These Terms govern Emerson's quotation and any resulting Contract for Emerson to supply Goods, Documentation, Software and Services. Emerson's acceptance of Customer's PO is exclusively subject to these Terms.

1. Quotation & Contract

1.1 Emerson's quotation is valid for acceptance for 30 Days after its date unless Emerson has stated a different period or withdraws it earlier.

1.2 The PO must be in writing and has no effect until Acknowledgement. Emerson is not obliged to accept any PO.

1.3 If there are any conflicts, discrepancies or ambiguities, the following order of priority applies: (1) the Acknowledgment, (2) these Terms, (3) the PO and (4) Emerson's quotation. Clauses 5 and 16 of these Terms take priority over the rest of these Terms.

1.4 All communications about the Contract must be in English and state the Customer PO number and Emerson order number.

2. Customer Responsibilities

2.1 Customer must in a timely manner supply the information, documents and instructions Emerson reasonably needs to proceed with its Contract duties.

2.2 Customer is responsible for the accuracy and completeness of all information it supplies.

2.3 If Emerson performs Services at Site, Customer will not ask Emerson or Emerson Personnel to enter any agreement which imposes, waives, releases, indemnifies or otherwise limits or expands any rights or obligations in respect of Emerson or Emerson Personnel. Any such agreement is void.

2.4 If the acts or omissions of Customer, Customer Personnel or Customer's other contractors delay or prevent Emerson from performing a Contract duty or increase Emerson's costs, time will be extended and Customer will compensate Emerson accordingly.

2.5 Unless otherwise agreed, Customer is solely responsible for use of the Goods and Services in accordance with all applicable local, state and federal laws pertaining to data privacy, security and transfer including but not limited to the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA). As such, Customer is solely responsible for maintaining the integrity of its own network and internal security.

2.6 Emerson will perform Services but only to the extent they do not violate any Laws and only to the extent Services can be performed safely and would not present a risk of harm to any Personnel. Emerson reserves the right to remove its Personnel if it deems Site unsafe.

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 Terms.**
Unless the Contract says otherwise, Emerson will deliver the Goods, Documentation and Software from its, its Affiliate's or third party's factory or warehouse (the point of delivery), Carriage Paid To (CPT) the place of destination named in the Contract (Incoterms® latest version). Customer will pay for freight, packing and handling at Emerson's then current rates.

3.3 **Partial Shipments.**
Emerson may make partial shipments. Emerson may ship batteries 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 storage at a third-party warehouse chosen by Emerson, at Customer's expense if Customer, by its acts or omissions, delays their shipment. On placing Goods, Documentation and Software in the warehouse, delivery is complete and risk and title in Goods and Documentation passes to Customer. This Clause 3.4 does not apply to Goods, Documentation and Software which Emerson or its Affiliate exports from the United States.

4. Title & Risk

Even if the Contract says otherwise and except as stated in Clauses 3.4 and 5:

a) for any Goods and Documentation which Emerson or its Affiliate exports from the United States, title and risk of loss will pass to Customer when they pass the territorial limits of the United States.

b) for all other Goods and Documentation, title will pass to the Customer on delivery and risk of loss will pass to Customer under the Incoterms® rule stated in the Contract.

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5. Documentation, Software, Firmware and Intellectual Property

5.1 Emerson and other owners will each keep all rights, interest and title in their respective Documentation, Software, and Firmware and all copies thereof.

5.2 Customer's use of Software and Firmware is governed exclusively by the Software License Agreement with Emerson (or its Affiliate) if there is one or, in any other case, by the license terms of the owner.

5.3 If Software or Firmware is not governed by a separate Software License Agreement, Customer is granted a non-exclusive, royalty-free license to use that:

a) Software only in conjunction with the Goods; and
b) Firmware in the Goods, only as incorporated in the Goods.

In both cases, the license applies only at the Site where the Goods are first used.

5.4 Customer may only copy Documentation (with its copyright notices unchanged) as needed to install, operate, re-calibrate, de-install, maintain and repair the Goods for its reasonable internal business purposes.

5.5 Unless the Contract says otherwise, Documentation will consist of one copy only of Emerson's, its Affiliates', or the manufacturer's standard documents in English. Emerson is only required to supply third party documents if authorized to do so by the third party. Emerson may choose to supply Documentation by hard copy, by CD-ROM or other suitable media, or by download from a website.

6. Compensation

6.1 **Prices/Rates.**

Unless the Contract says otherwise, the prices, Software license fees and rates:

a) for Goods, Documentation and Software licenses delivered and for Services performed within the period(s) stated in the Contract are set forth in Emerson's quotations and Emerson reserves the right to adjust such prices, fees and rates at any time prior to delivery to reflect any and all increases in cost as a result of any tariffs, duties and similar taxes that may affect the prices, in which case Emerson will reissue its quotation or Acknowledgement as the case may be;
b) exclude all taxes (such as sales, use, value added and similar taxes), duties, levies and similar charges. Emerson will invoice all these taxes, duties, levies and charges as a separate line item on the invoice unless it has received an appropriate exemption from Customer;
c) exclude freight, packing and handling; and
d) exclude the storage, installation, start-up and maintenance of the Goods and Software.

6.2 **Payment Terms.**

a) Unless the Contract says otherwise, Customer will pay Emerson:
   (i) in full without set-off, counterclaim or withholding (except deductions required by Law);
   (ii) in the currency of Emerson's quotation; and
   (iii) full payment, or milestone payments in advance of shipment or within 30 days of the invoice date, subject to the approval of Emerson's credit department.
b) Unless the Contract says otherwise, Emerson will invoice:
   (i) Goods (including part shipments), Documentation and Software license fees: on delivery.
   (ii) Services upon completion.
   (iii) Storage costs under Clause 3.4: monthly in arrears.
c) Customer will pay Emerson by 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. Emerson may reject payment by any other method.
d) Customer waives the right to dispute any invoiced amount unless Customer tells Emerson of the dispute (with detailed reasons) within 10 Days from the invoice date. All undisputed amounts are payable as set out in Clause 6.2(c).
e) Emerson may end the Contract or suspend performance (including withholding shipment and suspending performance of Services) if Customer fails or, in Emerson's reasonable opinion, appears likely to fail to make payment when due under the Contract or any other contract. This action will not subject Emerson to any penalty or affect its other rights.
f) Emerson may at any time demand such security for payment as Emerson may think reasonable, and Customer will provide the security within 10 Days after the request. This action will not affect any other right of Emerson.
g) Customer must pay all expenses (including attorneys' fees) incurred by Emerson in collecting late payments, up to the maximum amounts permitted by Law.

7. Warranties

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7.1 Emerson warrants that:
a) Emerson will transfer title to the Goods (excluding Software and Firmware) to Customer under Clause 4;
b) Goods, Documentation and Services will conform with the Specification;
c) Goods made by Emerson or its Affiliates will, under normal use and care, be free from defects in materials or workmanship; and
d) Emerson and its Affiliates' Personnel delivering Services are trained and will use reasonable skill and care.

7.2 **Warranty Periods.** Unless otherwise specified by Emerson, the warranties in Clause 7.1 apply as follows:
a) **Goods:** until the earlier of 12 months from the first installation or 18 months from delivery (90 days from delivery in the case of consumables and PolyOil® products).
b) **Services:** for 90 days from completion of the Services.
c) **Goods repaired, replacement items and Services re-performed:** from delivery of the replacement or completion of the repair or re-performance, for 90 days or until the end of the original warranty period (if later).

7.3 **Warranty Procedure.** Clause 7.3 applies if, within the warranty period, Customer discovers any non-conformity with a warranty in Clause 7.1, tells Emerson in writing and, in the case of Goods, returns the non-conforming items at Customer's cost, freight and insurance pre-paid, to the repair facility chosen by Emerson. Where this Clause applies, Emerson will, at its sole option, either:
a) correct any non-conforming Documents and Services; or
b) repair or replace non-conforming Goods FCA (Incoterms® latest version) at the repair location; or
c) instead refund the price of the non-conforming item.

7.4 **Exclusions from Warranty.**
a) The warranties in Clause 7.1(b), (c) and (d) exclude and Customer will pay the cost of all repairs and replacements caused by any of the following: normal wear and use; inadequate maintenance; unsuitable power sources or environmental conditions; improper handling, storage, installation, or operation; misuse or accident caused by anybody except Emerson; a modification or repair not approved by Emerson in writing; materials or workmanship made, provided or specified by Customer; contamination; the use of unapproved parts, firmware or software; Cyber Attack; any other cause not the fault of Emerson.
b) Emerson will not pay any costs relating to non-compliance with a warranty in Clause 7.1, except when agreed in writing in advance. Unless accepted in writing by Emerson, Customer will pay:
(i) all costs of dismantling, freight, reinstallation and the time and expenses of Emerson Personnel for travel under Clause 7; and
(ii) all costs incurred by Emerson in correcting nonconformities for which Emerson is not responsible under Clause 7 and in examining items that comply with the warranties in Clause 7.1.
c) If Emerson relies on wrong or incomplete information supplied by Customer, all warranties are void unless Emerson agrees otherwise in writing.
d) Customer alone is responsible for the selection, maintenance and use of the Goods.
e) Resale Products carry only the warranty given by the original manufacturer. Emerson has no liability for Resale Products beyond making a reasonable commercial effort to arrange procurement and shipping of the Resale Products.

7.5 **Disclaimer.** The limited warranties set out in this Clause 7 are the only warranties made by Emerson and can be changed only with Emerson's signed written agreement. THE WARRANTIES AND REMEDIES IN CLAUSE 7 ARE EXCLUSIVE. THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ABOUT MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANYTHING ELSE FOR ANY OF THE GOODS, DOCUMENTATION OR SERVICES.

8. Changes

No change to the Contract applies unless agreed in writing by Emerson and the Customer.

9. Termination

9.1 **Termination for Default and Insolvency.**
a) Either party (Injured Party) may end the Contract wholly or partly by written notice to the other (Defaulting Party) if an Insolvency Event or Default Event affects the Defaulting Party. Termination under Clause 9.1 will not affect other rights of the Injured Party.
b) A **Default Event** occurs if all the following conditions are met:
(i) Defaulting Party breaches a material duty under the Contract;
(ii) Injured Party sends Defaulting Party a notice identifying the breach in sufficient detail;
(iii) 10 Days after receiving the notice, Defaulting Party has not corrected the breach; and

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(iv) if the breach cannot reasonably be corrected in 10 Days, Defaulting Party has not acted diligently to fix the breach.

c) An **Insolvency Event** means any of the following:
(i) a meeting of creditors of Defaulting Party.
(ii) a proposal for an arrangement or composition with or for the benefit of creditors of Defaulting Party.
(iii) a chargeholder, receiver, administrative receiver or similar person is appointed over or takes possession of material assets of Defaulting Party.
(iv) a legal enforcement process is taken (and not discharged within 5 Days) against material assets of Defaulting Party.
(v) Defaulting Party stops trading or cannot pay its debts.
(vi) anyone gives notice of intention to appoint an administrator, or applies to court to appoint an administrator, in relation to Defaulting Party.
(vii) a petition is presented (and not discharged within 20 Days) or a resolution is passed or an order made for winding-up, bankruptcy or dissolution of Defaulting Party.
(viii) an event similar to any of (i) to (vii) in a jurisdiction where Defaulting Party is incorporated or resides or carries on business or has assets.

d) On termination under Clause 9.1(a), Customer will pay Emerson the price of Goods, Software, Documentation and Services already delivered. If Emerson was the Injured Party, Customer will also pay Emerson for work in progress under Emerson's then current policies and cancellation charges.

9.2 **Termination for Customer Convenience.** Customer may end the Contract in whole or in part for its own convenience only with Emerson's written agreement and following Emerson's then current policies and cancellation charges.

9.3 **Termination after 90 Days' Force Majeure.** Either party may end the Contract without liability by written notice to the other if performance of the Contract is delayed or prevented by a cause listed in Clause 12 for 90 Days. Unless prevented by a cause listed in Clause 12, Customer will pay Emerson for all Goods, Documentation, Software licenses and Services delivered before the notice was given and for work in progress.

10. Customer Information

Emerson may use and share Customer Information in accordance with data protection Law, as necessary to fulfill the Contract and to communicate with Customer for marketing purposes, including sharing:

a) Customer Information to its suppliers, for use in product registration and support and to comply with import and export control Law:
b) Customer Information and copies of the Contract to its agents and sales representatives, as necessary to fulfill the Contract.

Customer has sole responsibility for obtaining all consents and permissions (including providing notices to Customer Data Subjects or third parties) and satisfying all requirements necessary to permit Emerson and its affiliates' use of Customer Information in connection with this Agreement. Customer is solely responsible for compliance with all applicable local, state, federal, and foreign data privacy and sovereignty laws, regulations, rules and restrictions as the same relate to the collection, movement, and use of data provided by Customer or generated by the Goods and to Customer's use of the Goods. With regard to the collection processing and use of personal data (if any) by Emerson, please refer to Emerson's Privacy Notice, which is available at https://www.emerson.com/en-us/privacy-notice.

11. Intellectual Property Claims

11.1 In Clause 11, an **Intellectual Property Claim** is a claim that Goods made or Documentation produced by Emerson infringe a valid intellectual property right (including patent, copyright, design right and trademark) of the United States or of a country where the Contract states the Goods will be used.

11.2 Clause 11 applies only while Customer does all the following:
a) promptly tells Emerson in writing that an Intellectual Property Claim has been threatened or filed;
b) allows Emerson complete control of the defense and settlement of the claim; and
c) gives all reasonable help and cooperation requested by Emerson for the defense.

11.3 Subject to the provisions herein, Emerson will indemnify and defend Customer against any Intellectual Property Claim brought by legal action.

11.4 Emerson will only pay any final judgment or settlement resulting from the action. If the action results in an injunction against the use of any Goods or Documentation, Emerson will, at its sole option and expense, provide a commercially reasonable alternative. This may include procuring for Customer the right to continue using the Goods or Documentation or replacing them with a non-infringing item or changing them to become non-infringing or refunding their price.

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11.5 Emerson will not be liable for infringement, and Customer 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 Documentation, or Emerson did not design them for use in the way or for the purpose that infringed intellectual property rights.
c) the Customer caused the Goods or Documentation to become infringing.

12. Force Majeure

Neither party is liable for non-performance or delay due to circumstances or causes beyond its reasonable control, including but not limited to acts of God; war; armed conflict; terrorism; fire; flood; accident; weather; failure or interruption of public and private computer or telecommunication systems, networks, and infrastructure; Cyber Attacks; sabotage; strikes or labor disputes; civil disturbances or riots; epidemics or pandemics; governmental decisions, requests, restrictions, Law (including the denial, failure to issue or loss of export or re-export licenses); unavailability of or delays in transport; or shortage of materials or parts.

13. Export Controls and Compliance

13.1 Customer and Emerson will comply with all:
a) export, import and other trade compliance Laws of the territories in which Customer and Emerson are established, from which the Goods, Firmware, Software, Services and any technical data are supplied or shipped, and to which the Goods, Firmware, Software, Services and any technical data will be taken or eventually used; and
b) Laws against bribery, corruption and money-laundering.

13.2 Customer agrees not to use, transfer, release, export or re-export any Goods, Firmware, Software, Services or Emerson-supplied technical data contrary to trade compliance Law or to any license or required government authorization.

13.3 Customer will give Emerson:
a) details of financial institutions and other parties involved in the transaction;
b) details of the end-destination, end-user and end-use of the Goods, Firmware, Software, Documentation and Services;
c) all information needed by Emerson to:
(i) apply for necessary export and import licenses and government authorizations and
(ii) comply with Laws against bribery, corruption and money-laundering and Emerson's policies on them; and
d) any trade compliance certification or letter of assurance requested by Emerson in relation to trade compliance Law.

13.4 Neither Emerson nor Customer will engage in any activity that exposes the other party or an Affiliate to a risk of penalties under Laws forbidding corruption, bribery and improper payments. Emerson strictly adheres to its environmental social governance standards and code of ethics found at https://www.emerson.com.

14. Laws and Regulations

14.1 Both parties will comply with all Laws, except to the extent a party is prohibited from doing so based upon a conflict of Laws.

14.2 The Contract does not require Emerson to collect, treat, recover or dispose of anything Law treats as 'waste'. If the Law on waste requires Emerson to dispose of something it supplied, Customer will, if allowed by Law, pay Emerson to dispose of it at Emerson's standard charge. If Emerson has no standard charge, and if allowed by Law, Customer will pay Emerson's costs incurred in the disposal (including handling, transport and a reasonable mark-up for overhead).

14.3 Each party must ensure that its Personnel will, while on the premises of the other party, comply with the other party's reasonable site rules on HSSE that are communicated in writing to the visitor before its arrival, and with the other party's reasonable instructions relating to HSSE.

14.5 Emerson objects and does not agree to the application of any governmental procurement provision to the Contract.

15. Nuclear and Medical End-use

GOODS, FIRMWARE, SOFTWARE, DOCUMENTATION, SERVICES AND THE PRODUCTS OF SERVICES SUPPLIED UNDER THE CONTRACT MUST NOT BE USED IN CONNECTION WITH ANY MEDICAL, LIFE-SUPPORT OR RELATED APPLICATIONSUNLESS OTHERWISE AGREED IN WRITING BY BOTH PARTIES. ALL NUCLEAR OR NUCLEAR-RELATED APPLICATIONS MUST BE SUPPORTED BY A NUCLEAR DEFENSE & INDEMNIFICATION AGREEMENT EXECUTED BY THE END-USER. Regardless of whether Customer is the owner/operator of the nuclear, medical or other facility, Customer:

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a) accepts all Goods, Software, Documentation, Services and products of Services 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

16.1 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.

16.2 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 LOSS 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**.**

16.3 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

17.1 Ontario 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.

17.2 The Ontario courts or the U.S. federal district courts in Missouri have exclusive jurisdiction over all disputes arising out of the Contract.

17.3 All notices and claims connected with the Contract must be in writing.

17.4 If any provision of the Contract is invalid under any Law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Contract.

18. Entire Agreement

The Contract is the exclusive and entire agreement between the parties on its subject matter. At Acknowledgment, the Contract supersedes all previous or existing agreements, negotiations, representations and proposals, whether written, oral, express or implied, on that subject matter. Except where the Contract expressly states otherwise, the parties intend that nobody except Customer and Emerson will benefit from or enforce any term of the Contract. The parties have requested that the Contract and all ancillary documents be drafted in English. *Les parties ont exigé que le Contrat et tous les documents y afférant soient rédigés en langue anglaise.*

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.

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Documentation means any manuals, drawings and other documents Emerson must supply with the Goods, Software and Services.
Emerson is the Emerson 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.
HSSE 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.

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