1. DEFINITIONS:
In these Terms and Conditions of Sale, “Seller” means Nidec Industrial Automation USA LLC “Buyer” means the person, firm, company or corporation by whom the order is given; “Goods” means the goods, products or components (including any Software and Documentation, as defined in Clause 9) described in Seller’s Acknowledgement of Order Form; “Services” means the services described in Seller’s Acknowledgement of Order Form; “Contract” means the written agreement (which incorporates these Standard Terms and Conditions and any other terms and conditions agreed in writing between Buyer and Seller) by which Buyer agrees to purchase the Goods and/or provision of Services; “Contract Price” means the price payable to Buyer by Seller for the Goods and/or Services supplied under each individual order and “Seller Affiliate” means any company which is for the time being directly or indirectly controlled by, or controlled in law or in fact by Buyer or any company which is or becomes a company is directly controlled by or is a subsidiary of another company or companies which holds 50% or more of the shares carrying the right to vote at a general meeting of the first mentioned company and all of whose shares are subject to the control of the company which is for the time being directly or indirectly controlled by Buyer; “Customer” means any company, company or person to whom the goods or Services are supplied in connection with the sale, purchase, delivery, storage, installation, operation or environmental requirements; “Manufacturers” Buyer will start with serial production of the relevant Goods in order to ensure that they are compatible with the other components that make up their equipment, and that they are adapted to the intended use. Such written approval will confirm Buyer’s acceptance of the prototype and/or related documentation and signify that Buyer has neither raised any objection nor made any comments concerning the-concept, design, materials, performance, appearance, specifications. In this respect, Buyer and Seller will sign two originals of a “Product Approval Form”, one original to be retained by Buyer and one by Seller.

7. INSPECTION, TESTING, CALIBRATION AND QUALIFICATION:
7.1 Unless expressly agreed in writing between Buyer and Seller, all Goods shall be packed, packing materials are non-returnable.
7.2 Unless otherwise stated in Seller’s quotation, all periods stated for delivery or completion run from the Date of Acknowledgement of Order, and any additional tests or such time as may be necessary for purposes other than to ensure the proper performance of the Goods is not adversely affected and that neither the Contract Price nor delivery of the Goods is adversely affected.
7.3 All Goods will be invoiced at any time after their readiness for shipment.
7.4 (b) in the currency of Seller’s quotation within thirty (30) days after delivery.
7.5 Claims for shortfalls in quantity or for incorrect delivery will be void if made more than fourteen (14) days after delivery or completion at the earliest.
7.6 Any alteration or variation to the Contract will apply unless agreed in writing by both parties. However, Seller reserves the right to effect minor modifications and/or improvements to the Goods before delivery provided that the performance of the Goods is not adversely affected and that neither the Contract Price nor delivery date is affected.

8. DELIVERY, RISK TITLE:
8.1 Unless expressly agreed in writing between Buyer and Seller, delivery of the Goods will be carried out (CIF – Cost, insurance, freight insurance paid to Buyer by Seller) for the Goods and/or Services supplied under each individual order and are to be treated as estimates only. Effective Date and are to be treated as estimates only. Unless otherwise stated in Seller’s quotation, all periods stated for delivery or completion run from the Date of Acknowledgement of Order, and any additional tests or such time as may be necessary for purposes other than to ensure the proper performance of the Goods is not adversely affected and that neither the Contract Price nor delivery of the Goods is adversely affected.
8.2 Buyer will make all payments to Seller in accordance with the provisions of an Acknowledgement of Order or an order received by Buyer from Seller.
8.3 Claims for shortfalls in quantity or for incorrect delivery will be void if made more than fourteen (14) days after delivery or completion at the earliest.
8.4 Subject to Clause 9, title to the Goods will pass to Buyer upon delivery in accordance with Sub-clause 8.1.

9. DOCUMENTATION AND SOFTWARE:
9.1 Title to and ownership of the copyrights in the software and/or firmware incorporated into or provided for use with the Goods (“Software”) and/or the documentation supplied with the Goods (“Documentation”) will remain with Seller, manufacturer and/or relevant Seller Affiliate (or such other party as may have supplied the software and/or Documentation to Seller) and is not transferable to Buyer. Except as otherwise provided herein, Buyer is hereby granted a non-exclusive, royalty-free licence to use the Software and Documentation in conjunction with the Goods. Other than Seller’s standard operating and user manuals and any other documentation supplied by Seller, Buyer will not disclose any of Seller’s documentation in any form to any party, including, for the purposes of this Clause 9, to any of Seller’s customers and/or licensees, unless expressly authorized in writing by Seller.
9.2 Except as otherwise provided herein, Buyer is hereby granted a non-exclusive, royalty-free licence to use the Software and Documentation in conjunction with the Goods. Other than Seller’s standard operating and user manuals and any other documentation supplied by Seller, Buyer will not disclose any of Seller’s documentation in any form to any party, including, for the purposes of this Clause 9, to any of Seller’s customers and/or licensees, unless expressly authorized in writing by Seller.
9.3 Notwithstanding Sub-clause 9.2, Buyer’s use of Software (including but not limited to Control System Software) will be governed exclusively by the applicable licence agreement.
9.4 Seller shall maintain Seller’s patents, inventions, designs and processes made or evolved by them and save as set out in this Clause 9 no Intellectual Property Rights are hereby granted.

10. DEFECTS AFTER DELIVERY:
10.1 Seller warrants (i) subject to the other provisions of the Contract, good title to and the unencumbered ownership (in the case of disassembly and reassembly of said Goods in the equipment into which they are mounted. Seller’s costs incurred in investigating and rectifying such defects (whether or not covered by the Warranty)) and (ii) that the Goods delivered by Seller to Buyer are in all material respects in accordance with Buyer’s specifications and that Buyer will be responsible for insurance of the Goods after their delivery to the carrier; such insurance will be charged at Seller’s standard rates. “Ex-works”, “FCA”, “CPT” and any other delivery terms used in the Contract will be defined in accordance with the latest version of INCOTERMS.
10.2 Seller may deliver by instalments and if so each deliver will constitute a separate contract and failure by Seller to deliver any one or more of the instalments in accordance with their terms will not entitle Buyer to terminate the whole Contract or to refuse any delivery or to withhold any payment. Seller shall be entitled to set off against any claim by Buyer, any sum which Buyer owes to Seller.

11. INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT:
11.1 This indemnity is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement.
11.2 Subject to the limitations in Clause 12, Buyer will indemnify Buyer in the event of any claim for infringement of a valid U.S. Patent, Letter Patent, Registered Design, Design Right, Trade Mark or Copyright (“Intellectual Property Rights”) existing at the date of formation of the Contract or arising in the course of the supply of the Goods, against all reasonable costs and damages awarded against Buyer in any action for such
infringement, or for which Buyer may become liable in any such action, provided always that Seller will not be liable to so indemnify Buyer in the event of: (i) such unauthorized use or operation of Seller's and/or Manufacturer's product by Buyer or any other party, (ii) any violation of any laws, regulations, orders or requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union and the jurisdictions in which Seller and Buyer are established or from which Goods are to be supplied or manufactured; (iii) the sale, marketing or other use of Goods for which the Goods were not intended; (iv) if Seller or Manufacturer has modified or repaired any Goods without Seller's prior written consent; (v) the sale, marketing or other use of Goods in violation of the applicable laws, regulations, orders or requirements; (vi) the sale, marketing or other use of Goods in violation of any third-party intellectual property rights; or (vii) any action or inaction threatened or brought against Seller by or for breaches of any such laws, regulations, orders or requirements, as they may be amended from time to time, by any government or any governmental or other regulatory body or authority, including any governmental or other regulatory body or authority, or (viii) the sale, marketing or other use of Goods in violation of any laws, regulations, orders or requirements.

15. DEFAULT, INSOLVENCY AND CANCELLATION:

Seller will be entitled, without prejudice to any other rights it may have, to cancel the Contract immediately (or at its option on some grace period, if any) and/or wholly, by notice in writing to Buyer (a) if Buyer is in default of any of its obligations under the Contract; (b) if Buyer has made a false representation or statement of material fact in connection with the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period as may be stipulated or allowed by law; (c) if Buyer fails to take action in effecting any remedy the Seller may be held or an arrangement composition with or for the benefit of its creditors being proposed by or in relation to Buyer; (d) if a holder of a floating charge, receiver, administrative receiver, judicial manager or similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being dishonored within seven (7) days) on the whole or a material part of the assets of Buyer; (e) Buyer ceasing to carry on business or being unable to pay its debts; (f) Buyer or its directors or the holder of a qualifying floating charge or like encumbrances giving notice of their intention to appoint, or making an application to the court for the appointment of an administrator; (g) a petition being presented (and not being discharged within twelve hours (12) days) or a resolution being passed or an order being made for the administration or the winding up, bankruptcy or dissolution of Buyer; or (h) the happening in relation to Buyer of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident in which it carries on business or has assets. Seller will be entitled to recover from Buyer or Buyer's representative all costs and damages incurred by Seller as a result of such cancellation, including a reasonable allowance for overheads and profit (including but not limited to loss of prospective profits and overheads). In the event the Contract is cancelled, any amounts due will become payable, any down payments or amounts already paid by Buyer will remain in Seller's hands, and unpaid Goods must be returned to Seller immediately, regardless of where they are located, at Buyer's risk and expense under charge of 10% (ten per cent) of their value thereof, per week's delay. No order which has been accepted by Seller may be cancelled by Buyer except with Seller's prior written consent and on terms that Buyer will indemnify Seller in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by Seller and/or Seller Affiliate as a result of cancellation.

16. CONFIDENTIALITY:

Each of the parties undertakes to maintain the confidentiality of all technical, trade, financial or other information received from other or from either party or any of their respective officers, directors, employees, agents, representatives, distributors, licensees, and/or assigns, and to ensure that all such information shall be treated as confidential, except to the extent otherwise required by law or to the extent provided for under the Contract. Buyer agrees to sign such undertaking as may be required by Seller. All Confidential Information is the property of Seller and/or Seller Affiliate.

17. SUPPLEMENTARY TERMS AND CONDITIONS:

The goods comprise or include a Control System, Seller's Supplementary Terms and Conditions Applicable to the Supply of Control Systems and Related Services will apply to the Control System and related services only. Such Supplementary Terms and Conditions will take precedence over these Standard Terms and Conditions and are available from Seller upon request.

18. MISCELLANEOUS:

18.1 No waiver by either party with respect to any breach or default or of any other right or remedy and no course of dealing or performance, will be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressly in writing and signed by the party to be bound.

18.2 If any clause, sub-clause or other provision of the Contract is rendered invalid or unenforceable under any statute or rule of law, such provision, to that extent only, will be deemed to be omitted without affecting the validity of the remainder of the Contract.

18.3 Buyer will not be entitled to assign its rights or obligations hereunder without the prior written consent of Seller.

18.4 Seller enters into the Contract as principal. Buyer agrees to look only to Seller for due performance of the Contract.

18.5 UNLESS OTHERWISE AGREED TO IN WRITING BY BOTH PARTIES AND COMBINED WITH AN ACCURATE DESCRIPTION OF GOODS OR SERVICES, ALL GOODS AND OR SERVICES ARE NON-EXCLUSIVE, NON-TRANSFERABLE, AND HEREUNDER ARE NOT SOLD OR INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Regardless where Buyer is the owner/operator of the nuclear facility, Buyer agrees and acknowledges that Seller does not guarantee the suitability, reliability, and/or safety of such Goods, services or equipment for use in a nuclear facility. Buyer agrees and acknowledges that Seller will not be liable for any losses, suits, and judgments, including incidental and consequential damages, arising from use of Goods and Services in any nuclear or nuclear related applications, whether the cause of action arises from breach of the Contract or otherwise, including allegations that Seller's liability is based on negligence or strict liability.

18.6 The Contract will in all respects be construed in accordance with the laws of the State of Minnesota, and to the fullest extent permitted by law, will be without any conflict of laws or rules which might prejudice the rights and remedies of any other jurisdiction. All disputes arising out of the Contract will be subject to the exclusive jurisdiction of the state courts in Minnesota or in the federal court in Minnesota and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Contract.

18.7 The headings to the Clauses and paragraphs of the Contract are for convenience only and shall not affect the interpretation thereof.

18.8 The parties agree that in connection with the Contract must be in writing.

18.9 No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless set forth in writing by both parties.