



SHIFTING THE LIMITS

GENERAL TERMS OF DELIVERY AND PAYMENT

/ Fronius USA LLC / valid from 1st September 2013

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1. APPLICABILITY.

1.1 General Application. These General Terms and Conditions of Sales and Delivery ("General Terms") apply to all proposals and quotations submitted by Seller, to all purchase orders received by Seller, and to all sales of goods and services sold by Seller, except as otherwise specifically provided in a document specifically issued by Seller as an exception. Any services to be provided by Seller, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units or included as part of an installation), shall be considered ancillary to a sale of goods and the law adopted by these General Terms shall apply to all goods and services to be provided by Seller (collectively "Goods"). All references to "Seller" include the Seller identified above and any affiliate within the United States of such entity that receives a purchase order referencing or otherwise subject to these General Terms.

1.2 Formation. A written quotation issued by Seller is an offer to sell. A contract shall be formed and Buyer shall be deemed to have accepted the provisions of these General Terms by any of the following: (a) signing and returning to Seller a copy of any quotation within the time provided therein; (b) sending to Seller a written acknowledgment or acceptance of the quotation within the time provided therein; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assembly, or delivery of the Goods (including instructions to build and hold) following receipt of any quotation or these General Terms; (d) failing to cancel a pending purchase order which is not deemed to be an acceptance of an offer by Seller within ten days after receiving these General Terms; (e) accepting delivery of all or any part of the Goods; (f) paying for all or any part of the Goods; or (g) indicating in some other manner Buyer's acceptance of these General Terms. All sales by Seller consist, in the following descending order of priority, only of these General Terms, terms in other documents which are referred to herein or are attached hereto or in a document provided, signed, or issued by Seller which reference the transaction, and Buyer's purchase order (excluding Buyer's standard terms and conditions of purchase and other terms inconsistent with Seller's quotation and these General Terms) (all of which constitute the "Agreement").

1.3 Choice of Law and Jurisdiction. THE AGREEMENT SHALL BE GOVERNED, CONSTRUED AND ENFORCED UNDER THE LAWS OF THE STATE OF INDIANA INCLUDING THE UNIFORM COMMERCIAL CODE IN FORCE ON THE INITIAL DATE OF THE AGREEMENT ("UCC"), EXCEPT AS PROVIDED HEREIN. THE U.N. CONVENTION ON THE INTERNATIONAL SALES OF GOODS SHALL NOT APPLY. THE COURTS OF INDIANA SHALL HAVE EXCLUSIVE JURISDICTION OVER THE PARTIES AND THE CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT, UNLESS WAIVED IN A WRITING SIGNED BY SELLER AND SUBJECT TO ANY RIGHT OF ARBITRATION WHICH MAY BE PROVIDED BY THE AGREEMENT. The parties stipulate to the convenience of Indiana courts in general, and 7th Circuit Court in particular, as to all litigation and shall not file any objection thereto. If Buyer does not maintain a registered office or agent in the United States, Buyer hereby irrevocably appoints the Secretary of State of the state whose law applies and CT Corporation at its office in Indiana as Buyer's non-exclusive agents to receive process on behalf of Buyer in any proceeding arising under or related to the Agreement for forwarding to Buyer at the address set forth in the Agreement.

2. PRICES AND PAYMENTS.

2.1 Prices and Payment. Prices contained in Seller's published price lists, if any, are subject to change without notice. Prices contained in individual written quotations are firm only for a period stated therein and otherwise for 60 days from the date of the quotation, unless modified in writing by Seller prior to Buyer's acceptance. After any firm price period in a quotation or other communication, the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. All prices are current from data of purchase Incoterms ex works. Prices are for the Product only, and do not include any amount for freight, insurance, fees, customs duties or federal, state or local excise, value added, sales, use, service, occupation, gross income, property or any other taxes, all of which shall be paid by Buyer even if the tax is assessable against Seller (except for taxes on Seller's net income). Buyer shall reimburse Seller for any such amounts which are Buyer's responsibility. Unless provided otherwise in the Agreement, all prices are in United States dollars and must be paid in U.S. dollars at the location specified in Seller's invoice. Buyer shall pay all government fees levied on the installation and inspection of the Goods. Buyer shall pay upon receipt of all invoices issued by Seller to Buyer for any such items Seller may pay which were the obligation of Buyer to pay under the Agreement.

2.2 Price Adjustments. For services performed under contracts for work and materials (installation, repairs, maintenance and other such work), Seller shall charge its hourly rates and materials prices applicable at the time of completion, plus its applicable surcharges for any overtime, night-time, Sunday and public holiday working. Travel and waiting times are counted as working hours. Travel expenses and daily and overnight allowances will be invoiced separately.

2.3 Changes to Goods and Schedule at Buyer's Request. Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, or manufacturing of the Goods and adjust the delivery schedule or any other performance by

Seller, which Seller determines to be required by changes requested by Buyer to the Goods after the date of any quotation. Seller is not obligated to perform any such changes which would substantially affect Seller's performance, but shall be compensated for them if Seller complies with such requested changes. In addition, if any delay in delivery beyond the date of delivery scheduled at the time of entry of the purchase order is requested or otherwise caused by Buyer, Seller shall adjust the price as provided above in this Subsection.

2.4 Payment Demand and Acceleration. If, at any time, reasonable grounds for insecurity arise with respect to Buyer's performance of its payment or other obligations hereunder, Seller may demand immediate payment in full or a documentary or stand-by letter of credit issued or confirmed by a U.S. bank acceptable to Seller or other financial security or other assurance for such payment or other performance. In addition, all amounts owed by Buyer to Seller shall be accelerated and payable immediately if Buyer fails to make any payment and as otherwise legally required, if Buyer sells or transfers the line of business for which the Goods are purchased, or if Buyer is a participant in a merger or other reorganization.

2.5 Export Fees. All export permits and licenses and the payment of all export duties and customs fees shall be the responsibility of Seller, if Seller is obligated by the Agreement to deliver the Goods within the United States. All export duties, fees, permits, licenses, etc., for Goods to be delivered outside of the United States shall be the responsibility of Buyer.

2.6 Payment Terms. Buyer shall pay for all deliveries of Goods net 30 days after delivery.

2.7 Installments. The Agreement may require or Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale. Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer shall pay timely the price for each installment which is delivered. Any Goods indicated as back-ordered now or in the future shall be considered an installment delivery. A failure to pay for an installment when due is a material anticipatory breach of other installments by Buyer, unless the failure to pay is the result of a good faith dispute and Buyer deposits the amount in dispute into an escrow with an independent third party.

2.8 Carrying Charge. All amounts not paid to Seller when due shall incur a carrying charge of 1.0% per month above the current LIBOR one month rate to the extent allowed by law and otherwise at the highest written contract rate allowed by law plus other allowable damages. Buyer shall reimburse Seller for all costs of collection, including reasonable attorney fees, of amounts not paid when due.

2.9 Buyer's Failure to Cooperate. All amounts due on inspection, delivery, installation, acceptance or other event which requires the action or cooperation of Buyer which Buyer fails to supply timely shall become due upon such failure, irrespective of whether or not the Goods are formally accepted by Buyer or the Goods have been installed.

2.10 Letters of Credit. Unless otherwise provided in the Agreement, if the Agreement permits or requires the use of a letter of credit, the letter of credit must be a documentary letter of credit which is assignable, irrevocable, confirmed by a United States bank with a payment office in Indiana acceptable to Seller, payable in installments, and require payment to Seller on submission of Seller's invoice and a bill of lading or other proof of delivery, and Seller's statement that a payment is due. Any such letter of credit must be issued and accepted by Seller before date of proposed initiation of production of the Goods or acquisition of production material or component; otherwise, Seller reserves the right to postpone production and delivery without liability to Seller. If a required letter of credit is not received within 30 days prior to the proposed initiation of production, Buyer shall be in material default.

2.11 Right of Offset. Seller may offset or recoup any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller. Buyer waives any right of offset or recoupment and shall pay all amounts owed to Seller when due regardless of any claim of Buyer regarding warranties or other issues arising under contract, tort, statute or otherwise. Payment of such amounts by Buyer under written protest shall not constitute a waiver by Buyer of its claims.

2.12 Allocation of Payments. Seller may allocate payments from Buyer among outstanding invoices in Seller's discretion.

2.13 Samples. Samples of Goods and sample test reports will be provided by Seller only upon Seller's consent and at prices established by Seller or written agreement with Buyer.

2.14 Withholdings from Amounts Due Seller. If a legal requirement requires Buyer to deduct an amount as a withholding tax or other government fee (however it may be described in such legislation) from any payment under the Agreement such that Seller will not actually receive on the due date the full amount provided for under the Agreement, Buyer shall provide Seller with 60 days' written notice of such obligation, and on the due date:

- (a) Buyer shall deduct the amount for the withholding tax;
- (b) Buyer shall pay an amount equal to that amount deducted to the relevant authority in accordance with applicable law and give to Seller the original receipt or other proof of payment required for Seller to obtain a refund;
- (c) Buyer shall pay Seller an amount equal to the difference between the payment otherwise due and the amount deducted;
- (d) Buyer shall also pay Seller the amount deducted; and
- (e) Seller shall, after receiving reimbursement of the withheld amount, if any, repay Buyer the amount recovered after deducting the expenses incurred in obtaining reimbursement.

2.15 Software Disablement for Accounts Exceeding 30 Days. Seller may include or add a disabling function within the software programming of the Goods that may be activated by

Seller or the passage of time if any outstanding amounts have not been paid to Seller within 30 days of the due date. The disabling code will be deactivated and functionality of the Goods will be restored when all amounts due (including interest and other charges) are paid.

2.16 Retention. If temporary retention by Buyer of any portion of the price is permitted under the Agreement, it shall be paid upon the earlier of written acceptance of the Goods and 30 days from substantial completion of Seller's obligations under the Agreement.

2.17 Cumulative Rights. All remedies of Seller under the Agreement are cumulative and to the extent not specifically waived under the Agreement in addition to those provided by law.

2.18 Solvency of Buyer. Buyer represents that it is solvent and able to pay the price for the Goods and that all financial and business information given to Seller is correct. If Buyer becomes insolvent before delivery of the Goods, it shall notify Seller. Acceptance of delivery shall be a reaffirmation at delivery of Buyer's solvency, and that there has not been a material adverse change in such information.

3. PERFORMANCE OF SHIPPING AND DEFAULT.

3.1 Shipping Dates. Shipping dates are estimates based on Seller's and/or its supplier's present engineering and manufacturing capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer's purchase order and/or delivery releases. All shipping dates are approximate and shall be computed from the date of entry of the purchase order and/or delivery releases on Seller's books. All shipping dates are further subject to Seller's prompt receipt from Buyer of a written purchase order or formal acceptance, letter of credit, deposit and other conditions as specified in the Agreement, and of all drawings, information and approvals convenient or necessary for Seller to provide the Goods and/or to grant any credit terms.

3.2 Method, Cost and Insurance of Shipment. Seller shall deliver the Goods ex works Incoterms in the current version from date of purchase by tendering the Goods for placement in the possession of a carrier and, unless otherwise advised by Buyer in writing, without liability, shall make such contract for their transportation as Seller decides having regard for the nature of the Goods and other circumstances. Seller will generally follow Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyer's cost. On Buyer's request, Seller shall obtain and send to Buyer upon its reasonable request documents to assist Buyer in obtaining insurance. Seller is not responsible to prepay transportation or insurance costs. Buyer shall pay all handling and other charges incidental to transportation. Buyer is responsible for making any claim against the carrier, riggers and other handlers of the Goods after delivery to Buyer.

3.3 Risk of Loss and Title. The Agreement is for a shipment contract and the Goods shall be delivered ex works Seller's dock or ex works Seller's supplier's dock if the Goods are to be shipped directly from Seller's supplier to Buyer. Whether or not Seller prepays shipping charges shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Notwithstanding the transfer of the risk of loss, title to the Goods shall remain with Seller until Buyer pays for the Goods in full and fully performs all other obligations related to delivery and installation of the Goods.

3.4 Shipping and Packaging. Except as otherwise provided in the Agreement, Seller shall not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of the Agreement. If such charges are specifically included in the price or Seller's obligations, any increase in rates for such services becoming effective after the date the price is quoted to Buyer shall be added to the price. All Goods shall be packed with disposable dunnage for shipment by Seller for over-the-road travel transportation, and for placement in a seaworthy container if transportation under the Agreement includes transportation by sea, in accordance with Seller's standard practices. It is Buyer's responsibility, whether or not Seller arranges shipping, to determine whether additional packaging procedures and materials are appropriate for the shipment of Goods and advise Seller in writing of Buyer's requirements. Buyer shall pay Seller for the additional procedures and materials. Buyer shall pay Seller for additional handling charges for small, expedited or other shipments outside Seller's normal and ordinary course of business or the normal performance of the Agreement.

4. DELAY OF SHIPMENT OR PERFORMANCE EXCUSED.

4.1 The delivery period commences with Seller sending the order acknowledgment, while the performance period for installation, maintenance or repair work shall commence when the equipment is delivered. In no event shall the delivery or performance period begin sooner than 14 days after the time when Buyer has furnished Seller with the documents (e.g., engineering drawings, plans, etc.), permits or approvals which it shall procure or when it has made all requirement payments. The delivery or performance deadline is deemed to have been met if Seller has notified Buyer prior to such deadline of Seller's readiness to deliver or perform. In cases where a special agreement obliges Seller to deliver, the delivery or performance deadline shall be deemed to have been met if the Goods have been shipped prior to such deadline.

4.2 Delayed Shipment. If shipment of any Goods or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Goods at the place of manufacture or elsewhere at the risk and expense of Buyer from the time the Goods are ready for shipment. In the event of any such delay in shipment, full and final payment

for Goods shall be due and payable 30 days after Buyer is notified that the Goods are ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Goods, Buyer shall accept shipment immediately. If Buyer requests temporary storage of Goods prior to final delivery, Seller will attempt to provide or arrange such storage, but a reasonable charge for storage as computed by Seller plus all expenditures incurred for space, insurance, and handling will be charged to Buyer. Invoices for Goods stored at Buyer's request will be provided at the beginning of the storage period and periodically thereafter, and payment will be due net 30 days from the date of invoice billed in advance.

4.3 Supply Allocation. Whenever Seller's supply of the Goods, materials or means of production or source of supply is insufficient to meet the estimated delivery schedule or in the event of any occurrence mentioned in Subsections 4.1 and 4.1, Seller, in its sole discretion, may allocate its supply to its own use, to Buyer, and to other customers. Subsections 4.1 and 4.2 shall be effective even as to events described in Subsections 4.1 and 4.2 which exist on the date of a quotation or of contract formation.

4.4 Force Majeure. All inspection, delivery and other dates for Seller's performance are estimates only. In addition, Seller shall not be in default because of its delay or failure to deliver or perform under the Agreement resulting, in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or purchase order; (ii) shortages of raw materials or labor; (iii) the lack of usual means of transportation, fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or other performance; (iv) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise; or (v) failure of Seller's suppliers to perform. If one or more deliveries hereunder is delayed by reason of any one or more of such occurrences for a period of 30 days, Seller may, at its option, terminate the Agreement as to the undelivered Goods or waive such delay and establish a new delivery schedule.

5. GENERAL EXPRESS WARRANTIES.

5.1 General. Seller warrants to Buyer only, subject to the disclaimers and limitations of the Agreement, that Goods to the extent manufactured by Seller shall be free from defects in materials and workmanship at the time of delivery which are discovered and reported to Seller within the period of 24 months from the delivery date. From the beginning of the 13th month of this period, however, Seller's warranty shall be limited to making available, free of charge, the items needed for remedying the defects; from this time onwards, any warranty claims going beyond the above shall be inadmissible. This period limitation also applies to the supply of items deemed to be immovable and to work on items which are, or are deemed to be, immovable. The warranty period shall start to elapse upon the passage of risk. Buyer must always prove that defects coming to light during the warranty period were already present at the time of the passage of risk. This is not a warranty of performance, but a limited warranty as to the condition of the Goods at delivery. Seller does not warrant any portion of the Goods not designed, developed or manufactured by Seller (whether or not specified by Buyer), but Seller shall assign to Buyer upon request all assignable warranties of Seller's suppliers related to such Goods. Because the Goods may be subject to a wide variety of use, installation, maintenance, cleaning, and other factors, the warranty is only against the named defects and not against any other defects or failures such as, but not limited to, those due to normal wear and tear, normal maintenance and unknown causes. Perishable and wear items are excluded from warranty against defects. Buyer shall ensure that all computer equipment and software included with or used with the Goods has adequate protection against viruses or other malicious software after initial installation. Seller's warranty does not cover damage or contamination caused by such malicious software. Notwithstanding anything to the contrary, there is no warranty as to prototype Goods.

5.2 Seller's Warranty. In cases where Seller gives warranty, Seller shall, at its own discretion and within a reasonable period of at least four weeks' duration, either exchange the defective article itself, or its defective components, for a defect-free article or defect-free components, or remedy the defect(s), or grant Buyer a reasonable reduction in price, or (unless the defect in question is a minor one) cancel the contract. The warranty period is not prolonged by the exchange of the item or of parts or components belonging to the item. If, however, the remainder of the warranty period, including that part of the period during which Seller's warranty is limited to free provision of the requisite materials in accordance with Subsection 5.1, lasts for less than 12 months, then the warranty period for the exchanged items, parts or components shall be extended to 12 months. The items, parts or components thus exchanged shall become Seller's property. Seller shall not refund the costs for any actual or attempted remedying of a defect by Buyer or by any third party.

5.3 Conformity. Included in Seller's warranty against defect is Seller's warranty to Buyer only that the Goods will be as described in the Agreement in all material respects, subject to the limitations stated herein and Seller's published and internal standards; however, Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Goods without liability if, in its judgment, the change is nonmaterial. Seller may, in its discretion, also rely on any generally accepted industry standards and deviations in making

changes and in manufacture.

5.4 Warranty Requirements. Seller's warranties against non-conformities and defects shall continue to apply only so long as the Goods: (i) have been installed, maintained and used in conformity with instructions furnished by Seller from time to time, if any, and otherwise in conformity with the highest industry practices; (ii) have been subjected to normal use for the purpose for which the Goods were designed; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been altered or repaired by persons other than Seller or Seller authorized warranty service providers in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods; and (v) have beenw fully paid for.

5.5 To the extent that is necessary and may reasonably be expected of Buyer, the object of delivery or performance, or the defective part(s) thereof, are to be dispatched or shipped to Seller immediately at our request, at Buyer's risk and expense, failing which any and all warranty obligation on Seller's part shall become void.

5.6 Buyer is not entitled to withhold payments on account of warranty claims or other counterclaims not recognized by Seller.

5.7 Warranty claims from Buyer are excluded in cases where the installation, user and operating manuals provided by Seller, or to be requested from Seller by Buyer, have not been observed, or where the user has not been (fully) obligated to observe such instructions; if the installation work has not been performed properly and in accordance with the relevant Standards, and in particular if was not carried out by licensed contractors; if any corrective maintenance or other work has been performed on the object of delivery or performance without Seller's consent; if it has been improperly operated or used, or operated despite its protective features being faulty, or taken out of the contract territory without our consent, or used contrary to Sellers' instructions or for purposes for which it is not intended; and, moreover, where defects are attributable to foreign object damage, chemical influences, overvoltage, the conduct of third parties or to force majeure; the same applies in respect of natural wear and tear.

5.8 Seller's warranty is also excluded in cases where Seller has been contracted to carry out repair orders, to alter or modify used items, or to supply such items.

5.9 Finally all guarantee claims shall be excluded if Buyer installs third party components or replacement parts in Seller's delivery items or services provided by Seller which have not been expressly recommended by Seller prior thereto.

5.10 In addition to the rights of Buyer in accordance with Subsection 5.2 regarding the delivery of inverters for photovoltaic systems the warranty in accordance with the warranty conditions of Seller shall apply, available at www.fronius.com/solar/garantie.

5.11 Records. Buyer shall create, maintain and make available to Seller, permanent records of the installation, maintenance, use and disposition of the Goods. The warranty does not apply when the malfunction results from the use of the Goods in conjunction with accessories, other products, or ancillary or peripheral equipment and Seller determines that there is no defect in the Goods.

5.12 Transfers. Seller's warranties are granted only to Buyer and apply only so long as the Goods remain in the country of destination and on the initial premises of installation unless otherwise agreed to in writing by Seller. Furthermore, the warranties are voided when Goods are moved to new locations without written permission from Seller.

6. PATENT WARRANTIES.

6.1 Seller shall defend and indemnify Buyer from any claim which asserts that the Goods or their inherent methods of operation, intrinsically, infringe any United States patent, except as to a claim based on Buyer's modifications and use of the Goods as a step in an overall process or as an element in an overall combination. Seller's obligation shall not apply to a claim based on the Goods or portions thereof specified, designed, or manufactured by Buyer. Buyer shall notify Seller promptly of any assertions of patent infringement and provide Seller with assistance and information requested by Seller for its defense, or Seller shall have no further obligation to defend or indemnify. Seller shall defend with its counsel or other counsel of its choice and shall have the sole right, without consultation with Buyer, to take all action Seller deems appropriate to prosecute or settle such claims. Seller's exclusive obligation to indemnify as to the Goods declared to infringe is limited to the acquisition of a License, the replacement of the Goods with non-infringing Goods, the modification of the Goods so that they are non-infringing, or the return of the purchase price and shipping costs in exchange for the Goods, as Seller may elect. This Section states Seller's entire and exclusive obligation regarding patent infringement and the exclusive remedies therefor, and Buyer waives all other rights. Seller disclaims any implied warranty of non-infringement. Buyer shall defend and indemnify Seller for all infringement claims (including direct, contributory and inducement) based on Goods or portions thereof specified, designed or manufactured by Buyer.

7. SPECIAL PROVISIONS FOR SOFTWARE SUPPLIED TOGETHER WITH ORDERED ITEMS OR SOFTWARE SUPPLIED SEPARATELY.

7.1 For software delivered together with other items or for software delivered separately from Goods (hereafter "software") these Terms and Payment only apply insofar as these do not deviate from the following conditions or from conditions agreed upon separately with Buyer in writing.

7.2 Scope of Use. All rights of intellectual property, such as copyright, trademark rights, design rights, patent rights, utility model rights and know-how, as well as in particular unpro-

TECTED INVENTIONS, commercial experience, trade secrets and such like, independent from the time these were disclosed to Buyer, shall be reserved at any time by Seller or Seller's licensors. Buyer shall have the right to use the software after payment of the agreed sum exclusively for its own purposes in accordance with the acquired number of licences. With the present contract only the authorization to use the software is acquired. Dissemination by Buyer shall be excluded in accordance with the copyright law. With a possible participation of Buyer in producing the software, no rights other than the specified usage laid out in this Section are acquired. Buyer may only use the software simultaneously on one device, which one is its decision. Usage of the software shall constitute any long-term or even any temporary duplication (copying) of the software, whether in whole or also only in part, by saving, loading, running or displaying for the purpose of execution of the software and processing of the data contained therein by the hardware. Buyer shall not be authorized to copy the user manual. Buyer shall be permitted to make copies of the software for archival and data protection purposes on condition that there is no explicit prohibition in the software or any accompanying material (instruction manual, packaging, etc.) and that all copyright and proprietary notices are transferred unchanged in these copies. Retranslations of the program code (decompilation) exceeding the legal provisions shall not be permitted. If the software is equipped with technical copy protection, Buyer shall in the case of damage be supplied with a replacement copy after restitution of the data carrier.

7.3 Further Rights. In the event of availability of a new software version Buyer shall be entitled to exchange the supplied software package for a similar software package of the new version at our listed update price; the exchange implies the software package as a whole, as it was acquired by Buyer. With the exchange Buyer's permission to use the exchanged software package shall expire. In such an event Buyer shall immediately and completely destroy all copies, partial copies and backup copies as well as altered or revised versions of the software and the copies, partial copies and backup copies made thereof.

7.4 Warranty.

(a) Buyer shall note that it is not possible to develop software programs in such a manner that these are free from defects for every application condition.

(b) Seller shall warrant that the supplied software fulfils the agreed functions and has the expressly guaranteed properties. Requirement for any warranty is usage according to contract. A defect for which Seller is responsible shall only be deemed to exist if the software does not function according to the most recent version of the corresponding performance description and documentation and if this is reproducible by Buyer. In order to carefully examine possible occurring defects Buyer shall be obliged to support Seller in the rectification of any defects.

(c) Seller shall further warrant that the original software is duly recorded onto a tested data carrier. Excepted here from are previously installed software and third-party software products.

(d) Software defects shall be documented by the user and Seller shall be notified in writing with immediate effect.

(e) The warranty period shall always be 12 months; the period commences with the dispatch of the software package.

(f) If the software package is not usable or defective, Seller shall exchange it primarily for a new one of the same title or for an adequate alternative solution. If this also proves to be unusable or defect and if Seller is not in a position to make it usable with adequate effort within an adequate time, but at least within a period of four weeks, Buyer may demand a price reduction or a change. In the case of change shall apply accordingly. Costs of defect rectification by Buyer or a third person shall not be compensated by Seller.

(g) In excess of Subsection(f) Seller shall not provide warranty, in particular not in the case of the supplied software not meeting the special requirements of Buyer or user, and also not for altered or revised versions of the software (Subsection 7.2), unless Buyer can prove that the defects are not connected to the alterations or revisions. Buyer itself is solely responsible for the selection, installation and usage of the software as well as for the results intended therewith.

(h) In the event of unjustified assertion of defects in the software Seller shall be entitled to charge Buyer with any incurred costs according to valid cost rates.

8. DISCLAIMER AND LIMITATION OF EXPRESS WARRANTY.

8.1 There are no express warranties other than those contained in the Agreement and they are not assignable. Any representations as to performance and other matters, except as specifically contained in the Agreement, were for illustrative purposes only and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third party beneficiaries to the express warranties contained herein unless specifically provided and identified. Seller is not responsible for any errors or omissions or for any loss or damage resulting from reliance on catalogues, brochures, price lists or other information provided to Buyer from Seller, including, without limitation, any descriptions, shipping specifications, illustrations, representations as to quality or capabilities, or any other information. Such information provided by Seller is intended for general information only and is not a representation, warranty or other obligation of Seller. Buyer is to conduct its own tests or include in the written Agreement any express obligations of Seller which Buyer deems material. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines or procedures unless specifically contained in the Agreement.

9. REMEDIES AND LIMITATIONS OF SELLER'S LIABILITY.

9.1 General Remedies. Defective or non-conforming Goods or parts thereof discovered and reported during the express warranty period shall be repaired, or replaced by Seller without any additional charge, and shipped to Buyer, FOB Seller's plant, for reinstallation by Buyer at its cost, subject to the terms hereof of the Agreement, as Buyer's exclusive remedy. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant of any part of the Goods which Buyer shall, within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller shall determine upon examination to be defective or not in conformity with the express warranties contained herein. Goods cannot be deemed defective or non-conforming if Seller cannot duplicate the alleged failure. In lieu of repair or replacement, if Seller elects, Seller may, upon return of such Goods and making a determination of nonconformity or defect, keep the Goods and refund the purchase price as Buyer's exclusive remedy. Seller may provide such repairs itself or through its third party contractors. Buyer's remedies shall be limited (even in the event of Seller's default of its warranty obligations or a failure of an item to meet its intended purpose) exclusively to those provided in this Section. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE, REGARDLESS AS TO WHETHER SELLER'S LIABILITY ARISES UNDER CONTRACT, TORT, STRICT LIABILITY STATUTES, OR OTHERWISE, FOR EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOSS PROFITS OR REVENUES; INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING, PREMISES, OR WORK-IN-PROCESS; COST OF CAPITAL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES; COST OF PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE OR SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Each provision of the Agreement which provides for a limitation of liability, disclaimer of warranties, or exclusion or limitation of damages or remedy is severable and independent of each other and to be enforced as such. Buyer waives any causes of action or theories of liability relating to or arising under the Agreement including, but not limited to, those arising under contract, tort, strict liability, product liability statutes, or otherwise, except as specifically provided by the UCC as modified and limited herein. The replacement or repair of Goods by Seller does not give rise to any new or extended warranty, and the warranty period provided for herein shall not be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date the repaired or replacement Goods are delivered to Buyer or otherwise.

9.2 Buyer's Obligations. Buyer shall contact Seller to request warranty coverage, a return authorization number, and other instructions relating to the return of Goods or parts thereof. If requested by Seller, Buyer shall issue a new purchase order or amendment to Seller for replacement parts, subject to Seller issuing a credit memo if Buyer's claim for warranty coverage is approved. Buyer shall provide with any claim in writing a complete description of the non-conformity or defect. Buyer shall comply with Seller's return instructions (including return of the Goods) within 30 days or the claim shall be deemed conclusively to have been abandoned. Buyer is responsible for properly tagging, identifying and packing returned Goods. Goods returned without compliance with the above procedures shall be returned to the sender at sender's cost.

9.3 Sole Remedy. This Section sets forth Seller's sole liability and entire obligation and Buyer's exclusive remedy for any action that is brought against Seller.

10. DISCLAIMER OF IMPLIED WARRANTIES.

10.1 SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS (OTHER THAN THAT THE GOODS WILL BE NEW AND GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY, WHETHER OTHERWISE ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING, OR COURSE OF PERFORMANCE. There are no warranties which extend beyond those express warranties contained in the Agreement. Buyer affirms that it has not relied upon Seller's skill nor judgment to select or furnish the Goods for any particular purpose beyond the specific express warranties in the Agreement. Any design provided by Seller is based on information provided by Buyer. Seller may rely entirely on information provided by Buyer and is under no obligation to verify such information or take any action to obtain explanatory or supplemental information from Buyer or third parties. Buyer's approval of drawings and/or prototypes constitutes Buyer's acceptance and waiver of any responsibility for a failure to consider or correct information or approval provided by Buyer. Any modifications of drawings, prototypes and other work of Seller after approval by Buyer shall be at Buyer's expense at Seller's normal rates for services and materials. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in the Agreement. Seller does not warrant that the Goods will operate with any accessories or within any system not sold under the Agreement and Seller's warranty is limited to the operation of the Goods in a stand-alone mode, unless specifically stated in Seller's written specifications. Some countries, states, or provinces do not allow the exclusion or limitation of implied warranties or the limitation of incidental or consequential damages for certain products supplied to consumers, or the limitation of liability

for personal injury, so such limitations and exclusions may be limited in their application to an end user and others. When the implied warranties are not allowed to be excluded in their entirety, they will be limited to the duration of the applicable written warranty. The warranty gives specific legal rights which may vary depending on local law.

11. INDEMNIFICATION.

11.1 Third Party Claims. Buyer shall indemnify, and at Seller's request defend, Seller from any and all third party claims, damages and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise arising out of the use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts, components and systems manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, or Buyer's or customer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller. Buyer shall defend and indemnify Seller from all liability for claims, damages, losses and expenses incurred as a result of the advice furnished by Seller to, and relied on by, Buyer's contractors to the extent the liability exceeds any liability as limited by the Agreement had the advice been furnished to, and relied on by Buyer.

11.2 Buyer's Indemnity for Unsafe Use. Buyer shall use and shall require its employees and all other users of the Goods to use all safety devices and guards furnished with or intended to be used with the Goods, and to follow proper safe operating procedures in accordance with general industry standards and as set forth in manuals and instruction information furnished by Seller and as otherwise required by the Agreement. If Buyer fails to comply with the obligations set forth in this subsection, Buyer shall indemnify and save Seller harmless and on Seller's request defend Seller from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the operation of the Goods and all warranties of Seller shall become automatically void. Buyer shall notify Seller promptly, and in any event within 30 days, of any accident or malfunction involving Goods which results in personal injury or damage to property and shall cooperate fully with Seller in investigating to determine the cause of such accident or malfunction, including allowing Seller access to the Goods and Buyer's reports regarding the Goods for Seller's inspection. If Buyer fails to provide such notice and cooperation to Seller, Buyer shall indemnify Seller from any claims arising from such accident or malfunction whether or not the Goods are non-conforming or defective.

12. SECURITY INTEREST.

12.1 In addition to any security interest granted by the UCC or other law, Buyer hereby grants a security interest to Seller in all Goods and documents related thereto and proceeds and products therefrom to secure all obligations of Buyer to Seller, whether or not arising under the Agreement. Seller may file a financing statement and at Seller's request, Buyer shall sign financing statements and other documents, which evidence perfect and confirm the security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to a financing statement or other similar documents if necessary or convenient to perfect Seller's security interest. Buyer shall not change the name of Buyer, the jurisdiction of Buyer's formation, or the location of any Goods from the original delivery point or installation site without prior written notice to Seller. Buyer shall provide a lien waiver or subordination from all third parties to whom the Goods may be delivered. Buyer shall provide a landlord's waiver or subordination of any lien rights at the premises to which the Goods are to be installed. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others and take other actions to repossess or render inoperable all Goods in which it has a security interest provided that Seller provides Buyer with immediate notice it has rendered the Goods inoperable. In case of a default by Buyer, Buyer hereby irrevocably appoints Seller as its agent to obtain possession of the Goods and documents related thereto. Seller may install and activate procedures or devices to make the Goods or Software non-operative upon Buyer's default. The Goods shall be and remain strictly personal property whether or not affixed or attached on permanent foundation or affixed or attached to building or structure. Title shall not transfer to Buyer until the Goods shall be paid in full. Buyer shall maintain the Goods which constitute inventory in a segregated area and not co-mingle any Goods which are not fully paid. Buyer shall not sell, exchange, transfer, convey, mortgage, pledge, hypothecate or grant a security interest in any Goods which are subject to the Agreement until payment has been made in full to Seller, at which time title shall transfer to Buyer. Buyer shall immediately advise Seller in writing of any damage to, change in location of, or seizure of, any of the Goods the price of which has not been paid to Seller.

13. PROPRIETARY INFORMATION.

13.1 Buyer's Rights to Confidentiality. Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.

13.2 Seller's Rights to Confidentiality. All proposals, plans and other information furnished by Seller in bidding, negotiating and performing the Agreement, are confidential and the property of Seller, whether or not marked "Confidential", and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any other third party or used by

Buyer unless necessary for the selection or use of the Goods and notice of such disclosure has been given to Seller. Buyer shall treat as confidential any quotation or other business proposal from Seller and all technology which shall be made available, directly or indirectly to Buyer by Seller and by Seller's licensors, including but not limited to drawings, schematics, specifications, bills of material, test results, analysis, recommendations, models, and designs, and Buyer shall use such proposal and technology only to evaluate its business relationship with Seller and to enable Buyer to perform under the Agreement. Buyer shall not manufacture or sell any product using confidential information provided by Seller or obtained from reverse engineering or decompiling Goods of Seller. Buyer shall not disclose, or authorize or instruct any third party to disclose, any confidential or proprietary information of Seller to any third party that is not bound by contract to at least the same duty of confidentiality to Seller as is Buyer. In addition, only those employees and contractors of Buyer having a need-to-know and bound by contract by the same confidentiality provisions as Buyer may be given access to such technology. Buyer shall maintain, for Seller's inspection, written records which shall include the names and address of such employees and contractors granted such access. Buyer shall indemnify Seller from all expenses and damages related to the improper use or disclosure by Buyer or its employees and contractors. Business proposals and technology of Seller may be protected by patent, copyright, trademark and other law. No license or other right to business proposals or technology is granted to Buyer except as specifically provided in the Agreement.

13.3 Patentable Features. Any design, invention or other information developed by Seller in the performance of the Agreement shall remain the property of Seller, whether or not Seller charges for design, research, development, testing, or similar services. Any patentable features developed by Seller in the performance of the Agreement, alone or in cooperation with Buyer, shall be the property of Seller and Seller shall be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the Agreement, except as provided in Subsection 13.1.

13.4 Drawings and Calculations. Seller is not obligated to furnish detailed or shop working drawings, manufacturing drawings, engineering calculations, computer programs, or other information for any Goods or part thereof.

13.5 Trade Secrets. Goods and related Software contain valuable trade secrets of Seller, and Buyer shall not translate, reverse engineer, de-compile or disassemble or make any other unauthorized use of such Seller Software and Goods. Since unauthorized use of such Seller Software and Goods will greatly diminish the value of such trade secrets and cause irreparable harm to Seller, Seller, in addition to any other remedies it may have, shall be entitled to equitable relief to protect such trade secrets, including without limitation temporary and permanent injunctive relief without providing further proof of irreparable harm by Seller.

13.6 Restrictions on Other Purchases by Buyer. Buyer shall not purchase from any supplier of Seller any Goods or components thereof which have been purchased by Buyer from Seller until two years after the last purchase of such Goods or components from Seller, unless Buyer gives Seller seven days prior written notice of its intent to make such purchases.

14. BREACH.

14.1 Default. If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of a protective order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover the Goods in transit or delivered, disable delivered Goods, and otherwise enforce its remedies for Buyer's default.

14.2 Seller's Damages. Seller shall be awarded interest, consequential and incidental damages, and costs (such as but not limited to actual reasonable attorney fees) in any proceeding to enforce its remedies in which it obtains relief or damages or in which it prevails in the defense of any action by Buyer.

14.3 Security. Seller may require that within 21 days of demand Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to Buyer's ability to make prompt payment. If such security is not posted, Seller shall have the right to cease performance of its obligations and enforce its remedies for Buyer's default.

14.4 Cumulative Rights and Limitations. All rights granted to Seller and all limitations in favor of Seller in the Agreement and by law are cumulative, provided Seller shall be entitled to only a single full recovery.

14.5 Good Faith. Seller shall not be liable in damages or otherwise for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.

14.6 Waiver. Seller's failure or delay in enforcement of any provision shall not constitute a waiver of a default or of the provision itself.

14.7 Substantial Compliance. Seller shall not be liable for any damages for breach of any provision of the Agreement with which it has substantially complied.

14.8 Currency. The choice of currency expressed in the Agreement and the place of payment are essential terms and there are no equivalent terms. Any money judgment rendered under the Agreement shall be converted in any enforcement action in a jurisdiction in which the local legal currency is other than as expressed in the Agreement shall be converted into the legal currency of the enforcing jurisdiction at the current New York rate of exchange as pub-

lished in the Wall Street Journal on the date of entry of the original judgment.

14.9 Cancellation. Buyer may cancel its purchase order for the Goods prior to their completion by immediate payment to Seller of Seller's cost of manufacture and liquidated damages (including labor, engineering, materials, equipment time and overhead) computed using Seller's standard internal costing procedures, plus 15% of the sale price of the Goods. Cost of manufacture shall include all materials or services which Seller has ordered and which cannot be canceled and all costs incurred in canceling material and service orders which can be canceled. Seller may retain without cost all materials and partially completed Goods on canceled purchase orders. The parties acknowledge the great difficulty of proving damages for the cancellation of products such as the Goods and the reasonableness of this liquidated damages provision.

15. CONSEQUENTIAL, INCIDENTAL, AND OTHER DAMAGES.

15.1 Disclaimer. BUYER AND THIRD PARTIES SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, LIQUIDATED, EXEMPLARY OR INCIDENTAL DAMAGES, AS DEFINED IN THE APPLICABLE LAW OR OTHERWISE, EXCEPT AS TO ANY INDEMNIFICATION OBLIGATIONS TO THIRD PARTIES SPECIFICALLY PROVIDED IN THIS AGREEMENT. "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF CONTRACT GOODS, COSTS OF REPLACEMENT POWER OR CONTRACT GOODS, ADDITIONAL EXPENSES INCURRED IN THE USE OF CONTRACT GOODS OR FACILITIES, OR THE CLAIMS OF THIRD PARTIES, EVEN IF SELLER HAS BEEN ADVISED OF POSSIBILITY OF SUCH DAMAGES OR IF THEY ARE OTHERWISE REASONABLY FORESEEABLE. THIS DISCLAIMER SHALL APPLY TO INCIDENTAL, CONSEQUENTIAL AND LIQUIDATED DAMAGES BASED UPON ANY CAUSE OF ACTION WHATSOEVER ASSERTED AGAINST SELLER, INCLUDING ONE ARISING OUT OF PRINCIPLES OF CONTRACT, ANY BREACH OF WARRANTY, EXPRESSED OR IMPLIED, GUARANTEE, EQUIPMENT OR OTHER CONTRACT GOODS LIABILITY, NEGLIGENCE, TORT, OR ANY OTHER CAUSE PERTAINING TO PERFORMANCE OR NON-PERFORMANCE TO THE PROPOSAL OR ORDER BY SELLER. This limitation shall be enforced regardless of whether Seller has defaulted in its warranty or other obligations or the limited warranty is held to fail of its essential purpose. Any legal inability to limit or restrict the right of Buyer or a third party to such damages shall not affect the right of Seller to indemnification hereunder, and under no circumstance shall Buyer recover more than the purchase price.

15.2 Overall Limitation. IRREGARDLESS OF THE DISCLAIMER IN SUBSECTION 15.1 ABOVE, UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY FOR CLAIMS FOR NON-DELIVERY OR OTHER NON-PERFORMANCE, DEFECTIVE PERFORMANCE, NON-CONFORMING GOODS, DEFECTIVE GOODS OR OTHERWISE EXCEED THE AMOUNT RECEIVED OR TO BE RECEIVED BY SELLER FOR THE PERFORMANCE OR SHIPMENT WHICH CONTAINED THE NON-CONFORMING GOODS, DEFECTIVE GOODS OR SUCH OTHER EVENT GIVING RISE TO THE CLAIM, EXCEPT AS MAY BE SPECIFICALLY PROVIDED BY THESE GENERAL TERMS.

16. TERMINATION.

16.1 By Either Party. A party may terminate or cancel the Agreement immediately by written notice to the other party if:

- The other party breaches any of its material obligations under the Agreement and that breach is not capable of remedy.
- A party becomes insolvent; or
- It becomes unlawful for the party to perform its obligations under the Agreement.

16.2 By Seller. Seller may terminate or cancel the Agreement immediately by written notice to Buyer if Buyer fails to:

- Pay money owing under the Agreement for more than seven days;
- Accept delivery at the delivery point within seven days from the date the Goods are first available for delivery as advised to Buyer by Seller, unless agreed otherwise in writing; or
- Carry out any other provision of the Agreement or breaches any of its material obligations under the Agreement and does not remedy that failure or breach within the remedy period set out in a written notice from Buyer giving full particulars of the breach and requiring it to be remedied. Any breach which is not so described is waived.

16.3 Cumulative Remedies. The rights of termination or cancellation under the Agreement are in addition to any right of action or remedy which the parties have in respect of any breach of the terms and conditions of the Agreement. The termination or cancellation of the Agreement does not affect the right of action or other remedy by the parties before termination in respect of any prior breach of the terms and conditions of the Agreement, including any breach which is the grounds of termination.

16.4 Survival of Rights. All rights and obligations of each party to the Agreement which are expressed to survive termination, cancellation, or expiry of the Agreement, or which by their nature or context must survive termination, cancellation, or expiry of the Agreement, will survive the termination, cancellation, or expiry of the Agreement.

17. SEVERABILITY.

17.1 Any provision found to be unenforceable by a final unappealed order entered by the court or tribunal shall be severed from the Agreement. Such severance shall be as narrow as

possible and shall not affect the remainder of the Agreement in such action and other actions, unless the court or tribunal shall also find, on the request of Seller that without such provision as originally written, the Agreement is not likely to meet the reasonably commercial expectations of the parties and in such case, the court or tribunal shall enter an equitable judgment of rescission, termination or reformation of the Agreement as necessary to reach an equitable result.

18. ASSIGNMENT

18.1 No right or interest in the Agreement may be assigned by Buyer without the prior written consent of Seller. Any assignment attempted by Buyer shall be void and ineffective for all purposes unless made in conformity with this Section.

Fronius USA LLC
10421 Citation Drive, Suite 1100
Brighton, Michigan 48116
USA
Telephone +1 810 220 4414
Fax +1 810 220 4424
sales.usa@fronius.com
www.fronius-usa.com