Terms of Quotation and Sale - Goods & Services

These Terms govern Emerson’s quotation and any resulting Contract for Emerson to supply Goods, Documentation, and Software, Documents, and Services.

1. Quotation & Contract: Emerson’s quotation is valid for acceptance for 30 Days after its date, unless Emerson has stated a different period or withdrawn it earlier. The PO must be in writing and must clearly state: (i) Acceptance of the Quotation (ii) Acceptance of the goods, Documentation, and Software (iii) Terms and Conditions of Sale and Supply. Emerson’s acceptance of any PO is not to be taken as indicating acceptance of any QUOTE, conflicts, discrepancies or ambiguities, the following order of priority applies: (1) the Acceptance of the Quotation (2) the PO (3) the terms and conditions of Sale and Supply (4) this Clause 7 and 16 of these Terms take priority over the rest of these Terms. All communications about the Contract must be in English and state the PO number and Emerson order number.

2. Contract Between Customer and Emerson: Customer must ensure that the information, documentation and instructions Emerson reasonably needs to proceed with its Contract duties. Customer is responsible for the accurate and complete supply of all information.

3. Delivery:
   3.1 Delivery and Performance Periods: Delivery and performance periods begin on Acknowledgment. All delivery periods and dates stated are approximate. Emerson will not be liable for any damages caused by its failure to deliver or perform on time.
   3.2 Delivery: Unless otherwise stated in the PO, Emerson will deliver the Goods, Documentation and Software from its or its Affiliate’s or third party’s factory or warehouse (the point of delivery), Carriage Paid (CIP) to the place of delivery stated in the PO. Costs, freight, packing and handling at Emerson’s then current rates.
   3.3 Partial Shipment: Emerson may ship or deliver separately from the rest of the Goods. Hard copies of Documentation may be shipped separately from the Goods.
   3.4 Storage: Emerson may place Goods, Documentation and Software into a third party warehouse chosen by Emerson, at Customer’s expense if by its sale or omission, delays their shipment. On placing Goods, Documentation and Software in the warehouse, delivery is complete and risk and title in the Goods and Documentation pass to Customer. Emerson will not deliver on call unless Customer has agreed in writing in advance. Customer will pay for the storage, installation, start-up and maintenance of the Goods and Software.

4. Terms & Contract:
   4.1 Payment:
   (a) Emerson will pay by check or direct bank transfer to the Emerson bank account stated in the Contract or invoice, paid in either case from Customer’s account, with a bank in Customer’s country (or its Affiliate) in the currency of Emerson’s quotation.
   (b) Customer waives the right to dispute any invoice amount unless Customer pays Emerson the disputed (full or partial) amount within 2 months of the invoice date. All undisputed payments are payable as set out in Clause 6.2(c).
   (c) Emerson may and the Contract or suspend performance (including holding of shipment) 

5. Compensation:
   5.1 Payment: Unless the Contract states otherwise, the prices, Software license fees and rates are fixed for Goods, Documentation and Software licensed and delivered for Services performed within the period stated in the Contract, but exclude all taxes (such as, sales, use, added value and similar duties), levies and charges. Emerson will, to the extent that the prices and charges has it with a separate Non-Exclusive license Agreement. Unless the to the owner of the Software. Software or Firmware not governed by a separate Software License Agreement, Emerson is granted a non-exclusive, royalty-free license to use that (a) Software only in connection with the Customer’s systems and (b) in the territories in which Customer and Emerson are located. In both cases, the license applies only where the Software is first used. Emerson will be responsible for any damages caused by its failure to deliver or perform on time.

6. Warranty:
   6.1 Warranties:
   (a) Emerson warrants that the Goods will be free from material defects for a period of 12 months from the date of delivery to the place of delivery stated in the PO. Emerson’s warranty period starts immediately after the expiration of the induction warranty period.
   (b) Emerson’s warranty for Firmware is subject to the owner of the Firmware.
   (c) Emerson’s warranty for Software is subject to the owner of the Software.

7. Force Majeure:
   7.1 Force Majeure: Neither party is liable for non-performance or delay due to unforeseen circumstances, causes or events beyond its reasonable control, including: economic conditions; war; insurrection; civil commotions; strikes; lockouts; government restrictions or limitations, acts of terrorism; fires; accidents; weather; failure or interruption of public and private computer or telecommunications systems, networks, and infrastructures; Cyber-Attacks; sabotage; strikes; lockouts; government restrictions or limitations, acts of terrorism; failures of any kind in any governmental procurement provision to the Contract.

8. Export Controls and Compliance:
   8.1 Export Controls and Compliance: Customer and Emerson will comply with all: (a) import, export and other trade compliance Laws of the territories in which Customer and Emerson are established or from which the Goods, Firmware, Software and Services will be supplied or shipped, and to which the Goods, Firmware, Software, and Services may be delivered or used; (b) Laws against bribery, corruption and money laundering. Customer agrees not to use, transfer, release, export or re-export any Goods, Software, Firmware, Services and Software-sourced technical data contrary to trade compliance Law or any license or required government authorization.

Emerson will not be liable for any infringement, and will indemnify Emerson in, each of these cases: (a) the infringement relates to goods not made by Emerson; (b) Emerson did not design the Goods or Distributed Software, if Distributed Software is pre-installed; (c) for Services directly, or for Services brought by Emerson to its contractors.

9. Legal Action:
   9.1 Legal Action: Emerson will be free to bring any suit or other remedy for the breach of the contract, or any part thereof, in any court of competent jurisdiction.

10. Termination:
    10.1 Termination:
      (a) Either party may terminate the Contract without liability by written notice to the other if: (A) it goes into liquidation or suspends its affairs; (B) its management is placed under administration; (C) it becomes bankrupt; (D) it makes a composition or arrangement with its creditors; (E) it enters into an agreement with the Receiver of its property; (F) it engages in any activity that exposes Customer to material risk to its affairs.

11. Governing Law:
   11.1 Governing Law:
      (a) This Contract shall be governed by and construed in accordance with the Laws of the state of Florida with the laws of the United States.

12. Entire Agreement:
    12.1 Entire Agreement: The entire contract made by Emerson and Customer for these Goods, Services and Software, is stated in this Contract and any variations shall not be valid unless signed by Customer and Emerson.
with these restrictions; (b) agrees to communicate these restrictions in writing to all later buyers or users; and (c) agrees to defend and indemnify Emerson and Emerson Affiliates from all claims arising from such use of Goods, Firmware, Software, Documentation, Services and products of Services. This indemnity covers every sort of claim, including allegations of negligence, strict liability or product liability.

16. Limitation of Liability: Emerson and its Affiliates will not be liable for damages caused by delay in performance. The remedies of Customer stated in this contract are exclusive. Regardless of the type of the claim (whether based in contract, infringement, negligence, strict liability, other tort or otherwise), Emerson's and its Affiliates' liability to Customer and its Affiliates will never exceed the contract price. Neither party will ever be liable for (A) damages for loss or corruption of data or cyber attacks, or (B) incidental, consequential or punitive damages. "Consequential damages" include but are not limited to losses of anticipated profits, revenue, production or use and costs incurred including without limitation for capital, fuel and power, replacement product and claims of each party's Affiliates. No action, regardless of form, relating to this contract, may be brought more than 2 years after the claim arose.

17. Applicable Law, Disputes, Notices: Missouri law governs the contract and its interpretation. The parties agree to exclude any effect on that law of the 1980 United Nations' Convention on Contracts for the International Sale of Goods and, so far as legally possible, any rules which might apply the laws of another jurisdiction. The State of Missouri's courts or the U.S. Federal district courts in Missouri are the exclusive jurisdiction over all disputes arising out of the contract. All notices and claims connected with the contract must be in writing.

18. Entire Agreement: The contract is the exclusive and entire agreement between the parties on its subject matter. At Acknowledgement, the contract supersedes all previous or existing agreements, negotiations, representations and proposals, whether written, oral, express or implied, on that subject matter.

19. Definitions: In these terms:
- Acknowledgement is Emerson’s written acceptance of the PO by means of Emerson’s standard order acknowledgement form, including all text on the form and its attachments.
- Affiliate of an entity is any body that entity controls, is controlled by or is under common control with. ‘Control’ of an entity means the direct or indirect beneficial ownership of more than half the shares, or other participating interest with the right to vote or to receive profits of that entity.
- Contract is the agreement between Customer and Emerson for the supply of the Goods and any Documentation, Software and Services. The contract consists of Emerson’s quotation, the PO, the Acknowledgement, these Terms, and all other documents contained or referred to in the agreement. (See clause 1.3 for the order of priority of these documents.)
- Contract Price is the total price the Customer must pay Emerson for the Goods, Documentation, Services and Software licenses.
- Customer is the buyer of the Goods, Documentation, Services and Software licenses.
- Customer Information is: (a) Customer’s name, address, phone number, ship-to recipient and address, (b) similar details for the end-user (if that is not the Customer); and (c) Customer’s primary contact’s name, address, phone number, and email address.
- Cyber Attack: Means cyber attack, intrusion attempt, unauthorized third party access, and other malicious activity.
- Day: Is any day except Saturdays, Sundays and public holidays at Emerson’s office named in the contract.
- Documentation: Means any manuals, drawings and other documents Emerson must supply with the Goods, Software and Services.
- Emerson: Is the Emerson Automation Solutions group company which issues the Acknowledgement.
- Firmware: Is any firmware incorporated into Goods Emerson must supply under the contract.
- Goods: Are the goods Emerson must supply under the contract.
- HSE&C: Is health, safety, security and the environment.
- Law: Is applicable law, including statutory rules and regulations, decrees, directives, orders, by-laws and ordinances having the force of law.
- Personnel: Is anyone who works for a party (or for an Affiliate or subcontractor of that party). It includes both employees and contract staff.
- PO: Is Customer’s purchase order or acceptance of Emerson’s quotation, for the supply of the Goods, Software, Documentation and Services.
- Resale Products: Are Goods Emerson buys from anyone except an Emerson Affiliate for resale to Customer.
- Services: Are any services Emerson must perform under the contract.
- Site: Means the places not belonging to Emerson or to an Emerson Affiliate, which are identified in the contract as where the Goods are to be installed, and the services performed.
- Software: Is any software Emerson must supply under the contract.
- Specification: Is the agreed specification of the Goods, Documentation and Services identified in the contract or, if none is identified, Emerson’s standard published specification.