

**ENDRESS+HAUSER CANADA LTD/LTEE GENERAL TERMS AND CONDITIONS OF SALE**

- 1. Acceptance.** The Buyer's purchase order ("Order") constitutes an offer by Buyer to purchase Goods and/or Services in accordance with these Terms and Conditions. The Order shall be deemed to be accepted when Seller issues written acceptance of the Order at which point and on which date the Agreement shall come into existence. Any quotation given by the Seller shall not constitute an offer. It is only valid for a period of 30 days from the date of issue unless the Seller agrees in writing to extend that period.
- 2. Buyer's Assent.** Shipment by Seller and acceptance by Buyer of, or payment for all or any part of the Goods (as defined below) and/or Services (as defined below) covered by the Order shall constitute Buyer's assent to all of the Terms herein. Prior to acceptance of Goods and Services by Buyer, Seller may withdraw or modify its conditional acceptance of the Order.
- 3. Complete Agreement.** The Agreement along with these Terms (collectively referred to herein as the "Agreement") constitutes the entire agreement between the parties and supersedes all prior agreements with respect to the Goods and Services whether such agreements were written or oral. These Terms apply to the Agreement to the exclusion of any other terms that Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. These Terms are also available online at [www.ca.endress.com](http://www.ca.endress.com). Seller may amend these Terms at any time at its discretion. These Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified. Special terms may apply in respect of software support services and/or other specific services if agreed between the parties.
- 4. Modification.** No modification, amendment, extension, renewal, rescission, discharge, abandonment, waiver or other change or alteration shall be valid, enforceable or binding on Seller unless agreed to in writing by Seller. Seller shall not be bound by any additional or different terms, whether printed or otherwise, in the Order or any other communication from Buyer to Seller unless specifically agreed to by Seller in writing. Prior courses of dealing, usage of the trade, and verbal agreements not reduced to writing and signed by Seller, to the extent that they modify, add to, or detract from the Agreement, shall not be binding on the Seller. Seller may, at its option, treat any attempted modification, termination or repudiation by Buyer to which Seller does not assent as a breach of the entire Agreement and claim all proper damages.
- 5. Termination.** If all or part of the Agreement is terminated by agreement of the parties, and if there is no contrary written agreement between Seller and Buyer, Buyer shall pay termination charges in the amount equal to the greater of (I) ten (10) percent of the net sales price or (II) (a) the price provided in the Order for all Goods assembled and Services performed prior to the agreement by Seller to terminate, plus (b) the actual expenditures made and liabilities incurred by Seller in connection with any portion of the Goods and Services not yet completed (as evidenced in writing), plus (c) reasonable estimated profit on the not yet completed portion of the Goods and Services.
- 6. Price, Payment Terms, and Security Interest.** The price for Goods shall be the price set out in the Order confirmation. The price of the Goods is exclusive of all costs and charges of packaging, insurance, and transport of the Goods. The charges for Services shall be on a time and materials basis and shall be calculated in accordance with Seller's standard daily fee rates and service rate schedule, which is available upon request. The price for Goods and Services are collectively hereinafter also referred to as the "Prices". Seller's Prices may be subject to change and are subject to Seller's standard annual price increases. Seller will notify Buyer of any Price increase. Unless provided otherwise on the face of this Agreement, Buyer shall pay the purchase price for the Goods and Services in full within 30 days from date of shipment. Buyer shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction, or withholding except as required by law. Seller may, without limiting its other rights or remedies, set off any amount owing to it by Buyer against any amount payable by Seller to Buyer. All invoices not paid when due will thereafter be subject to a monthly service charge of one and a half percent (1½%) of the unpaid balance. If, in Seller's opinion, there is a material, adverse change in Buyer's financial condition or if Buyer has not, within the agreed time, fully paid for Goods shipped and Services performed under this or any other agreement with Seller, Seller reserves the right to revoke Buyer's credit, to require shipment of Goods C.O.D., and/or suspend performance on this and/or other agreements and/or future shipments. Buyer hereby grants Seller a purchase money security interest in the Goods until the full purchase price is paid, and Buyers appoints Seller as its attorney-in-fact for the purpose of filing any documents necessary or desirable to perfect such security interest in any applicable jurisdiction.
- 7. Services.** In the event services are also provided to Buyer by Seller (including, but not limited to the licensing of software), Seller will provide services ("Services") to Buyer in accordance with the Buyer's service specifications and these Terms. However, Seller shall not be obligated to perform Services as a result of malfunctions of the Goods caused by: (a) the deliberate or negligent acts of persons other than the Seller; (b) inadequate facilities of Buyer; (c) systems or equipment outside Seller's control (such as those provided by vendors of utilities), and (d) modifications to the Goods made by a party other than the Seller. Seller shall have the right

to make any changes to the Services that are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.

Buyer shall provide Seller with reasonable access to its premises as necessary for Seller to perform the Services. At all times Seller's personnel will comply with Buyer's safety and security precautions, procedures, and guidelines. Seller will immediately inform Buyer of any injury or accident occurring on Buyer's premises involving Seller's personnel. Seller will provide Services in a manner as to minimize interference with Buyer's operations. Buyer shall cooperate with the Seller in all matters relating to the Services and provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is accurate in all material respects. Seller shall have the right to rely on information and materials provided by Buyer and Seller shall not be liable for Services performed, provided that such Services are provided in accordance with Buyer's specifications. Buyer shall obtain and maintain all necessary licenses, permissions and consents which may be required for the Services to be performed prior to the date on which the Services are to start, and keep and maintain all materials, equipment, documents and other property of the Seller ("Seller Materials") at the Buyer's premises in safe custody at its own risk, and in good condition until returned to the Supplier, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorization.

**8. Delivery/Shipment.** Seller shall deliver the Goods to the location as set out in the Order Confirmation (Delivery Location) and in accordance with the INCOTERM referred to in the Order Confirmation (in the absence of written agreement to the contrary) and shall be deemed complete pursuant to the agreed upon delivery terms. If no terms are specified, the delivery terms shall be CPT domestic site (Incoterms 2010). Buyer shall pay all shipping, packing and handling costs and shall bear the risk of loss after Seller completes delivery of the Goods to the carrier. Buyer shall have five (5) days after any full or partial delivery to notify Seller if Buyer's count of delivered Goods does not conform with Seller's count as identified in the itemized packing list accompanying the shipment.

**9. Title.** Title to the Goods shall only pass upon: Shipment of Goods.

**10. Sales or Use Taxes.** In compliance with various provincial sales tax statutes and regulations, Seller will add sales tax to the sale of a taxable order unless Buyer provides documentation that is complete, legally acceptable in form, and valid in accordance with applicable laws and regulations of the province that has jurisdiction over the sales transaction. The jurisdiction province shall be the province of Ontario. Buyer shall be held liable to Seller for monies due for sales tax if a subsequent tax audit determines that Buyer provided incomplete or invalid documentation, unless Buyer provides additional documentation to correct any deficiencies in the original documentation in accordance with applicable provincial laws and regulations and audit requirements.

**11. Time of Delivery.** Shipment and Service schedules are approximate and are based on conditions existing at the time of execution of the Agreement. Seller shall attempt to effect delivery or performance of Services in good faith by the date specified on the Order. Buyer agrees that Seller shall not be responsible or liable for any damages, including but not limited to, direct, indirect, special or consequential damages, arising from any shipment of nonconforming Goods, or any delay in delivery of Goods or performance of Services, or any failure to deliver Goods in quantities and at times specified. In such cases, Seller reserves the right to terminate the Agreement or to reschedule delivery within a reasonable time, and Buyer agrees that such termination or rescheduling shall not be considered a breach of the Agreement. In no event shall Seller be liable for incidental or consequential damages resulting from failure to meet requested delivery schedules. Goods and Services shall be deemed accepted when received by Buyer or upon completion of Services, respectively. Buyer's revocation of acceptance, if any, must be made in writing within fifteen (15) business days after receipt of the Goods or completion of the Services. The writing must specify Buyer's reason for revocation of acceptance. The terms of this section do not limit or affect Buyer's rights or Seller's warranty obligations specified hereunder.

**12. Returns.** Except for the return of nonconforming and defective Goods, all returns of Goods shall be made in strict compliance with Seller's Return Policy as may be in effect from time to time, a written copy of which is available to Buyer upon request.

**13. Storage Fees.** If Buyer requests deferral of shipment, or fails to provide information, material or documentation required by this Agreement and as a result Goods are placed in storage, storage fees will commence immediately following the scheduled ship date unless extended in writing. The Buyer will be charged a storage fee equal to Seller's actual cost to store the Goods. These charges will be invoiced to Buyer separately from the actual shipment and shall be paid in full by Buyer within thirty (30) days of date of invoice.

**14. Specifications.** Goods and Services shall be deemed to be in conformity herewith if they conform to the specifications provided by Buyer. In the event ambiguities, discrepancies, or express conflicts exist between the specifications and any other item purporting to describe or define the Goods or Services, including but not limited to drawings, photographs, models or other documentation, the specifications shall control unless otherwise agreed to in writing by Seller. Buyer agrees that Seller shall have no responsibility to identify or notify Buyer of any such ambiguity, discrepancy, or conflict. Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

**15. Nonconforming Goods.** Seller reserves the right to cure any shipment of nonconforming Goods. At the option of Seller, Buyer's remedies for nonconforming Goods shall be limited to the repair or replacement of the nonconforming Goods, and if repair or replacement is not possible, return of the nonconforming Goods and repayment of any portion of the purchase price paid.

**16. Seller's Express Warranty.** Seller warrants the Goods to meet the specifications provided in the Order and to be free from defects in materials and workmanship under normal use and service for a period of one year from time of shipment. Seller further warrants that for a period of one year from time of completion of Services, Services will conform to the specifications set forth in the Order and that Seller will perform Services in a professional and workmanlike manner in accordance with all applicable laws and regulations. Buyer agrees that it has the sole responsibility for the proper selection application, installation, use and instructions (concerning use, application, periodic maintenance, and cautions of the Goods) to ultimate users of the Goods and Services. Buyer agrees that the warranty provided herein shall not apply to any Goods or Services which: (1) have been repaired or altered outside of Seller's factory in any way so as, in Seller's judgment, to affect such Goods' or Services' reliability; (2) have been subject to misuse, negligence, or accident; (3) have been operated other than in accordance with the printed instructions prepared by Seller and provided by Seller with the Goods or Services; or (4) have been subject to abnormal wear of wetted parts caused by Buyer's application of the Goods. Furthermore, Buyer acknowledges that repairs performed by Buyer or others are not warranted by Seller, and that third party equipment shall be subject to the warranties provided therewith. Notwithstanding anything to the contrary herein, it is understood and agreed that the provisions of the Ontario Sale of Goods Act, the Ontario Consumer Protection Act, and similar legislation throughout Canada are hereby waived by the Customer.

**17. Seller's Exclusive Obligations under Warranty.** Seller shall re-perform, at Seller's sole cost and expense, any Services which do not comply with the applicable warranties specified hereof. At Seller's option, Seller may repair, replace, or refund the purchase price of Goods. Goods shall be returned to Seller no later than one month after the expiration of the applicable warranty period and in the manner set forth in this clause and in a manner in which Seller's examination shall disclose to Seller's satisfaction that Goods are defective as specified in the warranty clause hereof. All allegedly defective Goods shall be returned to the Seller at Buyer's expense and risk. All such defective or nonconforming Goods shall be returned to Seller at Burlington, Ontario, freight prepaid, unless otherwise agreed by the parties in writing, and shall be accompanied or preceded by a particularized statement of the claimed defect. Under such circumstances, freight charges to and from Seller and risk of loss shall be borne by Buyer. Seller shall bear the cost of repair or replacement and the risk of loss while the Goods are in Seller's possession at Seller's plant. If Goods are returned without being preceded or accompanied by a written statement of the claimed defect, Seller shall hold the Goods pending receipt of Buyer's statement of defect, provided that, prior to such receipt, risk of loss of the Goods shall remain with the Buyer.

**18. Limitation of Remedies.** SELLER'S OPTION TO REPAIR, REPLACE OR REFUND THE PURCHASE PRICE FOR GOODS OR RE-PERFORM SERVICES IS BUYER'S EXCLUSIVE REMEDY AGAINST SELLER WHETHER SUCH REMEDY ARISES OUT OF BUYER'S CLAIM FOR BREACH OF WARRANTY, BREACH OF CONTRACT OR ANY OTHER CLAIM WITH RESPECT TO THE GOODS AND SERVICES AND SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOSS OR PROFIT OR OTHER ECONOMIC LOSS) OR OTHER DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES ARISING OUT OF THE FURNISHING, PERFORMANCE, USE OF, OR PROVIDING THE GOODS AND/OR SERVICES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES AGREE THAT CONSEQUENTIAL DAMAGES FOR PURPOSES OF THIS AGREEMENT REPRESENT ANY DAMAGES OTHER THAN THE COST TO REPAIR, REPLACE OR REFUND THE PURCHASE PRICE OF THE GOODS WITH RESPECT TO WHICH THE LOSS OCCURRED.

**19. Seller's Disclaimer of Implied Warranties.** SELLER'S EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, AND SELLER HEREBY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER AGREES THAT MODELS OR SAMPLES SHOWN TO BUYER, IF ANY, WERE USED MERELY TO ILLUSTRATE THE GOODS AND NOT TO REPRESENT, PROMISE, OR GUARANTEE THAT ANY GOODS DELIVERED HEREUNDER WOULD CONFORM TO SUCH MODELS OR SAMPLES. SELLER'S AGENTS HAVE NO AUTHORITY TO GIVE WARRANTIES BEYOND THOSE PROVIDED IN THIS LIMITED EXPRESS WARRANTY.

**20. Indemnification.** Buyer agrees to indemnify and hold harmless Seller against all damages, costs, expenses and attorney's fees arising from claims of infringement of patents, designs, copyrights or trademarks with respect to all Goods manufactured or assembled either in whole or in part to Buyer's specifications. Buyer agrees that such infringement shall be deemed a breach of the Agreement. Seller further reserves the right to terminate the Agreement for Goods which, in the opinion of Seller, infringe upon any patent, design, copyright or trademark in their manufacture, sale and/or use, and Buyer agrees that such termination shall not be considered a breach by Seller of the Agreement. Buyer further agrees that Seller shall not be liable under this provision if the Goods or Services are

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altered or modified in any manner after Seller delivers such Goods to the carrier for delivery to Buyer or completes performance of any Services.

**21. Import and Export Compliance.** Buyer is solely responsible for compliance with all applicable import and export control laws, in any jurisdiction, relating to the Goods and Services. Buyer shall undertake all necessary actions to comply with such laws, including, but not limited to, processing of all necessary customs procedures, payment of import/export duties and import/export taxes, completion and maintenance of documentation and provision of accurate information to all customs authorities. Buyer shall indemnify and hold harmless Seller against all damages, costs, expenses and attorney's fees arising from or alleged to arise from any violation, alleged violation, or failure to comply with, the terms of this provision by Buyer or any person for whom Buyer may be responsible.

**22. Buyer Default.** Seller shall have the unrestricted right, upon written notice to Buyer, to declare a default ("Buyer Default") hereunder and to terminate this Agreement if any of the following events occur: 1) Buyer's failure to comply with any of the provisions, terms and conditions of this Agreement, including without limitation, Buyer's failure to timely pay for any Goods or Services delivered to Buyer; 2) Seller's ability to perform of any of its obligations in respect of Services is prevented or delayed by any act or omission by Buyer or failure by Buyer to perform any relevant obligation, after a reasonable opportunity to cure such Buyer's failure to perform or act or omission; 3) Dissolution, insolvency, appointment of a receiver, assignment for the benefit of creditors or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Buyer; or 4) Seller's determination, in its sole discretion, that Buyer's financial condition is such as to endanger Buyer's performance hereunder.

**23. Remedies Upon Buyer's Default.** Upon Buyer's Default and Seller's written notice thereof to Buyer, every obligation of Seller hereunder shall immediately terminate and Seller shall have all rights and remedies existing at law or in equity, including but not limited to those provided by the Uniform Commercial Code as adopted in Ontario, and Buyer shall reimburse Seller on written demand for any costs or losses sustained or incurred by Seller arising directly or indirectly from the Buyer Default. Seller shall also have the right to suspend performance of any Services until Buyer remedies such Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays Seller's performance of any of its obligations.

#### **24. Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Ontario and Canada.

#### **25. Jurisdiction**

Each party irrevocably agrees that the courts of Ontario and Canada shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

**26. Reservation of Rights.** Buyer agrees that Seller's forbearance, delay or failure to exercise any right or remedy hereunder shall not constitute a waiver of such right or remedy and that Seller's exercise or partial exercise of any right or remedy shall not preclude further exercise of such right or remedy or any other right or remedy.

**27. Costs of Enforcement.** Buyer agrees to pay Seller's reasonable expenses, including reasonable attorney's fees and costs, incurred in enforcing the terms herein.

**28. Choice of Law and Venue.** The Agreement shall be governed by the laws of the province of Ontario, excluding its provisions on conflicts of law. Exclusive venue of any dispute or action arising out of this Agreement will lie in any province or federal court of competent jurisdiction in Burlington, Ontario.

**29. Severability of Clauses.** Buyer agrees that the invalidity or unenforceability of any of the clauses or terms herein shall not affect the validity or enforceability of any other clauses or terms hereof. Sections 15-20, 28 and 30, and any other clause as the context implies, shall survive the termination or expiration of this Agreement.

**30. Alternative Dispute Resolution.** If a dispute arises between the parties, the parties agree to use the following alternative dispute resolution ("ADR") procedure prior to either Party pursuing other available remedies:

- 1) A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
- 2) If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the parties to act as a mediator. If the parties are

unable to agree on the neutral person within twenty (20) days, they shall seek assistance in such regard from ADR Chambers of Canada (“ADRCC”). The fees of the neutral person and all other common fees and expenses shall be shared equally by the parties.

3) The mediation may proceed in accordance with ADRCC’s Mediation Rules. The parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within sixty (60) days, then, upon seven (7) days’ written notice to the other party either party may suggest another form of ADR, *e.g.*, arbitration, a mini-trial or a summary jury trial, or may pursue other available remedies.

31. **Confidentiality.** The parties agree to treat the Order, this Agreement, and any contract formed upon its acceptance as confidential and shall not disclose the existence or substance hereof to any third party. If in connection with the provision of goods or services hereunder a party (each one a “Recipient” as applicable to this provision) becomes aware of or receives any confidential information of the other party (each one a “Discloser” as applicable to this provision), Recipient agrees not to disclose such information to any third party or to make use of such information, except to the extent necessary to perform hereunder or as required by law. Upon Discloser’s request, Recipient shall promptly return to Discloser all Confidential Information in tangible form. The parties agree that any disclosure or use of the other party’s Confidential Information, except as otherwise authorized herein or by Discloser in writing, would be wrongful and cause immediate and irreparable injury to Discloser. Recipient agrees to immediately notify Discloser of any unauthorized disclosure or use of any Discloser’s Confidential Information of which Recipient becomes aware. This clause shall survive termination of this Agreement.

32. **Independent Contractors.** In performing its obligations to Buyer, hereunder, Seller is acting as an independent contractor and neither party is an agent or representative of the other. Neither party is authorized to make any representations or assume or create any obligations on behalf of the other.

33. **Limitation of Liability.** NOT WITHSTANDING THE OTHER PROVISIONS OF THIS AGREEMENT TO THE CONTRARY, THE AGGREGATE LIABILITY OF EACH PARTY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS AND LIABILITIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR TO THE BUYER’S OR SELLER’S RIGHTS AND OBLIGATIONS HEREUNDER, WHETHER BASED ON A THEORY OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE GOODS OR SERVICES. IN NO EVENT SHALL SELLER’S LIABILITY TO BUYER EXTEND TO INCLUDE INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM “CONSEQUENTIAL DAMAGES” SHALL INCLUDE BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR USE AND COSTS INCURRED. THIS CLAUSE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

34. **Compliance with Governing Laws and Regulations.** The Parties acknowledge and agree that all business activities shall be conducted ethically, with integrity, and in full compliance with both the letter and the spirit of the laws and regulations applicable to those activities. This commitment applies without limitation to the award of contracts/subcontracts on an impartial/competitive basis, personal business conduct, internal control systems, the offering/giving/receiving of gifts or anything of value, and correct documentation and registration of financial accounts. Neither Buyer nor its employees are authorized to operate on Seller’s behalf in an illegal manner or in contrast with Seller’s business-conduct policies and vice-versa. Should a Party ever receive, directly or indirectly from any of the other Party’s representatives or agents, a request that the Party believes is contrary to the provisions of this clause, that Party shall immediately notify the other Party’s general counsel.

Without limiting the generality of the foregoing or the effect of any other provision of this Agreement, and to the extent either Party performs any work or obtains or sells any of the products in relation to this Agreement in or from a foreign country:

a. Each Party represents and warrants that it is familiar with the Corruption of Foreign Public Officials Act (“the CFPOA”), and the Criminal code of Canada (the “Criminal Code”), as amended,. Each Party further represents that, in particular, it is familiar with the prohibitions of the CFPOA and the Criminal Code against offering, paying or giving anything of value, either directly or indirectly, to foreign or domestic officials (including employees of state-owned or controlled enterprises), candidates or political parties for the purpose of securing any improper advantage for a company, including assisting a company in obtaining or retaining business.

b. Each Party agrees that it shall not make any offer, payment, promise to pay, gift, or promise to give monies or anything of value; nor authorize any such offer, payment, promise to pay, gift, or promise to give by anyone acting for or on behalf of itself or the other Party; to any government official, any political party or official thereof, any candidate for political office, any official of a public international organization, or any other person that is contrary to the provisions of the CFPOA or the Criminal Code, as amended.

c. Each Party agrees that it shall not make any offer, payment, promise to pay, gift, or promise to give monies or anything of value; nor authorize any such offer, payment, promise to pay, gift, or promise to give by anyone acting for or on behalf of itself or the other Party; to any employee of a private company in order to improperly induce that employee to provide any competitive advantage to either Party in selling products or services or in otherwise doing business with that company.

d. Each Party agrees to maintain records for 5 years and present them for auditing upon demand by the other Party if there is any suspicion that a violation of this provision 33 may have occurred.

e. Both Parties represent that neither it nor any of its directors, officers, or employees is a government official, including without limitation an official or employee of any government, an official of a political party, or a candidate for political office, or a director, officer, employee, or "affiliate" (as defined in the CFPOA) of a government instrumentality. Both Parties understand that for purposes of this agreement, a "government official" may include an employee or official of a commercial entity or a university or institute of higher learning in which a government body has an ownership interest or exerts control over the activities of such entity, as well as officials and employees of public international organizations.

Each Party acknowledges that the representations and warranties provided in this clause are material to this Agreement. These representations shall be deemed to be continuing in effect throughout the term of the Agreement. Both Parties shall promptly advise each other of any change in circumstances which may affect the continuing validity of their representations. Either Party may terminate this Agreement at any time, without any liability or obligations to the other Party, if that Party believes, in good faith, that the other Party has violated any provisions of this clause. Any action by either Party which would or might constitute a violation of the CFPOA or the Criminal Code, as amended, or a request for such action from or by a representative of either Party shall result in immediate termination of this Agreement without further liability or obligation of the other Party.

**35. Force Majeure.** The Seller will not be responsible or liable in any way for delay or failure to effect delivery of Goods and Services pursuant to its obligations under this Agreement in which effectuation is hindered or prevented by conditions reasonably beyond its control, acts of God, fire, flood, other weather conditions, war, embargo, explosions, riots, laws, rules, regulations, or orders of any governmental authority.

**36. Assignment.** This Agreement may not be assigned by either Party to any third party without the prior written consent of the other Party hereto; provided, however, that a Party may assign its rights and obligations hereunder by written notice to the other Party to (a) any Affiliate or (b) a successor or transferee (whether by merger, consolidation, purchase or otherwise) of either (i) all or substantially all of the assets of the assignor, or (ii) all or substantially all of the assets of the business to which it pertains; and provided such party is not a competitor of the non-assignor. Any purported assignment in violation of the preceding shall be void. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve a Party of responsibility for the performance of any obligation which accrued prior to the effective date of such assignment.

**37. Intellectual Property.** All Intellectual Property Rights in or arising out of or in connection with this Agreement and/or the Services shall be owned by Seller.

**38. General Definitions.**

- a) Agreement: means the receipt and acceptance by Seller of the Order along with these Standard Sales and Service Terms and Conditions, Sellers' invoices, delivery forms, or other Seller documents related to the Order.
- b) Goods: means any and all goods purchased by Buyer from Seller in connection with this Agreement and as specified in the Order.
- c) Intellectual Property Rights: means patents, inventions, copyright and related rights, trademarks, trade names, business and domain names, goodwill, designs, database rights, processes, know-how, trade secrets, computer technical expertise, general product and process expertise, software and other intellectual property independently developed, owned, and/or controlled by Seller and any improvements thereto which are used, improved, modified, or further developed by Seller during its performance under this Agreement, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and right to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, shall be and remain the property of Seller.
- d) Services: means any and all services, including any deliverables, purchased by Buyer from Seller in connection with this Agreement and as specified in the Order.

**39. Language.**

The parties acknowledge that they have required that the agreement evidenced hereby be drawn up in English. Les parties reconnaissent avoir exigé la rédaction en anglais du Contrat. In the event of a conflict between the English and other language versions, the English version will prevail.