



## **TERMS AND CONDITIONS OF SALE**

- I. **ACCEPTANCE:** Any order based on a quotation by AMS Controls, Inc, hereinafter "Seller", for the purchase of goods from Seller shall be subject only to the Terms and Conditions set forth herein and is subject to approval and acceptance by Seller at Seller's office in Maryland Heights, Missouri. There are no understandings or agreements other than as set forth herein and no additions, deletions or modifications of these terms or any other matter set forth on the face hereof proposed by the undersigned, hereinafter "Buyer", in its printed forms or otherwise shall bind Seller unless accepted by Seller in writing, regardless of whether such other terms would materially alter the terms hereof. A quotation made by Seller shall expire thirty (30) days after its date, and may be reinstated only by written confirmation by Seller. Stenographic and clerical errors are subject to correction.
  
- II. **PRICES:** Prices are F.O.B. Seller's plant and are subject to change without notice at any time prior to Seller's acceptance of Buyer's order. Unless specifically mentioned, prices quoted do not include the amounts of any applicable sales, use, transfer or excise taxes or other similar taxes, tariffs or custom duties, and Buyer shall be charged for any such taxes, tariffs or custom duties levied upon the sale, transfer, import or use of the goods sold hereunder.
  
- III. **TERMS:** Unless special written terms are arranged, all quoted prices shall be paid as follows:
  - a. **New Customers and Customers Without Established Credit**

All orders placed by new customers and customers without established credit shall be prepaid, acceptable forms including check, credit card or wire transfer, or C.O.D.

All new customers seeking net 30 terms must provide Seller with at least three (3) credit references and a bank reference, which will be investigated by Seller. Should said investigation produce a result deemed satisfactory by Seller, a credit limit of Five Thousand U.S. Dollars (\$5000.00) shall be established. If the customer requests a credit limit greater than Five Thousand U.S. Dollars, a financial report from Dunn & Bradstreet shall be obtained and the contents therein used to establish the credit limit. Seller's Controller has final approval powers in regard to all matters of credit to customers and approval of such is at her sole discretion.
  - b. **International Customers**

Standard terms for international customers are prepaid, acceptable forms including check, credit card or wire transfer. All payments shall be made in U.S. Dollars.
  - c. **Credit Limits for Existing Customers**



Credit limits for existing customers shall be based on the history of the customer's account, with adjustments made for average payment promptness relative to terms. The placement, maintenance, removal from and any activity regarding a credit limit for a customer account are activities in the sole discretion of the Seller's Controller. These amounts shall be reviewed approximately every six (6) months for active customers.

d. Custom Product Orders

Subject to the conditions of custom orders contained herein, if an order by Buyer is to be customized to Buyer's specifications, the terms are as follows:

1. Thirty percent (30%) down payment due at the time the order is placed.
2. Sixty percent (60%) down payment due at the time of shipment.
3. Balance NET 30 days on approved credit as specified 3(a) paragraph 2 above.

e. Delinquent & Over Limit Accounts

Any account with an outstanding balance greater than the Customer credit limit or with individual payments overdue greater than sixty (60) days will be placed on hold status, and any orders placed thereafter shall be refused until such time as the account is removed from hold status. Removal of an account from hold status is accomplished by payment in full of the amount over the Customer credit limit or the amount overdue.

IV. **DELIVERY:** Shipping and handling costs shall be borne by Buyer. Estimated shipping time is calculated from the date complete specifications necessary to manufacture to Buyer's requirements are received at Seller's plant. Shipping time is approximate only, and Seller is not responsible for delays or non-performance resulting from (a) delays in receipt of final specifications from Buyer, (b) changes in specifications from those on which Seller's quotation was based, (c) Force Majeure such as strikes or other abnormal manufacturing conditions, fire, flood, accident, riot, war and invasion, governmental priorities, or other causes beyond Seller's reasonable control. In no event shall Seller be liable for incidental, consequential or special damages arising out of a delay or failure to deliver. All shipments hereunder shall be by truck at Seller's discretion, unless Buyer expressly requires other means of shipment and bears any additional cost thereof. Risk of loss during shipment shall be borne by Buyer. Weight, if given, is the net shipping weight or Seller's best estimate thereof.

**Delay in Delivery caused by Buyer:** If a Buyer wishes to delay delivery of a custom system, Seller may honor the request. If the request is honored, Seller may require payment of up to 90% of the total price of the system, regardless of previously negotiated payment terms. If Buyer does not wish to secure the system by payment, the order may be treated as cancelled, subject to the Cancellation clause (VI) contained herein.



V. **INSTALLATION AND SERVICE:** Unless otherwise expressly specified on the face hereof, all costs of installation of goods and service of said goods provided by Seller at Buyer's plant shall be borne by Buyer. Seller will provide Buyer with an estimate of the time required for such installation or service. The cost of additional time needed for installation or service, as well as travel expenses incurred by Seller shall be borne by Buyer. Travel expenses may include, but shall not be limited to, airfare to and from Buyer's site, lodging, rental vehicle, and meals. Additional costs incurred and deemed reasonably necessary by Seller for the success of the visit and/or reasonable comfort of Seller's technician shall be borne by Buyer. The rates for onsite installation and service are as follows:

- a. Standard Rates
  - i. Standard Travel \$100
  - ii. Overtime Travel \$150
  - iii. Standard On-Site \$150
  - iv. Overtime On-Site \$200

Pricing does not include travel expenses. All travel expenses are billed to the customer plus a \$16.00 processing fee (charged once per trip).

Travel time is billed at the specified rates:

- Travel is charged from 1 hour prior to a flight from the technician's home city, until arrival at a hotel or customer site.
- Travel time includes a single 1 hour meal break for every 9 hours of travel, rounded up to the next whole number of breaks.

For example

- 4 hours of travel - 1 hour break
- 9 hours of travel - 1 hour break
- 10 hours travel - 2 hour break

Return travel is charged from the time technician leaves the customer site (in cases where they go directly from the plant to the airport), or from 1 hour prior to departure (when the technician goes from the hotel or anywhere other than the customer site) to the time the plane lands in the traveler's home city.

Travel Hours

- Standard travel hours are Monday through Thursday 5:00 AM to 9:00 PM and Friday 5:00 AM to 6:00 PM.
- Overtime travel hours are Monday through Thursday 9:00 PM to 5:00 AM and Friday 6:00 PM to Monday 5:00 AM.

Site Overtime is charged:

- When in one day the technician works more than 8 hours.
- When the technician is on-site before 6:00 AM or after 9:00 PM Monday through Thursday.
- When the technician is on-site any time between Friday 6:00 PM and Monday 6:00 AM.



- VI. **CANCELLATION:** Orders placed for equipment covered by Seller's quotation are not subject to cancellation or modification, in whole or in part, after Buyer's acceptance, except with Seller's express written consent, and upon Buyer's payment of a cancellation charge which will cover all costs incurred by Seller to time of cancellation. If Buyer cancels the order without Seller's express written consent, the Buyer agrees to pay all costs incurred by Seller and to compensate Seller for any loss of profits that it may suffer in the event that Seller is unable to resell the material and equipment and/or component parts thereof at the contract price. Material purchased by Buyer's payment of cancellation fee will be shipped upon request. Customized material is the property of the Buyer when purchased by the Seller for production and will be sent to Buyer upon payment of cancellation charges.
- VII. **DRAWINGS AND PRINTS:** Insofar as goods are to be procured and/or manufactured in accordance with Buyer's specifications, Buyer represents that the drawings, prints and parts, if any, submitted in connection with its order reflect Buyer's latest revisions of specifications. Any drawings, prints, specifications and information furnished to Buyer by Seller in connection herewith is confidential for use of Buyer only and Buyer will be responsible to Seller for any loss or damage caused by wrongful use or disclosure of any such matters by Buyer. All descriptive and shipping specifications, drawings and particulars of weight and dimensions provided by Seller are approximate only. No descriptions or illustrations contained in Seller's catalogs, price lists or other advertising materials shall constitute a part hereof or of any contract between Buyer and Seller.
- VIII. **CHANGES IN SPECIFICATIONS OR DESIGN:** If Buyer requests changes in specifications or design of any goods covered by any Contract with Seller, Seller will, in its sole discretion, determine whether it will undertake to make such changes. If Seller determines not to do so, the contract will nevertheless remain in full force and effect. If Seller determines to undertake to make such changes, Seller may revise the delivery schedule and increase or decrease the price of the goods to the extent necessary in Seller's reasonable judgment to take account of such changes. Subject to the foregoing sentence, all the terms of the contract shall remain in full force and effect notwithstanding changes in the specifications or design of the goods.
- IX. **GENERAL LIMITED WARRANTY:** Seller warrants that XL200 Series Controllers as manufactured by Seller shall be free from defects in material or workmanship for a period of two (2) years from the date of start-up or thirty (30) months from the date of shipment (whichever first occurs) when installed, operated, and serviced in accordance with Seller's recommendations; when used under normal conditions for their intended purposes; and when evidence of such installations, proper and acceptable to Seller are recorded at Seller's factory. Seller reserves the right to void this warranty for operations of its product outside of these terms.

Any request for repair or replacement must be made to the service



department of AMS Controls Inc., 12180 Prichard Farm Road, St. Louis, MO 63043. The Seller's warranty shall be limited to repair or replacement, at Seller's option, of any part or any equipment that proves to be defective after an examination by the service department or designate. The labor to make repairs or replacement under this warranty shall be furnished by Seller or its authorized representative between the hours of 8:00 AM and 4:00 PM, Monday through Friday, excluding Federal, State and company holidays, and is limited to actual repairs or replacement of the warranty item. Labor and the cost of such labor to inspect and/or determine the origin of the problem involving examination of equipment or systems not furnished or manufactured by Seller is specifically excluded. This warranty covers only applications for which the equipment was originally installed, and covers only original equipment components. Warranty claims will be honored only if a Return Materials Authorization is properly issued by an Authorized AMS Employee.

This warranty does not cover routine maintenance activities. Malfunctions caused by electrical power variances are excluded from warranty protection.

Warranty claims will not be honored unless the manufacturer is advised in advance of the work being performed by an authorized and approved representative of Seller.

This warranty does not cover the loss of product or other consequential damages resulting from any equipment failure.

- X. **LIMITATIONS OF ACTIONS:** Any action for breach of contract arising out of Seller's acceptance of Buyer's order must be commenced within one (1) year after the cause of action has accrued.
  
- XI. **PATENT INFRINGEMENT:** Seller shall have no liability or responsibility with respect to any material or part thereof supplied by or manufactured to the design of Buyer infringing any United States or foreign patent, and Buyer will indemnify and save Seller harmless from any such claims of infringement including but not limited to payment of Seller's attorney fees.
  
- XII. **LABOR WARRANTY:** Seller, by acceptance of orders hereunder, certifies that Seller complies with the Fair Labor Standards Act, as amended, and all regulations and orders issued pursuant thereto.
  
- XIII. **GOVERNING LAW:** The rights and obligations of the parties hereto and the construction and effect of any contract formed pursuant hereto shall be governed by the laws of the State of Missouri.
  
- XIV. **INDEMNIFICATION – SAFE OPERATION:** Buyer shall comply with and require its employees to comply with directions set forth in documented inspections and maintenance instructions, manuals, drawings, safety notices and warnings and other instructions furnished by Seller and shall use and require its employees to use reasonable



care and all safety equipment in the operation and maintenance of the goods. Buyer shall not remove or permit anyone to remove any safety equipment or warning signs.

If Buyer removes or permits anyone to remove any safety equipment or warning signs or fails to observe any condition in this section, or if any injury or damage is caused, in whole or in part, by Buyer's failure to comply with applicable federal, state or local safety requirements, Seller shall have no obligation to Buyer and Buyer shall indemnify and hold Seller harmless against any claims, loss or expense for injury or damage arising from the use of the goods. Seller specifically disclaims any and all liability arising out of the operating of the goods other than the warranty liabilities to the original Buyer.



Order Acceptance Form

Please thoroughly read and understand all aspects of this quotation including the section on ADDITIONAL TERMS AND CONDITIONS OF SALE. Any questions or requests for modifications to this quotation should be presented to your AMS sales representative for written clarification or re-quote.

Signing this document will be considered acceptance of the quotation as it exists and will become a binding contract and authorization for **AMS Controls** to proceed with the project.

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I have read and agree with all terms and conditions of this quotation:

\_\_\_\_\_  
*Company*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Authorized*

\_\_\_\_\_  
*Purchase Order Number*

\_\_\_\_\_  
*Title*

Please fax or mail this signed page back to **AMS Controls**.

Fax: 314.344.9996  
AMS Controls Inc.  
12180 Prichard Farm Rd.  
Maryland Heights, MO 63043