

Terms & Conditions for Cates Control Systems

The following Terms and Conditions apply to all quotations and proposals made by Cates Control Systems, Inc. ("Cates") d/b/a Integrity Integration Resources and d/b/a Cates Control Solutions to all orders placed with Cates by the buyer of Cates goods or services (the "Buyer"):

1. **PRICES AND DELIVERY:** All prices and service charges, unless otherwise noted in writing by Cates, are net exworks Cates's plant and are subject to change without notice to conform to Cates' published price list in effect at the time of shipment. Delivery shall be deemed to occur and risk of loss shall pass to Buyer upon delivery to the carrier. Cates reserves the right to make partial shipments and will render invoices accordingly.
2. **PAYMENT TERMS:** Terms are subject to the approval of Cates' credit department prior to shipment, and the Buyer agrees with respect to its obligation for payment, that: (a) if in Cates's sole judgment Buyer's financial condition or other conditions do not justify shipment on normal credit terms, Cates may require full or partial payment in advance; (b) after the products are shipped, it will pay to Cates the amount of the invoice in accordance with the terms of payment stated thereon, with interest at the rate of 1.5 percent per month on any late payment; (c) after the invoice is issued, if in Cates' sole judgment Buyer's financial condition in any way becomes impaired or jeopardized, the invoice shall become immediately due and payable; and (d) except where expressly prohibited by law, Buyer will, in event of default, pay Cates' cost of collecting any amount due under these Terms and Conditions including, without limitation, court costs and reasonable attorneys' fees. In addition to the purchase price, the Buyer agrees to pay the amount of any sales, use, occupation, excise or similar tax applicable to the transaction.
3. **CANCELLATION OR DELAY:** In the event of cancellation by the Buyer, or a change initiated by the Buyer that results in a partial cancellation or delay, of an order for products that are to be specifically constructed or adapted for the Buyer's use, the Buyer agrees that it shall confirm such cancellation or change in writing and shall reimburse Cates for all actual costs and damages incurred, including but not limited to, engineering, fabrication expenses, restocking fees, order price for all products or services that have been completed in accordance with Buyer's order and not previously paid for, the actual cost of work-in-progress, and raw materials expenses incurred by Cates in complying with such cancellation or change.
4. **CHANGE ORDERS:** The Buyer may request (in writing) changes to be made in the design or construction of the product being specifically constructed or adapted for the Buyer's use, which request shall be subject to Cates' acceptance in its sole discretion. If Cates accepts such request, it shall provide to Buyer an adjustment in the purchase price, which adjustment shall include any revisions to shipping dates and the estimated date of completion of the project. Upon Buyer's written acceptance of the adjustment(s) and revision(s), Cates shall proceed with completion of the project in accordance with the revised plans. Cates reserves the right to substitute like components of equal quality with those called for in the specifications or plans.
5. **PLANS AND SPECIFICATIONS:** Specifications, plans, blueprints, or similar Cates proprietary products received with the finished goods purchased by Buyer are, and shall remain, property of Cates. They shall not be reproduced, transmitted, or otherwise disclosed to any person not connected with Buyer's organization, nor delivered to a competitor of Cates.
6. **FORCE MAJEURE:** Cates shall not be liable for any loss, damage, delay, or failure of delivery resulting from fire, embargo, strikes, riot or civil commotion, differences with workmen, inability to obtain materials, casualties, delays in transportation, or any other causes of a similar nature to those named above, all of which are beyond Cates's reasonable control, nor shall Cates be liable for consequential damages including, without limitation, lost profits that may result from any delay whatsoever.
7. **SAFETY DEVICES:** Safety devices are not included as part of Cates' sale of products, unless the Buyer has specifically requested (and Cates has agreed) otherwise in writing. Unless otherwise agreed to by the parties in writing, the price of such safety devices is not included in Cates' proposals. Cates recommends that safety devices be made a part of the products sold by Cates and that Buyer should purchase such safety devices as a part of its purchase of the products from Cates. If Buyer fails to request or purchase such safety devices, such failure shall be at Buyer's risk. Buyer agrees to indemnify Cates and hold it harmless from any claim, demand, or cause of action asserted against Cates by any person or entity, and any loss and expenses including, without limitation, attorneys' fees, incurred by Cates by reason of same, which relates, directly or indirectly, to the lack of safety devices. In the event any safety device is provided by Cates, Cates shall only be responsible for ensuring that the design and installation of such safety device shall be of a type that is generally recognized in the industry. Buyer agrees that exceptions taken by local inspectors, not consistent with generally accepted industry interpretation and practice, will not be considered a failure on the part of Cates to fulfill its obligations to the Buyer.
8. **LIMITED WARRANTY, DISCLAIMER & LIMITATION OF REMEDIES:** CATES warrants to the original Buyer only that all products or parts manufactured by Cates shall be free of defects in materials and workmanship for a period of one (1) year from the date of shipment, when used according to Cates' recommended usages. Cates engineering, software, programming and labor have limited warranties, if any. For on-site software installations and start-ups, system verification by the Buyer's plant personnel is considered acceptance of the system and any subsequent on-site trips will be at additional cost to the Buyer. Reasonable remote support by telephone, fax, email, and modem will be provided for ninety (90) days if software "bugs" are found. If Cates does not perform the start-up, any warranty provided by Cates shall be



effective for ninety (90) days after shipment from Cates' facility. Other conditions may apply. If Buyer discovers within the applicable warranty period a defect in material, workmanship, engineering, software, programming or labor, it must promptly notify Cates in writing in accordance with these Terms and Conditions. All written notifications provided in accordance with this section must be received by Cates by the following deadlines: (1) for defects in materials or workmanship of parts or products manufactured by Cates, not later than thirteen (13) months from the date of shipment of such parts or products to Buyer, and (2) for defects in engineering, software, programming, and labor provided by Cates to the Buyer, not later than four (4) months from the date of delivery of such services. Any action or suit for breach of warranty must be commenced within eighteen (18) months following delivery of the affected goods and services to the Buyer.

A. In the event of any liability on the part of Cates in contract, tort, or otherwise, the Buyer's exclusive remedies shall be as follows: (1) repair by Cates, (2) refund of purchase price paid to Cates, or, (3) replacement in kind by Cates of any non-conforming items, provided those items are returned to Cates with shipping prepaid by the Buyer. Cates reserves the right to decide which of these exclusive remedies shall be exercised.

B. The Buyer agrees that, except as otherwise set forth herein or where such limitations, exclusions, and indemnities are specifically prohibited by applicable law, Cates' entire liability in contract, tort, or otherwise for any losses or damages resulting from defective goods or from any other cause shall be strictly limited to the purchase price paid to Cates for the deliverable(s) with respect to which losses or damages are claimed, plus any transportation charges actually paid by the Buyer. In no event, be it breach of warranty or other cause from performance or non-performance, shall Cates be liable to the Buyer for any incidental or consequential damages including, without limitation, lost profits.

C. The warranty set out herein shall be considered void if such products are misused, improperly installed, inappropriately stored, operated beyond rated limitations, damaged, neglected, altered/changed/repaired/or modified in any way by anyone other than personnel authorized by Cates.

D. Should material leakage occur, Cates shall have no liability due to such leakage, and Buyer agrees to indemnify Cates for any consequential injuries or damages that occur therefrom.

E. Cates does not warrant any products not manufactured by Cates. For products and components not manufactured by Cates, Cates' warranty is limited to the manufacturers' warranty. All manufacturers' warranty documentation will be forwarded to Buyer.

F. The warranty expressed above is in lieu of all other warranties, implied or otherwise. There are no implied warranties of merchantability or fitness for a particular purpose. Those warranties are specifically disclaimed and excluded.

9. INDEMNIFICATION: The Buyer agrees to indemnify, defend, and hold harmless Cates and all of its respective owners, officers, directors, affiliates, agents and employees from and against any and all claims, suits, actions, proceedings, liabilities, damages, losses, costs, attorneys' fees, and expenses that Cates may incur, suffer, or become liable for, directly or indirectly, arising from, or related to: (1) the Buyer's breach of its obligations to Cates; (2) misrepresentations made by the Buyer; or, (3) intentional or willful misconduct or negligence of the Buyer, its employees, officers, and agents, arising out of or in connection with the use of products or services provided by Cates to the Buyer.

A. Cates agrees to defend, indemnify, and hold harmless the Buyer, and all of its respective owners, officers, directors, affiliates, agents and employees (each an "Indemnitee" and collectively the "Indemnitees") from and against all liabilities, claims, suits, actions, proceedings, damages, losses, expenses (including reasonable attorneys' fees) directly arising from or directly in connection with: (1) any bodily injury or death of any person, (2) any property damage, or (3) any breach of the Terms and Conditions (collectively, an "Indemnifiable Event"); provided that, in all cases, the Indemnifiable Event occurs at the time service or installation is being provided by Cates for the Buyer and that in all cases, the Indemnifiable Event arises directly out of Cates' (or any of its employee's) gross negligence or intentional or willful misconduct during the performance of Cates' work for the Buyer. No Indemnifiable Event shall occur once Cates' work has been completed and verified or approved by the Buyer's plant personnel or any other Indemnitee.

B. The Buyer agrees that, except where such limitations, exclusions, and indemnities are specifically prohibited by applicable law, in the event that an Indemnifiable Event arises and Cates is found to be at fault, the total amount of damages and compensation to the Buyer or any persons affected may exceed the purchase price paid by Buyer to Cates, but shall never exceed the policy limits of Cates' current applicable insurance policy at the time the Indemnifiable Event occurred.

C. Buyer and each other Indemnitee shall undertake reasonable efforts to promptly notify Cates of an Indemnifiable Event together with reasonable details, documents and other information regarding such Indemnifiable Event (the "Notice of Indemnity"). Upon Cates' receipt of the Notice of Indemnity, Buyer and each other Indemnitee shall cooperate in good faith and assist and tender all defense of such Indemnifiable Event to Cates.

10. RETURNED GOODS: All sales are final. Thus, products shall not be returned without the written permission and shipping instructions from Cates. Products that are returned for reasons other than being defective shall be shipped exworks destination and the Buyer shall pay the following expenses: a twenty-five percent (25%) restocking fee and all expenses that may be necessary to restore the products to salable condition. Only products of current design and in salable condition shall be considered for return.



11. SOFTWARE / INTELLECTUAL PROPERTY OWNERSHIP: Cates shall retain all right, title and interest in and to all drawings, specifications and software prepared by Cates, including but not limited to all copyrights, patents and other intellectual property rights. Ownership rights for any job related application shall remain with Cates until such time as the project is completed, and all corresponding invoices due by the Buyer have been paid in full. Upon confirmation that all invoices have been paid in full CATES will grant to the Buyer a non-transferable, non-exclusive license to use the software for the Buyer's internal purposes only. The Buyer shall not sell, license, disclose, give away, assign or transfer the software or any interest therein to any person or entity. The Buyer, however, may engage other persons or firms to modify or add to Cates' software, in which case such other persons or firms may modify or add to the software for no purpose other than for Buyer's internal benefit and, shall first execute and deliver to Cates a confidentiality agreement in a form acceptable to Cates. If the Buyer makes additions or modifications to the software, the Buyer will own such additions and modifications, including all intellectual property rights in the additions and modifications.

12. DISPUTE RESOLUTION: CATES and Buyer are fully committed to working with each other throughout the project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Cates and Buyer each commit to resolving such disputes in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruption to Cates' work for the Buyer.

In furtherance of the foregoing, Cates and Buyer will first attempt to resolve disputes at the field level through discussions between Cates' representative and Buyer's representative. If a dispute cannot be resolved by discussion between Cates' representative and Buyer's representative, then senior-level representatives of each of Cates and Buyer shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute. Prior to any meetings between the senior-level representatives, the parties will exchange relevant information that will assist the parties in resolving the dispute.

If after meeting, the senior-level representatives determine that the dispute cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute to non-binding mediation, which shall be conducted in the State of Texas in Dallas County. The mediation shall be conducted by a mutually agreeable mediator or, if the parties cannot so agree, a mediator appointed by the American Arbitration Association pursuant to its Construction Industry Mediation Rules. Except as otherwise set forth herein, the parties agree to share equally in the mediator's fees and expenses, and also to bear their own attorneys' fees and costs associated with the mediation. Except as otherwise set forth herein, if any party commences formal legal proceedings or otherwise files any petition or complaint without first following the dispute resolution procedures set forth herein, and then participating in mediation pursuant to this section, such party shall bear the entire cost and expense of mediation. Notwithstanding the foregoing, Cates may bypass all provisions of this section to initiate legal proceedings in order to obtain immediate injunctive relief to protect its intellectual property and similar rights, and after such relief is obtained, Cates shall proceed promptly with the dispute resolution process set forth herein.

13. NOTICE. Any notice or other communication to be given hereunder by the Buyer shall be in writing and validly given if (a) delivered by overnight express (receipt requested) with tracking information provided to Cates, or (b) sent by United States registered or certified mail, postage prepaid, to the address for Cates set forth on the purchase order between Cates and the Buyer. Any notice that is sent by overnight express in the manner provided herein shall be deemed to have been duly given to the party to whom it is directed upon receipt by such party. Any notice that is addressed and mailed in the manner herein provided shall be conclusively presumed to have been given to the party to whom it is addressed at the close of business, local time of the recipient, on the fifth day after the day it is so deposited with the United States mail.

14. MISCELLANEOUS: The Terms and Conditions cannot be changed, modified, or amended by the Buyer unless Cates and the Buyer agree in a specific writing, signed and dated by Cates and the Buyer, to such change(s), modification(s), or amendment(s). The foregoing Terms and Conditions, together with any authorized amendments, changes, or modifications thereto, all mutually-approved proposals, purchase orders and change orders, and all invoices of Cates, constitute the complete and exclusive agreement between Cates and the Buyer, superseding all prior agreements, oral or written, and all other communications between the parties relating to Cates' work for the Buyer. To the extent these Terms and Conditions conflict with any mutually-approved proposals, purchase orders, or change orders between the Buyer and Cates, with regard to the specific subject matter of these Terms and Conditions, these Terms and Conditions shall control. The captions at the beginning of sections are used for convenience only and are not to be considered in attempting to construe any part of the Terms and Conditions. The Buyer shall make any claims for shortage or error in filling its order within five (5) days after receipt of shipment. Cates does not guarantee any product to meet local, municipal, state, or national laws or regulations. The waiver by Cates of a breach of any provision of these Terms and Conditions shall not operate or be construed as a waiver of any subsequent breach by any party nor shall such waiver constitute a continuing waiver. Cates' failure to enforce these Terms and Conditions immediately or its failure to enforce similar agreements against other buyers does not constitute a waiver or estoppel of the Cates' rights to enforce these Terms and Conditions against the Buyer. Whenever possible each provision of these Terms and Conditions will be interpreted in a manner to be effective and valid but if any provision of these Terms and Conditions is held to be prohibited by or invalid, then such provision or term will be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms set out herein.