



Optimal Control Systems, Inc.

P.O. Box 462, Albany, OR 97321

2324 Three Lakes Rd, Albany, OR 97322

Phone: 541-967-9323 | Fax: 541-967-9485

Standard Terms and Conditions

1. ACCEPTANCE, GOVERNING PROVISIONS, AND CANCELLATIONS. No order for Optimal Control Systems equipment or services shall be binding upon Optimal Control Systems until accepted by a writing of an authorized official of Optimal Control Systems or by shipment or other performance of such order. Any such order shall be subject to these conditions of sale, and acceptance shall be expressly condoned on assent to such conditions, which assent shall be deemed given unless purchaser shall expressly notify Optimal Control Systems and in any event, within five (5) days after receipt of any acknowledgment or confirmation of such order.

No order accepted by Optimal Control Systems may be altered or modified by purchaser unless agreed to in writing signed by an authorized official of Optimal Control Systems, and no such order may be canceled or terminated except upon payment of Optimal Control Systems's loss, damage and expense arising from such cancellation or termination.

Any order or contract may be terminated by the customer only by written notice and upon payment to Optimal Control Systems of reasonable and proper cancellation charges, including but not limited to all labor, facility, and equipment costs identified in the order or contract and which have been incurred prior to the date of notice of cancellation. All additional costs resulting from the cancellation and ten percent (10%) of the final net price will be included in the cancellation charges to compensate for disruptions in scheduling, planned production and other direct costs. Payment shall be made within thirty (30) days from the date of invoice.

No modified or other conditions will be recognized by Optimal Control Systems unless specifically agreed to in writing and failure of Optimal Control Systems to object to provisions contained in any purchase order or other communication from a purchase (including, without limitation, penalty clauses of any kind) shall not be construed as a waiver of these conditions nor an acceptance of any such provisions.

Unless otherwise agreed in writing by a duly authorized representative of Optimal Control Systems products sold hereunder are not intended for use in or in connection with a nuclear facility or activity if so used Optimal Control Systems disclaims all liability for any nuclear damage,

injury or contamination and purchaser shall indemnify Optimal Control Systems against any such liability, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise.

Any contract for sale and these conditions shall be governed by and construed according to the laws of the state of Oregon.

Optimal Control Systems shall have the right to cancel any order or contract at any time by written notice for any breach of the order or contract by the customer and Optimal Control Systems shall be entitled to collect cancellation charges as identified above.

No termination by customer for default shall be effective unless and until Optimal Control Systems shall have failed to correct such alleged default within forty-five (45) days after the receipt by Optimal Control Systems of the written notice specifying such default.

2. QUOTATIONS, PRICES AND MINIMUM BILLING. Written quotations are conditioned upon acceptance by purchaser within thirty (30) days from date issued and shall be considered as offers by Optimal Control Systems to sell during such thirty (30) day period unless sooner terminated by notice. Other Optimal Control Systems publications are maintained as sources of general information and are not quotations or offers to sell.

All prices are subject to change without notice. In the event of a net price change and unless otherwise agreed to in writing, prices for orders scheduled for immediate release shall be those in effect at time of order entry; orders not for immediate shipment will be subject to prices in effect on date of shipment.

Except as may otherwise be stated in quotations, price sheets, catalogs or other Optimal Control Systems publications, orders amounting to less than \$50 net will be billed at \$50. Minimum billing will be waived on emergency service orders in lieu of freight expense. See #5. Delivery below

All clerical errors are subject to correction.



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3. **PAYMENT TERMS.** Payment terms to customers with satisfactory credit are net thirty (30) days from date of invoice.

Any order for products by Buyer shall constitute a representation that Buyer is solvent. In addition, upon Seller's request, Buyer will furnish a written representation concerning its solvency at any time prior to shipment.

Optimal Control Systems reserves the right at any time to demand full or partial payment before proceeding with a contract of sale if, in its judgment the Buyer's financial condition at any time does not justify continuance of the work to be performed by Seller hereunder on the agreed terms of payment, Seller may require full or partial payment in advance. In the event of Buyer's bankruptcy or insolvency or in the event any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy or any insolvency or in the event any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, Seller shall be entitled to cancel any order then outstanding at any time during the estate and shall receive reimbursement for its proper cancellation charges. If delivery is delayed or deferred by purchaser beyond the scheduled date payment shall be due in full when Optimal Control Systems is prepared to ship and the equipment may be stored at the risk and expense of purchaser. If purchaser defaults when any payment is due, then the whole contract price shall become due and payable upon demand, or Optimal Control Systems, at its option without prejudice to other lawful remedies, may defer delivery or cancel the contract for sale. Seller's rights under this article are in addition to all rights available to it at law or in equity.

If payment of any amount owed Optimal Control Systems is not made when due, Optimal Control Systems reserves the right (in addition to and without limitation of its other rights) to suspend further performance, without liability, until such payment has been made.

4. **TAXES AND OTHER CHARGES.** Any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax (except the Federal excise tax on vehicles) duty, custom, inspection or testing fee or other tax, fee or charge of any nature whatsoever imposed by any governmental authority on or measured by any transaction between Optimal Control Systems and purchaser, shall be paid by purchaser in

addition to the prices quoted or invoiced. In the event Optimal Control Systems shall be required to pay any such tax, fee or charge, purchaser shall reimburse Optimal Control Systems therefor; or, in lieu of such payment, purchaser shall provide Optimal Control Systems at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing the same. Purchase orders must state the existence and amount of any such tax, fee or charge which it shall be Optimal Control Systems's responsibility to collect from purchaser at that time.

5. **DELIVERY.** Delivery of equipment to a carrier at any Optimal Control Systems plant or other shipping point shall constitute delivery to purchaser; and, regardless of freight payment, title, and all risk of loss or damage in transit shall pass to purchaser at that time.

Great care is taken in packing Optimal Control Systems equipment. Optimal Control Systems cannot be held responsible for breakage after having received 'in good order' receipts from the transportation company. All claims for loss and damage must be made by purchaser to the carrier.

Claims for shortages or other errors must be made in writing to Optimal Control Systems within 15 days after receipt of shipment, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by purchaser.

No allowance will be made in lieu of transportation if purchaser accepts shipment at factory, warehouse, freight station, or otherwise supplies its own transportation.

Method and route of shipment will be at the discretion of Optimal Control Systems unless purchaser shall specify otherwise. The total transportation cost will be borne by the purchaser.

Optimal Control Systems reserves the right to make delivery in installment, unless otherwise expressly stipulated in the contract for sale, and all such installment when separately invoiced shall be paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve purchaser of its obligations to accept remaining deliveries. Optimal Control Systems shall not be liable for any damage as a result of any delay due to



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any cause beyond Optimal Control Systems's reasonable control, including, without limitation, an act of God: act of purchaser or Optimal Control Systems supplier, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot delay in transportation: and inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

Delivery dates are approximate and based upon prompt receipt of all necessary information from Buyer. Unless otherwise specified by Seller, delivery will be made and title will pass F.O.B. point of shipment to Buyer. Risks of loss and damage pass to Buyer on delivery.

6. **SUBSTITUTES.** Optimal Control Systems may furnish suitable substitutes for material unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers, and assumes no liability for deviation from published dimensions and descriptive information not essential to proper performance of the product.
7. **WARRANTY TO CUSTOMER PURCHASING THROUGH AUTHORIZED OPTIMAL CONTROL SYSTEMS DISTRIBUTORS AND CUSTOMERS PURCHASING DIRECTLY FROM OPTIMAL CONTROL SYSTEMS.** Optimal Control Systems warrants equipment manufactured by it to be free from defects in materials and workmanship for the lesser of one (1) year from date of installation or eighteen (18) months from date of purchase. If within the applicable warranty period above purchaser discovers such item was not as warranted above and promptly notifies Optimal Control Systems in writing, [Optimal Control Systems shall repair or replace the items at the company's option.] This warranty shall not apply (a) to equipment not manufactured by Optimal Control Systems (b) to equipment which shall have been repaired or altered by others than Optimal Control Systems, (c) to equipment which shall have been subjected to negligence, accident, or damage by circumstances beyond Optimal Control Systems's control or to improper operation, maintenance or storage, or to other than normal use or service with respect to equipment sold but not manufactured by Optimal Control Systems the warranty obligations of Optimal Control Systems shall in all respects conform and be limited to the warranty actually extended to Optimal Control Systems by

its supplier. [The forgoing warranties do not cover reimbursement for labor, transportation, removal installation, or other expenses which may be incurred in connection with repair or replacement.]

The conditions of any tests shall be mutually agreed upon and seller shall be notified of, and may be represented at, all tests that may be made. The warranties and remedies set forth herein are conditioned upon (a) proper storage, installation, use and maintenance, and conformance with any applicable recommendations of Seller and (b) Buyer promptly notifying Seller of any defects and, if required, promptly making the product available for correction.

[If any product or service fails to meet the foregoing warranties (except title), Seller shall thereupon correct any such failure either, at its option, (1) by repairing any defective or damaged part or parts of the products, or (2) by making available, F.O.B. Seller's plant or other point of shipment, any necessary repaired or replacement parts. Where a failure cannot be corrected by Seller's reasonable efforts, the parties will negotiate an equitable adjustment in price, not to exceed amount of purchase order.]

[Except as may be expressly provided in an authorized writing by Optimal Control Systems, Optimal Control Systems shall not be subject to any other obligations or liabilities whatsoever with respect to equipment manufactured by Optimal Control Systems or services rendered by Optimal Control Systems.]

The foregoing warranties are exclusive and in lieu of all other express and implied warranties except warranties of title, including but not limited to implies warranties of merchantability and fitness for a particular purpose.

Seller warrants to Buyer that products and any services furnished hereunder will be free from defects in material, workmanship and title and will be of the kind and quality specified in Seller's quotation. The foregoing shall apply only to failures to meet said warranties (excluding any defects in title) which appear within one year from the date of shipment hereunder; provided, however, that if Buyer, in the course of its regular and usual business, transfers title to or leases such products (including equipment incorporating such products) to a third party, such period shall run until one year from such transfer or lease or eighteen months from shipment by seller, whichever occurs first.



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8. **LIMITATION OF LIABILITY.** Anything to the contrary herein contained notwithstanding, OPTIMAL CONTROL SYSTEMS COMPANY, ITS CONTRACTORS AND SUPPLIERS OF ANY TIER, SHALL NOT BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE, PROFESSIONAL NEGLIGENCE, OR STRICT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, DIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER. The remedies of the purchaser set forth herein are exclusive where so stated and the total cumulative liability of Optimal Control Systems, its contractors and suppliers of any tier, with respect to this contract or anything done in connection therewith, such as the use of any product covered by or furnished under the contract, whether in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the price of the product or part on which such liability is based.

IN NO EVENT, REGARDLESS OF CAUSE, SHALL OPTIMAL CONTROL SYSTEMS ASSUME RESPONSIBILITY FOR OR BE LIABLE (a) FOR PENALTIES OR PENALTY CLAUSES OF ANY DESCRIPTION OR (b) FOR INDEMNIFICATION OF CUSTOMER OR OTHERS FOR COSTS, DAMAGES, OR EXPENSES EACH ARISING OUT OF OR RELATED TO THE GOODS OR SERVICES OF THIS ORDER, OR FOR CERTIFICATION UNLESS OTHERWISE SPECIFICALLY PROVIDED HEREIN, OR (c) FOR DAMAGES UNDER ANY CIRCUMSTANCE, INCLUDING ANY LOSS, INJURY, OR OTHER DAMAGES. OPTIMAL CONTROL SYSTEMS'S MAXIMUM LIABILITY, INCLUDING DIRECT DAMAGES, SHALL NOT EXCEED THE AMOUNT OF THE PURCHASE ORDER. THIS LIMITATION OF OPTIMAL CONTROL SYSTEMS'S LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE. ANY ACTION AGAINST OPTIMAL CONTROL SYSTEMS MUST BE BROUGHT WITHIN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

The invalidity, in whole or part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph in this article.

9. **RETURN OF EQUIPMENT.** No equipment may be returned without first obtaining Optimal Control Systems's written Return Material Authorization.

Equipment accepted for credit, not involving a Optimal Control Systems error, shall be subject to a service charge of 20% of the invoice price. Individual returns not involving a Optimal Control Systems error must exceed \$100 net each.

Returned equipment must be of current manufacture, unused, and in resolvable condition, securely packed to reach Optimal Control Systems without damage and labeled with return authorization number, any cost incurred by Optimal Control Systems to put equipment in first class condition will be charged to purchaser. Non-stock products will be accepted at net salvage value.

10. **PATENTS.** As to equipment proposed and furnished by Optimal Control Systems, Optimal Control Systems shall defend any suit or proceeding brought against purchaser so far as based on a claim that said equipment constitutes an infringement of any patent of the United States. If notified promptly in writing and given authority, information, and assistance at Optimal Control Systems's expense for the defense of the same. In event of a final award of costs and damages. Optimal Control Systems shall pay such award. In event the use of said equipment by purchaser is enjoined in such a suit, Optimal Control Systems shall at its own expense, and at its sole option, either (a) procure for purchaser the right to continue using said equipment, (b) modify said equipment to render it non-infringing, (c) replace said equipment with non-infringing equipment, or (d) refund the purchase price (less depreciation) and the transportation and installation costs of said equipment. Optimal Control Systems will not be responsible for any compromise or settlement made without its written consent.

The foregoing states the entire liability of Optimal Control Systems for patent infringement, and in no event shall Optimal Control Systems be liable if the infringement charge is based on the use of Optimal Control Systems equipment for a purpose other than that for which sold by Optimal Control Systems. As to any equipment furnished by Optimal Control Systems to purchaser and manufactured in accordance with designs proposed by purchaser, purchaser shall indemnify Optimal Control Systems against



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any award made against Optimal Control Systems for patent trademark, or copyright infringements.

The delegation or assignment by Buyer of any or all of its duties or rights hereunder without Seller's prior written consent shall be void.

11. **PATTERNS AND TOOL.** Notice will be given if special patterns or tools are required to complete any order. Charges for such patterns or tools do not convey title thereto or the right to remove them from Optimal Control Systems's plant. If patterns or tools are not used for a period of two years, Optimal Control Systems shall have the right to scrap them without notice.

Any representation, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on seller. No modification, amendment, rescission, waiver or other change shall be binding on Seller unless assented to in writing by Seller's authorized representative.

12. **EXCUSABLE DELAYS.** Seller shall not be liable for delays in delivery or performance, or for failure to manufacture, deliver or perform, due to (1) a cause beyond its reasonable control, or (2) an act of God, act of Buyer, act of civil or military authority, Governmental priority, strike or other labor disturbance, flood epidemic, war, riot, delay in transportation or car shortage, or (3) inability on account of a cause beyond the reasonable control of Seller to obtain necessary materials, components, engineering, services, or facilities. Seller will notify Buyer promptly of any material delay excused by this article and will specify the revised delivery date as soon as practicable. In the event of any such delay, there will be no termination and the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.

The validity, performance and all matters relating to the interpretation and effect of this agreement and any amendment hereto shall be governed by the law of the State of New York.

The provisions of this agreement are for the benefit of the parties hereto and not for any other person except as specifically provided herein with respect to Seller's

13. **DISCLOSURE OF INFORMATION.** Any information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in writing signed by a duly authorized representative of seller.

15. **PUBLISHED PRICES.** Prices shown in any Optimal Control Systems publication are subject to change without notice and are not to be construed as a definite quotation or offer to sell by Optimal Control Systems. Such publication is maintained only as a source of general information and any prices shown therein are subject to confirmation with a specific quotation.

14. **GENERAL.** Any products delivered by Seller hereunder will be produced in compliance with the fair labor standards act of 1938, as amended and applicable. Seller will comply with applicable Federal, state and local laws and regulations as of the date of any quotation which relate to (1) non segregated facilities and equal employment opportunity (including the seven paragraphs appearing in section 202 of Executive Order 11246, as amended), (2) workmen's compensation, and (3) the production in Seller's manufacturing facilities of products furnished hereunder. Price and, if necessary, delivery will be equitably adjusted to compensate Seller for the cost of compliance with any other laws or regulations.

With respect to services, unless other wise agreed in writing by Optimal Control Systems and customer, (1) the price of any services shall be Optimal Control Systems's published price therefor in effect as of the date such services are provided; and (2) Optimal Control Systems shall have the right to increase or decrease the price of any service, effective with respect to any portion of services which have not been provided as of the date of such price change.

Hourly service prices are based on the standard work day of 8:00 a.m. to 5:00 p.m. Monday through Friday. Unless otherwise agreed in writing between Optimal Control Systems and customer services provided outside the standard work day will be charged at one and on-half times the applicable base service rate, except on Sundays and Holidays observed by Optimal Control Systems, in which case the services will be charged at two times the applicable base rate.

Billable service time includes all time Optimal Control Systems representatives spend traveling to and from the job



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site and all time Optimal Control Systems representatives are available for work and waiting (whether on or off the job site) to perform the services. In addition to billable service time, customer shall pay or reimburse Optimal Control Systems at cost for all travel and living expenses incurred by Optimal Control Systems representatives (in accordance with Optimal Control Systems Policies) in the course of providing services to customer, including without limitation hotel, meals, air, rail, bus or taxi transportation, car rental, and automobile mileage cost reimbursement if a personal vehicle is used.

16. **SCOPE CHANGE.** All changes affecting Goods, delivery date or otherwise affecting the scope of the order are to be documented in writing and subject to prior approval at Optimal Control Systems headquarters. All changes approved by Optimal Control Systems may result in price, delivery, specification, and/or other changes.
17. **SOFTWARE AND FIRMWARE.** Unless otherwise provided in an Optimal Control Systems or third party license agreement, Optimal Control Systems warrants for a period of one (1) year from the date of invoice that the software or firmware furnished under this order will perform in accordance with published or other written specifications prepared, approved, and issued by Optimal Control Systems headquarters, when used with specifically identified hardware. In any event, Optimal Control Systems makes no representation or warranty, express or implied, that the operation of the software or firmware will be uninterrupted or error free, or that the functions contained in the software or firmware will meet or satisfy the customer's intended use or requirements. Any software or firmware support is limited to the terms and conditions of the Optimal Control Systems license agreement or Optimal Control Systems extended support agreement. Software and firmware corrections are warranted for a period of three (3) months from the date shipped by Optimal Control Systems, or the remainder of the original warranty term, whichever is longer.

Satisfaction of this warranty, consistent with other provisions herein, will be limited to the replacement, or repair or modification of, or issuance of a credit for the Goods involved, at Optimal Control Systems's option, only after the return of such Goods with Optimal Control Systems's consent in accordance with RETURN OF EQUIPMENT. Any warranty service (consisting of time,

travel and expenses related to such services) performed other than at Optimal Control Systems's factory, shall be at Customer's expense.

18. **LICENSED SOFTWARE AND FIRMWARE.** Software or firmware which is subject to Optimal Control Systems license agreement (a) is also subject to terms and conditions herein unless inconsistent with the Optimal Control Systems license agreement, in which case the license agreement shall govern, and (b) shall not be provided to customer until customer agrees to the terms and conditions of the Optimal Control Systems license agreement.
19. **INTELLECTUAL PROPERTY.** Optimal Control Systems shall defend any suit or proceeding brought against customer or any customer of customer, so far as the same is based upon a claim that the design or construction of Goods sold by Optimal Control Systems infringe a United States Patent, Copyright of Mask Work Registration (excepting a claim based upon a design or modification incorporated in such Goods at the request of the customer); provided that customer promptly notifies Optimal Control Systems of any such suit or proceeding in writing and provided that at Optimal Control Systems's expense (a) customer gives Optimal Control Systems the right to defend or control the defense of any such suit or proceeding, including settlement, and (b) customer provides all necessary information and assistance for defense. This obligation to defend shall extend, in the case of non-standard Goods sold by Optimal Control Systems to customer, to a claim based upon the use of Goods but only when such use is not in combination with any other apparatus and only to the extent that Optimal Control Systems was informed by customer of such use in writing prior to the date of Optimal Control Systems's shipment of the Goods. No implied license is granted to use the goods in an infringing manner.

Optimal Control Systems will pay all costs and damages finally awarded or agreed upon by Optimal Control Systems which are directly related to any such claim. In the event the Goods, or any part thereof, is in such suit held to constitute infringement and the use of said Goods or part is enjoined, Optimal Control Systems will at its own expense, either procure for the customer the right to continue using such Goods or part, or replace same with non-infringing Goods, or modify the same so it becomes non-infringing or remove the Goods and refund the purchase price and the transportation and installation costs thereof. THIS



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PARAGRAPH SETS FORTH OPTIMAL CONTROL SYSTEMS'S ENTIRE LIABILITY WITH RESPECT TO INTELLECTUAL PROPERTY.

20. **GOVERNMENT CLAUSES AND CONTRACTS.** No Government contract regulations or clauses shall apply to the Goods of this order or bind Optimal Control Systems unless specifically agreed in writing at Optimal Control Systems Headquarters.

Goods sold by Optimal Control Systems are not intended to be used, nor shall they be used, as a "Basic Component" UNDER 10 CFR 21 (NRC).

21. **VISITOR PASSES.** Optimal Control Systems shall be provided such access to Customer's premises as Optimal Control Systems deems reasonably necessary to enable Optimal Control Systems to provide services to Customer in accordance with these terms and conditions and any applicable specification relating hereto. Notwithstanding anything in any visitor pass form, premises access agreement or similar document presented by Customer to any Optimal Control Systems representative as a condition of access to Customer's premises, Optimal Control Systems and its representatives shall not (1) be liable for any claim, injury or damage to Customer, its agents, employees or contractors or any third party relating to or arising out of Optimal Control Systems's visit to Customer 's premises and only to the extent such claim, injury or damage results directly from the negligence of Optimal Control Systems's representative; (2) waive any claim for loss or damage to person or property caused by Customer, its agents, employees or contractors or any third party from any claim for injury, loss or damage to person or property occurring during Optimal Control Systems's visit to Customer's premises.