



## GENERAL TERMS AND CONDITIONS OF SALE

The sale of any products ("Products") and/or the provision of services, including without limitation, evaluation, repair, application counseling, specification, training, and design assistance services (collectively, "Services"), by Agilix Solutions, LLC ("Seller") to the buyer of such Products and/or Services ("Buyer") is expressly made, subject to and conditioned upon the terms and conditions contained or referred to herein, in addition to those set forth on any applicable quotation, credit application, invoice, acknowledgment or packing slip (as well as any attachments to any of the foregoing) provided by Seller (collectively, the "Terms"). Additionally, the terms and conditions published by any manufacturer or service provider whose Products or Services are being resold by Seller are made a part of these Terms, as being applicable to those specific Products or Services. The Terms shall apply to the exclusion of all other terms and conditions, including (a) any terms or conditions which are implied by trade, custom, practice or course of dealing or which Buyer may purport to apply; or (b) any prior, additional, contrary or inconsistent terms or conditions contained in any order confirmation, acknowledgment, estimate, shipment, invoicing document or other written correspondence of Buyer. The fact that Buyer places an order for any Products or Services offered for sale by Seller (an "Order") shall serve as conclusive evidence that Buyer acknowledges and accepts, without restriction or reservation, these Terms prior to such Order.

1. **ORDERS AND PRICES:** All Orders placed with Seller, regardless of how transmitted, are subject to Seller's approval and acceptance. All Orders are subject to credit approval. All Order changes and modifications are only accepted by Seller if in writing and signed by Seller. Confirming Orders shall be marked clearly as such by Buyer and shall recite when and how the original Order was placed. Prices are subject to change by Seller without notice to Buyer. Prices do not include any present or future sales, use, excise, value-added or similar taxes, which, where applicable, shall be paid by Buyer and excludes any shipping costs and delivery charges which, unless otherwise agreed by Seller in writing, will be paid by Buyer. Applicable sales taxes will be stated separately on the applicable invoice(s). The Seller is not responsible for reasonably apparent typographical errors. Buyer is solely responsible for the unauthorized placement of Orders by Buyer's current or former employees. Buyer will notify Seller, in writing, whenever there is a change in personnel authorized to place an Order on their behalf.

2. **QUOTATIONS:** Except as otherwise modified by Seller in writing, all quotations provided by Seller to Buyer with respect to Products and/or Services ("Quotation") shall be effective for thirty (30) days from and after the date thereof; provided, however, that all Quotations shall remain subject to change upon the occurrence of any event beyond the reasonable control of Seller, including, but not limited to, acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, terrorist activity or threat, order or restriction by any governmental authority. All Orders, whether or not based on a specific Quotation from Seller, are subject to acceptance by Seller.

3. **LICENSED SOFTWARE AND FIRMWARE:** Products comprised of software or firmware may be subject to additional terms and conditions set forth in a separate license agreement provided by the vendor of such Products that control use of the Products. Delivery of such Products will only take place after a signed license agreement is in the possession of Seller.

4. **DELIVERY AND PERFORMANCE:** All Orders will be scheduled for delivery according to mutual agreement between Buyer and Seller, and may be subject to charges related to staging, storage, or delivery. Accommodations for emergency or after-hours delivery may result in a special handling charges. Any specified delivery dates are estimates only and do not represent a promise by Seller to deliver Products at a date certain and Seller shall not be responsible for any loss or liability suffered by Buyer as a result of failure or delay in the delivery of Products. All dates scheduled for performance of Services are not fixed or guaranteed. All claims for shortages, damages and shipment errors made by deliveries on Seller's trucks must be reported to Seller within five (5) business days of shipment. Claims of non-delivery by Seller's trucks must be made within 15 days of invoice. Claims for shortages, damage, or non-delivery made by common carriers must be made to the carrier by Buyer. Proof of delivery, if available, will be furnished upon request within 30 days of invoice date. Unless otherwise specified by Seller in writing, the shipping terms applicable to (a) shipments of Products from Seller to Buyer shall be ex works (EXW Incoterms 2010) Seller's facility; and (b) direct shipments of Products from Seller's vendors to Buyer shall be ex works (EXW Incoterms 2010) vendor's facility.

5. **RETURNED GOODS AND CANCELLATIONS:** Purchases from Seller may be returned for credit or exchange within a 90 day period from invoice date, when accompanied by Seller's Returned Goods Authorization form (RGA). RGA is valid for 30 days from date of RGA. Seller will not be responsible for any Products returned without

an authorized RGA number. Returned Products must be clean, unused, in original packaging, and in saleable condition, and have the RGA number clearly marked on the packaging and be shipped prepaid to Seller (or other destination), unless approved for pickup by Seller's truck. Returned Products may be subject to a reasonable handling and restocking charge. Buyer understands and agrees that any Order cancelled, returned, or postponed that consists of (a) materials and/or Products that are non-standard, custom made for Buyer or dedicated, special, or specific only to the Buyer, or (b) that consists of Products that are not normally stocked and/or quantities of Products ordered which exceed the Seller's normal on hand inventory level will, in each case, be subject to a cancellation, handling, return, or restocking charge of up to 100% of the value of the Products as determined by Seller and/or Seller's vendor. The manufacturer's stated cancellation or change order terms apply to special ordered items.

6. **CREDIT AND TERMS OF PAYMENT:** If Buyer is authorized, in Seller's sole discretion, to purchase on an open account, it is understood and agreed that Buyer shall pay to Seller all amounts set forth on each applicable invoice within no less than 30 days from the date of such invoice (except as otherwise expressly agreed to by Seller in writing). No payment offset is permitted with amounts owed by Seller to Buyer, if applicable, unless approved in writing by Seller. Buyer shall pay interest on all late payments (calculated daily and compounded monthly) at the rate of "Prime" plus 2% per annum; provided, however, that any amounts which are more than 90 days past due and have been turned over to a third party for collection, will thereafter accrue interest (calculated daily and compounded monthly) at the greater of the rate of 10% per annum or the highest rate then permissible under applicable law. For purposes of these Terms, "Prime" shall mean the "prime rate" as published in The Wall Street Journal, Eastern Edition (or if such rate is not available in that publication, then as determined in any publicly available source of similar market data). Buyer shall also reimburse Seller for all reasonable costs incurred by Seller in collecting any late payments, including any attorneys' fees and court costs related thereto. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any other available rights), Seller reserves the right to suspend performance at any time in the event Buyer fails to pay any amounts when due under these Terms. Buyer agrees that it shall give written notice to Seller at least 30 days prior to the sale of more than 25% of its ownership interests or assets, in a single transaction or a series of transactions within a year (a "Sale Transaction"). Failure to provide such notice shall result in 100% of the Buyer's account balance becoming immediately due and payable on the date of such Sale Transaction. Other than as described above, Buyer shall be responsible for payment within 30 days of being invoiced for all ancillary charges related to its account balance, including but not limited to, all service charges, interest charges, non-sufficient fund and other non-recurring bank charges incurred by Seller due to Buyer's action or error, costs incurred by Seller with third parties to collect past-due amounts, and costs associated with Seller exercising its lien rights or obtaining or preserving a security interest in the Products sold or related proceeds thereof if applicable. Notwithstanding anything contained herein to the contrary, if, at the time of shipment of any Order, Seller makes a reasonable determination that, due to the financial position of Buyer or as a result of any other adverse circumstances, Buyer's then present condition does not justify the terms of payment specified herein, Seller reserves the right to require full or partial payment before shipment and to suspend any further performance until such payment has been received. Buyer agrees that all funds owed to or received by Buyer from anyone, to the extent those funds result from labor or materials supplied by Seller, shall be held in trust for the benefit of Seller ("Trust Funds"). Buyer agrees it has no interest in the Trust Funds held by anyone and to promptly account for and pay to Seller all Trust Funds. To the extent the Trust Funds are held by a third party, Buyer agrees to direct the third party to pay the Trust Funds to Seller.

7. **SECURITY INTEREST:** To secure Buyer's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of Buyer to Seller, Buyer hereby grants Seller a first-priority security interest, with priority over all other liens, claims and encumbrances, in all inventory of Products purchased by Buyer from Seller, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Buyer acknowledges that, to the extent permissible in accordance with applicable law, the security interest granted under this Section 7 is a purchase-money security interest under Missouri law. Seller may file a financing statement for such security interest and Buyer shall execute such statements or other documentation necessary to perfect Seller's security interest in such Products. Buyer also authorizes Seller to execute, on Buyer's behalf, such statements or other documentation necessary to perfect Seller's security interest in such Products. Seller shall be entitled to all applicable rights and remedies of a secured party under applicable law.

8. **CUSTOMER SUPPORT SERVICES:** In addition to all other Terms set forth herein, the following terms and conditions are applicable to the provision of Support Services by Seller as requested by Buyer. "Support Services" are defined as those Services provided by Seller or a sub-contracted third party to assist Buyer with, but not limited to, specification, staging, storage, programming, repair, training, trouble shooting, installation and start-up assistance. Buyer hereby acknowledges and agrees that (a) Seller reserves the right to refuse to provide any and all Support Services; (b) when purchasing Support Services, Buyer shall be solely and exclusively responsible for (i) approval of the design specifications and scope of work covered by the agreement to provide such Support

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Services; (ii) insuring that the operational control system meets applicable designs, specifications, standards, laws, safety requirements, environmental requirements, good practices, and is not in violation of any patents; (iii) obtaining and/or paying for any permits or fees which may be necessary in order to perform the requested Support Services; (iv) complying with all applicable environmental laws and regulations; and (c) if Support Services are provided by or through Rockwell Automation, its publication entitled "General and Supplemental Terms and Conditions for GMS Contracted and On-Site Services" will be applicable, a copy of which will be provided by Seller upon request.

**9. WARRANTY:** Seller makes no representations and disclaims all warranties of any kind, express or implied, relative to any Products which may be sold by Seller hereunder, and to the extent that Seller furnishes advice or other assistance with respect to any Products or any system or equipment in which any such Products may be installed, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, warranty, tort (including negligence), or otherwise. The only warranty, if any, associated with such Products will be that provided directly by the original manufacturer. Seller assumes no post-sale technical support or warranty repair obligations with respect to such Products (however, at its discretion, Seller may assist the customer in processing warranty claims). Seller assumes no responsibility for any manufacturer-supplied information, specifications, claims, warranties or representations made or provided relative to such Products, which in all cases will be the responsibility of the original manufacturer. Such information and materials, to extent provided by or secured from Seller, are solely for the convenience of Buyer, and Buyer must make its own determination as to their accuracy and completeness. In connection with any Services provided by Seller hereunder, Seller warrants that its services will be performed in a competent, workmanlike manner, provided, however, that such warranty shall not extend to any advice or assistance which Seller may provide in connection with any Products sold hereunder or any system or equipment in which any such Products may be installed and in no event shall Seller be subject to any liability, whether in contract, warranty, tort (including negligence), or otherwise in connection with the provision of such advice or assistance. The foregoing warranty shall be limited to a period of ninety (90) days from and after the completion of such Services, unless otherwise specified or agreed to in writing by Seller. The Seller's sole responsibility with respect to such Services shall be to repeat performance of such Services or credit to Buyer the original cost of such Service in Seller's sole discretion. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND, EXCEPT AS EXPRESSLY SET FORTH HEREIN, ALL PRODUCTS AND SERVICES ARE SOLD "AS IS". FURTHERMORE, SELLER ALSO DISCLAIMS ANY LIABILITY FOR CLAIMS ARISING OUT OF PRODUCT MISUSE, IMPROPER PRODUCT SELECTION, PRODUCT MODIFICATION, MISREPAIR OR MISAPPLICATION. FINALLY, SELLER MAKES NO REPRESENTATION OR WARRANTY THAT ANY PRODUCTS PROVIDED HEREUNDER COMPLY WITH THE REQUIREMENTS OF THE US OCCUPATIONAL SAFETY AND HEALTH ACT, THE CONSUMER PRODUCTS SAFETY ACT, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTE OR ORDINANCE OR THE RULES AND REGULATIONS ISSUED THEREUNDER. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 9.

**10. INDEMNITY:** Buyer shall indemnify, defend and hold Seller harmless for, from and against any and all claims, losses, damages, injuries and/or liabilities (however caused), resulting from, arising out of, or in any way connected with the Services to be performed and/or the Products to be provided under these Terms, whether or not caused or contributed to by the operation of Seller on Buyer's property, or by any negligence or alleged negligence on the part of any of Seller, its agents or employees. Notwithstanding the foregoing, in no event shall the indemnification obligations of Buyer under this paragraph apply to any claim, loss, damage, injury and/or liability directly caused by and/or arising from the sole negligence of Seller.

**11. LIMITATION OF LIABILITY:** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS AND CONDITIONS OR ANY OTHER DOCUMENT OR AGREEMENT, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL SELLER OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, WHETHER OR NOT FORESEEN OR FORESEEABLE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, DAMAGE TO ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS OR APPARATUS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWN TIME COSTS, OR CLAIMS OF THIRD PERSONS WHO BUY FROM OR DEAL WITH CUSTOMERS OF SELLER FOR SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, THE MAXIMUM LIABILITY, IF ANY, OF SELLER FROM ANY CAUSE WHATSOEVER SHALL BE THE ORIGINAL COST OF ANY PRODUCTS SOLD OR SERVICES PROVIDED.

12. **ACCURACY OF CATALOGS, WEBSITE AND BROCHURES (Please read the following DISCLAIMER before using any of Seller's catalogs, website and brochures):** The Product information, specifications, and descriptions contained in Seller's catalogs, website, brochures or other Product descriptions have been compiled for the use and convenience of the customers of Seller from information furnished by various manufacturers. Seller does not accept any responsibility for the accuracy or correctness of any description, calculations, specification or information contained therein which is provided to Seller by third parties with respect to Products or Services manufactured or provided by such third parties. Seller is selling the Products illustrated and described therein on an "as is" basis and subject to the warranty terms herein set forth. Due to manufacturers' franchise agreements, all Product shown in Seller's catalogs, website, brochures or other Product descriptions may not be available at all of Seller's locations. Please consult your Seller's representative.

13. **DISCLOSURE OF INFORMATION:** Any information, ideas, drawings, designs, suggestions, credit information, or other materials transmitted by Buyer to Seller in connection with the Products or Services ordered by Buyer are not to be regarded as secret or submitted in confidence except as may be otherwise expressly agreed to by Seller in a writing signed by an officer of Seller.

14. **RESTRICTIONS ON RESALE:** Buyer represents and warrants that it will not resell, ship or transfer, directly or indirectly, any of the Products covered by these Terms, or any technical data applicable thereto, to third parties located in countries to which such resale, shipment or transfer is prohibited by applicable provisions of the United States Export Control Regulations, Trading With the Enemy Act, the Patriot Act or any law or regulation similar to the foregoing.

15. **TAXES:** If Seller does not have a valid Tax Exemption Certificate from Buyer, Seller is required to charge sales/use tax on all Buyer's purchases. A Tax Exemption Certificate is not valid if any required information is missing or, if it is a Blanket Certificate, it was issued more than three years before. If customer makes a tax-free purchase from Seller and it is later determined, by a State or Local Department of Revenue, that the purchase was a taxable purchase, Buyer shall be responsible and agrees to make payment to Seller of the appropriate sales/use tax, along with any applicable interest and penalties that are assessed by the State or Local Department of Revenue.

16. **REPAIR AND SPECIAL SERVICES:** By delivering possession of Buyer's equipment or other apparatus to Seller for evaluation, quotation or repair, or allowing Seller to provide any such service or repair at Buyer's location, or by accepting any Services from Seller, Buyer acknowledges and agrees that (a) Seller shall not be required to hold, store, care or be responsible for any said apparatus or Products for more than ninety (90) days after taking possession thereof, and thereafter Seller shall have the right to scrap or otherwise dispose of said apparatus or Products in its possession without liability of any kind after giving customer at least ten (10) days written notice of Seller's intention to do so and an opportunity to reclaim or receive said apparatus at customer's sole expense and upon payment of all charges owed to Seller, (b) Seller's maximum liability for any loss or damage to said apparatus while in Seller's possession or while Seller is providing such Services or repair at Buyer's location shall not exceed the then depreciated cost thereof and Seller's liability for losses or liabilities arising out of or related to the Services performed or repairs provided shall be subject to all of the limitations set forth in Section 9 hereof, and (c) Seller's Services and repairs are also subject to all of the these Terms.

17. **INTELLECTUAL PROPERTY INFRINGEMENT:** Buyer will hold Seller harmless against any loss or expense, including attorney's fees, resulting from infringement of patents or trademarks arising from compliance with Buyer's designs, specifications or instructions. Seller does not warrant that the Products it sells which are manufactured by third parties are free from patent or trademark infringement.

18. **QUALITY ASSURANCE/CRITICAL APPLICATIONS:** Seller shall have no obligation to ensure that any Products or Services purchased from Seller meet any special quality assurance specifications and/or other requirements unless such specifications and/or other requirements are set forth in Buyer's purchase order and expressly accepted in a written acknowledgement from Seller and Buyer represents that Products or Services which it purchases from Seller will not be applied by Buyer to, or resold by Buyer for application to, any critical end use (i.e. an application in which the failure of the system in which the Seller supplied Products or Services are used could reasonably result in widespread or catastrophic property damage, injury or death), including, without limitation, use in connection with or in any way related to the construction or operation of a nuclear or a hazardous or toxic materials treatment or disposal facility, unless the appropriate specification and/or other requirements for such end use is set forth in Buyer's purchase order and is expressly accepted in a written acknowledgement from Seller. In the event that any such Products or Services supplied by Seller in connection therewith, are applied to a critical end use without the appropriate specification and/or other requirement therefore having been set forth in Buyer's purchase order and expressly accepted in a written acknowledgement from Seller, Buyer shall indemnify and hold Seller harmless against any damages or claims for damages made by any person for any injury, fatal or nonfatal, to any person or for any damage to property, incident to arising out of such

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application, including, without limitation any loss resulting from the radioactive, toxic, explosive or other hazardous inherently dangerous properties of source materials.

19. **FORCE MAJEURE**: Seller shall not be liable for any delay in or impairment of performance resulting in whole or in part from fire, floods or other catastrophes, strikes, lockouts or labor disruption, wars, riots or embargo delays, government allocations or priorities, mill conditions shortages of transportation equipment, fuel, labor or materials, inability to procure supplies or raw materials, severe weather conditions, or any other circumstance or cause beyond the control of Seller in the reasonable conduct of its business.

20. **GENERAL**: Buyer's and Seller's obligations shall be governed by, and construed in accordance with, the internal laws of the State of Missouri, without regard to principles of conflicts of law. It is agreed that either party may communicate with the other by electronic means. Each party agrees when electronic communications are used, they are deemed to be the equivalent of written and signed documents. The foregoing notwithstanding, Seller shall not be bound by any electronic mail transmission with respect to any purported obligation by Seller which obligates Seller to provide Products or Services or to assume any liability or risk in excess of \$10,000.00 unless and until such purported obligation is fully performed by Seller or the purported obligation is confirmed by a written document from Seller and mailed, sent by overnight delivery service or personally delivered to Buyer. Seller shall have the right to set off any sum due to Seller from Buyer against any sum due or to become due to Buyer from Seller; such right of set-off being in addition to and not in lieu of any and all other rights and remedies to which Seller may be entitled.

21. **REMEDIES**: Except as otherwise expressly set forth in these Terms, the rights and remedies provided in these Terms are cumulative and not exclusive, and the exercise by a party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

22. **ASSIGNMENT**: Buyer shall not assign any of its rights or delegate any of its obligations hereunder, and any purported assignment or delegation in violation of this Section 22 shall be null and void.

23. **COMPLETE AGREEMENT**: The terms and conditions set forth herein, together with any other terms, conditions, or documents incorporated herein by reference, constitute the sole and entire agreement between Buyer and Seller with respect to any Order, superseding completely any oral or written communications, unless terms thereof are expressly incorporated in a written acknowledgement by Seller.