



## ATHENA CONTROLS, INC (SELLER) STANDARD TERMS AND CONDITIONS OF SALE

**EXCLUSIVE AND ENTIRE:** The following Standard Terms and Conditions are intended by the parties to govern all the purchases of equipment, parts or service from Seller, and together with the specifications provided or embodied herewith, represent the entire understanding of the parties without exception. All other terms and conditions are specifically rejected, and by proceeding with the transaction in any manner, both Seller and Buyer agree that these Standard Terms and Conditions shall control. The price charged by Seller to Buyer is based on these Standard Terms and Conditions.

**GENERAL CONDITIONS:** All orders are subject to acceptance by the Seller. Seller reserves the right to make changes at any time, without notice in prices, specifications and models in the interest of advancing design technologies. The Seller will continue to service obsolete models only as parts remain available, and such service is considered by the Seller to be practical. Sensors with Precious Metal content are subject to price adjustment based on order placement timing and will be adjusted based on the current spot material cost. **FREIGHT TERMS:** Seller default freight terms are EX WORKS. We will ship pre-paid and add to your invoice at our choice of carrier's normal quoted rate. We will ship freight collect on your account with your carrier of choice. For LTL common carrier shipments, we will ship collect on your choice of carrier. International shipments are strictly quoted Ex Works (EXW) and Buyer bears all costs bringing goods to destination, including duties, fees and taxes. Seller reserves the right to charge a small handling fee to cover extraordinary administrative, packaging or shipping costs. This fee will be quoted before shipment. **RETURNS:** Equipment must arrive at seller in "Like New" condition within 60 days from the invoice date. Equipment returned during this 60-day time period will be subject to a 25% restocking fee.

**PAYMENT TERMS:** All sales are in US Dollars. Buyers with approved credit may order on open account (net 30-day payment terms). Shipments will be suspended on delinquent accounts unless satisfactory arrangements have been made and accepted in writing. A "Late Payment" charge or service charge of 2% per month will be made on monies past due. Seller accepts company checks, major credit cards (V, MC, AX) bank wires, ACH transfers and Cash in Advance. Seller does not accept COD orders.

**TAXES:** The quoted prices do not include state or local sales, duties, use, excise or similar taxes. To avoid any inconvenience, please supply us with one of the following documents:

1. A tax exemption certificate from your state or
2. A statement on your order or letterhead that your firm will pay the appropriate state/use tax in accordance with the current tax laws.

Unless we are provided with one of these documents, any such taxes imposed upon Seller may be added to our invoice by a separate item.

**TERMINATION:** In the event that this purchase is terminated by Buyer for any reason, including Buyer's failure to make partial payments as specified, any order which has been accepted by the Seller may be cancelled only with the consent of the Seller which shall be given upon the Buyer's agreement to pay Seller reasonable cancellation charges, but not less than 20%.

**WARRANTY:** Seller warrants to the original Buyer that the equipment, service, software, repair or parts supplied shall conform to the description in the quotation. Temperature Controls, Power Controls and Sensors are warranted to be free from defects of material and workmanship. They are sold subject to our mutual agreement that the liability of Seller is to replace and / or repair at its factory, provided the equipment is returned, transportation prepaid, within two (2) years of its factory ship date. Components which wear or which are damaged by misuse are not warranted. These items include temperature sensors; control points, fuses, electro-mechanical relays and triacs, Units that have been modified by a Buyer are not warranted. The warranty obligations of Seller with respect to equipment not manufactured by Seller shall conform to and be limited to the warranty actually extended to Seller by its suppliers. Notice of a claim for alleged defective equipment must be given within fifteen (15) days after Buyer learns of the defect. The defective part or parts shall be returned to Seller, freight prepaid, unless otherwise directed by Seller. THIS WARRANTY SHALL BE EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES AND SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR WARRANTIES OF ANY OTHER KIND EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE WHICH EXTEND BEYOND THE WARRANTY AS SET FORTH ABOVE. SELLER'S LIABILITY FOR ANY

AND ALL LOSSES AND DAMAGES TO BUYER RESULTING FROM DEFECTIVE PARTS OF EQUIPMENT SHALL IN NO EVENT EXCEED THE COST OF REPAIR OR REPLACEMENT, EXW OF DEFECTIVE PARTS OR EQUIPMENT. This warranty shall not apply to products which have been abused, altered, misused in application, improperly maintained or repaired, or operated other than in accordance with Seller's operating instructions.

PATENTS: Seller agrees to indemnify Buyer against any proven claim and assessed liability for infringement of any United States patent arising from the manufacture or sale of any apparatus furnished by Seller to Buyer. THE FOREGOING STATES SELLER'S ENTIRE LIABILITY FOR CLAIMS OR PATENT INFRINGEMENT. Seller shall have no liability whatsoever if the claim of infringement arises out of Seller's compliance with Buyer's specifications. Seller shall have no liability whatsoever if a claim of infringement is based upon the Buyer's use of the equipment as part of a patented combination where the other elements of the combination are not supplied by Seller, or in the practice of a patented process unless Seller supplies the process. Where the specifications, process, design are supplied by Buyer, then Buyer agrees to indemnify Seller in like manner.

PROPRIETARY RIGHTS: Unless otherwise stated herein all design, manufacturing processes, manufacturing information, vendor sources, know-how, equipment, tooling or other hardware, software, or information (collectively referred to as "resources") acquired or utilized by the Seller to produce the finished goods, and any intellectual property rights, including but not limited to patents, copyrights and trade secrets related in any way to the resources, are and shall hereinafter remain the exclusive property of the Seller, regardless of whether such resources are created solely by the Seller, or by Buyer's collaboration with the Seller, for example, where Seller utilizes Buyer's specifications to create resources, and the Buyer shall acquire or receive no rights or title therein or thereto as a result of this purchase whether or not the order provides for Seller's delivery of technical data, drawings or other information to the Buyer in addition to the finished goods. Unless Seller's prior written consent is given, in no event shall the Buyer permit such data, drawings or information to be: (1) disclosed to any third party other than the Buyer's customer; (2) used by the Buyer or the Buyer's customer for manufacture of like or similar goods; (3) used for purposes of duplicating or reverse-engineering Seller's proprietary designs or processes; or (4) used by a party other than the Buyer or the Buyer's customer for any purpose.

CONFIDENTIALITY. Except as otherwise agreed or set forth herein, all information and ideas disclosed by Buyer in connection with this order may be considered by Seller to be in the public domain. Any notice that Buyer desires Seller to handle certain information or ideas as confidential or proprietary information of Buyer must be in writing and specifically acknowledged by an officer of Seller. Buyer agrees to process the personal data of Seller only on a need-to-know basis and in accordance with applicable laws and regulations. Seller and Buyer agree that the other Party may use any contact information such as names or addresses provided by the other for purposes reasonably related to the purpose of this order and may store such information in globally-accessible databases.

SOFTWARE LICENSE. The following software terms apply to Seller's software and any modifications made by Seller thereto ("Software") whether separately packaged, embedded or installed in the products furnished by Seller hereunder:

A. Seller grants Buyer a nonexclusive, nontransferable, single machine use license to use any Software delivered to Buyer under this agreement, but only in connection with the configuration of the products and operating system for which the Software is ordered and for the end use purpose stated in the related Seller operating documentation;

B. Buyer agrees that neither it nor any third party shall modify, reverse engineer, decompile or reproduce the Software without Seller's prior written consent with the exception that the Buyer may make a single copy for backup or archival purposes in accordance with the related Seller operating documentation; and

C. Buyer agrees that Seller's name and any appropriate third party marks must be provided on or in any backup or archival copy.

In the event that the Buyer violates the forgoing, Buyer specifically agrees to return all non-embedded Software to Seller without compensation of any kind.

LIMITATION OF LIABILITY: SELLER'S TOTAL AGGREGATE LIABILITY (ARISING OUT OF OR IN CONNECTION WITH BUT NOT LIMITED TO ANY BREACH OF CONTRACT, NEGLIGENCE, TORT, LIQUIDATED DAMAGES, SPECIFIC PERFORMANCE, TERMINATION, CANCELLATION INCLUDING THE REPAYING OF THE CONTRACT PRICE OR PARTS THEREOF, FUNDAMENTAL BREACH, FAILURE

OF ESSENTIAL PURPOSE, BREACH OF WARRANTIES, MISREPRESENTATION, NONPERFORMANCE, NONPAYMENT, OR ANY OTHER) WHETHER BASED IN CONTRACT, IN TORT, IN EQUITY, ON STATUTE, AT LAW OR ON ANY OTHER THEORY OF LAW, SHALL NOT EXCEED THE PAID CONTRACT PRICE. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS OF THE AGREEMENT MAY BE BROUGHT BY BUYER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED. NEITHER BUYER NOR SELLER WILL BE LIABLE TO THE OTHER FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR INDIRECT DAMAGES OF ANY KIND OR NATURE WHATSOEVER.

THE BUYER ACKNOWLEDGES THAT THE REMEDIES PROVIDED IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES AVAILABLE TO THE BUYER AT LAW, IN CONTRACT, IN TORT, IN STATUTE OR IN EQUITY OR IN ANY OTHER THEORY OF LAWS.

INSURANCE: Buyer represents that they have a program of Insurance which adequately protects their interest, and that of their employees and agents, including damage to plant, property and equipment, personal injury of any kind, directly or indirectly related in any way to the equipment, service, repair or parts supplied by Seller. Accordingly, Buyer waives any claim against Seller for the foregoing, and on behalf of its Insurance Company, any right of subrogation in connection therewith.

TITLE AND RISK OF LOSS. Except as to Software (for which title shall not pass; the use therefore being subject to license as otherwise defined herein), title to equipment shall remain in Seller until fully paid. Notwithstanding delivery terms or payment of transportation charges and expenses, risk of loss or damage passes to Buyer upon delivery to carrier.

U.S. EXPORT CONTROLS: Seller and Buyer agree to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the Export Administration Act of 1979 and the Export Administration Regulations promulgated thereunder, the Arms Export Control Act, the International Traffic in Arms Regulations, and the sanctions laws administered by the Office of Foreign Assets Control, including the requirement for obtaining any Export License or agreement, if applicable. Without limiting the foregoing, Seller and Buyer agree that they will not transfer any export-controlled information, data, or services to each other or another party (including transfer from or to foreign persons employed by, associated with, or under contract to that party or its affiliated companies), without the authority of an Export License, agreement, or applicable exemption or exception.

BUSINESS PRACTICE. Buyer and Seller shall comply with the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and other applicable anti-corruption laws and regulations. Specifically, Buyer and Seller warrant that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, or authorize to give, any payments, gifts, property, or thing of value, directly or indirectly, to any person, official, employee or representative of any government or agency or instrumentality thereof, or to any employee, agent, or representative of the other Party, for the purpose of securing any business or influencing such person with respect to the terms, conditions, or performance of any contract, including this order. If Buyer breaches the terms of this section, Seller may immediately terminate this order without any liability.

FORCE MAJEURE: If the performance of any part of this contract by Seller is rendered commercially impracticable by reason of any strike, fire, flood, accident, or any other contingency, the non-occurrence of which was a basic assumption of this contract including war, embargo, government regulation, or any unforeseen shutdown of major supply sources or other like causes beyond the control of Seller such as cannot be circumvented by reasonable diligence and without unusual expense, Seller shall be excused from such performance in whole or in part to the extent that it is prevented and for as long a period of time as these conditions render Seller's performance commercially impractical.

LAW: This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania USA, with venue exclusively in the US District Court of Pennsylvania or the Pennsylvania Commonwealth Courts in Montgomery County, PA. Seller and Buyer specifically accept INCOTERMS 2010 for the purchase of goods and services between the Parties. The Convention for the International Sale of Goods (CISG) is expressly rejected.

SEVERABLE AND INDEPENDENT PROVISION: WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH, FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED ITS ESSENTIAL PURPOSE, ALL OTHER LIMITATIONS OF LIABILITY AND EXCLUSION OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT. ALL SUCH PROVISIONS SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS OF THIS AGREEMENT MAY BE BROUGHT BY BUYER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.