

# VANZANDT CONTROLS, LLC.

## STANDARD TERMS AND CONDITIONS OF SALE

The products, equipment, materials and services (collectively, the "Equipment") which are described on the face of the attached contract form are sold by VanZandt Controls, LLC. ("VanZandt", "Seller") only upon the following Standard Terms and Conditions of Sale (the "Contract"):

**1. CONTRACT ACCEPTANCE:** The Seller agrees to sell the Equipment covered herein under the terms and conditions as set forth in this Contract. Any purchase order received from Buyer by the Seller, whether written or oral, will be interpreted as a written acceptance of Seller's offer to sell and will be filled in accordance with terms and conditions of sale as set forth in this Contract. SELLER'S ACCEPTANCE OF THIS ORDER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THE TERMS OF THIS CONTRACT. Buyer will be deemed to have assented to all such terms and conditions by accepting any part or portion of the Equipment ordered. Buyer's standard terms and conditions will not be considered a counteroffer to Seller's Contract. The failure of Seller to object to any provision in conflict herewith whether contained on Buyer's purchase order or otherwise will not be construed as a waiver of the provisions hereof nor as an acceptance thereof. ANY REPRESENTATIONS, PROMISES, WARRANTIES, OR STATEMENTS BY SELLER'S AGENT OR EMPLOYEE THAT DIFFER IN ANY WAY FROM THE TERMS OF THIS CONTRACT SHALL BE GIVEN NO FORCE OR EFFECT. Any additional, different, or modified terms or conditions set forth in any communications, including without limitation a telephone order, a request for quotation, or a purchase order form from Buyer are objected to by Seller and shall not be effective or binding unless expressly assented to in writing by an officer of Seller. All shipments are made pursuant to this Contract. No other terms, additions to or modifications of this Contract are acceptable. This Contract is intended as a final and complete expression of the agreement between Buyer and Seller. The failure of either Buyer or Seller to enforce any rights under the Contract shall not constitute a waiver of such rights or any other rights under the Contract.

Where Seller does not issue either a quotation or a sales confirmation and ships Equipment pursuant to Buyer's purchase order, verbal request, or other form of order, such sale shall be subject to Seller's Contract as set forth on Seller's invoice and Buyer shall be deemed to have agreed thereto unless Equipment is returned to Seller at Buyer's expense within ten days of date of invoice (in new, unused condition), in which event such sale shall be canceled for all purposes unless governed by SPECIAL RESTRICTIONS as noted below Section 4, "Cancellation And Returns."

This Contract represents a separate and independent transaction and contract between Buyer and Seller for the sale of Seller's Equipment regardless of what other sales or other business are pending between Seller and Buyer or how many separate contract forms be sent by Seller to confirm and evidence such other sales or business.

Any typographical or clerical error herein is subject to correction by Seller and the intended language of the Contract will remain in effect.

**2. QUOTATIONS AND PRICES:** All prices shown are in U.S. dollars and are F.O.B. Seller's shipping point. Quotations automatically expire thirty (30) calendar days from the date issued and are subject to termination by written notice within that period. Prices quoted pertain only to the items quoted as described. The Equipment which may be available at the time the quotation is made is subject to prior sale.

Any modifications to the Equipment quoted, additional items or work, testing, assembly, documentation, or any other Equipment not expressly described in Seller's quote WILL INCUR ADDITIONAL CHARGES as applicable. Also, all prices quoted by Seller are subject to additional charges as necessary to cover any taxes or charges or any applicable increase in same hereafter becoming effective, such as, for example, the payment of any applicable sales, use, excise or other taxes, documentation charges, freight, packing charges, or similar costs or charges. Custom duties, import duties, insurance charges and other comparable charges are to be borne by Buyer.

Prices do not include sales, use, excise, or other similar taxes. The amount of any present, retro-active, or future sales, use, excise, or similar tax applicable to Customer's purchase of goods or services will be added to Seller's invoice and paid by Customer unless Customer provides Seller with tax exemption certificates acceptable to the appropriate taxing authorities.

**3. PAYMENT TERMS:** Subject to establishment of satisfactory credit, terms are strictly C.O.D. or via credit card payable in U.S. dollars. Unless otherwise specified by the Seller, with the establishment of satisfactory credit, terms are 30 days from the date of invoice payable in U.S. dollars to Seller at its offices in Houston, Texas, or as Seller otherwise directs. No discounts are given for early payment.

The amount of any invoice will be deemed to be accurate unless Seller receives written notification from Buyer disputing the amount or validity of any such invoice prior to the payment due date and prior to payment of the invoice. Any such notification will be sent to Seller at 5115 Ashbrook Drive, Houston, Texas, 77081, Attention: Accounts Receivable. Any such notice shall include the invoice number and a description of the alleged error.

Seller will have the right, among other available legal remedies, to terminate this Contract and/or to suspend further deliveries under this or other agreements with Buyer if Buyer fails

Rev 2/18

to make payments to Seller when due. A service charge of 2% per month may be assessed all accounts over 30 days past due (60 days past the invoice date), subject to a minimum charge of \$5.00 per month, or the legal rate of interest, whichever is lower.

**4. CANCELLATION AND RETURNS:** The Buyer may cancel all or part of its order prior to shipment upon written notice to the Seller AND written consent from the Seller to the Buyer (except as noted below) provided that (a) Seller is given reasonable advance written notice of such termination and (b) Seller is paid termination charges which shall include all costs and expenses already incurred or commitments made by Seller in connection with the processing, purchasing, handling and fabrication of the Equipment, and a reasonable profit thereon plus any losses or damages resulting from such cancellation or termination. Seller's determination of such termination charges shall be conclusive.

Subject to the terms of this Contract regarding cancellation and warranties, all sales are final. Buyer may request to return Equipment by contacting its account salesperson to request a Returned Goods Authorization ("RGA") Number. No Equipment will be accepted for return without a valid RGA Number clearly noted on the outside of the shipment. Any return shipments must be made freight prepaid unless Seller has expressly authorized Buyer in writing to ship such Equipment to Seller at Seller's expense. Any returns of Equipment authorized by Seller are subject to Seller's standard restocking charges as such are then effective. Seller's current MINIMUM restocking charges are the greater of 20% of the invoiced price or \$50 per item. Special orders or non-stock items are non-returnable. Equipment will only be considered for return if requested by the Buyer within 60 days of shipment.

Any Equipment modified by Seller is done so at the Buyer's request and may void any manufacturer's warranty. Any Equipment sold as "refurbished" or "remanufactured" is done so at the Buyer's request and is sold "as is, where is". No warranties for modified, refurbished or remanufactured Equipment are expressed or implied by Seller nor is Seller liable for any damages that may occur as a result of use of the Equipment. Any order for modified, refurbished or remanufactured Equipment is NON-CANCELLABLE, and the Equipment is NON-RETURNABLE.

Equipment that is used, damaged, in need of refurbishment or altered in any way is non-returnable. Refunds for Returns will be issued for Credit.

**5. DELIVERY AND DOCUMENTATION:** Buyer will bear the risk of loss of damage to or destruction of the Equipment from the earlier of the time that Seller delivers such Equipment to the carrier or to Buyer or Buyer's agent. Any claims for loss or damage after risk of loss has passed to Buyer will be filed with the carrier. Buyer will give written notice to Seller of any claim for shortage, error in Equipment shipped or error in charges within thirty (30) days after receipt of Equipment or such claim will be deemed waived.

Quoted delivery dates are approximate estimates determined at the time of quotation and are subject to revision at any time.

All shipping dates are approximate and are based upon prompt receipt by Seller of all necessary information from Buyer to properly process the order. Equipment offered from stock are subject to prior sale.

Delivery dates are subject to changes caused by additions to or modifications of the original order agreed to by both Seller and Buyer.

Under no circumstances will Seller have any liability whatsoever for loss of use or for any indirect or consequential damages as a result of delayed delivery.

Unless otherwise agreed in writing Seller will have the option of partial or complete shipment of the Equipment.

Items in Will Call will be invoiced five (5) working days after customer notification if not picked up prior to that time. Items cancelled before invoicing will be subject to cancellation terms and charges. Items cancelled after invoicing will be subject to return terms and fees.

**6. INSTALLATION, MAINTENANCE, ETC.:** All Equipment shall be installed by and at the expense of the Buyer. Buyer shall be responsible for receiving, storing, installing, starting up and maintaining all Equipment. Buyer may request the Seller to provide a quotation for providing services to assist Buyer in all or part of these duties.

**7. SERVICES:** (a) Services rendered by Seller, whether with or without charge, are only technical or advisory in nature and are merely incidental to the sale of the Equipment. When any such services are rendered, Buyer will retain full responsibility for and full control, custody and supervision of the Equipment and the installation, selection of material thereof, use or operation thereof, and a representative of Buyer will be present with full authority to direct operations.

(b) If Seller furnishes technical or other advice to Buyer, whether or not at Buyer's request, with respect to Buyer's process or equipment, such advice will be made in good faith, and Buyer assumes all risk of such advice and the results thereof.

**8. LIMITED WARRANTY AND DISCLAIMER:** As to all Equipment, except as expressly set forth in this section, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR

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PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE EQUIPMENT. Seller assigns to Buyer all of Seller's rights and remedies under warranties to the extent that such rights and remedies are assignable for Equipment purchased by Seller from a third party for resale ("Resale Products"). Buyer agrees that Seller will have no liability for warranty defects alleged to exist in Resale Products. However, Seller agrees to make a reasonable commercial effort, if requested to do so by Buyer, to arrange for procurement and shipping of replacement Resale Products, at Buyer's expense.

As stated previously, No warranties for modified, refurbished or remanufactured Equipment are expressed or implied by Seller nor is Seller liable for any damages that may occur as a result of use of the Equipment.

**9. BUYER DATA/SPECIFICATIONS:** To the extent that Seller has relied upon any specifications, information, representation of operating conditions or any other data supplied in writing by Buyer to Seller in the selection or design of the Equipment or otherwise in connection with this Contract or the preparation of Seller's quotation, and in the event that the actual operating conditions or other conditions differ from those supplied by Buyer and relied upon by Seller, ANY WARRANTIES OR OTHER TERMS AND CONDITIONS CONTAINED HEREIN WHICH ARE AFFECTED BY SUCH CONDITIONS SHALL BE NULL AND VOID.

**10. LIMITATION OF REMEDY AND LIABILITY:** BUYER'S EXCLUSIVE REMEDY WILL BE FOR DAMAGES, AND SELLER'S TOTAL LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES ARISING OUT OF ANY AND ALL CAUSES WHATSOEVER (WHETHER SUCH CAUSE BE BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) WILL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE EQUIPMENT IN RESPECT OF WHICH SUCH CAUSE ARISES OR, AT SELLER'S OPTION, THE REPAIR OR REPLACEMENT OF SUCH EQUIPMENT, AND IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES RESULTING FROM ANY SUCH CAUSE. NOTWITHSTANDING THE FOREGOING, SELLER WILL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. The term "Consequential Damages" will include, but not be limited to, a loss of anticipated profits, loss of use, loss of revenue and cost of capital. Seller will not be liable for, and Buyer assumes liability for, all personal injury and property damage connected with handling, transportation, possession, use, further manufacture, or resale of the Equipment. No costs or charges incurred by Buyer will be paid by Seller unless authorized in writing in advance by Seller.

**11. EXCUSE OF PERFORMANCE:** Deliveries may be suspended, delayed, or cancelled by Seller, without liability to Buyer or any other person, in the event of: Act of God, war, riot, fire, explosion, accident, flood, natural disaster, sabotage, equipment or computer failures; acts, omissions, or failures by Seller's suppliers or other third parties, lack of or delays in obtaining adequate fuel, power, raw materials, components, labor, containers, or manufacturing or transportation facilities; compliance with governmental requests, laws, regulations, order or actions; breakage or failure of machinery or apparatus; force majeure; national defense requirements or any other event, whether or not of the class or kind enumerated herein, beyond the reasonable control of Seller; or in the event of labor trouble, strike, lockout or injunction (provided that Seller will not be required to settle a labor dispute against its own best judgment); which event makes impracticable the manufacture or delivery of a shipment of the Equipment or of a material or component upon which the manufacture of the Equipment is dependent.

Deliveries suspended or not made by reason of this section shall at Seller's option, either be cancelled or the time of delivery will automatically be extended for a period of time equal to the suspension period, without liability, but this Contract will otherwise remain unaffected.

**12. WAIVERS AND RELEASES:** Except as provided in paragraph 9 and except for the willful misconduct or gross negligence of Seller, its employees or agents, Buyer hereby releases Seller, its employees, agents, management and owners from all liabilities, claims, costs, expenses, losses and damages of any and every kind arising out of or resulting, directly or indirectly, from any defect or failure of the Equipment or any act, omission, error or delay in the performance, or nonperformance of Seller's obligations and duties under this Contract. To the extent, if any, that Seller, its employees, agents, management or owners shall have any liability under this Contract, Buyer's exclusive remedy will be set for as set forth in paragraph 11. BUYER WAIVES ALL CLAIMS FOR CONSEQUENTIAL DAMAGES AND ALL CLAIMS REGARDING LOSS OF REVENUE, INCOME, PROFIT AND USE OR DAMAGES, WHETHER SAME BE DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL.

**13. GOVERNING LAW, VENUE AND LIMITATIONS:** This Contract will be governed by and construed in accordance with the laws of the State of Texas.

Each of the parties hereto submits irrevocably to the non-exclusive jurisdiction of the courts of the State of Texas, in Harris County, as regards any claim or matter arising under this Contract.

No action or claim, regardless of form, arising out of transactions under this Contract may be brought by either party, more than two years after the cause of action or claim has accrued.

**14. EXPORTS:** Export of the Equipment sold hereunder may be subject to required governmental licenses and authorizations. Buyer agrees to comply with all U.S. export regulations applicable to the Equipment it purchases from Seller, including Export Administration Regulations of the U.S. Department of Commerce and the International Traffic in Arms Regulations of the U.S. Department of State. Buyer shall be responsible for procuring any required licenses and authorizations. Buyer further warrants that it will not re-export the Equipment or technical information to any country to which export is prohibited by applicable U.S. law.

**15.FORCE MAJURE:** Seller shall not be liable to Customer for any loss or damage suffered by Customer, directly or indirectly, for any failure or delay of Seller to perform hereunder where such failure or delay is caused by labor troubles (including, without limitations, strikes, slow downs and lockouts) or civil disturbance, government regulations, inability to obtain or revocation of export or import license, interruptions of or delay in transportation, material shortages, fire, flood, acts of God, power failures, accidents or other causes of like or different character beyond Seller's reasonable control.

**16 MSDS:** To the extent that any goods contain hazardous materials, Supplier will provide all relevant information pursuant to Occupational Safety and Health Act (OSHA) regulations 29 CFR 1910.1200, as amended, if applicable, including a completed Material Safety Data Sheet (OSHA Form 20), and any other applicable law, rule or regulation, and mandated labeling information, or any similar requirements in any other jurisdictions to which Purchaser informs Supplier the products are likely to be shipped.

**17. OTHER TERMS AND CONDITIONS:** Buyer will not (by operation of law or otherwise) assign its rights or delegate its performance hereunder without the prior written consent of Seller, and any attempted assignment or delegation by Buyer without such consent shall be void.

Seller reserves the right to modify the design of any Equipment without obligations or notifications, and Seller is not obligated to so modify Equipment previously or subsequently sold.

Should any clause, sentence or part of this Contract be held invalid, such holding shall in no way affect the validity of the remainder, which will remain in full effect. Failure to enforce any or all provisions of this Contract in a particular instance or instances, will not constitute a waiver or preclude subsequent enforcement thereof.