

# Standard Terms & Conditions



## **STANDARD TERMS AND CONDITIONS**

Unless otherwise agreed to in writing by Unidata Pty Ltd (UPL) all quotations expire THIRTY (30) days after the date of the quotation. All prices quoted are valid only if Buyer's requested delivery date (including any change orders) is within three (3) months of the date on which the original order is placed. Unless quoted as such, or otherwise agreed to in writing by UPL, all prices quoted are in Australian Dollars exclusive of any and all taxes or duties. Such taxes or duties shall be for the Buyer's account and appear as separate items on UPL's invoice.

### **1. PAYMENT TERMS/PASSAGE OF TITLE**

Unless otherwise agreed to in writing by UPL, Buyer shall pay all invoices issued within thirty (30) days from the date of invoice. UPL reserves the right to change the credit terms at any time, if in UPL's opinion Buyer's financial condition or previous payment record of Buyer so warrants. Thirty (30) day payment terms are subject to approval by UPL Credit Department. Should Buyer be delinquent in the payment of any sum due UPL, after ten (10) days from the date of written notice to Buyer UPL shall not be obligated to continue performance under any agreement with Buyer. Title to and Property in the goods remains with UPL and Buyer agrees to hold the goods as bailee for UPL until payment in full to UPL for the goods. In the event of the buyer being delinquent in payment UPL may at any time terminate any contract relating to the goods and may thereupon take possession of the goods until payment in full to UPL for the goods.

### **2. DELIVERY DATES**

Shipments of any products purchased are subject to UPL/UPL Agents-Reseller's availability schedule. UPL shall make every reasonable effort to meet any delivery date(s) quoted or acknowledged. However, UPL will not be liable for its failure to meet such delivery date(s).

### **3. DELAYS IN PERFORMANCE**

UPL shall not be liable for any delay in performance hereunder due to unforeseen circumstances or causes beyond its control including, but not limited to, acts of nature, acts of government, strikes, delays in transportation, and delays in delivery or inability to deliver by UPL suppliers. UPL accepts no responsibility for any interruption to recorded data no responsibility for reception interruptions.

### **4. SHIPMENT, RISK OF LOSS AND PACKING**

Unless otherwise agreed to in writing by UPL, all shipments shall be FCA (ICC Incoterm 1990) at UPL/UPL Agents-Reseller's premises and risk of loss and damage shall pass to Buyer on delivery. Unless otherwise agreed to in writing by UPL, all products shall be packed, if appropriate, for shipment and storage in accordance with standard commercial practices.

### **5. ORDER OF PRECEDENCE**

These Terms and Conditions of Sale and any attachments take precedence over Buyer's additional or different terms and conditions, to which notice of objection is hereby given. Acceptance by Buyer is tied to these terms and conditions. UPL's commencement of performance or delivery will be deemed or construed as acceptance of Buyer's additional or different terms and conditions. Buyer's purchase of UPL products hereunder represents acceptance of these Terms and Conditions and any attachments, which together constitute the entire understanding between parties and supersede any previous communications, representations, or agreements by either party whether verbal or written. No change or modification of any of the terms or conditions herein shall be valid or binding on either party unless in writing and signed by an authorised representative of each party.

### **6. CHANGES AND CANCELLATIONS**

If Buyer issues a change order causing a delivery delay or cancels an order less than ninety (90) days prior to the scheduled shipment, such change or cancellation shall be subject to acceptance by UPL and may incur a charge, provided that UPL shall use reasonable efforts to accommodate such changes. If Buyer cancels an order for non-standard products/special equipment or services any time after the order is received by UPL, Buyer may be subject to an additional charge.

### **7. ACCEPTANCE OF PRODUCTS**

Acceptance shall be accomplished by using applicable test procedures or programs established by UPL. If installation by UPL is not included in the purchase price, acceptance shall be presumed unless Buyer demonstrates within thirty (30) days of delivery that the products do not perform UPL established test procedures or programs. If installation by UPL is included in the purchase price, acceptance shall occur at the installation site when UPL demonstrates that the applicable diagnostic or verification programs work properly or the product is otherwise demonstrated to be in normal operational condition. If installation is scheduled or delayed by Buyer more than thirty (30) days from delivery, Buyer shall be deemed to have accepted the products on the thirty-first (31st) day from date of shipment.

### **8. COPYRIGHTED MATERIALS**

Unless otherwise agreed to in writing by UPL, UPL copyrighted material (software and printed documentation) may not be copied except for archive purposes, to replace a defective copy, or for program error verification.

### **9. INTELLECTUAL PROPERTY RIGHTS**

UPL retains all title and except as expressly provided herein, all rights to software and all related documentation and materials (Software). Notwithstanding anything to the contrary herein contained, "purchase" of software shall only entitle the buyer to a license to use the software for its intended purpose on one system. The Buyer acknowledges that all copyright and other intellectual property in UPL products, UPL software and all related materials remain with the Company. The Buyer must not reproduce, copy, publish or distribute the related materials unless written approval is given by UPL. In such event, the Buyer must bring to the attention of the recipient of the related materials the copyright in the related materials and the restriction attaching to it that must be similar to this clause. The Buyer agrees that it will not attempt to create or permit others to attempt to create by reverse engineering, compiling or disassembling or otherwise, any part of UPL products, UPL software and any related materials.

### **10. GRANT OF LICENCE**

For all UPL software products, UPL hereby grants to the Buyer the non-exclusive right to the use of the UPL software on the terms and conditions described herein. Pursuant to the grant of license in this Agreement, UPL agrees to allow the Buyer use UPL's software, and other intellectual property rights, including written specifications of software, software binaries, methods, marketing materials, processes and techniques, devised by UPL (hereinafter referred to as "Related Materials").

### **11. WARRANTY**

UPL hardware products are warranted against defects in materials and workmanship. If UPL receives notice of such defects during the warranty period, UPL shall, at its option, either repair or replace hardware products that prove to be defective. UPL software and firmware products that are designated by UPL for use with a hardware product, when properly installed on that hardware product, are warranted not to fail to execute their programming instructions due to defects in materials and workmanship. If UPL receives notice of defects during the warranty period, UPL shall repair or replace software media and firmware that do not execute their programming instructions due to such defects. UPL does not warrant that operation of the software, firmware or hardware shall be uninterrupted or error free. If UPL is unable, within a reasonable time, to repair

or replace any product to a condition as warranted, Buyer will be entitled to a refund of the purchase price upon return of the product to UPL. The standard warranty period is 12 months from date of shipment for each product. If a different warranty period is required then that shall be stated on a quotation. The warranty period begins either on the date of delivery or, where the purchase price includes installation by UPL, on the date of installation. If Buyer schedules or delays delivery or installation more than thirty (30) days from the date the product is available for delivery or installation, the warranty period begins on the thirty-first (31st) day from the date the product is so available.

b. Warranty and installation services will be performed at Buyer's facility only upon UPL's prior agreement and Buyer shall pay UPL round trip travel expenses and applicable additional expenses for such services. For product warranties requiring return to UPL, products must be returned to a service facility designated by UPL, Buyer shall prepay shipping charges (and shall pay all duties and taxes) for products returned to UPL for warranty service. Except for products returned from another country, UPL shall pay for return of products to Buyer.

c. Limitation of Warranty: The foregoing warranty shall not apply to defects resulting from:

- Improper or inadequate maintenance by Buyer;
- Buyer-supplied software or interfacing;
- Unauthorised modifications or misuse;
- Operation outside of the environmental specifications for the product; or
- Improper site preparation and maintenance.
- Any unauthorised movement of the equipment.

SUBJECT TO PARAGRAPH (d) THE WARRANTY SET FORTH ABOVE IS EXCLUSIVE AND EXCEPT AS PROVIDED BELOW NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL IS EXPRESSED OR IMPLIED. UPL SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

d. There are several Federal/Commonwealth, State and Territorial laws that imply certain consumer warranties and liabilities into contracts for the supply of goods and services. Except to the extent permitted by such laws, these terms and conditions of sale do not exclude, restrict or modify the application or effect of any such implied conditions, warranties or liabilities.

### **12. LIMITATION OF REMEDIES AND LIABILITY**

SUBJECT TO PARAGRAPH (9d) THE REMEDIES PROVIDED HEREIN ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES. IN NO EVENT SHALL UPL BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS) WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF UPL HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

The foregoing limitation of liability shall not apply in the event that any UPL product sold hereunder is determined by a court of competent jurisdiction to be defective and to have directly caused bodily injury, death or property damage, provided, that in no event shall UPL/UPL Agents-Reseller's liability for damage exceed the greater of A\$10,000 or the purchase price of the specific product that caused such damage.

### **13. NUCLEAR & AVIATION & SCADA & MISSION CRITICAL APPLICATIONS**

UPL products are designed for environmental and industrial measurement purposes. For mission critical monitoring redundancy should be considered as failure of one measurement station may occur. UPL products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance, operation or use of any nuclear facility nor for the flight, navigation or communication of aircraft or ground support equipment or for SCADA applications requiring 24 / 7 control of equipment. UPL equipment may be used for SCADA applications provided the application is not the primary control system which is used for plant control. In such circumstances other backup systems must operate in the event of a failure to maintain industrial equipment integrity and personal safety. Any Buyer using UPL products for these applications agrees that, except as otherwise provided herein, UPL is not liable, in whole or in part, for any claims or damages arising from such use. If Buyer uses UPL products for such applications, Buyer agrees to indemnify and hold UPL harmless from any claims for loss, cost, damage, expense or liability arising out of or in connection with the use and performance of UPL products in such nuclear or aviation or SCADA applications.

### **14. EXPORT ADMINISTRATION REGULATIONS**

For products with ultimate destination in countries other than Australia Buyer shall take actions necessary to obtain at Buyer's expense all required export licenses to permit the exportation of products and documentation. Any agreement is subject to the obtaining of said export license. Such products and documentation shall not be dealt with by the Buyer in violation of the export licenses and/or applicable regulations. Buyer acknowledges its awareness of said regulations and shall furnish all information and documentation necessary to obtain such licences.

### **15. GOODS & SERVICES TAX**

In the event that Buyer claims GST / Sales Tax /other local taxes from UPL and in the event that UPL does not charge these taxes to the Buyer in the event of a Tax Exemption claim by Buyer, Buyer agrees to indemnify UPL from any Tax penalties and any costs associated with such Tax penalties.

### **16. MISCELLANEOUS**

a. Except as may be prohibited by applicable law, in the event of any insolvency or inability to pay debts as they become due by a party hereto, or voluntary or involuntary bankruptcy proceeding by or against a party hereto, or appointment of a receiver or assignee for the benefit of creditors, the other party may elect to cancel any unfulfilled obligations hereunder.

b. Any required notices shall be given in writing at the address of each party set forth in the attachments hereto, or to such other address as either party may substitute by written notice to the other.

c. Neither party may assign or transfer any of the rights, duties or obligations herein without the prior written consent of the other and any purported attempt to do so shall be null and void.

d. UPL failure to exercise any of its rights hereunder shall not constitute or be deemed a waiver of forfeiture of such rights.

e. No Government Procurement Regulations shall be included hereunder and binding on either party unless specifically agreed to in writing prior to incorporation herein.

f. Stenographical, typographical and clerical errors are subject to correction.

g. Any dispute regarding the interpretation or validity hereof shall be governed by the laws of the State of Western Australia. The parties hereby agree that any dispute relating to the products sold hereunder shall be subject to the jurisdiction of the courts within the State of Western Australia.

h. Issue 2.2 dated 01 11 2018