

Terms & Conditions

THIS AGREEMENT, CONSISTING OF THESE TERMS AND CONDITIONS, SERVICES RATE SHEET, AND ORDER ACKNOWLEDGMENT IS BINDING UPON SPARK

HOLLAND B.V., HEREINAFTER 'SELLER', AND THE CUSTOMER, HEREINAFTER 'BUYER', AND IS THE ENTIRE AGREEMENT

1. Definitions: 'Goods' are materials, repair services and documentation supplied to fulfill the order requirements. 'Site work' shall include without limitation, field commissioning, start-up, installation supervision, training, or consultation services furnished by the Seller.

2. Acceptance: The sale of Goods and site work is expressly conditional on Buyer's acceptance of Seller's terms and conditions as stated herein and on the typed portion of the attendant quotation. Unless otherwise specified in writing, all quoted prices are firm for ninety (90) days from the date of offer. Provided that Buyer has not previously accepted Seller's terms and conditions, Buyer's receipt of Goods or services shipped under this Agreement constitutes Acceptance of these terms and conditions.

3. Documentation: Seller shall provide Buyer with data/documentation. Additional copies of standard data/documentation or requests for special data/documentation will be made available to Buyer at additional cost. Documentation includes, but is not restricted to, drawings, specifications, user manuals, training materials, and other such data or artwork furnished to the Buyer or the Buyer's subcontractors. The definitions and restrictions set forth in the following subparagraphs apply regardless of the type of media on which the documents are provided.

- A. Document Classes: Documentation shall comprise two classes: Class 1 shall include all documents describing the standard functionality and operation of the Seller's products, commonly referred to as user manuals, which are not produced exclusively for the Buyer. Class 2 shall include all documents produced by the Seller specifically for the Buyer for the purpose of facilitating the fair use of the Goods and services provided under this contract.
- B. Copyrights: the Seller retains Ownership of copyrights for all documents in all classes. The Buyer is granted a license to make, without further approval by the Seller, as many as 25 copies of any portion of a Class 1 document so long as the copied portion includes the copyright and trademark statements found on the title page of the original document and does not exceed more than 50 percent of the document content. The Buyer is further granted a license to make as many as 25 copies, in whole or in part, of any Class 2 document so long as the copied portion includes the copyright and trademark statements found on the title page or title block of the original document.
- C. Trademarks: The Buyer is granted a license to use the Seller's trademarks in documentation produced by the Buyer for the purpose of facilitating the fair use of the Goods and services provided under this contract so long as the trademarks are treated in a manner that is consistent with applicable Dutch trademark laws and clearly identified as trademarks of the Seller. A list of said trademarks is available upon request of the Buyer.

Documents provided to the Buyer, or copies of copyrighted material(s) made by the Buyer under the provisions set forth in subparagraph 'B' above, may be used by the Buyer or the Buyer's subcontractors only for the purpose of facilitating the fair use of the Goods and services provided under this contract. Said documents contain information considered to be the Seller's confidential and proprietary property, and may not be disclosed to any other third party without written permission of the Seller.

4. Termination and Suspension: Provided that Seller receives adequate written notice from Buyer, Buyer may terminate or suspend performance at Buyer's convenience subject to all reasonable charges, which charges shall be solely determined by Seller. Unless the equipment has been shipped, Buyer may cancel its order by written notice sent to Seller at its home offices subject to the following conclusive charges: Contract cancellation charges are based on the time the cancellation is made with respect to work in progress. This includes but is not limited to:

- A. Actual cancellation charges imposed by Seller's vendors with respect to special materials.
- B. Actual production status of Seller manufactured parts and assemblies.

5. Tax: All government charges upon the services tendered by this Agreement, including, but not limited to, use, occupation, VAT, income, export and import taxes, shall be paid by Buyer or, in lieu thereof, Buyer shall furnish Seller with a tax exemption certificate acceptable to the authority imposing the tax on Seller. Any applicable customs fees, visa fees, brokerage fees, work permits, work taxes, or other taxes related to the project will be invoiced at cost.

Seller does not warrant: (a) defects caused by failure to provide a suitable installation environment for the product, (b) damage caused by use of the

6. Credit: The amount of credit offered by Seller to Buyer is contingent upon Seller's opinion of Buyer's capacity, ability, and willingness to promptly pay for Goods and services received under the terms of this Agreement. Provided that, in Seller's opinion, there is a material adverse change in Buyer's financial condition and/or Buyer has not, within the agreed time, fully paid for Goods and services previously supplied under this and/or another Agreement(s) with Seller, Seller reserves the right to revoke Buyer's credit and/or suspend performance on this and/or other orders for Goods and services.

7. Shipment, Risk of Loss and Deliveries: With the exception of resale products as defined in Clause 9 below, all sales are Ex-works Seller's Factory. Shipping contracts made by Seller shall be to Buyer's account. All claims for loss or damage after risk of loss has passed to Buyer shall be filed by Buyer with the carrier. Buyer shall be liable to Seller for the full price of the Goods, irrespective of loss or damage in transit. Seller shall not be required to provide freight cost receipts to Buyer at the time of invoice.

- A. Transportation Expenses: Transportation expenses shall be paid by the Buyer. Full insurable values shall be declared with the resultant insurance premiums being paid by Buyer. Shipping charges shall be prepaid by Seller and added to the Buyer's invoice at cost, unless otherwise specified by Buyer.
- B. Deliveries: Delivery of any installment of Goods within 30 days after the delivery date specified by Seller shall constitute a timely delivery. Thereafter, delivery shall be deemed timely unless prior to shipment Seller has received written notice of cancellation, subject to paragraph 4. Untimely delivery of one (1) installment shall entitle Buyer to cancel that installment only. Unless otherwise specifically expressed, partial shipments shall be deemed acceptable.

8. Payments: Seller offers no discount periods and all payments are due 30 days after the invoice date. A monthly service charge of 1.5% may be charged on amounts owed by Buyer to Seller that have not been paid within 30 days of invoice date, subject to maximum amount permitted by law. However, if it is judicially determined that a different law governs this clause of this Agreement, the service charge shall be the maximum amount permitted under such law. Failure of the Buyer's representative to sign time sheets of the Seller's representative shall not preclude payment for services rendered.

9. Resale Products: Resale products are Goods (that are sold with Seller's Goods) which are not manufactured by Seller and which are supplied as an accommodation to Buyer. Seller's responsibility for resale products is limited to reasonable commercial effort to arrange for procurement and shipping. Unless otherwise agreed, all prices are F.C.A. resale product manufacturer's factory. Standard documentation shall be only as supplied by the resale product manufacturer.

SELLER MAKES NO WARRANTY FOR RESALE PRODUCTS, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE SOLE WARRANTY SHALL BE THAT OF THE RESALE PRODUCT MANUFACTURER.

Buyer agrees that Seller has no liability for resale products beyond the services within Seller's direct control necessary to reasonably discharge the above stated responsibility and that Seller shall not be liable for delays caused by resale product manufacturer. Buyer further agrees that Buyer's SOLE AND EXCLUSIVE REMEDY for Seller's breach of the stated responsibility shall be limited to the difference between the resale product manufacturer's price to Seller and Seller's price to Buyer for resale products in such breach.

10. Limited Warranty: Seller warrants, to its original customer only, that Goods manufactured by Seller are free from defects in material and workmanship for the lesser of 12 months from date of start-up or 14 months from date of shipment. If a failure to conform to specifications or a defect in materials or workmanship is discovered within this period, Seller must promptly be notified in writing, which notification, in any event must be received no later than 15 months from the date of shipment. Within a reasonable time after such notification, Seller will supply at no cost to Buyer all parts, components and subassemblies required for the service of any of the parts found not to be in compliance with the published specifications. Seller will also supply at no cost to Buyer components and subassemblies required for the repair of defective Goods in which the defect occurred during the warranty period. If repairs required are, in Seller's opinion too expensive or too difficult to accomplish, defective Goods may be returned to Seller at Buyer's expense for repair or replacement. Seller shall promptly repair or replace such Goods and return them to Buyer at Seller's expense. Excluded from the described TERMS & CONDITIONS 1 January 2005 provisions are consumables and parts subject to normal wear and tear. THE ABOVE ARE THE BUYER'S EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY.

The arbitral tribunal shall be composed of one (1) arbitrator when the contract value is lower than Euro 150,000 and shall be composed of three

Terms & Conditions

product for purposes other than those for which it was purchased, (c) damage caused by disasters such as fire, flood, wind, and lightning, (d) damage caused by unauthorized attachments or modification, (e) any other abuse or misuse by the Buyer, including improper installation.

THE FOREGOING LIMITED WARRANTIES AND REMEDIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND REMEDIES. IN NO CASE SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED UPON ANY LEGAL THEORY. SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF SAVINGS OR REVENUE, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME, THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS, INJURY TO PROPERTY AND, UNLESS PRECLUDED UNDER APPLICABLE LAW, BODILY AND PERSONAL INJURY.

Seller warrants that services will be performed in accordance with good industry principles and practices. Seller will ensure that personnel performing services will have the ability and experience for proper, efficient, and professional performance.

11. Force Majeure: Seller shall not be liable for failure to perform due to labor strikes or acts beyond Seller's direct control.

12. Software Provisions: If software is provided under this Agreement, Buyer is granted a non-exclusive, royalty free, 12-month license only for Buyer's use of Seller's software provided with the Seller's system. Under this license Buyer may: (a) Use Seller's software with the Seller's system provided; (b) Copy the Seller's software into any machine readable or printed form for back up in support of Buyer's use of the Seller's software on the Seller's system provided; (c) Create one additional copy of the software for archival purposes only.

13. Patents: Seller shall defend and indemnify the Buyer against any actions of third parties based on claims that the Goods manufactured by Seller constitute an infringement of a valid patent of the Netherlands, or any other applicable country, for the benefit of such third parties, provided that Buyer notifies Seller in writing of any such claim within five days thereof and thereafter gives necessary authority, information and assistance to Seller for the defense of such action. In the event that the Goods manufactured by Seller are held to be infringing in such action and their use is enjoined, Seller shall, at Seller's expense, modify Goods so they become non-infringing, or, if modification is not possible, refund the Buyer purchase price for the hardware and software items that are infringing and remove them at Seller's sole expense. Buyer agrees that Seller shall not be liable and that Buyer shall fully indemnify Seller if infringement is based upon the use of the Goods in connection with Goods not manufactured by Seller or in a manner for which the Goods were not designed by the Seller or if the Goods were designed by the Buyer or were modified by or for the Buyer in a manner to cause them to become infringing.

14. General Provisions: (a) Neither party shall have the right to assign its rights or obligations under this Agreement except with the written consent of the other party, provided, however, that a successor in interest by merger, by operation of law, assignment, purchase, or otherwise of the entire business of either party, shall acquire all interest of such party hereunder. Any prohibited assignment shall be null and void. (b) There are no understandings, Agreements or representations, expressed or implied, not specified in this Agreement, with the exception of written contracts stating specifically that the contract overrides these terms and conditions and is signed by a duly authorized officer of Seller. (c) No action, regardless of form arising out of transactions under this Agreement, may be brought by either party more than two (2) years after the cause of action has occurred. (d) No representative of Seller has any authority to modify these terms and conditions unless the modification is contained in a written instrument signed by a duly authorized officer of Seller. (e) This Agreement is formed and shall be construed under the laws of the Netherlands. (f) All stenographic, typographical and clerical errors in quotations, price lists, services rate sheets or specifications may be corrected at any time by Seller. (g) If Goods supplied hereunder are used in a nuclear power generation facility, Buyer fully indemnifies Seller pursuant to Seller's Standard Nuclear Liability Form. All disputes arising in connection with the present contract, the contract resulting thereof shall be finally settled in accordance with the arbitration rules of the Netherlands Arbitration Institute [Nederlands Arbitrage Instituut].

(3) arbitrators when the contract value is equal or higher than Euro 150,000. The place of arbitration shall be Emmen, the Netherlands. The arbitral procedure shall be conducted in the Dutch or English language.

15. Insurance: At Buyer's request, Seller shall furnish Buyer with certificates of insurance demonstrating the Seller's insurance coverage. Such certificates shall contain a statement that the insurance coverage shall not be changed or canceled without at least thirty (30) days prior written notice to the Buyer.

16. Limitation of Liability: Seller's total liability for any and all losses and damages arising out of any and all causes whatsoever including, without limitation, defects in the Goods, services, software, documentation, or Site work supplied under this Agreement, shall in no event exceed the purchase price of the applicable item(s).

17. General Indemnification: Seller agrees to defend, indemnify, and save harmless Buyer from any claims for bodily injury or property damage, and any costs, expenses, or damages incurred as a result thereof, which are based solely on the gross negligence or intentional misconduct of Seller and its executive staff.

18. Nonwaiver: Any failure by any party to strictly enforce the terms and conditions as stated in this Agreement or to exercise any rights acquired hereunder shall not constitute a waiver of such terms or rights and shall not affect the right of the party to enforce or exercise such terms or rights in the future.

19. Severability: If any one or more of the provisions or subjects contained in the Agreement shall for any reason be held invalid, illegal, or unenforceable, it shall not affect the validity and enforceability of any other provisions or subjects. Site work Provisions: In addition to the foregoing paragraphs, the following provisions shall also apply to any and all services performed by Seller's personnel at the Buyer's designated location. Applicable rates will be charged for Site work based on the Seller's Services Rate Sheet in effect at the time the service is performed, unless otherwise agreed in writing by the Seller.

20. Safety: Buyer shall ensure that Seller's personnel are not exposed to unreasonable hazards on or in the vicinity of the worksite. Buyer shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the worksite. Seller shall ensure that Seller's personnel will comply with the Buyer's documented safety regulations provided to the Seller while on the worksite. Seller shall ensure that Seller's personnel are provided with basic safety training for the normal work environment. Site specific training shall be provided at the Buyer's expense.

21. Hazardous Locations: Seller reserves the right to refuse to dispatch personnel to worksites threatened by warfare, terrorist activities, or other unsafe conditions as determined by the Seller's management. A variety of factors will be considered in determining whether a location is hazardous, including whether the country within which the work is to be performed is under a 'Travel Warning Status' as determined by the Dutch government. Seller reserves the right to recall personnel if the worksite does not meet reasonable health and safety standards.

22. Living Conditions: If meals and living accommodations are provided by the Buyer, Seller reserves the right to recall the Seller's personnel if the accommodations and meals are not suitable (as determined by the Seller's management). Seller reserves the right to make alternate arrangements if other accommodations are available.

23. Seller's Personnel on Worksite: Seller reserves the right to determine the number of Seller's personnel required for implementation of a project. All costs for the Seller's personnel on worksite shall be paid by the Buyer.

24. Communications Access: Buyer shall provide at no cost to Seller unlimited access to telephone, fax, and data transmission lines to the Seller's personnel on worksite for communicating with.