

**1 SCOPE**

- 1.1 These Conditions shall apply to all contracts and agreements between CW-I and the Customer, whether written or oral, for the sale or supply by CW-I of any Products and/or Services, to the exclusion of any other terms and conditions on which any purchase order or other offer has been given to CW-I.
- 1.2 In case of any inconsistency between the terms and conditions of any Quotation, purchase order, acknowledgement or form of contract sent from the Customer to CW-I, or contained in any other communication between the Customer and CW-I, or any terms and conditions implied by trade, custom, practice or prior course of dealings, and these Conditions, then these Conditions shall prevail. Additional or alternative terms and conditions shall not apply unless expressly accepted in writing and signed by an authorized representative of CW-I. Additional, alternative or contradictory provisions contained in any purchase order, acknowledgement or other communication from the Customer are hereby expressly rejected and shall have no binding effect.
- 1.3 Each purchase order, acknowledgement or form of contract sent from the Customer to CW-I for the supply of Products and/or Services shall be deemed to be an offer by the Customer to purchase Products and/or Services subject to these terms and conditions. CW-I may accept or reject any such offer to purchase. Silence on the part of CW-I shall not constitute acceptance of Customer's offer to purchase.

**2 ORDERS AND ACCEPTANCE**

- 2.1 Specifications or any description of the Products or Services appearing in any catalogue or marketing materials shall not form a part of the contract between CW-I and the Customer unless such specification or description is specifically referenced and restated in the Order and specifically acknowledged by CW-I in its acceptance.

**3 PRICE AND PAYMENT**

- 3.1 All prices quoted by CW-I are exclusive of Value Added Tax and all other sales, use, excise taxes, duties, charges or similar.
- 3.2 Unless otherwise stated in any Quotation or otherwise expressly agreed in writing, all prices are exclusive of all shipping costs and insurance, which shall be invoiced to and be paid by the Customer as additional charges.
- 3.3 Unless otherwise stated in any Quotation or otherwise expressly agreed in writing, all prices are exclusive of the cost of installation, engineering and related charges, which shall be invoiced to and be paid by the Customer as additional charges.
- 3.4 Unless otherwise agreed in writing, the Customer shall make payment of the purchase price in the currency stated in the Quotation, at the times stated in the Order or otherwise upon delivery of the Products and/or completion of the Services, without deduction or set off of any kind in accordance with Article 3.6.
- 3.5 In the event that manufacture, shipment or delivery of the Products or performance of Services is delayed either at the request of the Customer or by reason of the Customer's act or omission (including the Customer's failure to ready the site for installation), or any extreme weather conditions or non-standard site conditions, payment of the balance of the purchase price shall nevertheless fall due on the date on which payment would otherwise have fallen due but for such act, omission or event. Risk in the Products shall pass to the Customer as if the Products had been delivered in accordance with the original delivery schedule and CW-I may ship the Products (in either completed or incomplete form) to either a storage facility designated by the Customer, or to any storage facility designated by CW-I, and the Customer shall (without limiting any other right or remedy available to CW-I) pay to CW-I upon demand the amount of any additional storage, transport or other, costs and insurance expense incurred by CW-I.
- 3.6 Each payment shall be made within thirty days of the date of invoice, either by prepaid telegraphic transfer to an account designated by CW-I or by irrevocable letter of credit confirmed by a London clearing bank, and payable upon presentation of invoice and customary shipping documents. Except where a credit account has been opened for the customer by CW-I, payment shall be made in advance of Products being released for shipment against a pro-forma invoice.
- 3.7 If the Customer disputes any invoice or part thereof, the Customer shall immediately pay the undisputed portion of the invoice and shall immediately notify CW-I in writing of the reasons for such dispute. The parties shall seek to resolve the dispute within fourteen days of such notification. Upon resolution of the dispute, such sum as is agreed by the parties as payable shall be paid immediately to CW-I, together with any interest due under Article 3.8.
- 3.8 In addition to any other rights and remedies CW-I may have, if any payment due to CW-I is not made on the due date:

- (a) the Customer will pay interest on the overdue amount for the time being outstanding, calculated on a daily basis at a variable rate of six per cent per annum above the 3 month US Dollar London Interbank Offered Rate (Libor) (as varied from time to time) from the due date until the date of actual payment time), and compounded monthly;
  - (b) CW-I may suspend further deliveries to the Customer until all sums overdue from the Customer have been paid;
  - (c) all sums invoiced by CW-I to the Customer (whether or not outstanding) shall become immediately due and payable in full;
  - (d) all outstanding bonds issued by CW-I, if any, shall be released; and
  - (e) CW-I may deduct the same from any sum then due to the Customer under the Order or any other contract between CW-I and the Customer.
- 3.9 CW-I may, as a condition of the performance of any of its manufacturing, supply or other obligations under its contract with the Customer, require the Customer to provide to CW-I written evidence in a form satisfactory to CW-I that the Customer has secured the finance necessary for the Customer to pay the purchase price. Without limiting any other right or remedy available to CW-I, CW-I may cease or delay the manufacture or shipment or installation of any Product until the Customer has provided such evidence to CW-I.

#### **4 DELIVERY, TITLE AND RISK OF LOSS**

- 4.1 All times and dates given by CW-I for delivery of Products and performance of Services are given in good faith, and CW-I shall use reasonable efforts to meet such delivery times and dates, but time shall not be of the essence and, except as expressly provided for in this Article 4.1, CW-I shall have no liability to the Customer in the event of a delay in delivery or performance.
- 4.2 The Customer shall make available free of charge and risk to CW-I at the times stated in the Quotation or otherwise in a timely manner all necessary personnel, materials, equipment, resources, instructions, documents, licenses, authorizations, approvals and site access ("Customer Resources") reasonably required by CW-I to supply the Products and/or Services, and where applicable, the Customer shall remove any Customer Resources which are at CW-I's premises and which have not been incorporated into the Products, at its sole expense on expiry or earlier termination of any Order. The Customer hereby represents and warrants that it has the full right, authority and licence to supply and disclose the Customer Resources and that any Customer Resource and its use by CW-I for the purpose of supplying the Products and/or Services will not infringe the copyright or other intellectual property rights of any third party.
- 4.3 In the event of any failure or delay on the part of the Customer in supplying the Customer Resources, or if the same are not in accordance with the Order or are not fit for the purpose provided, then CW-I may notify the Customer thereof, and the Customer shall as soon as reasonably practicable and at its own expense supply replacement Customer Resources. CW-I may: (i) extend the period for delivery of the Products and/or Services by a reasonable time; and/or (ii) adjust the price to reflect any additional costs incurred by CW-I as a result thereof and the Customer shall pay such additional charges; and/or (iii) serve notice under Article 11.1(b).
- 4.4 Unless otherwise expressly stated in the Quotation or Order, delivery of Products shall take place Ex Works (EXW) (in accordance with Incoterms) at the place where the Product is handed to a carrier for carriage either to the Customer or to a storage facility pursuant to Article 3.5, at which point title to, risk of damage to, and loss of the Products shall pass to the Customer. For the avoidance of doubt any such transfer of title in the Products shall not imply transfer of ownership of any Intellectual Property therein.
- 4.5 As security for the full and prompt payment of all amounts owed by the Customer to CW-I, the Customer grants CW-I a security interest in all Products and their proceeds, supplied by CW-I to the Customer. The Customer shall execute all such documents and do all such other things as may be reasonably necessary or desirable to perfect and register such security interest.
- 4.6 In addition to CW-I's rights under Article 11, if the Customer fails to pay or perform when due any amount or obligation owing to CW-I under these Conditions, or if the Customer ceases or threatens to cease to carry on business or substantially the whole of its business, becomes unable to pay its debts, becomes insolvent or bankrupt, enters into liquidation, or a receiver, administrator, administrative receiver, manager, trustee or similar officer is appointed in relation to it or over any of its assets, or any action is taken or threatened by or against it analogous to the foregoing in any jurisdiction, then CW-I may declare all amounts and obligations of the Customer owing to CW-I immediately due and payable, and CW-I shall have the rights and remedies of a secured party.
- 4.7 For as long as payment is overdue, the Customer shall, if requested, deliver up the Products which have not been paid for in full to CW-I and, if the Customer refuses, CW-I shall be entitled at any time to recover possession of such Products from the Customer. CW-I or its duly authorized agent is hereby irrevocably authorized to enter upon the land and into the premises of the Customer during normal business hours to take possession of the Products.
- 4.8 In the event that period of delay referenced in Article 3.5 exceeds six months, CW-I shall be entitled (at its sole discretion) to cancel the Order and to retain any amount of the purchase price already paid, whereupon CW-I's further obligations to the

Customer shall be extinguished. Nothing in this Article 4.8 shall restrict CW-I's right to pursue damages or any other remedy to which CW-I may be entitled as a matter of law.

- 4.9 CW-I reserves the right to make substitutions, modifications and improvements to the Products or Services ordered by the Customer provided that such substitutions, modifications or improvements shall not adversely affect the functionality or performance of the Products or the quality of the Services, in a manner material to the intended application of the Products or Services.
- 4.10 CW-I shall have the right to make, and the Customer agrees to accept, delivery by instalments.
- 4.11 Upon delivery, it shall be the responsibility of the Customer to inspect the condition of the Products and that they conform to the Order. The Customer shall have no claim against CW-I by reason of the defects in the condition of the products at time of delivery or failure to conform with the Order unless the Customer provides written notice of such defect or failure to conform to CW-I within five days of delivery by CW-I of the Products.

## **5 WORK PERFORMED ON CW-I'S OR CUSTOMER'S PREMISES**

- 5.1 Where Customer's employees, agents and representatives attend CW-I's or its Affiliates' sites, they shall abide by such regulations, including without limitation security and health and safety regulations, as are applicable to their presence on CW-I's and/or its' Affiliates' premises. Customer shall ensure that appropriate insurance is maintained to cover its obligations under the Order and shall upon CW-I's request provide current certificates of insurance
- 5.2 CW-I shall have the right to require the removal from its premises of any person disobeying such regulations and reserve the right to refuse entry to its premises to any person whom it considers unsuitable.
- 5.3 Where the Order requires CW-I to perform work at the Customer's or others' premises, the Customer shall be responsible for arranging, in good time, all permits, licences or other permissions necessary to enable CW-I's employees, agents and representatives to gain access to and perform work at such premises. CW-I's employees, agents and representatives working on the Customer's or others' premises shall abide by such regulations detailed in the Contract as are applicable. If installation services are part of the Services contained in any Order, then the parties shall agree separate terms and conditions which apply to the installation services.

## **6 LICENCE**

- 6.1 CW-I grants to the Customer a non-exclusive royalty-free licence to use the Products solely for the purposes expressly stated in the Order as being the purpose for which the Products are supplied or, if no such purpose is stated, solely for the purpose stated within CW-I's accompanying documentation and in any event, solely in accordance with any instructions set out in such documentation.
- 6.2 The license granted by Article 6.1 is non-transferable except that the Customer may, subject to the provisions of Article 6.3, sublicense the Software to its customers in conjunction with the resale of any Products in which the Software is installed or with which it is used.
- 6.3 It is a condition of the Customer's right to sublicense the Software to its customers, pursuant to Article 6.2, that the Customer procures from the Customer's customer a written agreement whereby the Customer's customer becomes bound by the other terms of this Article 6. The Customer shall promptly deliver to CW-I a copy of each such written agreement upon request.
- 6.4 The Customer shall not make any copies of the Software. The Customer may not, either itself or with the assistance of any third party make modifications to the Software or seek to recover any portion of the Software (including object code, source code, program listing or any data).
- 6.5 The Customer shall not revise, decompile, copy or adapt the whole or any part of the Software except for the purpose of observing, studying or testing the functioning of the Software in order to understand the ideas and principles which underlie the Software or for the purpose of achieving interoperability, and then only to the extent required by applicable legislation.
- 6.6 The Customer shall not remove or alter any copyright or other proprietary notice on any of the Software, and shall ensure that such notices appear on each and every copy of the Software supplied to the Customer's customers pursuant to the licence granted by Article 6.2.
- 6.7 Without limiting the generality of the limitations in Articles 6.1 to 6.6 inclusive, and subject only to Article 6.2, the Customer shall not sub-license, sell, rent, disclose, or otherwise make the Software available to any other person, or use the Software except as expressly authorized in writing by CW-I.
- 6.8 The Software may include one or more programs and documentation owned by third parties and distributed by CW-I under license. The Customer hereby agrees to be bound by all third party licences that govern the Customer's possession and use of such program(s), and if provided to the Customer, regardless of whether provided as part of the program's shrink wrap package or in electronic format displayed during program boot up or operation or in any other form. The Software will at all

times remain the sole and exclusive property of CW-I or its licensor (as the case may be), and the Customer shall obtain no title to or interest in the Software.

## **7 WARRANTIES**

- 7.1 CW-I warrants that as at the time of delivery the Products (excluding the Software) (1) shall be and shall perform substantially in compliance with any specification, drawings and other documents expressly incorporated into this Order; and (2) during the Warranty Period the Products shall remain free from defects in material and workmanship (the "Equipment Warranty"), failing which CW-I shall (at its option) either repair or replace the defective Products or issue a credit note to Customer in an amount equal to the purchase price of the defective Products.
- 7.2 CW-I warrants that the Services shall be performed with a reasonable degree of care and skill (the "Services Warranty"), failing which CW-I shall (at its option) either repeat the performance of the defective portion of the Services or issue a credit note to Customer in an amount equal to the purchase price of the defective portion of the Services.
- 7.3 CW-I warrants that all physical media containing the Software shall be free of defects in materials and workmanship at the time of delivery and that the Software shall during the Warranty Period operate substantially in compliance with any specification contained in the Order (the "Software Warranty"), failing which CW-I shall replace the physical media containing the Software with a version in which errors or bugs have been corrected.
- 7.4 CW-I is not liable for any claim under the Equipment Warranty, Software Warranty or Services Warranty unless the Customer (a) has given CW-I notice of the claim in a timely manner, specifying in reasonable detail the nature of the claim together with all relevant information and in any event within a period of seven days from the expiry of the Warranty Period; and (b) provides CW-I a reasonable opportunity to examine the Products concerned; and (c) on CW-I's request, returns, at the Customer's cost, such Products for examination at CW-I's place of business..
- 7.5 Where CW-I supplies any goods supplied by a third party (excluding any Affiliate of CW-I), CW-I does not give any warranty, guarantee or indemnity on such goods, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity provided to CW-I by such third party.
- 7.6 **THIS WARRANTY AND ASSOCIATED REMEDIES ARE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, AND CUSTOMER WAIVES ALL OTHER WARRANTIES, OBLIGATION OR LIABILITIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION AN IMPLIED WARRANTY OF COMMERCIAL ACCEPTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY MAY NOT BE EXTENDED OR ALTERED EXCEPT BY WRITTEN AUTHORIZATION OF CW-I.**

## **8 LIMITATIONS OF LIABILITY**

- 8.1 Notwithstanding any other provisions in these Conditions:
- (a) any obligation, liability, right, claim or remedy in tort (including, without limitation, for the avoidance of doubt, any breach of statutory duty) that the Customer may otherwise have against CW-I is hereby excluded to the fullest extent permitted by law;
  - (b) where CW-I supply Products, Customer shall be responsible for ensuring that such Products are suitable for use in the process media and/or Customer-designated application and shall indemnify and hold CW-I harmless from and against any and all damages, claims, costs or liabilities incurred by CW-I arising from the Products not being suitable.
  - (c) **CW-I SHALL NOT BE LIABLE TO THE CUSTOMER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY) OR OTHERWISE HOWSOEVER ARISING FOR ANY LOSS OF PROFIT OR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY NATURE WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF PRODUCTION, MATERIAL WASTAGE, DEPLETION OF GOODWILL, REPUTATION OR LOSS OR CORRUPTION OF DATA, EVEN IF CW-I HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS BEING INCURRED.**
- 8.2 CW-I's aggregate liability to the Customer arising out of the supply of any Products and/or Services will in no event exceed the price actually paid by the Customer to CW-I for such Products and/or Services.
- 8.3 The Customer agrees and acknowledges that these Conditions have been the subject of discussion and negotiation and are fully understood by the Customer, and that the mutual agreements of the parties set forth in the Conditions were arrived at in consideration of the provisions of this Article 8 specifically including the limitation set forth in this Article 8.
- 8.4 Nothing in these Conditions shall exclude, or be construed as an attempt to exclude, any liability of CW-I which cannot, as a matter of law, be excluded.
- 8.5 Except as expressly stated, each of the Articles and sub-Articles of this Article 8 is to be construed as a separate limitation, applying and surviving even if for any reason one or more of the Articles is held to be inapplicable or unreasonable in all or any circumstances.
- 8.6 The warranties set forth in Article 7 do not extend to damage, defects, failures or malfunctions caused or contributed to by:

- (a) the Customer's failure to follow the instructions and advice provided by CW-I regarding the installation, operation, storage, use and maintenance of the Products;
  - (b) modifications, alterations or repairs made by a Person other than by CW-I;
  - (c) the mishandling, abuse, misuse, negligence, or improper storage, servicing or operation of Products (including without limitation use with incompatible equipment or non-standard connections) by the Customer or its agents;
  - (d) power failures, surges, fire, flood, accident, actions of third parties or any act of Force Majeure;
  - (e) the Customer continuing to make full or substantially full use of the Products;
  - (f) CW-I's compliance with instruction of the Customer; or
  - (g) fair wear and tear.
- 8.7 CW-I does not warrant that the Software is error free or that the Customer will be able to operate the Software without problems or interruptions.
- 8.8 The Software Warranty does not apply to any software media or Software that (a) has been altered or modified by any Person other than CW-I; (b) has been installed, operated, repaired or maintained otherwise than in accordance with instructions supplied by CW-I; (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) has been used in an application other than its intended application.

## **9 EXPORT AND IMPORT TERMS**

- 9.1 Delivery and performance respectively of the Products and Services supplied by CW-I are subject to applicable export control laws and regulations including the United Kingdom, United States and Canada, and conditioned upon receipt of required government licences and approvals. The Customer shall not re-export the Products or any technical data supplied by CW-I (a) from the country of delivery, or (b) to any facility anywhere in the world engaged in the design, development, stockpiling, manufacturing or use of nuclear, missile, chemical or biological weapons, or (c) to any military end-user or to any Person for military end-use or distribution to a military end-user, in each case without fully complying with the regulations of all relevant government agencies including those of the United Kingdom, United States and Canada.
- 9.2 CW-I shall use its reasonable endeavours to obtain all necessary export or other licences, consents, clearances and/or authorisations (the "Export Licenses") required in order to fulfil its obligations under the Order.
- 9.3 The Customer shall, in a timely manner and at its own cost and expense, provide to CW-I such end-user certificates, end-user undertakings or other information as CW-I may request in support of obtaining and maintaining Export Licenses.
- 9.4 In the event that such Export Licenses are not granted or are revoked, then such event shall be deemed to be a Force Majeure event under Article 10 and CW-I shall have no liability to the Customer for completing its obligations affected by such Export Licenses (including without limitation the supply of any Products), or for any loss, expense or damage whatsoever suffered by the Customer.
- 9.5 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties or taxes. If any license or consent of any government or other authority shall be required for the acquisition, import, carriage or use of the Product by the Customer, the Customer shall obtain the same at its own expense and produce evidence of the same to CW-I on demand. CW-I shall provide certificates of delivery, certificates of origin and other information in its control that is reasonably necessary for the Customer to import the Products. The failure of any authority or government agency to issue such license or consent or the withdrawal thereof shall not entitle the Customer to withhold or delay payment of the purchase price.

## **10 FORCE MAJEURE**

CW-I shall not be liable for delay or failure in performance of any of its obligations to the Customer attributable in whole or in part to any cause beyond its reasonable control including, but not limited to, actions or inactions of government bodies whether in its sovereign or contractual capacity, judicial action, war, civil disturbance, insurrection, sabotage, act of a public enemy, act of terrorism, labour difficulties or disputes, failure or delay in delivery by CW-I's suppliers or subcontractors, transportation difficulties, shortage of energy, materials, labour or equipment, accident, fire, flood, storm or other act of God ("Force Majeure"), or the Customer's fault or negligence.

## **11 TERMINATION**

- 11.1 CW-I may terminate any Order:
- (a) immediately upon notice to the Customer if the Customer is delinquent for more than 30 days in the payment of any sum due to CW-I;
  - (b) immediately upon notice to the Customer if it is in breach of any obligation under the Order and the Customer has failed to remedy such breach within thirty days of written notice to the Customer requiring the breach to be remedied;

- (c) immediately upon notice to the Customer if there is any change in the ownership, management or control of the Customer;
  - (d) immediately upon notice to the Customer if the Customer ceases or threatens to cease to carry on business or substantially the whole of its business or CW-I has reasonable cause to believe that the Customer is unable to pay its debts when due;
  - (e) without notice to the Customer if the Customer becomes insolvent or bankrupt, enters into liquidation, or a receiver, administrator, administrative receiver, manager, trustee or similar officer is appointed in relation to it or over any of its assets or any action is taken or threatened by or against it analogous to the foregoing in any jurisdiction; or
  - (f) immediately upon notice to the Customer if a case of Force Majeure continues for 60 days or more.
- 11.2 Where CW-I terminates any Order under this Article 11, the Customer shall within seven (7) days pay to CW-I: (a) all amounts invoiced by CW-I under the Order which remain unpaid at the date of termination; (b) a fair and reasonable price in respect of work completed or in progress but not invoiced at the date of termination; (c) all costs (including without limitation a sum in respect of overheads) incurred by CW-I connected with termination; (d) all suppliers' and sub-contractors' termination charges; and (e) a sum in respect of the profits which CW-I would have reasonably been expected to make under the Order but for its termination.
- 11.3 Termination of any Order by CW-I shall be without liability or obligation of any kind on the part of CW-I. Such termination shall not affect the rights of CW-I accrued prior to the date of termination.
- 11.4 Customer may only terminate any Order for convenience in accordance with and subject to the terms of any specific termination or cancellation schedule included in CW-I's Quotation.

## **12 CONFIDENTIALITY**

- 12.1 The Customer shall treat all Confidential Information disclosed by CW-I as confidential and shall not use or disclose any Confidential Information except for the proper and necessary purposes of use of the Products and Services, and any such disclosure shall be made to the Customer's employees under appropriate conditions of confidence.
- 12.2 The obligations of confidence contained in Article 12.1 shall not apply to any information which is, in the public domain through no fault of the Customer or at the time of disclosure by CW-I is already known to the Customer from a bona fide source other than CW-I.
- 12.3 Neither the Customer nor CW-I shall without the prior written consent of the other; (a) make use of the other's name or trademarks; (b) make use of the name of any of the other's personnel, customers or agents; (c) make use of any information obtained under the Order for publicity purposes; or (d) refer to the other or the Order in any advertisement or public notice.

## **13 INDEMNITIES**

- 13.1 Customer agrees to indemnify, release, defend and hold harmless CW-I, its Affiliates, their employees, officers, directors, shareholders, agents, subcontractors and/or joint venturers (the "CW-I Indemnitees") against all claims, costs, charges, expenses, damages and other liabilities (including attorney's fees) in connection with any injury, death or ill health of any personnel of Customer, its Affiliates, its subcontractors (excluding CW-I) and/or joint venturers, or any loss of or damage to property (whether leased, owned or hired) of Customer, its Affiliates, its subcontractors, and/or joint venturers, regardless of the cause therefor, including, without limitation, the negligence or strict liability of the CW-I Indemnitees, its Affiliates, their employees, officers, directors, agents, subcontractors and/or joint venturers. Customer will indemnify, hold harmless and defend the CW-I Indemnitees from and against any claims, suits, judgments, expenses or liabilities of any nature (including without limitation all reasonable attorneys' fees) which are threatened or brought against, or are incurred by, CW-I Indemnitees arising from any actions, omissions or misrepresentations of Customer in the use, promotion, or sale of products or services provided by CW-I.

## **14 INFRINGEMENT INDEMNIFICATION**

- 14.1 The Customer agrees promptly to notify CW-I in writing of any notice, proceeding, or any action against the Customer based upon a claim that any Product infringes any patent granted at the time of Order in either the United States, the United Kingdom or Germany, copyright, trademark, or other intellectual property of a third party. CW-I will defend, at its expense, any such action, except as excluded below, and shall have full control of such defense including all appeals and negotiations, and will pay all settlement costs, or damages awarded against the Customer. In the event of such notice, suit or action, CW-I will take reasonable steps, at its expense, and at its sole option, to procure for the Customer the right to continue using the Product, or modify the Product to render it non-infringing, or accept return of and replace such Product with substantially equivalent non-infringing equipment, or accept return of the Product and refund or credit to the Customer the amount of the original purchase price, less a reasonable charge for depreciation and damage.

- 14.2 The agreements by CW-I in Article 14.1 shall not apply to any Product manufactured to specifications furnished by or on behalf of the Customer, or to any infringement arising out of the use of the Product in combination with other equipment or software not furnished by CW-I, or to use in a manner not normally intended, or to use in a country outside of the country to which the Products shipped, or to any patent, copyright, trademark or in which the Customer, or any subsidiary or Affiliate the Customer, has a direct or indirect interest, or if the Customer has not provided CW-I with prompt notice, authority, information and assistance necessary to defend the action.
- 14.3 Customer shall not do anything that might be prejudicial to any proceedings or actions. Customer shall do nothing which would or might vitiate any insurance which the Customer may have relating to any claimed infringement and shall use its best endeavours to claim costs, or damages awarded against the Customer under such insurance, which shall be offset against any settlement costs or damages to be paid by CW-I in accordance with this Article 14. Without prejudice to any duty of the Customer at common law, Customer shall take such steps as CW-I may require to mitigate or reduce any such settlement costs or damages to be paid by CW-I in accordance with this Article 14.
- 14.4 The provisions of this Article 14 contain the sole and exclusive remedy of the Customer arising from the infringement or alleged infringement of any patent, copyright, trademark or other intellectual property of a third party.
- 14.5 The Customer warrants that any design or instructions furnished by it do not and shall not cause CW-I to infringe any patent, copyright, trademark, or other intellectual property of a third party.

## **15 TECHNICAL DATA AND INVENTIONS**

- 15.1 Except as provided for in Articles 6.1 and 6.2, the sale of Products and/or or license of Software by CW-I confers on the Customer no right in, licence under, access to, or entitlement of any kind to any of CW-I's technical data, including but not limited to design, process technology, software and drawings, or to CW-I's inventions (whether or not patentable) irrespective of whether any such technical data or invention or any portion of such technical data or invention arose out of work performed under an order placed by the Customer, and irrespective of whether the Customer has paid or is obligated to pay CW-I for any part of the design and/or development of the Products and/or Software.
- 15.2 CW-I shall not be obliged to safeguard or hold confidential any data, technical or other information, furnished by the Customer for CW-I's supply of Products and/or performance of Services unless (and only to the extent that) the Customer and CW-I have entered into a separate written confidentiality agreement.
- 15.3 All rights in any intellectual property created, designed, or conceived by CW-I in connection with or arising out of the performance of the Order by CW-I shall vest exclusively in CW-I and/or its suppliers. Except as agreed to in writing by CW-I, no work performed by CW-I shall be considered a work made for hire.

## **16 INJUNCTIVE RELIEF**

It is expressly agreed that unauthorized reproduction, disclosure or unauthorized use of the Software or disclosure by the Customer of any of CW-I's Confidential Information or proprietary data supplied to the Customer will cause immediate and irreparable harm to CW-I for which money would be an inadequate remedy. In addition to any and all remedies available at law, CW-I shall be entitled to injunctive or other equitable remedies in all legal proceedings in the event of any threatened or actual reproduction, disclosure or use of CW-I's Confidential Information or proprietary data.

## **17 GOVERNING LAW AND JURISDICTION**

- 17.1 These Conditions shall be governed by and construed in accordance with:
- (a) (where CW-I is or includes a United States domiciled entity) the laws of the State of New York, exclusive of any choice of law provisions; or
  - (b) (where CW-I does not include an United States domiciled entity) the laws of England and Wales, exclusive of any choice of law provisions.
- 17.2 All disputes arising out of or in connection with these Conditions and each supply of Products, Software and/or Services by CW-I to the Customer other than a claim for monies due from the Customer to CW-I, but including its existence, validity or termination, shall be referred to and finally resolved in accordance with Article 18. All proceedings shall be conducted in the English language.
- 17.3 Nothing in this Article 17 shall restrict the jurisdiction of any court that would, apart from the provisions of Article 17 or 18, have jurisdiction over a dispute arising out of or in connection with these Conditions for the purpose of enforcing any right or remedy of either party by means of injunctive relief, specific performance or equivalent remedy which an arbitrator appointed pursuant to Article 18 is not empowered to grant.
- 17.4 The parties expressly agree to exclude from the Order the United Nations Convention on Contracts for the International Sale of Products, 1980, and any successor thereto.

## **18 DISPUTE RESOLUTION**

- 18.1 If any dispute arises in connection with the Order, the parties' respective senior representatives will, within ten (10) days after receipt of a written request from either party to the other, in accordance with these Conditions, meet in a good faith effort to resolve the dispute without recourse to legal proceedings. If the parties fail to reach agreement within thirty (30) days after receipt of the written request, any dispute or difference may be referred for resolution in accordance with the following Articles.
- 18.2 Where CW-I is or includes a United States domiciled entity, any dispute arising out of or relating to the Contract or its breach shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The parties may agree on the selection of a single arbitrator, but if they cannot so agree, each such party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator. No arbitrator may be affiliated, whether directly or indirectly, with any of the parties, including, without limitation, as an employee, consultant, partner or shareholder. The arbitrator(s) shall permit each of the parties to the Arbitration to engage in a reasonable amount of discovery. In the event either party requests arbitration, the arbitration shall be held in New York, New York. The award by the arbitrator or arbitrators shall be final, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.
- 18.3 Any dispute arising out of or relating to the Order which is not subject to the provisions of Article 18.2, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the International Chamber of Commerce ("ICC") Rules of Arbitration as in force at the commencement of the arbitration. If the dispute involves \$5 million or less, the arbitration shall be conducted by a sole arbitrator. Either party to the Order may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator. If within 30 days after receipt by a party of a proposal made in accordance with this paragraph the parties have not reached agreement on the choice of an arbitrator, the sole arbitrator shall be appointed by the ICC in Accordance with its Rules. If the dispute involves more than \$5 million, the arbitration shall be conducted by a tribunal of three arbitrators, one arbitrator to be named by CW-I, one arbitrator to be named by Customer, and the third arbitrator (who shall serve as the chairperson of the tribunal) to be appointed by the two party-appointed arbitrators. If the two party-appointed arbitrators fail to appoint a third within 15 days of the appointment of the second of the two party-appointed arbitrators, then either party may request that the chairperson be appointed by the ICC in accordance with its Rules of Arbitration. The place of arbitration shall be London, England. Any arbitral tribunal constituted pursuant to the Order shall apply the law identified in Article 17.1 hereof to all disputes. The award of the arbitrator shall be final and binding upon the parties and may be entered and/or enforced in any court of competent jurisdiction. The parties acknowledge that the Order and any award rendered pursuant to it shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- 18.4 Notwithstanding the foregoing, CW-I may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights.

## **19 ENFORCEABILITY**

Any provision of these Conditions that is prohibited or unenforceable for any reason in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. For any provision so severed from these Conditions, there shall be deemed to be substituted a like provision to accomplish the intent of the parties as closely as possible to the provision so severed, as determined by any court of competent jurisdiction, to the extent permitted by law.

## **20 NOTICES**

- 20.1 Any notice to be given under these Conditions shall be in writing and may be hand-delivered (including delivery by courier service such as FedEx or DHL). In the case of the Customer, notice may be sent to its principal place of business or such other address or fax number as the Customer may have provided to CW-I for this purpose. In the case of CW-I, notices should be sent to CW-I at the CW-I address stated on the Order, marked for the attention of "General Manager", with a copy to Office of the General Counsel at Curtiss-Wright Corporation, 10 Waterview Boulevard, Second Floor, Parsippany, New Jersey 07054, USA.
- 20.2 Unless the contrary shall be proved, notice shall be deemed to have been given, if by hand delivery (including courier) during working hours on a working day, when left at the relevant address, and otherwise on the next working day after delivery.

## **21 MISCELLANEOUS**



- 21.1 Neither the Customer nor CW-I may assign these Conditions in whole or in part without the prior written consent of the other party provided, however, that CW-I may assign and delegate any of its rights and obligations, in whole or in part, to any Affiliate of CW-I without the written consent of the Customer.
- 21.2 No amendment to the Order shall be effective unless in writing and signed on behalf of both parties.
- 21.3 No failure by either Party to enforce, at any time or for any period, any one or more of the terms or conditions of the Order shall be construed as a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Order.
- 21.4 Any obligations and duties, which by their nature extend beyond the expiration or earlier termination of this Agreement and/or the completion of each Project shall survive any such expiration or termination and remain in effect.
- 21.5 Unless otherwise agreed in writing, all documentation provided in connection with any Order and any communications between the parties shall be in the English language.
- 21.6 Customer acknowledges that:
- (a) Curtiss-Wright Corporation has posted a copy of Curtiss-Wright Corporate Policy No. 1A, "Code of Conduct – Suppliers & Customers" on the world wide web at: <http://www.curtisswright.com/investors/corporate-governance/Code-of-Conduct--Suppliers-and-Customers/default.aspx> ;
  - (b) Customer has reviewed a copy of the policy; and
  - (c) Customer agrees to comply with the provisions of the policy.

## **22 ENTIRE AGREEMENT AND THIRD PARTIES**

- 22.1 These Conditions supersede all previous communications, transactions, and understandings, whether oral, or written, and constitute the sole and entire agreement between the parties pertaining to any Order. No modification or deletion of, or addition to these Conditions or any Order shall be binding on either party unless made in writing and signed by a duly authorized representative of both parties.
- 22.2 No contract between the parties for the supply of Product or Services shall confer any right upon any third party, either by virtue the Contracts (Rights of Third Parties) Act 1999 or otherwise. In particular, but without limiting the generality of the preceding sentence, the Software Warranty provided to Customer shall not confer any benefit or right of any kind on any sublicensee of the Customer.

## **23 INTERPRETATION**

- 23.1 In these Conditions:
- "Affiliate" means, in respect of a Person, another Person that controls the first Person or is controlled by the first Person, or is controlled by the same Person that controls the first Person;
- "Conditions" means the standard terms and conditions of sale set out in this document;
- "Confidential Information" means all information concerning or relating to the business and affairs of CW-I or any of its Affiliates including, but not limited to, its technology, products, prices, marketing practices, customers, licensees, suppliers and business plans and including all information contained in any Quotation, technical proposal, specification or scope of work;
- "Customer" means the Person who issues an Order acceptable to CW-I for the purchase of Products, Software and/or supply of the Services;
- "CW-I" means the Curtiss-Wright Corporation Affiliate identified on the Order or any of its assignees or successors;
- "Equipment Warranty" shall have the meaning given to that term by Article 7.1;
- "Force Majeure" shall have the meaning given to that term by Article 10;
- "Incoterms" means the rules for the interpretation of international trade terms of the International Chamber of Commerce, as revised from time to time;
- "Order" means the agreement in writing concluded between CW-I and Customer, including any specifications, and other drawings and documents that are expressly incorporated into it, and incorporating these Conditions;
- "Person" means individual, partnership, limited partnership, sole proprietorship, company or corporation with or without share capital, public or private association, public utility, legal personal representative, regulatory or governmental agency or body, or other legal entity however designated or constituted;
- "Products" means all goods, Software, articles, documents or other materials, and any data or other information which are stated in the Order to be supplied by CW-I to the Customer pursuant to these Conditions or any other agreement or contract between them;
- "Quotation" means a written offer by CW-I to the Customer to supply any Products and/or Services
- "Services" means any services to be supplied by CW-I to the Customer pursuant to these Conditions;

“Services Warranty” shall have the meaning given to that term by Article 7.2;

“Software” means any software programs which CW-I is to license to the Customer pursuant to these Conditions or any other agreement or contract between CW-I and the Customer;

“Software Warranty” shall have the meaning given to that term by Article 7.3; and

“Warranty Period” means unless otherwise agreed in writing, the period:

(a) in respect of Products commencing on the date of delivery of the Products and expiring in respect of Products (except for Software) twelve months after delivery and in respect of Software three months after delivery; and

(b) in respect of Services commencing on the date on which CW-I has determined that the performance of the Services has been completed and expiring three months thereafter.

23.2 For the purposes of these Conditions (and, in particular, the definition of “Affiliate” in Article 23.1), a Person shall be deemed to control another Person where the first Person has any direct or indirect influence that, if exercised, would give the first Person the power to manage the affairs of the second Person, including (but without limiting the generality of the foregoing) ownership of more than half of the capital or business assets or the right to exercise more than half of the voting rights or the power to appoint more than half of the members of the board of directors or supervisory board of the second Person.

23.3 Unless the context otherwise requires, any term or expression which is defined in or given any particular meaning by the provisions of the Incoterms shall have the same meaning in these Conditions.

23.4 Any reference in any agreement, order, acknowledgement or other communication between CW-I and the Customer to CW-I’s standard terms and conditions shall be deemed to be a reference to these Conditions.

23.5 The term “and/or” denotes a reference to both of the adjoining terms and of them individually.

23.6 Any reference the term “writing”, or cognate expressions, includes communications effected by e-mail.