

GE Intelligent Platforms End User License Agreement Terms and Conditions

The license of any software, including firmware, ("Software") is expressly conditioned upon the terms and conditions contained or referred to herein. Any additional or different terms and conditions set forth in Customer's purchase order or similar communication are objected to and will not be binding upon the GE Intelligent Platforms business providing the Software, whether GE Intelligent Platforms, Inc. or its subsidiary (hereinafter "GE"), unless specifically agreed to in writing by GE's authorized representative. Authorization by Customer, whether written, oral, or by electronic designation, to furnish Software will constitute acceptance of these terms and conditions.

1 Complete Agreement.

1.1 These terms and conditions and any other terms and conditions or documents referenced herein, contain the complete agreement between the parties, and no modification, amendment, rescission, waiver or other change will be binding on GE unless agreed to in writing by GE's authorized representative. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on GE. The invalidity, in whole or part, of any of the foregoing sections or paragraphs of the contract will not affect the remainder of such article or paragraph or any article or paragraph of the contract.

1.2 In addition to these Terms and Conditions, the End User License Agreement terms and conditions attached as Appendix A shall apply to the license of any Software.

2 Warranty.

2.1 Software.

2.1.1 GE warrants that (a) as of the date of shipment by GE (in the event of shipment of a physical item containing the software) or (b) as of the date the download is made available by GE (in the event the Licensed Software is made available electronically), the GE Software (as defined in Appendix A) will be in substantial conformance with the product documentation or mutually agreed to specifications pertaining thereto. If, within ninety (90) days of date of shipment it is shown that the GE Software does not meet this warranty, and such GE Software is returned to GE with a copy of Customer's purchase confirmation, GE will, at its option, either correct the defect or error in the GE Software, free of charge, or make available to Customer satisfactory substitute software, or, if none of the foregoing is reasonably available, return to Customer all payments made as license fees (or, if applicable, the portion of the fees paid for the GE equipment in which the GE Software is embedded which are allocable to the GE Software) and terminate the license with respect to the GE Software affected. GE does not warrant that operation of the GE Software will be uninterrupted or error free or that it will meet Customer's needs. Third Party Software is only warranted as provided in Section 2.3 below. All other portions of the Licensed Software (as defined in Appendix A) are provided "as is" without warranty of any kind.

2.1.2 GE warrants that the media on which the GE Software is delivered will be free from defects in material or workmanship under normal use and service for a period of ninety (90) days from the date of delivery. If any defects are discovered in the media and reported by Customer within ninety (90) days after delivery, GE shall, at no cost to Customer, upon return of media to GE, replace the media and deliver to Customer a new and complete copy of the GE Software.

2.2 Conditions of Warranty. The warranties and remedies set forth herein are conditioned upon: (i) proper storage, installation, use and maintenance of the Software, the proper design and configuration of the system into which the Software is installed, conformance with any applicable recommendations of GE, and GE's ability to reproduce and observe the claimed defect and (ii) Customer promptly notifying GE of any defects and, as required, promptly making any personnel, Software or computer systems available. Any modification to the Licensed Software by Customer without the express written consent of GE shall void the warranty.

2.3 Limitations on Warranty. GE warrants Third Party Software (as defined in Appendix A) only to the extent that the Third Party's warranty allows GE to transfer such warranty to Customer. GE will pass through to Customer any such warranties. To the extent any such Third Party fails to provide a pass-through warranty, such Third Party Software is provided "AS IS" without warranty of any kind and the Third Parties disclaim all warranties, whether express or implied, including but not limited to the implied warranties of merchantability, title, non-infringement or fitness for a particular purpose. The Third Parties shall not have any liability for special, indirect, punitive, incidental or consequential damages. Customer's sole remedy for breach of such warranty shall be the remedy offered by and available from the Third Party, if any. GE shall have no liability, whether in contract, tort, negligence, or otherwise, to Customer with respect to Third Party Software.

2.4 EXCEPT AS SET FORTH IN SECTION 3.2, THE WARRANTIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. GE DOES NOT WARRANT ANY SOFTWARE OF OTHERS WHICH CUSTOMER HAS DESIGNATED. The warranty remedies set forth herein provide the exclusive remedies for all claims (except as to title) based on failure of, or defect in, Software provided hereunder, whether the failure or defect arises before or during the warranty period, and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. Upon the expiration of the applicable warranty period, all such liability shall terminate.

3 Intellectual Property.

3.1 GE shall retain exclusive rights to its Software, intellectual property rights (including copyrights, trademarks, patents and trade secrets), schematics, logic diagrams, and manufacturing processes, and to all modifications thereto funded by Customer. GE shall retain ownership in and does not convey, nor does Customer or Customer's final customer obtain any right, title, or interest in, Software, specifications or data furnished or developed by GE either prior to or in the performance of Customer's order. No schematics or source code shall be furnished, unless pursuant to a separate license as agreed by GE. Subject to the performance of its obligations hereunder, Customer shall have a license to use GE's intellectual property rights only as they are embodied in the Software and for no other purpose. Customer shall not modify or reverse engineer the Software.

3.2 GE warrants that any GE Software (as defined in Appendix A) licensed hereunder, and any part thereof, shall be free of any rightful claim of any third party for infringement of any United States patent, copyright, trademark or trade secret. If promptly notified in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against Customer based on a claimed infringement which would result in a breach of this warranty, and GE shall pay all damages and costs awarded therein against Customer due to such breach, other than damages and costs arising from any willful infringement by Customer after receipt of notice of the claimed infringement. GE shall not be responsible for any compromise or concession made by Customer without GE's prior written consent. In case any GE Software is in such suit held to constitute such an infringement and the use for the purpose intended of said Software is enjoined, GE shall, at its expense and option, either procure for Customer the right to continue using said Software, or replacing same with noninfringing Software, or modify same so they become noninfringing, or remove the Software and refund the purchase price or license fee (less reasonable depreciation for any period of use). The foregoing states the entire liability of GE for patent, copyright, trademark or trade secret infringement.

3.3 The preceding paragraph shall not apply to any Software (a) specified by Customer and not of GE manufacture, or (b) manufactured to Customer's design, or (c) to the use of any Software furnished with other equipment or software in a combination not furnished by GE as part of the transaction. As to any such Software, or use in such combination, GE assumes no liability whatsoever for infringement and Customer will hold GE harmless against any infringement claim arising therefrom (including, but not limited to, reasonable attorney's fees).

4 Excusable Delays.

4.1 GE shall not be liable for delay due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of Customer, prerequisite work by others, acts of civil or military authority, government priorities, fires, strikes or other labor disturbances, floods, epidemics, war, terrorism, riot, delays in transportation or car shortages, or inability to obtain or delay in obtaining suitable labor, materials, or facilities, due to causes beyond its reasonable control. In the event of any such delay, the time of performance shall be extended for a period equal to the time lost by reason of the delay.

4.2 In the event GE is delayed by acts of Customer or by prerequisite work by other contractors or suppliers of Customer, GE shall be entitled to an equitable price adjustment in addition to extension of the time of performance.

5 Sales and Similar Taxes. In addition to any price specified herein, Customer shall pay, or reimburse GE for, the gross amount of any present or future sales, use, excise, income, value-added or other similar tax applicable to the price, sale, licensing, or furnishing of any Software hereunder, or to their use by GE or Customer, or Customer shall provide GE with evidence of exemption acceptable to the taxing authorities. If Customer fails to provide GE with requested proof of payment or exemption, GE may pay the taxes due and obtain reimbursement from Customer. Customer shall pay all import duties and registration fees arising from the sale, license or furnishing of any Software hereunder.

6 Payments and Financial Condition.

6.1 Except to the extent otherwise specified by GE in writing, invoices for Software shall be issued pro rata as shipments are made. Unless otherwise agreed to in writing by GE, payment terms are net thirty (30) days from the date of invoice. All payments shall be made without set-off for claims arising out of other sales by GE.

6.2 If the financial condition of Customer at any time does not, in the judgment of GE, justify continued performance on the terms of payment previously agreed upon, GE may require full or partial payment in advance or shall be entitled to terminate the contract and receive termination charges. In the event of bankruptcy or insolvency of Customer or in the event any proceeding is brought against Customer, voluntarily or involuntarily, under the bankruptcy or insolvency laws, GE shall be entitled to terminate the agreement at any time during the period allowed for filing claims against the estate and shall be entitled to payment for its termination charges.

6.3 Payment shall be made in the currency quoted.

6.4 Customer shall pay a monthly late payment charge computed at the rate of 1.5%, or the maximum interest rate permitted by law, whichever is less, on any past due amount for each calendar month (or fraction thereof) that the payment is overdue, and Customer shall pay, indemnify and save GE harmless from any and all costs and expenses of GE's collections efforts including reasonable attorney's fees, and costs associated with compromises and judgments arising therefrom. GE retains a security interest and right of possession in the articles until Customer makes full payment, and Customer agrees to sign documentation at GE's request as reasonably necessary to perfect such interest.

7 Limitations of Liability.

7.1 GE'S LIABILITY ON ALL CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, OR THESE TERMS AND CONDITIONS, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY SOFTWARE COVERED BY OR FURNISHED UNDER THE CONTRACT OR ANY EXTENSION OR EXPANSION THEREOF (INCLUDING REMEDIAL WARRANTY EFFORTS), SHALL IN NO CASE EXCEED THE CONTRACT PRICE OF THE ITEM GIVING RISE TO THE CLAIM. ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD SPECIFIED HEREIN.

7.2 IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL GE, ITS EMPLOYEES AND SUPPLIERS BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUE, OR FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMER'S CUSTOMERS FOR SUCH DAMAGES EVEN IF GE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND THE CUSTOMER WILL INDEMNIFY GE, ITS EMPLOYEES AND SUPPLIERS AGAINST ANY SUCH CLAIMS FROM THE CUSTOMER'S CUSTOMERS. IF THE SOFTWARE BEING PROVIDED BY GE WILL BE FURNISHED BY THE CUSTOMER TO A THIRD PARTY BY CONTRACT OR RELATE TO A CONTRACT BETWEEN THE CUSTOMER AND A THIRD PARTY, THE CUSTOMER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING GE AND ITS SUPPLIERS THE PROTECTION OF THIS AND THE PRECEDING PARAGRAPH 7.1.

7.3 Unless otherwise agreed by the parties in writing, the Customer has sole responsibility for designing and implementing a solution including the Software which will meet all appropriate safety requirements and/or standards. GE disclaims all liability for any damages arising as a result of any non-conformance of the solution of the Customer to safety requirements and/or standards. Software licensed hereunder is not intended for use in any nuclear facility or activity, production of land mines or cluster bombs, or any life-support equipment. GE further disclaims all liability for any damages resulting from dangerous use or misuse of its Software, including use that could result in radiation, chemical and environmental damages, injury and contamination as well as death, personal injury or severe physical damages. Customer shall indemnify GE, its employees and agents from all liability resulting from such use(s), whether based on contract, warranty, tort (including negligence), strict liability or any other legal theory, regardless of whether GE had knowledge of the possibility of such damages or not.

7.4 If GE furnishes Customer with advice or assistance which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject GE to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

8 Title.

8.1 No title to the Software is transferred.

9 Export.

9.1 Customer agrees to be aware of and comply with U.S. export laws and regulations, and the applicable export laws and regulations of any other country, to ensure that the Software or technology will not be used, sold, transferred, or re-exported in violation of such laws and regulations.

9.2 In addition to the representation in paragraph 9.1 above, Customer agrees that it shall not, without prior U.S. government authorization, export, reexport, or transfer Software or technology, either directly or indirectly: 1) to any country subject to a comprehensive U.S. trade embargo or to any resident or national of any such country; 2) to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce, the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury or any other applicable prohibited party list; or, 3) to an end-user engaged in any nuclear weapons, chemical weapons, or biological weapons activities.

10 U.S. Government Contracting. If Customer is a U.S. Government entity or elects to license Software provided hereunder to the U.S. Government or to a contractor selling to the U.S. Government, the following provisions apply: (a) Customer agrees that all Software provided by GE meet the definition of "commercial-off-the-shelf" (COTS) or "commercial item" as defined in FAR 2.101, and that the subparagraph terms of FAR 52.212-5(e) or FAR 52.244-6 (or, for orders from the U.S. Government, FAR 52.212-5 and FAR 52.212-4 with tailoring to the extent permitted by FAR 12.302 by replacing all paragraphs except those listed in FAR 12.302(b) with these Terms and Conditions), and (subject to subsection (e) below) DFARS 252.212-7001(c) or DFARS 252.244-7000, whichever are applicable, apply only to the extent applicable to COTS or commercial items and only as appropriate for the dollar value of this order; (b) with regard to any terms related to Buy American Act or Trade Agreements, the country of origin of Software is unknown unless otherwise specifically stated in writing by GE; (c) Customer agrees that any services offered by GE are exempt from the Service Contract Act of 1965 (FAR 52.222-41); (d) Customer agrees that this sale is not funded, in whole or in part, by the American Recovery and Reinvestment Act unless otherwise set forth in a written agreement of the parties; (e) GE makes no representations, certifications or warranties whatsoever with respect to the ability of its Software to satisfy DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals; and (f) Customer is solely and exclusively responsible for compliance with any other applicable statutes or regulations governing sales to the U.S. Government, and GE makes no representations, certifications or warranties whatsoever with respect to the ability of its Software or prices to satisfy any such statutes and regulations other than those contained herein.

11 Termination.

11.1 Sections 3.1, 5, 7, 9 and 10 shall survive termination of these Terms and Conditions.

11.2 Termination of this Agreement and any license hereunder shall neither relieve Customer of its obligation to pay all outstanding charges hereunder nor entitle Customer to any refund of such charges previously paid.

12 General.

12.1 GE reserves the right to subcontract any of the work to one or more subcontractors.

12.2 The delegation or assignment by Customer of any or all its duties or rights hereunder without GE's prior written consent shall be void.

12.3 Any requests for changes shall apply only if GE and Customer agree in writing on the specification of the change and the corresponding changes to pricing and/or schedule.

12.4 Any information, suggestions or ideas transmitted by Customer to GE, its agents, employees or subcontractors are not to be regarded as secret or submitted in confidence except as otherwise provided in a writing signed by GE.

12.5 GE shall comply with all applicable state and federal laws, including but not limited to, the Fair Labor Standards Act of 1938, as amended, the Occupational Safety and Health Act of 1970 (OSHA), laws related to nonsegregated facilities and equal employment opportunity (including the seven paragraphs appearing in Sec. 202 of Executive Order 11246, as amended), and all standards, rules, regulations, and orders issued pursuant to such state and federal laws.

12.6 This Agreement shall be governed by the laws of the State of New York, without regard to its conflict of law provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

Appendix A

End User License Agreement

1 Definitions.

1.1 "GE Software" shall mean those portions of the Licensed Software, in object code form only, that are created by GE or branded as GE (including integrated third party software), including but not limited to, Software developed and/or configured by GE pursuant to mutually agreed to specifications, but shall not include any Third Party Software.

1.2 "Application Templates" shall mean the part numbered software components created by GE for a specific application, which can include forms, displays, workflows, reports, user activities, device configuration, and system configuration.

1.3 "Designated Computer" shall mean the one (1) computer upon which Customer shall run each copy of the Licensed Software, except in the case of MAX-ON Software for which "Designated Computer" shall mean the one (1) redundant PLC system consisting of one or two PLC CPU's upon which Customer shall run each copy of the Licensed Software.

1.4 "Licensed Software" shall mean the GE Software plus any other Software (including Third Party Software), in object code form only, and any Application Templates supplied by GE pursuant to this Agreement. If no operating system software is included in the Software provided under this Agreement, Customer must make provision for any required operating system software licenses.

1.5 "Open Source Software" means software (including, without limitation, software libraries and dependencies) usually available without charge, with access provided to its source code and where use, modification and redistribution is allowed under the terms of the software license associated with it and includes open source code, free code, community source code, libraries, or similar software.

1.6 "Third Party Software" shall mean software, including but not limited to operating systems, owned or licensed by a third party that is supplied to Customer by GE, and which is neither branded as GE Software nor integrated into the GE Software.

2 License.

2.1 Except as provided in Section 2.2 below, Customer is granted only a non-transferable, nonexclusive license to install and use the number of copies of the Licensed Software provided on the quote by GE only on the Designated Computer(s). No copies shall be made unless authorized in writing by GE. Customer may not reverse engineer, decompile or reverse compile or disassemble, re-engineer or otherwise modify the Software. The Licensed Software, comprising proprietary trade secret information of GE and/or its licensors, shall be held in confidence by Customer and protected from copying or disclosure to third parties. No title to the intellectual property is transferred. Customer must reproduce and always include all applicable copyright notices and proprietary markings on any copy. Customer hereby acknowledges and agrees that any Licensed Software that is embedded within GE hardware, shall be used, redistributed and/or resold only to the extent permissible under this Agreement and only embedded within the GE hardware with which it was provided.

2.2 If Customer is an authorized GE distributor or an original equipment manufacturer or a system provider who incorporates the Licensed Software into its equipment or system for sale to an end user, or if Customer uses the Licensed Software to create redistributables, Customer may only transfer the Licensed Software to an end user provided that the end user agrees to be bound by the provisions of this Agreement. Customer shall use its best efforts to enforce its agreement with customers made in accordance with this section, and shall promptly report any violation or suspected violation to GE.

2.3 Customer shall not use or incorporate any Open Source Software in the Licensed Software that would: (i) create, or purport to create, obligations of GE or any Third Party Software licensor with respect to any Licensed Software; or (ii) grant, or purport to grant, to any third party any rights to or immunities under GE's intellectual property or proprietary rights in the Licensed Software. For example, Customer's modifications of Licensed Software may not include any Open Source Software that, when combined with Licensed Software would in any way require any Licensed Software to be made freely available.

2.4 All rights and benefits afforded to GE under this Agreement shall apply equally to the owner of any Third Party Software and its licensors (collectively, the "Third Parties") with respect to the Third Party Software. The Third Parties are intended third party beneficiaries of this Agreement. The provisions of this Agreement relating to the Licensed Software, as the same incorporate Third Party Software, are made expressly for the benefit of, and are enforceable by, the Third Parties. The Third Parties retain title to the Third Party Software.

2.5 EXCEPT AS PROVIDED IN SECTION 2.2 ABOVE, IF CUSTOMER TRANSFERS POSSESSION OF ANY COPY OF THE LICENSED SOFTWARE TO ANOTHER PARTY WITHOUT WRITTEN CONSENT OF GE, THIS LICENSE IS AUTOMATICALLY TERMINATED. Any attempt otherwise to sublicense, assign or transfer any of the right, duties or obligations hereunder is void.

3 Additional Terms for Monitoring Software.

3.1 "Monitored Equipment" shall mean the equipment of Customer to be monitored with the Monitoring Software (if any), as set forth on a monitoring software schedule agreed to in writing by the parties ("Monitoring Software Schedule").

3.2 "Monitoring Software" shall mean the equipment condition monitoring Licensed Software (if any) listed on a Monitoring Software Schedule.

3.3 Monitoring Software License. To the extent the Licensed Software includes Monitoring Software: (a) Customer's license is limited to using the Monitoring Software to monitor the Monitored Equipment, as described more fully in the Monitoring Software Schedule, (b) GE or its authorized representative shall have the right upon reasonable notice to audit and inspect Customer's utilization of the Monitoring Software in order to verify compliance with the terms of this Agreement, and (c) upon GE's reasonable request, which shall occur no more than twice annually, Customer shall deliver to GE a report, as defined by GE, evidencing Customer's and other authorized users' use of the Monitoring Software. Use of the Monitoring Software to monitor equipment other than the Monitored Equipment is prohibited.

3.4 Additional Warranty Disclaimer. While the Monitoring Software provides advisory information regarding equipment condition, it is virtually impossible to guaranty that each and every fault condition can be foreseen or detected. **THEREFORE, GE EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE MONITORING SOFTWARE WILL DETECT ANY PARTICULAR FAILURE OR PROVIDE ANY PARTICULAR AMOUNT OF ADVANCE WARNING OF AN IMPENDING FAILURE OR CONDITION OF THE MONITORED EQUIPMENT.**

3.5 Additional Limitation on Liability. The Monitoring Software generates advisory information but does not perform any automated control, and GE has no control over decisions made or actions taken on the basis of any such generated information. Customer assumes total responsibility for Customer's use of the advisory information generated by the Monitoring Software. **THEREFORE, TO THE EXTENT THE LICENSED SOFTWARE INCLUDES MONITORING SOFTWARE, CUSTOMER BEARS THE ENTIRE RISK OF ANY LIABILITY ARISING OUT OR RELATING TO THE USE OF THE SOFTWARE, OTHER THAN THE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT PURSUANT TO SECTION 3.2 OF THE TERMS AND CONDITIONS TO WHICH THIS APPENDIX IS ATTACHED.**

3.6 Indemnity. In the event GE is named as a defendant in a third party lawsuit for personal injury and/or property damage alleged to be caused by Monitored Equipment of Customer on the basis that the Monitoring Software failed to detect an equipment condition that would have avoided the injury or damage, Customer will indemnify, defend and hold harmless GE in such lawsuit.

3.7 If a term expiration date is provided on the Monitoring Software Schedule, then the license granted hereunder shall terminate upon such date.

4 Term and Termination.

4.1 Customer may terminate this End User License Agreement and any license granted hereunder at any time by destroying the Licensed Software together with all copies thereof and notifying GE in writing that all use of the Licensed Software has ceased and that the Licensed Software has been destroyed.

4.2 GE, upon thirty (30) days notice, may terminate this Agreement and any license hereunder if Customer is in material breach of this Agreement or if Customer attempts to transfer or assign this Agreement without the prior written consent of GE. Within twenty (20) days after any such termination of this Appendix A, Customer shall certify in writing to GE that all use of the Licensed Software or the affected portion thereof has ceased, and that the Licensed Software or portion thereof has been returned or destroyed, in accordance with GE's instructions.

4.3 Upon termination, Customer's rights under Section 2 shall immediately cease, and neither party shall have any further obligations under this Appendix A except Sections 3 and 4 shall survive any expiration or termination and remain in effect.