


|   |   |               |                 |
|---|---|---------------|-----------------|
|  | Contractual Document                        | Document Nr.  | SOP 93CD 1      |
|   | Systems and Products                        | Issue Date    | 5/15/2009       |
|   | <b>General Terms and Conditions of Sale</b> | Revision Date | Rev 8 2/22/2017 |

**Definitions.**

**ACS Software:** means the Object Code versions of the baseline computer software programs developed by or for ACS. ACS Software does not include, and this Agreement does not grant Licensee a license to the Source Code for ACS Software.;

**Contract:** Specific contract between purchaser and ACS, Purchase Order from Purchaser to ACS.

**General Terms and Conditions of Sale:** The legally binding terms applicable to sale of product and services from ACS.

**Product:** Any ACS designed and manufactured RTU product or part. (i.e. NTX);

**System:** Any ACS deliverable involving project delivery of ACS or Third Party Software (i.e. PRISM);

**Third-Party Software:** means Object Code versions of the computer software programs licensed by ACS from third parties and sublicensed to Licensee. Third-Party Software does not include, and this Agreement does not grant Licensee a license to the source code for such Third-Party Software.;

The following terms and conditions of sale shall apply to any sale of goods and services by Advanced Control Systems, Inc. (hereinafter called "ACS"). Purchaser shall be deemed to have full knowledge of the terms and conditions herein and such terms and conditions shall be binding if either the goods and services referred to herein are delivered to and accepted by Purchaser, or if Purchaser does not within five days from the date hereof deliver to ACS written objection to said terms and conditions or any part thereof.

**Applicability.** These General Terms and Conditions of Sale apply to all Systems supplied ("Deliverables") by Advanced Control Systems, Inc. (ACS) under any quote, purchaser order or other related order by Purchaser. All software delivered by ACS is subject to the ACS Software License and Maintenance Agreements, or the Software License Agreement, whichever is applicable.

**Agreement.** Any acceptance of a Contract is limited to acceptance of the express terms in the Contract and these General Terms and Conditions of Sale. Any proposal for different terms by Purchaser to vary any terms of the Contract is hereby rejected. Any deviations from these terms in other Contract documents are superseded by General Terms and Conditions of Sale.

**Documents.** Unless otherwise agreed to, brochures, catalogs and other marketing materials are not binding. Designs, drawings, technical documentation and data contained in software or other electronic or paper medium are binding insofar as they form an integral part of this Contract. ACS retains all rights to designs, drawings, documents, technical documents and software. Purchaser acknowledges these rights and shall not make such designs, drawings, documents and software available to any third party, either in whole or part, nor use them for any purposes other than the agreed purposes without prior written consent of ACS. If the Deliverables includes software, Purchaser is hereby granted the non-exclusive and non-transferable right to use the software for the agreed purpose subject to any other license agreement to which Purchaser may become a party.

**Title and risk.** Unless otherwise agreed, risk of loss shall immediately pass upon delivery of any of the Deliverables. Notwithstanding the same, ACS shall retain title of the Deliverables until receipt of full payment from Purchaser.

**Delivery.** The Purchaser shall inspect the Deliverables within two (2) days of receipt on Purchaser's premises and shall immediately notify ACS of any defects. If Purchaser fails to notify ACS of the same, within two (2) days delivery of conforming goods will be deemed to have occurred.

**Acceptance.** Acceptance of the System shall be deemed to have occurred if Purchaser puts the System to use or agrees to acceptance.

**Cancellation.** ACS may cancel this Contract for breach of any provision of this Contract by Purchaser.

If ACS cancels or intends to cancel this Contract, it shall immediately inform Purchaser and thereafter, ACS shall be entitled and Purchaser shall pay to ACS for all Deliverables (plus reasonable overhead and profit) which have already been produced or delivered to Purchaser. Purchaser shall have no recourse for any damages under this provision and ACS waives no rights to seek other damages it may be entitled for breach of this Contract.

**Prices and Payment.** All prices are net US Dollars. Any and all additional costs, such as freight, insurance, export fees, transportation, import and other permits or certifications shall be borne by Purchaser. Taxes, including without limitation value added tax, levies, fees, income, sales or any other taxes shall be borne solely by Purchaser. Any exchange rate risk is borne by the purchaser. Purchases which apply to shipments and/or services will be made at the time of occurrence with payment due upon receipt of the invoice. Late payments are subject to a late charge of 1.5% per month.

**Expedited Delivery.** Any request for expedited delivery shall incur a premium charge to Customer which shall be addressed on a case by case basis for determination of the applicable premium for such delivery.


**Product Returns.** Product returns are accepted by ACS under the following conditions: (i) Deliverables must have never been installed and returned in their original packaging; (ii) Customer has obtained and included a return authorization number from ACS; (iii) all expenses associated with the return are borne by Customer including all freight, handling, insurance and other applicable charges; and (iv) Customer pays a minimum restocking fee on the returned Deliverable of twenty five percent (25%).

**Confidentiality.** ACS and Purchaser shall consider all information furnished by each other to be confidential and neither party shall disclose any such information to any other person, or use such information for any purpose other than performing its obligations under this Contract, unless it obtains written permission from the other party to do so.

**Indemnification.** Purchaser shall defend, indemnify, and hold harmless ACS against all damages, claims, liabilities, penalties, fines, costs and expenses (including legal fees) arising out of or resulting in any way from any act or omission, of Purchaser, its agents, employees, or subcontractors, or from any breach of its obligations of this agreement.

**Change Orders.** The parties may agree make additions, deletions, or other revisions by written Change Order without invalidating the Contract. Any and all Change Orders shall be agreed by both parties and set forth in writing signed by both parties.

**Warranty.** ACS warrants its System to be free from defects in materials and workmanship for a period of 12 months from the date of shipment. Notwithstanding the foregoing, the following deliverables shall be free from defects in materials and workmanship as follows: (1) System upgrades are warranted for a period of 12 months from the date of shipment; (2) ACS warrants to Licensee that the ACS Software will perform without Documented Defects ("ACS Software Warranty") for a period three months following delivery of the ACS Software to Licensee (the "Warranty Period"). Warranties related to any Third-Party Software and hardware shall be subject to OEM's terms; (3) Services are provided on an "as is" bases. ACS's warranty shall not apply to (i) any Deliverables damaged by misuse, neglect, or accident caused by Purchaser or its agents, contractors, employees or the like; (ii) any event of Force Majeure (as defined herein); or (iii) any Deliverables which have been improperly installed, operated, maintained, repaired, or modified, by persons other than ACS, its employees, or subcontractors. Should any information or documentation provided by Purchaser be inaccurate and the same leads to a defect in materials and workmanship, the warranty shall be void.

|   |   |               |                 |
|---|---|---------------|-----------------|
|  | Contractual Document                        | Document Nr.  | SOP 93CD 1      |
|   | Systems and Products                        | Issue Date    | 5/15/2009       |
|   | <b>General Terms and Conditions of Sale</b> | Revision Date | Rev 8 2/22/2017 |

ACS repairs provided under warranty may utilize, after being tested to a standard consistent with ACS performance and quality requirements, refurbished parts. Upon usage, such parts shall be clearly labeled as “refurbished”.

ACS warrants its NTX produced product line, to only include the NTX-20, NTX-200, NTX-220, NTX-240, NTX-260, NTX-U20 & NTX-U57, to be free from defects in materials and workmanship for a period of 10 years for all NTX series and their respective modules from the date of shipment. This warranty only applies to ACS manufactured NTX products and is governed by the following guidelines: Repairs shall be warranted for an additional period of ninety (90) days from the date of shipment or for the duration of the original warranty, whichever is greater. Customer is required to obtain an RMA from ACS prior to the return of any part or product. Customer shall be solely responsible for shipping and returning the repaired product to ACS for repair or replacement in accordance with warranty terms and conditions outlined herein. ACS reserves the right to substitute refurbished parts and components for any and all repair work, ACS reserves the right to utilize refurbished products as replacements.

The Warranties for the NTX product line set forth herein are the only warranties made by ACS in connection with the specified NTX products. ACS cannot and does not make any implied warranties with respect to the product line, and disclaims all other warranties, including, but not limited to, any warranty of merchantability or fitness for a particular purpose. Product line sold by ACS is sold only to the specifications specifically set forth by ACS in writing. Other than the limited warranty set forth herein, ACS makes no other warranties, express or implied. ACS’ sole obligation under this warranty shall be repair or replacement of nonconforming specified NTX products, or at the option of ACS, return of the product and a refund of the purchase price. Buyer assumes all risk whatsoever as to the result of the use of the products purchased, whether used singularly or in combination with any other products or substances.

**DISCLAIMER OF WARRANTIES FOR NTX PRODUCT LINE.** ACS’ specified NTX Products must be stored, handled, installed, used and maintained in accordance with instructions provided by ACS, and this Limited Warranty is conditioned upon compliance with all such instructions. Copies of the ACS User Manual are available from ACS. This WARRANTY does not cover defects caused by: 1) Non-compliance with ACS’ User Manuals. Such Failures include, but are not limited to, [exposure to physical abuse, including, but not limited to extreme climate conditions, chemical abuse, (e.g. harsh cleansers and solvents), thermal abuse or shock (e.g. excessive heat or cold) or misuse]; 2) Improper storage, installation, handling, use and/or fabrication of the product; 3) Damage not resulting from manufacturing defects that occur while the product is in the customer’s possession; 4) Unreasonable or unintended use of product; 5) Products installed with known or visible manufacturing defects at the time of installation, including, but not limited to physical damage, products not properly marked and/or identified as the product required; 6) Failure or dissatisfaction with the appearance of the product.

**OTHER THAN THE PRECEDING LIMITED WARRANTY, ACS DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PURCHASER ASSUMES FULL RESPONSIBILITY FOR THE SELECTION, POSSESSION, PERFORMANCE AND USE OF THE DELIVERABLES.**

**Limitation of Liability.** THE LIABILITY OF ACS ARISING FROM THE SUPPLY OR USE OF THE DELIVERABLES, WHETHER IT ARISES UNDER WARRANTY OR OTHERWISE, SHALL BE LIMITED SOLELY TO CORRECTING THE DEFECTS OR PROVIDING REPLACEMENT PARTS TO THE PURCHASER FOR THE PERIOD OF THE WARRANTY. IN NO EVENT SHALL ACS BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR LIKE DAMAGES, SUCH AS, BUT NOT LIMITED TO, DAMAGE TO OR LOSS OF OTHER PROPERTY OR DELIVERABLES, LOSS OF PROFITS OR REVENUE, OR CLAIMS OF CUSTOMERS OF PURCHASER FOR SERVICE INTERRUPTIONS. THIS LIMITATION OF LIABILITY CLAUSE WILL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT STATEMENT IN ANY OTHER CONTRACT DOCUMENTS.

**Force Majeure.** If a Party is or will be prevented from performing any of its obligations under this Agreement by a Force Majeure event, then it shall give written notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations the performance of which is or will be prevented. The Party shall, having given notice, be excused performance of such obligations for as long as such Force Majeure prevents it from performing them. “Force Majeure” includes but is not limited to storms or floods, lightning, tornadoes, hurricanes, earthquakes, solar storms and other forces of nature, wars, hostilities, civil disturbances, terrorist attacks, revolts, insurrections, sabotage, commercial embargoes, epidemics, fires, explosions, and actions of a governmental instrumentality that were not requested, promoted, or caused by the affected party, labor disorder or strike by persons other than the Purchaser’s or ACS’s personnel and other employees of Purchaser, ACS and subcontractors.

**General.** If any provision of these General Terms and Conditions of Sale is held to be unenforceable, the other provisions shall nevertheless remain in full force and effect. This document and all appendices attached hereto constitute the entire understanding between the Parties and may only be amended or modified by a writing signed by a duly authorized representative of each party. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence: (y) Document general terms and conditions; (z) the appendices. This document may be executed by facsimile or electronic mail. This Document may be signed in any number of counterparts. This Document replaces and supersedes any prior verbal or written understandings, communications, and representations between the Parties regarding the subject matter contained herein. This Document shall be binding upon and inure to the benefit of the successors and assigns of ACS and Purchaser. Purchaser shall not assign any rights or obligations under this Document without the express written authorization of ACS.

**Choice of Law, Interpretation.** This Agreement shall be deemed to be made in the State of Georgia and governed and construed in accordance with the laws of the State of Georgia without giving effect to its conflicts of laws to the extent such laws would require the application of the laws of another jurisdiction. The Parties hereby consent to the jurisdiction and venue of the courts of the State of Georgia and agree that any process may be served upon them outside of Georgia with the same effect as if such service had been made within Georgia.