

# Appendix D

## Control Technology Corporation Standard Terms & Conditions

The terms and conditions stated below ("Standard Terms & Conditions") shall apply to all orders of equipment, products, parts, materials, and/or services ("Orders," or singularly an "Order") from Control Technology Corporation ("CTC") by a third party ("Customer"). These Standard Terms & Conditions shall be binding upon Customer unless otherwise stated in writing by CTC. If Customer objects to any of CTC's Standard Terms & Conditions, such objections must be expressly stated and brought to the attention of CTC in writing. Incorporation of any additional or different terms or conditions by Customer into a resulting Order shall constitute nonacceptance of these Standard Terms & Conditions, releasing CTC from any obligation or liability with respect to the Order. Acknowledgment of the receipt of an Order shall not constitute acceptance by CTC of any additional or different terms or conditions, nor shall CTC's actions in fulfilling an Order, be construed as acceptance of additional or different terms and conditions contained in an Order.

1. Orders and Deliveries. All Orders shall, at all times, be subject to acceptance and approval in whole or in part by CTC, which may at any time decline to make any shipment or delivery except after receipt of payment or other terms and conditions of payment satisfactory to CTC. Acceptance and approval of an Order will be evidenced by CTC's issuance of a purchase order acknowledgement form ("Purchase Order Acknowledgement"). No Orders that have been received by CTC may be canceled by the Customer without the prior written consent of CTC and unless cancellation charges (including recovery of lost profit) are borne by the Customer for all work done by CTC and for any obligations incurred by CTC in connection with the Order. While CTC recognizes the desirability of filling Orders promptly and will at all times make a commercially reasonable effort to make deliveries on or before the dates specified in accepted Orders, CTC shall have no liability for delays in delivery. Unless otherwise indicated in the Order and agreed to by CTC, all deliveries will be made directly to Customer and by the method and route of CTC's choosing.
  - (a) Minimum Order Amount. The minimum Order amount is \$200, unless a lesser amount has been authorized by Customer's CTC Regional Sales Manager.
  - (b) Incorrect or Damaged Orders. Customer shall notify CTC within 15 days of receipt of any shipment of incorrect products, or products that are visibly damaged or otherwise not in conformance with the Order placed by Customer. If said notice is not given within fifteen (15) days, Customer will have accepted the products.
2. Prices and Taxes. Unless otherwise acknowledged by CTC in writing: (i) all prices are subject to change without notice; (ii) goods will be billed at the prices in effect at the time of shipment; (iii) prices are quoted F.O.B. CTC's factory; (iv) prices on the items set forth in the Order Acknowledgment are exclusive of all city, state, provincial and federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, occupation, use and similar taxes. Whenever applicable, any taxes will be added to the Order Acknowledgment as a separate charge to be paid by Customer.
3. Payment. Payment for all Orders by Customer will be net, payable in cash within thirty (30) days from the date of invoice. Any dispute concerning an invoice should be reported to CTC's Customer Service Center immediately following receipt of the invoice. Each payment shall be accompanied by a remittance identifying the specific items paid, invoice number and amount. Any amount not paid within thirty (30) days from date of invoice shall bear interest from the date of invoice at the rate of one and one-half percent (1.5%) per month. Upon Customer's continuing failure to pay as required, CTC may, at its option, delay the production, shipments and delivery of pending Orders, require that future shipments be paid for in advance and make any other credit arrangements satisfactory to CTC.
4. Indemnity. Customer agrees to hold CTC harmless from any and all liability, and to pay all costs and attorney's fees, for injury or damage to persons or property caused in any manner by material covered by the Purchase Order Acknowledgment while in possession or under the control of Customer's or Customer's successor in interest.
5. Indemnity for Infringement of Intellectual Property Rights. CTC shall have no liability for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights. If a claim is made against CTC and is based on information provided by Customer or if the design for an item sold by CTC to Customer is specified in whole or in part by Customer, Customer shall defend and indemnify CTC for all costs, expenses or judgments resulting from any claim that such item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right.
6. Installation, Initial Operation and Service. The installation of any equipment or parts in connection with an Order will be at the expense of Customer. Should Customer request the services of CTC and CTC agrees to provide services, such services shall be rendered and charged at the established rate at the time of performing said service, plus all other expenses including travel, hotel bills and living expenses.
7. Custom Products. Any custom hardware, tooling, or software designed or produced by CTC in the manufacture of any product sold to Customer shall remain the sole and exclusive property of CTC, unless otherwise agreed to in writing by an officer of CTC.
8. Limited Warranty. CTC warrants that upon delivery, the Orders sold to Customer shall be as described in the Product Order Acknowledgment and shall be free from defects in materials and workmanship for a period of 24 months from the date of shipment. **THIS WARRANTY COMPRISES THE SOLE AND ENTIRE WARRANTY PERTAINING TO ITEMS SOLD TO CUSTOMER BY CTC. CTC MAKES NO OTHER WARRANTY, GUARANTEE, OR REPRESENTATION OF ANY KIND WHATSOEVER. ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY**

**AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, TRADE USAGE, OR COURSE OF DEALING ARE HEREBY DISCLAIMED. NOTWITHSTANDING THE FOREGOING, THERE ARE NO WARRANTIES WHATSOEVER ON ITEMS BUILT OR ACQUIRED, WHOLLY OR PARTIALLY, TO CUSTOMER'S DESIGNS OR SPECIFICATIONS.**

9. **Limitation of Remedy.** CTC's **LIABILITY ARISING FROM OR IN ANY WAY CONNECTED WITH THE ITEMS SOLD TO CUSTOMER BY CTC SHALL BE LIMITED EXCLUSIVELY TO REPAIR OR REPLACEMENT OF THE ITEMS SOLD OR REFUND OF THE PURCHASE PRICE PAID BY CUSTOMER, AT CTC'S SOLE OPTION. IN NO EVENT SHALL CTC BE RESPONSIBLE FOR OR LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING FROM OR IN ANY WAY CONNECTED WITH ITEMS SOLD TO CUSTOMER BY CTC, WHETHER ALLEGED TO ARISE FROM BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR IN TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY OR ARISING FROM CUSTOMER INABILITY TO USE THE PRODUCTS EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER EQUIPMENT OR FROM ANY OTHER CAUSE.**
10. **Software Programs.** Computer software programs that may be included in any Orders have been designed to perform a given set of tasks as defined in the documentation provided and are offered AS IS. It is Customer's responsibility to determine if the features of the software programs are suitable for Customer's requirements and to confirm that the software programs operate correctly. Customer understands that such software programs are of such complexity that they may have inherent defects and that CTC makes no warranty that all software features will perform correctly as supplied. For CTC's software utilizing automation servers, improper reading and writing data to the automation server can cause the automation server software to malfunction and may cause the automation server and/or the program writing to the automation server to crash. Improperly reading and writing data to an automation server may cause the device controlled by that automation server to malfunction. CTC shall not be responsible for damage to any device or damage caused by any device due to the improper reading and/or writing of data to an automation server.
11. **Force Majeure.** CTC shall not be liable for any delay in performance or in the delivery of Orders, or for any damages suffered by Customer or its customers by reason of such delay, if such delay is, directly or indirectly, caused by, or in any manner arises from, fires, floods, accidents, civil unrest, acts of God, war, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, transportation delays, or any other cause (whether or not similar in nature to any of these hereinbefore specified) beyond its control.
12. **Conditions.** Fulfillment of Orders is subject to CTC's ability to obtain the necessary raw materials, and delivery of such Orders is subject to CTC's current manufacturing schedules and governmental regulations, orders, directives and restrictions that may be in effect from time to time.
13. **Assignment.** Customer shall not assign, subcontract, delegate or transfer in any way an Order, in whole or in part, without the prior written consent of CTC and any such assignment, subcontract, delegation or transfer without CTC's prior written consent shall be void. Customer shall not be relieved of any of its obligations under an Order notwithstanding any such written consent by CTC.
14. **Non-Waiver by CTC.** Waiver by CTC of a breach of any of the Standard Terms & Conditions herein shall not be construed as a waiver of any other breach.
15. **Governing Law.** These Standard Terms & Conditions shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts, exclusive of the conflict of law provisions thereof. If any provision of these Standard Terms & Conditions is held invalid or unenforceable under the laws of the United States or of any state, county or political subdivision thereof, such holding shall not invalidate any of the other provisions of the Terms and Conditions. The Convention on Contracts for the International Sale of Goods shall not be applicable to these Standard Terms & Conditions. No actions arising out of the sale of products, other than an action by CTC to recover the purchase price of such material or products, may be brought by either party more than two (2) years after the cause of action accrues.