These General Terms and Conditions of Sale (hereinafter referred to as “GTCS”) are applicable to all offers, quotations, agreements and orders for the sale of Products, which for the purpose hereof includes the sale of Software and the providing of Services by Yokogawa. Any provisions in Customer’s general conditions of purchase or amendment(s) made by Customer to these GTCS are herewith explicitly rejected. Any such additions or amendments to and deviations from these GTCS shall be agreed in writing.

1. DEFINITIONS
Customer: the legal entity issuing a Purchase Order to Yokogawa.

Delivery Date: the date when Yokogawa shall deliver the Products and/or has executed and performed the Services.

Functional Design Specification or FDS: the functional specifications, drawn up by Yokogawa on the basis of data supplied by the Customer.

Hardware: all machinery and installations and peripherals, by means of which data are processed or recorded on data carriers, together with components of the same.


Party or Parties: Yokogawa and/or Customer individually or collectively as the case may be.

Products: all Hardware, Software and documentation, test- and measurement equipment, analyzers, flow- pressure- or temperature meters, recorders, transmitters, sensors or any other good specified in the Quotation, not consisting of Services.

Purchase Order: a written order issued by Customer for the purchase of Products/ Services as accepted in writing by Yokogawa. As far as Software is concerned, “purchase” means acquisition of a license to use the involved Software and “Customer” means “licensee”.

Quotation: the offer, proposal or quotation (however named) including scope, specifications, functional requirements, quantity, schedule, conditions, drawings and other related documents attached thereto or referred therein, issued by Yokogawa for the sale of Products/Services. Services, Software, or the like.

Site Work: Services to be performed by Yokogawa or under Yokogawa’s direction which are not performed at Yokogawa premises.

Software: machine readable object code, including executable programs, firmware and/or Yokogawa-supplied data bases, user documentation in written or electronic object code form recorded on forms, tapes, magnetic tapes, disks and all other media on which data have been or are recorded, including updated parts of such Software, new versions and/or adaptations.

Variation Order: a written document issued by Customer and accepted in writing by Yokogawa for the variation of an existing Purchase Order.

2. QUOTATION AND PURCHASE ORDER
Any Quotation issued by Yokogawa shall be without engagement and the price stated therein shall remain valid for a maximum period of sixty (60) days calculated from the date of the Quotation. Technical specifications, dimensions, designs, drawings, illustrations, catalogues, use statistics, weights etc. used by Yokogawa in a Quotation, are drawn up by Yokogawa to the best of its ability, but do not bind Yokogawa unless expressly agreed to in writing. Yokogawa shall be free (at its sole discretion) to accept or refuse Customer’s Purchase Orders.

3. DELIVERY AND PRICE
All prices for the delivery of Products are calculated for deliveries ex Yokogawa-registered office / production- / distribution facility which is for deliveries within the EEA “Ex Works” and for deliveries outside the EEA “FCA” in accordance with the ICC – Incoterms. Prices for Products and Services are calculated, applying then prevailing rates in the Yokogawa price list. All prices and rates are exclusive of VAT, transport, packaging, travel, lodging and installation, import duties and other taxes, levies or costs.

The Delivery Date is not a deadline and in the event of late delivery, Yokogawa shall notify the Customer in writing as soon as possible, identifying the reasons for the delay. The delivery time is calculated from acceptance of Customer’s Purchase Order by Yokogawa, or, in case it has been agreed that Customer shall make a deposit, prepayment and/or shall pay a security, from the date Yokogawa has received the relevant Customer payment.

4. PAYMENT
Payment shall be made by Customer within thirty (30) days from invoice date. Payments must be made without any deduction or set-off into a bank or postal account, designated by Yokogawa. All bank charges shall be for Customer’s account.

If Customer does not meet its payment obligations promptly or in full, Customer shall, without any further notice being required, be in default. In the prevailing case, Customer shall owe Yokogawa, with effect from the due date, the applicable statutory interest rate. The foregoing shall apply regardless of Yokogawa’s right, in case of Customer’s late payment, to suspend the further execution of the Order or, in the event the Order or Order has not yet been executed, to terminate same by means of a written notice, without prejudice to Yokogawa’s right in the prevailing case to claim full compensation for any loss suffered.

5. PACKING
Packing of the Products shall be in accordance with Yokogawa’s standard procedures.

6. FUNCTIONAL DESIGN SPECIFICATION (FDS)
Delivery of FDS shall be deemed to have taken place at the moment the FDS has been submitted to Customer. The content of the FDS shall be exclusively applicable to the Products and/or Services. The FDS shall be approved by Customer in writing within the agreed period. From the date the FDS has been approved, Customer can no longer derive any rights from the data as supplied by Customer previously that contradicts the FDS.

7. ACCEPTANCE TESTING
Factory Acceptance Test (FAT) means the testing of the Products and/or Services according to Yokogawa’s standard test procedures, based on the FDS as approved by Customer. The FAT is carried out on Yokogawa’s premises, eye-witnessed by Customer to verify the compliance of the delivery with the contractual requirements and the FDS. If Customer, despite prior invitation and/or confirmation, has not been present at FAT, FAT is deemed to have taken place on the basis of the FAT report. Completion of FAT shall result in Customer’s release for shipment, subject to all outstanding invoices having been paid by Customer.

Site Acceptance Test (SAT) is the site test to verify that no deterioration occurred to the Product(s) during shipment and installation of the delivery on Customer’s site.

8. SITE WORK
In respect of Site Work to be performed by Yokogawa, Customer shall ensure the following:
Site Work can be commenced and continued unhindered and undisturbed from the moment of arrival of Yokogawa’s personnel.
Site Work can be performed during and outside normal working hours.
Yokogawa shall be entitled to perform its work in the customary manner, with due regard to the conditions of the place of performance of the Site Work are present.
 Mandatory government permits have been obtained.
Strict adherence to all reasonable directions given by Yokogawa to ensure the proper performance of the Purchase Order.
Availability of fully operational technical, spatial and communication facilities needed to enable any Products to be supplied to function. This includes, but is not limited to good access roads, transport facilities, adequate foundations, auxiliary supplies and equipment, power, water, light, properly air-conditioned rooms for the Products, the presence of at least one appropriately skilled employee, as well as all other necessary aids and equipment.
Availability at Customer’s site of suitable and secure space for storing Products, materials and tools of Yokogawa for performing the Site Work, as well as a telephone for communications outside Customer’s site. Customer shall be liable for all damage to and loss of Products, materials, tools and instruments from any cause during storage on Customer’s site.
Suitable and safe facilities for Yokogawa’s personnel in the immediate vicinity of the Site Work.
Physical safety of Yokogawa’s personnel; Customer’s Health and Safety program (including evacuation and emergency arrangements applicable to Yokogawa personnel).
Applying for and obtaining of all necessary Site Work permits and licences as required for Yokogawa’s personnel, as well as prior notification to Yokogawa of all relevant rules and procedures in connection therewith.
All safety facilities are available.
The Customer’s facilities and services described herein are available to Yokogawa free of charge.

9. VARIATION ORDERS
In case of variations which affect or may affect a Purchase Order, each Party shall notify the other Party in writing. Upon Yokogawa’s receipt (or issuance) of such notification, Yokogawa will inform Customer in writing: (i) whether or not such variations are acceptable, (ii) price- and/or settlement of all such variations. Customer shall notify the other Party in writing. Upon Yokogawa’s receipt (or issuance) of such notification, Yokogawa will inform Customer in writing: (i) whether or not such variations are acceptable, (ii) price- and/or settlement of all such variations.

10. TITLE AND RISK
Title to the Products and/or the results of the Services is reserved and shall transfer to Customer upon full payment by Customer. Risk to the Products and/or the results of the Services shall transfer to Customer upon delivery.

11. INTELLECTUAL PROPERTY RIGHTS
Yokogawa remains the owner of the intellectual property rights in the Products and in the results of Services, including rights in inventions, models, designs, schedules, drawings, illustrations, catalogues, manuals and in all other documentation etc. comprised therein as supplied to Customer. Customer shall not reproduce or circulate the above in whole or in part, without the prior written permission of Yokogawa. Except for the rights included in the software license conditions in article 13 below, nothing in these GTCS or any Purchase Order or Quotation is intended to or shall have the effect of vesting in or transferring to Customer rights in Yokogawa’s or its affiliates’ or its or their suppliers’ Software, methods, know-how or other intellectual property, regardless of whether such intellectual property was created, used or first reduced to practice in tangible or intangible form in the course of performance of the Services, whether solely by Yokogawa or jointly with Customer.

12. INFRINGEMENT CLAIMS
Without prejudice to article 15, Yokogawa will indemnify and hold Customer harmless from all claims by third parties with respect to an infringement of any intellectual property right, made against Customer and (allegedly) resulting from Customer’s use of the Products and/or the results of the Services, provided that:

a) Customer shall promptly notify Yokogawa in writing of any such claims,

b) Customer shall provide all assistance to Yokogawa as may be reasonably requested in connection with the defense or settlement of all such claims,

c) Yokogawa shall have the exclusive right to control the defense and settlement of all such claims.

If according to a final judgment, Customer shall be denied the further use of the Product and/or the results of Services or part thereof by reason of an (alleged) infringement, Yokogawa will, at its own expense and option either:

(i) modify or replace the Product and/or results of Services or the infringing part thereof so that it becomes non-infringing without adversely affecting the functionality thereof,

(ii) procure for Customer the right to continue to use the Product and/or results of Services, or

(iii) if the foregoing alternatives are not available or (at Yokogawa’s sole discretion) economically reasonable, Yokogawa shall take the Product/Services back and credit Customer for an amount equal to the value of the Product/Services, taking into account a reduction in Purchase Order value of the relevant Product/Services depreciated over a period of four (4) years from the date of acquisition.

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Yokogawa shall not be liable if the infringement of any intellectual property right or any claim in respect thereof arises from, or is based on the use of the Product and/or the results of the Services in combination with products not supplied by Yokogawa or if the Product and/or the results of the Services are modified by Customer without Yokogawa’s prior written authorization.

Customer shall fully indemnify Yokogawa against all losses of Yokogawa in performing Services, that breach an intellectual property right of third parties, if such breach arises from Customer’s directions and/or the use by Yokogawa of Customer’s designs, specifications, drawings or instructions.

The above constitutes Customer’s entire rights and Yokogawa’s maximum liability with respect to an (alleged) infringement of any intellectual property right of a third party, resulting from Customer’s use of the Product/Services.

13. SOFTWARE LICENSE CONDITIONS

Yokogawa declares to the best of its knowledge to be entitled to license and adapt Software as necessary for the proper execution of the relevant Purchase Order. The ownership of, and all intellectual property rights in Software shall at all times remain with Yokogawa or its licensors. Software is made available to Customer on the licensing conditions embedded in the Software or made available to Customer in the Product documentation or otherwise.

14. WARRANTY

Hardware is warranted to be free from defects in material and workmanship for a period of twelve (12) months from the Delivery Date. To the extent the warranty period is interrupted respectively starts anew due to repair/replacement regarding defective parts, all Yokogawa’s warranty obligations shall in any event expire sixteen (16) months after the Delivery Date. Yokogawa assumes no warranty responsibility for consumables and in the event of (i) improper handling, storage or use; (ii) attempted renovation, repair, calibration or replacement of parts by any third party other than authorized by means of prior written approval by Yokogawa; (iii) normal wear and tear; or (iv) other cause of defect not exclusively attributable to Yokogawa.

Subject to the remaining provisions herein, Hardware found defective shall be repaired or replaced at Yokogawa’s sole discretion at its premises with transportation charges prepaid by Customer. Dismissing of the defective part, re-installation of the repaired/replaced part and re-commissioning shall be the responsibility of Customer. Any warranty claim shall be made in writing within the aforementioned warranty period and will be handled during Yokogawa’s normal working hours. Customer shall be responsible for delivering to Yokogawa the defective part clear and free from any substance that may affect health.

Upon Customer’s request and Yokogawa’s acceptance, Yokogawa may dispatch at Customer’s cost, its service engineer(s) during Yokogawa’s normal working hours, to repair the defect and/or investigate its cause.

With respect to the providing of Services, warranty is limited to Yokogawa’s commitment that the engaged personnel will execute the Services, taking into account the diligence, knowledge and craftsmanship which is standard in the industry.

This warranty is in lieu of all other liability or warranties on the part of Yokogawa, express or implied. All implied warranties including implied warranties of merchantability and fitness for a particular purpose are explicitly excluded and disclaimed. The foregoing shall constitute the exclusive remedies for any breach by Yokogawa of its warranties.

15. LIMITATION OF LIABILITY

In no event shall Yokogawa’s liability in aggregate exceed the Purchase Order price. Furthermore, Yokogawa shall only be liable if such is a direct and exclusive consequence of negligence on the part of Yokogawa. Claims must be submitted to Yokogawa in writing within ten (10) business days after occurrence of a particular loss.

Customer shall be solely responsible for the protection of its electronic data and information through installation of the most recent computer virus detection programs and the timely creation of back-up copies. Yokogawa shall never be liable for any damage, relating to the loss of or mutilation of electronic data and information, nor for the restoring of the same.

Neither Party shall in any event be liable for any special, indirect or consequential damages, loss of profits, loss of business, interruption of business, lost goodwill, lost revenue and/or loss of business opportunity, and irrespective whether such damages are based on wrongfull act, breach of contract, breach of warranty or other legal fault.

The limitation and exclusion of liability herein shall not apply to personal injury, gross negligence, willful misconduct, as well as in all other cases in which liability is mandatorily enforced by law.

16. TERMINATION

In the event Yokogawa has valid reasons to assume that Customer shall not perform any obligation under the Purchase Order or any agreement connected therewith without providing adequate reason within a reasonable period of time, Yokogawa may terminate the Purchase Order which, upon written notice by Yokogawa remains unfilled for thirty (30) calendar days thereafter; (ii) becomes subject to change of control or ownership; (iii) terminates or suspends its business activities, becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, becomes subject to direct control of a trustee, receiver or of a similar authority or becomes subject to any bankruptcy or insolvency proceedings; Yokogawa shall be entitled, immediately and without warning or notice of default and without any liability or prejudice to any other remedy and/or right which Yokogawa may have, either to claim immediate fulfillment of Customer’s obligations or cancel the Purchase Order, obtain possession of the Products and/or recover from Customer any amounts due.

17. FORCE MAJEURE

Parties shall not be responsible for any loss, damage, delay or failure in performing their obligations under a Purchase Order, if due to Force Majeure. For the purpose hereof, Force Majeure mean a delay of obligations which is directly and solely attributable to events which are compelling, unforeseeable, unavoidable, outside of the invoking Party’s control and not due to any fault and negligence on its part.