TERMS AND CONDITIONS OF SALE

Introduction: Control Products, Inc. is herein referred to as “Seller” and the customer, person or entity purchasing goods or services (collectively referred to as “Goods”) from Seller is herein referred to as “Buyer”. Sale of Goods includes Seller granting to Buyer a license to use any software and/or firmware (“Software”) which are pre-loaded, or to be loaded into such Goods. These Terms and Conditions, any price list or schedule, quotation, acknowledgment or order confirmation and any other documents, given or delivered by Seller to Buyer, and all modifications or amendments thereto, herein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods by Seller to Buyer. Buyer’s acceptance of the Goods will manifest Buyer’s assent to these terms and conditions without variation. The fact that Seller may at times make partial shipments, and deliver or service such partial shipments, shall under no circumstances constitute a waiver of any of the provisions hereof or alter the terms thereof.

1. PRICES. All Prices for Goods, whether specified in Buyer’s order or purchase order, quotation, acknowledgment or order confirmation, or in any invoice, bill of lading, or other written or oral communication, or in any term of sale, unless otherwise agreed in writing by Buyer and Seller, shall be F.O.B. Seller’s plant of origin. No price list or quote shall be binding upon Seller.

2. TAXES. Any current or future tax or governmental charge (or increase in same) affecting Seller’s costs of production, sale, delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, other than taxes based on Seller’s net income or profit, shall be paid by Buyer unless paid for or collected by Seller. All such taxes paid or accrued by Seller shall be added to the price of the Goods or billed to Buyer separately, at Seller’s election.

3. TERMS OF PAYMENT. While Seller will use normal business efforts to obtain the delivery date(s) specified in Buyer’s order or purchase order, quotation, acknowledgment or order confirmation, Seller is not bound to deliver the Goods on any specific date or within any specific time, or to deliver the Goods according to Buyer’s delivery instructions. If Seller is unable to deliver the Goods on or before the date specified or on any date thereafter, Seller may suspend further performance under this and/or other agreements with Buyer, which other agreements Buyer and Seller hereby amend accordingly, in the event Buyer fails to make any payment when due. Buyer shall be liable for all expenses, costs, charges, losses, damages, and other amounts incurred by Seller as a result of such a suspension, whether such suspension results from the fault of Buyer or not. If the delivery date is outside of the United States immediately after the Goods have passed beyond the territorial limits of the United States. For all other shipments, risk of loss and damage and responsibility shall pass from Seller to Buyer upon delivery to Buyer’s carrier at Seller’s plant of origin. Seller’s obligation under this agreement is limited to the repair or replacement of any Goods which are defective and which are returned to Seller by Buyer. Seller will not be liable for any other costs, charges, losses, damages, arising from such use, or the cause of action being based in tort, contract, negligence or strict liability.

5. LIMITED WARRANTY. Subject to the limitations of Sections 6, 7, and 9, Seller warrants, to its direct purchasers and to no others, that the Goods manufactured by Seller will be free from defects in material and workmanship under normal use and regular service and maintenance, and that the Software will execute the programming instructions provided by Buyer without error and will be compatible with Buyer’s hardware and software.

9. PATENTS AND COPYRIGHTS. Buyer’s discovery of any warranty defects within the warranty period, Buyer notifies Seller thereof in writing, Seller shall, at its option and expense, use due diligence to repair or replace Goods so as to make them free from defects within the warranty period. All such tools, dies and patterns shall become the property of Buyer after Buyer has paid for them. Seller hereby warrants, without incurring cost or lien, that the title of all such tools, dies and patterns shall be clear and free of all claims.

10. EXCUSE OF PERFORMANCE. Buyer shall not be liable for any nonperformance or any default or delay in performance if caused by any act of God, strikes, lock-outs, slow downs, picketing or other labor controversies, accidents, delay or default of or failure by carriers, shortages of labor, delay in obtaining or inability to obtain materials, equipment or parts from regular sources, action, request or regulation of or by any government or governmental authority, or any other happening or contingency beyond Buyer’s control, and furnished by Buyer to Seller, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, other than taxes based on Seller’s net income or profit, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, other than taxes based on Seller’s net income or profit, shall be paid by Buyer unless paid for or collected by Seller. All such taxes paid or accrued by Buyer shall be added to the price of the Goods or billed to Buyer separately, at Buyer’s election. Any current or future tax or governmental charge (or increase in same) affecting Buyer’s costs of production, sale, delivery or shipment, or which Buyer is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, other than taxes based on Buyer’s net income or profit, or which Buyer is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, other than taxes based on Buyer’s net income or profit, shall be paid by Buyer unless paid for or collected by Seller. All such taxes paid or accrued by Buyer shall be added to the price of the Goods or billed to Buyer separately, at Buyer’s election.

11. CANCELLATION. Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller’s cancellation charges which include, among other things, all costs and expenses incurred, and to cover commitments made, by Seller and a reasonable profit thereon. Seller’s determination of such termination charges shall be conclusive.

12. CHANGES. Buyer may request changes or additions to the Goods consistent with Seller’s specifications and criteria. Any event such changes or additions are accepted by Seller, Seller may revise the price(s) and date(s) of delivery. Buyer reserves the right to change designs and specifications for the Goods without prior notice to Buyer, except with respect to Goods being made-to-order for Buyer. Buyer shall have no obligation to install or make such change in any event such event is a result of Buyer’s fault.

13. ASSIGNMENT. Buyer shall not assign its rights or delegate its duties hereunder or any interest therein without the prior written consent of Seller, and any such assignment, without such consent, shall be void. Seller will be passed on to those persons who use the Goods. Seller’s Goods are to be used in their recommended application and use patents only applies to infringements arising solely out of the inherent operation, according to Seller’s specifications for the Goods.

18. DOCUMENTATION. Seller shall provide Buyer with that documentation which is specifically identified in Seller’s quotation. If additional copies of documentation are to be provided by Seller, it shall be provided to Buyer at then prevailing cost. Buyer agrees to be responsible for all customs documentation.

19. EXPORT IMPORT. Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which Buyer’s Goods will be located, will be satisfied, and Buyer will comply with all applicable laws, rules and regulations and any other requirements that may be imposed, regarding Buyer’s use of the Goods. Goods may not be resold, leased, licensed or transferred, in whole or in part, to any other person or entity, except as specifically provided herein. Buyer is responsible for all duties, taxes, fees and other charges relating to the delivery of Goods to Buyer.

21. GENERAL PROVISIONS. These terms and conditions supersede all other communications, negotiations and prior oral or written agreements of Buyer and Seller. This form of agreement, including in those circumstances where any of the terms hereof are in conflict with Buyer’s order or purchase order, quotation, acknowledgment or order confirmation, shall be the controlling agreement, and Buyer acknowledges and agrees that the terms and conditions hereof shall govern the interpretation and effect of this agreement shall be governed by the laws of the State of Minnesota, USA with regard to its conflict of law principles. Buyer and Seller agree that the proper venue for all actions arising in connection with the sale of Goods hereunder will be the State of Minnesota. Buyer and Seller acknowledge and agree that all claims, actions and causes of action arising out of or relating to this agreement or any transactions relating to this agreement may be brought by either party, to the extent of 2% after the cause of action has accrued. Further, the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement of any transactions relating thereto.