



## **Industrial Controls Solutions, LLC dba Synergy Terms and Conditions of Sale**

### **1. Definitions**

A. These terms and conditions are incorporated into and made a part of the agreement or proposal ("Agreement") by Industrial Controls Solutions, LLC, dba Synergy, and any of its domestic subsidiaries, unincorporated divisions, or affiliates ("SYNEGY") to sell to the named Buyer the goods referenced on the face of this document ("Goods") and services (including, without limitation, any material management, assembly and kitting services, and engineering and design services (whether performed by ISC or a subcontractor)) referenced on the face of this document ("Services"). The Agreement expressly limits Buyer's acceptance to these terms and conditions. Buyer may reject the Agreement by not ordering or receiving any Goods or Services. The Agreement does not constitute an acceptance by SYNEGY of any offer or counteroffer of Buyer, and SYNEGY hereby rejects any additional, different, or inconsistent terms, conditions or limitations contained in or incorporated by reference in any forms, purchase orders or other documents of Buyer that already have been or hereafter may be presented to SYNEGY with respect to the Agreement.

B. If Buyer has submitted or will submit additional and/or different terms and conditions to SYNEGY, or submit a counteroffer to SYNEGY, SYNEGY's subsequent performance will not be construed as either acceptance of Buyer's additional and/or different terms and conditions or Buyer's counteroffer, nor will SYNEGY's subsequent performance be viewed as a willingness to accept any provision of the Uniform Commercial Code, as adopted by any State or Commonwealth, that is contrary or in addition to any of the terms and conditions hereof.

### **2. Prices**

A. Unless otherwise agreed to by SYNEGY in writing, SYNEGY's prices for the Goods and Services will be the prices stated on the face of this document or SYNEGY's standard prices for such Goods and Services as of the date hereof, provided that, where standard prices for Goods in the quantities ordered as calculated by SYNEGY extend beyond two decimal places, SYNEGY shall round such prices for Goods to the nearest two decimal places for purposes of determining Buyer's payment obligation with respect to such Goods; provided, however, that SYNEGY may change the price for the Goods and Services in accordance with any change to its standard pricing for such Goods and Services prior to the date of shipment of Goods or performance of Services, as the case may be.

B. The prices of all Goods and Services shall be confidential, and Buyer shall not disclose such prices to any unrelated third party. SYNEGY and Buyer acknowledge and agree that money damages for all breaches of Buyer's obligation not to disclose the price of any Goods or Services is both incalculable and insufficient and that any such breach would irreparably harm SYNEGY. Therefore, in the event of an actual or prospective breach of the obligation of Buyer not to disclose the prices of any Goods and Services, SYNEGY shall be entitled to a permanent and/or a preliminary injunction to prevent or remedy such breach and shall have the right to specific enforcement of this Agreement against Buyer in addition to any other remedies to which SYNEGY may be entitled at law or in equity.

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3. Specifications. Unless SYNEGY has expressly agreed otherwise in writing, it is Buyer's responsibility to ensure that the Goods and Services are the ones that it has requested and that all specifications and quantities are correct. SYNEGY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES THAT GOODS AND SERVICES CONFORM TO ANY SPECIFICATIONS, DRAWINGS, DESIGNS, OR SAMPLES.

4. Shipment of Goods; Performance of Services. A. Shipment of all Goods shall be made F.O.B. point of shipment. Buyer shall bear the risk of loss and damage to Goods after delivery to the point of shipment. B. Any shipping dates for Goods or performance dates for Services given in advance of actual shipment of Goods or performance of Services are SYNEGY's best estimates for informational purposes only, and deliveries of Goods and performance of Services will be made subject to prior orders on file with SYNEGY. Unless otherwise agreed to by SYNEGY in writing, SYNEGY may, in its sole discretion, use any commercial carriers for shipment of the Goods. SYNEGY will use its reasonable efforts to comply with Buyer's requests as to method and route of transportation, but SYNEGY reserves the right to use an alternate method or route of transportation, whether at a higher rate.

C. Unless otherwise agreed to by SYNEGY in writing, Buyer will pay all insurance costs in connection with delivery of the Goods, if any, and be responsible for filing and pursuing claims with carriers for loss of, or damage to, Goods in transit.

D. Buyer is responsible for obtaining at its sole cost and expense all necessary licenses and permits for the Goods and Services, including, without limitation, any licenses and permits for transportation.

E. If Buyer is unable to receive the Goods when they are tendered, Buyer will be liable to SYNEGY for any losses, damages, or additional expenses incurred or suffered by SYNEGY because of Buyer's inability to receive the Goods.

F. Buyer immediately will inspect all Goods upon its receipt of them and will be deemed to accept the Goods upon receipt. Any claims for shortages or discrepancies will be waived by Buyer unless made in writing to SYNEGY within five days of receipt of the Goods.

G. SYNEGY may cancel in whole or in part any order for Goods or Services under the Agreement at any time. H. Until Buyer has fully and finally paid all amounts owed to SYNEGY for any Goods, Buyer shall hold such Goods in trust for SYNEGY, and SYNEGY may repossess them if Buyer fails to pay for them in a timely fashion.

## 5. Payment

All payments for Goods and Services must be made in United States currency unless specified in writing by SYNEGY. Payments for Goods and Services will be made by such means as SYNEGY may specify, such as by check or wire transfer, provided that SYNEGY may refuse, in its sole discretion, payment by any means, including, without limitation, credit cards. All payments must be made following the payment schedule outlined in the scope of work.

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B. Payment for Goods and Services is due within 30 days from the date of SYNEGY's invoice; provided, however, that SYNEGY reserves the right, in its sole discretion, to require full payment in cash before order entry, shipment, or delivery.

C. SYNEGY shall have the right to offset all amounts due and owing from SYNEGY to Buyer under this Agreement, including, without limitation, any chargebacks, or rebates, against any amounts due and owing from Buyer to SYNEGY under this Agreement.

D. If Buyer defaults in payment, Buyer will be liable for all collection costs incurred by SYNEGY including, but not limited to, attorneys' and collection agency fees, and all related disbursements.

E. If Buyer does not pay when payment is due following the payment terms outlined in the scope of work, past due amounts are subject to service charges of one and a half percent (1 ½%) per month or the maximum percentage rate permitted by law, whichever is less.

#### 6. Taxes

The purchase price of the Goods and Services does not include transportation taxes and sales, use, excise, import or any similar tax or other governmental charge arising pursuant to or in connection with the sale, purchase, processing, delivery, storage, use, consumption, performance or transportation of the Goods and Services. Buyer is responsible for payment of any transportation taxes, and any present or future sales, use, excise, import or any similar tax or other governmental charge applicable to the Agreement and to the sale and/or furnishing of the Goods and Services.

#### 7. Cancellation

Buyer may cancel its order for Goods and/or Services, but only if SYNEGY agrees to such cancellation in writing and only after Buyer pays reasonable charges for expenses already incurred and commitments made by SYNEGY in connection with the placement of such order(s). No cancellations will be permitted once material has been purchased by SYNEGY unless otherwise approved in writing by SYNEGY.

#### 8. Disclaimer of Warranties

SYNEGY HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN OR ORAL, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY CONTRACT, AT LAW, IN EQUITY, BY STRICT LIABILITY OR OTHERWISE, WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY AGAINST DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY AGAINST REDHIBITORY DEFECTS, ANY WARRANTY OF GOOD TITLE, AND A NY WARRANTY AGAINST INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY PATENTS, TRADEMARKS, OR COPYRIGHTS. SYNEGY shall, however, if given prompt written notice by Buyer of any claim of alleged patent, trademark, or copyright infringement with respect to any Goods use its reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may offer with respect to such Goods.

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#### 9. Exclusive Remedy

Buyer's EXCLUSIVE remedy against SYNEGY for any claim for or arising out of any in a Good tendered to Buyer is the repair or replacement of the Good, or alternatively, at SYNEGY's sole election, a refund of the purchase price of the Good. Buyer's EXCLUSIVE remedy against SYNEGY arising out of any defect in, or in connection with, any Service provided hereunder is the re-performance of that Service or, at SYNEGY's sole election, a refund of the purchase price of the Service. These remedies only will only be available to Buyer for one year after the Good is tendered or Service is provided to Buyer, and SYNEGY's obligations under this Section 9 will be void unless Buyer provides SYNEGY with notice of the defect in the Good or Service within 30 days of discovery of the defect. Any Good returned to SYNEGY for repair, replacement or refund under this Section 9 will be returned by Buyer in accordance with SYNEGY's return material authorization procedures then in effect, returns for a refund may be subject to restocking fees.

#### 10. Limitation of Liability

NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT WILL: (A) SYNEGY BE LIABLE TO BUYER FOR ANY CIRCUMSTANTIAL, CONSEQUENTIAL, CONTINGENT, EXEMPLARY, INCIDENTAL, INDIRECT, LIQUIDATED, MATERIAL, PUNITIVE, SPECIAL, SPECULATIVE OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, SALES OR REVENUES, COST OF REPLACEMENT GOODS, LOST BUSINESS OR BUSINESS INTERRUPTIONS, OR ATTORNEYS FEES OR COURT COSTS ARISING IN ANY MANNER PURSUANT TO OR IN CONNECTION WITH THE AGREEMENT, THE GOODS OR THE SERVICES (EVEN IF SYNEGY IS MADE AWARE OF THE POTENTIAL FOR SUCH DAMAGES); AND (B) SYNEGY'S TOTAL LIABILITY RELATED TO ANY GOOD OR SERVICE EXCEED THE PURCHASE PRICE OF SUCH GOOD OR SERVICE.

#### 11. Indemnification

A. Upon prompt notice by Buyer of any claim of U.S. patent, copyright, or trademark infringement with respect to any Goods or Services, SYNEGY will use its reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may customarily give with respect to such Goods. This Section 10 sets forth Buyer's sole and exclusive remedy against SYNEGY regarding the infringement by any Goods or Services of any third-party intellectual property rights, including, without limitation, any patents, or trademarks.

B. Buyer will indemnify, defend and hold harmless SYNEGY, its shareholders, officers, directors, employees, agents and representatives from and against all losses, damages, liabilities, costs, and expenses including, but not limited to, property damage, loss of profits or revenue, loss of use of any property, cost of capital, cost of purchased or replacement power or temporary equipment, personal or bodily injury, or death ("Losses"), that may arise pursuant to or in connection with the Agreement, the Goods, or the Services (including, without limitation, Losses arising in connection with the performance of Services on Buyer's premises by SYNEGY's employees, representatives, agents, or subcontractors), regardless of whether such Losses are suffered directly by Buyer or arise pursuant to or in connection

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with a third -party suit, claim, counterclaim, demand, judgment or other action (each a "Claim") and regardless of whether or not SYNEGY or any third-party is proportionately negligent with respect to such Losses and/or Claim, provided that Buyer need not indemnify SYNEGY for SYNEGY's obligation, if any, to Buyer under Section 9 above. For the avoidance of doubt and without limitation, this indemnification obligation requires Buyer to pay any judgments against SYNEGY or any other indemnified party resulting from any Claim, any court costs of SYNEGY or any other indemnified party in connection with any Claim, and any reasonable attorneys' fees and disbursements incurred by SYNEGY or any other indemnified party in SYNEGY's defense of any Claim. SYNEGY will have the sole and exclusive right to conduct the defense of any Claim at Buyer's sole and exclusive cost and expense. Buyer's indemnification obligation does not depend on the truth or accuracy of any allegations made against SYNEGY, Buyer or any third party.

## 12. Product Suitability

Goods sold by SYNEGY are designed to meet stated U.S. safety standards and regulations. Because local safety standards and regulations may vary significantly, SYNEGY cannot guarantee that the Goods meet all applicable requirements in each locality. Buyer assumes responsibility for compliance with such safety standards and regulations in the localities in which the Goods will be shipped, sold, and used. Before purchase and use of any Goods, Buyer should review the product application, and national and local codes and regulations, and verify that the use and installation of the Goods will comply with them.

13. Ownership. SYNEGY shall have and retain all right, title, and interest in and to any and all trade secrets, technical data, sales service and product plans, methodologies, techniques, designs, molds, tools, samples, systems, know-how, expertise and other proprietary information that it may use pursuant to or in connection with any Services, and Buyer shall not obtain a license to, or any other property rights in, any such SYNEGY property pursuant to or in connection with this Agreement

James Allen \_\_\_\_\_

Date: \_\_\_\_\_

Client: \_\_\_\_\_

Date: \_\_\_\_\_

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