

The following terms and conditions govern the sales of all products (the "Products") manufactured by JUMO Process Control, Inc. ("JUMO") or its' Affiliates, (each, a "Seller"), as well as any service relating to such Products if applicable. "Affiliates" as used herein shall mean a business entity now or hereafter controlled by, controlling or under common control with JUMO. These terms and conditions of sale constitute the final, complete, and exclusive agreement between Buyer and Seller relating to the subject matter hereof and supersede all prior or contemporaneous proposals, understandings, representations, warranties, promises and other communications, whether oral or written, unless otherwise specifically agreed to in writing by an authorized representative of Seller. Any term or condition in any order, confirmation or other document furnished by Buyer that is in any way inconsistent herewith is hereby expressly rejected and Seller's acceptance of any offer or order of Buyer is expressly made in reliance of Buyer's assent to all terms and conditions hereof. Buyer's acceptance of delivery of any Products shall constitute Buyer's acceptance of these terms and conditions. In the event of conflict between the terms and conditions set forth herein and any other forms, purchase orders, documents or instruments of the Buyer, the provisions contained herein shall prevail.

#### 1. PRICES

Prices applicable to the Products shall be as listed or quoted by Seller to Buyer and are F.O.B. Seller's U.S. warehouse unless otherwise specified. Seller's prices are subject to change without notice. Stenographic and clerical errors are subject to correction. Prices listed or quoted do not include any present or future federal, state, local, use, excise, transportation or similar taxes or other governmental charges, all of which shall be invoiced to and paid by the Buyer. Any such taxes or governmental charges paid by Seller on Buyer's behalf shall be reimbursed by Buyer on demand.

##### 1.1 PURCHASE ORDER PROCESS; TERMS OF PAYMENT

Buyer shall place orders for the Products to be purchased hereunder by submitting one or more purchase orders to Seller. Each such purchase order is intended for convenience only and shall state the descriptions and quantities of Products being ordered and the requested shipments dates for such Products. In no event shall any terms and conditions set forth on a purchase order submitted by Buyer other than the terms and conditions set forth herein, including, without limitation, any preprinted terms and conditions of Buyer, be binding on Seller. In addition, no purchase order shall be binding on Seller until Seller has accepted such purchase order by written acknowledgement or by shipment of the Products applicable to such purchase order. Orders for the purchase of Products when made by the Buyer shall be considered irrevocable for such Buyer.

The purchase price of the Products shall be payable, without deduction of any kind, within thirty (30) days from the date of invoice, unless otherwise agreed to by Seller in writing. In the event Buyer has a blanket order in place with Seller for the recurring supply of Products over a period of time which is subject to discounted pricing (a "Blanket Order"), Buyer shall be responsible for prompt payment of all discounts received under the given period's Blanket Order, if Buyer has not by that given period's end purchased all items so pre-specified under the Buyer's Blanket Order for that period. The period on a Blanket Order shall be one (1) year unless otherwise specified in such Blanket Order.

##### 1.2 SERVICE CHARGE

Interest at the rate of one and one-half percent (1 1/2%) per month (not to exceed the maximum interest allowable by law) shall be paid on the unpaid balance of any invoice not paid by Buyer within thirty (30) days of the due date thereof. Such interest shall be in addition to the purchase price hereunder. In the event Seller engages a collection agency or commences a legal action or suit to collect the purchase price or any part thereof, Buyer shall, in addition to the full purchase price including interest, be liable for all costs and expenses of such legal action or suit (including reasonable attorney's fees).

##### 1.3 TITLE

Title to and risk of loss or damage to the Products shall pass to Buyer upon delivery of the Products to a carrier for shipment.

#### 2. DELIVERY AND SHIPPING SCHEDULE

Shipment/delivery dates are approximate and are determined from the date as specified in Seller's acceptance of Buyer's order. Seller will make every effort to deliver the Products hereunder in accordance with the requested delivery date, provided that Seller shall not be liable for unavoidable delays in delivery caused indirectly or directly or in any manner by fires, flood, accidents, riots, acts of God, war, governmental interference, embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or

supplies, transportation delays or any other cause or causes (whether or not similar in nature to any of those specified herein) either beyond its control or which it cannot remedy without great economic hardship. Seller shall not be liable for any damages or penalties whatsoever whether direct or indirect, special, incidental or consequential, resulting from Seller's failure or the failure of its suppliers to perform or delay in performing unless otherwise agreed in writing by an authorized officer of Seller. Buyer agrees that any delay in delivery shall not affect the validity of any orders or these terms and conditions.

Seller reserves the right to deliver Products in installments unless expressly prohibited in an applicable purchase order. Installment deliveries will be invoiced by Seller at time of shipment unless otherwise agreed to by Seller. Delay in any installment delivery shall not relieve Buyer of its obligation to accept all remaining installment deliveries pursuant to a purchase order.

#### 3. RETURNS

No returns will be accepted by the Seller for any reason without prior authorization from Seller and Buyer's receipt of a "Return Material Authorization Number" from Seller in accordance with Seller's "Return Material Authorization Terms and Conditions", which are incorporated herein and made a part hereof (the "RMA Terms and Conditions").

Products, which have not been used or modified, as determined by Seller, may be returned to Seller for a refund provided that a \$100 or a twenty percent (20%) restocking charge on the applicable purchase price for such Product(s), whichever is greater, shall apply. For controllers, recorders, programmable transmitters and indicators only, such Products may be returned if not permanently modified, for a minimum \$150 or thirty percent (30%) restocking charge. All stock and modified-stock Products shall require Seller's prior authorization to be returned and must be returned within one hundred twenty (120) days from the date of delivery. Products for which the packaging seal has been broken may only be returned if agreed to by Seller, in Seller's sole discretion. Non-stock Products (i.e. "Specialized Products"), Seller's software products and accessories may not be returned under any condition.

#### 4. LIMITED WARRANTY; DISCLAIMERS

Seller warrants that the Products described herein are free from defects in material and workmanship. The foregoing warranty shall extend to the first ultimate user only for the Product for a period of one (1) year from the date of shipment (the "Warranty Period"), provided the Products: (i) have been properly cared for (i.e. the Products have not been subject to misuse, neglect, misapplication etc.); (ii) have been properly installed, operated and maintained in accordance with Seller's instructions, if any; (iii) have not been tampered with or modified without Seller's prior written approval; and (iv) Buyer promptly notifies Seller in writing of any warranty claim during the Warranty Period. The warranty provided by Seller in this Section 4 is the only warranty provided by Seller with respect to the Product(s) sold hereunder, and may be modified or amended only by a written instrument signed by Seller. In the event any Product fails to meet the warranty in this Section 4 during the Warranty Period, Buyer shall return the allegedly defective Products to Seller at Buyer's expense and risk in accordance with the RMA Terms and Conditions. All returned Products shall be returned with shipping prepaid. The Seller's sole obligation under this warranty shall be limited to, at Seller's option, to either repairing or replacing the non-conforming Product or issuing a credit in the amount of the purchase price for the non-conforming Product. Upon written agreement with Buyer, Seller may repair defective Products at Buyer's premises and Buyer shall pay all reasonable expenses incurred by Seller in connection thereto, including, without limitation, Seller's reasonable travel expenses.

Seller's warranty does not apply to Products not manufactured by Seller and do not apply to components furnished by third parties. Any components furnished by third parties are warranted only to the extent of the original manufacturer's warranty and then only if such original manufacturer's warranty is assignable to Buyer.

THE EXPRESS WARRANTY OF SELLER CONTAINED HEREIN IS EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, WRITTEN, ORAL, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. SELLER'S WARRANTY OBLIGATIONS AND BUYER'S REMEDIES ARE SOLELY AND EXCLUSIVELY AS STATED IN THIS SECTION 4.

Notwithstanding anything to the contrary contained herein, Seller's aggregate liability in connection with the sale or use of

Product(s) hereunder, regardless of the form of action giving rise to such liability (whether in contract, tort or otherwise), shall not exceed the aggregate purchase price for Products paid by Buyer to Seller pursuant to an applicable order. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY OF ANY NATURE, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF EQUIPMENT OR ANY OTHER EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS OF BUYER FOR SUCH DAMAGES EVEN IF SELLER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS BY BUYER OR ANY THIRD PARTY) AND OTHER RISK(S) IN CONNECTION WITH OR RESULTING FROM USE OF THE PRODUCTS. **THE FOREGOING STATES THE ENTIRE LIABILITY OF SELLER WITH REGARD TO THE SALE OF PRODUCTS HEREUNDER. THE LIMITATIONS CONTAINED IN THIS SECTION 4 ARE A FUNDAMENTAL PART OF THE BASIS FOR SELLER'S BARGAIN HEREUNDER, AND SELLER WOULD NOT ENTER INTO AN AGREEMENT WITH BUYER ABSENT SUCH LIMITATIONS.**

#### 5. CANCELLATION

Seller shall have the right to cancel an order if at any time Buyer does not strictly comply with all the terms and conditions contained herein or if Buyer's credit standing is at any time disapproved by Seller, in Seller's reasonable determination, by giving written notice of such decision to Buyer. Orders may be cancelled by Buyer only with the written consent of Seller at Seller's sole discretion and upon reimbursement to Seller for any and all expenses and other losses incurred by Seller as a result of such cancellation, including Seller's actual out of pocket costs, overhead and anticipated profit. Partial cancellation of an order may result in adjustment of prices for the balance of the order.

#### 6. INTELLECTUAL PROPERTY INDEMNITY

Buyer shall immediately inform Seller of any action or proceeding commenced against Buyer or to which Buyer is made a party based on a claim that a Product infringes a United States patent, copyright or trademark and shall cooperate in good faith with Seller in dealing with such claims and in the pursuance of its rights. Buyer shall indemnify and hold Seller harmless from all claims, liabilities, damages, costs and expenses incurred in connection with any action or proceeding commenced against Seller or to which Seller is made a party, relating in any manner to Buyer's purchase, possession or use of the Products, (including but not limited to any claims, damages and expenses asserted or brought against Seller based on the alleged infringement of any intellectual property contributed by Buyer to Seller or improper use of a third party's intellectual property rights by Buyer), except only to the extent it is determined that Seller's gross negligence has directly caused any damages to the party or parties seeking recovery for the same.

#### 7. GENERAL

No agent, salesman or distributor has any authority to obligate Seller with regard to any terms or conditions not contained herein.

Buyer shall advise Seller immediately of anything contained herein to which Buyer does not assent as a term or condition governing transactions between Buyer and Seller.

The laws of the State of New York shall apply to these terms and conditions and govern all transactions between Buyer and Seller. The federal and state courts located within Onondaga County, New York shall have exclusive jurisdiction to determine any and all actions and proceedings relating to or arising from the terms and conditions set forth herein and the sale of Product(s) hereunder and each party hereby irrevocably consents to the personal and subject matter jurisdiction of such courts with respect thereto.

The failure of either party to insist upon strict performance of any provision of the terms and conditions set forth herein, or to exercise any right provided for herein, shall not be deemed a waiver for the future of such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce any other provision or right herein.

In the event any provision or provisions herein, or parts thereof, shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired and shall remain in full force and effect.

## Additional Terms and Conditions for Specialized Products

#### Specialized Products:

"Specialized Products" are those non-stock Products manufactured or furnished by Seller in accordance with drawings, samples or manufacturing specifications designated by Buyer.

#### Engineering Charge:

All Specialized Products shall be subject to an engineering charge to be applied or included in the price of such Products, as quoted by Seller. No discounts shall be afforded to an engineering charge.

#### Order Changes:

Buyer shall notify Seller in writing of requested changes in the quantity, drawings, designs or specifications for any Specialized Products, which are ordered but not yet in the process of manufacture. After receipt of such notice, Seller will inform Buyer of any adjustments to be made in price, delivery schedules, etc. resulting from Buyer's requested changes prior to incorporating requested changes into manufactured Specialized Products. Changes in materials, supplies, labor and/or changes made at the request of the Buyer shall be at the expense of the Buyer. Written notice of any requested changes must be delivered to Seller not less than sixty (60) days prior to scheduled shipping date.

#### Prototypes:

If Buyer orders a "Prototype" of a Specialized Product, Seller makes no guarantees, warranties or representations with respect to such Prototype. Buyer shall have the duty and sole responsibility to test a Prototype for suitability and acceptance prior to production of Specialized Products that are based on Prototype designs.

#### Warranty and Indemnification by Buyer:

Buyer hereby represents and warrants to Seller that any Specialized Products when built to Buyer's specifications, do not and will not infringe any rights of any third party, of any kind or nature. Buyer shall indemnify, defend and hold Seller harmless from all claims of any nature asserted or brought against Seller resulting from a breach of Buyer's warranty hereunder.