



SERVICE SYSTEMS SOLUTIONS

## STANDARD TERMS AND CONDITIONS OF SALE

1. **Entire Agreement.** These Terms and Conditions of Sale (which include any purchase order or other document(s) attached hereto or referencing these Terms and Conditions of Sale) (the "terms") constitute the entire, complete, and exclusive agreement between the parties with respect to goods and/or services (a "deliverable" or the "deliverables") provided to Buyer by CPE as specified in these terms. **If these terms are different from, or contain terms and conditions in addition to, Buyer's purchase order or any other document provided by Buyer (including any modifications thereto), CPE expressly rejects such different or additional terms in Buyer's document, and CPE's provision of the deliverables is expressly conditioned upon Buyer's acceptance of these terms. Notwithstanding any other acts or omissions of the parties, Buyer's acceptance of a deliverable constitutes Buyer's acceptance of all of these terms.**

2. **Acceptance/Delivery.** No order or other request for deliverables will be binding upon CPE unless accepted in writing by CPE. Delivery is F.O.B. shipping point. Buyer assumes full responsibility for deliverables upon CPE's delivery to Buyer's carrier at shipping facility, including proper arrangement and security for transport. Any dates quoted for delivery are approximate only. In the event of CPE's inability for any reason to supply the total demand for deliverables, CPE may allocate its available supply among any or all purchasers, as well as departments and divisions of the CPE, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.

3. **Services.** CPE will provide such services as may be specifically described in these terms, but shall have no obligation to provide any services unless agreed to by CPE in writing. Services are not provided as work-for-hire and CPE retains on an exclusive basis all rights to any intellectual property developed, delivered and/or used in providing services.

4. **Price.** The price for deliverables is specified in these terms. The price is exclusive of taxes and shipping related costs and is payable only in U.S. currency. Price, delivery terms, availability of deliverables and descriptions and specifications of deliverables is subject to change without notice. Buyer shall reimburse CPE for all taxes, shipping related costs or other charges which CPE may be required to pay upon the sale, transportation or use of the deliverables. The opening and maintenance of a credit account with CPE is subject to Buyer providing satisfactory references and observing all of the terms on which credit is given, including CPE's Credit Policy. CPE reserves the right to refuse to extend credit at any time and for any reason. Any discounts, rebates, warranties, or similar allowances given by CPE for the deliverables are expressly conditioned upon full and timely payment.

5. **Payment.** At CPE's option, the price and any applicable taxes, shipping related costs or other charges is due and payable on or before delivery, or if invoiced by CPE, due and payable thirty (30) days after the date of invoice. If Buyer fails to make payment when due, in addition to CPE's other rights and remedies, Buyer shall (i) pay CPE a late charge equal to the lesser of 1.5% or the highest lawful amount which may be charged to Buyer, per month and/or part of a month on the remaining unpaid balance due to CPE; and (ii) pay all expenses of collection of amounts due CPE from Buyer, including reasonable attorneys' fees. Buyer shall not be entitled to make any deductions or set off of any amounts (including those for alleged damages) against payments due to CPE hereunder.

6. **Security Interest.** Buyer grants CPE a purchase money security interest in all deliverables, including the proceeds, products thereof, additions and accretions thereto and replacements and substitutions thereof, with all rights and remedies of a secured party in any jurisdiction. Buyer authorizes CPE to file financing statements, or such other documents, appropriate to protect CPE's security interest, without Buyer's signature. If Buyer has granted a third party a blanket security interest in the type of collateral of which a deliverable would be characterized under the Uniform Commercial Code or applicable law, Buyer shall notify CPE of such fact in writing prior to shipment of deliverables.

7. **Inspection.** Promptly upon delivery, but no later than five (5) days after delivery, Buyer shall (i) examine and inspect all deliverables; and (ii) notify CPE of any defect in material or workmanship or any other fact that causes the deliverables not to conform to the agreement between Buyer and CPE. Failure to so inspect and inform CPE of a defect within the foregoing time period or the use of a deliverable by Buyer at any time shall be conclusive evidence that CPE has

satisfactorily tendered delivery and that Buyer has inspected and accepted the deliverables. Buyer agrees that the foregoing time period provides Buyer with a reasonable time to inspect deliverables. Should Buyer properly notify CPE of any defects in deliverables, in addition to any obligations Buyer may have to CPE, Buyer shall re-pack the deliverable into its original packaging and store that deliverable indoors and in a dry and temperature regulated facility pending instructions from CPE.

8. **Force Majeure.** CPE is not responsible for any delay or failure to perform its obligations under these terms when such failure is due to any cause beyond its control. If shipments are delayed at Buyer's request, due to Buyer's acts or omissions, or due to circumstances that are not within CPE's control, payment shall be made by Buyer within ten (10) days after Buyer has been notified by CPE that a deliverable is ready for shipment. If shipment is delayed, in addition to any other remedy available to CPE, the deliverable may be stored by CPE at Buyer's risk and expense.

9. **Returns/Cancellation.** No deliverable may be returned unless CPE agrees in writing and such deliverable is (i) in new condition, suitable for resale in its undamaged original packaging and with all its original parts and (ii) has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged. If CPE agrees to accept a return, Buyer must pay all costs and bear all risk of returning the deliverable to CPE's facility and pay a re-stocking charge starting at 30% of the price. Orders accepted by CPE can only be cancelled with the written consent of CPE, such consent to be in the CPE's absolute discretion and then only upon payment of a reasonable cancellation charge.

10. **Buyer Responsibilities.** Buyer is responsible for obtaining any and all permits, licenses or other documents necessary for shipment, receipt or use of the deliverables and providing CPE written evidence thereof in advance of shipment. Buyer, its employees and agents will take all necessary steps to ensure that the deliverables will be set-up, assembled, installed and used (whether by Buyer or a third party) in accordance with CPE's instructions, any instruction manual, package insert or other materials provided with the deliverables, and all requirements of all applicable governmental authorities pertaining to the installation and operation of the deliverables. Buyer shall indemnify and hold CPE and CPE's directors, officers, employees and agents harmless against any and all damages, losses, costs, claims and expenses (including, without limitation, reasonable attorneys' fees and costs whether incurred in a third party action or in an action to enforce these terms) incurred by CPE or such persons that arise out of or relate to the failure of Buyer to comply with CPE's instructions, any instruction manual, package insert or other materials provided with the deliverables, and all requirements of applicable law or regulation pertaining to the installation and operation of the deliverables. CPE shall have no obligation to perform should Buyer be in breach of its obligations to CPE under these terms or any other contract with CPE.

11. **Technical Advice.** Upon request, CPE may furnish such technical advice or assistance as it has available in reference to the use of deliverables. It is expressly understood, however, that all such technical advice or assistance is given **AS-IS** and the CPE assumes no obligation or liability for the advice or assistance given or results obtained, and all such advice or assistance is given and accepted at Buyer's risk.

12. **Limited Warranty.** CPE warrants to Buyer that deliverables will be free from defects in material and workmanship. This warranty is not transferable or assignable and any such transfer or assignment is void.

This limited warranty does not cover service trips, service calls and labor charges, shipment of replacement parts, or damages due to: (i) failure to install, operate or maintain the deliverables in accordance with CPE's instructions, any instruction manual, package insert or other materials provided with the deliverables, and all requirements of applicable law or regulation; (ii) misuse, abuse, neglect or modification of a deliverable in any way; (iii) improper service or use of replacement parts or accessories that are not specified by CPE; (iv) improper installation by Buyer or a third party or any relocation of a deliverable after initial installation; (v) incorrect supply, accident, fire, flood, acts of God or other casualty; (vi) use of a deliverable other than for its intended purpose; (vii) shipment of a deliverable (all claims must be filed with the carrier); (viii) use of a

deliverable in the vicinity of combustible or explosive materials; (ix) any defect in a deliverable arising from a drawing, design, or specification supplied by or on behalf of Buyer; (x) failure of parts not manufactured by CPE; (xi) Buyer cannot prove original purchase date and required annual maintenance history, if any; (xii) the serial number or any similar or other identifying information on any deliverable is removed, defaced, modified or altered in any way; or (xiii) CPE is not permitted to inspect the damaged deliverable.

CPE makes no warranty regarding any deliverables produced or supplied by parties other than CPE. Those deliverables are subject to any terms and conditions imposed by such third parties.

No person other than an executive officer of CPE has authority to change or extend the terms of the above limited warranty and Buyer confirms that no other warranty terms have been extended by CPE or are applicable to the deliverables. Changes or extensions to the terms of the above limited warranty are binding only if confirmed in writing by CPE's duly authorized executive officer.

13. **Limitation on Warranties/Damages.** Any claim under the limited warranty set forth in Section 12 must be made within a period of twelve (12) months from the date of shipment by CPE or such claim is waived. **Except as set forth in these terms, CPE makes no representation or warranty of any type, express or implied, including any warranty of merchantability, warranty of fitness for a particular purpose, warranty of non-infringement or warranty arising from any course of dealing, course of performance or usage of trade.**

**CPE will not under any circumstances be liable for any special, indirect, punitive or consequential damages (even if CPE has been notified of the possibility of such damages) resulting from or related to a deliverable including, without limitation, any loss of profits or loss of opportunity.**

Some jurisdictions do not allow limitations on warranties or damages, so this limitation or exclusion may not apply to Buyer.

14. **Remedy.** CPE's sole obligation and Buyer's exclusive remedy with respect to any deliverable, whether arising in contract, tort (including negligence), strict liability, breach of warranty or otherwise, is limited to CPE, at its discretion, replacing or repairing the defective deliverable, providing replacement parts or issuing Buyer a credit equal to the price paid to CPE for such defective deliverable, and in no event will CPE's liability exceed the amounts actually received by CPE for any deliverable.

This exclusive remedy shall not be deemed to have failed its essential purpose so long as CPE is willing and able to: (i) repair or replace a defective deliverable or parts thereof or (ii) at CPE's option, refund the price received by CPE for the defective deliverable, within a reasonable time after Buyer demonstrates that a defect exists.

15. **Limitation of Actions.** Any action against CPE arising out of this transaction shall be commenced within one (1) year from the date such cause of action has accrued; otherwise the same shall be barred.

16. **Intellectual Property.** CPE is not transferring to Buyer any patent, copyright, trademark or other intellectual property rights in or related to any deliverable, other than the limited license to use the deliverable for Buyer's internal business purposes. The deliverables provided hereunder may be subject to patent, trade secret and other intellectual property rights and Buyer agrees that should the deliverables or certain information relevant thereto be made available to others it would cause irreparable harm to CPE. Therefore, Buyer agrees not to, and not to permit others to, use, disclose, copy or replicate (through, for example, reverse engineering or other similar process) any deliverable and/or any documentation or information regarding any deliverable.

Buyer shall indemnify and hold CPE and CPE's directors, officers, employees and agents harmless from and against any and all damages, losses, costs, claims and expenses (including, without limitation, reasonable attorneys' fees and costs whether incurred in a third party action or in an action to enforce these terms) incurred by CPE or such persons that may arise out of or relate to any or all claims of any nature alleging infringement of a third-party's intellectual property rights as a result of CPE's compliance with Buyer's written specifications or instructions for the

manufacture of the deliverables (the "Specifications"). The foregoing shall not apply, however, to the extent (i) such infringement arises from any deviation, embellishment, interpretation, modification or creative work performed on the part of CPE that deviates from, or is in addition to, the specific requirements of the Specifications, or (ii) Buyer can demonstrate that CPE knew or should have known in the exercise of reasonable prudence that CPE's compliance with the Specifications would infringe such third-party's intellectual property rights.

17. **Governing Law.** These terms shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflicts of laws, and shall not be governed by the provisions of the United Nations Convention on Contracts for International Sales of Goods. The parties agree that all actions or proceedings between them shall be tried and litigated only in the state and federal courts located in the County of Monroe, New York.

18. **Termination.** CPE may terminate these terms, and have no obligation to supply deliverables, immediately upon the bankruptcy or insolvency of CPE or CPE's breach of these terms. Buyer will pay the price for any deliverables delivered on or before the date of termination. CPE is not liable for any other costs, expenses, losses, damages or liabilities arising out of such termination. Termination or cancellation will not alter or terminate any of the parties' obligations under these terms that by their nature extend beyond termination or cancellation.

19. **Assignment/Subcontract.** Buyer may not delegate or assign any duties or rights under these terms without CPE's prior written consent, which consent may be withheld by CPE for any or no reason. Any such delegation or assignment in violation of this section is void.

20. **Severability/Revision.** Should any provision of these terms be held by a court of law, or other body having proper jurisdiction, to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of these terms shall not be affected or impaired thereby and the parties agree that partial enforcement of these terms or revisions of the illegal, invalid or unenforceable provision is appropriate.

21. **Notices.** To be effective, all notices and other communications under these terms shall be in writing and sent to the intended recipient by personal delivery, by registered or certified mail, return receipt requested, or recognized overnight courier, at the party's address as set forth in the purchase order or other documents attached to these terms. Each party may change its address for receipt of notice by giving notice of such change pursuant to this section. Notice is given immediately upon personal delivery, or three business days following the date on which such notice is mailed in accordance with this section, or the next day following the date on which such notice is sent by overnight courier.

22. **Entire Agreement, Amendment and Waiver.** These terms (a) constitute the entire agreement between the parties as to the subject matter hereof and supersede all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof, and (b) may be modified or amended only by a written document signed by CPE and Buyer. No supplement, modification or waiver of these terms will be binding unless executed in writing by the party to be bound thereby and specifically references these terms and the section(s) so modified. No waiver of any of these terms shall be deemed or shall constitute a waiver of any other term hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.