

## Standard Terms and Conditions of Sale

ACP Solutions Inc. (hereinafter referred to as "ACP") and, <customer's legal name> (hereinafter referred to as "Customer"), agree that the terms and conditions identified in this document, its schedules and in any written specification of services to be furnished by ACP hereunder (hereinafter referred to as the "Agreement") shall govern exclusively the sale of goods and services by ACP within Canada. The term "services" shall include without limitation, design, programming, installation and commissioning of a control system. No addition or modification to any of the terms and conditions as they appear in this document shall be binding upon ACP unless in writing and signed by an authorized representative of ACP.

### 1. ACCEPTANCE OF ORDER

Orders based on any proposal by ACP are subject to the written acceptance of an authorized representative of ACP. Any order submitted by Customer will only be accepted by ACP with the understanding that the following terms and conditions will apply to the legal obligations that result between the parties. The prices quoted herein are based upon this understanding and Customer's acceptance of ACP's terms and conditions.

### 2. SCOPE CHANGES

All changes affecting hardware or services, delivery dates or otherwise affecting the scope of the order are to be documented in writing and are subject to the prior written approval of an authorizing representative of ACP. All changes approved by ACP may result in price, delivery specification, and/or other changes.

### 3. PRICES

The prices specified herein are in Canadian currency unless otherwise specified and are firm for a period of thirty (30) days. Thereafter, such prices are subject to change to pricing in effect at the time of purchase order acceptance. All verbal quotations and verbal amendments to this quotation must be confirmed in writing by an authorized representative of ACP. All clerical and typographical errors are subject to correction. All quotations are subject to approval by an authorized representative of ACP. Applicable taxes are not included in quoted prices. Customer shall pay or reimburse ACP for all sales, use, excise or similar taxes.

### 4. PUBLISHED PRICES

(A) Prices shown in any ACP publication are subject to change without notice and are not to be construed as a definite quotation or offer to sell by ACP. Such publication is maintained only as a source of general information, and any prices shown therein are subject to confirmation with a specific quotation.

(B) With respect to services, unless otherwise agreed in writing by ACP and Customer, (i) the price of any services shall be ACP's published price in effect on the date such services are provided; and (ii) ACP shall have the right to increase or decrease the price of any service, effective with respect to any portion of services that have not been provided as of the date of such price change.

(C) Hourly service prices are based on a standard 8-hour workday. ACP's normal hours are 8:00 a.m. to 5:00 p.m. Monday through Friday, or based on Customer's normal starting time. Time and material services provided outside the standard work day will be charged at one and one half times the applicable base service rate, except on Sundays and holidays observed by ACP, in which case the services will be charged at two times the applicable base rate.

(D) Billable service time includes all time spent by the representatives of ACP traveling to and from the job site and all time that such representatives are available for work and waiting (whether on or off the job site) to perform the services. In addition to billable services, Customer shall pay or reimburse ACP at cost for all travel and living expenses incurred by representatives of ACP (in accordance with the policies of ACP then in effect) in the course of providing services to Customer, including without limitation, hotel, meals, bus or taxi transportation, car rental, and automobile mileage cost reimbursement if a personal vehicle is used.

### 5. INVOICE PAYMENT TERMS

(A) Invoices will be issued by ACP according to the schedule set forth in this quotation or proposal. These invoices shall be payable in accordance with the stated terms thereof and, unless otherwise stated, invoices shall be payable within thirty (30) days after invoice date. ACP will charge interest on any and all amounts unpaid thirty (30) days after invoice date at the rate of one and one-half percent (1 ½%) per month (18% per annum).

(B) If payment of any amount owed to ACP is not made when due, ACP reserves the right (in addition to and without limitation of any other rights it may have) to suspend further performance, without liability, until payment has been made.

### 6. TITLE, DELIVERY, AND INSPECTION

(A) Goods shall be delivered F.O.B. to ACP's facility unless otherwise stated. Title and liability for loss or damage to equipment shall pass to Customer upon delivery of the goods by ACP to a carrier for shipment to Customer or delivery by ACP of the goods to Customer. Title for software or firmware is licensed for use by Customer pursuant to each manufacturer's license agreement.

(B) Customer shall bear all transportation, duty, insurance, and tax expense associated with delivery of the goods to Customer's facility unless otherwise stated.

(C) Shipping dates are approximate only and ACP shall not be liable for any loss or expense (consequential, incidental, or otherwise) incurred by Customer or Customer's customers if ACP fails to meet the specified delivery schedule. If shipment is delayed at the request of, or due to acts or omissions by Customer, ACP shall have the right to store the hardware at a place of its own choice at Customer's expense. In addition, Customer acknowledges that the goods called for hereunder may be manufactured by or for ACP to fulfill this order and the delivery dates are based on the assumption that there will be no delay due to the causes beyond the reasonable control of ACP.

(D) Once the goods have been received by Customer, Customer shall be entitled to examine the goods and, within three days of the date of receipt, to reject any of the goods which do not conform to the specifications and drawings set out in the schedule attached or which are defective in materials or workmanship. At the end of such period of three days, Customer shall be deemed to have accepted all goods which have not been rejected.

### 7. MATERIAL FURNISHED BY CUSTOMER

Material, tools, parts and other property furnished to ACP by Customer shall be at Customer's risk and expense. Unless otherwise agreed to by ACP, Customer shall keep in good condition and replace as necessary all such material, tools, parts and other property furnished to ACP. Customer shall bear all transportation, duty, insurance and tax expense associated with the delivery of Customer's material to and from ACP's facility.

### 8. PRODUCT SPECIFICATIONS

ACP may modify the specifications of equipment designed by ACP providing that the modifications will not materially affect the performance of the equipment.

### 9. WARRANTY

(A) Hardware - ACP warrants that all equipment manufactured by ACP or its designated fabrication vendors shall be free from defects in material or workmanship for a period of twelve (12) months from the date of shipment. Should any such defect appear during this period, ACP shall, if given prompt notice by the Customer, correct such nonconformity by doing one of the following, the choice of which shall be at the sole option of ACP:

(a) repairing such defect at the job-site; or

(b) repairing or replacing the non-conforming equipment or parts thereof-F.O.B. ACP's facility.

When the nature of the repair is such that it is appropriate (in the judgment of ACP ) to make a repair at the job-site, repair or replacement shall be made at no charge for warranty labour when work is performed during ACP's normal working hours. Labour performed at other times at the request of the Customer will be billed at the applicable rates prevailing for services by ACP personnel. ACP warrants repair parts for a period of ninety (90) days from the date of shipment provided that repairs to or replacements of original equipment shall not renew or extend the warranty period of such equipment. Replaced equipment or parts which have been purchased by ACP from other manufacturers shall have only the warranty offered by the manufacturer thereof. ACP is not responsible to enforce the warranty on any such third party product. A charge, in accordance with ACP prices for services in force at that time, will be made for parts and services which:

(c) fall into the general category of normal maintenance; or

(d) are needed to make modifications or additions requested by the Customer; or

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- (e) are needed to make repairs not covered by this warranty such as damages caused by accident, misuse, neglect, alteration, improper storage, installation, maintenance, and/or unauthorized repair.
- (B) Software - ACP warrants that:
- (a) The media on which software is furnished will be free from defects in material and workmanship under normal use for a period of ninety (90) days from the date of shipment by ACP to the Customer.
  - (b) Software programs will operate substantially as described in the applicable software descriptions provided by ACP. Standard software products sold by any other vendor(s) and provided to Customer by ACP are warranted for a period of ninety (90) days from the date of shipment to the Customer.
  - (c) Software developed specifically for Customer's application is warranted for a period of twelve (12) months from the date of shipment to Customer.
  - (d) Such warranties are subject to the following conditions:
    - (i) Customer shall not, without the express written permission of ACP, modify the software in any way; and
    - (ii) Customer shall use the software according to instructions supplied by ACP.

The sole responsibility of ACP for any breach of such warranties is to provide programming services to attempt to correct any substantial nonconformity brought to ACP's attention by Customer in writing during the warranty period.

Improvements and enhancements to standard software described in paragraph 2 will not be provided during the warranty period unless such enhancements will correct a defect found in an operating system that affects the ability of the system or software to perform in Customer's original application. Such corrective enhancements will be supplied at no additional cost.

The foregoing warranty for hardware and software is exclusive and in lieu of all other warranties of quality or performance including any warranties for merchantability of fitness for a particular purpose

### 10. FORCE MAJURE

ACP shall not be liable for any loss, damage or delay in delivery of goods or services due to acts of God or causes beyond its reasonable control including without limitation, acts of Customer, delays of suppliers, acts of civil or military authority, compliance in good faith with any applicable foreign or domestic governmental regulations or order whether or not it proves to be valid, severe weather, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, labour disputes, delays in transportation, transportation embargoes, or inability due to causes beyond ACP's reasonable control to obtain necessary engineering services, labour, materials, or manufacturing facilities. To the extent that any such causes delay any deliveries of goods or services by ACP, the time for performance or delivery by ACP shall be extended for a period of time mutually agreed upon by Customer and ACP.

### 11. INTELLECTUAL PROPERTY

The Customer irrevocably assigns to ACP all right, title and interest in and to all patents, trade marks, copyrights, and industrial property rights in any material, equipment, process or program developed by ACP in fulfilling orders for Customer. ACP retains any and all such right, title and interest unless specifically assigned in writing.

### 12. REMEDIES AND DAMAGES

If ACP breaches any provisions of the contract, ACP's sole and exclusive liability and Customer's sole and exclusive remedy, whether based on contract, tort, or otherwise, shall not in any event exceed the contract price of the equipment and/or services provided by ACP.

### 13. LIMITATION OF LIABILITY

In no event, regardless of cause, shall ACP assume responsibility or be liable for:

- (A) penalties or penalty clauses of any description, or
- (B) indemnification of Customer or others for costs, damages, or expenses arising out of or related to the goods or services of this order, or for certification, unless otherwise specifically provided for herein, or
- (C) incidental or consequential damages, whether in contract, tort, negligence, or strict liability, including but not limited to, loss of profits or revenue, loss of use of equipment, downtime costs, or other damages to Customer or its customers.

The sole and exclusive liability of ACP hereafter shall be to repair or replace equipment or parts thereof found to be defective within the warranty period, or upon failure of such remedy, to refund to the Customer the purchase price of the equipment or part thereof which gives rise to the claim.

ACP's maximum liability, including direct damages, shall not exceed the amount of the purchase order. This limitation of ACP's liability will apply regardless of the form of action, whether in contract, or tort or otherwise, and any action against ACP must be brought within six (6) months after the cause of action arises.

### 14. GENERAL

- (A) Time shall be of the essence.
- (B) Any notice or other writing required or permitted to be given under any agreement or for the purposes of it to either Customer or ACP, shall be sufficiently given if delivered personally, or if sent by prepaid registered mail or if transmitted by telex, telefax or other form of recorded communication to either Customer or ACP.
- (C) Neither this Agreement nor any rights, remedies, liabilities or obligations arising under it or by reason of it shall be assignable by Customer without the prior written consent of an authorized representative ACP. Subject thereto, this Agreement shall enure to the benefit of and be binding on Customer and ACP, their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.
- (D) Customer and ACP shall with reasonable diligence do all things and provide all reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and Customer and ACP shall provide such further documents or instruments required by either Customer or ACP as may be reasonably necessary to effect the purpose of this Agreement.
- (E) This Agreement constitutes the entire agreement between Customer and ACP and except as stated in it and in the instruments and documents to be executed and delivered, contains all the representations and warranties of Customer and ACP. There are no oral representations or warranties or collateral agreements of any kind between Customer and ACP relating to the subject-matter herein. This Agreement may not be amended or modified in any respect except by written instrument signed by authorized representatives of both Customer and ACP.
- (F) The representations, warranties, covenants and agreements contained in this Agreement or in any instrument, document or written statement authorized and delivered pursuant to this Agreement shall survive and not merge on closing.
- (G) If any term of this Agreement is invalid or unenforceable under any statute, regulation, ordinance or other rule of law, that term shall be deemed modified or deleted, but only to the extent necessary to comply with the statute, regulation, ordinance or rule of law, and the remaining provisions of this Agreement shall remain in full force and effect.
- (H) The failure of ACP at any time to require performance by Customer of any provision of this Agreement shall in no way affect the right of ACP to require performance at any time thereafter by Customer. The waiver of ACP of a breach of any provision of this Agreement by Customer does not constitute a waiver of any succeeding breach of the same or any other provision by Customer.
- (I) This Agreement shall be interpreted in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.