

These Terms and Conditions of Service shall apply to the supply of services by Seller – if purchasing goods and/or products, the current version of Emerson's Digital Cold Chain Terms & Conditions of Sale ("Terms of Sale"), which are incorporated by this reference, shall also apply; in the event of any conflict between these Terms and Conditions of Service and the Terms of Sale, these Terms and Conditions of Service shall control. Any capitalized term which is not herein defined shall have the same definition as found in the Terms of Sale. Any term capitalized herein and not defined in either location shall have its ordinary, dictionary definition applied.

1. TRIAL BASIS:

A. Seller may make one or more Services available to Buyer on a trial basis free of charge until the earlier of (i) the termination date set forth on any applicable Orders or (ii) the start date of any Services purchased by Buyer. Additional trial terms and conditions may appear on the applicable orders. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

B. ANY DATA BUYER ENTERS INTO THE SERVICES BY OR FOR BUYER DURING THE TRIAL PERIOD WILL BE PERMANENTLY LOST UNLESS BUYER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED DURING THE TRIAL PERIOD. BUYER MUST EXPORT OUTPUT BEFORE THE END OF THE TRIAL PERIOD OR OUTPUT WILL BE PERMANENTLY LOST. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES OF ANY KIND RELATED TO THE LOSS OF SUCH DATA, EVEN IF SELLER HAS BEEN APPRISED OF THE CONSEQUENCES OF SUCH LOSS PRIOR TO OR DURING THE TRIAL PERIOD.

C. All the terms and conditions of this Agreement, including the Terms incorporated by reference herein, are binding on Buyer and Buyer's use of the Services during the trial period. NOTWITHSTANDING SECTION 11 DURING THE TRIAL PERIOD THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND ANY SUCH WARRANTIES ARE HEREBY DISCLAIMED. NOTWITHSTANDING SECTION 12, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES WHATSOEVER ARISING OUT OF OR RELATED TO SELLER'S PROVISION OF THE SERVICES OR BUYER'S USE OF THE SERVICES DURING THE TRIAL PERIOD.

2. START AND DURATION OF SERVICES: Seller shall perform the Services, subject to the fulfillment by Buyer of all conditions precedent stipulated by Seller. In the case of Services to be performed on Buyer's premises ("Site"), traveling time between Seller's personnel's home bases and Site shall, unless otherwise expressly agreed in writing by Seller, be deemed to be part of the Services and shall be chargeable. Performance of the Services by Seller shall be subject to the timely provision by Buyer of adequate and accurate information and/or instructions. Seller shall not be liable for any delay or increase in the work caused by Buyer's failure to provide such information and/or instructions, nor for any other acts or omissions of Buyer, and Buyer shall reimburse Seller for any additional costs incurred by Seller as the direct result of any such failure, act or omission. Any times for completion shall be treated as estimates only, unless expressly otherwise agreed, not rendering Seller liable in any way for failure to complete the Services by such times. In all cases the time for completion shall be extended in cases such as, but not limited to, the event that Seller is prevented from fulfilling its obligations due to industrial disputes or any other circumstances beyond its reasonable control. One condition precedent may be that Buyer must click to accept or agree or sign such a statement, if Seller so requires to begin Services.

3. PURCHASED SERVICES:

A. Seller shall make the Services available to Buyer as purchased by Buyer through Orders pursuant to this Agreement and subject to these Terms. Buyer agrees that Buyer's purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Seller regarding future functionality or features.

B. Buyer agrees that (i) Services are purchased as subscriptions and may not be accessed or used by Buyer, the users, or Buyer's employees, contractors, or other participants in excess of the subscription amounts specified in the Orders, (ii) additional subscriptions may be added during the subscription term at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the subscription term in effect at the time the additional subscriptions are added, and (iii) the added subscriptions shall terminate on the same date as the pre-existing subscriptions. Except as otherwise specified by Seller in the Orders, subscriptions are based on the persons designated by Buyer as the permissible users or employees, contractors, or other participants and cannot be shared or used by anyone except as permitted in the Orders. Buyer is responsible for ensuring that Buyer's employees, contractors, and customers comply at all times with the Terms in using the Goods or Services.

4. PRICES: The applicable prices for Services are set forth in Seller's written proposal, statement of work, or Acknowledgement of Order Form.

5. PERMITS, FEES, AND TAXES: Buyer shall obtain and pay for all permits, licenses, visas, and other approvals (if any) required for Seller to perform Services. Buyer shall also be responsible for all sales, value added, use, excise, or similar taxes arising from the sale and/or performance of Services. All undisputed overdue Fees will be subject to a finance charge at the lesser of one percent (1.0%) per month or the maximum rate allowed by law beginning fifteen (15) days after a Fee is due, plus all expenses, including attorney's fees and expenses, incurred by Seller in collecting any overdue amounts. Buyer's obligation to pay any Fees and/or interest shall survive the expiration or earlier termination of the Agreement and/or any applicable invoice. Fees for the Services are exclusive of all taxes now in force or enacted in the future, and the Buyer shall pay all such applicable taxes. Buyer shall be responsible for obtaining and providing to Seller any certificate of exemption or similar document required exempting Buyer from any tax liability.

6. BUYER SUPPLIED INFORMATION:

A. Should Seller become aware of any errors, inaccuracies, inconsistencies, or ambiguities in the information provided by Buyer, it shall advise Buyer of same; it being recognised by Buyer that Seller shall have no obligation to verify or otherwise assess the correctness of information provided to it. Buyer shall promptly advise Seller if Buyer becomes aware of any inaccuracy or error in Seller's interpretation of Buyer's information.

B. Buyer shall indemnify and hold Seller fully harmless against all claims, liabilities, costs, losses and/or expenses of any kind whatsoever arising directly or indirectly as the result of Seller having acted upon or carried out the Services in accordance with Buyer's or its representative's, agents or servant's instructions, or Buyer supplied information.

7. SUPPLY OF SELLER'S PLANS FOR APPROVAL:

A. If Seller is required to submit to Buyer for Buyer's approval copies of specifications and/or drawings, unless otherwise agreed, two copies only shall be submitted. Such specifications and drawings submitted shall be approved within the periods agreed, or when no periods are agreed, within fourteen (14) days from the date of submission. They shall be deemed to have been approved upon expiry of such period if Buyer shall not have given his approval or otherwise in writing before expiry thereof. However, on a case by case basis Seller shall be entitled to stop working, if Buyer does not approve within the period agreed above. Any agreed timeline shall be reasonably extended after such stop of work.

B. Buyer shall promptly advise Seller if Buyer becomes aware of any inaccuracy or error in Seller's Data.

8. CONFIDENTIALITY: In accordance with a fully executed Non-Disclosure Agreement applicable to the Services provided, or in the absence of an applicable NDA:

A. Seller undertakes for a period of five (5) years from the date of formation of the Contract to keep confidential and not to disclose to any third-party without Buyer's written consent any Data supplied by Buyer relating to the Site or Buyer's/Client's processes which have been designated in writing by Buyer as confidential, except as may be necessary for the proper performance of the Contract or where required by law to do so.

B. Buyer shall for a period of five (5) years from the date of the Contract keep confidential and not disclose to others without Seller's prior permission in writing any Data whether of a commercial or technical nature, acquired from Seller and shall use the same only for the purpose of (a) carrying out the Contract, and (b) the installation, operation and maintenance of the Goods.

C. Both parties agree to keep Data received from the other party and which is the subject of Section 8(A) and/or 8(B) in the way they keep information of their own.

D. Nothing contained in Sections 8(A), 8(B) and 8(C) shall apply to prevent either party from disclosing Data:

- in its possession (with no restriction on disclosure) prior to receiving it from the other, or
- which is or later becomes public knowledge other than by breach of this Section, or
- which it may independently receive from a third-party with no restriction on disclosure, or
- which is independently developed by an employee who has not benefited from the Data referred to in Section 8(A) or 8(B).

9. INTELLECTUAL PROPERTY

A. Seller shall retain ownership of all inventions, designs, processes, algorithms, including software, models, designs, drawings, documents, inventions, information and know-how made or evolved by it, whether during the course of providing Services or otherwise, and, except as provided in this Section 9, no rights in intellectual property are hereby granted.

B. All Software and Documentation, all derivative works, all art, design, and information contained on Seller's websites, and all related intellectual property are the sole and exclusive property of the Seller. The Buyer has no rights in the intellectual property except those limited license rights expressly granted in this agreement. Buyer and its employees and agents shall use the Services in compliance with all applicable licenses, contracts, laws, ordinances, orders, rules and regulations, and shall not attempt to access or use the Services or Host Network in any unauthorized or improper manner. Buyer and its employees and agents shall not attempt to circumvent any of Seller's technical security or licensing restriction on the Software, Services, or any network used by Seller to host Software and data ("Host Network"). Buyer and its employees shall not access, retrieve or index any Seller website except as specifically authorized in this agreement. Buyer shall not manufacture, duplicate, alter, adapt, modify, translate, reverse engineer, decompile, or disassemble the Software or any related information.

C. Neither party shall use any trademark, service mark, brand name, or any other intellectual property of the other except as provided in a separate agreement signed by the parties. Notwithstanding, the Buyer may disclose that Seller is the underlying provider of its service.

D. Seller grants to the Buyer a limited, non-exclusive, non-transferable right and license to access and use the Software (including Documentation) and Services described in the statements of work during the term of this Agreement, solely for internal business operations and not for sublicensing, sharing with, or resale to any other party. This license is subject to the terms of an applicable End User License Agreement which is incorporated by reference as part of this Agreement. "Documentation" includes all user manuals, operating manuals and other instructions, specifications, documents and materials, in any form or media, that describe any component, feature, requirement or other aspect of the Services, including any functionality, testing, operation or use.

E. Buyer shall not (i) permit any third-party to access the Software or Services except as permitted herein or as otherwise agreed, (ii) create derivative works based on the Software or Services, (iii) copy, frame, or mirror any part or content of the Software or Services, other than copying or framing on Buyer's own intranets or otherwise for Buyer's own internal business purposes, (iv) reverse engineer the Software or Services, or (v) access the Software or Services in order to build a competitive product or service or copy any features, functions, or graphics of the Software or Services.

F. Seller further owns all Output (defined below) generated by the use of the Products, Software Products, or during the course of the Services. The Output may be used by Seller for its business purposes including, but not limited to, services, diagnostics, research and development, product or service improvements, optimization of customer usage, and quality control. No end-user or customer-identifiable data will be provided to any third party. Subject to the terms and conditions of this agreement, Seller hereby grants Buyer a worldwide, non-exclusive, non-transferable, perpetual, royalty-free license to use the Output provided to or collected by Seller in the ordinary course of using the Software Products or Services. "Output" means all electronic data or information generated through Buyer's use of the Products, Software Products, or during the course of the Services.

G. If Buyer sends Seller ideas relating to Seller's current or prospective Goods, regardless of what Buyer's submission states, Buyer agrees that Seller can use the ideas for any purpose and in any way, including but not limited to production, sale, transfer, or disregard without future liability to Buyer.

10. INSPECTION AND WORKS TEST:

A. The Goods may be subject to Acceptance Tests, as detailed in Seller's quotation and as further agreed in writing by the Parties. If Buyer wishes to inspect the equipment or to witness any tests, such viewing shall be mutually agreed.

B. In the event that Buyer or his representative fail to attend the Acceptance Tests on the due date, Seller shall be entitled to proceed in their absence and the results of such tests shall be deemed to be in accordance with the Acceptance Test certificate issued by Seller, based on the Test Acceptance Criteria. Such certificate may record that the Acceptance Tests had been carried out in the absence of Buyer or its representative and/or that the Goods had passed the Acceptance Tests subject to reservations relating to minor defects, which are to be remedied by Seller at a time to be agreed.

C. If during the Acceptance Tests any of the Goods is found not to be in accordance with the Specification, Seller shall within reasonable time remedy the defect. The Acceptance Tests shall be repeated only in case of major deficiencies and not in the case of minor defects not affecting the functionality of the Goods.

D. If the Acceptance Tests show that the Goods meets the Specification and if Buyer or his representative has attended the Acceptance Test, then Buyer or his representative shall sign an acceptance certificate accordingly. Buyer shall not be entitled to refuse acceptance in case of minor deficiencies, such as any deviation from the agreed specification which does not prevent the Buyer from operating the Goods / not affecting the functionality of the Goods. The acceptance certificate may record that the Goods have passed the Acceptance Tests but subject to reservations relating to minor defects which will be remedied by Seller at a time to be agreed.

E. Buyer shall be deemed to have accepted the Goods upon issue of the test certificate referred to in Section 10(B) or upon signature of the Acceptance Certificate referred to in Section 10(D).

F. Acceptance of Services shall be deemed to have occurred on the later to occur of: (1) acceptance of the Goods to which the Warranties, as described above; or (2) upon completion of all Services (without prejudice to the provisions of Section 23(B)).

11. WARRANTY:

A. Seller's warranty given in Clause 6 of the Terms of Sale shall be supplemented as follows insofar as the provision of Services is concerned.

B. Seller warrants to Buyer and to no other person or entity the following limited warranties: Services will conform to the specifications set forth in the Agreement, any statement of work, or documentation related thereto. Furthermore, Seller warrants (a) the Services will be performed in a professional and workmanlike manner; (b) Seller's personnel providing Services are trained and will use reasonable skill and care; (c) the Services and materials provided to Buyer under this Agreement will not infringe upon or violate the valid U.S. patents of any third-party, (d) to the extent Seller must access the Buyer's software database to perform the Services, no changes, upgrades, or configurations of any kind shall be performed without Buyer's written permission.

C. Seller does not warrant, and shall have no responsibility for, the data or other information generated by Buyer using the Goods, Software, and Services, and makes no warranty regarding the absence of errors or consequential effects on the business operations of the Buyer. Seller does not guarantee the privacy, security, authenticity, and non-corruption of any information transmitted through, or stored in any system connected to, the Internet. Except as expressly set forth herein, Seller shall not be responsible for any delays, errors, failures to perform, or disruptions in the Services caused by or resulting from any act, omission, or condition beyond Seller's reasonable control.

D. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH SERVICE, SOFTWARE, SAMPLE DATA, AND ALL TECHNICAL SERVICES ARE PROVIDED "AS IS" AND SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. SELLER DOES NOT WARRANT THAT THE USE OF ANY SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES SELLER WARRANT THAT IT WILL REVIEW THE BUYER DATA FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN THE BUYER DATA WITHOUT LOSS. SELLER SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO THIRD-PARTY HOSTING PROVIDERS WITH WHOM BUYER SEPARATELY CONTRACTS. SELLER DOES NOT MAKE ANY WARRANTIES AND SHALL HAVE NO OBLIGATIONS WITH RESPECT TO THIRD-PARTY APPLICATIONS. BUYER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

E. Buyer understands that the Products sold in connection with this Agreement may utilize wireless networks maintained by Buyer and that actual signal availability may depend on a combination of the products and Buyer's wireless network and that factors outside of Seller's control, such as buildings, usage, or maintenance activities of Buyer's wireless network may limit or interrupt the Services. As such, Seller will not be liable to Buyer or any third-parties for interruption or limitation of Services based on issues with Seller's wireless network.

F. Unless otherwise specified by Seller, the warranties in this Section apply as follows:

- Service: for 90 days from completion of the Services;
- Repaired, Replaced, or Re-Performed Services: from delivery of the replacement or completion of the repair or performance, for 90 days or until the end of the original warranty period (if later).

G. Section 11(F) applies if, within the warranty period, Buyer discovers any non-conformity with a warranty in this Section and informs Seller in writing of the non-conformity. Where this Sub-Section applies, Seller will, at its sole option, either: (1) correct any non-conforming Documents or Services; (2) repair or replace non-conforming Services; or (3) refund the price of the non-conforming Service.

12. LIMITATION OF LIABILITY

A. NEITHER PARTY SHALL BE LIABLE FOR ANY FAILURE OR DELAY IN PERFORMANCE TO THE EXTENT CAUSED BY FACTORS BEYOND ITS REASONABLE CONTROL, INCLUDING, ANY FORCE MAJEURE EVENT. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY BUYER'S FAILURE TO TAKE REMEDIAL MEASURES FOLLOWING NOTICE THAT THE SOFTWARE OR SERVICES ARE NOT PERFORMING IN ACCORDANCE WITH THE DOCUMENTATION.

B. BUYER ACKNOWLEDGES AND AGREES THAT SELLER SHALL NOT BE HELD LIABLE FOR ANY DAMAGES, INCLUDING THE LOSS OF PROSPECTIVE PROFITS, DATA, OR ANTICIPATED SALES, OR ON ACCOUNT OF EXPENDITURES, INVESTMENTS, OR COMMITMENTS INCURRED IN CONNECTION WITH BUYER'S BUSINESS, WHICH RESULT FROM OUTAGE OF SERVICES OR ANY OTHER FAILURE OF CONNECTIVITY TO THE HOST NETWORK. BUYER ACKNOWLEDGES THAT ITS SOLE REMEDY FOR SERVICE OUTAGES SHALL BE SPECIFIC REMEDIES AS DESCRIBED IN THE ORDER, STATEMENT OF WORK, OR SIMILAR DURING THE OUTAGE PERIOD. EXCEPT AS SPECIFIED IN AN ORDER, STATEMENT OF WORK, OR SIMILAR, SELLER SHALL NOT BE LIABLE FOR ANY OTHER TYPE OF DOWNTIME OR CONNECTIVITY FAILURE OR SERVICES INTERRUPTION.

C. IN NO CASE SHALL A PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES WITH RESPECT TO ANY CLAIMS REGARDING THE SERVICES, EVEN IF SUCH PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF. FURTHERMORE, IN NO EVENT SHALL SELLER BE LIABLE HEREUNDER TO BUYER FOR CUMULATIVE DIRECT DAMAGES FROM ANY CAUSE WHATSOEVER, REGARDLESS OF FORM OF ACTION, WHETHER IN CONTRACT, NEGLIGENCE OR OTHERWISE, IN ANY AMOUNT GREATER THAN (I) THE FEES PAID BY BUYER FOR THE SPECIFIC SERVICES GIVING RISE TO THE DAMAGES CLAIMED DURING THE SIX MONTH PERIOD PRECEDING THE OCCURRENCE OF DAMAGES, AND BUYER SHALL INDEMNIFY AND HOLD HARMLESS SELLER FOR ANY DAMAGES INCURRED BY SELLER IN EXCESS THEREOF. FOR THE AVOIDANCE OF DOUBT, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY PERISHABLE PRODUCT SPOILAGE IN CONNECTION WITH THIS AGREEMENT. The products sold in connection with this Agreement are not for use as the sole method of measuring or tracking temperature in products and articles that are perishable or could affect the health or safety of persons, plants, animals, or other living organisms, including but not limited to foods, beverages, pharmaceuticals, medications, blood and blood products, organs, flammable, and combustible products. Buyer shall assure that redundant (or other

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- primary) methods of testing and determining the handling methods, quality, and fitness of the articles and products should be implemented. Temperature tracking with this product, where the health or safety of the aforementioned persons or things could be adversely affected, is only recommended when supplemental or redundant information sources are used. Buyer shall be responsible for proper use and storage of this product.
- D. Neither party shall bring any action, whether in contract or tort, including negligence, arising out of or in connection with the Services, more than two years after the cause of action has accrued.
13. **SCHEDULED MAINTENANCE:** In connection with the any hosted services, Seller will use commercially reasonable efforts to conduct maintenance which may require Services or Host Network "down time" outside of regular business hours. The Buyer understands and agrees that Seller may, in its reasonable discretion, perform emergency maintenance at any time.
14. **SECURITY:** Seller shall provide technical and organizational safeguards against accidental, unlawful, or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling, or processing of Buyer's Confidential Information that ensure a level of security appropriate to the risks presented by the processing of such information and the nature of such information, consistent with industry practice and standards. Seller shall use diligent efforts to remedy any breach of security or unauthorized access in a timely manner and shall notify Buyer of any such breach or access that could reasonably be expected to affect the Buyer's Confidential Information.
15. **SITWORK:** When as part of the Services, Seller is responsible for the provision of Site Work, the following terms and conditions will apply to the Site Work.
16. **SCOPE OF SITE WORK:** Any Site Work to be provided by Seller shall be as detailed in the Services' scope.
17. **SITE FACILITIES:**
- A. To enable Seller's obligations in respect of Site Work to be expeditiously and properly carried out, Buyer will provide the facilities set out in the Service's scope at no cost to Seller, as and when required; if no such facilities are stated in the Service's scope, Buyer shall at no cost to Seller provide all facilities and assistance required by Seller which may include but shall not be limited to the following:
- suitable access to the Site, satisfactory foundations and environmental conditions for the Equipment, adequate lifting facilities and scaffolding, all unskilled labour, any masons', joiners' or builders' work necessary, suitable security and protection for the Site and for the Goods from time of delivery, storage facilities for tools/equipment, any electrical power, lighting and heating needed, suitable sanitation facilities and drinking water (reasonably close to the point(s) of installation of the Goods) and all other necessary facilities and assistance.
 - permanent and suitable electrical and/or air supplies for the Equipment, terminated in accordance with Seller's requirements.
 - convenient continuous and unrestricted access to the Site and to the Goods.
 - qualified operators and attendants for the Site.
 - a safe working environment for Seller's Personnel (including where appropriate, safety induction procedures and special protective clothing).
 - adequate first aid and medical facilities at or adequately close to the Site.
- B. Buyer will be responsible for ensuring that the Site is correctly installed and fit for its purpose and that any necessary minor adjustments, as the situation may require, to be made to the Site are carried out expeditiously. Any authorisations, permits, approvals, licences etc. that may be required in respect of performing the specific Site Work shall be within the Buyer's obligation and shall be made available to Seller prior to the commencement of Site Work.
- C. Unless otherwise agreed Seller will not be responsible for unloading the Goods and moving it to the place of Installation. If, in Seller's sole opinion, the Site environmental conditions are not suitable for the Installation of the Goods, a safe working environment does not exist on Site or if Buyer fails to have provided any facility or assistance as requested by Seller and in accordance to the Services' scope, Seller's obligations to provide Site Work shall be suspended (without liability to Seller) until the conditions have been rectified to Seller's satisfaction and any time limits for completion of the Site Work shall be appropriately extended. If the Goods have suffered loss, damage or deterioration after delivery and before Site Work commences, the Goods shall be put in a satisfactory condition at Buyer's cost before Seller shall be obliged to proceed.
- D. Seller may charge Buyer for emergency service calls made at Buyer's request where no defect or failure is found. Any such charges shall be at Seller's then-current rates.
18. **SUPERVISION OF INSTALLATION:**
- A. Where Seller is responsible for supervision of Installation or part thereof, Seller shall provide the services of one or more competent personnel to give instruction to the personnel provided by Buyer to secure:
- the reception and unpacking of the Equipment;
 - the moving to the place or places of Installation of the various items of Equipment and their Installation.
- If called for by the Contract, Seller shall load the Software and (if provided by Seller) the Configuration software onto the Equipment.
- B. The personnel provided by Buyer shall remain under the direction of and under the control of Buyer. Seller shall not be liable for any act or omission of such personnel, but if in giving or omitting to give orders or instructions to such personnel, Seller's supervisory personnel fail to use proper skill and care, Seller shall be liable for the consequences of such failure in accordance with the Contract.
19. **COMMISSIONING:** If specified in the Services' scope, Seller shall assist Buyer with Commissioning. Buyer shall be responsible for the operation of the Goods and of the Site during Commissioning and shall provide suitably qualified personnel to perform such work.
20. **PAYMENT FOR SERVICES:**
- A. Unless otherwise agreed, the Seller shall invoice at the end of each calendar month for the Services completed in that specific month. Any sums payable in respect of Services shall be paid within 30 (thirty) days of Seller's invoices. Invoices for any Services which is completed in less than one calendar month shall be issued upon completion and shall be payable not later than 30 (thirty) days from the completion of Services.
- B. If under the Contract, Buyer, or Buyer's agent or representative is required to countersign Seller's timesheets or other related documentation, such countersignature shall be conclusive proof that the Services concerned has been performed and that Seller is entitled to claim payment therefore.
21. **THIRD-PARTY SOFTWARE:** To the extent Buyer requires other third-party software to be installed or used on its computer network in order to fully access and/or use the Services, Buyer shall be responsible for licensing, installing, and paying all fees for such third-party software as a condition precedent to Seller beginning providing Services. Buyer will assume sole responsibility for any work associated with integrating Seller's provided software, including but not limited to the Software, with other third-party software. Seller will not provide source code to allow third-party software to integrate with the Software.
22. **DATA PRIVACY AND SECURITY:**
- A. If applicable, the parties shall comply with the Data Protection Agreement ("DPA"), which is incorporated herein by this reference and except as expressly stated therein, shall not be modified except by mutual written agreement of the parties. By signing this Agreement, each party is deemed to have signed the DPA, including the Model Clauses as "Data exporter" in the case of Buyer, and as "Data importer" in the case of Seller. Seller's current Privacy Notice(s) and Terms of Use are incorporated herein and available in the footer of <https://www.emerson.com/en-us>.
- B. If applicable, the parties shall comply with Seller's Security Policy, which is incorporated herein by this reference.
23. **FORCE MAJEURE:** Neither party is liable for non-performance or delay due to unforeseen circumstances or causes beyond its reasonable control, including acts of God; war; armed conflict; terrorism; pandemic; epidemic; other global- or nationwide-health crisis;

fire; flood; accident; weather; failure or interruption of public and private computer or telecommunication systems, networks, and infrastructure; cyber-attacks; sabotage; strikes or labor disputes; civil disturbances or riots; governmental decisions, requests, restrictions, law (including the denial, failure to issue or loss of export or re-export licenses); unavailability of or delays in transport; or shortage of materials or parts.

24. GENERAL TERMS:

- A. Seller and Buyer agree the validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the laws of the State of Delaware, USA without regard to its conflict of law principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be deemed exclusively proper only in state court in Saint Louis County, Missouri or in the federal court for the Eastern District of Missouri and the parties agree to submit to such jurisdiction.
- B. By employing Services or using Software, Buyer agrees that it is solely responsible for complying with all U.S. export control regulations and applicable international regulations. Buyer will not download or use data, information, or Software without all required approvals in any proscribed destination or on behalf of any proscribed entity.
- C. Seller's privacy policy is available upon request and governs the collection, use, and disclosure of Buyer's information and data. The data may be stored and processed on servers both inside and outside the United States.
- D. Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.
- E. If any Section (or part thereof) of these Terms and Conditions of Service or the agreement is found by a court of competent jurisdiction to be contrary to, prohibited by or invalid under any applicable law, such court may modify such Section (or part thereof) so, as modified, such Section (or part thereof) will be enforceable and will, to the maximum extent possible, comply with the apparent intent of the parties in drafting such Section (or part thereof). If no such modification is possible, such Section (or part thereof) shall be deemed omitted, without invalidating the remaining provisions hereof. No such modification or omission of a Section (or part thereof) shall in any way affect or impair such Section (or any part thereof) in any other jurisdiction.
- F. Seller shall not be liable for delays in performance or for non-performance, if caused directly or indirectly, by acts of God; acts of Buyer; war, fire, flood, weather, sabotage, strikes, lockouts, slowdowns, picketing, or other labor disputes or controversies; civil disturbances or riots; governmental requests, tariffs, restrictions, allocations, laws, regulations, orders, or actions; unavailability of or delays in transportation; accidents, delays or default of or failure by common carriers; shortage of labor; delay in obtaining or inability to obtain materials, equipment or parts from regular sources; default of suppliers; or unforeseen circumstances or events beyond Seller's reasonable control, or without Seller's fault, whether similar or dissimilar to the foregoing. Deliveries or other performance may be suspended for an appropriate period of time or cancelled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected.
- G. The relationship between Buyer and Seller is solely that of independent contractors and not that of an agency, partnership, or joint venture. Neither party has the authority to represent or bind the other in any manner.
- H. Buyer shall promptly and fully cooperate with Seller to address and resolve all issues, problems, administrative procedures, end user complaints, regulatory investigations, or inquiries arising from Buyer's use of the Services.
- I. Seller agrees to purchase and maintain the following insurance, at its sole cost and expense: (1) Commercial general liability insurance with limits of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate; (2) workers' compensation insurance; and (3) automobile liability for a combined single limit of Two Million Dollars (\$2,000,000). All required insurance will be provided by an insurance company rated AM Best A-7 or better. Before providing services pursuant to this agreement, Seller shall provide Buyer with certificates of insurance evidencing the insurance coverage required under this Section. Seller shall promptly notify Buyer of any cancellation of any coverage required under this Section. Buyer acknowledges and agrees that Seller's requirements under this Section may be met through self-insurance.
- J. Seller and its personnel shall cooperate with reasonable requests for information as necessary to carry out Buyer's compliance activities and legal obligations, and to enable Buyer to fully participate in all surveys, audits, and reviews conducted by any state or federal agency, contractor, or payment program, any accreditation agency such as The Joint Commission or Det Norske Veritas, or any governmental- or commercial-managed care company or insurer.
- K. If this Agreement is for the provision of Services with a value of Ten Thousand and 00/100 Dollars (\$10,000.00) or more over a twelve (12) month period, then until the expiration of four (4) years after the furnishing of any services pursuant to this Agreement, Seller shall make available, upon written request by the Secretary of the United States Department of Health and Human Services or from the United States Comptroller General, or any of their duly authorized representatives, this Agreement and such books, documents, and records of Buyer that are necessary to certify the nature and the extent of the reasonable cost of services to Buyer. If Seller enters into an agreement with any related organization to provide services pursuant to this Agreement with a value of Ten Thousand and 00/100 Dollars (\$10,000.00) or more over a twelve (12) month period, such agreement shall contain a clause identical in content to the first sentence of this paragraph. This paragraph shall be of force and effect only to the extent required by 42 U.S.C. § 1395x(v)(1)(I).
- L. No amendment to, modification of, or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to, or rescission, termination or discharge of, this Agreement and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- M. In the event this Agreement is subject to the provisions of (i) Executive Order 11246, (41 C.F.R. § 60-1.4); (ii) Section 503 of the Rehabilitation Act of 1973, (41 C.F.R. § 60-741.5(a)); and (iii) Section 4212 of the Vietnam Era Veterans Readjustment Act of 1974, (41 C.F.R. § 60-300.5(a)), Seller will not discriminate against any employee or applicant for employment because of race, religion, color, sex, gender, sexual orientation, age, national origin, or physical or mental handicap and will take affirmative action to ensure equal opportunity in all aspects of employment including, but not limited to, recruitment, promotion, demotion, transfer, layoff, termination, compensation, and selection for training, including apprenticeship; and will send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice stating the terms of the commitment hereunder with respect to equal opportunity. Seller and Buyer shall abide by the requirements of 41 C.F.R. § 60-741.5(a) and 41 C.F.R. § 60-300.5(a), if applicable. These regulations prohibit discrimination against qualified individuals on the basis of disability, and qualified protected veterans, and requires affirmative action by covered prime organizations to employ and advance in employment qualified individuals with disabilities and qualified protected veterans.
- N. By signing this Agreement or entering into this Agreement via electronic means of transmission, Buyer accepts this Agreement and agree to its terms and conditions. If Buyer is accepting this Agreement on behalf of an entity, Buyer represents that Buyer has the authority to bind such entity to these terms and conditions. If Buyer does not have such authority, or if Buyer does not agree to these terms and conditions, Buyer must not accept this Agreement and may not use the Services. Use of the Services is conditioned on acceptance of this Agreement and compliance with the terms and conditions provided herein.
- O. Except as otherwise specified herein, the Sections which by their nature survive termination, shall continue after the Termination or expiration of these Terms.