



Process Controls & Engineered Equipment

1. ACCEPTANCE

Acceptance of Purchaser's order is expressly subject to Seller's terms and conditions of sale, contained herein, which shall take precedence over any other conditions, and no contrary, additional or different provisions or conditions shall be binding on the Seller unless accepted by an officer of Seller in writing. The terms and conditions contained herein shall constitute the complete and only agreement between Seller and Purchaser, it being intended by the parties that this document sets forth the entire agreement between the parties hereto as to purchase of the goods (hereinafter referred to as the "Equipment") described herein. All orders shall only become legally binding upon acceptance by Seller's main office in Tulsa, OK.

2. PRICING

The prices in this quotation shall be void sixty (60) days from the date hereof or upon Seller's prior notification of a price change to Purchaser. The prices quoted herein do not include any federal, state, county, local or other taxes levied on the Equipment, its use or sale, or on this agreement by any jurisdiction either inside or outside the United States. Such taxes, where Seller is required by law to collect them, whether designated as sales tax, gross receipts tax, occupation tax, etc., will be billed to Purchaser based on the law in effect at the time of delivery unless Purchaser furnishes Seller with a proper tax exemption certificate. Purchaser shall reimburse Seller for any state, county, or local property taxes respecting the Equipment, imposed, assessed, billed or becoming due and payable by Seller on or after the date the Equipment or its component parts are located on Purchaser's premises or the premises of any subcontractor.

3. DELIVERY

Seller will select a carrier to ship Purchaser's order to Purchaser's specified destination, unless Purchaser indicates a specific carrier. Analyzer shipments must be via air ride van. Seller's obligation is to deliver equipment FOB to the carrier at Seller's warehouse. Any equipment, which Purchaser obtains from Seller to replace Equipment damaged or lost in transit, will be sold to Purchaser at Seller's standard prices in effect at the time of such replacement.

All shipping dates quoted by Seller are ARO (After Receipt of Order) by Seller, and reflect shipping date, not delivery date to Purchaser's facility. Shipping dates are approximate and are based upon prompt receipt by Seller of all necessary information. Delays due to missing information such as product specification sheets, or credit examination will be in addition to Seller's quoted shipping times and may impact the originally scheduled shipping date. Partial shipments may be made unless specifically prohibited on Purchaser's purchase order. If this contract calls for the shipment of goods in separate lots, or if partial shipments are made as herein authorized, this contract shall be deemed an "installation contract" within the meaning of the applicable law. Seller does not return Purchaser's acknowledgments.

Seller shall not be liable for delays in shipping which are due to causes beyond Seller's reasonable control, including, but not limited to, delays due to: (1) Acts of God, Purchaser's acts, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, war, riot, delays in transportation, car shortages, or the like; (2) difficulty in obtaining the necessary labor, materials, components or manufacturing facilities; (3) changes in specifications, directions, or design requested by Purchaser or agreed to by Purchaser; or (4) Purchaser's delay in approving documents. In the event of any such delay, the date of shipment may be extended for a period equal to the time lost by reason of the delay. Seller shall provide written notification of the shipment date in case of a delay.

4. INSTALLATION AND SITE PREPARATION

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

5. SOFTWARE

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

Applied Controls Corporation
10325 E. 58th St.
Tulsa, Oklahoma 74146
918 259-0020 Fax 918 259 0019

6. PAYMENT TERMS

Unless otherwise agreed to by Seller, payment for each item specified in this acknowledgment shall be due at



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Seller's main office in Tulsa, OK no later than 30 days after invoice date. Purchaser agrees that Seller specifically retains a security interest under the Uniform Commercial Code in all the Equipment and all proceeds thereof to secure payment of all amounts due from Purchaser to Seller. Any payment not made when due shall accrue interest at the rate of eighteen percent (18%) per annum (or if lower, the highest lawful rate) and if collected by or through an attorney at law, Purchaser shall also pay Seller fifteen percent (15%) thereof as Seller's reasonable attorney's fees, and shall also pay other costs of collection.

7. WARRANTIES

Subject to the terms hereof, Seller warrants that the original Equipment cataloged or manufactured by Seller and furnished for delivery in the United States and Canada hereunder is free from defects in material and workmanship, and will be of the kind and quality designated or described on the quotation.

Seller makes a limited warranty that software purchased in conjunction with the Equipment conforms to the specifications agreed to by Seller and Purchaser.

Seller also warrants that certain consumable products, as hereunder identified, have a one-year shelf life and will be free from all defects in material during that period. Seller does not warrant these products, however, beyond the initial installation due to variables associated with normal usage. These certain consumable products include, but are not limited to, thermocouples, RTDs, pH electrodes, conductivity cells, O₂ cells, and recorder consumable products, such as charts, ribbons and ink pens (retained in their original sealed package).

FOR INSTRUMENTS

A. If, within twelve (12) months from the date of shipment, the Equipment does not meet the warranties specified, and Purchaser notifies Seller of this promptly, Seller shall correct any such defect or any such non-conformance to the specifications, within a reasonable time. This correction can be made at Seller's option, either by repairing any defective part or parts which are returned to Seller, freight prepaid, or by making available at Purchaser's facilities a repaired or replacement part. Purchaser must contact Seller's Customer Service Department at (918) 259-0020 prior to returning any parts or equipment. Any defective material not returned by Purchaser to Seller wherein Seller has furnished replacement material under warranty, within thirty (30) days Purchaser may be liable for payment for replacement parts.

B. Purchaser may also elect to have Seller's Service Department repair the equipment at Purchaser's facility. Purchaser must contact Seller's Customer Service Department in Tulsa, OK at (918) 259-0020 to arrange for a service call. A service call will be scheduled and executed within five (5) business days (10 business days in Alaska and Hawaii). Purchaser will be charged at the Seller's published rates.

FOR SYSTEMS

C. If within twelve (12) months from date of shipment to the Purchaser the system does not meet the warranty specified, and the Purchaser notifies Seller, the Seller shall correct any such non-conformance to the specifications, within a reasonable time. Purchaser may elect to return defective material to Seller or have Seller make available a repaired or replacement part under the terms described in "A" above. Purchaser may also elect to have Seller's Service Department repair the equipment at Purchaser's facility. Terms for on-site service are described in "B" above.

The conditions of any tests of the Equipment hereunder alleged to be defective shall be mutually agreed upon and Seller shall be notified of, and may be represented at, all tests that may be made. Seller's liability to Purchaser or that of Seller's Agent/Representative, arising out of the supplying of the Equipment, or its use, whether based on warranty, contract, or negligence shall not, in any case, exceed the cost of correcting defects in the Equipment as herein provided but shall, in all events, be limited to a maximum of the purchase price. Upon the expiration of the applicable warranty period mentioned above, all such liability shall terminate. The foregoing shall constitute Purchaser's sole remedy and Seller's sole liability. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE.

8. PATENTS

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

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9. INDEMNIFICATION

Purchaser shall indemnify and hold Seller harmless from any liability or damage whatsoever, including any court costs and attorney's fees, arising out of or related to the use of the Equipment or software, including, but not limited to,



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any use in or with any nuclear installation or activity.

10. DISCLAIMER OF DAMAGES

Notwithstanding any other provision of this Contract, in no event shall the SELLER or its sub-contractors or suppliers be liable, whether arising under tort (including negligence), strict liability or otherwise, for loss of anticipated profits, loss by reason of plant shutdown, non-operation or increased expense of operation, service interruptions, cost of purchased or replacement power, claims of customers, cost of money, loss of use of capital or revenue, decontamination expenses, or for any special, incidental, or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

11. LIMITATION OF LIABILITY

Seller's maximum liability hereunder, arising from any cause whatsoever, whether based in contract, tort (including negligence), strict liability or any other theory of law, shall not exceed the contract price. A suit based on any aforementioned cause of action must be commenced within one year from date said action accrues.

12. INSURANCE

Seller certifies that the following insurance coverage is maintained:

- A. Worker's Compensation and Employer's Liability, Statutory Limits.
- B. Commercial General Liability: \$1,000,000/occurrence, \$2,000,000 annual aggregate.
- C. Automobile Liability: Bodily Injury and Property Damage, combined single limit \$1,000,000.
- D. Umbrella Liability: \$2,000,000 occurrence/aggregate.

13. ARBITRATION

Except for the enforcement of Seller's security interest in the Equipment, any controversy, dispute or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration to be held in Broken Arrow, OK in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as from time to time amended and in effect, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof. The entry of such Award shall be a condition precedent to any litigation being filed with respect to this Agreement or any relationship, right or duties created or continued hereby.

14. APPLICABLE LAW

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

Purchase order must either specifically reference this document or include this document as an attachment.

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