

12/03/2018

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS:

"Customer" shall mean the Company that purchases Product/Services pursuant to this Order.

"Delivery Point" shall mean the location of delivery of Product stated in the Order.

"Order" shall mean the agreement between SELLER and the Customer (individually "Party" and collectively "the Parties") for the sale and purchase of the Product/Services that incorporates by reference these Terms and Conditions of Sale and any contemporaneous writing or Quotation.

"Product" means all components, spare parts, goods, product, or materials of any kind, which are supplied by SELLER under this Order.

"Third Party Products" shall mean products and software of a third party vendor. If Third Party Products are supplied by the SELLER under this Order, notwithstanding anything to the contrary, such supply is made on a "pass-through" basis only and is subject to the terms and conditions of the third party vendor, including but not limited to warranties, licenses, indemnities, limitation of liability, prices and changes thereto. For time and materials orders, Third Party Products are quoted subject to price changes imposed by third party vendors between the date of the Order encompassing such Third Party Products and the date of SELLER's invoice related to that Third Party Product.

"Software" shall mean computer software programs, in object code form including firmware and custom software, and instructions manuals, specifications and related documentation in written or electronic form, their related instructions manuals and documentation, for which SELLER grants Customer a license under this Order.

"Quotation" means the written Quotation or tender submitted by the SELLER to Customer.

"Services" means all services, including maintenance and installation services, provided under this Order.

"Specifications" shall mean the SELLER's standard specifications applicable to the Product at the time of execution of the Order hereunder or the specific requirements mutually agreed upon between the Parties in Orders hereunder in relation to the Product.

"SELLER" shall mean any Smiths Interconnect entity or business supplying Product or Services to Customer under an Order.

"Warranty" or "Warranties" means the warranties set forth in Article 8.

2. OFFER AND GOVERNING PROVISIONS: Each Quotation and Order acknowledgement issued by SELLER (i) is an offer by SELLER to sell the goods and/or services described in it in accordance with these Terms and Conditions of Sale, (ii) is not an acceptance of any offer made by the Customer, and (iii) is expressly conditioned upon the Customer's assent to these Terms and Conditions of Sale and waiver of any differing terms of conditions. Such assent and waiver is evidenced by Customer's Order (any contrary terms or conditions of which shall be disregarded) or by accepting delivery of the first shipment hereunder. SELLER rejects any additional or different terms contained in any purchase order or other communication previously or hereafter provided by Customer to SELLER including any acknowledgement, shipping documents, terms and conditions or otherwise. No such additional or different terms or conditions will be of any force or effect. The terms of the Order will be the entire agreement between Customer and SELLER on the subject of the transaction that it describes and there are no conditions to that agreement that are not part of the Order. These Terms and Conditions of Sale may be modified only by a written document signed by duly authorized representatives of SELLER and Customer. If the Product, Software, or Services are to be used directly or indirectly in the performance of a contract with the U.S. Government, whether a prime contract or subcontract, CUSTOMER agrees that (a) the Product, Software, and Services provided are "commercial items" as that term is defined at FAR 2.101, and (b) the additional terms and conditions in the attached Addendum A apply.

3. PAYMENT: Payment in full of the purchase price shall be made in United States currency within 30 days of the date of invoice, unless otherwise agreed by the parties in a signed writing. Customer acknowledges that SELLER has the right to reassess Customer's creditworthiness from time to time. To the extent such is in accordance with law, in the event there is a decline in Customer's creditworthiness, SELLER may, upon thirty (30) days written notice, revise the payment terms between the parties. Upon request, Customer shall provide financial data

evidencing the Customer's worth in order for SELLER to determine the creditworthiness of Customer. Such information shall include, but not be limited to, annual reports, balance sheets, and bank records. Payments advices from Customer shall include the following information: invoice number, amount of payment, and purchase order number.

If Customer is delinquent in its payment obligations, without prejudice to any other remedies available to it by law or in equity, SELLER may demand immediate payment and at SELLER's option (i) suspend all further deliveries to be made under the purchase order or any further performance under any other contract with Customer or Customer's affiliates, in which event Customer shall not be released in any respect from its obligations to SELLER under the purchase order; (ii) recover all costs of collection including but not limited to reasonable attorneys' fees; (iii) repossess the Product for which payment has not been made; (vi) charge interest at 1.5% per month on the past due amount, not to exceed the interest percentage allowed by law; and (vii) reassess the credit worthiness of Customer and change any current payment terms. Any discount from SELLER's rates, if any, shall cease to apply to the delinquent invoice, Customer shall be invoiced for such differences in cost, and shall immediately pay the resulting invoice.

Customer shall not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from SELLER and/or its affiliates.

4. REJECTION OF PRODUCT: Customer shall have ten (10) days from arrival of Product at the Delivery Point to notify SELLER of rejection of Product for non-conformity with the Order. Any notice of rejection must be in writing, identify this Order and describe all defects of the Product on which Customer intends to rely. No Products shall be returned without SELLER's express instructions.

5. CANCELLATION: SELLER at its option and in addition to its other remedies may without liability cancel this Order or refuse shipment, if (a) Customer is in default in any payments or other performance due SELLER under this Order or any other agreement (b) Customer becomes insolvent or a petition in bankruptcy is filed with respect to Customer (or similar event) or (c) causes beyond SELLER'S control make it impossible to assure its timely performance. Customer may cancel the remaining unfilled portion of its Order only upon written consent of SELLER and payment of the full price for that portion of the Order that SELLER has substantially completed at time of cancellation plus reasonable cancellation charges which shall include the full profit plus all costs incurred in connection with the canceled portion of the Order such as overhead and administrative costs, commitments made by SELLER as a consequence of Customer's Order and the cost of all work-in-progress. Cancellation charges shall not exceed the purchase price of the canceled portion of the Order.

6. LIENS; TITLE; RISK: (A) Title and risk of loss to Product passes to Customer on delivery of Product to the carrier at the shipping point. (B) Customer hereby grants to SELLER a security interest in the Product and any property owned by the Customer (including Customer's beneficial rights to property leased by Customer) in the possession of SELLER or any of SELLER's affiliates, at any time, to secure all amounts owed by Customer to SELLER under this Order.

7. DELIVERY: All delivery hereunder is per Incoterms 2010 via the method and location agreed by the Parties in the Order. SELLER may deliver, and Customer will accept delivery of, a greater or lesser quantity not to exceed five percent (5%) of the original order quantity. SELLER will not accept and Customer shall not make any invoice modification based on a deviation of five percent (5%) or less of the quantity delivered and the original order quantity.

8. WARRANTIES: (A) SELLER warrants the Product manufactured by SELLER for a period of six (6) months from delivery to the Delivery Point ("Warranty Period") will materially conform to SELLER's standard specifications available from the SELLER for such Product at the time of the issuance of the Order or to the Specifications agreed between the Parties, including drawings or descriptions, specification sheets, drawings, notes and technical data for such Product. SELLER further warrants that Product, at the time of their delivery, will be free from defects in material and workmanship for the Warranty Period.

(B) The express warranty set forth in the first sentence of this paragraph shall be the only warranty given by SELLER with respect to the Product/Services provided.

(C) For Third Party Products not manufactured by SELLER, SELLER's only responsibility is to assign to its Customer any manufacturer's warranty that does not prohibit such assignment.

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(D) Product and parts that are consumed in normal operation are not covered by this Warranty.

(E) If the Customer discovers a defect within the applicable Warranty period, it must be reported in writing to SELLER's service department immediately upon discovery.

(F) Within a reasonable time after proper notification, SELLER shall, during its normal business hours, Monday through Friday, correct any defect covered by this warranty with either new or used replacement parts, without charge. The above remedies are the exclusive remedies of Customer, and the sole responsibility of SELLER, for breach of this warranty as to repaired or replaced Product. SELLER'S LIABILITY FOR BREACH OF ANY WARRANTY SHALL BE LIMITED TO THE REMEDIES PROVIDED HEREIN.

(G) The Warranties cease to be effective if Customer fails to operate and use the Product sold hereunder in a safe and reasonable manner in accordance with SELLER's written instructions.

(H) Customer shall not be entitled to any remedy under the Warranties with respect to: (i) Product/Services that has been subjected to any alteration, disassembly, tampering, modification, or repair without prior authorization by SELLER; (ii) Product/Services subjected to experimental running or any type of operation or use other than that for which the Product/Services is designed; (iii) Product/Services from which SELLER and/or vendor's trademark or serial number has been altered, removed, or obliterated without SELLER's written permission, excluding any alteration, removal, or obliteration directly caused by accident or mishap; (iv) Product/Services that has been in storage or immobilized for one (1) year or more after delivery to the Delivery Point.

(I) SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED (EXCEPT WARRANTIES OF TITLE), AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR OF NON-INFRINGEMENT; AND THE EXPRESS WARRANTY SET FORTH IN THIS ARTICLE IS IN LIEU OF ANY SUCH WARRANTIES AND ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF SELLER.

(J) The Warranties are non-transferable and are applicable only to the original Customer.

9. LIMITATIONS OF LIABILITY AND INDEMNITY:

General Limitations. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS ORDER OR THE USE OF THE PRODUCT/SERVICES PROVIDED HEREUNDER, REGARDLESS OF WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, ANCILLARY COSTS TO THE PROCUREMENT OF SUBSTITUTE PRODUCT OR SERVICES, RETESTING, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION, REGARDLESS WHETHER SUCH CLAIM OR CLAIMS FOR DAMAGES IS BASED ON BREACH OF WARRANTY OR OTHER CONTRACT BREACH, NEGLIGENCE OR OTHER TORT OR ON ANY STRICT LIABILITY THEORY. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST SELLER MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED.

Specific Limitations. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS ORDER, OR ANY USE OF ANY PRODUCT PROVIDED HEREUNDER, EXCEED THE TOTAL AMOUNT OF THE APPLICABLE ORDER UNDER WHICH THE PRODUCTS WERE PURCHASED WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED REGARDLESS WHETHER SUCH CLAIM OR CLAIMS IS BASED ON BREACH OF WARRANTY OR OTHER CONTRACT BREACH, NEGLIGENCE OR OTHER TORT OR ON ANY STRICT LIABILITY THEORY. EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES, SELLER SHALL NOT BE RESPONSIBLE FOR ANY CLAIM AGAINST CUSTOMER BY A THIRD PARTY. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR UNITS SOLD TO CUSTOMER UNDER THIS ORDER SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

CUSTOMER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS ORDER AND THAT IN THE

ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS ORDER WOULD BE SUBSTANTIALLY DIFFERENT.

SELLER shall not be liable for failure to deliver, for delay in delivery, or for any losses or damage to Customer, or to the Product/Services occasioned by delays, in the performance of SELLER's obligations, due to: (i) any cause beyond SELLER's reasonable control or the control of SELLER's suppliers or subcontractors; (ii) an act of God, act or omission of Customer, act of civil or military authority, fire, terrorism, strike or other labor difficulty, riot or other civil disturbance, insolvency or other inability to perform by the manufacturer, delay in transportation; or (iii) any other commercial impracticability including any changes in laws and regulations.

Customer will protect and indemnify SELLER against all claims arising out of patents, designs, trade secrets, copyrights, or trade names with respect to Products manufactured wholly or partially to Customer's designs or specifications, including any costs, expenses, loss, attorneys' fees, settlement payments, or damages.

10. PRICES, TAXES AND CURRENCY:

Prices for Product shall be in accordance with the SELLER's proposal.

SELLER's proposals and the Order Price exclude all sales taxes, value-added taxes, import and export duties and any other taxes, surcharges, duties or tariffs of any kind now existing or hereafter imposed upon SELLER, its personnel or subcontractors or their properties in any country or territory either directly or indirectly in respect of the production, sale, supply, delivery, license export and import, or use of the Product. Customer shall be responsible for all such taxes, duties and charges. If such charges are not collected at the time of payment Customer will hold SELLER harmless.

If SELLER is required to impose, levy, collect, withhold or assess any such taxes, duties and charges, SELLER shall invoice Customer for such taxes, duties and charges unless Customer furnishes SELLER with an exemption certificate or other equivalent documentation demonstrating its exemption from such taxes, duties and/or charges.

If Customer is required by law to make any tax withholding from amounts paid or payable to SELLER, (i) the amount paid or payable shall be increased to the extent necessary to ensure that SELLER receives a net amount equal to the amount that it would have received had no taxes been withheld; (ii) Customer shall forward proof of such legally required withholding to SELLER.

Customer shall remit the amount due on the invoice in the currency indicated on the invoice.

11. INVOICING: Invoices shall be sent to the address specified in the Order. Should Customer dispute any invoice, Customer shall notify SELLER of the nature of the dispute in writing within fifteen (15) days of the invoice date. If Customer does not notify SELLER of any dispute within fifteen (15) calendar days of the invoice date, then the invoice is deemed to have been accepted and invoice payment is required to be made on the payment due date per contract terms. Notwithstanding any dispute regarding the invoice, Customer shall pay the undisputed portion of the disputed invoice.

12. MERGER AND SEVERABILITY: This Order contains the total agreement of the Parties, and all agreements entered into prior to or contemporaneously with the execution of this Order are excluded whether oral or in writing, except that a contemporaneous writing, signed by both Parties, and firmly attached to this Order, shall be considered part hereof. If any provision of this Order shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not effect the remaining provisions of this Order, all of which shall remain in full force and effect.

13. GOVERNING LAW AND FORUM: This Order shall be governed by, and construed in accordance with, the laws of the State of Delaware without the application of conflict of laws principles. **THIS ORDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** No action in law or equity arising out of this Order may be brought by Customer more than one (1) year after the cause of action has first arisen. SELLER shall have the right to collect from Customer its reasonable expenses, including attorneys' fees, incurred in enforcing this Order. The rights and obligations herein shall survive completion of the final payment under this Order.

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14. EXPORT CONTROLS: Customer acknowledges and agrees that the ultimate destination of the Product/Services sold hereunder is in the United States, unless otherwise agreed to in writing. Customer shall not authorize or permit its employees, distributors, customers, brokers, freight forwarders, and/or agents to export or re-export any of the Product/Services to any foreign person without complying with applicable export laws and regulations of Customer's country and of the United States, including the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). Customer agrees to obtain and properly utilize U.S. Government export authorization prior to exporting or re-exporting the Product/Services, either in their original form or after being incorporated into other end-items. Customer agrees to defend, indemnify and hold harmless SELLER from and against any claim, loss, liability, expense or damage (including liens or legal fees) incurred by SELLER with respect to any of Customers export or re-export activities contrary to applicable import and export laws and regulations.

15. NOTIFICATION: Customer agrees to notify SELLER immediately if Customer is listed in any Denied Persons List, Entity List, or Specially Designated Nationals List, or if Customer's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

16. LICENSE AND OWNERSHIP: To the extent that the Product/Services contain or are software, SELLER hereby grants to Customer a non-exclusive, non-transferable, personal license to use the software and related documentation. Customer's use of the Order Product/Services conclusively evidences its acceptance of this license and this Order. Title to the software shall at all times remain with SELLER. Customer agrees that the software, all enhancements, related documentation, and derivative works are, and will remain the sole property of SELLER and includes valuable trade secrets. Customer agrees to treat the software and related documentation as confidential and to not copy, reproduce, sub-license, or otherwise disclose the software and related documentation to third parties. Customer agrees to not disassemble, decompile, reverse engineer, create derivative works from or otherwise translate, customize, localize, modify, add to, or in any way alter, rent, or loan the software or related documentation.

17. SELLER SOFTWARE LICENSE: The Software License in Article 18 shall apply to generally to SELLER's Software. Third Party Product software Licenses are separate end user license agreements ("EULA") and not issued pursuant to the license in Article 18.

18. SOFTWARE LICENSE: (A) In consideration of the receipt of full payment of the Product/Services, and subject to Customer's compliance with its obligations under this Order, SELLER shall provide to Customer a personal, non-transferable, non-exclusive limited license, without the right to grant sublicense, to use the Software incorporated into the Product, if any, for purpose of Customer's ordinary business. Customer may not without SELLER's prior written express consent (i) copy, modify, sublicense, loan or transfer in any manner the inherent software or firmware, create derivative works, or translate, decompile, disassemble, reverse assemble, reverse engineer, emulate or perform any other operation, unless the operation is specifically authorized by law. Customer agrees to defend, indemnify and hold harmless SELLER from all damages and third party claims arising from unauthorized use or transfer of the software or firmware.

(B) If the Software is licensed for use in the performance of a U.S. Government prime contract or subcontract, Customer agrees that, consistent with FAR 12.211 and 12.212, commercial computer Software, computer Software documentation and technical data for commercial items are licensed under SELLER's standard commercial license.

19. INTELLECTUAL PROPERTY: Notwithstanding delivery of and the passing of title in any product, nothing in these terms and conditions shall have the effect of granting or transferring to, or vesting in, Customer any intellectual property rights in or to any Products.

20. ASSIGNMENT: Customer shall not assign this Order without the prior written consent of SELLER, and any purported assignment shall be void. SELLER may assign this Order at any time without notice to Customer.

21. RELATIONSHIP: Nothing in this Order shall be construed to place the Parties in the relationship of partners or joint ventures, and the Parties shall have no power to obligate or bind the other in any manner whatsoever.

22. HEADINGS: Any headings or paragraph titles are for the convenience of reference only and shall not define, limit, or extend the scope or intent of this Order or any provision thereof.

23. PROPRIETARY INFORMATION STATEMENT: The Quotation for this Order contains information proprietary to SELLER. No part of this information may be reproduced or transmitted in any form without the prior written permission of SELLER.

24. WAIVER: No waiver by SELLER of any breach of this Order by the Customer shall be considered as a waiver of the subsequent breach of the same or any other provision.

25. SEVERABILITY: If any provision or portion of this Order shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, that provision or portion of this Order shall be deemed omitted and the remaining provisions and portions shall remain in full force and effect.

26. AMENDMENTS: Any amendment to the terms of this Order shall only be effective if made in writing and signed by SELLER and Customer.

27. SURVIVORSHIP: The provisions of this Order that by their nature survive final acceptance under a Customer Order, expiration, cancellation or termination of any Customer Order shall remain in full force and effect after such acceptance and payment for the period specified herein, or if not specified then for the maximum time allowed by law. These provisions are: (i) Definitions, Article 1; (ii) Prices, Taxes and Currency, Article 10; (iii) Payment Terms, Article 3; (iv) Warranties, Article 8; (v) Intellectual Property, Article 19; (vi) Liens, Title, Risk Article 6; (vii) Limitation of Liability and Indemnity, Article 9; (ix); Governing Law and Forum, Article 13; (x) Headings, Proprietary Information, Waiver, Severability, Amendments and Survivorship, Articles 22 - 27.

ADDENDUM A – Additional Terms and Conditions for Sales in Connection to U.S. Government Contracts

1. COMPLIANCE WITH LAW: Seller and Customer agree to comply with all applicable Federal, State and local laws, executive orders, rules, and regulations applicable to its performance under this contract, including any applicable contract clauses that by law must be included in this agreement.

2. DATA SECURITY: Seller shall endeavor to maintain the highest level of data security. Seller is in compliance with NIST SP 800-171.

3. SYSTEM FOR AWARD MANAGEMENT (SAM): Seller and Customer certify that the data within their respective SAM profiles are accurate and complete, and that it shall maintain the accuracy of its SAM profile throughout the duration of this agreement.

4. TERMINATION FOR CONVENIENCE: Buyer shall have the right to terminate this contract, or any part hereof, in the event and to the extent that the portion of the prime contract with the federal government encompassing the work to be performed under this agreement is terminated by the federal government for the convenience of the government. In the event of such termination, Seller shall stop all work hereunder and shall cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges Seller incurred that resulted from the termination. Seller shall not be required to comply with the cost accounting standards or contract cost principles for this purpose, and its right to reimbursement is not contingent on approval by Buyer's customer. This paragraph does not give Buyer or Buyer's customer any right to audit Seller's records. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

5. TERMINATION FOR CAUSE: Either party may terminate this contract, or any part hereof, for cause in the event of any material default by the other party, or if the other party fails to provide, upon request, adequate assurances of future performance.

6. CHANGES: Changes to the terms and conditions of this agreements may be made only by written agreement of the parties. Seller agrees to consider in good faith any changes proposed by Buyer that are within the general scope of this agreement.

7. PATENT INDEMNITY: Seller shall indemnify Buyer and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Seller is reasonably notified of such claims and proceedings.

8. ORGANIZATIONAL CONFLICT OF INTEREST: Seller and Customer represent and warrant that their performance of this agreement does not constitute and will not create an organizational conflict of interest (OCI) under any applicable OCI clause or regulation.

9. BUSINESS ETHICS AND CONDUCT: Seller maintains a written code of business ethics and conduct, including an active compliance program. Seller shall comply with its written code of conduct in performance of this agreement.