



## French Gerleman General Terms and Conditions of Sale

Sale of any goods and/or provision of services, including without limitation, evaluation, repair, application counseling, specification, training, and design assistance services, by French Gerleman Electric Company ("Seller") is expressly made, subject to and conditioned upon the terms and conditions contained or referred to herein, in addition to those set forth on any applicable quotation, invoice, acknowledgment or packing slip provided by Seller and those contained in any attachments thereto provided by Seller. Additionally, the terms and conditions published by any manufacturer or service provider whose products or services are being resold by Seller are made a part of this document, as being applicable to those specific products or services. Any additional or different terms or conditions set forth in Customer's purchase order or other documentation not provided by Seller will not be binding upon Seller, unless specifically agreed to in writing by an officer of Seller. Customer's issuance of an order in response to Seller's quotation shall be deemed an acceptance of the terms and conditions of sale herein. As used herein, "Customer" and "Buyer" mean the customer of Seller.

**1. ORDERS, PRICES AND QUOTATIONS:** All orders placed with Seller, regardless of how transmitted, are subject to Seller's approval and acceptance. All orders are subject to credit approval. All terms of any credit application submitted by or agreement entered into by Customer or any agent of Customer are fully incorporated herein by this reference. All order changes and modifications are only accepted by Seller if in writing and signed by an officer of Seller. Confirming orders shall be marked clearly as such by Buyer and shall recite when and how the original order was placed. Prices are subject to change by Seller without notice to Buyer. See Section 16 hereof for prices set out in quotations. Prices do not include any present or future sales, use, excise, value-added or similar taxes, which, where applicable, shall be paid by Buyer and excludes any shipping costs and delivery charges which, unless otherwise agreed by Seller in writing, will be paid by Buyer. Applicable sales taxes will be stated separately on the applicable invoice(s). The Seller is not responsible for reasonably apparent typographical errors.

Customer is solely responsible for the unauthorized placement of orders by Customer's current or former employees. Customer will notify Seller, in writing, whenever there is a change in personnel authorized to place orders on their behalf. In the case of on-line transactions, Customer has the responsibility for notifying Seller of authorized buying personnel changes.

**2. QUOTATIONS:** All quotations are effective only for 30 days after the date of the quotation unless changed by prior written notice from Seller. All orders, whether or not based on a specific quotation from Seller, are subject to acceptance by the Seller at its general offices in St. Louis County, Missouri.

**3. LICENSED SOFTWARE AND FIRMWARE:** Products comprised of software or firmware may be subject to additional terms and conditions set forth in separate vendor's license agreements that control use of the product. Delivery of such product will only take place after a signed license agreement is in the possession of Seller.

**4. DELIVERY AND PERFORMANCE:** All orders will be scheduled for delivery according to mutual agreement between Buyer and Seller, and may be subject to a delivery charge. Accommodations for emergency or after-hours delivery may result in a special handling charges. Seller shall not be liable for failure to deliver or for delays in delivery or performance. Factory shipping dates are estimates by the manufacturer or Seller's suppliers and shall not be deemed to represent fixed or guaranteed shipping dates. All dates scheduled for performance of services are not fixed or guaranteed. All claims for shortages, damages and shipment errors made by deliveries on Seller's trucks must be reported to Seller within 5 business days of shipment. Claims of non-delivery by Seller's trucks must be made within 15 days of invoice. Claims for shortages, damage, or non-delivery made by common carriers must be made to the carrier by Buyer. Proof of delivery, if available, will be furnished upon request within 30 days of invoice date. Unless otherwise specified by Seller, shipping terms are FOB shipping point and direct shipments from manufacturers are FOB factory.

**5. RETURNED GOODS AND CANCELLATIONS:** Purchases from Seller may be returned for credit or exchange within a 90 day period from invoice date, when accompanied by Seller's Returned Goods Authorization form (RGA). RGA is valid for 30 days from date of RGA. Seller will not be responsible for any goods returned without an authorized RGA number. Returned goods must be clean, unused, in original packaging, and in saleable condition, and have the RGA number clearly marked on the packaging and be shipped prepaid to Seller (or other destination), unless approved for pickup by Seller's truck. Returned merchandise may be subject to a reasonable handling and restocking charge. Buyer understands and agrees that any order cancelled, returned, or postponed for material that is non-standard, custom made for Buyer, dedicated, special, or specific only to the Buyer or that is not a normally stocked item and/or quantity ordered exceeds the Seller's normal on hand inventory level, will be subject to a cancellation, handling, return, or restocking charge of up to 100% of the value of the goods as determined by Seller and / or Seller's vendor. The manufacturer's stated cancellation or change order terms apply to special ordered items.

**6. CREDIT:** If Customer is authorized, in the Company's sole discretion, to purchase on open account, it is understood and agreed that all amounts are due and payable from Customer to the Company within 30 days of invoice date. Any past-due amount will be subject to interest at the lesser of (i) 1.5% per month and (ii) the highest rate permitted by law. If the account becomes more than 30 days delinquent and is placed for collection, Customer shall pay to the Company, on demand, all the Company's reasonable collection charges; and if placed in the hands of an attorney for collection or suit, Customer shall pay to the Company, on demand, all the Company's reasonable attorney fees. Customer agrees that it shall give written notice to the Company at least 30 days prior to the sale of more than 25% of its ownership interests or assets, in a single or a series of transactions. Notwithstanding anything to the contrary contained herein, the Customer agrees that upon such notice, all amounts advanced or credit extended by the Company, along with all fees, expenses and other amounts, shall, without further notice, become immediately due and payable from the Customer to the Company, and shall bear interest at the lesser of (i) 1.5% per month and (ii) the highest rate permitted by law. Customer agrees that its obligations pursuant hereto and pursuant to any other agreement with the Company are, notwithstanding anything to the contrary contained herein or in any other documents or agreement, expressly un-assignable and non-delegable.

**7. TERMS OF PAYMENT, INTEREST:** Terms of payment are net 30 days from date of invoice (unless shown differently on Seller's written quote or invoice), with on-going approved credit as determined by Seller. Seller reserves the right to suspend performance at any time in the event any prior due payment from Buyer is not made when due. No payment offset is permitted unless approved in writing by Seller. Seller reserves the right to charge the lesser of (i) 1.5% per month or 18% annually and (ii) the highest rate permitted by law, on all past due account balances. Buyer shall be responsible for all service charges, costs of collection incurred by Seller, including without limitation lien costs and all attorneys' fees and expenses.

**8. CUSTOMER SUPPORT SERVICES:** In addition to other terms and conditions, the following terms and conditions will apply when Seller provides support services requested by Buyer. Support services are defined as those services provided by Seller or a sub-contracted third party to assist Buyer with, but not limited to, specification, programming, repair, training, trouble shooting, installation and start-up assistance.

- a.) Seller reserves the right to refuse to provide these services to any Buyer.
- b.) Buyer expressly agrees that it shall be solely and exclusively responsible for the following when purchasing support services:
  - (i) Approval of the design specifications and scope of work covered by the agreement to provide such services.
  - (ii) Insure that the operational control system meets applicable designs, specifications, standards, laws, safety requirements, environmental requirements, good practices, and is not in violation of any patents.
  - (iii) Obtain and/or pay for any permits or fees which may be necessary in order to perform the requested Customer Support Services.
  - (iv) Compliance with all applicable environmental laws and regulations.
  - (v) Supervision and review of the support services as such work progresses and final testing and approval promptly upon completion.
- c.) If customer support services are provided by or through Rockwell Automation, its publication entitled "General and Supplemental Terms and Conditions for GMS Contracted and On-Site Services" will be applicable, a copy of which will be provided by Seller upon request.

**9. WARRANTY:** Seller makes no representations and disclaims all warranties of any kind, express or implied, relative to any product manufactured by a third-party which may be sold by Seller hereunder. The only warranty, if any, associated with such products will be that provided directly by the original manufacturer. Seller assumes no post-sale technical support or warranty repair obligations with respect to such products (however, at its discretion, Seller may assist the customer in processing warranty claims). Seller assumes no responsibility for any manufacturer-supplied information, specifications, claims, warranties or representations made or provided relative to such products, which in all cases will be the responsibility of the original product manufacturer. Such information and materials, to extent provided by or secured from Seller, are solely for the convenience of the buyer, and the buyer must make its own determination as to their accuracy and completeness.

Seller warrants that its services will be performed in a competent, workmanlike manner.

The foregoing notwithstanding, if Seller furnishes advice or other assistance with respect to any product supplied hereunder or any system or equipment in which any such product may be installed, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, warranty, tort (including negligence), or otherwise. Such warranty shall be limited to a period of ninety (90) days from and after the completion of such services, unless otherwise specified or agreed to in writing by Seller. The Seller's sole responsibility with respect to such services shall be to repeat performance of such services or credit to customer the original cost of such service in Seller's sole discretion.

**THIS WARRANTY IS IN LIEU OF ANY OTHER EXPRESSED OR IMPLIED WARRANTIES, INCLUDING (BUT NOT LIMITED TO) ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR USE OR PURPOSE AND OTHER THAN AS EXPRESSLY PROVIDED HEREIN, ALL PRODUCTS AND SERVICES ARE SOLD "AS IS".** Further, Seller makes no representation or warranty that the products comply with the requirements of the US Occupational Safety and Health Act, the Consumer Products Safety Act, or any other Federal, State or local statute or ordinance or the rules and regulations issued thereunder. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS OR ANY OTHER DOCUMENT OR AGREEMENT, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL SELLER OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, WHETHER OR NOT FORESEEN OR FORESEEABLE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, DAMAGE TO ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS OR APPARATUS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWN TIME COSTS, OR CLAIMS OF THIRD PERSONS WHO BUY FROM OR DEAL WITH CUSTOMERS OF SELLER FOR SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, THE MAXIMUM LIABILITY, IF ANY, OF SELLER FROM ANY CAUSE WHATSOEVER SHALL BE THE ORIGINAL COST OF ANY PRODUCTS SOLD OR SERVICES PROVIDED.**

**10. LIABILITY:** Seller's liability, in addition to any manufacturer's warranty for equipment and/or parts, shall be limited to claims, injury, or damage to the buyer, which result directly from the negligence of a Seller's employee while performing such customer support service. In no event will the liability of Seller with respect to any contract exceed the price of such contract. In no event will Seller assume responsibility for or be liable for: (a) Penalties or penalty clauses of any description; or (b) Certification not otherwise specifically provided herein and/or for indemnification of buyer or others for costs, damages or expenses, each arising out of or related to the equipment or services of any order.

**11. INDEMNIFICATION:** Buyer expressly agrees to indemnify and save Seller harmless from and against any and all claims, loss, damage, injury and liability however caused, resulting from, arising out of, or in any way connected with the work to be performed under this agreement, whether or not caused or contributed to by the operation of Seller on Buyer's property, or by any negligence or alleged negligence on the part of any of Seller, its agents or employees, except that the provisions of this paragraph shall not apply to loss or liability caused by the sole negligence of Seller.

**12. ACCURACY OF CATALOGS, WEBSITE AND BROCHURES (Please read the following DISCLAIMER before using any of Seller's catalogs, website and brochures.):** The product information, specifications, and descriptions contained in Seller's catalogs, website, brochures or other product descriptions have been compiled for the use and convenience of the customers of Seller from information furnished by various manufacturers. Seller does not accept any responsibility for the accuracy or correctness of any description, calculations, specification or information contained therein which is provided to Seller by third parties with respect to products or services manufactured or provided by such third parties. Seller is selling the goods and merchandise illustrated and described therein on an as is basis and subject to the warranty terms herein set forth. Due to manufacturers' franchise agreements, all items shown in Seller's catalogs, website, brochures or other product descriptions may not be available at all Seller's locations. Please consult your Seller's representative.

**13. DISCLOSURE OF INFORMATION:** Any information, drawings, designs, suggestions, credit information, or ideas transmitted by buyer to Seller in connection with products ordered by buyer are not to be regarded as secret or submitted in confidence except as may be otherwise provided in writing signed by an officer of the Seller.

**14. RESTRICTIONS ON RESALE:** Buyer represents and warrants that it will not resell, ship or transfer, directly or indirectly, any of the products covered hereby, or technical data applicable thereto, to third parties located in countries to which such resale, shipment or transfer is prohibited by applicable provisions of the United States Export Control Regulations, Trading With the Enemy Act, the Patriot Act or any law or regulation similar to the foregoing.

**15. TAXES:** If Seller does not have a valid Tax Exemption Certificate from Buyer, Seller is required to charge sales/use tax on all Buyers' purchases. A Tax Exemption Certificate is not valid if any required information is missing or, if it is a Blanket Certificate, it was issued more than three years before. If customer makes a tax-free purchase from Seller and it is later determined, by a State or Local Department of Revenue, that the purchase was a taxable purchase, Buyer shall be responsible and agrees to make payment to Seller of the appropriate sales/use tax, along with any applicable interest and penalties that are assessed by the State or Local Department of Revenue.

**16. REPAIR AND SPECIAL SERVICES:** By delivering possession of Buyer's equipment or other apparatus to Seller for evaluation, quotation or repair, or allowing Seller to provide any such service or repair at Buyer's location, or by accepting any services from Seller, Buyer acknowledges and agrees that (a) Seller shall not be required to hold, store, care or be responsible for any said apparatus delivered to it for more than ninety (90) days after taking possession thereof, and thereafter Seller shall have the right to scrap or otherwise dispose of said apparatus in its possession without liability of any kind after giving customer at least ten (10) days written notice of Seller's intention to do so and an opportunity to reclaim and receive said apparatus at customer's sole expense and upon payment of all charges owed to Seller, (b) Seller's maximum liability for any loss or damage to said apparatus while in Seller's possession or while Seller is providing such services or repair at Buyer's location shall not exceed the then depreciated cost thereof and Seller's liability for losses or liabilities arising out of or related to the services performed or repairs provided shall be subject to all of the limitations set forth in Sections 8 and 9 hereof, and (c) Seller's services and repairs are also subject to all of the other terms, conditions and provisions of the Seller's quotation therefore and these Terms and Conditions of Sale.

**17. INTELLECTUAL PROPERTY INFRINGEMENT:** Buyer will hold Seller harmless against any loss or expense, including attorney's fees, resulting from infringement of patents or trademarks arising from compliance with Buyer's designs, specifications or instructions. Seller does not warrant that the products it sells which are manufactured by third parties are free from patent or trademark infringement.

**18. QUALITY ASSURANCE/CRITICAL APPLICATIONS:** Seller shall have no obligation to ensure that any goods or services purchased from Seller meet any special quality assurance specifications and/or other requirements unless such specifications and/or other requirements are set forth in Buyer's purchase order and expressly accepted in a written acknowledgement from Seller and Buyer represents that products which it purchases from Seller will not be applied by Buyer to, or resold by Buyer for application to, any critical end use (i.e. an application in which the failure of the system in which the Seller supplied product or service is used could reasonably result in widespread or catastrophic property damage, injury or death), including, without limitation, use in connection with or in any way related to the construction or operation of a nuclear or a hazardous or toxic materials treatment or disposal facility, unless the appropriate specification and/or other requirements for such end use is set forth in Buyer's purchase order and is expressly accepted in a written acknowledgement from Seller. In the event that any such goods, or any services supplied by Seller in connection therewith, are applied to a critical end use without the appropriate specification and/or other requirement therefore having been set forth in Buyer's purchase order and expressly accepted in a written acknowledgement from Seller, Buyer shall indemnify and hold Seller harmless against any damages or claims for damages made by any person for any injury, fatal or nonfatal, to any person or for any damage to property, incident to arising out of such application, including, without limitation any loss resulting from the radioactive, toxic, explosive or other hazardous inherently dangerous properties of source materials.

**19. FORCE MAJEURE:** Seller shall not be liable for any delay in or impairment of performance resulting in whole or in part from fire, floods or other catastrophes, strikes, lockouts or labor disruption, wars, riots or embargo delays, government allocations or priorities, mill conditions shortages of transportation equipment, fuel, labor or materials, inability to procure supplies or raw materials, severe weather conditions, or any other circumstance or cause beyond the control of Seller in the reasonable conduct of its business.

**20. GENERAL:** Buyer's and Seller's obligations shall be governed by, and construed in accordance with, the internal laws of the State of Missouri, without regard to principles of conflicts of law.

It is agreed that either party may communicate with the other by electronic means. Each party agrees when electronic communications are used, they are deemed to be the equivalent of written and signed documents. The foregoing notwithstanding, Seller shall not be bound by any electronic mail transmission with respect to any purported obligation by Seller which obligates Seller to provide products or services or to assume any liability or risk in excess of \$10,000.00 unless and until such purported obligation is fully performed by Seller or the purported obligation is confirmed by a written document from Seller and mailed, sent by overnight delivery service or personally delivered to Buyer. Seller shall have the right to set off any sum due to Seller from Buyer against any sum due or to become due to Buyer from Seller; such right of set-off being in addition to and not in lieu of any and all other rights and remedies to which Seller may be entitled. To secure full payment for the goods purchased by or delivered to Buyer, Buyer grants Seller a continuing purchase money security interest in, and a right to repossess, all such goods, wherever located, and Buyer authorizes the filing of appropriate financing statements, and will from time to time execute such other documents as Seller may reasonably require, with respect thereto.

**21. COMPLETE AGREEMENT:** The terms and conditions set forth herein, together with any other terms, conditions, or documents incorporated herein by reference, constitute the sole and entire agreement between Buyer and Seller with respect to any order, superseding completely any oral or written communications, unless terms thereof are expressly incorporated in a written acknowledgement by Seller. No addition to or variations from such terms and conditions whether contained in Buyer's purchase order, any shipping release or elsewhere shall be binding upon Seller unless expressly agreed to in writing by Seller.