

#### **Preamble**

The General Terms and Conditions set forth herein below, as modified and supplemented by any Special Terms and Conditions contained in the attached Addendum(s), shall constitute the terms and conditions under which Charles Industries, A Charles Industries Company (hereinafter referred to as "Charles Industries") respectively agrees to sell, and Customer agrees to buy Charles Industries Material and, if applicable, Services. In the event of a conflict, the special terms and conditions shall take precedence. The provisions hereof are all of the terms, conditions and agreements of the parties regarding the sale of material and services and take the place of any pre-printed provisions that may appear on the face and/or reverse side of Customer's order. No modification(s) will be valid unless stated in writing and signed by duly authorized representatives of both Charles Industries and the Customer.

#### **Purchase Orders**

1. The Customer shall order Charles Industries Material, and if applicable, Services hereunder by issuance of a Purchase Order(s) to Charles Industries in accordance with the terms and conditions given herein and which Purchase Order shall be subject to Charles Industries' acceptance and confirming written acknowledgement. Delivery of Material and/or Services will be in accordance with Charles Industries' Order Acknowledgement.
2. Purchase Orders placed hereunder shall include the following information:
  - a. The detailed description, quantity and Price of the Material, and if applicable, Services including any pertinent numerical or alphabetical identifications as shown in Charles Industries' quotation.
  - b. Requested delivery date(s);
  - c. Shipping destination(s) for Material; and,
  - d. Mailing address for Charles Industries invoice(s).

#### **Prices**

Prices for Charles Industries Material and, if applicable, related Services are those shown in Charles Industries' firm fixed price quotation or otherwise published price catalog in effect on date of order and which prices, unless otherwise expressly stated herein, shall remain valid for sixty (60) days from the date of the quotation and further provided delivery of Charles Industries Materials and, if applicable, Services is to be made within twelve (12) months of the date of Charles Industries' acceptance of the Purchase Order unless otherwise expressly agreed upon by Charles Industries. Prices for the Material are exclusive of transportation, charges to destination(s), any applicable taxes, duties, or other similar impositions as may be payable by Charles Industries.

#### **Payment Terms**

Subject to credit approval and unless otherwise deemed appropriate by Charles Industries, the full purchase price for the Material and any related prepaid freight transportation charges, insurance costs and taxes as itemized in Charles Industries invoice(s) shall be due and payable NET 30 DAYS from date of invoice and which invoice shall be mailed to Customer at the time of shipment of the Material. Final payment for Services ordered by the Customer and performed by Charles Industries shall be due net thirty (30) days from the date of Charles Industries' invoice to be issued upon its Service performance completion.

#### **Freight Terms – Delivery**

Charles Industries will pack the Material purchased hereunder for transport in accordance with its commercial standards and will deliver the same to a carrier of the mode of transportation selected by Charles Industries unless otherwise agreed upon by both parties. Prices are FOB Origin (EX WORKS for International Orders) Charles Industries' facility at which point delivery to a designated transport company will be made. Prepaid transportation charges to Customer's specified delivery destination will be separately itemized in Charles Industries' invoice. Charles Industries may make deliveries in installments with appropriate partial invoicing issued therefore. Charles Industries will not be responsible for any failure to perform due to unforeseen intervening circumstances or causes beyond its ability to control.

#### **Transfer of Title and Risk of Loss**

Title to the Material except for software shall pass from Charles Industries to Customer upon delivery to the carrier at the FOB Origin (EX WORKS for International Orders) point. Title to software shall remain with Charles Industries. Charles Industries grants to Customer a fully paid up, non-exclusive, non-transferable license to use the software solely in conjunction with Charles Industries provided hardware and is considered Charles Industries Proprietary Information. The foregoing license does not include any right of Customer to sublicense or assign without the prior written approval of Charles Industries. Customer assumes all risk of loss, damage or destruction of the Material upon Charles Industries delivery to the designated carrier and any loss, damage or destruction of the Material thereafter shall not relieve the Customer of its obligations to pay the Price therefore. Charles Industries will assist the Customer in asserting any claim against the involved carrier.

#### **Taxes**

Prices for Material do not include any state, federal, county or local (or comparable Canadian taxing jurisdiction) sales, use or excise taxes (or otherwise duties, fees, or similar charges however designated) applicable to the sale, delivery, or use of said Material, and the Customer expressly agrees to pay to Charles Industries (in addition to the Prices specified), the amount of any such taxes that may be imposed upon and therefore payable by Charles Industries as shall be determined by the Shipping Destination specified in the Customer's purchase order. In the event such tax is imposed by taxing jurisdiction in which Charles Industries is not authorized to do business, Charles Industries will collect and pay such tax as an agent of the Customer. All applicable taxes, duties, fees and similar cost incurrences will be billed to the Customer by Charles Industries unless the Purchase Order is accompanied by valid tax exemption certificates or equivalent legal waiver documents. Notwithstanding the foregoing, Customer shall not be liable for any taxes imposed upon or made payable by Charles Industries against the net income of Charles Industries.

#### **Credit, Security and Termination**

Charles Industries shall have the unencumbered right to change or withdraw any credit arrangements in effect with the Customer in the event that Charles Industries determines that the Customer is no longer a good credit risk. Charles Industries, under such credit arrangements, shall retain a security interest in the Material net to the unpaid balance of the Price until such time as the Customer makes full payment of the Price. If the customer petitions to reorganize under a Bankruptcy Act or is adjudicated bankrupt or if a receiver is appointed for the Customer's business or the Customer makes an assignment for the benefit of creditors, or if the Customer defaults in payment of any sums due under the provisions hereof, Charles Industries will without notice have the immediate right to terminate this Contract and enter the Customer's premises for the purpose of repossessing and removing any Charles Industries-owned Material. Charles Industries' termination of this contract or such taking of possession will be without prejudice to any other remedies Charles Industries may have. The Customer's obligation to pay all Charles Industries invoices as may be accrued will survive any termination action.

#### **Specifications**

Charles Industries manufactured Material furnished hereunder is represented to perform in accordance with Charles Industries' standard commercial product specifications which constitute the sole basis for technical acceptance of such Material by the Customer. Material supplied hereunder that is not of Charles Industries' manufacture is represented to perform in accordance with the original manufacturer's standard commercial product specifications which shall constitute the sole basis for technical acceptance of such Material by the Customer.

#### **General Warranty Provisions**

MATERIAL MANUFACTURED BY CHARLES INDUSTRIES, A CHARLES INDUSTRIES COMPANY, UNLESS OTHERWISE INDICATED IS WARRANTED FROM DATE OF SHIPMENT AS SPECIFIED AT: <http://www.charlesindustries.com/main/warranty.html>.

Subject to the limitations stated herein, Material manufactured by Charles Industries (exclusive of Software originated and supplied by Charles Industries) is warranted to be free of defects in workmanship and material at the time of delivery to the Customer. Software furnished in conjunction with Material is warranted to substantially conform to Charles Industries' standard specifications for one (1) year from the date of delivery to Customer. Charles Industries' sole obligation hereunder shall be to remedy any nonconformance in the event the Material is not as warranted herein at the time of delivery. Charles Industries agrees to, at its option, repair, correct or replace at its designated Warranty Repair Center, any defective Material so as to make the Material conform to this warranty or take back the Material and refund the Price therefor, less a reasonable adjustment for the Customer's beneficial use of the Material provided:

- a. Notice of the claimed defect or unsuitability is given in writing within twelve (12) months after delivery of the Material or Software or within such longer or shorter warranty term as designated for Material listed in the attachment hereto; and,

- b. The defective Material is returned to Charles Industries' designated Warranty Repair Center transportation prepaid and risk of loss borne by Customer, in accordance with Charles Industries' instructions which shall be promptly given; and,
- c. An inspection of the returned Material by Charles Industries at its Warranty Repair Center indicates the defect was not caused by abuse or improper use, maintenance, repair, installation or alteration by other than Charles Industries or its authorized Service Center; and,
- d. The Material has not been connected directly or indirectly to an apparatus not registered to the extent required or which otherwise is not in compliance with the FCC Rules and Regulations.

Any Material including Software supplied by but not of Charles Industries' manufacture or origination shall be subject only to the warranty of the manufacturer or supplier thereof which shall be conveyed to the Customer.

Charles Industries warrants that its installation Services shall be performed in a good and workmanlike manner and that any related installation material supplied by Charles Industries shall be free from defects in workmanship. If the Services shall be found defective within one (1) year from the date on completion of said Services, Charles Industries shall fulfill this warranty through repair or replacement of any installation materials and/or correction of installation errors provided written notice of the claimed defect is given to Charles Industries promptly upon discovery and in any event, within the services warranty period.

Equipment Repair Services provided the Customer by Charles Industries outside the scope of the above specific warranties are warranted by Charles Industries for a period of ninety (90) days against defect in workmanship or material under and subject to all of the applicable terms, limitations and conditions given herein.

THERE IS NO WARRANTY OF MERCHANTABILITY. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE PROVISIONS STATED HEREIN. THERE ARE NO WARRANTIES EITHER EXPRESSED OR IMPLIED OR ANY AFFIRMATION OF FACT OR REPRESENTATION EXCEPT AS SET FORTH HEREIN.

The foregoing shall constitute Customer's sole right and remedy under the terms and conditions given herein with respect to defective Material and Services.

#### **Returns**

Return authorization must be obtained from Charles Industries prior to return of any items, including In-Warranty and Out-of-Warranty. Customer's rights to repair or replacement are governed by warranty. Issuance of credit for returned items shall be made at Charles' discretion upon buyer's request and are subject to a restocking fee.

#### **Excusable Delay**

Charles Industries will not be liable for delays in performance or a failure to perform hereunder due to unforeseen interruptive circumstances or causes beyond its control including, but not limited to, inability to obtain material, labor or manufacturing facilities, acts of God, acts of any government, wars, riots, fires, floods, accidents, strikes, freight embargoes, or delays on the part of Charles Industries' suppliers for said reasons. In the event of such delays the schedules shall be extended for such additional period of time as is determined to be equitable by the parties.

#### **Substitutions and Modifications**

Charles Industries reserves the right, at any time before delivery, to modify, replace or substitute items of Material of its manufacture, or Material procured from its suppliers, and relevant general software to be supplied, provided that such modification replacement or substitution does not adversely effect the operational requirements or performances or maintenance of the particular Material and Software to be delivered and will not result in additional charges to Customer.

#### **License and Permits**

Any licenses or permits required in any State, Municipality, or Province to operate the Material, Firmware or Software furnished by Charles Industries shall be the responsibility of the Customer.

#### **Information Exchanges**

Should private information of either the Customer or Charles Industries be required by the other in performance of this Contract, the party receiving such private information (Recipient hereafter) agrees to maintain same in confidence and to take precautions reasonably necessary to protect same from third parties and any purpose inconsistent with the Contract. Precautions taken shall be deemed reasonable if at least equivalent to Recipients precautions with respect to its own private information. Private information shall mean technical or business information or data conveyed in written, graphic, or other permanent tangible form identified as being private or, in the case of oral conveyance, any such information promptly reduced to a tangible form.

The foregoing confidentiality restrictions, however, shall not extend to any part of the private information which:

1. was already known to the recipient at the time of disclosure hereunder as can be confirmed by written documentation;
2. was known or was generally available to the public at the time of disclosure hereunder;
3. becomes known or generally available to the public (other than by act of Recipient subsequent to its disclosure hereunder);
4. is disclosed or made available in writing to Recipient by a third party having an apparent bona fide right to do so;
5. is independently developed by Recipient without the use of the private information as can be established by written documentation; or
6. is required by law to be released.

Charles Industries' firm fixed price quotation(s) supplied in conjunction with the Charles Industries General Terms and Conditions of Sales shall be considered private information.

#### **Assignment**

In the absence or prior written consent of Charles Industries, Customer shall not assign any Purchase Order subject to the terms and conditions hereof or any of its rights and obligations hereunder. Charles Industries may assign any Purchase Order(s) and its rights and obligations hereunder (or may delegate the performance of its obligations) to any Charles Industries Company or to any other affiliated organization which in all respects is, and shall be bound by such obligations. Subject to the foregoing, the Purchase Order and the Terms and Conditions hereof shall inure to the benefit of and be binding upon the heirs, successors, administrators, executors and assigns of the parties.

#### **Patent Indemnity**

Charles Industries agrees that it will defend, at its own expense, all suits against Customer for infringement of any U.S. or Canadian patent, or patents covering, or alleged to cover, Charles Industries designed and manufactured Material in the form furnished by Charles Industries, and Charles Industries agrees that it will pay all sums which, by final judgement or decree in any such suits, may be assessed against Customer on account of such infringement, provided that Charles Industries shall be given (i) immediate written notice of any claims of any such infringement and of any suits brought or threatened against Customer and (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any suits so far as this may be without prejudice to the right of the Customer to continue the use, as contemplated, of the Material furnished or to be furnished. If in any such suit so defended the Material is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Charles Industries deems it advisable to do so. Charles Industries may procure the right to continue to use of the same for the Customer, or replace the same with non-infringing Material, modify same so as to be non-infringing, or accept the return of Material and refund the Contract Price thereof to Customer less an amount for wear and tear. Any indirect, special, remote and consequential damages which may occur as a result of any such infringement, or claim of infringement, as expressly negated and the complete liability of Charles Industries is limited to its agreements herein contained. Customer agrees that the foregoing indemnification shall not apply, and moreover shall be extended to Charles Industries, under circumstances where the infringement claim is based on a requirement or usage peculiar to the Customer or is inconsistent with Charles Industries' standard published documentation governing the proper application and use of the Material designed and manufactured by Charles Industries and supplied in fulfillment of Customer's order. In no event shall Charles Industries' total liability under this provision exceed the Purchase Price paid by Customer for the Material.

#### **Governing Law**

The terms and conditions hereof, in their formation, construction and interpretation shall be governed by the laws of the State of Illinois. In the event any of these provisions hereof become subject to revision or nullification by ruling of an appropriate Court of jurisdiction, the remaining terms and conditions contained herein shall continue in full force and effect.

#### **Limitations of Liability**

CHARLES INDUSTRIES SHALL NOT BE LIABLE FOR ANY INCIDENTAL SPECIAL REMOTE OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO THE LOSS OF REVENUE OR PROFITS OF THE CUSTOMER) ARISING FROM OR CAUSED BY, DIRECTLY OR INDIRECTLY, A DELAY IN DELIVERY OF THE ITEMS, BREACH OR WARRANTY, USE OF ITEMS BY CUSTOMER, BREACH OF ANY OBLIGATION OF CHARLES INDUSTRIES HEREUNDER, THE PERFORMANCE OR FAILURE TO PERFORM THIS AGREEMENT OR ANY OTHER ACT OR OMISSION BY CHARLES INDUSTRIES.

#### **Export Control**

Acceptance of this purchase order is subject to any present and future U.S. laws, regulations or other restrictions on the export from the United States of licensed products, or information about licensed products. In addition, the acceptance of any purchase order by Charles Industries is conditioned upon Charles Industries being granted any required export license. In no event shall Charles Industries be considered in default or breach of this agreement if the export license is not granted.