

**GENERAL TERMS AND CONDITIONS OF SALE OF YOKOGAWA UNITED KINGDOM LIMITED,  
HAVING ITS REGISTERED OFFICE AT STUART ROAD, MANOR PARK, RUNCORN, CHESHIRE WA7 1TR  
(HEREINAFTER REFERRED TO AS "YOKOGAWA")**

These General Terms and Conditions of Sale (hereinafter referred to as "GTCS") are applicable to all offers, quotations, agreements and orders for the sale of Products, which for the purpose hereof includes the licensing of Software, and the providing of Services by Yokogawa to its Customers.

Any provisions in Customer's general conditions of purchase and/or sale, any Purchase Order, enquiry, letter, form of contract, specification or other document put forward by the Customer, or any amendment(s) made by Customer to these GTCS, are herewith explicitly rejected and excluded. Any such additions or amendments to and deviations from these GTCS can only be agreed in writing and require signature by duly authorized representatives of Parties.

## 1. DEFINITIONS

**Customer:** the legal entity issuing a Purchase Order to Yokogawa.

**Delivery Date:** the date by which Yokogawa shall deliver the Products and/or execute and perform the Services.

**Functional Design Specification or FDS:** the functional specifications for the Products and/or Services, drawn up by Yokogawa on the basis of data supplied by Customer.

**Hardware:** all machinery and installations and peripherals, by means of which data are processed or recorded on data carriers, together with components of the same.

**ICC - Incoterms 2000:** International Chamber of Commerce ("ICC") rules for the interpretation of trade and delivery terms.

**Party or Parties:** Yokogawa and/or Customer individually or collectively as the case may be.

**Products:** all Hardware, Software and documentation, test- and measurement equipment, analyzers, flow- pressure- or temperature meters, recorders, transmitters, sensors or any other good specified in the Quotation, not consisting of Services.

**Purchase Order:** a written order issued by Customer for the purchase of Products/ Services as accepted in writing by Yokogawa. As far as Software is concerned, "purchase" means the acquisition of a license to use the involved Software and "Customer" means "licensee".

**Quotation:** the offer, proposal or quotation (however named) including scope, specifications, functional requirements, quantity, schedule, conditions, drawings and other related documents attached thereto or referred therein, issued by Yokogawa to the Customer for the sale of Products/Services.

**Services:** all activities performed by Yokogawa (or under Yokogawa's direction) for Customer, as specified in the Quotation, not consisting of the supply of Products.

**Site Work:** Services to be performed by Yokogawa or under Yokogawa's direction which are not performed at Yokogawa premises.

**Software:** machine readable object code, including executable programs, firmware and/or Yokogawa-supplied data bases, user documentation in written or electronic object code form, recorded on forms, tapes, magnetic tapes, disks and all other media on which data have been or are recorded, including updated parts of such Software, new versions and/or adaptations.

**Third Party Products:** Non-Yokogawa products which are delivered to Yokogawa's premises for the purpose of a) reselling to the Customer b) integration with the Products or c) the testing of the Products.

**Variation Order:** a written document issued by Customer and accepted in writing by Yokogawa for the variation of an existing Purchase Order.

## 2. QUOTATION AND PURCHASE ORDER

Any Quotation issued by Yokogawa shall be without engagement and the price stated therein shall remain valid for a maximum period of sixty (60) days calculated from the date of the Quotation. Technical specifications, dimensions, designs, drawings, illustrations, catalogues, use statistics, weights etc. used by Yokogawa in a Quotation, are drawn up by Yokogawa to the best of its ability, but do not bind Yokogawa unless expressly agreed to in writing. Yokogawa shall be free (at its sole discretion) to accept or refuse Customer's Purchase Orders.

## 3. DELIVERY AND PRICE

All prices for Products are calculated on the basis of deliveries ex Yokogawa-office / production- / distribution facility which is "Ex Works" in accordance with the ICC – Incoterms 2000. Prices for Services are calculated, applying then prevailing rates in the Yokogawa pricelist. All prices and rates are exclusive of VAT, transport, packaging, travel, lodging and installation, import duties and other taxes, levies or costs.

The Delivery Date is not a deadline and in the event of late delivery, Yokogawa shall notify the Customer in writing as soon as possible, identifying the reasons for the delay. The delivery time is calculated from acceptance of Customer's Purchase Order by Yokogawa, or, in case it has been agreed that Customer shall make a deposit, prepayment and/or shall pay a security, from the date Yokogawa has received the relevant Customer payment. The Delivery Date may be extended if Customer requests Variation Orders.

## 4. PAYMENT

Payment shall be made by Customer within thirty (30) days from invoice date. Payments must be made without any deduction or set-off into a bank or postal account, designated by Yokogawa. All bank charges shall be for Customer's account.

If Customer does not meet its payment obligations promptly or in full, Customer shall, without any further notice being required, be in default. In the prevailing case, Customer shall owe Yokogawa, with effect from the due date, interest equal to the greater of 1% per month or the maximum amount permitted by law. The foregoing shall apply in addition to Yokogawa's right, in case of Customer's late payment, to suspend the further execution of the Purchase Order or, to the extent the Purchase Order has not yet been executed, to terminate the same by means of a written notice, without prejudice to Yokogawa's right in the prevailing case to claim full compensation for any loss suffered.

## 5. PACKING

Packing of the Products shall be in accordance with Yokogawa's standard procedures.

## 6. FUNCTIONAL DESIGN SPECIFICATION (FDS)

Delivery of FDS shall be deemed to have taken place at the moment the FDS has been submitted to Customer. The content of the FDS shall be exclusively applicable to the Products and/or Services. The FDS shall be approved by Customer in writing within the agreed period. From the date the FDS has been agreed, Customer can no longer derive any rights from the data as supplied by Customer previously.

## 7. ACCEPTANCE TESTING

Factory Acceptance Test (FAT) means the testing of the Products and/or Services according to Yokogawa's standard test procedures, based on the FDS as approved by

Customer. The FAT is carried out on Yokogawa's premises, eye-witnessed by Customer to verify the compliance of the Products and/or Services with the contractual requirements and the FDS. If Customer, despite prior invitation and/or confirmation, has not been present at FAT, FAT is deemed to have taken place in Customer's presence. Completion of FAT shall result in the release of the Products and/or Services for shipment or performance, subject to all outstanding invoices having been paid by Customer.

Site Acceptance Test (SAT) is the test carried out at the Customer's site to verify that no deterioration occurred to the Product(s) during shipment and installation of the delivery on Customer's site.

## 8. SITE WORK

In respect of Site Work to be performed by Yokogawa, Customer shall ensure the following:

- Site Work can be commenced and continued unhindered and undisturbed from the moment of arrival of Yokogawa's personnel.
- Site Work can be performed during and outside normal working hours.
- Working conditions as necessary for the proper performance of the Site Work are present.
- Mandatory government permits have been obtained.
- Strict adherence to all reasonable directions given by Yokogawa to ensure the proper performance of the Purchase Order.
- Availability of fully operational technical, spatial and communication facilities needed to enable any Products to be supplied to function. This includes, but is not limited to good access roads, transport facilities, adequate foundations, auxiliary supplies and equipment, power, water, light, properly air-conditioned rooms for the Products, the presence of at least one appropriately skilled employee, as well as all other necessary aids and equipment.
- Availability at Customer's site of suitable and secure space for storing Products, materials and tools of Yokogawa for performing the Site Work, as well as a telephone for communications outside Customer's site. Customer shall be liable for all damage to and loss of Products, materials, tools and instruments from any cause during storage on Customer's site.
- Suitable and safe facilities for Yokogawa's personnel in the immediate vicinity of the Site Work.
- Physical safety of Yokogawa's personnel; Customer's Health and Safety program (including evacuation and emergency plans) shall be applicable to Yokogawa personnel. Customer shall be wholly liable for damages and losses arising from the death of or physical injury to Yokogawa personnel, resulting from Customer's failure to meet this obligation.
- Applying for and obtaining of all necessary Site Work permits and licenses as required for Yokogawa's personnel, as well as prior notification to Yokogawa of all relevant rules and procedures in connection therewith.
- Messing facilities are available.
- The Customer's facilities and services described in this article are available to Yokogawa free of charge.

## 9. VARIATION ORDERS

In case of variations which affect or may affect a Purchase Order, Customer shall notify Yokogawa in writing. Upon Yokogawa's receipt of such notification, Yokogawa will inform Customer in writing: (i) whether or not such variations are acceptable, (ii) price- and/or schedule impact (if any) and (iii) any other commercial or technical impacts or conditions (if any). Only upon receipt of Customer's written confirmation of acceptance of Yokogawa's informed/proposed impacts and conditions and upon Customer's compliance with any consequent obligations (if applicable) such as advanced payments, amendments of payment vehicles or the submission of additional information, Yokogawa shall incorporate and proceed with the above variations after signature by both Parties of the relevant Variation Order. In case such variations result in loss of time and/or additional costs, Yokogawa shall be entitled to extend the delivery time and/or to a reimbursement of additional costs, even if the variations are cancelled by Customer afterwards.

## 10. TITLE AND RISK

Title to the Products/Services is reserved and shall transfer to Customer upon full payment by Customer. Risk to the Products/Services shall transfer to Customer upon delivery.

## 11. INTELLECTUAL PROPERTY RIGHTS

Yokogawa remains the owner of all intellectual property rights in the Products and the results of Services, including inventions, models, designs, schedules, drawings, illustrations, catalogues, manuals and all other documentation etc. comprised therein as supplied to Customer. Customer shall not copy, reproduce or circulate the above in whole or in part, without the prior written permission of Yokogawa. Nothing in these GTCS or any Purchase Order or Quotation is intended to or shall have the effect of vesting in or transferring to Customer rights in Yokogawa's or its affiliates' or its or their suppliers' Software, methods, know-how or other intellectual property, regardless of whether such intellectual property was created, used or first reduced to practice in tangible or intangible form in the course of performance of the Services, whether solely by Yokogawa or jointly with Customer.

## 12. INFRINGEMENT CLAIMS

Yokogawa will indemnify and hold Customer harmless from all claims by third parties with respect to an infringement of any intellectual property right, made against Customer and (allegedly) resulting from Customer's use of the Products/Services, provided that:

- a) Customer shall promptly notify Yokogawa in writing of any such claims,
- b) Customer shall provide all assistance to Yokogawa as may be reasonably requested in connection with the defence or settlement of the claims,
- c) Yokogawa shall have the exclusive right to control the defence and settlement of all such actions or claims.

If according to a final judgment, Customer shall be denied the further use of the Product/Services or part thereof by reason of an (alleged) infringement, Yokogawa will, at its own expense and option either:

- (i) modify or replace the Product/Services or the infringing part thereof so that it becomes non-infringing without adversely affecting the functionality thereof, or
- (ii) procure for Customer the right to continue to use the Product/Services, or
- (iii) if the foregoing alternatives are not available or (at Yokogawa's sole discretion) economically reasonable, Yokogawa shall take the Product/Services back and credit Customer for an amount equal to the value of the Product/Services, taking into account the reduction in Purchase Order value of the relevant Product/Services depreciated over a four (4) year period from the date of acquisition.

Yokogawa shall not be liable if the infringement of any intellectual property right or any claim in respect thereof arises from, or is based on the use of the Product/Services in

**GENERAL TERMS AND CONDITIONS OF SALE OF YOKOGAWA UNITED KINGDOM LIMITED,  
HAVING ITS REGISTERED OFFICE AT STUART ROAD, MANOR PARK, RUNCORN, CHESHIRE WA7 1TR  
(HEREINAFTER REFERRED TO AS "YOKOGAWA")**

combination with products or services not supplied by Yokogawa or if the Product/Services are modified by Customer without Yokogawa's prior written authorization.

Customer shall fully indemnify Yokogawa against all losses of Yokogawa in providing the Products and/or Services, that breach an intellectual property right of third parties, if such breach arises from Customer's directions and/or the use by Yokogawa of Customer's designs, specifications, etc.

The above constitutes Customer's entire rights and Yokogawa's maximum liability with respect to an (alleged) infringement of any intellectual property right of a third party, resulting from Customer's use of the Product/Services.

### 13. SOFTWARE LICENSE CONDITIONS

Yokogawa declares to the best of its knowledge that it is entitled to license and adapt the Software as necessary for the proper execution of the relevant Purchase Order. The ownership of, and all intellectual property rights in Software shall at all times remain with Yokogawa or its licensors. Software is made available to Customer on the following licensing conditions:

- Yokogawa grants to Customer a perpetual, non-exclusive, non-transferable license to use the Software;
- Software is made available to Customer on an "as-is" basis and on the condition that it is exclusively used on the Hardware on which it was initially installed;
- Customer shall not: (i) alienate or pledge Software or have Software used by third parties, (ii) decompile, disassemble or reverse engineer Software, or otherwise attempt to derive any Product source code from object code, except to the extent expressly permitted by applicable law, (iii) develop or have developed derivative software or other computer programmes which are based on Software.
- Customer shall be entitled to make and keep in stock one (1) back up copy of Software for the purpose of replacing the original copy in case of involuntary loss or damage of Software.

### 14. WARRANTY

The Products are warranted to be free from defects in material and workmanship for a period of twelve (12) months from the Delivery Date. Yokogawa assumes no warranty responsibility in the event of (i) improper handling, storage or use; (ii) attempted renovation, repair, calibration or replacement of parts by any third party other than authorized by means of prior written approval by Yokogawa; (iii) normal wear and tear; or (iv) other cause of defect not exclusively attributable to Yokogawa.

If Third Party Products are supplied, the terms of warranty of the supplier of such products shall apply.

Subject to the remaining provisions herein, Products found to be defective shall be repaired or replaced at Yokogawa's sole discretion at its premises with transportation charges prepaid by Customer. Dismantling of the defective part or Product, re-installation of the repaired/replaced part or Product and re-commissioning shall be the responsibility of Customer. Any warranty claim shall be made in writing within the aforementioned warranty period and will be handled during Yokogawa's normal working hours. Customer shall be responsible for delivering to Yokogawa the defective part or Product clean and free from any substance that may affect health.

Upon Customer's request and Yokogawa's acceptance, Yokogawa may dispatch at Customer's cost, its service engineer(s) during Yokogawa's normal working hours, to repair the defect and/or investigate its cause.

With respect to the providing of Services, Yokogawa warrants that the engaged personnel will execute the Services in accordance with the level of diligence, knowledge and craftsmanship which is standard in the industry.

THIS WARRANTY IS IN LIEU OF ALL OTHER LIABILITY OR WARRANTIES ON THE PART OF YOKOGAWA, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPLICITLY EXCLUDED AND DISCLAIMED. The foregoing shall constitute the exclusive remedies for any breach by Yokogawa of its warranties.

### 15. LIMITATION OF LIABILITY

Nothing in these GTCS shall have the effect of excluding or restricting the liability of Yokogawa: (i) for death or personal injury resulting from its negligence; (ii) for any fraudulent misrepresentation; or (iii) for liability which may not otherwise be limited or excluded under applicable law.

Yokogawa's total liability towards Customer shall be limited to the compensation Customer paid or has to pay for the execution of that part of the individual Purchase Order, in relation to which damage has occurred, but shall never be in excess of the maximum compensation paid by Yokogawa's insurance in respect of such damage. Furthermore, Yokogawa shall only be liable if such damage is a direct and exclusive consequence of negligence on the part of Yokogawa. Claims must be submitted to Yokogawa in writing within two (2) business days after occurrence of such particular damage.

Customer shall be solely responsible for the protection of its electronic data and information through installation of the most recent computer virus detection programmes and the timely creation of back-up copies. Yokogawa shall never be liable for any damage, relating to the loss or mutilation of electronic data and information, nor for the restoring of same.

Neither Party shall in any event be liable for any special, indirect or consequential damages of the other Party, including but not limited to, loss of profits, loss of business, interruption of business, lost goodwill, lost revenue and/or loss of business information, and regardless whether such damages are based on wrongful act, breach of contract, breach of warranty or other legal fault.

### 16. TERMINATION

In the event Yokogawa has valid reasons to assume that Customer shall fail to perform any obligation under the Purchase Order or any agreement connected therewith without providing adequate security; or in case Customer (i) fails to perform any obligation under the Purchase Order which, upon written notice by Yokogawa remains unfulfilled for thirty (30) calendar days thereafter; (ii) becomes subject to change of control or ownership; (iii) terminates or suspends its business activities, becomes insolvent, admits in writing its inability to pay its debts as they mature, takes the benefit of any statutory provision for the relief of insolvent debtors, enters into liquidation, makes an assignment for the benefit of

creditors, makes an arrangement or composition with its creditors, becomes subject to direct control of a trustee, administrator or receiver of similar authority or becomes subject to any bankruptcy or insolvency proceedings; Yokogawa shall be entitled, immediately and without warning or notice of default and without any liability or prejudice to any other remedy and/or right which Yokogawa may have, either to claim immediate fulfillment of Customer's obligations or cancel the Purchase Order, obtain possession of the Products and/or recover from Customer any amounts due.

### 17. FORCE MAJEURE

Parties shall not be responsible for any delay or failure in performing their obligations under a Purchase Order, if due to Force Majeure. For the purpose hereof, Force Majeure shall mean a delay in or failure of the performance of obligations which is directly and solely attributable to events which are compelling, unforeseeable, unavoidable, outside of the invoking Party's control and not due to any fault and negligence on its part.

Force Majeure may include, but is not limited to, the following events or circumstances:

- war, hostilities, invasion, acts of foreign enemies;
- rebellion, terrorism, revolution, insurrection, military or usurped power, civil war;
- riot, commotion, disorder, strike or lockout by persons other than the invoking Party's personnel;
- munitions, explosive materials, ionizing radiation or contamination by radio activity, except as may be attributable to Yokogawa's or Customer's use of such munitions, explosives, radiation or radio active material;
- natural catastrophes such as flood, earthquake, hurricane, typhoon or volcanic activity.

In case of any of the above events, Parties will promptly notify the other Party of such delay or failure in writing and if a Force Majeure situation exceeds sixty (60) days, Parties shall have the right to terminate the Purchase Order without liability. In case of termination of the Purchase Order, goods belonging to Customer which are in the possession of Yokogawa shall be returned or held at Customer's expense and risk as from the termination date of the Purchase Order.

If Yokogawa has already partly met its obligations when a Force Majeure situation occurs or if Yokogawa can only partly meet its obligations, Yokogawa shall be entitled to invoice the part already performed and/or to be performed and the related payment shall be due by Customer.

### 18. CONFIDENTIALITY

Either Party shall keep strictly confidential all of the other Party's confidential and sensitive information of which it becomes aware of in the course of the execution of a Purchase Order and Parties shall take adequate measures to ensure that their personnel and other engaged personnel shall equally comply with this confidentiality commitment. This confidentiality commitment shall not apply to information which (i) is already known to the recipient or is publicly available at the time of disclosure, (ii) is legally disclosed to the recipient by a third party without an obligation of confidentiality, (iii) becomes publicly available after disclosure without any fault of the recipient, (iv) recipient can prove is independently developed by the recipient without reliance or reference to the information of the discloser, or (v) is required to be disclosed by law or public order.

### 19. EXPORT RESTRICTIONS

In the course of performing their respective duties hereunder, either Party agrees to comply with all applicable laws and regulations. In particular Parties shall comply with the export administration and control laws and regulations of the European Union and of any country relevant to the cooperation contemplated hereunder, including those of Japan.

Customer shall not knowingly use or export any of the Products if:

- a) Products shall be used for the erection, operation or mounting in a nuclear technology plant, or;
- b) Products shall be used for the erection, operation of a plant for research, production, use, storage or maintenance of armaments or ammunition as per EU Decree 1334/2000, including but not limited to chemical weapons, biological weapons or missiles thereof, or;
- c) the country of final destination is any country to which export regulations of the UN, EU or Japan, or Yokogawa's export compliance policies apply;

Customer shall exert all reasonable efforts in collecting all information necessary to comply with the above. In all relevant cases Customer shall apply for an appropriate approval of Yokogawa and export license of the proper authorities and Yokogawa. Should no such approval and export license be granted, Customer shall refrain from the intended use or export.

### 20. ASSIGNMENT AND SUBCONTRACTING

Parties shall not, in any manner or degree assign or transfer, directly or indirectly, these GTCS or a Purchase Order or any part thereof or any share or interest therein, without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.

Yokogawa may subcontract part or all of its obligations under these GTCS or a Purchase Order, provided Yokogawa shall remain fully liable and responsible for the acts of the subcontractor and compliance with the terms and conditions of these GTCS and the relevant Purchase Order.

### 21. WEEE

Any duty and/or costs for de-commissioning, transport, treatment, recovery, recycling and disposal of Products subject to Directive 2002/96/EC on Waste of Electrical and Electronic Equipment (WEEE) shall be for Customer's account. In countries where Yokogawa participates in waste collection schemes, Customer shall deliver WEEE declared products to a waste treatment facility (WTF) designated by Yokogawa for treatment and disposal in accordance with the WTF protocol. A WEEE declared Product shall not be re-used or re-marketed without prior written approval by Yokogawa. Customer shall indemnify and hold Yokogawa harmless against any fines, penalties, damages and/or claims resulting from or relating to failure by Customer to fulfill its obligations under this article.

### 22. GOVERNING LAW AND DISPUTE RESOLUTION

The construction, validity and performance of these GTCS shall be governed by and interpreted in accordance with English law and by entering into this Agreement the parties submit to the exclusive jurisdiction of the English courts.