



GENERAL TERMS & CONDITIONS

1. **CONDITIONS OF SALE:** BUYER AGREES THAT THE SALE OF ANY PRODUCTS OR SERVICES ORDERED BY BUYER IS EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED OR REFERRED TO HEREIN. Any additional or different terms and conditions set forth in Buyer's purchase order or similar communication are objected to and will not be binding upon CIMTEC ENGINEERED PRODUCTS, LLC ("CEP") unless specifically agreed to in writing by an officer of CEP. This Contract shall be governed by the laws of the State of North Carolina. Any modifications to the Contract shall be effective only when evidenced by a written instrument signed by an authorized representative of each party. The following definitions shall apply herein: (a) "CEP" shall mean CIMTEC ENGINEERED PRODUCTS, LLC; (b) "Contract" shall mean the agreement pursuant to which Buyer has agreed to purchase the products and/or services from CEP and shall include these General Terms and Conditions; (c) "System" shall mean the hardware and the software programs sold by CEP to Buyer, as may be further defined in any Contract, technical specifications or purchase orders (hardware may include equipment, materials and spare or replacement parts (hereinafter "Equipment"), and software programs may include computer programs developed and owned by CEP as applications or integrating software (hereinafter "CEP Programs") and commercially available third party programs provided in conjunction with Equipment operation (hereinafter "Operating Programs")); (d) "Installation" shall mean all work as may be defined in the Contract and technical specifications associated with installation of the System by CEP at the Installation Site; (e) "Installation Site" shall mean the Buyer's facility where the System is to be delivered, installed and operated; (f) "Services" shall mean optional services provided by CEP (including, but not limited to telephone hot lines, remote diagnostics, service calls, preventive maintenance plans and other support activities as may be defined in a service agreement) which, although purchased by the Buyer under a separate written agreement, will be subject to these terms and conditions; (g) "Products" shall mean the System, Installation and/or Services as defined above; and (h) "Final Acceptance" shall mean final approval and acceptance of the System by the Buyer in accordance with acceptance tests or other criteria as defined in the Contract.

2. **QUOTES, ORDERS AND PRICES:** Quotes from CEP to supply Products to Buyer are valid for sixty (60) days from issuance unless otherwise agreed to by CEP in writing. All prices are as stated in CEP's quote or order acknowledgment, as applicable, and specifically override any prices referenced in Buyer's purchase order. The prices stated in this Contract are in U.S. dollars and do not include transportation, insurance or any sales, use, excise or other taxes, duties, fees or assessments imposed by any jurisdiction. Any amounts paid at any time by CEP that are the responsibility of Buyer shall be invoiced to Buyer and reimbursed to CEP. All prices and other terms are subject to correction for typographical or clerical errors.

3. **TERMS OF PAYMENT:** All CEP invoices shall be due and payable in full within thirty (30) days after date of invoice. Any Services included in the Contract shall be invoiced based on the following schedule: one-third at contract award, one-third at design review and approval, and one-third at contract completion. All late payments hereunder shall bear interest on the unpaid portion in the amount of one and one-half percent (1.5%) per month, until paid, unless otherwise limited by law. In the event Buyer fails to remit payment to CEP as agreed, CEP shall be entitled to collect CEP's costs and expenses (including, but not limited to, reasonable attorney's fees and court costs) incurred in collection of such payment(s).

4. **CEP'S RIGHT TO CANCEL:** Failure by the Buyer to make any payment at the time due and provided herein shall give CEP the right to suspend the work or delivery until payment is made. In the event that any failure to pay continues for more than fifteen (15) days after the due date, CEP may at any time thereafter cancel this Contract by written notice mailed, telegraphed or sent via facsimile or electronic mail to Buyer and thereupon be entitled to recover the costs of all work done, all material provided and all damages sustained. Any such failure to make payment at the time provided shall be a bar to any claim by Buyer against CEP for any delay in completion of the work due to such suspension arising out of such failure to pay. Waiver of any default hereunder shall not operate as a waiver of any other or subsequent default.

5. **LICENSE OF PROGRAMS:**

5.1 **Grant of License.** CEP grants to Buyer, effective upon Final Acceptance of the System, (a) a nonexclusive license to use the CEP Programs that may be identified in Attachment A to the technical specifications, and (b) the right to use, *in accordance with the terms provided by the owner thereof*, the Operating Programs that may be identified in Attachment B to the technical specifications. The CEP Programs are provided and are authorized to be installed, executed, and used specifically at the Installation Site, only in machine-readable, object code form. Buyer's rights in the CEP Programs pursuant to such license are expressly limited to the use of the CEP Programs by Buyer at the Installation Site in connection with operation of the Equipment.

Buyer shall not assign, transfer, make copies, or sublicense the CEP Programs or Operating Programs without the prior written consent of CEP.

5.2 Restrictions. Buyer acknowledges and agrees that to the extent the products consist of CEP Programs or Operating Programs (collectively, the “Software”), the sale of the Products to Buyer shall not include a sale of, or transfer of title to, any Software or related documentation or manuals. Title to the Software is and shall remain, as between CEP and Buyer, the property of CEP. Buyer may use the Software provided by CEP under the Contract only in accordance with this **Paragraph 3** and only in connection with the operation of the Products.

5.3 Copyright. Buyer acknowledges that all copyrights in the Software belong to and are retained by CEP or third party suppliers. Buyer shall not remove or alter, or permit any person to remove or alter, any of the copyright or other notices on, stated in or affixed to the Software, or on any diskettes, covers or other packaging.

6. DELIVERY, INSPECTION, AND INSTALLATION: Unless otherwise agreed to in writing by CEP, delivery of the System shall be made FOB (*Incoterms 2000*) CEP’s facility or other point of shipment selected by CEP (“Shipping Point”). If Installation is not included in the Contract as part of the CEP scope of work, Buyer shall bear the risk of loss and damage to goods after delivery to the Shipping Point. Unless otherwise agreed to by CEP in writing, Buyer will pay all insurance costs in connection with delivery of the goods, if any, and be responsible for filing claims with carriers for loss of, or damage to goods in transit. CEP will make every effort to meet commitments concerning shipping dates; however, revisions may be necessary due to unforeseen events. CEP will not be responsible for loss, including but not limited to incidental, special or consequential damages, occurring to Buyer or to any other party as a result of any delay in shipment. Buyer shall not debit, back charge or setoff CEP for returns, warranty claims or for any other reason, without prior written consent from CEP. Products may not be returned by Buyer without prior written Return Materials Authorization (RMA) and the return of Products may be subject to a restocking fee. All returns that have been approved must be accompanied by an RMA issued by CEP at the time of return. RMA’s are valid for 30 days from issuance unless otherwise agreed to by CEP in writing. Return freight charges are the responsibility of the Buyer. If Installation is included in the Contract as part of the CEP scope of work, Buyer, at its expense and prior to delivery and installation of the System at the Installation Site, shall prepare the Installation Site in an appropriate manner and shall cause the Installation Site to conform to any utility, environmental, and communications interface requirements that CEP or its Equipment subcontractors may specify. Buyer shall promptly inspect the System upon its arrival at the Installation Site and shall notify CEP if Buyer finds any nonconformity or defect in the System.

7. TAXES: Buyer shall pay all taxes based on or in any way measured by the Contract or the Products, including any personal property taxes but excluding taxes based on CEP’s net income. If CEP is required by applicable law or regulation to pay or collect any such tax or taxes on the Products, then such amount of tax and any penalties and interest thereon shall be reimbursed to CEP or paid by Buyer.

8. PERMITS AND REGULATORY REQUIREMENTS: CEP shall be responsible for obtaining any license or permit required of CEP in its name to enable it to deliver the Products. Should compliance of the Products with applicable laws, rules, regulations, or ordinances of any Federal, State, or local authority, or of any agency thereof, be required, and should such compliance require changes in the Products or should any permits, licenses or approvals or plans and specifications for the Products or any permits, licenses, or approvals for the installation or use thereof be required, Buyer assumes the risk and responsibility for such compliance or changes, and for securing such permits, licenses, and approvals from the proper authorities, and for paying any associated costs or fees.

9. TITLE AND RISK OF LOSS OR DAMAGE: Title and risk of loss or damage with respect to all Equipment shall pass to Buyer F.O.B. carrier at the Shipping Point, subject to a purchase money security interest hereby reserved by CEP in the Products sold by CEP and the proceeds thereof until payment in full of the purchase price to CEP. Buyer authorizes CEP to file such financing statements or other documents as reasonably necessary for CEP to perfect its security interest.

10. WARRANTY:

10.1 Warranty with Respect to Equipment: CEP warrants that each item of Equipment delivered hereunder will be free from defects in workmanship and material. Such warranty will be in effect for a period of one (1) year from date of delivery. For consumables, warranty period(s) shall be shorter if so specified in the Contract technical specifications. Any part of any item of Equipment furnished to Buyer which fails to conform to this warranty will, at CEP’s expense and within a reasonable time, be either repaired, or at CEP’s option, replaced at the Installation Site; or, if repair or replacement is impracticable or impossible (as determined by CEP), CEP will refund to Buyer the price actually paid to CEP by Buyer for the defective item of Equipment.

10.2 Warranty With Respect to CEP and Operating Programs: CEP warrants that upon Final Acceptance of the System and for a period of one (1) year thereafter, the CEP Programs shall conform in all material respects to any specifications supplied in writing by CEP prior thereto, and shall not contain any material defect. If any CEP Programs do not conform with the above-stated warranty, CEP will modify or replace, at CEP's option, such non-conforming CEP Programs; or if modification or replacement is impracticable or impossible (as determined by CEP), CEP will refund to Buyer the price paid to CEP for the non-conforming CEP Program. Warranty for Operating Programs shall only be as stated in the literature accompanying same from the third party licensor. CEP provides no warranty for the Operating Programs.

10.3 Warranty With Respect to Installation: CEP warrants that any Installation Site labor provided and supervised by CEP will be performed in a manner consistent with the standards of quality and care typical within the industry at the time of performance for similar work. Such warranty will be effective for a period of one (1) year from the date of performance of the Installation Site labor. If any Installation Site labor provided and supervised by CEP does not conform with CEP's above-stated warranty obligation, CEP will remedy, replace or reperform same at CEP's expense; or if repair, replacement or reperformance is impracticable or impossible (as determined by CEP), CEP will refund to Buyer the price paid to CEP for the non-conforming Installation Site labor.

10.4 Warranty With Respect to Services: CEP warrants that any Services performed pursuant to this Contract will be performed in a professional manner consistent with the standards of quality and care typical within the industry at the time of performance for similar work. Such warranty will be effective for a period of one (1) year from the date of performance of the Service. With respect to development, implementation and/or refinement of a production process to be used for the operation of the Equipment in the manner specified in the specification or as otherwise most beneficial to Buyer, the parties recognize and agree that such development, implementation and/or refinement is not a part of the scope of CEP's obligations hereunder. However, upon mutual agreement as to the scope of work and price, CEP will participate jointly with Buyer in such development, implementation, and refinement as a part of a service agreement. CEP's obligations with respect to such supplemental Services as defined in a separate service agreement and performed by CEP will be limited to the warranty obligations set forth in this subarticle. Any Services which do not conform to CEP's above-stated warranty obligation will be reperformed by CEP at CEP's expense; or, if reperformance is impracticable or impossible (as determined by CEP), CEP will refund to Buyer the price paid to CEP for the non-conforming Services.

10.5 Conditions of Warranty: The Warranties and remedies set forth in 8.1 through 8.4, above, will apply only if notice of claim is given to CEP in accordance with the requirements specified above, and the following obligations of Buyer are complied with: (1) Written claim must be made by Buyer within thirty (30) days from the date the non-conformance is detected by Buyer and in no event later than thirty (30) days after expiration of the applicable aforementioned warranty period. (2) All Equipment must be properly unloaded, stored, maintained, and installed; and must be protected from damaging agents by Buyer except when installation of such System is included in CEP's scope of work. (3) All Equipment must be operated only in a normal and proper manner, in accordance with any operating instructions or manuals and not in excess of any applicable ratings, limitations, or operating specifications. (4) If CEP is to repair or replace any parts or items of the System or to reperform any Installation or Services, Buyer shall be obligated at its own expense to provide access to the part of the System or any parts or items of Equipment which are to be repaired or replaced. (5) Buyer shall, at no expense to CEP, provide personnel, facilities, data and information to assist in any activity which may be required of CEP under this warranty. For those parts or items of Equipment that may be normally removed from the System, Buyer agrees to remove such parts or items and ship to CEP for repair or replacement. Whether removed by Buyer or CEP, all defective parts or items of Equipment shall be returned to CEP. If the above conditions are not met, Buyer agrees to reimburse CEP for any costs of responding to the warranty claim. Any Buyer modification to the Equipment, CEP design or any CEP Programs or Operating Programs shall presumptively void CEP's warranty and remedy obligations to Buyer.

10.6 Warranty Disclaimer: THE WARRANTIES AND REMEDIES SET FORTH HEREINABOVE ARE EXCLUSIVE, AND NO OTHER WARRANTY OR REMEDY OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY.

10.7 Warranty Disclaimer of Third-Party Products: Products manufactured by a third-party ("Third-Party Products") may constitute, contain, be contained in, incorporated in attached to or packaged together with the System. Third-Party Products are not covered by the warranties set forth in 11.1 through 11.4. For the avoidance of doubt, **CEP MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO ANY THIRD PARTY PRODUCTS, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

10.8 Exclusive Remedies: The sole liability of CEP and the exclusive remedy of Buyer with respect thereto, arising out of the purchase, manufacture, sale, furnishing, or use of the Products, whether such liability is alleged to arise on account of contract, tort (including negligence), strict liability, or otherwise, shall be limited to the remedies specified in this Article. CEP shall not, in any event, be responsible for any work done by others or for any loss, damage, cost or expense arising out of or resulting from such work; provided, that in the event CEP has engaged subcontractors in the performance of its obligations CEP will have the same responsibilities to Buyer for such work as with respect to its own work.

10.9 Allocation of Risk. Buyer acknowledges and agrees that CEP entered into this Contract to provide the products and services in reliance upon the limitations of liability set forth in this Section 8 and in Section 9, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties.

11. LIMITATION OF LIABILITY: Neither CEP nor its subcontractors shall be liable whether arising under contract, tort (including negligence), strict liability, or otherwise, for loss of anticipated profits, loss by reason of plant or other facility shutdown, non-operation or increased expense of operation, claims of Buyer's customers or subcontractors, or for any special, incidental, indirect, or consequential loss or damage of any nature arising at any time from any cause whatsoever. The total liability of CEP and its subcontractors, whether in contract, tort (including negligence), strict liability, or otherwise, shall not exceed the amount actually paid to CEP under this Contract. The provisions of this Article shall apply notwithstanding any other provision of the Contract or of any other agreement.

12. INDEMNIFICATION AND WAIVER: Buyer agrees to indemnify and hold harmless CEP against all losses, claims, damages, or liabilities arising out of or based upon bodily injury (including death at any time resulting therefrom) occurring prior to completion of the Installation Site activity under this Contract, when proximately caused by the negligence of Buyer or its employees or agents.

13. DELAY IN PERFORMANCE: CEP shall not be liable for any expense, loss or damage resulting from delay or prevention of performance caused by fires, floods, acts of God, strikes, labor disputes, labor shortages, inability to secure materials or equipment, fuel or other energy shortage, riots, thefts, acts of terror, war or sabotage, accidents, transportation delays, acts or failure to act of any government or of Buyer, delay in obtaining licenses, major equipment breakdown, or any other cause whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of CEP. In the event of any delay occasioned by CEP or its subcontractors arising by reason of any of the foregoing, the time for performance shall be equitably adjusted. When CEP is performing work under the Contract at the Installation Site, Buyer shall pay CEP at the rates applicable for the work in question for time lost on account of such delay.

14. OPERATION OF BUYER'S EQUIPMENT - INTERPRETATION OF DATA: CEP's personnel are authorized to consult with Buyer but are not authorized to operate equipment which is a part of Buyer's Installation Site. All operation of Buyer's equipment shall be performed by and under the supervision of Buyer; provided, that personnel of CEP may, with the consent of Buyer, on a case-by-case basis, operate Buyer's test equipment or equipment used for repair or maintenance activities. Where applicable, CEP's personnel shall advise and consult with Buyer concerning data generated or obtained by Buyer in connection with this Contract, however, Buyer accepts total responsibility for the analysis or interpretation of such data and for judging what actions are required as the result of the data generated or obtained or any analysis or interpretation thereof.

15. PROPRIETARY INFORMATION: Buyer understands that special techniques in the arts and sciences, developed or accumulated by CEP on its own time and at its own expense, will be employed to benefit Buyer under this Contract, and Buyer further agrees that such special techniques are proprietary and shall not be disclosed to any third party during or subsequent to the term of this Contract without CEP's prior written consent; provided, however, that nothing herein shall limit Buyer's right to disclose any data provided by CEP hereunder which (a) properly becomes knowledge available within the public domain or (b) is received by Buyer from a third party without restriction and without breach of this or any other contract. This Contract does not effect any transfer of title in the CEP Programs, the Operating Programs, or any materials furnished or produced in connection therewith, including drawings, diagrams, specifications, input formats, source code(s) and user manuals. Buyer acknowledges that the CEP Programs (and all materials furnished or produced in connection with the CEP Programs) including, without limitation, the design, programming techniques, flow charts, source code, and input data formats, may contain trade secrets of CEP, entrusted by CEP to Buyer under this Contract for use only in the manner expressly permitted hereby. Buyer further acknowledges that CEP claims and reserves all rights and benefits in the CEP Programs afforded under (1) federal law as copyrighted works and patents and (2) state law as trade secrets. Neither the CEP Programs nor any materials provided to Buyer in connection with the CEP Programs may be modified, enhanced, copied, reprinted, transcribed, or reproduced, in whole or in part, without the prior written consent of CEP.

16. RIGHTS IN INFORMATION AND DATA: CEP shall own, have and retain the right to publish, use, make derivative works, have used, and permit others to publish, use, and/or have used, any information or data used, developed, or acquired by CEP

in the course of performance of the work hereunder, which use would not be prohibited by Article 13 above. Buyer shall have the right of access to such information or data for the limited purposes of maintenance but not duplication of the System by Buyer or third parties, as well as, use of the System by Buyer (but not by third parties) for the purpose intended or such similar related purposes as Buyer may elect.

17. NEGATION OF PROPRIETARY RIGHTS INDEMNITY: THE HARDWARE AND SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS AND CEP SHALL HAVE NO LIABILITY TO BUYER FOR THE INFRINGEMENT OF ANY PATENTS, COPYRIGHTS, TRADE SECRETS, OR OTHER PROPRIETARY RIGHTS BY THE HARDWARE OR SOFTWARE OR ANY PORTION THEREOF.

18. ASSIGNMENT AND TRANSFER: Any attempt to assign this Contract shall be void unless mutually agreed to in writing by the parties hereto. This clause shall not, however, prohibit a transfer resulting from corporate merger. In the event Buyer transfers any interest in the System, Buyer will indemnify and hold harmless CEP from and against any claims, losses, damages, or liabilities which CEP may incur and which it would not have incurred but for such transfer.

19. STATUTE OF LIMITATIONS. Any and all proceedings relating to the subject matter hereof (other than an action by CEP for any amount due to CEP from Buyer) shall be instituted within one (1) year after a cause of action has accrued or such cause of action will be deemed waived. In the event of breach or default by Buyer hereunder, Buyer agrees to pay to CEP reasonable attorneys' fees and such expenses as may be expended or incurred in the enforcement of any right or action with respect to a breach hereunder or any consultation in connection therewith.

20. CONSENT TO JURISDICTION. Buyer: (i) irrevocably submits to the jurisdiction of any state or federal court located in Guilford County or Mecklenburg County, North Carolina over any action or proceeding to enforce or defend any matter arising from or related to this Contract; (ii) irrevocably waives, to the fullest extent it may do so, the defense of any inconvenient forum to the maintenance of any such action or proceeding to enforce this Contract; (iii) agrees that a final judgment in any action or proceeding shall be conclusive and may be enforced in any other jurisdictions by suit on the judgment or proceeding in any manner provided by law; and (iv) agrees not to institute any legal proceeding or action against CEP or any of CEP's directors, officers, employees, agents or property, concerning any matter arising out of or relating to this Contract in any court other than one located in Mecklenburg County, North Carolina. Nothing in this paragraph shall affect or impair CEP's right to serve legal process in any manner permitted by law or CEP's right to bring any action or proceeding against Buyer or its property in the courts of any other jurisdiction.