

South Bend Controls

Terms and Conditions of Sale

Revised March 20, 2006

1. **TERMS AND CONDITIONS:** Only the terms and conditions set forth in this document shall be recognized and binding upon South Bend Controls known as (Seller) or (SBC). Similarly, these terms and conditions shall be deemed to be accepted by customer known as (Buyer) upon return of a purchase order and the commencement of performance by Seller in response to Seller's offer to provide goods and services to Buyer. These terms and conditions constitute the entire agreement between parties and no change to or modification of these terms and conditions, to include Buyer's standard terms and conditions, will be binding upon Seller unless in writing and signed by authorized representative from the Sales Department of South Bend Controls.
2. **STATE LAW:** Purchase orders and contracts shall be construed, interpreted, and applied in accordance with the laws of the State of Indiana.
3. **TRANSPORTATION:** Unless otherwise stipulated on the quotation provided by the South Bend Controls, all hardware shipped in support of resulting purchase orders will be "FOB Origin". Title to hardware procured by Buyer will pass to Buyer upon shipment from Sellers facility. Seller does not carry freight insurance on goods while transit to Buyer. In the event of loss, while in transit, Buyer accepts all responsibility of goods to include adherence to South Bend Controls standard payment terms. Similarly, Seller will render all reasonable assistance to Buyer in locating lost hardware to include working with commercial freight carriers and supplying Buyer with waybill and shipping information.
4. **WARRANTY & NON CONFORMANCE:**
 - a. South Bend Controls, hereinafter referred to as SBC, warrants to Buyer that all SBC products purchased by Buyer shall conform to all applicable SBC specifications and drawings and be free from defects in material and workmanship for a period of twelve (12) months from date of delivery of products to Buyer's facility. [For purposes of this warranty, a "defect" shall be defined as any discrepancy significant enough to cause the product to not perform within specifications or fail to meet form, fit or function requirements for which the product was designed.]
 - b. This warranty is given exclusively to the Buyer. No other party shall have the right or privilege to make or assert any claims under or with respect to this warranty. All warranty claims must:
 - i. Be in writing,
 - ii. Identify the SBC product by part number, serial number, and purchase order,
 - iii. Specify any alleged defect or nonconformity,
 - iv. State the use or circumstances of the SBC product at the time any failure occurred or any defect or nonconformity was discovered,
 - v. Identify the party in possession of the SBC product at such time,
 - vi. State the nature and results of any testing or analysis made with respect to such failure, defect or nonconformity.
 - vii. Return the SBC product that is the subject of the claim to SBC unless instructed to the contrary by SBC.

No warranty claim will be allowed unless received by SBC in proper form, within a reasonable period of expiration of Warranty (not to exceed 120 days), and notice is provided subject to the requirements of paragraph C.
 - c. SBC shall be notified in writing by Buyer of any failure, defect or nonconformity within thirty (30) days of its discovery by Buyer. Such notice shall describe the SBC product and any alleged failure, defect or nonconformity with particularity. Failure to provide such notice shall void all SBC warranties.
 - d. This warranty excludes product damage due to installation error, product abuse, product misuse, modification or use of the product in other than its designed application.
 - e. SBC will not be responsible for removal and installation charges or any additional costs of disassembly, fault isolation, failure analysis (unless performed by SBC), reinspection and/or retesting of said items. SBC is also not liable for any incidental or consequential damages, economic loss or any other secondary or tertiary claims, and Buyer hereby waives and releases all such claims.
 - f. SBC reserves the right to limit Buyer's remedy to the correction or replacement, at SBC's option, of proven nonconforming or defective items returned to SBC's facility within the time limits and conditions of this warranty. The failure of SBC to limit remedies to those listed here in any particular case shall not be a waiver of its right to do so in any other case.
 - g. SBC gives no authorization for any field modification, disassembly, repair or rework of its products during the warranty period. Any unauthorized modification, disassembly, repair or rework to SBC's products during the warranty period is done so at Buyer's risk and expense and shall void all SBC's warranties.
 - h. Whenever correction or modification is required under the terms of this warranty, product will be returned to SBC's facility by routine standard air transportation or common ground carrier.
 - i. SBC shall pay all reasonable transportation costs for warranted goods from point of shipment under original purchase order to SBC and back again to same point.

- j. SBC shall not be required to pay transportation costs if Buyer returns non-defective products to SBC for correction or replacement under the terms of this warranty. SBC reserves the right to charge Buyer an inspection fee on items returned for warranty work which are found to be in conformance.
 - k. No individual SBC product shall be presumed or proven to have a defect or be nonconforming because of the existence of any failure, defect or nonconformity in any other SBC product in the same lot or shipment.
 - l. EXCEPT AS PROVIDED HEREIN, SBC MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF **MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
 - m. The remedies provided herein shall be the sole and exclusive remedies for any and all claims for breach of warranty.
 - n. This warranty, and the rights and obligations of all persons hereunder, shall be interpreted under the laws of the State of Indiana.
 - o. All claims and disputes arising under, or in connection with, this warranty shall be resolved in a court of competent jurisdiction in St. Joseph County, Indiana, and Buyer consents and agrees that such court shall have exclusive personal and subject matter jurisdiction and preferred venue to resolve such claims and disputes.
5. **DELIVERY:** With respect to goods to be delivered hereunder, South Bend Controls shall deliver the quantity specified per the agreed upon delivery schedule with the option of delivery 15 days prior to Buyer's specified due date. South Bend Controls shall use best efforts and, within reason, attempt to maintain accurate component lead time information and notify Buyer of any potential delays or shortages that could would result in jeopardizing Buyer's procurement requirements.
6. **INDEMNIFICATION:**
 - a. Buyer agrees that it will defend, hold harmless, and indemnify South Bend Controls from and against any and all claims, suits, demands, or actions brought by any person, firm, or corporation, including payment of all judgments, damages, costs and attorneys fees associated therewith, which arise from the negligence or fault of Buyer with respect to the use of goods supplied to Buyer by South Bend Controls.
 - b. South Bend Controls agrees that it will defend, hold harmless, and indemnify Buyer from and against any and all claims, suits, demands, or actions brought by any person, firm, or corporation, including payment of all judgments, costs, and attorneys fees associated therewith, which arise from the design, development, manufacture and or sale of the goods by South Bend Controls, except those which arise from the negligence of Buyer with respect to the use of the goods supplied by South Bend Controls to Buyer.
 - c. To the extent that any claims, suits, demands, or actions brought by any person, firm or corporation result, or are alleged to result, from design, development, manufacture and or the sale of the goods by South Bend Controls and the negligence or fault of Buyer with respect to the use of the goods supplied to Buyer from South Bend Controls, neither shall have any obligation to indemnify the other, except to the extent that each shall be liable for its proportionate share of any judgment or damages which result therefrom. That is, each shall be liable for such judgments or damages in the proportion its liability bears to the total common liability.
7. **ASSIGNMENT/DELEGATION:** Neither party may assign its rights or delegate its responsibilities under this agreement without the consent of the other party.
8. **FORCE MAJEURE:** Seller shall not be responsible for any delay or failure in performance of any part of this agreement if and to the extent that such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, military authority, act of God, or other similar causes beyond its control.
9. **LABOR DISPUTES:** Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of Buyer's order, South Bend Controls shall immediately give notice thereof to Buyer.
10. **CLAIMS AND DISPUTES:** All claims and disputes arising under, or in connection with, these terms and conditions shall be resolved in a State or Federal court of competent jurisdiction in South Bend, Indiana and both parties agree that such State or Federal court shall have exclusive jurisdiction to resolve such claims and disputes.
11. **BREACH OF AGREEMENT:** In any suit or proceeding between the parties arising out of or involving these terms and conditions, the prevailing party shall be entitled to recover its costs and expenses related to such suit or proceeding, including reasonable attorney's fees.
12. **ORDER OF PRECEDENCE:** In the event of any inconsistency amount the provisions of these Terms and Conditions and any resulting customer Terms and Conditions, such inconsistency shall be resolved by giving precedence in the following sequence:
 - a. **South Bend Controls Terms and Conditions**
 - b. **South Bend Controls quotation letter**
 - c. **Face of the Purchase Order**
 - d. **Mutually agreed upon Terms and Conditions between South Bend Controls and Buyer.**
 - e. **Proprietary Information Exchange Agreement**
 - f. **Statement of Work**
 - g. **Specifications**
 - h. **Customer Terms and Conditions**
13. **WAIVER:** Failure by any party to exercise its rights or privileges under these Terms and Conditions at any time during both the life of the purchase order or warranty period shall not thereafter waive said right or privileges whether of the same or similar type.
14. **INVOICE & PAYMENT:** South Bend Controls has agreed to provide goods and services to the Buyer pursuant to payment terms of *NET 30* days after issuance of invoice, unless otherwise noted in Seller's original offer. Buyer understands that South Bend Controls will generate an invoice upon shipment of hardware to customer per the terms of

the purchase order and mailed within 24 hours after the shipment of hardware to Buyer. For clarification purposes it is understood that title to hardware will pass to Buyer upon egress of the packaged hardware from our facility. In the event of non payment within the terms specified in this clause, Seller will have the right to pursue the following options;

- a. Hold subsequent shipments until the delinquent invoice is paid in full.
- b. Unilaterally modify the contract to reflect COD payment terms.

It is understood that in the event that product shipments are held up due to lack of adherence to South Bend Controls' stated payment terms, Buyer will not negatively affect Sellers delivery and quality rating due to non-payment and subsequent non-shipments of follow on hardware.

15. **TOOLING, DRAWINGS, ROUTINGS & SPECIFICATIONS:** Tooling (including patterns, fixtures or jigs), drawings, routings, & specifications produced by South Bend Controls in support of Buyer's purchase orders are the property of South Bend Controls. Buyer waives all rights, title, and interest in any drawings, designs, specifications, models, software or other intellectual property developed by Seller in support of Buyer's purchase order.
16. **PROPRIETARY RIGHTS:** Any information furnished to Seller by Buyer and to Buyer by Seller relating to or as a result of any subsequent purchase order/contract shall be considered non confidential unless agreed to by Buyer and Seller in a separate written agreement. All technical information supplied by Seller by Buyer, and Buyer to Seller, and designated as confidential, shall be held in confidence by both parties. Such information shall not be reproduced, used, or disclosed to others without the other parties written consent and shall be returned to the originating party upon completion of the contractual obligations as defined in any subsequent purchase order.
17. **APPROVED SOURCES:** With respect to South Bend Controls, Inc. purchased goods and services, it is the policy of South Bend Controls on its proprietary products, to use suppliers of goods, services, and special processes selected approved and monitored exclusively by South Bend Controls.
18. **AUDITS:** South Bend Controls views its financial records and factors that comprise the following but are not limited to; material and labor costs, direct labor hours and rates, burden rates and subcontracts costs and internal pricing formulas as proprietary information that are not subject to disclosure and audit by Buyer or Buyer's customers. The exception being U.S. Government contacts that are in excess of \$550,000.00.
19. **RECORDS RETENTION:** South Bend Controls will maintain records for Fifteen (15) years after completion of order. Specifically, supporting documentation to include work order files, inspection files, product acceptance records, material certifications, acceptance test records and purchase order files will be made available for Buyer review, in our facility, accompanied by cognizant SBC personnel.
20. **STOP WORK ORDERS:** Buyer may elect to stop production by notifying Seller in writing of its intention to do so. Seller will recognize a one-time request for a maximum of 45 days after which Seller will recommence with production in accordance with the purchase order. Similarly, it is understood that after 45 days, in the event that Buyer wishes to extend beyond the initial 45 day period provided by Seller, the Buyer will provide Seller with progress payments entitled "inventory holding fees" that are in addition to the contracted unit price for the subject hardware. These fees will be calculated at 2% per month for the amount of the entire purchase order to commence 45 days after the Buyer's initial issuance of a stop work order and are payable every thirty days to the Seller while the work stoppage is in affect.
21. **TERMINATION:** The Buyer, buy written notice, may terminate their purchase order with South Bend Controls in whole or in part. The Buyer shall terminate by delivery to South Bend Controls of a notice of termination specifying the extent of termination and the effective date. Buyer will be liable for the cost of materials and work in process that were initiated within the lead time specified by South Bend Controls for the cancelled components. After receipt of a notice of termination, South Bend Controls will immediately (i) stop work as directed in the notice, (ii) place no further subcontracts or orders for materials, services, or facilities except as necessary to complete the unaltered portion of the order, (iii) terminate all subcontracts to the extent that they relate to work terminated, (iv) provide Seller with an invoice for costs associated with purchased materials, sub vendor contractual commitments, and labor associated with completed work up to the point of termination. If the scope of the termination notice involves a quantity reduction, South Bend Controls has the right to retroactively revise the unit price on components not terminated. South Bend Controls will not accept an order termination within (i) 8 weeks or (ii) within the remaining 25% of the total quoted lead-time of a component from the date of order receipt.
22. **NOTICES:** All notices required or permitted to given hereunder shall be deemed to be properly given if delivered in writing sent via facsimile, with proof of transmission delivery, United States certified, registered, or first class mail, or via commercial delivery service addressed to Seller or Buyer, as the case may be, at the addresses set forth on the face of the purchase order or contract with postage thereon fully paid. The effective time of notice shall be at the time of such sending, faxing, mailing, or commercial shipment.
23. **CHANGES:** Buyer shall have the right to make any changes to any one of the following: (i) drawings, designs, or specifications, (ii) place or time of delivery, (iii) method of shipment or package requirements, (iv) changes in quality requirements, provided that these changes do not alter the general scope of the original contract. In the event that customer requested changes do alter the scope of the contract, Seller has the option to revise the contract to reflect an equitable price adjustment prior to the shipment of hardware.
24. **ENTIRE CONTRACT:** These terms and conditions and subsequent SBC quotation letter signed by an approved representative of South Bend Controls contain the entire agreement of the parties and shall not be varied or supplemented by different or additional terms not contained herein.