

**GENERAL TERMS AND CONDITIONS OF PURCHASE OF YOKOGAWA IBERIA S.A.,  
HAVING ITS REGISTERED OFFICE AT C/ JULIÁN CAMARILLO, 29, EDIFICIO 1 PLANTA 2, 28037 MADRID, ESPAÑA,  
(HEREINAFTER REFERRED TO AS "YOKOGAWA")**

These General Terms and Conditions of Purchase (hereinafter referred to as "GTCP") are applicable to all Purchase Orders for Products, which for the purpose hereof includes the licensing of Software, and Services to be provided by Seller to Yokogawa and/or its customers.

Any provisions in Seller's general conditions of sale (however named) or amendment(s) made by Seller to these GTCP are herewith explicitly rejected. Any additions or amendments to and deviations from these GTCP shall be agreed in writing.

**1. DEFINITIONS**

**Delivery Date:** the date when Seller shall deliver the Products and/or has executed and completed the Services.

**Hardware:** all machinery and installations and peripherals, by means of which data is processed or recorded on data carriers, together with components of the same.

**ICC - Incoterms:** the latest version of the International Chamber of Commerce ("ICC") rules for the interpretation of trade and delivery terms.

**Liquidated Damages:** the amount of fixed compensation as specified in the Purchase Order for a delay in delivery of Products or completion of the Services.

**Owner:** Yokogawa's client establishing and/or owning the plant or facilities in which the Products and/or Services are intended to be used.

**Party or Parties:** Yokogawa and/or Seller individually or collectively as the case may be.

**Products:** all Hardware, Software and documentation, test- and measurement equipment, analyzers, flow- pressure- or temperature meters, recorders, transmitters, sensors or any other goods specified in the Purchase Order, not consisting of Services.

**Purchase Order:** a written order issued by Yokogawa for the purchase of Products and/or Services. As far as Software is concerned, "purchase" means acquisition of a license to use the involved Software and "Yokogawa" or "Owner" means "licensee".

**Quotation:** the offer, proposal or quotation (however named) including scope, specifications, functional requirements, quantity, schedule, conditions, drawings and other related documents attached thereto or referred therein, issued by Seller for the sale of Products and/or Services.

**Recall:** a request by Seller to return Products which show a defect in any produced series.

**Seller:** the legal entity receiving a Purchase Order from Yokogawa.

**Services:** all activities performed by Seller and its sub-suppliers for Yokogawa and/or Owner, as specified in the Purchase Order, not consisting of the supply of Products.

**Site:** the plant, facilities or other location of Owner, where (part of) the Services are to be performed or the Products put into operation.

**Software:** machine readable object code, including executable programs, firmware and/or Seller-supplied data bases, user documentation in written or electronic object code form, recorded on forms, tapes, magnetic tapes, disks and all other media on which data have been or are recorded, including updated parts of such Software, new versions and/or adaptations.

**2. ACCEPTANCE OF PURCHASE ORDER**

The Purchase Order shall become binding on the date that Seller signs the Purchase Order for acceptance. Seller shall return the accepted Purchase Order within fourteen (14) calendar days of the date of the Purchase Order. If Seller commences work before returning the signed Acceptance Form of the Purchase Order, Seller shall be deemed to have accepted the Purchase Order.

Yokogawa shall be entitled to cancel the Purchase Order if the Purchase Order has not been accepted in writing within the timeframe mentioned in this clause or if modifications to the Purchase Order have been made by Seller without Yokogawa's prior written consent.

**3. DELIVERY AND PRICE**

Delivery shall be as specified in the Purchase Order and per the ICC – Incoterms. The Delivery Date shall be of the essence. In case of late delivery, Yokogawa is entitled to cancel without any liability all or part of the Purchase Order.

However, Yokogawa may at his sole discretion choose not to cancel and grant Seller an extension of the Delivery Date. Notwithstanding the cancellation of the Purchase Order or the extension of the Delivery Date, the Liquidated Damages as stated in the Purchase Order – if any – shall remain due and payable by Seller. Partial delivery may only be made upon Yokogawa's prior written consent.

Seller shall notify Yokogawa in writing immediately if any delay is foreseen and shall take all necessary measures at its cost to achieve the agreed delivery schedule. Yokogawa reserves the right to require Seller to promptly implement at Seller's cost, such measures as Yokogawa reasonably considers necessary to achieve the agreed delivery schedule.

In the event of default by Seller under the provisions herein, and/or if Yokogawa otherwise determines that Seller's performance is such that it will cause a delay in delivery, not being due to Force Majeure, Yokogawa has the right, after prior written notice to Seller, to cancel part or all of the Purchase Order in accordance with the provisions herein. In the event delay is due to Force Majeure, the provisions of clause 18 shall apply.

The price set forth in the Purchase Order shall be fixed and firm and shall constitute the entire compensation owed to Seller for the Products and/or Services. No adjustment shall be made for whatever reason, including without limitation currency value change. All prices and rates are exclusive of VAT, but inclusive of all transport, packaging, travel, lodging and installation, import duties and other taxes, levies or costs.

**4. PAYMENT**

Seller shall submit an invoice containing the information as specified in the Purchase Order no earlier than the Products and/or Services' actual date of delivery. A correct and undisputed invoice shall be paid within sixty (60) days from date of receipt.

Yokogawa shall at all times be entitled to set off any amount owed to Seller against any debt, whether due payable or not, which Seller may at any time owe to Yokogawa, including without limitation any Liquidated Damages due and payable by Seller.

Yokogawa shall in the event of termination under clause 16 be entitled to defer any payment to Seller.

Payment shall not assume acceptance of the Products and/or Services nor compliance thereof with the requirements set forth in the Purchase Order and shall not release Seller from its obligations under the Purchase Order.

Invoices sent to Yokogawa after the expiry of six (6) months from the Delivery Date shall not be accepted by Yokogawa and by the expiry of said period the Seller's right to payment of such invoices shall be forfeited.

**5. PACKING**

The Products shall be adequately packed and marked in accordance with Yokogawa's instructions. Seller shall be liable for any and all damage caused to the Products or result from the Services as a result of inadequate packing. All used packaging shall become property of Yokogawa.

**6. EXPEDITING AND INSPECTION**

Yokogawa or third parties acting on behalf of Yokogawa shall at any time have the right to inspect or test the Products and/or Services. Seller shall give Yokogawa at least ten (10) working days notice of the scheduled date for such inspection or testing in order to enable Yokogawa to attend. All costs made by Seller and its sub-suppliers for inspection or testing shall be borne by Seller.

If Yokogawa or third parties acting on behalf of Yokogawa determine that the Products and/or Services are not in conformity with the specifications in the Purchase Order, Seller shall promptly at his own cost restore the Products and/or Services to their specifications and correct any defects.

If and when required in the Purchase Order, Seller agrees to submit a detailed production schedule and to regularly submit progress reports against such schedule. Seller agrees to undertake all expediting, including expediting sub-suppliers, as may be necessary to ensure that the Delivery Date or any other relevant date specified in the Purchase Order is met.

Upon request by Yokogawa, Seller shall issue un-priced copies of Seller's purchase orders to Seller's sub-suppliers, which shall include a statement of Yokogawa's expediting and inspection rights as set forth herein.

Products delivered by Seller in error or in excess of the quantities specified in the Purchase Order will be returned to Seller at Seller's cost.

**7. FINAL ACCEPTANCE AND REJECTION**

Final acceptance of Products and/or Services or any part thereof shall be subject to satisfactory survey at Yokogawa's premises or at the Site where the Products and/or Services will be delivered, installed or put into operation. Yokogawa's final acceptance shall not relieve Seller of any of its obligations under the Purchase Order and/or these GTCP.

Upon rejection by Yokogawa of the Products and/or Services, Yokogawa shall be entitled to replacement and delivery thereof within a period to be specified by Yokogawa and without prejudice to its other rights under the Purchase Order and/or GTCP. Such replacement and delivery thereof shall be without charge to Yokogawa and no such delivery shall be made prior to inspection and/or written consent by Yokogawa.

**8. COMPLIANCE**

The Products and/or Services shall be manufactured in accordance and comply with all applicable laws, rules and regulations in the country of origin of Seller, as well as the countries of delivery and final destination as specified by Yokogawa. Seller warrants that the applicable (EU-) legislation in force is not restricting any future support, (re-)sale, use or treatment of the Products and/or Services.

Furthermore, Seller warrants that whenever the Purchase Order requires Seller's presence at the Site, Seller shall comply with all applicable safety, health and environmental regulations including Yokogawa's or Owner's local policies or code of conduct, or other requirements applicable to the Site and shall promptly implement instructions by Yokogawa and/or Owner in this regard.

Seller is solely responsible for required compliance with any applicable import and export laws and regulations. When the Products and/or Services (or any part thereof) are subject to export control laws and regulations imposed by a government, Seller will provide Yokogawa with any and all information needed for Yokogawa to comply with applicable law, including but not limited to applicable Export Commodity Classification Numbers and harmonized Tariff Schedule Numbers, as well as certificates of manufacture in accordance with the origin rules imposed by governmental authorities.

Any Products and/or Services, which can be qualified as Dual Use item or Technology as per the UNSC Resolutions on non-proliferation of weapons of mass destruction and/or listed as such in EC Regulation 1232/2011 (or its logical successor) shall be explicitly stated as such by Seller in the Quotation.

Seller warrants that it has not made or offered and will not make or offer any payment, gift, promise or other advantage, whether directly or through intermediaries, to or for the use of any public official (i.e., any person holding a legislative, administrative or judicial office, including any person exercising a public function for a public agency, a public enterprise or a public international organization) or of any political Party, official or candidate, or to any officer, employee, agent or consultant of Yokogawa, where such payment, gift, promise or advantage would violate the laws of Yokogawa's country of origin, the laws of Seller's country of origin, or the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on December 17, 1997, the US Foreign Corrupt Practices Act (FCPA), the UK Bribery Act 2010, the OECD anti-bribery Convention dated November 21, 1997 and the Council of Europe's Criminal Law and Civil Law Conventions on Corruption dated January 27, 1999 and November 4, 1999, and/or any other country specific provisions in any member states of the EU on the same or comparable matters as contained in the FCPA.

In performing its activities hereunder, Seller shall comply with Yokogawa's Code of Conduct, which shall be made available upon request, or with a Code of Conduct of at least equal ethical standard.

**9. VARIATION ORDERS**

No variation or modification to, or deletion or substitution of any detail of Yokogawa's specifications, drawings etc. or to any condition or provision of the Purchase Order by Seller is permitted without prior written approval of Yokogawa.

Yokogawa may alter quantities and/or specifications given in the Purchase Order at any time. If any Yokogawa's initiated variations affect price or Delivery Date, Seller shall give

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Yokogawa written notice to that effect within fourteen (14) calendar days from the date of receipt of Yokogawa's notice of variation. Any changes in price and/or delivery time shall be agreed on mutually. In any event, if Seller fails to submit a request for a variation order within fourteen (14) calendar days from the date of Yokogawa's notice of variation or from the date of the occurrence for which Seller claims it is entitled to a variation, then the Seller shall, at the sole discretion of Yokogawa, forfeit any right to receive a variation order.

**10. TITLE AND RISK**

Title to the Products and/or results of the Services shall transfer to Yokogawa upon the earlier of a) delivery to Yokogawa or b) payment by Yokogawa of the first installment for the concerned Products and/or Services. In the latter case Seller shall properly mark as "Yokogawa owned" and store separately any and all goods of which the title has transferred to Yokogawa. Risk to the Products and/or results of the Services shall transfer to Yokogawa upon delivery or – if applicable - final acceptance.

**11. INTELLECTUAL PROPERTY RIGHTS**

Seller shall not use or refer to any of Yokogawa's/Owner's and/or their licensors' intellectual property rights without Yokogawa's prior written consent. Yokogawa and/or Owner remains the owner of all intellectual property rights in the inventions, models, designs, schedules, drawings, illustrations, catalogues, manuals and all other documentation etc. comprised therein as supplied to Seller during the course of the Services. Seller shall not copy, reproduce or circulate the above in whole or in part, without the prior written permission of Yokogawa.

As far as Software is concerned, Seller warrants to be entitled to license and adapt Software as necessary for the proper execution of the relevant Purchase Order. The ownership of, and all intellectual property rights in Software shall at all times remain with Seller or its licensors. Unless specified otherwise in the Purchase Order, Seller grants Yokogawa and/or Owner a worldwide, perpetual, non-exclusive license to use the Software.

**12. INFRINGEMENT CLAIMS**

Seller shall indemnify Yokogawa/Owner and hold Yokogawa/Owner harmless against any and all damages, losses or expenses resulting from any claim, action or litigation arising out of any alleged and/or actual infringement of any third party intellectual property right resulting from the use or resale of Products and/or Services.

**13. ADMINISTRATION AND QUALITY ASSURANCE**

Seller shall implement and maintain an administration adequate to trace all data pertaining to a certain production, including batch information, production dates, procured components and source, which shall be kept for a minimum of ten (10) years from such production date. Seller shall retain samples from each batch for a minimum of two (2) years from such production date.

Seller shall have and maintain a certified quality system such as, but not limited to ISO 9001-2000. Yokogawa reserves the right to inspect Seller's compliance therewith at Seller's premises.

**14. WARRANTY**

Seller warrants that the Products and/or Services (i) will be new and free from defects and in all respects meet the specifications in the Purchase Order; (ii) will be and remain suitable for their purpose.

Any defect detected within twenty-four (24) months from commercial operation or thirty-six (36) months from the actual delivery, whichever occurs first, shall be promptly repaired or replaced by Seller in consultation with Yokogawa. All costs arising from such repair or replacement shall be borne by Seller. If the Products and/or Services are destined to form part of and/or are to be integrated into a third party project, the twenty-four (24) month warranty period shall commence from the date such third party project shall come into commercial operation.

If Seller fails to comply with above obligations, Yokogawa shall be entitled to carry out to have carried out all necessary work at Seller's expense.

The warranty period for repaired or replaced items shall be twenty-four (24) months from reinstallation, or thirty-six (36) months from the original delivery, whichever period is longer.

**15. LIMITATION OF LIABILITY AND INSURANCE**

Seller shall be liable for and indemnify Yokogawa against any claims, including Owner's claims, relating to any Recall, personal injury or death and/or property damage arising out of acts or omissions of Seller or defects in the design, equipment, materials or workmanship of the Products and/or Services. Furthermore, Seller shall indemnify and hold harmless Yokogawa for all costs and damages, including Owner's claims, resulting from any (non-) compliance of the Products and/or Services with the applicable (EU-) legislation. Said liability shall survive any termination or expiration of the Purchase Order.

Except for Seller's breach of any of its obligations stated in Articles 8 (Compliance), 11 (Intellectual Property Rights), 15 (Limitation of Liability and Insurance), 19 (Confidentiality), neither Party shall in any event be liable for any special, indirect or consequential damages of the other Party, including but not limited to, loss of profits, loss of business, interruption of business, lost goodwill, lost revenue and/or loss of business information, and regardless whether such damages are based on wrongful act, breach of contract, breach of warranty or other legal fault.

Seller shall take out and maintain insurance policies, including, without limitation, general liability and product liability, which insurance policies shall cover risks during execution of the Purchase Order and five (5) years after fulfillment of Seller's obligations thereof. Upon Yokogawa's first request, Seller shall promptly submit insurance certificates of the required insurance policies. All such insurances shall include a waiver of subrogation against Yokogawa and Owner and include Yokogawa and Owner as additional insureds.

**16. TERMINATION**

In the event Yokogawa has valid reasons to assume that Seller will fail to perform any obligation under the Purchase Order without providing adequate security; or Seller (i) fails to perform any obligation under the Purchase Order which, upon written notice by Yokogawa, remains unfulfilled for thirty (30) calendar days thereafter; (ii) becomes subject to change of control or ownership; (iii) terminates or suspends its business activities, becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an

assignment for the benefit of creditors, becomes subject to direct control of a trustee, receiver of similar authority or becomes subject to any bankruptcy or insolvency proceedings; Yokogawa shall be entitled, immediately and without warning or notice of default and without any liability or prejudice to any other remedy and/or right which Yokogawa may have, either to claim immediate fulfillment of Seller's obligation or cancel the Purchase Order, obtain possession of the completed Products and/or Services and/or recover from Seller any amounts paid.

In the event of such termination, Yokogawa may take possession of the Products and/or the result of the Services in its existing state together with all materials, whether or not already incorporated in the Products and/or the result of the Services, and may finish the Products and/or Services by whatever method it may deem expedient, including engaging another party at Seller's risk and cost.

Furthermore, Yokogawa shall be entitled at any time to terminate for its convenience (part of) a Purchase Order by giving notice thereof to Seller. In such case Seller shall be entitled to payment for the part of the Product/Services as successfully delivered/performed and accepted by Yokogawa and/or Owner, as well as payment for other demonstrable costs of Seller as reasonably made up to the date of termination, using the rates as agreed between Parties or – in absence of agreed rates – as reasonably agreed between Parties.

**17. SUSPENSION**

Yokogawa may at any time, and without affecting the Purchase Order otherwise, by written notice to Seller, suspend further performance by Seller of any part or all of the Purchase Order. Upon receipt of such notice, Seller shall promptly suspend further performance and shall, during the duration of such suspension, take proper care and protect all work associated with the Products in progress and any materials, supplies and equipment on hand. Yokogawa may at any time withdraw by written notice the suspension and Supplier shall promptly resume and diligently continue performance under the Purchase Order.

If suspension reasonably affects price and/or delivery schedule, Seller shall so notify Yokogawa in writing and suggest the necessary changes. The Parties will discuss in good faith the proposed changes. If the duration of suspension exceeds one hundred and eighty (180) consecutive calendar days, either Party shall have the right to terminate the Purchase Order for its convenience and the last paragraph of clause 16 above shall be applicable.

**18. FORCE MAJEURE**

Parties shall not be responsible for any delay or failure in performing their obligations under a Purchase Order, if due to Force Majeure. For the purpose hereof, Force Majeure shall mean a delay in or failure in the performance of obligations which is directly and solely attributable to events which are compelling, unforeseeable, unavoidable, outside of the invoking Party's control or otherwise attributable to it and not due to any fault and negligence on its part.

Force Majeure may include, but is not limited to, the following events or circumstances:

- War, hostilities, invasion, acts of foreign enemies;
- Rebellion, terrorism, revolution, insurrection, military or usurped power, civil war;
- Riot, commotion, disorder, strike or lockout by persons other than the invoking Party's personnel;
- munitions, explosive materials, ionizing radiation or contamination by radio activity, except as may be attributable to Yokogawa's or Customer's use of such munitions, explosives, radiation or radioactive material;
- Natural catastrophes such as flood, earthquake, hurricane, typhoon or volcanic activity.

The following occurrences shall not be considered Force Majeure:

- normal hazards of weather;
- shortage of materials, supplies, power, labor and transport;
- disputes between Seller and his workers;
- directives by Government Authority arising from failure, error or delay by Seller to conform to applicable laws and regulations or to secure obligatory approvals and permits from Governmental or Local Authorities in due and proper time
- Any breaches or Force Majeure of Seller's sub-contractors or sub-suppliers.

In case of any of the above events, Parties will promptly notify the other Party of such delay or failure in writing and if a Force Majeure situation exceeds sixty (60) days, Parties shall have the right to terminate the Purchase Order without liability. Seller shall take all reasonable and expeditious steps to mitigate the adverse impact of Force Majeure. In the event of Force Majeure, the delivery schedule and related payment schedules shall be extended by and to the extent performance is affected by Force Majeure, but Seller shall in no event be entitled to any extra compensation by reason of Force Majeure.

**19. CONFIDENTIALITY**

Either Party shall keep strictly confidential all of the other Party's confidential and sensitive information (including Owner's confidential information) of which it becomes aware of in the course of the execution of a Purchase Order and Parties shall take adequate measures to ensure that their employees and other engaged personnel shall equally comply with this confidentiality commitment. This confidentiality commitment shall not apply to information which (i) is already known to the recipient or is publicly available at the time of disclosure, (ii) is lawfully disclosed to the recipient by a third party without an obligation of confidentiality, (iii) becomes publicly available after disclosure without any fault of the recipient, (iv) recipient can prove is independently developed by the recipient without reliance or reference to the information of the discloser, or (v) is required to be disclosed by law or public order.

Only upon Yokogawa's prior written approval, Seller shall be allowed to mention Yokogawa as a reference customer and/or make reference to products or services which the Seller has developed

**20. ASSIGNMENT AND SUBCONTRACTING**

Parties shall not transfer or assign or subcontract whole or part of (rights and obligations stemming from) the Purchase Order without the other Party's prior written consent. Yokogawa's consent shall not discharge Seller from any obligation towards Yokogawa, however. Yokogawa has the right to transfer or assign the Purchase Order to Yokogawa's affiliates or to Owner and Owner's successors and assignees without prior consent of Seller.

**21. GOVERNING LAW AND DISPUTE RESOLUTION**

These GTCP shall be governed by and interpreted in accordance with the laws of the country where Yokogawa has its principal place of business. Applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded. All disputes arising from or relating to the Purchase Order and/or these GTCP shall be submitted to the exclusive jurisdiction of the competent court in the country where Yokogawa has its principal place of business.