) were designed by the Buyer or modified by or for the Buyer in a manner to cause them to infringe any patent.

**17. GENERAL PROVISIONS:**

- a. Buyer shall not assign its rights or obligations under this Agreement without Seller's prior written consent;
- b. There are no understandings, agreements or representations, express or implied, not specified in this Agreement;
- c. No action, regardless of form, arising out of transactions under this Agreement, may be brought by either party more than two (2) years after the cause of action arose;
- d. This Agreement is formed and shall be construed, performed and enforced under the laws of the Province of British Columbia. Any suit, action or proceeding arising out of or connected in any way with this Agreement shall be brought in a Court of the Province of British Columbia which the parties agree shall have exclusive jurisdiction to hear and resolve such disputes, subject only to the parties agreeing to resolve such disputes through arbitration.