



GENERAL TERMS & CONDITIONS

1. CONDITIONS OF SALE: The sale or supply of any products and/or services by CIMTEC Automation, LLC, dba Qualitrol, its subsidiaries or affiliates (“Qualitrol”) to the customer (“Buyer”) is expressly conditioned upon the terms and conditions contained or referred to herein (“Agreement”). Any additional or different terms and conditions set forth in Buyer’s purchase order or other communication are objected to and will not be binding upon QUALITROL unless specifically agreed to in writing by an officer of QUALITROL; provided, however, no preprinted facility entry form shall be binding even if signed by QUALITROL’s representative. Any order or authorization by Buyer, whether written or oral, to furnish products or services or licensing of software shall constitute acceptance of these terms and conditions. No modification to the Agreement shall be effective against QUALITROL unless evidenced in writing and signed by a duly authorized representative of QUALITROL. Any software (including firmware) provided hereunder shall be subject to the terms of the standard QUALITROL Software License Agreement accompanying such software or the license provided herein. Such software is licensed, not sold.
2. DEFINITIONS. The following definitions shall apply herein: (a) “QUALITROL” shall mean Qualitrol Division of CIMTEC Automation, LLC; (b) “System” shall mean the hardware and the software programs sold by QUALITROL to Buyer, as may be further defined in any Agreement technical specifications or purchase orders (hardware may include equipment, materials and spare or replacement parts (hereinafter “Equipment”) and software programs may include computer programs developed and owned by QUALITROL as applications or integrating software (hereinafter “QUALITROL Programs”) and commercially available third party programs provided in conjunction with Equipment operation (hereinafter “Operating Programs”)); (c) “Installation” shall mean all work as may be defined in the Agreement technical specifications associated with installation of the System by QUALITROL at the Installation Site, (d) “Installation Site” shall mean the Buyer’s facility where the System is to be delivered, installed and operated; (e) “Services” shall mean optional services provided by QUALITROL (including, but not limited to telephone hot lines, remote diagnostics, service calls, preventive maintenance plans and other support activities as may be defined in a service agreement) which, although purchased by the Buyer under a separate written agreement, will be subject to these terms and conditions; (f) “Products” shall mean the System, Installation and/or Services as defined above; and (g) “Final Acceptance” shall mean final approval and acceptance of the System by the Buyer in accordance with acceptance tests or other criteria as defined in this Agreement.
3. QUOTES, ORDERS AND PRICES: Quotes for QUALITROL to supply products to Buyer are valid for 30 days from issuance unless otherwise agreed to by QUALITROL in writing. All prices are as stated in QUALITROL’s quote and specifically override any prices referenced in Buyer’s purchase order. The prices stated in this Agreement are in U.S. dollars and do not include transportation, insurance or any sales, use, excise or other taxes, duties, fees or assessments imposed by any jurisdiction and are subject to change. Any amounts paid at any time by QUALITROL that are the responsibility of Buyer shall be invoiced to Buyer and reimbursed to QUALITROL. All prices and other terms are subject to correction for typographical or clerical errors.
4. TERMS OF PAYMENT: All payments should be made in U.S. Dollars. All QUALITROL invoices shall be due and payable in full within thirty (30) days after date of invoice; provided, however, that QUALITROL reserves the right, in its sole discretion to require full payment in cash before order entry, shipment or delivery. Credit terms are subject to credit approval. In the event Buyer fails to remit payment to QUALITROL as agreed, QUALITROL shall be entitled to collect QUALITROL’s costs and expenses (including, but not limited to, reasonable attorney’s fees and court costs) incurred in collection of such payment(s). Invoices not paid within the thirty (30) day period, or by such other due date as may be agreed to in writing by the parties, shall have an additional 1-1/2% per month interest charge (or the maximum amount allowed by law, if less) assessed against the unpaid balance from the date of the invoice until paid, which Buyer agrees to pay.

5. LICENSE OF PROGRAMS:

- 5.1 Grant of License. QUALITROL grants to Buyer, effective upon Final Acceptance of the System, (1) a nonexclusive license to use the QUALITROL Programs that may be identified in Attachment A to the technical specifications, and (2) the right to use, in accordance with the terms provided by the owner thereof, the Operating Programs that may be identified in Attachment B to the technical specifications. The QUALITROL Programs are provided and are authorized to be installed, executed, and used specifically at the Installation Site, only in machine-readable, object code form. Buyer's rights in the QUALITROL Programs pursuant to such license are expressly limited to the use of the QUALITROL Programs by Buyer at the Installation Site in connection with operation of the Equipment. Buyer shall not assign, transfer, make copies, or sublicense the QUALITROL Programs or Operating Programs without the prior written consent of QUALITROL.
- 5.2 Restrictions. Buyer acknowledges and agrees that to the extent the products consist of QUALITROL Programs or Operating Programs (collectively, the "Software"), the sale of the Products to Buyer shall not include a sale of, or transfer of title to, any Software or related documentation or manuals. Title to the Software is and shall remain, as between QUALITROL and Buyer, the property of QUALITROL. Buyer may use the Software provided by QUALITROL under the Agreement only in accordance with this Paragraph 3 and only in connection with the operation of the Products.
- 5.3 Copyright. Buyer acknowledges that all copyrights in the Software belong to and are retained by QUALITROL or third party suppliers. Buyer shall not remove or alter, or permit any person to remove or alter, any of the copyright or other notices on, stated in or affixed to the Software, or on any diskettes, covers or other packaging.

6. DELIVERY, INSTALLATION and RETURNS: Unless otherwise agreed to in writing by QUALITROL, delivery of Equipment and Software shall be made Ex Works (*Incoterms 2000*) QUALITROL's facility or other Point of Shipment selected by QUALITROL. Buyer shall bear the risk of loss and damage to goods after delivery to the point of shipment. Unless otherwise agreed to by QUALITROL in writing, Buyer will pay all insurance costs in connection with delivery of the goods, if any, and be responsible for filing claims with carriers for loss of, or damage to goods in transit. QUALITROL will make every effort to meet commitments concerning shipping dates; however, revisions may be necessary due to unforeseen events. QUALITROL will not be responsible for loss, including but not limited to incidental, special or consequential damages, occurring to Buyer or to any other party as a result of any delay in shipment. Buyer shall not debit, back charge or setoff QUALITROL for returns, warranty claims or for any other reason, without prior written consent from QUALITROL. Products may not be returned by Buyer without prior written Return Materials Authorization (RMA) and the return of Products may be subject to a restocking fee. All returns that have been approved must be accompanied by an RMA issued by QUALITROL at the time of return. RMA's are valid for 30 days from issuance unless otherwise agreed to by QUALITROL in writing. Return freight charges are the responsibility of the Buyer.

7. TAXES: Buyer shall pay all taxes based on or in any way measured by the Contract or the Products, including any personal property taxes but excluding taxes based on QUALITROL's net income. If QUALITROL is required by applicable law or regulation to pay or collect any such tax or taxes on the Products, then such amount of tax and any penalties and interest thereon shall be reimbursed to QUALITROL or paid by Buyer. All applicable taxes will be paid by Buyer, unless Buyer provides QUALITROL with appropriate tax exemption certificates, and if Buyer requests that QUALITROL ship products to Buyer's customer, Buyer must provide QUALITROL with a valid resale certificate or other valid exemption certificate for its customer. Buyer hereby indemnifies QUALITROL for all taxes, costs, fees, expenses, penalties, and other charges if Buyer cannot provide adequate evidence that it remitted the applicable sales tax to the destination state.

8. PERMITS AND REGULATORY REQUIREMENTS: QUALITROL shall be responsible for obtaining any license or permit required of QUALITROL in its name to enable it to deliver the Products. Should compliance of the Products with applicable laws, rules, regulations, or ordinances of any Federal, State, or local authority, or of any agency thereof, be required, and should such compliance require changes in the Products or should any permits, licenses or approvals or plans and specifications for the Products or any permits, licenses, or

approvals for the installation or use thereof be required, Buyer assumes the risk and responsibility for such compliance or changes, and for securing such permits, licenses, and approvals from the proper authorities, and for paying any associated costs or fees.

9. TITLE AND RISK OF LOSS OR DAMAGE: Title and risk of loss or damage with respect to all Equipment shall pass to Buyer at ship point.

10. WARRANTY:

10.1 Warranty with Respect to Equipment: QUALITROL warrants that each item of Equipment delivered hereunder will be free from defects in workmanship and material. Such warranty will be in effect for a period of one (1) year from date of delivery. For consumables, warranty period(s) shall be shorter if so specified in the Agreement technical specifications.

10.2 Warranty With Respect to QUALITROL and Operating Programs: QUALITROL warrants that upon Final Acceptance of the System and for a period of one (1) year thereafter, the QUALITROL Programs shall conform in all material respects to any specifications supplied in writing by QUALITROL prior thereto, and shall not contain any material defect. Warranty for the Operating Programs shall only be as stated in the literature accompanying same and shall be limited to the party providing such warranty.

10.3 Warranty With Respect to Installation: QUALITROL warrants that any Installation Site labor provided and supervised by QUALITROL will be performed in a manner consistent with the standards of quality and care typical within the industry at the time of performance for similar work. Such warranty will be effective for a period of one (1) year from the date of performance of the Installation Site labor. If any Installation Site labor provided and supervised by QUALITROL does not conform with QUALITROL's above-stated warranty obligation, QUALITROL will remedy, replace or reperform same at QUALITROL's expense; or if repair, replacement or reperformance is impracticable or impossible (as determined by QUALITROL), QUALITROL will refund to Buyer the price paid to QUALITROL for the non-conforming Installation Site labor.

10.4 Warranty With Respect to Services: QUALITROL warrants that any Services performed pursuant to this Agreement will be performed in a professional manner consistent with the standards of quality and care typical within the industry at the time of performance for similar work. Such warranty will be effective for a period of one (1) year from the date of performance of the Service. With respect to development, implementation and/or refinement of a production process to be used for the operation of the Equipment in the manner specified in the specification or as otherwise most beneficial to Buyer, the parties recognize and agree that such development, implementation and/or refinement is not a part of the scope of QUALITROL's obligations hereunder. However, upon mutual agreement as to the scope of work and price, QUALITROL will participate jointly with Buyer in such development, implementation, and refinement as a part of a service agreement. QUALITROL obligations with respect to such supplemental Services as defined in a separate service agreement and performed by QUALITROL will be limited to the warranty obligations set forth in this sub article. Any Services which do not conform with QUALITROL's above-stated warranty obligation will be reperformed by QUALITROL at QUALITROL's expense; or, if reperformance is impracticable or impossible (as determined by QUALITROL), QUALITROL will refund to Buyer the price paid to QUALITROL for the non-conforming Services.

10.5 Conditions of Warranty: The warranties and remedies set forth in 10.1 through 10.4, above, will apply only if notice of claim is given to QUALITROL in accordance with the requirements specified above, and the following obligations of Buyer are complied with: (1) Written claim must be made by Buyer within thirty (30) days from the date the non-conformance is detected by Buyer and in no event later than thirty (30) days after expiration of the applicable aforementioned warranty period; (2) All Equipment must be properly unloaded, stored, maintained and installed in accordance with the documentation and instructions provided, and must be protected from damaging agents by Buyer except when installation of such System is included in QUALITROL's scope of supply; (3) All

Equipment must be operated only in a normal and proper manner, in accordance with any operating instructions or manuals and not in excess of any applicable ratings, limitations, or operating specifications; (4) Buyer shall not have made any changes to the Products or supplied any additional software or interfacing; (5) If QUALITROL is to repair or replace any parts or items of the System or to reperform any Installation or Services, Buyer shall be obligated at its own expense to provide access to the part of the System or any parts or items of Equipment which are to be repaired or replaced; (6) Buyer shall, at no expense to QUALITROL, provide personnel, facilities, data and information to assist in any activity which may be required of QUALITROL under this warranty. For those parts or items of Equipment that may be normally removed from the System, Buyer agrees to remove such parts or items and ship to QUALITROL for repair or replacement. Whether removed by Buyer or QUALITROL, all defective parts or items of Equipment shall be returned to QUALITROL. If the above conditions are not met, Buyer agrees to reimburse QUALITROL for any costs of responding to the warranty claim. Any Buyer modification to the Equipment or any QUALITROL Programs or Operating Programs shall presumptively void QUALITROL's warranty and remedy obligations to Buyer.

10.6 Warranty Disclaimer: THE WARRANTIES AND REMEDIES SET FORTH HEREINABOVE ARE EXCLUSIVE, AND NO OTHER WARRANTY OR REMEDY OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY. QUALITROL further disclaims any warranty that the Products will operate error free. QUALITROL makes no representation or warranty concerning the application or effect of any federal, state, national or local laws, ordinances, rules or regulations which may now or hereafter pertain to the use or operation of the Products.

10.7 Exclusive Remedies: The sole liability of QUALITROL and the exclusive remedy of Buyer with respect thereto, arising out of the purchase, manufacture, sale, furnishing, or use of the Products, whether such liability is alleged to arise on account of contract (including breach of warranty), tort (including negligence), strict liability, or otherwise, shall be (at the option of QUALITROL) the repair or replacement of the defective Product or the refund to Buyer of the price actually paid to QUALITROL by Buyer for the defective Product. QUALITROL shall not, in any event, be responsible for any work done by others or for any loss, damage, cost or expense arising out of or resulting from such work; provided, that in the event QUALITROL has engaged subcontractors in the performance of its obligations QUALITROL will have the same responsibilities to Buyer for such work as with respect to its own work.

11. SECURITY INTEREST/ACCEPTANCE: QUALITROL reserves the right to ship in advance of any delivery date requested by Buyer, except for those dates stipulated "not before." Title will pass to Buyer upon delivery of the Products of QUALITROL subject to a purchase money security interest hereby reserved by QUALITROL in the Products sold and the proceeds thereof until payment of the full purchase price to QUALITROL. Buyer authorizes QUALITROL to file such financing statements or other documents as reasonably necessary for QUALITROL to perfect its security interest. All Products shall be deemed accepted by Buyer unless, within ten (10) days after delivery, Buyer shall notify QUALITROL in writing that such Products are damaged or defective. Any claims for shortage must be made to QUALITROL in writing within ten (10) days after delivery.

12. QUALITROL'S RIGHT TO CANCEL: Failure by the Buyer to make any payment at the time due and provided herein shall give QUALITROL the right to suspend the work or delivery until payment is made. In the event that any failure to pay continues for more than fifteen (15) days after the due date, QUALITROL may at any time thereafter cancel this Agreement by written notice mailed, telegraphed or sent via facsimile or electronic mail to Buyer and thereupon be entitled to recover the costs of all work done, all material provided and all damages sustained. Any such failure to make payment at the time provided shall be a bar to any claim by Buyer against QUALITROL for any delay in completion of the work due to such suspension arising out of such failure to pay. Waiver of any default hereunder shall not operate as a waiver of any other or subsequent default.

13. BUYER'S CANCELLATION: Buyer may cancel its order for a standard product only if, prior to the shipment date requested in its purchase order, Customer: (a) provides QUALITROL with written notice of the order cancellation; and (b) agrees to pay QUALITROL the cancellation fee for each cancelled product. Notwithstanding the foregoing, orders for custom products or for last-time buys for end of life (EOL) products may not be cancelled, rescheduled, or returned. A "custom product" is any non-standard product developed by QUALITROL under a special agreement or any product not appearing in QUALITROL's standard product catalog.
14. LIMITATION OF LIABILITY:
- (a) IN NO EVENT SHALL THE TOTAL LIABILITY OF QUALITROL AND ITS SUBCONTRACTORS TO BUYER IN CONNECTION WITH THE PRODUCTS, WHETHER ARISING IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY), EXCEED THE AMOUNTS PAID BY BUYER TO QUALITROL DURING THE IMMEDIATELY PRECEDING SIX MONTHS.
 - (b) IN NO EVENT SHALL QUALITROL OR ITS SUBCONTRACTORS BE LIABLE TO BUYER, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY, FOR LOST PROFITS OR REVENUES, LOSS OF USE OR SIMILAR ECONOMIC LOSS, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE, CONDITION, OWNERSHIP, POSSESSION, OPERATION, SELECTION, TRANSPORTATION, LOADING, UNLOADING, MAINTENANCE OR RETURN OF THE PRODUCTS, OR FOR ANY CLAIM MADE AGAINST BUYER BY ANY OTHER PARTY, EVEN IF QUALITROL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM.
 - (c) THE HARDWARE AND SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS AND QUALITROL SHALL HAVE NO LIABILITY TO BUYER FOR THE INFRINGEMENT OF ANY PATENTS, COPYRIGHTS, TRADE SECRETS, OR OTHER PROPRIETARY RIGHTS BY THE HARDWARE OR SOFTWARE OR ANY PORTION THEREOF.
15. INDEMNIFICATION AND WAIVER: Buyer agrees to indemnify and hold harmless QUALITROL against all losses, claims, damages, or liabilities arising out of or based upon bodily injury (including death at any time resulting therefrom) occurring prior to completion of the Installation Site activity under this Contact, when proximately caused by the negligence of Buyer or its employees or agents.
16. DELAY IN PERFORMANCE: QUALITROL shall not be liable for any expense, loss or damage resulting from delay or prevention of performance caused by fires, floods, acts of God, strikes, labor disputes, labor shortages, inability to secure materials or equipment, fuel or other energy shortage, riots, thefts, acts of terror, war or sabotage, accidents, transportation delays, acts or failure to act of any government or of Buyer, delay in obtaining licenses, major equipment breakdown, or any other cause whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of QUALITROL. In the event of any delay occasioned by QUALITROL or its subcontractors arising by reason of any of the foregoing, the time for performance shall be equitably adjusted. When QUALITROL is performing work under the Agreement at the Installation Site, Buyer shall pay QUALITROL at the rates applicable for the work in question for time lost on account of such delay.
17. INSPECTION/LIMITATION OF ACTIONS:
- (a) Buyer shall inspect and test all Products as soon as practicable after the date of receipt. Anything herein to the contrary notwithstanding, to the extent that any defects, shortages or nonconformities in Products are discoverable by testing or inspection upon receipt of Products by Buyer, all obligations of QUALITROL to Buyer with respect to such defects, shortages or nonconformities shall be deemed to be satisfied, and all Products shall be deemed to be free of such defects, shortages or nonconformities, unless Buyer notifies QUALITROL of such defects, shortages or nonconformities in writing within thirty (30) days after the date of receipt.

- (b) No action, regardless of form, arising out of or in connection with the sale of Products under this Agreement (other than an action by QUALITROL for any amount due to QUALITROL from Buyer) may be brought more than one (1) year after the cause of action has arisen.

18. PROPRIETARY INFORMATION: Any information concerning the parties hereto which is disclosed to the other party incident to the performance of work pursuant to this Agreement is conclusively presumed to have been disclosed in confidence, and the recipient shall not publish or otherwise disclose it to others without the written approval of the disclosing party. Buyer understands that special techniques in the arts and sciences, developed or accumulated by QUALITROL on its own time and at its own expense, will be employed to benefit Buyer under this Agreement, and Buyer further agrees that such special techniques are proprietary and shall not be disclosed to any third party during or subsequent to the term of this Agreement without QUALITROL's prior written consent; provided, however, that nothing herein shall limit Buyer's right to disclose any data provided by QUALITROL hereunder which (a) properly becomes knowledge available within the public domain or (b) is received by Buyer from a third party without restriction and without breach of this or any other contract. This Agreement does not effect any transfer of title in the QUALITROL Programs, the Operating Programs, or any materials furnished or produced in connection therewith, including drawings, diagrams, specifications, input formats, source code(s) and user manuals. Buyer acknowledges that the QUALITROL Programs (and all materials furnished or produced in connection with the QUALITROL Programs) including, without limitation, the design, programming techniques, flow charts, source code, and input data formats, may contain trade secrets of QUALITROL, entrusted by QUALITROL to Buyer under this Agreement for use only in the manner expressly permitted hereby. Buyer further acknowledges that QUALITROL claims and reserves all rights and benefits in the QUALITROL Programs afforded under (1) federal law as copyrighted works and patents and (2) state law as trade secrets. Neither the QUALITROL Programs nor any materials provided to Buyer in connection with the QUALITROL Programs may be modified, enhanced, copied, reprinted, reverse engineered, transcribed, or reproduced, in whole or in part, without the prior written consent of QUALITROL.
19. STATUTE OF LIMITATIONS: Any and all proceedings relating to the subject matter hereof shall be instituted within one (1) year after a cause of action has accrued or such cause of action will be deemed waived. In the event of breach or default by Buyer hereunder, Buyer agrees to pay to QUALITROL reasonable attorneys' fees and such expenses as may be expended or incurred in the enforcement of any right or action with respect to a breach hereunder or any consultation in connection therewith.
20. RIGHTS IN INFORMATION AND DATA: QUALITROL shall own, have and retain the right to publish, use, make derivative works, have used, and permit others to publish, use, and/or have used, any information, designs, engineering or data used, developed, or acquired by QUALITROL in the course of performance of the work hereunder, which use would not be prohibited by Article 13 above. Buyer shall have the right of access to such information or data for the limited purposes of maintenance but not duplication of the System by Buyer or third parties, as well as, use of the System by Buyer (but not by third parties) for the purpose intended or such similar related purposes as Buyer may elect.
21. CONSENT TO JURISDICTION. This Agreement has been delivered for acceptance by QUALITROL in North Carolina and shall be governed by and construed in accordance with internal laws of the State of North Carolina hereby. Buyer: (i) irrevocably submits to the jurisdiction of any state or federal court located in Guilford County or Mecklenburg County, North Carolina over any action or proceeding to enforce or defend any matter arising from or related to this Agreement; (ii) irrevocably waives, to the fullest extent it may do so, the defense of any inconvenient forum to the maintenance of any such action or proceeding to enforce this Agreement; (iii) agrees that a final judgment in any action or proceeding shall be conclusive and may be enforced in any other jurisdictions by suit on the judgment or in any action or proceeding shall be conclusive and may be enforced in any manner provided by law, and (iv) agrees not to institute any legal proceeding or action against QUALITROL or any of QUALITROL's directors, officers, employees, agents or property, concerning any matter arising out of or relating to this Agreement in any court other than one located in Guilford or Mecklenburg County, North Carolina. Nothing in this paragraph shall affect or impair QUALITROL's right to serve legal process in any manner permitted by law or QUALITROL's right to bring any action or proceeding against Buyer or its property in the courts of any other jurisdiction.

22. ASSIGNMENT AND TRANSFER: Buyer shall not assign or transfer any right to this Agreement unless agreed to in writing by QUALITROL. In the event Buyer transfers any interest in the System, Buyer will indemnify and hold harmless QUALITROL from and against any claims, losses, damages, or liabilities that QUALITROL may incur that QUALITROL would not have incurred but for such transfer.
23. ATTORNEY'S FEES: In the event of litigation between the parties concerning this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses incurred in connection therewith.