

MICROMOD AUTOMATION, INC. GENERAL TERMS AND CONDITIONS

1. **General.** The terms and conditions contained herein, together with any additional or different terms contained in MicroMod Automation, Inc.'s ("MicroMod") Proposal, if any, submitted to Purchaser (which Proposal shall control over these terms and conditions to the extent it contains any conflicting terms and conditions) constitute the entire agreement between the parties with respect to this order and supersede all prior communications and agreements. Acceptance by MicroMod of Purchaser's order, or Purchaser's acceptance of MicroMod's Proposal is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions which may not be changed or waived except in a writing signed by both parties. Any additional, inconsistent or different terms and conditions contained in Purchaser's purchase order or other documents supplied by Purchaser are hereby expressly rejected. Unless the context otherwise requires, the term "Equipment" as used herein includes all equipment, parts, and accessories sold, and all software and application software licensed to Purchaser by MicroMod under this order. Unless the context otherwise indicates, the term "Services" as used herein shall mean labor, supervision and project engineering services provided by MicroMod under this order. As used herein, the term "Purchaser" shall include the initial end user of the Equipment and/or Services; *provided, however*, that Paragraph 14(a) shall apply exclusively to the initial end user.
2. **Prices, Taxes, Customs Duties.**
 - (a) Unless otherwise specified in writing, all written quotations expire thirty (30) days from the date thereof.
 - (b) Unless otherwise stated herein, Services prices are based on normal business hours (8 a.m. to 5 p.m. Monday through Friday). Overtime and Saturday hours will be billed at one and one half (1½) times the hourly rate; and Sunday hours will be billed at two (2) times the hourly rate; holiday hours will be billed at three (3) times the hourly rate.
 - (c) The price does not include any Federal, state or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment, its sale, its value or its use, or any services performed in connection herewith. Purchaser agrees to pay or reimburse any such taxes which MicroMod or its suppliers are required to pay or collect. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon order placement, provide MicroMod a copy, acceptable to the relevant governmental authorities of any such certificate or permit.
 - (d) MicroMod's prices herein include customs duties and other importation or exportation fees applicable to MicroMod's importation into the United States and the rates thereof in effect on the date hereof. Any change in such duties, fees, or rates shall be the basis for a price adjustment in a change order.
3. **Payment.**
 - (a) Unless specified to the contrary in writing by MicroMod, payment terms are net cash, payable without offset, in United States Dollars, 30 days from date of invoice payable by wire transfer to the account designated by MicroMod in the Proposal.
 - (b) If, in the judgment of MicroMod the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, then MicroMod may require payment in advance, payment security satisfactory to MicroMod or cancel any outstanding order, whereupon MicroMod shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall become due on the date MicroMod is prepared to make delivery. Delays in delivery or non-conformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.
 - (c) Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1½ % per month or the highest applicable rate allowed by law on all such overdue amounts plus MicroMod's attorneys' fees and court costs incurred in connection with collection.
4. **Changes.**
 - (a) Any changes requested by Purchaser affecting the ordered scope of work must be accepted by MicroMod and resulting adjustments to affected provisions including price, schedule, and guarantees, mutually agreed in writing prior to implementation of the change.
 - (b) MicroMod may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to meet any performance guarantees provided for in the Proposal. If Purchaser refuses to approve any such changes, MicroMod shall be relieved of its obligations to meet such guarantees to the extent to which MicroMod may be affected by such refusal.
5. **Delivery.** All Equipment manufactured, assembled or warehoused in the continental United States is delivered F.O.B. point of shipment. Equipment shipped from outside the continental United States is delivered F.O.B. port of entry. Where the scheduled delivery of Equipment is delayed by Purchaser or by Force Majeure, MicroMod may deliver the equipment by moving it to storage for the account of and at risk of Purchaser. Shipping and delivery dates are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for MicroMod's performance hereunder. Claims for shortages or other errors in delivery must be made in writing to MicroMod within ten days of delivery.
6. **Risk of Loss.** Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser and delivery shall be deemed to be complete upon delivery to a private or common carrier or upon moving into storage, whichever occurs first, at the point of shipment.
7. **Title.** Except with respect to licensed software (for which title does not pass; use being licensed), title to the Equipment sold shall remain in MicroMod until fully paid for.
8. **Inspection, Testing and Acceptance.**
 - (a) Any inspections by Purchaser of Equipment on MicroMod's premises shall be scheduled in advance and during normal working hours.
 - (b) When factory acceptance testing is included in the Agreement, MicroMod shall notify Purchaser when MicroMod will conduct a standard acceptance test for Purchaser prior to shipment. Unless Purchaser states specific objections in writing within ten (10) days after completion of the test, completion of the acceptance test constitutes Purchaser's factory acceptance of the Equipment and authorizes shipment.
 - (c) When on-site acceptance testing is included in the Agreement, a standard MicroMod on-site acceptance test will be performed by MicroMod's personnel to verify that all Equipment supplied hereunder has arrived at site complete, without physical damage, and is ready for the use specified in the Proposal. Completion of the on-site acceptance test constitutes full and final acceptance of the Equipment. If the acceptance test is not performed within thirty (30) days after arrival of the Equipment at the site, final acceptance shall be deemed made.
9. **Warranty.**
 - (a) **General.** MicroMod warrants the Equipment (excluding software, parts and repairs, and Services) against defects in material and workmanship for a period of twelve (12) months after date of shipment.
 - (b) **Services.** MicroMod warrants Services against defects in workmanship for a period of ninety (90) days from the date of completion of such Services.
 - (c) **Parts and Repairs.** MicroMod warrants: (1) spare parts and components sold by MicroMod against defects in material and workmanship for a period of 12 (twelve) months after shipment and (2) repaired or refurbished parts repaired by MicroMod against defects in material and workmanship for a period of Ninety (90) days after shipment, unless repaired pursuant to an original Equipment warranty, in which case the repair is warranted for the time remaining of the original warranty period.
 - (d) **Software.** MicroMod warrants that Software developed by MicroMod will perform substantially in accordance with the accompanying materials when properly installed, for a period of 90 (ninety) days from date of shipment. MicroMod does not warrant that the functions contained in the Software will meet Purchaser's requirements, or that the operation of the Software will be uninterrupted or error-free, or that defects in the Software will be corrected. MicroMod warrants the physical media on which the Software is furnished to be free of defects in materials and workmanship under normal use for a period of ninety (90) days from the date of shipment. Any supplements or updates, including fixes or patches, supplied after the 90 day period are not covered by any warranty. The foregoing warranty shall not apply to defects resulting from (1) unauthorized modification or (2) Purchaser-supplied software or interfacing. Software remedy is limited to the replacement of any distribution media not meeting MicroMod's warranty as stated above.
 - (e) **Equipment/Services Remedy.** Should any failure to conform with the applicable warranties appear during the specified periods under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained, and if given prompt written notice by Purchaser, MicroMod shall correct such nonconformity by, at its option, (1) repair or replacement of the nonconforming Equipment or parts thereof, or (2) refund of the purchase price of the nonconforming Equipment or parts thereof, or (3) in the case of nonconforming Services, provide equivalent Services at the job site or refund the price thereof. Repairs or replacements pursuant to warranty shall not renew or extend the applicable original warranty period, provided however, that any such repairs or replacement of Equipment or parts thereof shall be warranted for the time remaining of the original warranty period or 30 days, whichever is longer. MicroMod shall not be responsible for providing working access to the defect, including disassembly and re-assembly of equipment or for providing transportation to and from repair or factory facility, all of which shall be at Purchaser's risk and expense.
 - (f) These warranties shall not apply to any Equipment or parts thereof which (1) have been improperly repaired or altered; (2) have been subjected to misuse, negligence or accident; (3) have been used in a manner contrary to MicroMod's instructions; (4) are comprised of materials provided or design stipulated by Purchaser; (5) are used equipment; or (6) result from normal wear and tear.
 - (g) **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE ARE HEREBY DISCLAIMED BY MicroMod AND ALL EQUIPMENT MANUFACTURERS.**
 - (h) Correction of nonconformities in the manner and for the period of time provided above shall be Purchaser's sole and exclusive remedy for any failure of MicroMod to comply with its obligations and shall constitute fulfillment of all liabilities of MicroMod and any Equipment manufacturer (including any liability for direct, indirect, special, incidental or consequential damages) whether in warranty, contract, tort (including negligence) or otherwise with respect to or arising out of the work performed hereunder.

- (i) *Third-party products.* Equipment or Software provided by MicroMod which has not been developed by MicroMod is supplied under the license and warranty of the manufacturer thereof. Purchaser is obligated to fulfill the terms of the license or warranty of such equipment or software.
10. **Patent Indemnity.**
- (a) MicroMod shall defend at its own expense any actions brought against Purchaser alleging that the Equipment furnished hereunder by MicroMod or the use of said Equipment to practice any process supplied hereunder by MicroMod directly infringes any claim of a patent of the United States of America and to pay all damages and costs finally awarded in said actions. MicroMod shall have the right to settle or otherwise terminate said actions in behalf of Purchaser.
- (b) MicroMod shall have no obligations hereunder and this provision shall not apply: (1) to any other equipment or processes, including Equipment or processes supplied hereunder by MicroMod which have been modified or combined with other equipment or processes; (2) to any products or articles manufactured by any equipment or processes; (3) to any patent issued after the date hereof; and (4) in the event any of said actions are settled or otherwise terminated without the prior written consent of MicroMod.
- (c) If, in any action hereunder, the Equipment is held to constitute infringement, or the practice of any process using the Equipment is finally enjoined, MicroMod shall, at its option and its own expense, either procure for Purchaser the right to continue using said Equipment; or, modify or replace it with non-infringing equipment; or, with Purchaser's assistance, modify the process so that it becomes non-infringing; or remove it and refund the purchase price allocable to the infringing equipment. THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF MICROMOD AND EQUIPMENT MANUFACTURER WITH RESPECT TO PATENT INFRINGEMENT.
- (d) To the extent that said Equipment or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that MicroMod is a contributory infringer) or said Equipment or any part thereof is used by Purchaser to perform a process not furnished hereunder by MicroMod or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against MicroMod, Purchaser agrees to defend and indemnify MicroMod in the same manner and to the same extent that MicroMod indemnifies Purchaser in this "Patent Indemnity" paragraph.
11. **Limitation of Liability.**
- (a) In no event shall MicroMod, its suppliers or subcontractors be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, or claims of customers of the Purchaser or other third parties for such or other damages. MicroMod's liability for any claim whether in contract, warranty, negligence, tort, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this contract or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished under this contract, or from any services rendered in connection therewith, shall in no case (except as provided in the section entitled "Patent Indemnity") exceed one-half (½) of the purchase price allocable to the Equipment or part thereof or Services which gives rise to the claim.
- (b) All causes of action against MicroMod arising out of or relating to this contract or the performance or breach hereof shall expire unless brought within one year of the time of accrual thereof.
- (c) In no event, regardless of cause, shall MicroMod assume responsibility for or be liable for penalties or penalty clauses of any description or for indemnification of Purchaser or others for costs, damages, or expenses arising out of or related to the Equipment and/or Services.
12. **Laws and Regulations.** MicroMod does not assume any responsibility for compliance with Federal, state or local laws and regulations, except as expressly set forth herein, and compliance with any laws and regulations relating to the operation or use of the Equipment is the sole responsibility of the Purchaser. All laws and regulations expressly incorporated herein shall be those in effect as of the date hereof. In the event of any subsequent revisions or changes thereto, MicroMod assumes no responsibility for compliance therewith. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change order. Nothing contained herein shall be construed as imposing responsibility or liability upon MicroMod for the obtaining of any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment.
13. **OSHA.** MicroMod warrants that the Equipment will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the date of this Proposal. Upon prompt written notice from the Purchaser of a breach of this warranty, MicroMod will replace the affected part or modify it so that it conforms to such standard or regulation. MicroMod's obligation shall be limited to such replacement or modification. In no event shall MicroMod be responsible for liability arising out of the violation of any OSHA standards relating to or caused by Purchaser's design, location, operation, or maintenance of the Equipment, its use in association with other equipment of Purchaser, or the alteration of the Equipment by any party other than MicroMod.
14. **Software License.**
- (a) MicroMod owns and has all rights to certain proprietary computer software. As part of the sale made hereunder, Purchaser obtains a limited license to use certain proprietary software identified in MicroMod's proposal, subject to the following: (a) The proprietary software may be used only in conjunction with equipment specified by MicroMod. (b) The proprietary software is to be kept strictly confidential. (c) The proprietary software shall not be copied, reverse engineered, or modified. (d) The Purchaser's right to use the proprietary software shall become effective upon delivery and shall continue until the related equipment is no longer used by the Purchaser or until otherwise terminated hereunder. (e) The rights to use the proprietary software are non-exclusive, and are non-transferable, except with MicroMod's prior written consent.
- (b) Nothing contained in this Agreement shall be deemed to convey any title to or ownership in the software or the intellectual property contained therein in whole or in part to Purchaser, nor to designate the software a "work made for hire" under the Copyright Act, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of this License, Purchaser shall immediately cease using the software and without retaining any copies, notes or excerpts thereof, return to MicroMod the software and all copies thereof and shall remove all machine readable software from all of Purchaser's storage media.
15. **Inventions and Information.** Unless otherwise agreed in writing by MicroMod and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for Equipment and Services shall remain with MicroMod. Any design, manufacturing drawings or other information submitted to the Purchaser remain the exclusive property of MicroMod. Purchaser shall not, without MicroMod's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.
16. **Force Majeure.** MicroMod shall not be liable for loss, damage, detention, or delay, nor be deemed to be in default from causes beyond its reasonable control including but not limited to acts of war (declared or undeclared) fire, strike, labor difficulties, Acts of God, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production and the contract price will be adjusted to compensate MicroMod for such delay.
17. **Cancellation.** Any order or contract may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified to the order or contract incurred prior to the effective date of notice of termination and all expenses incurred by MicroMod attributable to the termination, plus a fixed sum of ten (10) percent of the final total selling price to compensate for disruption in scheduling, planned production and other indirect costs.
18. **Termination.** No termination by Purchaser for default shall be effective unless, within fifteen (15) days after receipt by MicroMod of Purchaser's written notice specifying such default, MicroMod shall have failed to initiate and pursue with due diligence correction of such specified default.
19. **Export Control.**
- (a) Purchaser represents and warrants that the Equipment and Services provided hereunder and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by MicroMod or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations.
- (b) If applicable, MicroMod shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Purchaser. Purchaser shall furnish such documentation within a reasonable time after order acceptance. Any delay in obtaining such license shall suspend performance of this Agreement by MicroMod. If export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by MicroMod without liability for damages of any kind resulting from such cancellation. At MicroMod's request, Purchaser shall provide to MicroMod a Letter of Assurance and End-User Statement in a form reasonably satisfactory to MicroMod.
20. **Assignment.** Any assignment of this contract or any rights or obligations hereunder without prior written consent of MicroMod shall be void.
21. **Choice of Law.** This agreement shall be governed by the laws of the State of New York, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and excluding New York law with respect to conflicts of law. Purchaser agrees that all causes of action under this agreement shall be brought in the State Courts of the State of New York, or the U.S. District Court for the District of New York. If any provision hereof, partly or completely, shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.
22. **Entire Agreement.** This Agreement constitutes the entire agreement between MicroMod and Purchaser, and there are no agreements, understandings, restrictions, warranties, or representations between MicroMod and Purchaser other than those set forth herein or herein provided for.