

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

- 1.1. "Application" means Seller's application for business credit extended to and signed by Buyer in connection with these Terms.
- 1.2. "Buyer" means the person or entity specified in the Order or SOW.
- 1.3. "Buyer Material" means Buyer's preexisting intellectual property provided by Buyer for the purpose of an Order or SOW.
- 1.4. "Confidential Information" means information received by the receiving party from the disclosing party which (a) is marked as "Confidential" or "Proprietary"; or (b) would reasonably be considered confidential and/or proprietary under the circumstances surrounding disclosure.
- 1.5. "Customer" means Buyer's customer, including any end user, of the Products, Software, and/or Services.
- 1.6. "Deliverables" means any work product, reports, or other deliverables developed and provided by Seller as part of the Services and required under an Order or SOW.
- 1.7. "Existing Agreement" means a mutually-executed agreement between the parties that governs the purchase and sale of the Products, Software and/or Services.
- 1.8. "Order" means a purchase order issued by Buyer to Seller for the purchase and/or use of the Products, Software, and/or Services.
- 1.9. "Products" means those products, materials, or goods described in an Order or SOW.
- 1.10. "Seller" means the selling entity specified in the Order or SOW.
- 1.11. "Seller Materials" means any and all processes, formulas, tools, ideas, concepts, methodologies, software, know-how, business practices, trade secrets, object code, source code, documentation, information and ideas developed by Seller or its licensors, and all intellectual property rights therein.
- 1.12. "Services" means those specific tasks, functions, responsibilities, Deliverables and other services described in an Order or SOW.
- 1.13. "Software" means the computer programs, operating systems, interfaces, software-as-a-service, applications or other software specified in an Order or SOW.
- 1.14. "SOW" means a document between Seller and Buyer that specifies Products and/or Services provided by Seller to Buyer.
- 1.15. "Special-Order Product" means any Product (i) that Seller procures or specially stocked for Buyer (including Products that are custom made, modified, altered, or includes special features), (ii) not readily saleable by Seller to other customers, or (iii) identified by Seller as non-cancelable or non-returnable.
- 1.16. "Terms" means these Terms and Conditions of Sale.

2. **SCOPE OF AGREEMENT.** Unless there is an Existing Agreement, these Terms govern the sale, purchase and use of Products, Software, and/or Services by Buyer from Seller and, together with the Application, and each Order and SOW, constitutes the entire and separate agreement between the parties with respect to the subject matter of these Terms. If a conflict arises between or among these Terms, the Application, and an Order and/or SOW, these Terms shall prevail unless otherwise expressly agreed in writing by authorized representatives of the parties. If Buyer is accepting these Terms on behalf of another party, Buyer represents and warrants that Buyer has full authority to bind such party to these Terms. Any additional, preprinted or different terms contained on any purchase order, portal, or other communication from Buyer purporting to apply shall be deemed void and unenforceable unless expressly agreed and signed in writing by authorized representatives of both parties. Buyer's or its Customer's placement of an Order or receipt or acceptance of the Products, Software and/or Services constitute acceptance of these Terms.

3. **ORDERS.** Seller has the right, in its sole discretion, to cancel, accept or reject any Order, in whole or in part, at any time. Any change requested by the Buyer to any aspect of the scope of an Order or SOW must be agreed in writing by both parties and may result in a price and/or delivery adjustment as determined by Seller. Seller reserves the right to implement a minimum order size of \$350 per Order. If Seller authorizes that all or part of an Order or SOW be terminated or suspended by modification, rescission or as otherwise provided in Sections 6 and 16, Buyer shall pay termination charges equal to Seller's costs associated with the Order or SOW, as determined by generally accepted accounting principles, plus a reasonable profit on the entire Order or SOW. Seller's costs shall include any amount Seller must pay to its suppliers and manufacturers relating to the relevant Order or SOW. Buyer agrees it (i) must take possession and accept delivery of any Special-Order Product within ninety (90) days upon completion of Seller's delivery obligations or the Product being

available for pick-up, as applicable, and (ii) cannot cancel any Order for Special-Order Product. If Buyer (a) does not take possession and/or accepts delivery of any Special-Order Product upon completion of Seller's delivery obligations or the Special-Order Product being available for pick-up, as applicable, or (b) cancels an Order for Special-Order Product, Buyer shall then pay or reimburse Seller the purchase price of the Special-Order Products plus any associated cancellation fees, including, but not limited to, any storage and transportation fees incurred by Seller. Seller may, in its discretion, require a non-refundable deposit for any Special-Order Product ordered by Buyer.

4. **SERVICES.** The Services requested by Buyer shall be specified in an Order or SOW. When applicable, Buyer shall provide Seller with sufficient, free, safe and timely access to its premises and/or system as required to provide the Services. Buyer warrants that the premises where the Services will be performed will comply with all applicable federal, state and local occupational safety, welfare and health standards, rules, and regulations. Buyer agrees to ensure, so far as is reasonably practicable, the health, safety and welfare of Seller's personnel when on Buyer's premises including, but not limited to providing and maintaining premises and systems that are, so far as is reasonably practicable; safe and without risks to health. Seller may use subcontractors to perform its contractual obligations under an Order or SOW. If Seller uses subcontractors, Seller will be solely responsible for ensuring that they comply with their respective contractual requirements. Buyer shall not supervise or direct the performance of any Seller subcontractors. Seller or Seller's subcontractors, when applicable, shall obtain and maintain the necessary licenses, certifications, and permits, specialty or otherwise, required to provide the Services. If Seller's performance of any of its obligations is prevented or delayed by Buyer: (a) Seller shall, without limiting its other rights or remedies under these Terms or as otherwise provided by law or equity, have the right to suspend or terminate performance of the Services; and (b) Buyer shall be liable for any costs and expenses sustained or incurred by Seller as a result thereof. Without limiting the foregoing, completion times referenced in an Order or SOW are only estimates.

5. **PRICE.** Prices on Seller's website, catalogs or in Seller quotes are subject to change without notice. Unless otherwise extended in writing by Seller, all prices on a Seller quote will expire and become invalid upon the expiration date stated therein, provided however, Seller reserves the right to update its quote or price in the event of any increase in tariffs, levies, duties, freight or importation cost or charges, supplier pricing or surcharge, or a material exchange rate fluctuation. In such event, Seller will provide an updated quote or price and will not ship Product or provide Software or Services until Buyer receives an Order with the correct price. Any manifest errors are not binding on Seller. Buyer is liable for applicable transaction taxes, including sales, use, and value-added taxes, goods and services taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by Buyer (collectively, "Transaction Taxes"), regardless of when such Transaction Taxes are levied or imposed. Such Transaction Taxes shall be due whether or not included on the invoice, Order or SOW. Buyer shall provide Seller with proof of exemption from Transaction Taxes at least fifteen (15) business days before the invoice due date.

6. **PAYMENT.** (a) Payment for Products, Software and Services must be made (i) in the currency identified in the invoice or in its equivalent as specified in writing by Seller, and (ii) by check or wire transfer or any other means specified by Seller, at its sole discretion. Buyer shall pay any Seller invoice within thirty (30) days from invoice date without any right to offset, counterclaim, holdback or deduction. Buyer must provide notice of any payment dispute within ten (10) days of the date of the invoice or Buyer waives any right to dispute such invoice; however, any such dispute shall not delay timely payment to Seller. Seller reserves the right to require guarantees, security or payment in advance of shipment from Buyer. In the event Buyer fails to pay the total sums due on an invoice by the due date or if an Insolvency Event (as defined in section 15.4 below) occurs, the entire outstanding balance due to Seller on all invoices shall be accelerated and become due in full immediately and the maximum allowable charge and/or interest allowed by applicable laws shall be applied to all past due accounts commencing from the due date of the invoice until paid. Seller shall also be entitled, in addition to all other remedies available at law or in equity, to suspend performance of

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any outstanding Orders or SOWs and to recover reasonable attorneys' fees and/or other expenses incurred collecting all outstanding sums from Buyer or otherwise enforcing or successfully defending these Terms. Seller may set off any amount due from Buyer from any amounts due to Buyer. Seller reserves the right to convert any payment into electronic funds at its discretion. (b) If Seller extends business credit to Buyer under an Application, then Seller's Business Credit Terms published at www.wesco.com/termsofsale, as amended from time-to-time, shall apply and are expressly incorporated herein by reference.

7. **SHIPPING.** Unless otherwise agreed to in writing, (i) all Product shipments shall be FOB shipping point, and (ii) Seller may, in its sole discretion, use any commercial carriers and method and route of transportation for shipment of the Products. Buyer shall be responsible for shipping charges, including all applicable freight, shipping, insurance and handling charges, unless otherwise agreed to in writing. Title to and risk of loss of the Products passes to Buyer upon transfer to the carrier at the shipping point. Software may be delivered electronically. Shipping dates or other applicable performance dates are estimated on the basis of prompt receipt of the Order and all information, drawings and approvals required to be furnished by Buyer. In the event Buyer, verbally or in writing, confirms a delivery date with Seller but subsequently suspends the Order or is unable to accept delivery, Buyer shall reimburse Seller for all costs and expenses Seller incurs as a result thereof, including, but not limited to, reasonable storage costs. No delay in the shipment or delivery of any Products relieves Buyer of its obligations under these Terms. Seller reserves the right to make partial or early shipments without liability or penalty. Buyer shall pay for the units shipped whether such shipment is in whole, partial or early fulfillment of an Order.
8. **ACCEPTANCE.** Buyer shall be deemed to have accepted the Products and Services unless written notice of rejection is given to the Seller within five (5) business days from date of delivery.
9. **RETURNS.** Product returns shall be made pursuant to Seller's Product Return Policy, published at www.wesco.com/termsofsale, as modified from time to time. Seller reserves the right to apply a re-stocking fees to any Product returns. Software cannot be returned without Seller's express prior written authorization.
10. **SHORTAGES.** Buyer shall submit all claims for shortages in writing to Seller within ten (10) days of receiving the Products; otherwise such claims will be deemed waived. Quantities are subject to normal manufacturer allowances. In the case of wires and cables, such allowances are plus 10% and minus 5%.
11. **RECOMMENDATIONS.** Buyer acknowledges and agrees that any drawings, designs, suggestions, recommendations, or advice as to any products, software, or services including installation or use recommendations (collectively, "Recommendations") are provided "as is" and are for informational and conceptual purposes only. Buyer acknowledges that in the event it follows any such Recommendations, it does so at its own risk and agrees that Seller will not be liable for any damage, claims, liabilities, or losses suffered by Buyer or any third party, directly or indirectly, due to Buyer following any Recommendations. Any legal or regulatory compliance obligations shall remain Buyer's sole responsibility, and nothing herein is intended to shift any such burden from Buyer to Seller.
12. **WARRANTY.**
 - 12.1. **Product and Software Warranty.** Seller is only a reseller of Products and Software and shall transfer and assign to Buyer any and all transferable warranties made to Seller by the manufacturer of the Products and Software. Unless otherwise specified in a writing signed by Seller, Seller provides no independent warranty for any Products and Software. Buyer's sole and exclusive remedy for any alleged non-conforming part, defect, failure, inadequacy, or breach of any warranty related to Products and Software (collectively, "Defects") shall be limited to those warranties and remedies provided by the manufacturers or licensor thereof. Seller is not responsible for obtaining or paying for access to, or uninstalling, installed Products, delivering replacement Products to the installation site, or installing replacement Products. Seller's obligations under this Section 12.1 will be void unless Buyer provides Seller with notice of the Defect within 30 days of the date Buyer discovered or should have discovered the Defect. Buyer shall contact Seller prior to contacting the manufacturer or licensor. In the event Buyer provides notice of a Defect to the manufacturer or licensor, Buyer shall immediately notify and engage Seller on any and all discussions and actions to be taken with such manufacturer. Seller DOES NOT WARRANT that the Software will be free from errors or defects, will meet Buyer's needs, or will operate without interruption. Seller DOES NOT WARRANT that the Software will provide fail-safe performance when used in hazardous environments, including any application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage. If Seller supplies any Products and Software which include open source software, Seller is not liable for defects in title or quality of the information, software or documentation, or for ensuring that it is correct, accurate, free of third-party property rights and copyrights, complete and/or usable.
 - 12.2. **Private Label Product Warranty.** Solely as it pertains to those Products with Seller's private label brands (collectively "Private Label Products"), Seller warrants that the Private Label Products are new and are free from defects in material and workmanship under normal use and conditions for a period of one (1) year from the original invoice date. If the Private Label Products fail to conform with the foregoing warranty during the warranty period, Buyer shall promptly notify Seller and Seller will, at its option and as Buyer's sole and exclusive remedy, either (i) repair or replace the defective Private Label Products; or (ii) refund to Buyer the amount paid for the defective Private Label Products.
 - 12.3. **Services Warranty.** Seller warrants that the Services it provides will be performed in a professional manner consistent with relevant industry standards. Provided Buyer notifies Seller in writing and in sufficient detail of a breach of the Services warranty in this section 12.3 within fifteen (15) days after provision of the non-conforming Services, Seller will, at its option, (a) re-perform the Services at no additional cost to Buyer or (b) credit Buyer the fees actually paid to Seller associated with the non-conforming Services. This is Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, with respect to any breach of warranty relating to the Services it provides. This Services warranty is personal to Buyer and may not be assigned, transferred or passed-through to any third party.
 - 12.4. **Forfeiture of Warranty.** The warranties described herein do not cover wear and tear and shall be ineffective and not apply to those Products, Software and Services that have been subjected to misuse, abuse, neglect, accident, damage, improper installation, unauthorized modification, or improper or unauthorized maintenance or repair, including, but not limited to, use, maintenance or repair not in accordance with the manufacturer's or other provider's specifications, license or instructions.
 - 12.5. **Buyer's Information.** Buyer acknowledges and agrees that, in performing its obligations under these Terms, Seller will rely upon the accuracy and completeness of the information and documentation Buyer provides, and that Seller's performance is dependent on Buyer's provision of complete and accurate information and data. It is Buyer's responsibility to ensure that the Products, Software, and Services are the ones that it has requested and that all specifications and quantities are correct.
 - 12.6. **DISCLAIMER.** THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF, AND SELLER DISCLAIMS AND EXCLUDES, AND BUYER WAIVES, ALL OTHER EXPRESS AND IMPLIED WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AGAINST REDHIBITORY DEFECTS, CONFORMITY TO ANY REPRESENTATION, DESCRIPTION, OR SPECIFICATION, PERFORMANCE, NON-INFRINGEMENT, AND OF ANY OTHER TYPE, REGARDLESS OF WHETHER ARISING BY LAW (STATUTORY OR OTHERWISE), COURSE OF PERFORMANCE, COURSE OF DEALING, OR ANY OTHER LEGAL OR EQUITABLE BASIS. IN THE EVENT DISCLAIMER OF WARRANTY STATEMENTS ARE DISALLOWED BY LAW, SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE LESSER OF THE APPLICABLE WARRANTY PERIOD OR THE MINIMUM PERIOD REQUIRED BY LAW. EXCEPT AS OTHERWISE SET FORTH HEREIN, THE PRODUCTS, SOFTWARE, AND SERVICES ARE PROVIDED "AS IS" EXCEPT TO THE EXTENT THE MANUFACTURER OR LICENSOR HONORS ANY WARRANTY EXPRESSLY MADE BY IT.
13. **PROPRIETARY RIGHTS. LICENSE.**
 - 13.1. **Intellectual Property Ownership.** Each party shall retain ownership of all right, title and interest in and to its pre-existing intellectual property,

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Confidential Information, materials and/or Deliverables. Buyer grants to Seller a fully paid-up, non-exclusive, non-assignable, non-transferable, non-sublicensable license to use Buyer Material to perform its obligations during the term of the applicable SOW or Order. Upon payment in full of the applicable fees, Seller grants Buyer a fully paid-up, limited, non-exclusive, non-assignable, non-transferable, non-sublicensable, perpetual license to use and reproduce, for Buyer's own internal business operations, the Deliverables (and any Seller Materials solely as provided by Seller as part of the Deliverables). Services will not be interpreted as "work for hire".

13.2. **Software License.** If applicable, Buyer shall be granted a limited license to use any Software strictly pursuant to the license agreement provided by the Product or Software manufacturer, and Buyer shall be bound by and comply with and ensure that its Customer complies with, at all times, any license terms pertaining to such Product or Software. If applicable, unless otherwise agreed to in writing, Software associated with a Product is licensed and not sold to Buyer. Buyer shall, and shall cause its Customer to (i) comply with any applicable laws, regulations, industry standards and third party rights in connection with its access to and use of the Software; (ii) accept and comply with all obligations contained in the license agreement provided by the Product or Software manufacturer; and (iii) use reasonable and diligent efforts pursuant to industry standards to protect and maintain user information collected by Buyer's applications, including personally-identifiable information, from unauthorized access or use. Buyer shall not, and Buyer shall instruct its Customer to not: (i) transfer, assign or sublicense the Software, or its license rights thereto, to any other person, organization or entity, including through rental, timesharing, subscription, hosting, or outsourcing the Software, except as specifically set forth herein; (ii) use the Software for any unauthorized purpose; (iii) attempt to create any derivative version thereof; (iv) remove or modify any marking or notice on or displayed through the Software or documentation; or (v) decompile, decrypt, reverse engineer, disassemble or otherwise reduce same to human-readable form. In the event Software and/or Services are provided and accessed by Buyer through the internet at a website provided by Seller, Buyer acknowledges and agrees that Seller is not responsible for (i) Buyer's access to the internet, (ii) any breaches of security, interruptions and/or interceptions of information or communication through the internet, and (iii) changes or losses of data through the internet. Further, Buyer acknowledges that security of transmissions over the internet cannot be guaranteed.

14. **INDEMNIFICATION.**

14.1. **By Seller.** Seller hereby transfers any intellectual property indemnity from the manufacturer of Products, Software, and Services to Buyer. Seller's obligation to indemnify Buyer shall not be greater than the intellectual property indemnity provided by the manufacturer of such Products, Software, and Services and shall only apply if Buyer complies with section 14.3 herein. In the event of any such infringement claim, Seller shall, as Buyer's sole and exclusive remedy, and at Seller sole option: (i) procure for Buyer the right to continue using the affected Products, Software or Services; (ii) replace the affected Products, Software, or Services with non-infringing Products, Software or Services; (iii) modify the affected Products, Software, or Services so they are non-infringing; or (iv) if fees were paid in advance, refund any prepaid fees associated with the affected Products, Software, or Services. Seller's indemnification obligation does not apply if (a) Seller followed Buyer's specifications, instructions or designs relating to the Products, Software or Services; (b) Buyer continued to use the Products, Software or Services after Seller informed Buyer of modifications required to avoid infringement; or (c) the alleged infringement results from Buyer's misuse, modification or enhancement of the Products, Software, and/or Services, whatever the case may be, or from the use of such in combination with other products not provided or approved by Seller.

14.2. **By Buyer.** Buyer shall indemnify and defend Seller and its affiliates, directors, officers, affiliates, employees, agents, successors, and permitted assigns ("Indemnitees") against any claims, demands, damages, liabilities and expenses (including court costs and reasonable attorneys' fees) that Indemnitees incur as a result of or in connection with: (a) any third-party claims arising from Buyer's: (i) failure to obtain any consent, authorization or license required for Indemnitees' use of Buyer Materials; (ii) use of the Products, Software, or Services in any manner (e.g., solely or in combination) not expressly permitted by these Terms or

the applicable license agreement or specifications provided by the Product and/or Software manufacturer or provider of Services; (iii) misuse, modifications, enhancements, or programming to the Products, Software, Services; (iv) breach of its obligations, representations, and warranties under these Terms; or (v) gross negligence or other act or omission in connection with the performance of its obligations under these Terms; (b) Indemnitees' compliance with any technology, designs, instructions or requirements, including any specifications provided by Buyer or a third party on Buyer's behalf; and (c) any reasonable costs and attorneys' fees and expenses required for Indemnitees to respond to a subpoena, court order or other official government inquiry regarding Buyer's use of the Products, Software, or Services.

14.3. **Notification.** The indemnified party shall: (i) provide prompt written notice to the indemnifying party; (ii) reasonably cooperate in connection with the defense or settlement of the claim, including providing all reasonable information and assistance at the indemnifying party's cost; and (iii) give the indemnifying party sole control over the defense and settlement of the claim, provided that any settlement of a claim shall not include a specific performance obligation or admission of liability by the indemnified party. Failure to provide timely notice that prejudices the indemnifying party shall relieve the indemnifying party of its obligations under these Terms to the extent the indemnifying party has been prejudiced and the failure to provide timely notice shall relieve the indemnifying party of any obligation to reimburse the indemnified party for its attorney's fees incurred prior to notification.

14.4. The foregoing indemnities are personal to Seller and Buyer and may not be transferred or assigned to anyone. This section 14 states the parties' exclusive remedies for any claims arising under sections 14.1 and 14.2, other than any remedies that may be available against third party manufacturers or providers of the Products, Software or Services.

15. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOST PROFITS, LOST BUSINESS, LOST REVENUE, DELAY DAMAGES, OR ANY OTHER SPECIAL, INCIDENTAL, LIQUIDATED, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, EVEN IF THE PARTIES HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. FURTHERMORE, TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER'S LIABILITY ON ANY CLAIM ARISING OUT OF OR CONNECTED WITH THESE TERMS OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS, SOFTWARE, OR SERVICES, WHETHER IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), MISREPRESENTATION, BREACH OF CONTRACT, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID FOR THE PRODUCTS, SOFTWARE, AND/OR SERVICES GIVING RISE TO THE CLAIM.

16. **TERMINATION AND SUSPENSION.**

16.1. In addition to and subject to Seller's rights set forth in section 6, in the event of any material breach of these Terms, Order, or SOW by either party, the non-breaching party may cancel the applicable Order or SOW by giving thirty (30) days' prior written notice thereof; unless the party in breach has cured the breach prior to the expiration of the thirty (30) day period.

16.2. In the event Seller or Buyer terminates an Order, Buyer shall not be entitled to any refund or credit of fees paid or payable hereunder. Buyer shall remain liable for Payment of invoices for Products and Software already delivered and Services already performed and for the fees and costs described in section 3 above, and payment of any manufacturer cancellation charges for unshipped items. In the event an Order is terminated, all licenses granted therein shall also terminate. Subject to the limitations and other provisions of these Terms, any provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of these Terms.

16.3. In addition to any other remedies provided under these Terms or applicable law, Seller may exercise any reclamation rights and/or suspend or terminate an Order or SOW with immediate effect if Buyer: (i) fails to pay any amount owed to Seller when due; (ii) fails to comply with any of its obligations herein; (iii) experiences an adverse change in financial position or becomes a credit risk; or (iv) becomes insolvent, receivership,

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- reorganization or assignment for the benefit of creditors, to the extent permissible under law (each, an “Insolvency Event”).
17. **CONFIDENTIALITY.** The receiving party shall protect the disclosing party’s Confidential Information with the same degree of care as the receiving party normally uses in the protection of its own Confidential Information, but in no case with any less degree than reasonable care. The receiving party shall not disclose to any third party any Confidential Information it receives from the disclosing party. Confidential Information excludes information that: (i) is publicly available other than by an act or omission of the receiving party; (ii) subsequent to its disclosure was lawfully received from a third party; (iii) was known by the receiving party prior to its receipt without any breach of any confidentiality obligations; or (iv) was independently developed by the receiving party without use of the disclosing party’s Confidential Information. If the receiving party becomes legally obligated to disclose any Confidential Information by subpoena, court order or other lawful government action, the receiving party may disclose the Confidential Information only to the extent so ordered and, to the extent permitted by law, after providing prompt written notification to the disclosing party of the pending disclosure. Neither party may use such Confidential Information in any way for any purpose, except as authorized under the Order or SOW. Either party may disclose Confidential Information to its auditors or attorneys under an obligation of confidentiality no less stringent, or Seller to its affiliates and/or third parties on a need-to-know basis to the extent necessary. If Seller offers to sell Buyer Products, Software, or Services from a specific manufacturer, Buyer shall not purchase such Products, Software, or Services directly from said manufacturer unless Seller provides prior written approval.
18. **COMPLIANCE WITH LAW.** Each party shall comply with all applicable laws, rules and regulations, including but not limited to, export and import, trade restrictions, FARs, anti-bribery and anti-corruption, anti-money laundering, anti-human trafficking and slavery, environmental protection, and health and safety. Products and Software may be subject to export controls under the laws, regulations, sanctions and/or directives of the United States and other countries, in which case, these Products and Software are only authorized for use (e.g., via a government-approved and issued export license, which Buyer must obtain) by the ultimate end-user in the destination identified in the transaction documents between Seller and Buyer. Buyer shall not sell, export, re-export or transfer, or cause a deemed export or re-export of the Products and Software (in their original form or after being incorporated into other items) to any county or person to which/whom sell, export, re-export or transfer (actual or deemed) is prohibited without first obtaining all required authorizations or licenses. To the extent permitted by law, Buyer shall indemnify and hold Seller harmless from any loss or damage arising from its violation of any such laws, rules, and regulations. Furthermore, Buyer shall not use, transfer or access any Products, Software, or Services for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the manufacturer and the U.S. government by regulation or specific license. If Seller receives notice that Buyer is or becomes identified as a sanctioned or restricted party under applicable law (including without limitation, the U.S. Commerce Department Bureau of Industry and Security (“BIS”) Denied Persons List; Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control (“OFAC”) Specially Designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defense Trade Controls (“DDTC”) Debarred Parties List), Seller will not be obligated to perform any of its obligations under any Order or SOW. Equipment, systems, or services provided by Seller may incorporate, include, or use telecommunications equipment, systems, parts, components, elements, or services that have sourcing restrictions depending on the intended use under section 889 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. No. 115-232).
19. **PRIVACY.** Each party shall comply with all applicable laws governing the collection, use and disclosure of personal data (as defined by applicable domestic and international data protection laws) and must obtain any required consents with respect to the handling of personal data as required by law. Buyer acknowledges that Seller is headquartered in the United States and operates globally, that data collected by Seller from Buyer in connection with these Terms may be transferred into and/or processed in the United States or other locations by Buyer or an authorized third party/subcontractor. Buyer and expressly consents to such transfer and processing.
20. **FORCE MAJEURE.** Seller shall not be liable for any failure to perform its obligations under an Order or SOW resulting directly or indirectly from, or contributed to or by acts of God, acts of terrorism, civil or military authority, epidemic or pandemic, fires, strikes or other labor disputes, accidents, floods, war, riot, inability to secure raw material or transportation facilities, hacking or other malicious attack, dissolution of the applicable manufacturer’s business, acts or omissions of carriers, or any other circumstances beyond Seller’s reasonable control.
21. **LAW. VENUE.** These Terms and any transactions contemplated herein shall be governed according to the substantive laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law, and shall not be governed by the U.N. Convention on the International Sale of Goods. Any issue, dispute or controversy (“Dispute”) between the parties, including with respect to contract formation or the interpretation of these Terms, that cannot be commercially resolved by the parties shall, at Seller’s election, be submitted to nonbinding mediation as a condition precedent to litigation. If Seller elects mediation, the parties shall mutually agree upon the mediator and shall share equally in the mediator’s fees. If Seller does not elect mediation or the parties cannot resolve their Dispute through the mediation process, the parties hereby consent to (i) the exclusive jurisdiction and venue of the state or federal courts located in Allegheny County, Pennsylvania and shall not contest or challenge the personal jurisdiction or venue of such courts, and (ii) extra-territorial service of process. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING ARISING IN OR IN CONNECTION WITH THESE TERMS AND THE TRANSACTIONS CONTEMPLATED HEREIN.** Notwithstanding the foregoing, if Seller is sued in any other jurisdiction or forum (including but not limited an arbitration proceeding) for matters related to any Products, Software or Services sold to Buyer, Seller shall have the right to join Buyer as a party to any such proceeding, and Buyer hereby consents to such joinder.
22. **RELATIONSHIP OF PARTIES.** The parties are independent contractors and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary or other special relationship. A person who is not a party to an Order or SOW shall not have any benefit or rights under or in connection with either.
23. **GENERAL.** These Terms shall be construed and interpreted without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. No amendments, modifications, waivers, rescission or termination of these Terms can be made through the parties’ course of dealings and no such change can be made except in writing and signed by authorized representatives of the parties. Failure by a party to exercise any right or remedy under these Terms shall not be deemed a waiver of such right or remedy unless in writing signed by the party, nor shall any waiver be implied from the acceptance of any payment. No waiver by a party of any right shall extend to or affect any other right, nor shall a waiver by a party of any breach extend to any subsequent breach. Buyer shall not assign an Order or SOW, by operation of law or otherwise, without the express written approval of Seller. Any attempt to assign or transfer all or any part of these Terms without first obtaining that written consent will be void or voidable, at Seller’s election. Any provision of these Terms that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be limited or eliminated to the minimum extent required by that jurisdiction, and the remaining provisions shall remain in full force and effect. Buyer acknowledges that the terms or content of any hyperlinked document, as amended from time to time, are incorporated in these Terms by reference and that it is Buyer’s responsibility to review the terms or content in the hyperlinks referenced. All notices under these Terms must be in writing (e.g., e-mail or physical mail) and addressed to the other party at its address set forth in the Order or SOW.

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In the event Seller provides *product storage-related Services to Buyer under a Storage Term Sheet, Order or other documentation* which specifically references these Terms; then the following additional terms and conditions shall apply. Any capitalized terms used herein and not defined shall have the meaning set forth in the Storage Term Sheet, as applicable. The term "Company" and "Buyer" shall have the same meaning for purposes of the Terms. In the event of a conflict between the following additional terms and conditions and the Terms, these terms and conditions shall prevail.

24. **Term and Termination.** The Storage Term Sheet shall run for the Storage Term (if no Storage Term is specified, the term shall be 90 days) and shall thereafter automatically renew for successive thirty (30) day renewal terms unless earlier terminated as provided herein. Either party may terminate the Storage Term Sheet by providing at least thirty (30) days prior written notice to the other party. Further, Seller may immediately terminate this Storage Term Sheet in the event Buyer fails to timely satisfy any invoice due to Seller. Upon the effective date of the termination of this Storage Term Sheet, Seller shall ship, at Buyer's sole risk and expense, any remaining Products that are being stored on Buyer's behalf to the Designated Buyer Ship-To Location.

25. **Storage of Products.** For Buyer's benefit, Seller shall receive, unload, and store the Products at the Facility. Upon prior notice to Buyer, Seller may change the location of the Facility. The Products shall be stored at the Facility at Buyer's sole risk and expense.

26. **Shipping.** Upon Buyer's issuance of a Shipping Order (as defined below), and at Buyer's sole risk and expense, Seller shall ship the Products to the Designated Ship-To Location. A "Shipping Order" shall mean a written request issued by Buyer to Seller that identifies: (i) the specific Product to be shipped; (ii) the quantity of Products to be shipped; (iii) the method of shipping selected by the Buyer; and (iv) the shipping destination, if different from the Designated Ship-To Location. Following acceptance of a Shipping Order, Seller shall ship the requested quantity of Products identified in the Shipping Order as soon as commercially reasonable, unless a specific date is mutually agreed to by the parties. If Buyer does not specify the mode of shipment or carrier, Seller shall use commercially reasonable efforts to ship the Products in the most cost-effective manner but does not guarantee that it will be the least expensive option available. Delivery of the Products being stored on Buyer's behalf may be made in one or multiple shipments based on Seller's discretion. Shipping charges shall be included on Seller's invoice to Buyer; provided, however, that Seller may require, in its discretion, that Buyer prepay the fees and costs associated with shipping.

27. **Invoicing and Payment.** Regardless if the Products are being stored on Buyer's behalf or if they have already been shipped to the Designated Buyer Ship-To Location, Buyer shall timely satisfy the invoices issued by Seller to Buyer for the purchase of the Products. Seller shall invoice Buyer for the Storage Fees plus applicable tax, and Buyer shall pay Seller the Storage Fees within Payment Terms of the date of the invoice. In the event Buyer fails to pay the total sums due on an invoice by the due date, the entire outstanding balance due to Seller on all invoices shall be accelerated and become due in full immediately and the maximum allowable charge and/or interest allowed by applicable laws shall be applied to all past due accounts commencing from the due date of the invoice until paid. Seller shall also be entitled, in addition to all other remedies available at law or in equity, to suspend performance of under the Storage Term Sheet and recover reasonable attorneys' fees and/or other expenses incurred collecting all outstanding sums from Buyer or otherwise enforcing or successfully defending the Terms. Seller may set off any amount due from Buyer from any amounts due to Buyer.

28. **Title and Risk of Loss to the Products.** Seller is only storing Product that has been purchased by Buyer. As such, in the case of a Storage Terms Sheet, title to the Product and risk of loss shall at all times remain with Buyer, including, but not limited to, when they are being stored at the Facility. Buyer acknowledges and agrees that Seller shall have no obligation whatsoever to maintain any insurance specifically covering the Product. As such, Buyer shall be solely responsible for, and shall be required to maintain insurance to cover any risk of loss to the Products while in storage at the Facility. Buyer agrees to indemnify, defend, hold harmless and release Seller and its affiliates and their respective shareholders, officers, directors, employees, agents, successors and assigns from all liabilities arising from any loss or damage to the Products due to any cause whatsoever, including fire, insects, rodents, rust, normal wear and tear, leakage, moisture, changes in temperature, acts of God, deterioration by time, or damage or for any loss or damage from causes beyond Seller's reasonable control. Further, Buyer

shall be responsible for all risk of loss to the Products while en route to the Designated Buyer Ship-To Location or to such other destination as Buyer may designate in writing.

ONLY in the event when Seller *provides Products and/or Services to Buyer in connection with the Rockwell Automation Solution Program* ("Rockwell Automation") which specifically references these Terms; then the following additional terms and conditions shall apply. Any capitalized terms used herein and not defined in the Terms, shall have the meaning set forth below.

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The term “Services” and “Work” shall have the same meaning for purposes of these Terms. In the event of a conflict between the following additional terms and conditions and the Terms, these terms and conditions shall prevail.

29. Standard Service Hours. Seller’s standard working hours are Monday through Friday, 8:00 a.m. to 5:00 p.m. at the standard current rate. Seller’s overtime working hours are Monday through Friday, 5:00 p.m. to 8:00 a.m. and Saturdays. The overtime rate is 1.5 times the standard current rate. Seller’s double-time working hours are Sundays and holidays. The double-time rate is 2.0 times the standard current rate. Buyer agrees that Seller’s actual hours worked and Seller’s overtime or double-time incurred may affect the final price of the Services.

30. Estimated Delivery. Estimated delivery of the completed Services is between four to six weeks after all the final requested data is collected by Seller from Buyer.

31. Information Security Standards. In the performance of the Services pursuant to the SOW and these Terms, Buyer and Seller will comply with the following standards and practices:

31.1. Data Transmission. Buyer agrees that all transmission or exchange of sensitive data with Seller shall take place via secure means (e.g., password-protected, using a complex password; encrypted WinZip sent via e-mail, or, for large files, Hightail File Transfer Service; Secure File Transfer Protocol (SFTP); physical media such as paper/DVD sent securely; or another equally secure means of transport). If Buyer requires Seller to use a Buyer specified system, the security of the data in transit and at rest once sent from Seller is Buyer’s sole responsibility.

31.2. Buyer-Provided Storage Media. If Seller personnel are required to use Buyer-provided storage media, Buyer agrees to provide the storage media with designated backup and recovery processes and in encrypted form, using commercially supported or industry ‘best of breed’ open source encryption solutions. Buyer must use commercially reasonable efforts to ensure against introduction of any malicious software into Seller’s or Rockwell Automation’s systems. These efforts include the implementation of security patches and antivirus or anti-malware solutions to remediate any vulnerabilities.

32. Warranty.

32.1. Seller warrants to Buyer for the lesser period of 18 months from delivery or 12 months from startup, that the Services will perform as stated in the SOW provided that the operating conditions and use of the Services are in accordance with any standards set forth in the SOW, Seller’s or Rockwell Automation’s published specifications, and applicable recommendations of Seller or Rockwell Automation. Seller warrants to Buyer for a period of 30 days from the date the Services are provided that the Services shall be performed in a workmanlike manner conforming to standard industry practice.

32.2. Buyer’s **EXCLUSIVE** remedies under this warranty will be limited to, at Seller’s sole discretion, replacement, repair, re-performance, modification, or issuance of a credit for the purchase price of the Services involved, but only after Seller’s receipt of Buyer’s written notification of the non-conforming Services. If the repair or re-performance does not cure the defective performance, Buyer may request emergency on-site services, which will be at Seller’s expense (consisting of time, travel, and expenses incurred by Seller or Rockwell Automation related to such services). If the defective performance is not due to warranted defects in the Services, the on-site service will be at Buyer’s expense. On-site warranty services performed at Seller’s expense shall not include removal or reinstallation costs related to large-scale assemblies such as motors or transformers. The foregoing will be the **EXCLUSIVE** remedies for any breach of warranty or breach of contract arising from warranted defects.

32.3. Warranty satisfaction is available only if (a) Seller is provided prompt written notice of the warranty claim, and (b) Seller’s or Rockwell Automation’s examination discloses that any alleged defect has not been caused by misuse, neglect, improper installation, operation, maintenance, repair, alteration, or modification by other than Seller or Rockwell Automation, accident, or unusual deterioration or degradation of the Products or parts thereof due to physical environment or electrical or electromagnetic noise environment.

32.4. **Disclaimer of Warranties. THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER WRITTEN OR ORAL, WHETHER EXPRESS, IMPLIED OR STATUTORY, WHETHER ARISING BY CONTRACT, AT LAW, IN EQUITY, BY STRICT LIABILITY OR OTHERWISE, WITH RESPECT TO THE PRODUCTS AND**

SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY AGAINST DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY AGAINST REDHIBITORY DEFECTS, ANY WARRANTY OF GOOD TITLE, AND ANY WARRANTY AGAINST INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY PATENTS, TRADEMARKS, OR COPYRIGHTS. Seller shall, however, if given prompt written notice by Buyer of any claim of alleged patent, trademark or copyright infringement with respect to any Products use its reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may offer with respect to such Products.

33. Software Licenses and Ownership.

33.1. Software. Software is subject to Buyer’s acceptance of additional terms and conditions set forth in separate Seller or Rockwell Automation or third-party click-wrap license agreements provided with such Standard Software. Such terms and conditions shall be the exclusive terms and conditions applicable to such Software, excluding Buyer’s obligation to pay any license fee which shall be identified in the SOW.

33.2. Documentation and Application Software. Seller hereby grants to Buyer a non-exclusive, non-transferable license to modify and use solely in conjunction with the Services all documentation and any Application Software created by Seller or Rockwell Automation as specified in the SOW. “Application Software” includes application project files for control programming, design, configuration, and visualization in source code and/or scripting code created by Seller or Rockwell Automation under these Terms for operational use with Seller’s or Rockwell Automation’s Standard Software or the Buyer’s system as specified in the SOW. Buyer is solely responsible for its modifications to documentation and Application Software. Except for any Buyer or third-party confidential information, Seller or Rockwell Automation retains all right, title, and interest to documentation and Application Software developed by Seller or Rockwell Automation. Buyer shall not sublicense or assign the documentation or the Application Software except to a customer who purchases the Services from Buyer. Buyer may make an additional archival copy of such documentation and Application Software for backup.

33.3. Other Software. In the absence of a separate Seller or Rockwell Automation license agreement for software provided by Seller or Rockwell Automation under the SOW, Seller hereby grants Buyer a non-exclusive, non-transferable license to use such software solely in conjunction with the Services for the project identified in the SOW without the right to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software (except for modifications of Application Software as set forth above). Ownership of the respective Seller or Rockwell Automation or third-party software shall remain with Seller or Rockwell Automation or the third party.

33.4. Ownership of Pre-existing Intellectual Property. Each party shall own all right, title, and interest in all patents, trademarks, copyrights, confidential information, trade secrets, mask rights, and other intellectual property rights as it owned on the date of these Terms.

33.5. No Other Licenses. Except as expressly set forth in these Terms, no license under any patents, trademarks, copyrights, confidential information, trade secrets, mask rights, or other intellectual property rights is granted or implied by either party.

34. Delivery. Ex-Works Seller’s branch or warehouse (per current Incoterms) or as otherwise specified in the SOW (“Delivery”). In all cases, title transfers to Buyer upon the earlier of Seller’s delivery to Buyer or receipt by the first carrier for transport to Buyer, except that title to all intellectual property rights associated with the Services remains with Seller or Rockwell Automation or its suppliers and licensors.

35. Acceptance. Acceptance of the Services occurs either (i) on the date the Services conforms to acceptance criteria in the SOW or is otherwise used by Buyer, but in no event later than 60 days from start-up or 120 days following Delivery whichever occurs first; or (ii) if no acceptance criteria is specified in the SOW then acceptance occurs upon Delivery. Any Seller provided interim Services deliverable requiring Buyer approval pursuant to the SOW will be deemed accepted if formal Buyer approval, written or as otherwise required, is not received by Seller within two calendar weeks after the date submitted.

36. Changes. Any change resulting from any of the following circumstances is subject to equitable adjustments to price, scheduling, and

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other affected terms and conditions: (a) Buyer requested changes, including those affecting the identity, scope, and delivery of the Products and/or Services; (b) concealed or otherwise unknown physical conditions differing materially from those indicated or anticipated in the SOW or that otherwise differ materially from those ordinarily found under similar circumstances; (c) delays, including but not limited to wait times, caused by Buyer, its employees, affiliates, other contractors to Buyer, or any other party within Buyer's reasonable control; and (d) any emergency endangering persons or property; in such emergency circumstances, Seller may act at its discretion to prevent damage, injury, or loss. All changes, except actions necessitated by emergencies as provided in (d) above, must be executed by a written change order signed or otherwise definitively authorized by both parties, and Seller will not begin work on a change until it is authorized. All claims must be made within a reasonable time after the occurrence giving rise to the claim.

37. Temporary Suspension of Services by Buyer. Except as set forth in the applicable SOW, Buyer may, by providing prior written notice, request that Seller temporarily suspend performance and delivery of the Services, in whole or in part. The notice shall specify the portion of the Services to be suspended, the effective date of suspension, Buyer's anticipated duration of suspension, and the reasons for the suspension. Seller shall suspend performance as requested, except as necessary for the care or preservation of Services previously executed. On or before the date the suspension begins, Buyer must pay Seller the unpaid balance of the portion of the Services previously executed plus any additional costs incurred by Seller as a result of the suspension. Seller shall resume the suspended Services after a change order is executed covering adjustments to the contract price, schedule, and any other affected terms or conditions resulting from the suspension. Unless otherwise agreed, the maximum cumulative period for suspension is 60 days. Upon expiration of this or any shorter period agreed upon as provided above, Seller may terminate these Terms, and Buyer shall pay all costs of cancellation (including third-party commitments, reasonable profit, and overhead) upon submission of Seller's invoices.

38. Safety and Standards. Seller is responsible for compliance of the Services with laws, regulations, and standards, including safety regulations and standards, of the country where the Services will be located that are applicable to the Services at the effective date of these Terms. Buyer must inform Seller of any other laws, regulations, or standards that may apply to the Services. Seller will be responsible for compliance with such other safety or other standards only if documented in the SOW. Otherwise, Seller is not responsible for laws, regulations, or standards that apply to Buyer's (or end user's, if different from Buyer) facility, equipment, process, information system, or data.

39. Site Rules, Licenses, Permits, Site Preparation.

39.1. Seller's Responsibilities. Seller agrees to comply with all applicable posted site rules of Buyer (unless inconsistent with the obligations set forth in the SOW) and any additional Buyer's site rules that have been incorporated into the SOW.

39.2. Buyer's Responsibilities. Buyer is responsible for: (1) all licenses, permits, clearances, and site access rights; (2) all sites being ready and equipped with all necessary Buyer furnished equipment and facilities; (3) any required customer fixtures or facilities being safe, hazard free, structurally sound, and sufficient; (4) reasonable access to the worksite; (5) properly using, calibrating operating, monitoring and maintaining the Services consistent with all Seller or third-party provided instructions, warnings, recommendations and documentation; (6) all other factors affecting the Services that are outside of the direct control of Seller; and (7) indemnifying Seller for any claims to the percentage extent directly caused by Buyer's breach of the obligations listed in this section.

40. Buyer Information.

40.1. Buyer represents and warrants that it has the rights to the information provided or made available by Buyer to Seller, including but not limited to technical specifications, drawings, source code, application code, communication interfaces, protocols, and all other documentation (collectively "Buyer Information"), for Seller or Rockwell Automation to perform its obligations under these Terms and that such access to and use of Buyer Information under these Terms will not infringe or violate any agreement, confidentiality obligations, copyrights, or other intellectual property rights of the original vendor or any other third party. Buyer agrees to indemnify Seller or Rockwell Automation from any claims arising out of Seller's or Rockwell Automation's use of Buyer Information pursuant to the SOW.

40.2. In Seller's or Rockwell Automation's performance of services, sales activities, or in connection with Buyer's use of Seller or Rockwell Automation Products, Seller or Rockwell Automation may obtain, receive, or collect data or information, including Buyer's contract information, computer system profile, Rockwell Automation Product installation data, and Buyer's usage specific data of Rockwell Automation Products (collectively, the "Data"). In such cases, Buyer grants Seller and Rockwell Automation a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely to facilitate the performance of sales and services by Seller or Rockwell Automation and its affiliates (including, but not limited to, quality, safety, energy, and security analytics, product and service diagnostics and prognostics, and reporting), and to facilitate or improve Buyer's use of the Products. In addition, Buyer grants Seller and Rockwell Automation and its affiliates a license to use and aggregate the Data in support of Seller's or Rockwell Automation's marketing and sales activities. Seller and Rockwell Automation and its affiliates may also use this information in the aggregate, in a form which does not personally identify Buyer, to improve Products, and Seller and Rockwell Automation may share anonymous aggregate data with our third-party suppliers and service providers.