



## Yokogawa Corporation of America

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### Terms and Conditions

#### 1. ACCEPTANCE

Acceptance of Purchaser's order is expressly subject to Seller's terms and conditions of sale, contained herein, which shall take precedence over any other conditions, and no contrary, additional or different provisions or conditions shall be binding on the Seller unless accepted by an officer of Seller in writing. If the terms and conditions contained herein differ in any way from the terms and conditions of Purchaser's order, this acknowledgement shall be construed as a **counteroffer** and shall not be effective as an acceptance of such order unless Purchaser assents to the terms and conditions contained herein. The failure of Purchaser to object thereto in writing within ten (10) days from the date of receipt hereof shall constitute assent thereto. The terms and conditions contained herein shall constitute the complete and only agreement between Seller and Purchaser, it being intended by the parties that this document sets forth the entire agreement between the parties hereto as to purchase of the goods (hereinafter referred to as the "Equipment") described herein. All orders shall only become legally binding upon acceptance by Seller's main office in Newnan, Georgia.

#### 2. PRICING

The prices in this quotation shall be void thirty (30) days from the date hereof or upon Seller's prior notification of a price change to Purchaser, whichever occurs first. The prices quoted herein do not include any federal, state, county, local or other taxes levied on the Equipment, its use or sale, or on this agreement by any jurisdiction either inside or outside the United States. Such taxes, where Seller is required by law to collect them, whether designated as sales tax, gross receipts tax, occupation tax, etc., will be billed to Purchaser based on the law in effect at the time of delivery unless Purchaser furnishes Seller with a proper tax exemption certificate. Purchaser shall reimburse Seller for any state, county, or local property taxes respecting the Equipment, imposed, assessed, billed or becoming due and payable by Seller on or after the date the Equipment or its component parts are located on Purchaser's premises or the premises of any subcontractor. The prices further do not include freight charges. Seller shall prepay transportation charges and Purchaser shall reimburse Seller for such charges within thirty (30) days of Purchaser's receipt of Seller's invoice. All transportation charges shall be stated separately from other charges.

#### 3. DELIVERY

Deliveries shall be F.O.B. Seller's facility. Seller will select a carrier to ship Purchaser's order to Purchaser's specified destination, unless Purchaser indicates a specific carrier. Distributed Control System ("DCS") shipments must be via air ride van. Any equipment which Purchaser obtains from Seller to replace Equipment damaged or lost in transit will be sold to Purchaser at Seller's standard prices in effect at the time of such replacement.

All shipping dates quoted by Seller are ARO (After Receipt of Order) by Seller, and reflect shipping dates, not delivery dates to Purchaser's facility. Shipping dates are approximate and are based upon prompt receipt by Seller of all necessary information. Delays due to missing information such as product specification sheets, or credit examination will be in addition to Seller's quoted shipping times and may impact the originally scheduled shipping date. Partial shipments may be made unless specifically prohibited on Purchaser's purchase order. If this contract calls for the shipment of goods in separate lots, or if partial shipments are made as herein authorized, this contract shall be deemed an "installation contract" within the meaning of the applicable law. Seller does not return Purchaser's acknowledgments. **ANY SHIPMENT DATE IS AN ESTIMATE. UNDER NO CIRCUMSTANCES SHALL SELLER HAVE ANY LIABILITY WHATSOEVER FOR LOSS OF USE OR FOR ANY SPECIAL, DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM DELAY REGARDLESS OF THE REASONS.**

#### 4. INSTALLATION AND SITE PREPARATION

Seller agrees to supply instructions and drawings for Purchaser to install and operate the Equipment furnished hereunder. Where site preparation is required, Purchaser agrees at Purchaser's sole expense to : (a) Prepare the site in accordance with Seller's written site specifications; (b) provide labor and unpacking and locating the Equipment; (c) assume responsibility for compliance with local laws, electrical codes, etc; and (d) obtain any permits required for installation and use.

#### 5. SOFTWARE

Seller owns and holds the exclusive copyright to any and all computer software to be transmitted as part of the Equipment. Seller, upon delivering the software to Purchaser, grants Purchaser a limited, non-exclusive license to use the software and related documentation in Purchaser's facilities only. Purchaser shall obtain no title, ownership nor any other rights in and to the software related documentation nor in or to the algorithms, concepts, designs and ideas requested by or incorporated in the software and related documentation. Purchaser agrees that it shall not, except for a back-up file copy, copy or reproduce, or permit to be copied or reproduced, the software or related documentation for any purpose. Purchaser shall not modify, or attempt to modify, the software. Nor shall Purchaser allow the software to be used on any equipment except that supplied by Seller as part of this order, or for the equipment for which this software is purchased. Additionally, Purchaser agrees that Purchaser will not transfer the software to any other person, except as agreed to, in writing, by Seller. Purchaser may not remove any copyright, trademark or other notice or product identification from the software and must reproduce and include any such notice or product identification on any back-up copy made of the software. Purchaser is further to hold this proprietary software confidential.

#### 6. PAYMENT TERMS

Unless otherwise agreed to by Seller in writing, payment for each item specified in this acknowledgment shall be due at Seller's main office in Newnan, Georgia, no later than 60 days after shipment of the Equipment to Purchaser's facilities. Partial shipments will be invoiced as shipped. Purchaser agrees that Seller specifically retains a security interest under the Uniform Commercial Code in all the

Equipment and all proceeds thereof to secure payment of all amounts due from Purchaser to Seller. Any payment not made when due shall be subject to a charge of one and one-half percent (1-1/2%) finance charge per month or the highest allowed finance charge, whichever is less, on the unpaid balance and if collected by or through an attorney at law, Purchaser shall also pay Seller fifteen percent (15%) thereof or the maximum amount allowed by law, whichever is greater, as Seller's reasonable attorney's fees, and shall also pay other costs of collection.

All Distributed Control System purchases shall be subject to the following progress payment schedule: 30% of the DCS order is due and payable at the time the DCS order is placed; 30% of the DCS order is due and payable upon the submittal of the design; 30% of the DCS order is due and payable upon the initiation of staging; and the final 10% of the DCS order is due and payable upon the completion of the factory acceptance test.

If at any time Purchaser does not make timely payments or Seller determines that the financial condition of Purchaser does not justify the terms of payment established, Seller may, at Seller's sole option, require full or partial payment in advance or shall have the right to cancel any purchase order and shall be reimbursed for Seller's reasonable and proper cancellation charges.

Either party may cancel a purchase order without liability if the other party becomes bankrupt, insolvent, or makes an assignment for the benefit of creditors.

#### **7. WARRANTIES AND LIMITATIONS OF DAMAGES AND REMEDIES**

All Equipment sold hereunder is warranted to be free from defects in material and workmanship at the time of shipment to Purchaser. Defective Equipment or component parts thereof will be replaced or repaired, at the option of Seller, at Seller's facility in Newnan, Georgia, with transportation charges prepaid by Purchaser. Purchaser shall first contact Seller's Service Department at (800) 524-7378 and obtain a Return Authorization (RA) number prior to returning any defective Equipment or component parts thereof, and shall clearly mark the return package with the RA number. Alternatively, and at Purchaser's option, Purchaser may have Seller's Service Department replace or repair, at the option of Seller, the defective Equipment or component parts at Purchaser's facility. If this option is selected, Purchase must schedule the service call with Seller's Service Department in Newnan, Georgia at (800) 524-7378. Not sure if this will still be at Newnan Georgia.

This warranty is subject to the following LIMITATIONS:

- 1) This warranty does not extend to any of Seller's Equipment which have been subject to misuse, accident, abuse, neglect, normal wear and tear, or improper installation or storage, maintenance or application, nor does it extend to products which have been repaired or altered outside of Seller's plant unless authorized in writing by Seller or unless such installation, repair or alteration is performed by an authorized representative of Seller.
- 2) If the defective Equipment is an "instrument" or a component part thereof, then every claim under this warranty shall be deemed waived by Purchaser unless made in writing within twenty-four (24) months from the date of shipment.
- 3) If the defective Equipment is a "system" or a component part thereof, then every claim under this warranty shall be deemed waived by Purchaser unless made in writing within eighteen (18) months from the date of shipment.
- 4) If the defective Equipment is "software," then every claim under this warranty shall be deemed waived by Purchaser unless made in writing within sixty (60) days from the date of shipment.
- 5) If Purchaser elects for the defective Equipment to be repaired or replaced at its facility, then Seller will attempt, but without any guarantees, to schedule the service call to occur within five (5) business days for locations within the United States (except for locations in Hawaii and Alaska which attempts will be ten (10) days).
- 6) If the Purchaser's facility is located outside the United States, then the Purchaser shall not have the option to elect warranty service calls at its facility, unless Seller agrees in writing to conduct the service calls at Purchaser's facility and Purchaser agrees to pay Seller for its service call travel, room and board, and other travel expenses.
- 7) If the defective Equipment is "consumable products," then every claim under this warranty shall be deemed waived by Purchaser unless made in writing within the printed shelf life on the equipment, twelve (12) months from the date of shipment or the date of initial installation, whichever is sooner. The consumable products include, but are not limited to, thermocouples, RTDs, pH electrodes, conductivity cells, O<sub>2</sub> cells, and recorder consumable products, such as charts, ribbons and ink pens (retained in their original sealed package).
- 8) If there is no defect discovered or the defect is not covered by the warranty, then Purchaser shall be liable for the service call charges incurred at the Seller's published rates.
- 9) This warranty is intended solely for the benefit of Purchaser and is not transferable or assignable by Purchaser without the express written consent of Seller.
- 10) Should Purchaser fail to fully compensate Seller for any and all other material, labor, service or work, whether existing now or arising in the future, such shall release Seller from any obligation established herein until Seller is fully compensated, during which time the above-identified warranty periods shall not be tolled.
- 11) Third party supplied hardware/software is warranted only to the extent of the stated warranty by the original manufacturer.

**SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OTHER SIMILAR DAMAGES.**

THIS WARRANTY IS GIVEN AND ACCEPTED IN LIEU OF ALL OTHER LIABILITY OR WARRANTIES ON THE PART OF SELLER, EXPRESS OR IMPLIED, IN FACT OR IN LAW. ALL IMPLIED WARRANTIES AND SPECIFICALLY THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

This warranty shall constitute Purchaser's sole and exclusive remedy and Seller's sole and exclusive liability with respect to this Agreement. Seller shall have no further obligation or liability upon the expiration of the warranty periods set forth above.

Seller's liability to Purchaser (or that of Seller's Agent/Representative) arising out of the supplying of the Equipment, or its use, whether based on warranty, contract, negligence (including without limitation strict liability) or otherwise shall not, in any case, exceed the cost of correcting defects in the Equipment as herein provided but shall, in all events, be limited to a maximum of the purchase price.

#### 8. PATENTS

Neither the purchase nor use of any of the Equipment shall entitle Purchaser to any rights arising out of any of Seller's patents, copyrights or trademarks associated with the Equipment.

#### 9. INDEMNIFICATION

Purchaser shall indemnify and hold Seller and its parent corporations, subsidiaries, affiliates, suppliers, manufacturers, subcontractors, officers, directors, employees and agents harmless from any liability or damage whatsoever, including any court costs and attorney's fees, arising out of or related to the use of the Equipment or software, including, but not limited to, any use in or with any nuclear installation or activity.

#### 10. DISPUTES

At the discretion and sole election of Seller, Seller may require that any controversy, dispute or claim, of whatever kind, arising out of or relating to this Agreement, be resolved by and in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as from time to time amended and in effect. Any litigation or arbitration arising out of this Agreement shall be brought, maintained and administered in Coweta County, Georgia. Should Seller be successful, in part or whole, in prosecuting or defending any lawsuit or arbitration, then Seller shall be entitled to recover its litigation or arbitration expenses, including attorney's fees. **ANY CONTROVERSY, DISPUTE, OR CLAIM THAT PURCHASER MAY HAVE AGAINST SELLER MUST BE INITIATED NO LATER THAN ONE (1) YEAR AFTER THE CLAIM ORIGINATED.**

#### 11. APPLICABLE LAW

This Agreement is made in and shall be governed by the laws of the State of Georgia, without giving effect to the conflict of laws provisions of the laws of the State of Georgia.

#### 12. FAILURE TO FULLY COMPENSATE SELLER

Should Purchaser fail to fully compensate Seller for any and all other material, labor, service or work, whether existing now or arising in the future, such shall release Seller from any obligations herein or otherwise until Seller is fully compensated.

#### 13. WAIVER

The waiver by Seller of any term, provision, or condition hereunder must be in writing and shall not be construed to be a waiver of any other term, condition, or provision hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same condition or provision on this order or on future orders.

#### 14. AUTHORITY OF SELLER'S AGENTS

No agent, employee, or representative of Seller has any authority to bind Seller or form a part of the basis of this bargain to bind Seller or form a part of the basis of this bargain with any affirmation, representation, or warranty concerning the Equipment sold under this Agreement, unless such affirmation, representation or warranty made by an agent, employee, or representative of Seller is specifically included within this written Agreement and accepted in writing by an officer of Seller.

#### 15. EXPORT

Purchaser understands that certain Seller products and technical data are subject to United States export controls. Purchaser shall obtain any documents required by law or regulations of the United States or any other relevant jurisdiction for the export of Seller's products and technical data. Purchaser shall at all times abide by all United States Export Administration Regulations and Department of State Defense Trade Controls Regulations as they pertain to export and re-export of U.S. origin products and technical data, and any foreign origin products and technical data subject to U.S. jurisdiction. This includes any and all re-exports of U.S. products and technical data from one foreign country to another and release of technical data to a foreign national of another country. **ANY EXPORT OR RE-EXPORT OF SELLER'S PRODUCT OR TECHNICAL DATA CONTRARY TO UNITED STATES LAWS IS STRICTLY PROHIBITED BY THIS AGREEMENT.**

#### 16. NUCLEAR

Purchaser warrants and covenants that prior to, or at the time of shipment of any of the goods and services provided under this Agreement to any nuclear facility, Purchaser and the nuclear licensee shall have entered into an indemnification agreement with the Nuclear Regulatory Commission as provided for in 42 U.S.C. section 2210(c), obtained financial protection to cover public liability claims in accordance with 42 U.S.C. section 2210(a) whereby Seller and its affiliates, subsidiaries, parent corporations, suppliers, manufacturers, subcontractors, officers, directors, employees, consultants and agents, regardless of tier or fault, are covered by such financial plan, and Purchaser further warrants and covenants that it and the nuclear licensee, jointly and severally, agree to defend, indemnify and hold harmless Seller and its affiliates, subsidiaries, parent corporations, suppliers, manufacturers, subcontractors, consultants, officers, directors, employees and agents, regardless of tier or fault, against any and all claims for personal injury or property damage arising out of or relating to a nuclear incident as defined in 42 U.S.C. section 2014(q).