

**VIRTUALSCADA SOFTWARE LLC**  
**TERMS AND CONDITIONS OF SALE**

VirtualSCADA Software LLC ("VIRTUALSCADA") and Customer, in consideration of the mutual covenants, agreements and provisions set forth herein and hereon, hereby agree that the purchase of VirtualSCADA products and/or Services ("Products") shall be subject to and in accordance with the following terms and conditions:

**1. ORDERS FOR PRODUCTS**

All Customer orders for Products shall be subject to these terms and conditions and, if applicable, an authorized quotation issued by VIRTUALSCADA. Such order, if accepted by VIRTUALSCADA, shall have significance as a reference document only. The parties hereby agree that these terms and conditions shall govern and control the relationship between VIRTUALSCADA and the Customer and that the terms and conditions contained herein shall supersede the terms and conditions contained in a Customer-issued order. VIRTUALSCADA reserves the right to refuse orders in its sole discretion, or to accept such orders on a separate contract form or to limit the types and amounts of Products ordered.

**2. PRICES**

Prices for Products shall be the then current prices for such Products in effect at the time of VIRTUALSCADA acceptance of an order or in accordance with an authorized and valid VIRTUALSCADA quotation.

Prices are exclusive of all charges or levies of any nature including all federal, state, municipal or other governmental excise, sales, use, occupational or like taxes now in force or enacted in the future and, therefore, are subject to an increase in amount equal to any tax VIRTUALSCADA may be required to collect or pay upon the sale or delivery of Products purchased. If a certificate of exemption or similar document is required in order to exempt the sale from sales or use tax liability, Customer will obtain and furnish evidence of such exemption at time of placement of order.

All prices are subject to adjustment on account of changes in specifications, quantities, shipment arrangements, and the like or the inclusion of terms and conditions which had not been part of any valid price quotation issued by VIRTUALSCADA.

**3. PAYMENT TERMS; REVOCATION OF CREDIT**

Unless otherwise specified by VIRTUALSCADA in writing, payment terms shall be net/30 days from date of invoice.

VIRTUALSCADA's obligation to ship Products or otherwise perform here-under shall be subject to the then current credit terms and policies as established by VIRTUALSCADA from time to time. Further, VIRTUALSCADA reserves the right at any time when, in its opinion, Customer's financial condition or other circumstances warrants it, to revoke, alter or suspend any credit already extended, or to require full or partial payments in advance of any shipment or other performance, or to otherwise defer or decline to make shipments under this Agreement and/or terminate this Agreement or any order accepted hereunder with-out liability to Customer.

**4. SHIPMENT**

All Products furnished hereunder shall be shipped Free Carrier VIRTUALSCADA Dock, whereupon the risk of loss, title in and right of possession of the Products and responsibility for all transportation expenses shall pass to the Customer upon delivery to the carrier. Subject to VIRTUALSCADA's right to stop shipment of Products already in transit, such carrier shall thereafter be deemed to be acting for Customer regardless of the carrier used or the freight terms.

Shipment will be made "best way," either prepaid or collect, as requested by Customer. If Customer requests prepaid shipment, actual charges incurred shall be billed and shall be due and payable to VIRTUALSCADA in accordance with VIRTUALSCADA's regular payment terms. (VIRTUALSCADA will not assume any liability in connection with such shipment nor constitute any carrier as its agent.)

All shipping dates quoted or otherwise agreed to by VIRTUALSCADA are estimates only. VIRTUALSCADA will use its best efforts to meet scheduled dates, but assumes no liability for failure to do so.

**5. FORCE MAJEURE**

VIRTUALSCADA shall not be responsible for delays or non-performance directly or indirectly caused by governmental regulations or requirements, acts of God, unavailability of materials, work stoppages, slowdowns, boycotts or other causes beyond VIRTUALSCADA's reasonable control. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of the delay, and Customer shall not be entitled to refuse delivery or otherwise be relieved of any obligations hereunder.

**6. LIMITED WARRANTY**

VIRTUALSCADA warrants that Products, upon delivery to Customer, will conform to VIRTUALSCADA's specifications therefor and will be free from defects in workmanship and material. If, within one (1) year from the date of shipment of such Products, any such Products are shown to VIRTUALSCADA's reasonable satisfaction not to be in conformance with this warranty, VIRTUALSCADA, at its option, will repair or replace such Products or refund the purchase price. In no event shall Products be returned to VIRTUALSCADA without VIRTUALSCADA's prior written consent.

THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESSED OR IMPLIED, AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE ARE HEREBY EXCLUDED. THE REMEDIES PROVIDED HEREIN ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE BY VIRTUALSCADA TO COMPLY WITH ITS WARRANTY OBLIGATIONS. CORRECTION OF THE NONCONFORMITIES IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED HEREIN SHALL CONSTITUTE COMPLETE FULFILLMENT OF VIRTUALSCADA'S OBLIGATIONS REGARDING DEFECTIVE PRODUCTS, WHETHER THE CLAIMS BY THE CUSTOMER ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

## **7. INTELLECTUAL PROPERTY**

- A. VIRTUALSCADA may discontinue, without liability, delivery of Products if, in VIRTUALSCADA's opinion, their use would constitute patent, copyright, trademark or trade secret infringement. If the use of Products is the subject of a claim or likely to be, in VIRTUALSCADA's opinion, the subject of a claim of infringement, VIRTUALSCADA may, at VIRTUALSCADA's option and expense:
- i. Procure for Customer the right to use the Products previously delivered;
  - ii. Replace such Products with equivalent noninfringing Products;
  - iii. Modify the Products so as to be noninfringing but equivalent; or
  - vi. Refund the purchase price (less a reasonable allowance for use and depreciation).
- B. VIRTUALSCADA makes no warranty against patent, copyright, mask work, trademark or trade secret or other infringement by Products if designed to Customer's specifications or if used in combination with non-VIRTUALSCADA supplied equipment or devices and if a claim, suit or action is based thereon, Customer shall defend, indemnify and save harmless VIRTUALSCADA therefrom.

## **8. LIMITATION OF LIABILITY; EXCLUSIVE REMEDY**

VIRTUALSCADA will not be liable to Customer under this Agreement, whether in contract, in tort (including negligence) under any warranty or otherwise for any special, indirect, incidental or consequential loss or damage, or loss of profits or revenues even if VIRTUALSCADA has been advised of the possibilities of such damages. The remedies set forth in Sections 6 and 7 of this Agreement are exclusive and VIRTUALSCADA's liability for damages to the Customer for any cause whatsoever, including performance or non-performance by VIRTUALSCADA or Products provided hereunder, regardless of the form of the action, under any warranty or otherwise will be limited to the remedies provided therein.

## **9. CANCELLATION OR POSTPONEMENT BY CUSTOMER**

Orders accepted by VIRTUALSCADA cannot be canceled or shipments postponed except by written notice to VIRTUALSCADA. In the event that Customer cancels or postpones an order(s) or any part thereof, VIRTUALSCADA's standard cancellation or postponement charges will apply.

**10. SOFTWARE**

(a) VIRTUALSCADA grants to Purchaser a non-exclusive, royalty-free perpetual license to use any compiled software provided by VIRTUALSCADA hereunder unless otherwise noted. The new or modified Software source code remains proprietary property of VIRTUALSCADA.

**11. DEFAULT**

A. Any of the following will constitute an act of default hereunder. Customer:

- i. Is or becomes insolvent or a party to any bankruptcy or receivership proceeding or any similar action affecting the financial condition or property of Customer and such proceeding has not been dissolved within 30 days;
- ii. Makes a general assignment for the benefit of creditors; or
- iii. Ceases doing business in the normal course.

B. In the event an act of default shall occur, VIRTUALSCADA shall have the right to and may elect any or all of the following remedies which shall be cumulative and not exclusive:

- i. Declare the particular order out of which the default arises to be immediately terminated;
- ii. Declare, at its option, all charges incurred but unpaid relative to the order to be immediately due and payable;
- iii. Exercise any or all remedies specified in this Agreement or any supplement associated herewith; and
- iv. Pursue each and every remedy available at law or in equity.

**12. GOVERNING LAW**

This Agreement and any order accepted hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the state of Florida.

**13. ASSIGNMENT**

Customer shall not delegate any duties or assign any rights or claims under this Agreement without VIRTUALSCADA's prior written consent, and any such attempted delegation or assignment shall be void.

**14. COMPLIANCE WITH LAWS**

Customer, this Agreement and all Products purchased here-under are subject to all laws, regulations, orders or other restrictions that may now or hereafter be imposed by the government of the United States or any agency thereof, including but not limited to all regulations relating to the sale, export, re-export or redistribution of equipment.

**15. GENERAL**

- A. If any of the provisions of this Agreement are invalid under any applicable statute or rule of law, such provisions are, to that extent, deemed omitted, but this Agreement and the remainder of its provisions shall otherwise remain in effect.
- B. No provisions of this Agreement shall be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is in writing and signed by the parties.
- C. The waiver of one default under this Agreement shall not be deemed a waiver of subsequent or similar defaults.
- D. Each order under this Agreement shall be treated as a separate contract and default by either party arising out of a particular order shall not constitute or be deemed to constitute a default of any other order or this Agreement itself. No lawsuit, regardless of form, arising out of this Agreement may be brought more than two years after the cause of action occurs.

THESE TERMS AND CONDITIONS SHALL SUPERSEDE AND TAKE PRECEDENCE OVER ALL PROPOSALS, CUSTOMER PURCHASE ORDERS OR ANY OTHER WRITTEN OR ORAL COMMUNICATIONS BETWEEN THE PARTIES. RECEIPT BY THE CUSTOMER OF PRODUCTS HEREUNDER SHALL BE DEEMED CONCLUSIVE EVIDENCE OF CUSTOMER'S AGREEMENT THAT THE PURCHASE, USE AND POSSESSION OF PRODUCTS IS GOVERNED EXCLUSIVELY BY THESE TERMS AND CONDITIONS.

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