



Control Analytics, Inc.
Standard Terms and Conditions of Sale
Integrated Systems, Component Sales and Services

1. ACCEPTANCE

These Terms and Conditions of Sale ("Agreement") apply to all offers made and orders accepted by Control Analytics, Inc. ("Control Analytics"). Acceptance of your ("Buyer's") order is expressly conditioned upon Buyer's assent to the terms and conditions herein, excluding all other terms and conditions. Any change to this Agreement must specifically be agreed to in writing by an authorized representative of Control Analytics. Some of the terms set out here may differ from those in Buyer's order or offer, and some may be new. Control Analytics' failure to object to provisions contained in any communication from you ("Buyer") will not be deemed a waiver of the provisions of this Agreement. Buyer's failure to reject this Agreement within ten (10) days after receipt, or upon Buyer's receipt of the goods or acceptance of the service, whichever occurs first, will be deemed Buyer's unconditional acceptance of the terms and conditions herein.

2. CREDIT APPROVAL AND PAYMENT

Credit terms, shipments, deliveries, and performance of work are at all times subject to the approval of Control Analytics' credit department. Control Analytics may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or satisfactory credit terms and security. In the event of Buyer's bankruptcy or insolvency, Control Analytics will be entitled to terminate any order then outstanding and to receive reimbursement for Termination under this Agreement.

2.1 PAYMENT TERMS:

Component sales: A component is defined as a product which is provided by the seller that does not require integration services by the seller and/or design engineering services including drawing packages. These include discrete analyzer sales, sample system component sales, spare parts sales, contract service site work. Payment terms for these sales are net thirty (30) days from date of invoices unless different terms are agreed to in writing.

Integrated system or packages product: A integrated system or packaged product are sales of components and services which require integration and/or design engineering services which may or may not include drawings, on-site installation assistance and other services. These products include Compliance CEM systems, SCR NOx and Ammonia Monitoring systems, Process analyzer systems, engineering and programming projects. The payment terms for these product sales shall be based on the following progress payment schedule:

- 10% of project total: PO issuance.
- 20% of project total: Approval Drawing Submittal.
- 30% of project total after proof of receipt of buyout components.
- 30% at Factory Acceptance Test (FAT).
- 10% at Shipment.

Late payments are subject to a 1.5% per month finance charge. Due date shall be based upon invoice issuance date on the seller invoice.

Each shipment is a separate and independent transaction and payment must be made accordingly.

If Buyer delays a shipment, payments will be due on the date when Control Analytics is prepared to make the shipment. If Buyer delays the work covered by the purchase order, payments will be made based on the purchase price and the percentage of completion. Goods held for Buyer by Control Analytics are at the risk and expense of Buyer.

3. TAXES

The amount of any present or future sales, use, excise, import duty, or other tax applicable to the manufacture and sale or lease of the goods covered by this order will be added to the purchase price and must be paid by Buyer, unless the Buyer provides Control Analytics with a tax exemption certificate acceptable to the taxing authority.

4. SHIPPING TERMS AND RISK OF LOSS

All domestic sales by Control Analytics are F.O.B. Control Analytics Facility of Shipment, as defined in the Uniform Commercial Code. All international sales by Control Analytics are Free Carrier (FCA) Control Analytics, as defined by INCOTERMS 2000.

5. TOOLING

Unless otherwise provided by special written agreement signed by Control Analytics and Buyer, all equipment, tools, and designs produced, acquired, or used by Control Analytics for the purposes of filling Buyer's order remains the property of Control Analytics.

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6. PACKING, PACKAGING, INSPECTION, TESTS, AND RETURN AUTHORIZATIONS

Control Analytics provides normal commercial packing, packaging, and Control Analytics's usual tests at the quoted prices. Any additional requirements, including without limitation Buyer's source inspection, are at Buyer's expense. The goods under this Agreement are furnished with Control Analytics's usual inspection standards at the place of manufacture. If Control Analytics and Buyer agree that Buyer is to inspect or provide for inspection at the place of manufacture, that inspection may not interfere unreasonably with Control Analytics's operations, and the Buyer's approval or rejection must be made before shipment of the goods. Buyer will promptly notify Control Analytics of nonconformance(s) in the goods and afford Control Analytics a reasonable opportunity to inspect the goods. No goods may be returned without Control Analytics's written authorization.

Failure to follow Control Analytics's return procedures could result in lost goods, delays, additional service charges, warranty denial, or refusal of a shipment. All goods returned to Control Analytics must be clearly identified with a return authorization (RA) number, which Control Analytics will assign in writing once it determines that the goods should be returned for evaluation or repair. The RA number must appear on the shipping label and all paperwork associated with the return. Control Analytics will reject goods returned without the correct RA number clearly marked on the outside of the shipping container. Granting a return authorization does not necessarily mean that a credit will be approved or that the evaluation or repair will take place without fee.

If after evaluation it is determined that the goods are not covered by warranty, including without limitation when Control Analytics determines that the goods were damaged after delivery, a purchase order funding Control Analytics's usual evaluation fee must be received before further action is taken by Control Analytics. In those circumstances, Control Analytics reserves the right to dispose of the goods when the Buyer does not promptly pay the evaluation fee.

7. EXPORT COMPLIANCE: FOREIGN CORRUPT PRACTICES ACT (FCPA)

For any resale, export, or re-export of the goods, Buyer must comply with all applicable export regulations, export licensing requirements, and the U. S. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd1 through 78dd3. Instances of violation or suspected violation of law, or any unethical actions, should be reported to Control Analytics at (724) 387-CEMS.

8. DELIVERY AND FORCE MAJEURE

Shipping dates are approximate and require prompt receipt of all necessary information from Buyer. If conditions arise which delay delivery, Control Analytics will notify Buyer and Control Analytics will not be liable for any damages, re-procurement costs, or penalties. Without limiting the generality of the foregoing, Control Analytics will not be liable for delays due to weather conditions, acts of God, acts of civil or military authorities, fires, strikes, job actions, floods, earthquakes, epidemics, quarantine restriction, war, terrorism, riot, supplier or vendor delays, or any other causes beyond the reasonable control of Control Analytics. In the event of delay, the date(s) of delivery will be deferred for a period that accounts for the time lost by reason of the delay.

If such excusable delay under Force Majeure continues for more than six (6) months, Control Analytics and Buyer each will have the option of canceling the affected Purchase orders. Cancelled purchase orders will be terminated following the terms of this Agreement. In the event Control Analytics's production is curtailed for any of the above reasons so that Control Analytics does not deliver the full amount released hereunder, Control Analytics may allocate production deliveries among its various customers then under contract for similar goods. The allocation will be made in a commercially fair and reasonable manner. When allocation has been made, Buyer will be notified of the estimated quota made available.

9. TERMINATION & CHANGE ORDERS

Buyer may request to terminate the order for convenience in whole or in part and Control Analytics agrees to cooperate with Buyer in attempting to make such arrangements subject to Buyer paying Control Analytics for deliveries made, full direct and indirect costs, settlements with suppliers, related administrative, accounting, and legal costs, plus a normal profit. All change order requests must be submitted by the Buyer in writing and will not be effective unless Control Analytics consents in writing to the change. If any change causes an increase or decrease in the cost of, or in the time required for, performance of an order, an equitable adjustment will be made in the order's price, terms, and delivery schedule. Control Analytics will recognize Buyer's written one-time request to stop production for a maximum of forty-five (45) days. The delivery schedule must be modified in writing to account for the production stoppage, and an equitable adjustment will be made in the price if Control Analytics costs allocable to the performance of any part of the order increase as a result of the Buyer's request to stop production.

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10. LIMITED WARRANTY – HARDWARE and SOFTWARE

(a) Seller warrants that on the date of shipment the goods are of the kind and qualities described herein and are free of non-conformities in workmanship and material. This warranty does not apply to goods delivered by Seller but manufactured by others.

(b) Buyer's exclusive remedy for nonconformity in any item of the goods shall be the repair or the replacement (at Seller's option) of the item and any affected part of the goods. Seller's obligation to repair or replace shall be in effect for a period of one (1) year from initial operation of the goods but not more than eighteen (18) months from Seller's shipment of the goods, provided Buyer has sent written notice within that period of time to Seller that the goods do not conform to the above warranty. Repaired and replacement parts shall be warranted for the remainder of the original period of notification set forth above, but in no event less than 12 months from repair or replacement. Lamps, fuses, filters, scrubbing and absorption media, bulbs and other expendable items are expressly excluded from the warranty under this Section. At its expense, Buyer shall remove and ship to Seller any such nonconforming items and shall reinstall the repaired or replaced parts. Buyer shall grant Seller access to the goods at all reasonable times in order for Seller to determine any nonconformity in the goods. Seller shall have the right of disposal of items replaced by it. If Seller is unable or unwilling to repair or replace, or if repair or replacement does not remedy the nonconformity, Seller and Buyer shall negotiate an equitable adjustment in the contract price, which may include a full refund of the contract price for the nonconforming goods. Unless specifically stated in a purchase contract travel to the site by the seller to remedy warranty items is not included in the warranty. If travel to the buyer site is requested all travel and living expenses, including but limited to travel time, hotel, meals, mileage, and airfares shall be payable by the buyer to the seller after work has been completed (net 30 days).

(c) SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT THAT OF TITLE. SPECIFICALLY, IT DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS. THE OBLIGATIONS CREATED BY THIS SECTION TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 9, SELLER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

(d) Buyer and successors of Buyer are limited to the remedies specified in this article and shall have no others for a nonconformity in the goods. Buyer agrees that these remedies provide Buyer and its successors with a minimum adequate remedy and are their exclusive remedies, whether Buyer's or its successors' remedies are based on contract, warranty, tort (including negligence), strict liability, indemnity, or any other legal theory, and whether arising out of warranties, representations, instructions, installations, or non-conformities from any cause.

(e) Seller disclaims any warranty that the operation of the Software will be uninterrupted or error free. The warranty for software produced by others shall be the warranty as stated by the software producer. Seller does not provide warranty on 3rd party software as part of this agreement.

11. INDEMNIFICATION

Each party hereto will hold harmless and indemnify the other party, its officer, directors, and employees, against all claims, judgments, costs and fees, including attorney fees, relating to infringement of U.S. patents, designs, copyrights, or trademarks to the extent that the infringing goods are manufactured, sold, and used in whole or in part to the indemnifying party's specifications. To the extent that one party's employees or agents enter on the property owned or controlled by the other party, the first party will hold harmless the other party, its officers, directors, and employees for any property damage or personal injury or death caused by the first party's employees or agents.

Buyer shall indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by

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Buyer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Seller without Seller's prior written approval.

12. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ORDER, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, MULTIPLE, ADMINISTRATIVE, OR PUNITIVE DAMAGES, OR ANY DAMAGE DEEMED TO BE OF AN INDIRECT OR CONSEQUENTIAL NATURE ARISING OUT OF OR RELATED TO ITS PERFORMANCE UNDER THIS CONTRACT, WHETHER BASED UPON BREACH OF THE CONTRACT, WARRANTY, OR NEGLIGENCE AND WHETHER GROUNDED IN TORT, CONTRACT, CIVIL LAW, OR OTHER THEORIES OF LIABILITY, INCLUDING STRICT LIABILITY, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. CONTROL ANALYTICS'S TOTAL LIABILITY INCLUDING BUT NOT LIMITED TO LIABILITY FOR INDEMNITY, DEFENSE, AND HOLD HARMLESS OBLIGATIONS WILL NOT EXCEED THE AMOUNT PAID TO CONTROL ANALYTICS UNDER THIS ORDER AND BUYER AGREES TO INDEMNIFY CONTROL ANALYTICS FOR ANY AMOUNTS IN EXCESS THEREOF. TO THE EXTENT THAT THIS LIMITATION OF LIABILITY CONFLICTS WITH ANY OTHER PROVISION(S) OF THIS CONTRACT, SUCH PROVISION(S) WILL BE REGARDED AS AMENDED TO WHATEVER EXTENT REQUIRED TO MAKE SUCH PROVISION(S) CONSISTENT WITH THIS PROVISION.

13. ARBITRATION AND LAW

Disputes which arise under this order and which cannot be settled amicably by the parties hereto will be settled by arbitration in the State of Pennsylvania in the United States of America under the prevailing rules of the commercial conciliation and arbitration rules of the American Arbitration Association. Judgment upon the arbitration award or decision may be entered in any court having competent jurisdiction thereof. Arbitration awards and decisions are subject to the Limitation of Liability set forth in this Agreement. The laws of the State of Pennsylvania excluding its conflicts of laws provisions govern the interpretation and enforcement of this contract.

14. UNENFORCEABLE PROVISIONS

In the event that one or more provisions of this Agreement is held to be unenforceable, the remaining provisions apply in full and the invalid or unenforceable provision will be replaced by a provision which lawfully enforces the parties' intention underlying the invalid or unenforceable provision.

15. PERSONNEL PROTECTION

Buyer agrees that it will not recruit, attempt to recruit, hire as an employee or hire as an independent contractor any employee of Control Analytics for a period of two (2) years from the date of purchase of Control Analytics products or performance of Control Analytics services without prior written consent of Control Analytics. If Buyer fails to obtain this consent, Control Analytics shall be paid consideration by the Buyer within 60 days of occurrence the greater of five (5) times the employees last Control Analytics annualized salary or five (5) times the annualized salary or other compensation paid by the Buyer to the employee.

16. WHOLE AGREEMENT; AMENDMENT

This document constitutes the entire understanding between the parties, and it supersedes all previous or additional agreements, arrangements and drafts relating hereto. This Agreement may be amended or modified only by mutual agreement of authorized representatives of the parties to this Agreement in writing.

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