

## STANDARD TERMS AND CONDITIONS OF SALE FOR CONTROL SYSTEM DELIVERABLES AND SERVICES

1. **Parties to this Agreement** – This Agreement for control system deliverables and/or services has been entered into by Applied Control Engineering, Inc. (“ACE”) and the “Buyer” (the entity and/or persons identified in the quotation or proposal provided to Buyer by ACE (“Proposal”) as the recipient of applicable deliverables and services).
2. **Acceptance** – These Standard Terms and Conditions of Sale, along with the Proposal, constitute the entire integrated agreement (“Agreement”) between ACE and Buyer for such deliverables, services, and related matters; the Agreement supersedes all previous and contemporaneous agreements, proposals and representations, written or oral, concerning such matters. Any additional, conflicting or inconsistent Buyer terms (whether set forth in a request for quotes or proposals, a purchase order or an acknowledgement, or in any other document) are expressly rejected by ACE and are not a part of the Agreement.
3. **Prices** – Written quotations are firm for thirty (30) calendar days from date of proposal, unless otherwise stated in the Proposal or unless ACE provides written notice to Buyer rescinding such Proposal or quotations prior to its receipt of written acceptance thereof by Buyer. All prices for control system deliverables are EXW (Incoterms 2020) shipping point, with Buyer responsible for insurance for such deliverables, unless otherwise specifically agreed upon in writing by ACE. All prices for services are exclusive of travel, living, and material expenses, unless otherwise specifically agreed upon in writing by ACE.
4. **Errors in Pricing** – ACE reserves the right to correct all typographical or clerical errors that may be present in its prices, proposals, quotations, or specifications by providing written notice thereof to Buyer.
5. **Buyer's Solvency** – Buyer's order shall constitute a representation that Buyer is solvent, and ACE is relying upon such representation. If ACE at any time believes that Buyer is insolvent or that Buyer's credit is impaired, Buyer shall be in material breach hereof and ACE may, without liability to Buyer, withhold performance hereunder, change the payment and credit terms, and/or repossess goods previously delivered for which payment has not been received by ACE (without limiting other remedies available to ACE hereunder or by applicable law).
6. **Payment Terms** – Payment terms are 30 days net from date of invoice, subject to approval of Buyer's credit by ACE, unless shorter periods (including requirements for advance payments or deposits) are set forth in the Proposal. If, in the judgment of ACE the financial condition of the Buyer at any time does not justify shipment or the continuation of production or performance of services under the aforesaid terms of payment, ACE may require payment in advance or other payment security from Buyer.
7. **Escalation** – If the performance of this Agreement extends beyond one year, or beyond the term set forth in the Proposal, then the remaining production and performance will be billed at higher rates to account for all labor and/or material costs escalations as reasonably demonstrated by ACE. ACE reserves the right to require an increase in price to account for increases in resale pricing over which ACE has no control.

8. **Taxes, Tariffs** – The amount of any tax or other government charge upon the production, sale, and/or shipment of the goods or performance of services identified in the Agreement, now imposed by any governmental authority or hereafter become effective, shall be added to the price provided in the Proposal and shall be paid by the Buyer. In the event of any increase in applicable tariffs or similar charges, or any other change in applicable laws impacting the services or goods described herein, ACE will be entitled to an equitable increase in its compensation, and an equitable extension of its schedule, to account for the impact of such changes on its performance hereunder as reasonably demonstrated by ACE.
9. **Invoicing** – ACE shall submit invoices consistent with the terms of the Proposal. The invoice shall include the amounts due and the amounts overdue.
10. **Late Charge** – ACE reserves the right to bill for a late charge equal to 1.5% per month of the unpaid balance past due under any invoice, or at the maximum rate legally permitted if less than such amount. In addition, ACE shall be entitled to suspend performance of this Agreement due to any late payment by Buyer until such payment default (including payment of accrued interest and late charges) is cured and an equitable adjustment of the purchase price and performance schedule for the services and deliverables described in the Proposal is agreed upon by ACE and Buyer and to recover from Buyer all costs of collection of amounts past due under this Agreement (including without limitation reasonable attorneys' fees and court costs), including those arising from any termination of this Agreement.
11. **Termination Provisions** – Buyer shall have the right to terminate this Agreement for its convenience if it determines it is in its best interest. Such termination must be made in writing and submitted to ACE reasonably in advance of the requested termination date. In this event, or in the event that Buyer fails to comply with its obligations under this Agreement and fails to cure such default within thirty (30) days of receipt of written notice thereof from ACE and ACE's corresponding termination of this Agreement, ACE shall be paid for all performance under the Agreement to date (including partial production of goods described in the Proposal), and a reasonable cost to close the project and deliver the incomplete deliverables, plus all actual demobilization expenses and third-party cancellation costs. Without limiting the foregoing, the amount due from Buyer to ACE on account of any termination shall not be less than the greater of the following (in addition to any actual damages suffered by ACE on account of Buyer's uncured default under this Agreement):
  - a. The amount that has been already paid by Buyer;
  - b. Up to (30) days after purchase commitment, total of 20% of purchase price;
  - c. Up to (45) days after purchase commitment, total of 40% of purchase price;
  - d. Up to (60) days after purchase commitment, total of 60% of purchase price;
  - e. Up to (90) days after purchase commitment, total of 80% of purchase price;
  - f. After (90) days of the purchase commitment, total of 100% of purchase price.
- If ACE for any reason is not allowed to complete all performance called for in this Agreement, ACE shall not be held responsible for the accuracy or completeness of the documents or other deliverables prepared by ACE if used, changed, or completed by the Buyer or another party. Accordingly the Buyer agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless ACE, its officers, employees and subconsultants from any claims, damage, liabilities, or costs (including reasonable attorneys' fees and defense costs) arising or allegedly arising from such use, change, or completion by Buyer or others of any such documents or other deliverable prepared by ACE.
12. **Inspection and Rejection** – Buyer shall have the right to inspect the deliverables provided by ACE within a reasonable period of time (not to exceed ten (10) days from delivery thereof to Buyer). If Buyer wrongfully rejects or revokes acceptance of any deliverables supplied by ACE, or fails to make any payment when due, ACE may

recover as damages the purchase price, or, in the event of cancellation prior to delivery, the amounts stated in Paragraphs 10 and 11 above.

13. **Delays/Storage Charges** – If Buyer delays shipment by request, or by failure to provide ACE with specifications and/or data required to complete the manufacture, assembly or testing of the system or other information necessary for the deliverables, ACE reserves the right to bill for storage charges and to recover any price or rate increases put in effect during the delay period.
14. **Intellectual Property** – Buyer acknowledges ACE's design documents, including specifications, programming code, and drawings, in hard-copy or electronic format, are instruments of service, and ACE retains all rights, title and interests in its services and deliverables (including patents, copyrights, and other intellectual property rights); however, upon completion of ACE's performance of this Agreement, and payment in full of all monies due to ACE, Buyer shall be deemed to have been granted a non-exclusive, non-transferable, royalty-free, perpetual license to use the services and deliverables performed or provided by ACE under this Agreement for the purposes contemplated in the Proposal, except that third-party deliverables (including "off-the-shelf" hardware and "click-wrapped" software) will be subject to Buyer's compliance, at its own cost (except as otherwise provided in the Proposal), with all applicable third-party licensing requirements (including End-User License Agreement). The Buyer shall not reuse or make any modifications to the design documents without the prior written authorization of ACE, and Buyer agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless ACE, its officers, directors, employees, and subconsultants against any claims, damages, liabilities or costs (including reasonable attorneys' fees and defense costs) arising or allegedly arising from the unauthorized reuse or modification of the design documents by the Buyer or any person or entity that acquires or obtains the design documents from or through the Buyer without the written authorization of ACE or arising or allegedly arising from Buyer's violation of the licenses to the services and deliverables provided by ACE as set forth or referenced in this Agreement. In no event shall Buyer sell, sublicense, assign or transfer its license to the services and deliverables provided by ACE hereunder without the prior written consent of ACE, nor may Buyer reverse engineer or (except as contemplated by the Proposal) make derivative works from the services or deliverables.
15. **Indemnification** – To the fullest extent permitted by law, each party hereto (an "Indemnifying Party") will indemnify and hold harmless the other party hereto (the "Indemnified Party") from and against all actual damages, liabilities, and expenses (including reasonable attorneys' fees and defense costs) incurred by the Indemnified Party resulting from the Indemnifying Party's performance of this Agreement (or Buyer's use of the services and deliverables resulting therefrom), provided that such damage, liability or expense is attributable to a third party claim for bodily injury (including sickness, disease or death) or injury to or destruction of tangible property (excluding the goods themselves provided under this Agreement, which are to be fully insured against casualty, loss and loss of use by Buyer), but only to the extent caused by the Indemnifying Party's (or its employees' or subcontractors') negligent acts or omissions or willful misconduct. The Indemnifying Party's obligations to the Indemnified Party hereunder shall not be limited by the amount or type of damages, compensation or benefits for which the Indemnifying Party may be directly responsible to an employee of the Indemnifying Party under worker's compensation acts, disability benefit acts, or other employee benefit acts. In addition, to the fullest extent permitted by law, Buyer shall indemnify and hold harmless ACE and its officers, employees and subconsultants from and against any and all damage, liability and expense (including reasonable attorneys' fees and defense costs) to the extent arising from Buyer's failure to maintain the health and safety of its facilities or equipment (including any pre-existing conditions thereof) or arising from the improper or unpermitted use, or improper or insufficient maintenance, of the services and deliverables provided by ACE under this Agreement.

16. **Severability** – Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.
17. **Survival** – Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement that, by their nature, survive such completion or termination (including termination provisions, intellectual property terms, indemnification obligations, confidentiality requirements, warranty terms, limitations of liability, dispute resolution provisions, and non-solicitation of employees terms) shall survive such completion or termination and remain in full force and effect.
18. **Confidentiality** – ACE agrees to keep confidential and not to disclose to any person or entity, other than ACE's employees and subconsultants (including vendors, if appropriate) any confidential or proprietary data or information not previously known to ACE that may be furnished to ACE and marked "CONFIDENTIAL" by Buyer. These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict ACE from giving notices required by law or complying with a rule, regulation or order to provide information or data issued by a court, administrative agency, or other legitimate authority or legal process, or if disclosure is reasonably necessary for ACE to defend itself from or pursue any legal action or claim.
19. **Independent Consultant** – In performing the obligations required by the Agreement, ACE will act as an independent consultant and not as an employee or agent of Buyer.
20. **Compliance with Law** – ACE shall endeavor to comply with all applicable federal and state laws and regulations and local ordinances in effect at the time of the performance of this Agreement. Changes in laws and regulations after the execution of this Agreement that were not known or reasonably foreseeable affecting the cost or time of performance shall entitle ACE to an equitable adjustment of the purchase price and performance schedule for the services and deliverables described in the Proposal. Both ACE and Buyer have assumed that the "industrial exemption" applies to the services described in the Proposal, and Buyer acknowledges that individuals not licensed as professional engineers in the applicable jurisdiction(s) may execute some or all of the services and create some or all of the deliverables described in the Proposal.
21. **Safety** – ACE and its subconsultants and employees shall follow all reasonable safety regulations and procedures of Buyer that are provided in advance to ACE while on Buyer premises. Buyer accepts responsibility to inform persons entering their premises of all safety requirements specific to those locations and to maintain a safe and healthy environment at Buyer's facilities for the performance of this Agreement.
22. **Force Majeure** – ACE will not incur any liability to the Buyer if its performance of any obligation under this Agreement is prevented or delayed by causes beyond its reasonable control. Causes beyond ACE's reasonable control may include, but are not limited to, delays or improper acts or omissions of Buyer or its employees or other consultants or vendors, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, labor disruptions, freight embargoes, pandemics, epidemics and other public health or safety emergencies (or rules, regulations or recommendations related thereto), unavailability of necessary materials or equipment at commercially reasonable prices, and shipping delays. In the event such an incident occurs, ACE shall notify the Buyer promptly following the date on which ACE becomes aware that such cause would prevent or delay its performance, and an equitable adjustment of the purchase price and performance schedule for the services and deliverables described in the Proposal will be agreed upon by ACE and Buyer.
23. **Applicable Law, Venue and Jurisdiction** – Notwithstanding any other agreement of the parties, this Agreement is governed and construed by the laws of the State of Delaware and the United States of America, without regard to rules governing choice or conflict of laws. The United Nations Convention on Contracts for the International

Sale of Goods will not apply to this Agreement. In the event ACE and Buyer cannot resolve any claim or dispute between them arising out of or related to this Agreement or the services or deliverables related thereto, such dispute shall be resolved through arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Such arbitration proceeds shall be held exclusively in Newark, Delaware, USA before a single arbitrator, and the arbitrator's award shall be final and binding and may be entered as a judgment in any court with jurisdiction.

**24. Warranty** – All hardware and software is warranted exclusively by the original manufacturer(s) thereof as provided by the manufacturer's written warranty provided to Buyer (if any).

All services, including application programming, provided by ACE are warranted for a period of one (1) year from date of performance as having been performed in a manner consistent with that degree and skill exercised by members of the same profession currently practicing under similar circumstances. Upon notice to ACE during such 1-year period promptly following Buyer's discovery of any defect or non-conformity, and by mutual agreement between parties, ACE will correct (without additional compensation) those services not meeting such standards (or, at ACE's option, refund to Buyer the purchase price paid for such non-conforming services). Such corrective services or refund shall be ACE's sole obligation, and Buyer's sole remedy, in the event of any defective or non-conforming services or deliverables provided under this Agreement.

If ACE is notified for warranty work under this section, and it is later determined the cause of the problem or issue is outside ACE's responsibilities under this Agreement, Buyer will reimburse ACE for its performance at ACE's then-applicable rates.

In no event shall ACE be responsible for (a) any modifications to any services or deliverables made by anyone other than ACE or its subconsultants; (b) damages caused by misuse, improper operation or improper or insufficient maintenance of any services or deliverables; (c) normal wear and tear; (d) any data loss or corruption or personal information data breach; or (e) any alleged defects in any services or deliverables that arise from ACE's compliance with designs or other criteria or requirements provided by or through Buyer. THE WARRANTIES SET FORTH IN THIS PARAGRAPH 24 ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, GUARANTIES, OBLIGATIONS, OR LIABILITIES, EXPRESSED OR IMPLIED BY ACE OR ITS REPRESENTATIVE, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF MERCHANTABILITY, AND ALL STATUTORY OR IMPLIED WARRANTIES ARE HEREBY EXPRESSLY NEGATED AND EXCLUDED BY ACE TO THE FULLEST EXTENT PERMITTED BY LAW.

**25. Trademarks** – “Applied Control Engineering, Inc.” and “ACE” are trademarks used by ACE and remain the sole property of ACE.

**26. Limitations of Liability** – Notwithstanding any other provision of this Agreement, in no event shall ACE be liable for any indirect, special, incidental, punitive, or consequential damages (including loss of anticipated profits, productivity, financing, reputation, business opportunities, or other economic loss) of any nature or type, regardless of cause. No person is authorized to assume for ACE any liability except as provided herein.   
 MOREOVER, TO THE FULLEST EXTENT PERMITTED BY LAW, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR STRICT LIABILITY), IN NO EVENT WILL ACE'S TOTAL AGGREGATE LIABILITY RELATED TO THIS AGREEMENT OR THE SERVICES OR DELIVERABLES RELATED THERETO EXCEED THE PURCHASE PRICE PAID BY BUYER TO ACE UNDER THIS AGREEMENT.

**27. Nondiscrimination / Sexual Harassment Clause** – In the hiring of any employees for the performance of work, ACE shall not by reason of gender, race, creed, or color discriminate against any citizen who is qualified and available to perform the work to which the employment relates. Neither ACE nor the Buyer shall in any manner

discriminate against or intimidate or retaliate against any employee of either party during the performance of the work on account of gender, race, creed, color, religion, sex (including pregnancy, sexual orientation and gender identity), national origin, age, disability or genetic information (including family medical history).

28. **Change Orders** – Buyer may request reasonable changes in or additions or subtractions to the services and deliverables described in the Proposal by providing written notice of such request to ACE, and ACE will obtain Buyer's written consent (which shall not be unreasonably withheld, delayed or conditioned) to any material changes or substitutions in the services or deliverables from those described in the Proposal. An equitable adjustment of the purchase price and performance schedule for the services and deliverables described in the Proposal will be agreed upon by ACE and Buyer with respect to all changes described in this Paragraph 28.
29. **Non-Solicitation of Employees** – To the extent permitted by law, Buyer and ACE specifically agree that neither party, on its own behalf or through any other company acting on its instruction, will solicit any employee of the other involved in the performance of this Agreement for employment, without the express written consent of the other party; provided that this restriction (a) shall apply only during the time of any active contracts between Buyer and ACE and for a period of two (2) years after conclusion thereof and (b) shall not restrict usual and customary general employment advertising not directed at the employees of the other company.
30. **Storage and Protection of Material on Buyer's Premises** – Buyer shall arrange for due care and custody of materials delivered to its premises during all stages of receipt and staging of system components. Buyer shall be responsible for security. ACE employees and subconsultants shall follow all reasonable security measures that are provided in advance to ACE by the Buyer.
31. **Cybersecurity** – Cybersecurity is a continuously evolving effort to secure applications, control systems, networks, programs, devices, and data from cyber-attacks. ACE will provide its deliverables and services hereunder in accordance with current standards in the industry but cannot ensure that Buyer or its personnel or other vendors, or any third-parties, will implement any cybersecurity policies, or comply with any of Buyer's cybersecurity policies. ACE cannot ensure that Buyer's systems will not be subject to improper access or use, data theft or destruction, or other cybersecurity breaches or similar incidents. ACE makes no warranties or guarantees of any nature or type with respect to the adequacy of Buyer's cybersecurity policies or with respect to the ability of ACE's deliverables and services to protect Buyer's systems or data from improper access or use, data theft or destruction, or other cybersecurity breaches or similar incidents (including without limitation the impacts of malware or ransomware). In no event shall ACE be responsible for any claim, loss, damage, or expense arising out of or related to any actual or alleged improper access or use of Buyer's systems or data, data theft or destruction, or other cybersecurity breaches or similar incidents (excluding only such incidents caused by the intentional misconduct of ACE or its personnel).