GENERAL TERMS AND CONDITIONS OF SALE OF YOKOGAWA DEUTSCHLAND GmbH,
HAVING ITS REGISTERED OFFICE AT BROICHOFSTRASSE 7-11, 40887 RATGEN, GERMANY (HEREAFTER REFERRED TO AS “YOKOGAWA”)  

These General Terms and Conditions of Sale (hereinafter referred to as “GTCS”) are applicable to all contracts concluded by Yokogawa, or its agents, clients and contractors for the sale of Products, under which such party undertakes, in connection with the acquisition of, includes the licensing of Software, and the providing of Services by Yokogawa to its Customers.

Any provisions in Customer’s general conditions of purchase and/or sale or amendment(s) made to Customer by the latter and set forth hereunder for the purpose hereof, are hereby rejected. In the absence of special provisions, these General Terms and Conditions of Sale (hereinafter referred to as “GTCS”) shall be agreed in writing.

1. DEFINITIONS
CUSTOMER: the legal entity issuing a Purchase Order to Yokogawa.
DELIVERY DATE: the date when Yokogawa shall deliver the Products and/or has executed and performed the Services.
FUNCTIONAL DESIGN SPECIFICATION OR FDS: the functional specifications, drawn up by Yokogawa on the basis of data supplied by Customer.
HARDWARE: all machinery and installations and equipment, by means of which data are processed or recorded on data carriers, together with components of the same.
PARTY OR PARTIES: Yokogawa and/or Customer individually or collectively as the case may be.
PRODUCTS: All Products and/or Services, including test equipment, analyzers, flow-pressure- or temperature meters, recorders, transmitters, sensors or any other good specified in the Quotation, not consisting of Services.
SOFTWARE: all written material, originating from Yokogawa or its affiliates or its or their suppliers, containing statutes, weights etc. used by Yokogawa in a Quotation, are drawn up by Yokogawa to the best of its ability, but do not bind Yokogawa unless expressly agreed to in writing. Yokogawa shall be free (at its sole discretion) to accept or refuse Customer’s Purchase Orders.

2. QUOTATION AND PURCHASE ORDER

(a) All quotations submitted by Yokogawa are exclusively valid for a maximum period of sixty (60) days calculated from the date of the Quotation. Technical specifications, dimensions, designs, drawings, Illustrations, catalogues, use statistics, weights etc. used by Yokogawa in a Quotation, are drawn up by Yokogawa to the best of its ability, but do not bind Yokogawa unless expressly agreed to in writing. Yokogawa shall be free (at its sole discretion) to accept or refuse Customer’s Purchase Orders.

(b) All). Payment shall be made by Customer within thirty (30) days from invoice date. Payments must be irrevocably and without deduction, in whole or in part, in Writing, in a currency agreed at the time of the Purchase Order.

(c) For the purpose of this clause third parties performing Site Work on behalf of Yokogawa will be deemed Yokogawa’s personnel.

3. DELIVERY AND PRICE

All prices for the delivery of Products are calculated for deliveries ex Yokogawa registered office and all deliveries are made “Ex Works” in accordance with the ICC – Incoterms 2000. Prices for Services are calculated, applying then prevailing rates in the Yokogawa price list. All prices and rates are exclusive of VAT, transport, packaging, travel, lodging and installation, import duties and other taxes, levies or costs.

In the event of late delivery, Yokogawa shall notify the Customer in writing as soon as possible, identifying the reasons for the delay. The delivery time is calculated from acceptance of Customer’s Purchase Order by Yokogawa, or, in case it has been agreed that Customer shall make a deposit, prepayment and/or shall pay a security, from the date Yokogawa has received the relevant Customer payment. The Delivery Date may be extended if Customer requests variation Orders.

4. PAYMENT

Payment shall be made by Customer within thirty (30) days from invoice date. Payments must be irrevocably and without deduction, in whole or in part, in Writing, in a currency agreed at the time of the Purchase Order.

Customer agrees to pay all expenses, costs and expenses connected with the Purchase Order, to the extent the Purchase Order has not yet been executed, to terminate same by means of a writ-

Customer’s late payment, to suspend the further execution of the Purchase Order or, to the statutory default interest. The foregoing shall apply regardless of Yokogawa’s right, in case of any further notice being required, be in default. In the prevailing case, Customer shall owe the following to Yokogawa: (i) whether or not such variations are acceptable, (ii) price- and/or schedule impact (if any) and (iii) any other commercial or technical impacts or conditions (if any). Only upon Yokogawa’s written confirmation of acceptance of Yokogawa’s information or variations, shall the variations, if any, become effective and the for this purpose by Customer.

5. PACKING

Packing of the Products shall be in accordance with Yokogawa’s standard procedures.

6. FUNCTIONAL DESIGN SPECIFICATION (FDS)

Once the FDS has been approved, Customer no longer deliver any rights from the data as supplied by Customer previously.

7. ACCEPTANCE TESTING

Factory Acceptance Test (FAT) means the testing of the Products and/or Services by Yokogawa in accordance with the requirements thereof, as approved by Yokogawa and carried out on Yokogawa’s premises, eye-witnessed by Customer to verify the compliance of the Products with the contractual requirements and the FAT. Yokogawa, despite prior invitation and notification, shall carry out FAT, if it deems to have taken place in Customer’s presence. Completion of FAT shall result in Customer’s release for shipment, may be at all times subject to Customer’s request.

Site Acceptance Test (SAT) is the site test to verify that no deterioration occurred to the Product(s) during shipment and installation of the delivery on Customer’s site.

8. SITE WORK

In respect of Site Work to be performed by Yokogawa, Customer shall be subject to the following:

Site Work can be performed during and outside normal working hours.  }

Yokogawa Deutschland GmbH is registered at the Handelsregister B of Amtsgericht Düsseldorf with file number HRB 43339.
results of the Services are modified by Customer without Yokogawa’s prior written authorization. Customer shall fully indemnify Yokogawa against all losses of Yokogawa in performing Services, that breach an intellectual property right of third parties, if such breach arises from Customer’s directions and/or the use by Yokogawa of Customer’s designs, specifications, etc.

The above constitutes Customer’s entire rights and Yokogawa's maximum liability with respect to an (alleged) infringement of any intellectual property right of a third party, resulting from Customer’s use of the Product/Services.

13. SOFTWARE LICENSE CONDITIONS

Yokogawa declares to the best of its knowledge 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 Yokogawa or its licensors. Software is made available to Customer on the following licensing conditions:

- Yokogawa grants to Customer a perpetual, non-exclusive, non-transferable license to use the Software;
- Software is made available to Customer on an “as-is” basis and on the condition that it is exclusively used for the purposes for which it was initially installed;
- Customer shall not: (a) alienate or pledge Software or have Software used by third parties, (b) decompile, disassemble or reverse engineer Software, or otherwise attempt to derive any Product source code from object code, except to the extent expressly permitted by applicable law, (c) develop or have developed derivative software or other computer programs which are based on Software;
- Customer shall be entitled to make and keep in stock one (1) back up copy of Software for the purpose of replacing the original copy in case of involuntary loss or damage of Software.

14. WARRANTY

The Products are warranted to be free from defects in material and workmanship for a period of twelve (12) months from the Delivery Date. Yokogawa assumes no warranty responsibility in the event of improper handling, storage or use; (ii) (attempted) renovation, repair, calibration or testing of the Product or Product part by unauthorized third parties without the prior written approval by Yokogawa unless the defect is not caused by such (attempted) renovation, repair, calibration or testing; (iii) normal wear and tear; or (iv) other cause of defect not exclusively attributable to Yokogawa.

If Third Party Products are supplied, the terms of warranty of the supplier of such products shall apply.

Subject to the remaining provisions herein, Products found defective shall be repaired or replaced at Yokogawa’s sole discretion at its premises. Dismantling of the defective part, re-installation of the repaired/replaced part and re-commissioning shall be the responsibility of Customer in the event of any damage caused by Customer.

In the event Yokogawa has valid reasons to assume that Customer shall fail to perform any Order which, upon written notice by Yokogawa remains unfulfilled for thirty (30) calendar days after written notice, Customer shall immediately take all necessary steps to repair the defect and/or replace the defective Product.

Upon Customer’s request and Yokogawa’s acceptance, Yokogawa may dispatch at Customer’s cost, its service engineer(s) during Yokogawa's normal working hours, to repair the defect and/or investigate the cause.

Customer warrants that the providing of Services, Yokogawa warrants that the engaged personnel will execute the Services, taking into account the diligence, knowledge and craftsmanship which is standard in the industry.

15. LIMITATION OF LIABILITY

Unless otherwise specified in these GTCS, Yokogawa shall only be liable for damages due to the breach of contractual and non-contractual obligations, or during the initiation of the Services, to the extent only for the direct loss of Yokogawa’s legal representatives or vicarious agents, and in the event of culpable breaches of material contractual duties (“Wesentliche Vertragspflichten”). In the event of culpable breaches of material contractual duties, Yokogawa shall be liable for direct, gross negligence on the part of Yokogawa’s legal representatives or vicarious agents – Yokogawa shall be liable only for contractually foreseeable and directly caused damage. Unless otherwise agreed, the material contractually foreseeable and typical damage shall be deemed to be the compensation to be paid under the Purchase Order, in relation to which the damage has occurred. Any further liability on the part of Yokogawa, including liability for consequential or other damages, is excluded. The limitation of liability herein shall not apply in the event of death, personal injury or damages to health or to claims under applicable product liability legislation.

Customer shall be solely responsible for the protection of its electronic data and information through installation of the most recent computer virus detection programmes and the timely creation of back-up copies. Yokogawa shall only be liable for damages that would have also occurred with due observance of all proper and regular measures to secure such electronic data and information in line with the importance of the electronic data and information.

16. TERMINATION

In the event Yokogawa has valid reasons to assume that Customer shall fail to perform any obligation under the Purchase Order or any agreement connected therewith without providing adequate security; or in case Customer (i) fails to perform any obligation under the Purchase Order which, upon written notice by Yokogawa remains unfulfilled for thirty (30) calendar days thereafter, Customer shall become the owner of the Product; (ii) terms of ownership are at variance with Customer’s; (iii) terms of payment, interest, costs and penalties; (iv) it goes into liquidation, bankruptcy, or similar administrative and control laws and regulations of the European Union and of any country relevant to the cooperation contemplated hereunder, including those of Japan. Customer shall not knowingly use or export any of the Products if: (a) the use of the Products will result in any fault of the recipient, (b) the recipient is not in a position to carry out all necessary safeguards to avoid damage, (c) the recipient has not the technical means and knowledge to make the Products function properly, (d) the Products are intended or designed for use in connection with nuclear material and weapons, anti-personnel mines, or in any other act of terrorism, rebellion, revolution, insurrection, military or usurped power, civil war; (e) nuclear catastrophe such as flood, earthquake, typhoon or volcanic activity.

20. ASSIGNMENT AND SUBCONTRACTING

Parties shall not, in any manner or degree assign or transfer, directly or indirectly, these GTCS or a Purchase Order or any part thereof or any share or interest therein, without the prior written consent of the other Party.

21. WEEE

Yokogawa may subcontract part or all of its obligations under a Purchase Order, provided that Yokogawa shall remain liable for all of its obligations under this article.

22. GOVERNING LAW AND DISPUTE RESOLUTION

These GTCS shall be governed by and interpreted in accordance with the laws of Germany where Yokogawa has its registered office. 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 GTCS shall be submitted to the exclusive jurisdiction of the competent courts of Düsseldorf, Germany.