

CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Standard Automation and Control DBA/ Wonderware West (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

The Contractor shall provide software and professional services for the City as described in Exhibit "A" attached hereto and incorporated herein.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed ten thousand one hundred one dollars and thirty six cents (\$10,101.36), plus applicable gross receipts taxes.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed and accepted by the City.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and terminate on June 30, 2018, unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 10 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. CONFIDENTIALITY

A. Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

B. The Contractor agrees not to access City data, apart from as necessary to provide the service, or as compelled to legally, or as permitted in writing

by the City. The Contractor agrees contractually to maintain appropriate administrative, physical and technical safeguards for the confidentiality and integrity of City data. The Contractor agrees to exercise the same care as it would with its own confidential data.

9. SECURITY

The Contractor shall provide, from their current hosting facility provider, the latest evidence of internal security audit report and update the status at least annually.

The Contractor shall provide, from their current system hosting facility provider, the latest evidence of SOC2 Type 2 report and update the status accordingly.

10. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

11. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

12. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims

and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

13. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition

prior to performing services under this Agreement.

14. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

15. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

16. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

17. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the

Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

18. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

19. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

20. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

21. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

22. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

23. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:
Water Division Director
City of Santa Fe
801 W San Mateo
Santa Fe, NM 87505

Contractor:
Standard Automation and Control/
DBA Wonderware West
600 Travis Street, Suite 5300
Houston, Tx 77002

IN WITNESS WHEREOF, the parties have executed this Agreement on the date
set forth below.

CITY OF SANTA FE:

CONTRACTOR:

Standard Automation & Control/
Wonderware West


BRIAN K. SNYDER, CITY MANAGER

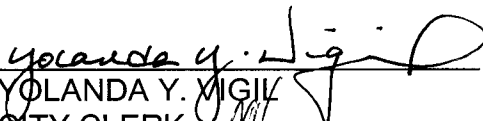

NAME & TITLE *Scott Spencer*
President

DATE: 12/11/2017


DATE: 12/20/17

CRS # 02-0521435
City of Santa Fe Business
Registration # 17-00144517

ATTEST:


YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:

 11/29
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

 12-11-17
ADAM JOHNSON, FINANCE DEPARTMENT

52361.530710
Business Unit Line Item

Corporate Address:
Standard Automation and Control
/DBA: Wonderware West
600 Travis Street, Suite 5300
Houston, TX 77002
Phone: 713-209-8884



Mitch Araman
Desert Southwest Region Sales
OFFICE: 602-297-2600
MOBILE: 602-432-3301
FAX: 602-297-2603
Mitch.Araman@wonderwarewest.com

Quote

Customer: City of Santa Fe Sangre de Cristo WTP
Location: Santa Fe,
Phone#: (505) 955-4375
Terms: Net 30
Contact: Gamino, Alex
Phone#: (505) 955-4375
Email: aegamino@santafenm.gov

Q-ID: QUO-32844-N8H8K9 Rev:0
Date: 11/13/2017

Quote Valid for 30 Days

Reference: Citect SCADA Server 5000
Quote Ref: Points
City of Santa Fe_11-13-
2017HW

THIS IS NOT AN INVOICE

DETAILS:

Line No.	Quantity	Part Number	Product Description	Price Per Unit	Extended Amount
1	1	CT101114	Citect SCADA Server, 5000 Points	\$9,130.00	\$9,130.00
2	1	10-7050	Required pro-rated cost to add above licenses to existing Customer First Support Agreement #24585-Citect beginning 11/13/2017 and expiring 6/29/2018.	\$971.36	\$971.36
				SubTotal:	\$10,101.36
				TOTAL:	\$10,101.36

To ensure rapid processing of your Purchase Order, please note the following:

- By agreeing to purchase you are accepting the Wonderware West Terms and Conditions attached to this quotation.
- If this quotation includes Wonderware products, by agreeing to purchase you are accepting the Schneider Electric End User License Agreement found [HERE](#).
- Shipping Terms: FOB Shipping Point
- Standard Payment Terms is NET 30.
- This quotation may contain products that are sold on a subscription basis. Subscription products require a purchase order to cover the full amount of the term of the subscription. Subscriptions will be invoiced on an annual basis and will be billed against the original purchase order.

As your Certified Wonderware Training Provider, we find that customers who attend training get the most out of their software investment. To learn more about the classes we offer and see our class schedule, please visit <https://wonderwarewest.com/training/>

Remittance Address:
Standard Automation & Control, LP
DBA Wonderware West
28373 Network Place
Chicago, IL 60673-1283
Phone: 713-209-8884



Exhibit "A"

TERMS AND CONDITIONS OF SALE
(Products, Software and/or Services)

1. Governing Effect of these Terms: An agreement for the sale and purchase of Products, Software and/or Services arises only upon Seller's acceptance of the Buyer's order. Seller's acceptance is expressly made conditional on Buyer's assent to these Terms and Conditions. Any additional or different terms and conditions set forth in the Buyer's order or any similar communication are objected to and will not be binding upon Seller unless agreed to by it.

2. Definitions:

(a) "Seller" means whichever of the following companies the Buyer is dealing with: Standard Automation & Control, LP d/b/a Wonderware West, MTL Instruments, Inc. or MTL Open Systems Technologies LP or any subsidiaries thereof.

(b) "Products" means equipment, software, components of either and combinations of both, sold by Seller.

(c) "Software" means all software and firmware programming routines and documentation thereof included in or supplied for use with, a Product, whether or not such Software was separately priced.

(d) "Services" mean services in the nature of installation, repair or maintenance performed by Seller's employees with respect to Products or Software and not the subject of terms and conditions included in a separate services contract.

3. Prices and Quotations: Prices of Products or Services shall either be based upon Seller's published price lists current at the time, specified in an applicable Quotation or other written confirmation from Seller or contained in separate contract between Buyer and Seller. Quotations of prices and specifications for Products and Services must be in writing and will expire on the expiration date indicated on said Quotation, or, if no date is specified, then sixty (60) days after the date of the Quotation. Seller reserves the right to change the prices on its price list on thirty (30) days notice. Quotations are subject to these Terms and Conditions of Sale.

4. Services: In the case of Services, normal working hours are 8:00 AM to 5:00 PM. A "man day" is eight (8) hours time, per man, per day during normal working hours. "Time" is on-the-job time, plus travel time to and from the job. "Time" starts and ends at the office location, unless otherwise agreed upon prior to the start of work. Saturdays, Sundays and Holidays will be charged at overtime rates. Overtime rates will apply when hours worked in one given day exceeds eight (8) hours. Overtime rate is 1-1/2 times applicable service rate. A minimum charge of 1/2 day's time, plus expenses will be charged when work done is under four (4) hours. Travel and living expenses are billed at cost. Automobile travel is billed at the allowable IRS rate then in effect per mile from office location, which is the point of origin and return, plus any required local travel. For larger jobs extending more than one month, travel and living expenses will be billed on a monthly basis.

5. Orders and Acceptance of Orders: All orders must be bona fide commitments specifying the Product(s) or Services, requested shipping dates, stipulated quantities and prices. No order or other commitment shall be binding upon Seller unless and until accepted in writing by an authorized officer of Seller.

6. Taxes: Prices do not include federal, state or local sales, use or other taxes now or hereafter enacted (unless otherwise specifically stated in Seller's acceptance) applicable to the Product(s) or Services. Such taxes will, in any event, be paid by Buyer unless Buyer provides a proper tax exemption certificate. Should Buyer fail to pay any such taxes and any taxing authority seeks to collect such taxes from Seller, Buyer agrees to indemnify Seller and hold it harmless from any such tax and any and all interest and penalties related thereto. Seller may, in its discretion, add such taxes to the sales price or bill for such taxes separately.

7. Shipments: All Products will be shipped F.O.B. Seller's shipping location. In the absence of specific instructions, Seller will select the carrier and, at its discretion, ship "collect" or prepaid, but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed to be the agent of Seller. Buyer must provide its own insurance. Title and risk of loss or damage to the Products shall pass from Seller to Buyer upon delivery by Seller to the possession of the carrier. Any claims for loss or damage or misdelivery shall be filed with the carrier. Products may be delivered in installments. The Buyer will clear the Products for export from the United States and import into the country of delivery.

8. Delivery Dates: The estimated shipping schedule stated in the Quotation or order acceptance does not constitute a commitment to deliver Products in accordance therewith. However, Seller will use reasonable efforts to ship on or before the estimated shipping dates indicated. Delay in delivery of any installments will not entitle the Buyer to refuse acceptance or terminate the agreement. If Buyer refuses to accept delivery, Seller may (without prejudice to other rights) store or dispose of the Products, in which case the Buyer will pay upon request the amount of any reasonable storage or disposal charges. Missing or damaged items must be reported within 5 days of delivery.

9. Payments and Credit:

(a) Payment terms are net thirty (30) days upon approval for credit. All payments are to be made in U.S. Dollars, unless otherwise agreed to in writing by Seller.

(b) Method of payment will be as specified in the Quotation or order acceptance, whichever applies. Extensions of credit and time for payment may be subject to limitations and vary, in Seller's discretion, as determined by (a) type of Product or Service, (b) magnitude of order, and (c) ultimate shipment destination. The amount of credit or terms of payment may be changed or credit withdrawn at any time. If Buyer fails to pay the price when due, Seller may recover, in addition to the price, interest thereon at the rate of 1 1/2% per month where lawful, otherwise the maximum lawful monthly interest rate, and reasonable attorney's fees.

10. Security Interest: Where requested by Seller as a condition of the extension of credit, Buyer agrees to grant Seller a Uniform Commercial Code purchase money security interest in the Products purchased as security for the performance of Buyer's obligations and to execute such documents to evidence, perfect and enforce said security interest as Seller may require.

11. Excusable Delays: Seller shall not be liable for any delay in performance of Services or delivery or non delivery Products, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or its suppliers, including by way of illustration but not limitation, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public worry, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Seller has exercised ordinary care in the prevention thereof. If any contingency occurs, Seller may allocate production and deliveries among Seller's customers and shall be entitled to a price adjustment, where equitable, in addition to extension of the time for performance.

12. Substitutions and Modifications: Seller may modify the specifications of components designed by Seller and incorporated into the Product, provided the modifications do not adversely affect the performance of the equipment. Seller may furnish suitable substitutes for materials unobtainable because of priorities, or regulations established by government authority, or non-availability of materials from suppliers.

13. Software: Seller shall at all times retain title to and full ownership of all Software created and supplied by it. Seller grants to Buyer a fully paid license to use the Software with the Product. Buyer shall have the right to make copies of the Software in any human or machine-readable form only to the extent necessary for the efficient use of the Product. Buyer shall not remove any statutory copyright notice included in the Software furnished to Buyer and shall reproduce all such notices on all copies of any form including revised, modified, or translated version made by Buyer, unless otherwise directed by Seller in writing. Buyer shall limit use and access of all Software provided by Seller, and copies thereof, to such of Buyer's employees as are directly involved in the operation and maintenance of the Product. Buyer shall require its employees not to make any disclosure of such Software or copies, except as required for the operation and maintenance of the Product. The rights and licenses granted to Buyer with respect to any Software furnished by Seller may not be assigned or transferred to another party without the prior written consent of Seller, except that such rights and licenses may be assigned or transferred upon the transfer of the Product to which such rights and licenses apply and the transferee's acceptance of such Product shall be deemed its agreement to assume and comply with any and all obligations of Buyer with respect to such Software. When Buyer no longer desires to use the Software, it shall notify Seller in writing and destroy all copies thereof.

Where Seller sells or licenses Software accompanied by a separate Software License, the terms and conditions of the latter will control in the case of any variances with these Terms and Conditions.

14. Warranties:

(a) Equipment: Seller warrants that its equipment will conform to Seller's specifications and shall be free from defects under normal use in material and workmanship for a period of one (1) year from receipt at destination. No equipment will be accepted for warranty consideration without a specific Return Material Authorization ("RMA") number furnished by Seller in advance of the return shipment. If equipment or components covered by warranty and assigned a RMA number are returned to the original shipping point, transportation charges and all other charges including but not limited to custom duties and insurance prepaid, within eighteen (18) months of invoice or twelve (12) months of installation whichever occurs first, and Seller determines to its satisfaction that the returned items are defective in material or workmanship and such defect was not caused by accident, misuse, neglect, alteration, improper installation, repair, improper testing or operation, or by improper packing for return, then Seller shall at its option (1) repair or replace the defective parts and ship prepaid to Buyer, excluding any custom duties and/or import fees etc., which shall be Buyer's responsibility, or (2) credit the account of Buyer for the original cost of the equipment plus original transportation charges. If Seller elects to repair or replace the defective parts, it shall have a reasonable time to do so. Seller shall not be responsible for failure of its equipment to perform specified functions or for any other non conformance caused by or attributable to (a) any associated or complimentary equipment, parts or software not furnished by Seller, (b) misuse, neglect or abuse of, or accident to the Product, use of sub-standard consumables, reasonable wear and tear or operator error, (c) exposure of the Product to conditions beyond the environmental, power and operating constraints specified by Seller, or (d) installation or wiring practices not in accordance with those recommended by Seller.

(b) Software: Seller warrants that any Software accompanying its Products will perform in accordance its software documentation. If, during the period ending ninety (90) days after delivery, the occurrence of any material error in the Software or any failure of the Software substantially to conform to Seller's software documentation that limits or prevents use of the Software by Buyer is promptly reported by the Buyer to Seller, Seller agrees to use its reasonable efforts to correct any such error or failure, but Seller does not warrant that the Software is free from defects or that all defects can be corrected; further, this warranty shall apply only to those portions of the Software, or its replacement that incorporate all program corrections and modifications, if any, delivered to Buyer, and provided further that this warranty shall not apply to any error or failure due to the misuse or negligence, incorrect installation or operation, improper repair or maintenance, the use of sub-standard consumables, or by any person other than Seller and shall not apply to any Software which has been modified by any person other than Seller.

(c) Services: Seller warrants that Services are performed in a good and workmanlike manner and conforms to any specification set forth in the Quotation, if any, relating to such Services. If the Services with regard to any Product are found defective under normal intended usage or operation within 90 days from the time of completion of the Services, Seller will correct such defects provided written notice of a claimed defect is given promptly upon discovery and within the services warranty period.



(d) Non-Seller products or software: Seller warrants products or software supplied by third parties (non-Seller Parties) only to the extent that such non-Seller Parties allow Seller to transfer to the Buyer the warranties of such non-Seller Parties. Seller will, to the extent permitted, assign to Buyers any such warranties. Buyer's sole remedy for breach of such warranty shall be the remedy offered by and available from the non-Seller Party, if any. Products or software from non-Seller which are not accompanied by non-Seller Party warranties are sold on an "AS IS, WHERE IS, WITH ALL FAULTS" basis.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS, SOFTWARE AND SERVICES AND ANY DEFECTS THEREIN OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER'S SOLE AND EXCLUSIVE LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY NONCONFORMITY OR DEFECT IN THE PRODUCTS, IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL BE AS SET FORTH IN THIS SECTION AND SECTION 14.

15. Limitations on Liability:

(a) SELLER'S LIABILITY ON ALL CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THESE TERMS AND CONDITIONS, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY PRODUCTS COVERED BY OR FURNISHED UNDER A CONTRACT HEREUNDER OR ANY EXTENSION OR EXPANSION THEREOF (INCLUDING REMEDIAL WARRANTY EFFORTS), SHALL IN NO CASE EXCEED THE CONTRACT PRICE EXCEPT AS TO TITLE TO ANY PRODUCTS FURNISHED. ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD SPECIFIED IN SECTION 13 ABOVE.

(b) IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL SELLER AND OR ITS EMPLOYEES BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS FOR SUCH DAMAGES. BUYER WILL INDEMNIFY SELLER AND ITS EMPLOYEES AGAINST ANY SUCH CLAIMS FROM THE BUYER'S CUSTOMERS. IF THE PRODUCTS OR SERVICES BEING PROVIDED BY SELLER WILL BE FURNISHED BY THE BUYER TO A THIRD PARTY BY CONTRACT OR RELATE TO A CONTRACT BETWEEN THE BUYER AND A THIRD PARTY, THE BUYER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING SELLER THE PROTECTION OF THIS AND THE PRECEDING PARAGRAPH.

16. Warranty Termination Upon Buyer Default: Upon the occurrence of any default by Buyer in payment of any portion of the purchase price when due, all warranties and all obligations of Seller to service the Product or components delivered by Seller to Buyer whether under this transaction or otherwise shall terminate.

17. Patent Infringement: Seller warrants that any Products or Software it manufactures will be free of any rightful claim of another for infringement of any United States patent. Provided Buyer gives Seller prompt notice in writing of such claim and permits Seller to contest or settle the same through its own counsel, Seller will defend Buyer, or may settle, at its expense, any suit or proceeding against Buyer based upon a claimed infringement which would result in a breach of this warranty and pay any settlement amounts or damages awarded against Buyer provided, however, that Seller shall not be liable to the Buyer for any indirect, consequential or incidental damages including but not limited to lost profits. Seller will, at its own cost, obtain for the Buyer the right to use the Product or Software, or modify it to avoid infringement or reclaim and replace it with a non infringing Product or Software, or to grant Buyer a credit for the then value (after reasonable depreciation) of the Product, and accept its return.

The above warranty shall apply neither to any software the warranties of which are solely expressed in a software license accompanying such software nor to any products which are (a) not of Seller's manufacture, (b) manufactured to Buyer's own design, (c) furnished in conjunction with any other products in a combination not offered by Seller as part of the transaction.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT INFRINGEMENTS AND IS IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED IN REGARD THERETO.

18. Confidential Information: Documentation, data, software, computer applications, and the like, whether in written or machine readable form, which Seller supplies to the Buyer shall constitute Confidential Information. Buyer agrees not to disseminate or copy any software or computer applications and to take reasonable measures to ensure the confidentiality of such Confidential Information, including the obtaining of binding agreements to this effect from its employees, and not to disclose the Confidential Information to any third party, except as may be authorized in writing by Seller. This provision shall not apply to information in the Buyer's legitimate possession prior to receipt from Seller or information which is or becomes available to the public or becomes general knowledge in the industry, otherwise than through the fault of Buyer.

19. Termination: Orders accepted by Seller may be canceled by Buyer only with the written consent of Seller (which consent Seller may withhold) and upon payment of reasonable cancellation or restocking charges. Seller shall have the right to cancel any order placed or to refuse, or to delay, the shipment thereof for failure of Buyer to meet promptly payments due Seller, or any other reasonable requirements established by Seller, or for any acts or omissions of Buyer that delay or impair Seller's performance. In the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer, voluntarily or involuntarily, under any provision of the Bankruptcy Act or any insolvency law, SELLER shall be entitled to cancel any order then outstanding, at any time during the period allowed for filing claims against the estate, and shall receive reimbursements for its reasonable and proper cancellation charges. If Seller elects to continue to make shipments under any of the circumstances referenced above, its action shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies.

20. Applicable Law: The validity, performance and construction of this contract shall be governed by the law of the Commonwealth of Massachusetts (excluding its laws regarding conflicts of laws) and the parties expressly disclaim any applicability of the United Nations Convention on the International Sale of Goods.

21. Government Contract Provisions: If the Product to be furnished under this contract is to be used in the performance of a Government contract or subcontract, the Government contract number and a statement to this effect shall appear on Buyer's purchase order, and in such event those clauses of the applicable Government procurement regulation which are, mandatorily required by Federal Statute to be included in Government subcontracts shall be incorporated herein by reference, including, without limitation, the Equal Opportunity clause specified in 41 CFR Section 60.250.4, and the Affirmative Action For Handicapped Workers clause specified in 41 CFR 60-741.4.

22. Interference with Seller Employees:

(a) Buyer shall not interfere with any employment relationship between Seller and any employee of Seller, including offering to employ the employee or engaging the employee as a consultant of Buyer or any of its affiliates or its other suppliers. The term "employee" includes any person who performs any work for or supplies any services to Seller or for or to its customers (on behalf of Seller) for wages, including but not limited to under a contract of hire by Seller.

(b) In the event that Buyer does interfere with an employment agreement or arrangement between the employee and Seller, including offering to employ the employee or engaging the employee as a consultant of Buyer or any of its affiliates or its other suppliers, then Buyer shall pay Seller the equivalent amount of that employee's gross wages earned during the six month period immediately prior to the last date of employment of employee by Seller ("damages") to compensate Seller for its investment in training such employee. Buyer agrees that in no event will it request or otherwise induce or permit employee to disclose to anyone any of the Confidential Information of Seller.

(c) Section 21 shall apply regardless of whether the employee in question had or has a "covenant not to compete" with Seller.

23. Exports: Any instructions by Buyer for delivery of Products outside the United States shall be deemed a representation and warranty that such instructions correctly specifies the consignee and correctly describes the ultimate destination of the Products. Buyer agrees to provide such additional information as SELLER may request regarding the identity of the consignee.

24. Assignment: This contract shall be binding upon and inure to the benefit of the parties and the successor and assigns of the entire business and goodwill of either Seller or Buyer or of that part of the business of either used in the performance, of this contract, but shall not be otherwise assignable.

25. Complete Agreement Modifications: This contract constitutes the entire agreement between the parties relating to the sale of the Product or the performance of Services and no addition to or modification of any provision shall be binding Seller unless made in writing and signed by an authorized officer of Seller.

26. Notice: All notices given hereunder shall be in writing, mailed first class, certified or registered, or delivered by hand to the address of other party set forth in the Quotation or to such other address as such party may designate from time to time by such notice, and shall take effect (a) when mailed, or (b) when received if delivered by hand.

27. Remedies: All Seller rights and remedies whether evidenced hereby or by any other agreement, instrument, or paper shall be cumulative and may be exercised singularly or concurrently.

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