GENERAL TERMS AND CONDITIONS OF SALE OF YOKOGAWA DEUTSCHLAND GmbH, HAVING ITS REGISTERED OFFICE AT BROICHHOFSTRASSE 7-11, 40880 RATINGEN, GERMANY (HEREINAFTER REFERRED TO AS “YOKOGAWA”)

These General Terms and Conditions of Sale (hereinafter referred to as “GTCS”) are applicable to all offers, quotations, agreements and orders for the sale of Products, which for the purpose hereof includes the licensing of Software, and the providing of Services by Yokogawa to its Customers.

Any provisions in Customer’s general conditions of purchase and/or sale or amendment(s) made by Customer to the present GTCS are hereby explicitly rejected. Any such additions or amendments to and deviations from these GTCS shall be agreed in writing.

1. DEFINITIONS

CUSTOMER: the legal entity issuing a Purchase Order to Yokogawa.
DELIVERY DATE: the date when Yokogawa shall deliver the Products and/or has executed and/or provided the Services.
FUNCTIONAL DESIGN SPECIFICATION OR FDS: the functional specifications, drawn up by Yokogawa on the basis of data supplied by Customer.
HARDWARE: all products, apparatuses, systems, installations and peripherals, by means of which data are processed or recorded on data carriers, together with components of the same.
PARTY OR PARTIES: Yokogawa and/or Customer individually or collectively as the case may be.
PACKING: all hardware, Software and documentation, test- and measurement equipment, analyzers, flow- pressure- or temperature meters, recorders, transmitters, sensors or any other good specified in the Quotation, not consisting of Services.
PURCHASE ORDER: a written order issued by Customer for the purchase of Products or Services as accepted in writing by Yokogawa. As far as Software is concerned, “purchase order” means acquisition of a license to use the involved Software and “Customer” means “licensee”.
QUOTATION: the offer, proposal or quotation (however named) including scope, specifications, functional requirements, quantity, schedule, conditions, drawings and other related documents attached thereto or referred therein, issued by Yokogawa for the sale of Products or Services.
SERVICES: all activities performed by Yokogawa or under Yokogawa’s direction for Customer, as specified in the Quotation, not consisting of the supply of Products.
SITE WORK: Services to be performed by Yokogawa or under Yokogawa’s direction which are not performed at Yokogawa premises.
SOFTWARE: machine readable object code, including executable programs, firmware and/or Yokogawa-supplied data bases, user documentation in written or electronic object code form, recorded on forms, tapes, magnetic tapes, disks and all other media on which data are or have been or are recorded, including updated parts of such Software, new versions and/or adaptations.
THIRD PARTY PRODUCTS: Non-Yokogawa products which are delivered to Yokogawa’s premises for the purpose of a) reselling b) integration with the Products or c) the testing of the Products.
VARIATION ORDER: a written document issued by Customer and accepted in writing by Yokogawa for the variation of an existing Purchase Order.

2. QUOTATION AND PURCHASE ORDER

Any written quotation issued by Yokogawa shall be without engagement and the price stated therein shall remain valid for a maximum period of sixty (60) days calculated from the date of the Quotation. Technical specifications, dimensions, designs, drawings, illustrations, captions, use statistics, weights etc. used by Yokogawa in a Quotation, are drawn up by Yokogawa to the best of its ability, but do not bind Yokogawa unless expressly agreed to in writing. Yokogawa shall be free (at its sole discretion) to accept or refuse Customer’s Purchase Order.

3. DELIVERY AND PRICE

All prices for the delivery of Products are calculated for deliveries ex Yokogawa registered office and all deliveries are made for deliveries within the “EE= Ex Works” and for deliveries outside the “EE Works” EFTA and EU “FCA” in accordance with the ICC – Incoterms. Prices for Products and Services are calculated, applying then prevailing rates in the Yokogawa price list. All prices and rates are exclusive of VAT, transport, packaging, travel, lodging and insurance, import duty and other taxes, levies or costs.

In the event of late delivery, Yokogawa shall notify the Customer in writing as soon as possible, identifying the reasons for the delay. The delivery time is calculated from acceptance of Customer’s Purchase Order by Yokogawa, or, in case it has been agreed that Customer shall be responsible for the delivery of the Products or shall have agreed to the delivery of the Products within a fixed period, from the day the Customer has received the relevant Customer payment. The Delivery Date may be extended if Customer and/or Yokogawa request Variation Orders.

4. PAYMENTS

Payment shall be made by Customer within thirty (30) days from invoice date. Payments must be made without any deduction or set-off to a bank or postal account, designated by Yokogawa. The Customer is entitled to declare set-off (Aufrechnung) only for counterclaims which are uncontested by Yokogawa or which have been recognized by declaratory judgment. All bank charges shall be for Customer’s account.

If Customer does not meet its payment obligations promptly or in full, Customer shall, without any further notice being required, be in default. In the prevailing case, Customer shall owe Yokogawa, with effect from the due date, interest equal to the lesser of 1% per month or the statutory default interest. The foregoing shall apply regardless of Yokogawa’s right, in case of default or the statutory default interest. The foregoing shall apply regardless of Yahuma’s right, in case of Customer’s late payment, to suspend the further execution of the Purchase Order or, to cancel the Purchase Order. In case the Purchase Order has not yet been executed, to terminate same forthwith without any notice, without prejudice to Yokogawa’s right in the prevailing case to claim full compensation for any loss suffered.

5. PACKING

Packing of the Products shall be in accordance with Yokogawa’s standard procedures.

6. FUNCTIONAL DESIGN SPECIFICATION (FDS)

Delivery of the FDS shall be deemed to have taken place at the moment the FDS has been sent to Customer. Customer acknowledges that the content of the FDS is the definitive approved version of the FDS for Products and/or Services. The FDS shall be approved by Customer within the agreed period. From the date the FDS has been agreed, Customer can no longer derive any rights from the data as supplied by Customer previously.

7. ACCEPTANCE TEST

Insofar as applicable on the relevant Purchase Order and in addition to Customer’s statutory obligations under Section 377 of the German Commercial Code (“HGB”), Factory Acceptance Test (FACT) means the testing of the Products and/or Services according to Yokogawa’s standard test procedures, based on the FDS as approved by Customer. The FACT is carried out on Yokogawa’s premises, eyewitnessed by Customer to verify the compliance of the delivery with the contractual requirements and the FDS. If Customer, despite prior invoice and/or proof-of-transport, presents the Products and/or Services which is deemed to have taken place in Customer’s presence. Completion of FAT shall result in Customer’s release for shipment, subject to all outstanding invoices having been paid by Customer, when applicable. Site Acceptance Test (SAT) is the site test to verify that no deterioration occurred to the Product(s) during shipment and installation of the delivery on Customer’s site.

8. SITE WORK

In respect of Site Work to be performed by Yokogawa, Customer shall ensure the following. Site Work can be commenced and continued unhindered and undisturbed from the moment of arrival of Yokogawa’s personnel.

– Site Work can be performed during and outside normal working hours.
– Working conditions and payment conditions for the proper performance of the Site Work are present.

9. VARIATION ORDERS

In case of variations which affect or may affect a Purchase Order, each Party shall notify the other Party in writing. Upon Yokogawa’s receipt (or issuance) of such notification, Yokogawa shall, upon Customer’s written request, make available its view to Customer in writing: i) whether or not such variations are acceptable, ii) price- and/or schedule impact (if any) and (iii) any other commercial impacts or conditions (if any). Only upon receipt of Customer’s written confirmation of acceptance of Yokogawa’s informed/proposed impacts and conditions and upon Customer’s compliance with any consequent obligations (if applicable) such as advanced payments, amendments of payment vehicles or the submission of additional information, Yokogawa shall incorporate and proceed with the above variations after signature by both Parties of the relevant Variation Order. In case such variations result in loss of time and/or additional costs, Yokogawa shall be entitled to extend the delivery time and/or to a reimbursement of additional costs, even if the variations are cancelled by Customer afterwards.

10. RESERVATION OF TITLE AND TRANSFER OF RISK

Yokogawa retains the title to all Products and/or results of the Services delivered by Yokogawa until the Customer fulfilled all claims arising out of the current business relationship, including all claims relating to the current account balance and current indemnification claims of contingent liabilities accepted by Yokogawa for the Customer.

The Customer shall keep the reserved Products (“Vorbehaltswaren”) in safe custody for Yokogawa and shall inform Yokogawa without undue delay in writing about any (attempted) plucking or any destruction or other loss of the reserved Products by third parties and about any damages to the reserved Products.

If, by combining or processing the reserved Products, Yokogawa’s ownership expires, the Customer hereby transfers to Yokogawa his ownership rights to the new goods in proportion to the invoice value of the reserved Products and shall keep them in safe custody for Yokogawa free of charge. Yokogawa hereby accepts such transfer.

The reservation of title of this section shall not be valid according to the laws of the country, in which the reserved Products are situated, a security shall be deemed to be agreed, which according to the laws of the country of this country results best the purpose of the relevant Variation Order. The Customer shall perform any acts necessary for this purpose upon Yokogawa’s request.

Risk to the Products and/or results of the Services shall transfer to Customer upon delivery.

11. INFRINGEMENT CLAIMS

Yokogawa shall indemnify and hold Customer harmless from and against any infringement of any intellectual property right, made against Customer and (alone or in combination with the Products and/or Services) to which Yokogawa has or may be reasonably requested in connection with the defense or settlement of all such claims,

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If according to a final judgment, Customer shall not be entitled to the further use of the Product under the Purchase Order or any part thereof or any share or interest therein, without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.

Yokogawa may subcontract part or all of its obligations under a Purchase Order, provided Yokogawa shall remain fully liable and responsible for the acts of the subcontractor and shall be bound by the terms and conditions of these GTCS and the relevant Purchase Order.

22. GOVERNING LAW AND DISPUTE RESOLUTION

These GTCS shall be governed by and interpreted in accordance with the laws of the country where Yokogawa has its registered office. Applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.

General terms and conditions of sale of Yokogawa Deutschland GmbH, having its registered office at Broichhofstrasse 7-11, 40880 Ratingen, Germany (hereinafter referred to as “Yokogawa”)