

TERMS AND CONDITIONS – SICK Automation Solutions SA de CV

The terms of sale contained herein apply to all quotations made, purchase orders entered into and invoices or acknowledgements issued by SICK Automation Solutions SA de CV. (hereinafter referred to as “SICK”) to Buyer (“Agreement”). Such terms of sale shall take precedence over all Purchase Orders or other related documents in the event of conflicting provisions. Some of the terms contained herein may differ from those in Buyer’s Purchase Order. SICK objects to any provisions contained in any Purchase Order or other related documents that differ from the terms of sale contained herein. Any changes in the terms contained herein must specifically be agreed to in writing by SICK before becoming binding on either SICK or Buyer. All Purchase Orders and other related documents must be approved and accepted by SICK. These terms of sale shall be applicable whether or not they are attached to or enclosed with the Goods sold or to be sold hereunder.

1. DEFINITIONS: “*Goods*” shall mean any products, equipment and related items to be sold by SICK to Buyer identified on the quotation, invoice and/or acknowledgement. “*Purchase Order*” shall mean a document between Buyer and SICK that authorizes the purchase, manufacture and shipment of Goods or Services, or both, including all specifications, exhibits, attachments, referenced documents and the Agreement, and including any future amendments. “*Services*” shall mean those services to be performed by SICK at the request of Buyer, in each case as specified or described in the Purchase Order or other related documentation. “*SICK*” shall mean that SICK entity listed on the reverse side hereof. “*Buyer*” shall mean that customer and purchaser listed on the reverse side hereof.

2. ACCEPTANCE - AGREEMENT: Buyer’s acceptance of this Agreement is limited to Buyer’s acceptance of the express terms and conditions contained herein in lieu of those in Buyer’s Purchase Order or other related documents. If Buyer proposes additional or different terms and conditions, then such proposal shall be in writing and will constitute a counter offer that will be effective only if SICK accepts such counter offer in writing. If SICK does not accept Buyer’s counter offer, the terms of this Agreement shall prevail.

3. PRICES: Prices for SICK’s Goods shall be in accordance with the standard price list in effect at the time SICK accepts the Purchase Order or as specified on an authorized SICK quotation in force at the time the Purchase Order is placed. All prices are subject to adjustment on account of specification, quantities, shipment arrangements or other terms and conditions which are not part of any original price quotation or standard price. SICK reserves the right to change quotations based on changes to any order. Prices quoted for software are for nonexclusive, nontransferable licenses, subject to the SICK License Agreement, the terms of which are incorporated herein by reference.

4. PAYMENT TERMS: The following terms apply:

STANDARD GOODS: All payments for Goods and Services are due within 30 days from date of SICK’s invoice. For Goods that are back ordered, all payments are due within 30 days from the date of invoice. Back ordered Goods may be invoiced separately. Sales taxes (VAT) shall be invoiced to Buyer any time.

Amounts owed by Buyer with respect to which there is no dispute shall be paid without set-off for any amounts which Buyer may claim are owed by SICK and regardless of any other controversies which may exist. SICK reserves the right at any time to require full or partial payment in advance, or to revoke any credit previously extended if, in SICK's reasonable judgment, Buyer's financial condition does not warrant proceeding on the terms specified.

Interest at CETES 364 days + 2 points per month will be charged on accounts that are past due over 5 days.

5. LOANED GOODS: Should SICK supply Goods for evaluation by Buyer on loan, the following terms and conditions apply:

A. Prior to shipment, SICK must have an authorized conditional Purchase Order for the Goods, in the event of purchase, loss or damage, clearly indicating that title to the Goods on loan remains with SICK and providing SICK the right to invoice for Goods not returned at the end of the agreed evaluation period (less than 2 months).

B. Shipping charges for loaned Goods will be paid by Buyer.

C. All Goods placed with Buyer for evaluation that requires SICK installation services will carry a charge for installation and training. Buyer shall maintain adequate insurance on loaned Goods. Buyer shall pay SICK promptly for any loss or damages to the Goods on loan.

D. Add-ons to SICK's Goods on loan which require SICK installation services will incur additional installation and training charges.

6. DELIVERY: All Goods will be shipped Directly to your office address in Mexico or other in Mexico described in the purchase order. SICK shall determine the "Best Way" for shipment the Goods.

7. SHIPPING SCHEDULE: All shipping dates are tentative. SICK reserves the right to ship up to thirty (30) days in advance of shipping date, unless a specific shipping schedule is agreed to by the parties in writing. SICK will ship the Goods in accordance with the shipping instructions and freight terms outlined in this Agreement (deliveries will be Monday, Wednesday and Friday every week). In order to be able to ship the products, SICK need the orders to be delivered in the system the previous day at noon latest.

8. WARRANTY ON PURCHASED ITEMS: With the exception of lamps, fuses, relays and other expendable components, SICK's Goods are warranted free from manufacturing and material defects for a period of one (1) year from the date of shipment. Any Goods purchased from SICK that have manufacturing or material defects during the one (1) year term will be repaired or replaced at SICK discretion at SICK's facility. Claims by Buyer with regard to any alleged defect in the Goods must be made with full particulars within one (1) year after shipment of the Goods. With any allowed defect claim, SICK will either replace the affected Goods or repair the defect. Goods should not be returned without the consent of SICK and a valid Return Authorization Number.

This warranty expressly set forth in Section 8 is SICK's sole warranty with respect to purchased Goods and Services. SICK MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED; AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEED THE AFOREMENTIONED OBLIGATION ARE THEREBY DISCLAIMED BY SICK AND EXCLUDED FROM THIS AGREEMENT. In no event shall SICK be responsible for damages including, but not limited to, consequential damages, liquidated damages or lost profits of any nature whatsoever.

9. SOFTWARE: With respect to any of SICK's software purchased hereunder, the terms of purchase, in addition to those contained herein, shall be found in the SICK License Agreement, the terms of which are incorporated herein by reference.

10. PERFORMANCE: Where system productivity figures have been stated or implied they are understood to be estimates based on field and application data available to SICK at the time and are not guaranteed or warranted by SICK since they are contingent on the internal processes of Buyer, or other factors beyond the control of SICK. Any alterations, additions, changes or improper use or care of the Goods by Buyer will void the above stated warranty provisions. Subsequent service for loaned or purchased Goods, if desired by Buyer after the warranty, may be available in accordance with one of SICK's Maintenance Service Plans.

11. ACCEPTANCE – GOODS OR SERVICES: Buyer shall carry out acceptance within a period of two (2) weeks upon completion of the Goods, upon the delivery of the Goods and/or upon completion of the Services rendered. If the Buyer fails to accept within the aforesaid period, acceptance shall be deemed granted. Acceptance may not be withheld and the Goods and Services may not be rejected due to insubstantial nonconformity.

12. GENERAL INDEMNITY: TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER AGREES TO INDEMNIFY, DEFEND, PROTECT, RELEASE AND HOLD HARMLESS SICK AND ITS RESPECTIVE PARENT AND AFFILIATE COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS, EMPLOYEES AND INSURERS (COLLECTIVELY "INDEMNITEE"), FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITIES OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR LOSS OR DAMAGE TO ANY PROPERTY (INCLUDING WITHOUT LIMITATION, CLAIMS FOR POLLUTION AND ENVIRONMENTAL DAMAGE), AND ANY CIVIL OR CRIMINAL FINES OR PENALTIES, ARISING IN FAVOR OF ANY THIRD PARTY OR GOVERNMENTAL AGENCY OR ENTITY, OR ANY INDEMNITEE AND THEIR EMPLOYEES' REPRESENTATIVES AND BENEFICIARIES, IN CONNECTION WITH OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, OR IN ANY WAY INCIDENTAL TO THE PERFORMANCE OF THIS AGREEMENT OR THE GOODS AND SERVICES PROVIDED HEREUNDER (COLLECTIVELY "LIABILITIES"). IT IS THE INTENTION OF SICK AND BUYER THAT SUCH INDEMNITY SHALL APPLY REGARDLESS OF WHETHER THE LIABILITIES ARISE IN WHOLE OR IN PART FROM THE ACTUAL OR

ALLEGED COMPARATIVE, CONCURRENT, ACTIVE, PASSIVE, OR CONTRIBUTORY NEGLIGENCE OF INDEMNITEE. THIS INDEMNITY INCLUDES BUYER'S AGREEMENT TO PAY ALL COSTS AND EXPENSES OF DEFENSE, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES, INCURRED BY ANY INDEMNITEE. THIS INDEMNITY SHALL APPLY, WITHOUT LIMITATION, TO ANY LIABILITIES IMPOSED ON ANY PARTY INDEMNIFIED HEREUNDER AS A RESULT OF ANY STATUTE, RULE, REGULATION OR THEORY OF STRICT LIABILITY INCLUDING, BUT NOT LIMITED TO, STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. THE OBLIGATION OF INDEMNIFICATION HEREUNDER SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING: (I) LIENS BY THIRD PERSONS AGAINST ANY INDEMNITEE AND THEIR PROPERTY, BECAUSE OF LABOR, SERVICES, MATERIALS, OR ANY OTHER TYPE OF LIEN, FURNISHED TO BUYER, ITS ASSIGNEES, CONTRACTORS OR SUBCONTRACTORS, IN CONNECTION WITH THE GOODS SUPPLIED BY SICK, (II) EXPENSES, CLAIMS, FINES, AND PENALTIES OR OTHER ENFORCEMENT CHARGES, RESULTING FROM THE FAILURE OF BUYER TO ABIDE BY ANY AND ALL VALID AND APPLICABLE LAWS, RULES OR REGULATIONS OF ANY GOVERNMENTAL OR REGULATORY AUTHORITY WITH JURISDICTION. IT IS UNDERSTOOD AND AGREED BY BUYER THAT IN THE EVENT ANY INDEMNITEE IS MADE A DEFENDANT IN ANY SUIT, ACTION OR PROCEEDING FOR WHICH AN INDEMNITEE IS INDEMNIFIED PURSUANT TO THIS AGREEMENT, AND BUYER FAILS OR REFUSES TO ASSUME THE DEFENSE THEREOF, THAT INDEMNITEE MAY COMPROMISE AND SETTLE OR DEFEND ANY SUCH CLAIM, AND BUYER SHALL BE BOUND AND OBLIGATED TO REIMBURSE INDEMNITEE FOR THE AMOUNT EXPENDED BY INDEMNITEE IN SETTLING AND COMPROMISING ANY SUCH CLAIM, OR FOR THE AMOUNT EXPENDED BY INDEMNITEE IN PAYING ANY JUDGMENT RENDERED THEREIN, TOGETHER WITH ALL REASONABLE ATTORNEYS' FEES INCURRED BY INDEMNITEE FOR DEFENSE OR SETTLEMENT OF SUCH CLAIM. ANY JUDGMENT RENDERED AGAINST INDEMNITEE OR AMOUNT EXPENDED BY INDEMNITEE IN COMPROMISING OR SETTLING SUCH CLAIM SHALL BE CONCLUSIVE AS DETERMINING THE AMOUNT FOR WHICH BUYER IS LIABLE TO REIMBURSE SUCH INDEMNITEE HEREUNDER. ALL REPRESENTATIONS, WARRANTIES, INDEMNITIES AND OTHER UNDERTAKINGS OF BUYER AND ALL CLAIMS, RIGHTS AND REMEDIES OF SICK SHALL SURVIVE DELIVERY, PERFORMANCE INSPECTION, TESTING, ACCEPTANCE, USE AND PAYMENT. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Agreement, such legal limitations are made a part of the indemnification obligations and shall operate to amend the indemnification obligations to the minimum extent necessary to bring the provisions into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

13. INDUSTRIAL SAFETY: Buyer agrees to obtain advance written permission from SICK before removing, disabling or modifying supplied safety equipment and markings on the Goods. Buyer further agrees not to knowingly operate SICK's Goods with inoperative, defective or missing safety equipment or markings.

14. PATENT INDEMNITY: SICK warrants that the Goods supplied hereunder do not infringe any U.S. patent. No sale of any Goods shall be construed as granting to Buyer any license or other right in or to any copyright, trademark or other proprietary right applicable to the Goods.

If Buyer alters the Goods, which makes the Goods subject to an infringement suit or if the Goods produced by Buyer are subject to an infringement suit or if the Goods supplied hereunder are manufactured in accordance with any requirements specified by Buyer, this warranty shall not apply.

SICK agrees to indemnify, defend, and hold harmless Buyer against any liabilities, judgments, awards and costs, including costs of investigation, attorneys' fees, court costs and legal fees and expenses, arising out of or related to any claim that Buyer's use or possession of the Goods infringes or violates the copyright, trade secret, patent or any other proprietary right of any third party. SICK shall defend and settle at its sole expense all suits or proceedings arising out of the foregoing, provided that Buyer gives SICK reasonably prompt notice of any such claim of which it learns. If the Goods involved in any infringement claim or action are held to constitute an infringement and the use thereof may be enjoined, SICK shall, at its own expense, use its best efforts to either: (i) procure for Buyer the right to continue using such Goods; or (ii) modify the Goods to become non-infringing; or (iii) replace the Goods with equally suitable, compatible and functionally equivalent noninfringing Goods. However, SICK's indemnification obligations to Buyer shall not exceed the amount paid by Buyer to SICK pursuant to this Agreement.

15. DATA AND PROPRIETARY RIGHTS IN DATA: SICK normally supplies all necessary data for the proper installation, testing, operation and maintenance of its Goods. This data is proprietary in nature and may be so marked. Buyer agrees to hold the data in confidence and shall be liable for all loss or damage incurred by SICK as a result of the improper or unauthorized use of such data. SICK retains for itself all proprietary rights in and to all design, engineering details, and other data pertaining to any Goods and to all discoveries, inventions, patent rights, and other intellectual property rights, arising from work done in connection with the Agreement and to any and all Goods developed as a result thereof, including the sole right to manufacture and re-sell to third parties' any and all such Goods.

16. PROPRIETARY INFORMATION - CONFIDENTIALITY - ADVERTISING: All commercial, financial, technical information in any form that SICK provides to Buyer, or that comes into the possession of Buyer, shall be deemed to be proprietary and confidential, and Buyer shall not disclose such information to third parties or use such information without the prior written consent of SICK, which SICK may arbitrarily withhold. The restrictions of this paragraph shall also apply to drawings, specifications, or other documents and data prepared in connection with this Agreement.

17. CANCELLATION: Orders accepted by SICK cannot be cancelled, deferred or Goods returned except with the consent of SICK and upon terms (including payment to SICK of a cancellation charge) that will indemnify SICK against all loss including the loss of profit on any part of the order that is cancelled, deferred or Goods returned. When a return of Goods is authorized by SICK and a Return Authorization Number has been granted, shipping and customs clearance charges of said returned Goods are to be paid by Buyer upon notice and invoice submitted..

SICK shall have the right to suspend or cancel this Agreement at any time upon Buyer making an assignment for the benefit of creditors or becoming bankrupt or insolvent, or upon petition being filed in a court of competent jurisdiction proposing the appointment of a receiver, or if Buyer is adjudicated as bankrupt or insolvent or reorganized under the provisions of any applicable bankruptcy or insolvency act.

Minimum cancellation charges will be assessed in the following manner:

Standard Goods: Cancellation within **30 days** of requested ship date – charges will be 15% of the Purchase Price.

Cancellation **greater than 30 days** of requested shipping date – cancellation charges may vary.

Custom Goods, Services: Cancellation charges will be billed at the actual costs incurred at the time of cancellation.

18. SOFTWARE UPDATES: Software updates may be available. With respect to any of SICK's software purchased hereunder, the terms of purchase, in addition to those contained herein, shall be found in the SICK License Agreement, the terms of which are incorporated hereby by reference.

19. SECURITY INTEREST: SICK reserves and Buyer grants to SICK a security interest in all Goods sold and all proceeds therefrom to secure the full payment and performance by Buyer of its liabilities and obligations to SICK. Buyer acknowledges that this Agreement may be filed with the appropriate authorities as a financing statement and agrees to execute and deliver such other documents as SICK may request in order to perfect SICK's security interest.

20. SUBSTITUTIONS AND MODIFICATIONS OF PRODUCTS: SICK may modify the specifications of Goods designed by SICK and/or substitute substantially conforming Goods provided the modifications and/or substitutions do not adversely affect the performance of these products.

21. FORCE MAJEURE: A force majeure delay shall mean any delay caused by, but not limited to, an act of God; government action or failure of the government to act; war or acts of the public enemy; strike or other labor trouble; fire; floods; severe weather; riots or other causes beyond the reasonable control of the party affected, provided that any such delay is not caused, in whole or in part, by the acts or omissions of the party so delayed and further that such party is unable to make up for such delay with reasonable diligence and speed. If any such cause delays to SICK's performance, the delivery date or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay; however, SICK shall take all reasonable measures to mitigate the effects of the force majeure event and to minimize such delay. Buyer may delay delivery or acceptance of the Goods and/or Services or performance due to acts of force majeure or other causes beyond its control. SICK shall hold such Goods and/or Services at the direction of Buyer and shall deliver them when the cause affecting the delay has

been removed. Buyer shall be responsible for SICK's reasonable additional costs in holding the Goods and/or Services or delaying performance under this Agreement.

22. ENTIRE AGREEMENT: This Agreement and any documents referred to herein constitute the entire agreement between the parties hereto and supersede all prior proposals, negotiations and counterproposals. The parties intend this Agreement as a final expression of their agreement and as a complete and exclusive statement of the terms and conditions thereof. No course of prior dealings between the parties shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in the course or performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.

23. ASSIGNMENT: Buyer shall not delegate any duties or assign any obligations without SICK's prior written consent, and any such attempted delegation or assignment shall be void.

24. COMPLIANCE WITH LAWS: Buyer shall carry out the transaction contemplated by this document and shall otherwise deal with the Goods purchased in conformity with all applicable laws, rules, and regulations of all governmental authorities, including, without limitation, the Export Administration Act, and shall obtain all permits and licenses required in connection with the purchase, installation, shipment or use of any of the Goods.

25. APPLICABLE LAW AND VENUE: THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE UNITED STATES OF MEXICO. SICK AND BUYER SPECIFICALLY DISCLAIM THE APPLICATION OF THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS TO ANY AGREEMENT. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT (THE "PROCEEDINGS"), EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE UNITED MEXICAN STATES, AND IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDINGS BROUGHT IN ANY SUCH COURT, AND WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDINGS, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT PRECLUDES EITHER PARTY FROM ENFORCING IN ANY JURISDICTION ANY JUDGMENT, ORDER OR AWARD OBTAINED IN ANY SUCH COURT.