

Terms & Conditions

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SECURITY

AES® Corporation places the utmost importance on protecting information transmitted via the Site and will take security precautions to protect all such information; however, AES® Corporation cannot guarantee that any electronic commerce is totally secure. AES® Corporation will take measures to secure and protect all customer-specific information from loss, misuse, and alteration.

Terms of Purchase

1. AES® Corporation (“AES®”) Conditions of Sale: Buyer's purchase order or quotation shall be subject only to the terms and conditions set forth herein, notwithstanding any terms and conditions that may be contained in any purchase order, acknowledgement or other form by Buyer. Such terms and conditions of Buyer shall not bind AES® unless accepted by it in writing whether or not they materially alter this order. This order shall be governed in all respects by the laws of the State of California. In the absence of a written agreement, an acceptance of any goods received by Buyer filling a purchase order to AES® shall constitute an acceptance of these terms and conditions.
2. General Terms of Sale: Payment: Net 10/Net15 days, on approved credit. AES® does not accept payment by American Express, MasterCard or Visa. FOB: Shipping point
3. Quotation Expiration: All quotations are valid for 30 days from quotation date, unless otherwise specified.
4. Selling Price: The selling price on back orders, and as shown on AES®'s quote is subject to change without prior notification and will be priced in accordance with the price list in effect at the time of shipment.
5. Shipping Discrepancies: Errors in shipping quantity or damage to shipped products must be reported within ten (10) business days of receipt of product, or will not be acted upon.

6. Return for Credit or Exchange: All returns of non-defective material for credit or exchange (not due to a Seller error) must be authorized in advance and in writing, by the Seller. Item(s) must be returned within 30 days of receipt. Item(s) must be current revision, unused, in original unopened packaging and in sellable condition. Return of such items is subject to a minimum return processing fee of 25% of the extended sales price; minimum fee is \$75. Non-standard, modified, "special order", "special value" or "promotional" items and custom test instruments, are non-cancelable and non-returnable. Requests for return of non-defective material for credit or exchange resulting from a seller error (i.e., mis-shipment of material or quantity) shall be handled at no charge to Buyer. No credit will be issued for defective items unless the manufacturer deems the items to be a seller, manufacturer or factory error. All RMA's (Return Material Authorization) expire thirty (30) days after authorization notification and shall not be renewed.

7. Delivery: AES® shall not be liable for any delays in or failure of delivery due to acts of God or public authority, labor disturbances, accidents, fires, floods, extreme weather conditions, failure of and delays by carriers, shortages of material, delays of suppliers, or any other cause beyond AES's control. In no event shall AES® be liable for consequential or special damages arising out of a delay in or failure of delivery. Buyer's requested delivery date or schedule shall be approximate and subject to AES®'s acceptance.

8. Warranty: AES® provides no warranty with respect to the goods sold hereunder. AES® agrees to use its best efforts to assist Buyer in enforcing any warranty provided by the Manufacturer(s) of the goods. The repair or replacement of defective products under warranty is at the sole discretion of the manufacturer; AES® does not replace returned defective products with new products. In no event shall AES® or AES®'s supplier(s) be liable for consequential or special damages arising out of a defect in material or workmanship.

9. Nuclear Indemnity: If the goods are to be used in any nuclear installation or activity, the Buyer or the ultimate user (i) shall secure and maintain the maximum nuclear property damage liability insurance protection available (ii) shall enter into and maintain a government indemnity agreement, and (iii) shall waive and require its insurers to waive all rights of recovery or subrogation against AES® and shall indemnify and hold AES® harmless from and against any claims, losses or damages (including consequential or special damages of any kind) arising out of a Nuclear Incident as that term is defined in the Atomic Energy Act of 1954, as amended.

10. Taxes: Any sales, use, excise or similar tax payable by AES® which is or may be imposed by any taxing authority upon the sale or delivery of goods covered by this order, or any increase in rate of any such tax not in force, shall be added to the sales price; if not collected at the time of payment of sales price, Buyer will hold AES® harmless.

11. Attorneys' Fee: In the event that default should occur in the payment for the goods sold hereunder, Buyer agrees to pay AES®'s reasonable attorneys' fees and court costs incurred by AES® to enforce payment thereof.

12. Finance Charge: 1 ½% monthly (18% per annum) on past due accounts.

Terms and Conditions Relating to the Engineered Test System

CONTROLLING PROVISIONS: No terms and conditions other than the terms and conditions contained herein shall be binding upon Seller unless accepted by it in a writing signed by the Seller's Branch Manager. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. Buyer will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or services described herein are shipped or an invoice is presented in connection with the said goods and/or services.

1. General: AES Corporation (including, without limitation, any successors, assignees or subsidiaries thereof) is herein referred to as “**AES**” and the entity purchasing certain equipment and materials (collectively, the “**System**”) referred to as “**Customer.**” These terms and conditions (the “Terms and Conditions” or “**Agreement**”), the Services Agreement or accompanying quotation, as applicable, and all documents incorporated by specific reference herein or therein constitute the complete and exclusive statement of the terms of the agreement (“**Agreement**”) governing the sale of certain goods hereinafter referred to as the “**System**” by AES to Customer. Customer’s acceptance of the Services and/or System will manifest Customer’s assent to the Agreement. No terms stated by Customer in any purchase order, acceptance or acknowledgement will become part of the Agreement unless expressly agreed upon in writing by AES, and AES hereby objects to and rejects any additional or different terms in Customer’s prepayment, purchase order, acceptance, acknowledgement or other forms. AES reserves the right in its sole discretion to refuse orders.

2. Prices and Taxes: All prices are based upon the material cost and labor rates in effect on the date of the quotation, unless an earlier date is indicated on the face of the quotation; are for Customer guidance in submitting orders; and are subject to change with notice. On requirements contracts, which are orders that are subject to periodic releases and cover requirements of Customer for a specific future period of time, prices may be adjusted as labor rates and material costs change. Customer agrees that the quantities committed affect the price of such System, and that if Customer hereafter makes any change in the quantities committed from those shown on the front of the purchase order, the price of such System shall be adjusted to meet AES’s price applicable to the quantities committed as changed. Each quantity committed must be scheduled by Customer for shipment within 180 days following the initial shipment.

All prices are subject to change by AES without notice. All prices are exclusive of any costs of any sales, use, value added, excise, gross receipts, business and occupation or

similar present or future taxes imposed by any governmental body on the performance of Services or the sale, delivery, use, or other handling of Parts or in connection with any related or contemplated transactions, which costs are to be borne by Customer.

3. Excuse of Performance; Force Majeure: AES is not liable for non-performance or delays in performance due to acts of God; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; equipment breakdown or malfunction; unforeseen circumstances; acts or omissions of Customer, or any events or causes beyond AES's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the Agreement will otherwise remain in effect.

If AES determines that its ability to supply the total demand for System, or to obtain material used directly or indirectly in the rendering of Services or the manufacture of the System, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, AES may allocate its available supply of the System or such material (without obligation to acquire other supplies of any such System or material) among itself and its purchasers on such basis as AES determines to be equitable without liability for any failure of performance which may result therefrom.

4. Limited Warranty: Subject to the limitations of Section 5, AES warrants that the System engineered by AES will be free from defects in material and workmanship under normal use and regular service and maintenance for a period of one (1) year from the date of shipment of the System by Seller, unless otherwise specified by Seller in writing. Any products purchased by AES from a third party for resale to Customer will carry only the warranty extended by the original manufacturer. **EXCEPT AS SPECIFIED ABOVE, PARTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 4 AND THE WARRANTY SET FORTH IN SECTION 6 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY AES WITH RESPECT TO THE SERVICES AND PARTS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO AES IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT THE PARTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY AES FOR CUSTOMER'S OR ANY OTHER PERSON'S USE OR PURPOSE.**

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, Customer's or any other person's negligence, unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or

application or any other cause not the fault of AES, and, unless otherwise specified by AES in writing, This warranty ONLY applies to the original purchaser of the Test System. AES has no duty to install, inspect, observe, advise and/or warn as to the Test System, or as to any other products or conditions located on Customer's property or work site, at the time of sale, delivery, or otherwise. To the extent that Customer or its agents has supplied specifications, information, representation of operating conditions or other data to AES that are used in the selection or design of the System and the preparation of AES's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Customer, any warranties or other provisions contained herein which are affected by such conditions are null and void.

If within thirty (30) days after Customer's discovery of any warranty defects within the warranty period or within ten (10) days after shipment for quantity discrepancies, Customer notifies AES thereof in writing, AES shall, at its sole option and as Customer's sole remedy for any such alleged defect or discrepancy, repair, correct or replace F.O.B. point of manufacture, or refund no more than 25% of the purchase price for that portion of the System found by AES to be defective or missing. Failure by Customer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Customer's claim for such defects or shortages, and AES shall have no further liability relating thereto. System repaired or replaced during the warranty period will be covered by the foregoing warranty for the remainder of the warranty period or ninety (90) days from the date of shipment, whichever is longer.

Customer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of System, either alone or in combination with other products/components, and shall indemnify, defend, and hold AES harmless from any such loss, damage or injury.

The foregoing warranty does not apply to conditions over which AES has no control, including, without limitation, contamination, incorrect power supply, pressures in excess of recommended maximum, products damaged or subjected to voltage, humidity, or temperature outside of specified range, accident, abuse or misuse after shipment from AES, products altered, disassembled or repaired by anyone other than , AES authorized service personnel or persons so designated in writing by AES's Service Department prior to commencement of said work.

Types of failures which are not attributable to defects in materials and/or workmanship and which are not considered by AES as part of its warranty include, but are not limited to; (i) damages due to deterioration during periods of storage by the Buyer prior to installation and operation, (ii) damage of any kind from erosive or corrosive action of any gases or liquids handled by the system, (iii) damage attributable to accident, abuse, neglect, (iv) operating beyond the recommended maximum flow, pressure, temperatures, voltage or humidity or below the recommended voltage, (v) improper filtration, (vi) repairs by unauthorized service personnel, (vii) use of the product in a manner or purpose for which it was not designed or intended by AES, (viii) misalignment, mis-wiring, high vibration, and/or (ix) ordinary wear and tear.

5. Limitation of Remedy and Liability: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 6) IS LIMITED TO, AT AES'S SOLE OPTION, REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF A PRO-RATED PORTION OF THE PURCHASE PRICE, BASED ON A STRAIGHT LINE AMORTIZATION OF THE PURCHASE PRICE FOR THE SYSTEM REDUCED BY THE TIME ELAPSED FROM THE DATE OF PURCHASE UNTIL THE DATE OF SUCH BREACH, DIVIDED BY THE ONE YEAR WARRANTY PERIOD.

AES IS NOT LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN LAW, EQUITY, CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL AES'S LIABILITY TO CUSTOMER AND/OR END USERS FOR ANY DAMAGES HEREUNDER (INCLUDING, WITHOUT LIMITATION, DAMAGES IN AN ACTION FOR CONTRIBUTION OR INDEMNITY) EXCEED THE PRICE PAID BY CUSTOMER FOR THE SPECIFIC SYSTEM PROVIDED BY AES GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. CUSTOMER AGREES THAT IN NO EVENT SHALL AES'S LIABILITY TO CUSTOMER AND/OR END USERS INCLUDE INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES. The term "consequential damages" includes, but is not limited to, loss of anticipated profits; business interruption; loss of use, revenue, reputation or data; costs incurred, including, without limitation, costs for capital, fuel, or power; loss or damage to property or equipment; and environmental clean-up. Any action arising hereunder or relating hereto, regardless of the form of the action (whether based in law, equity, contract, infringement, negligence, strict liability, other tort or otherwise), is subject to the notice requirement set forth in Section 4 hereinabove and must be commenced within one (1) year after the date of shipment or it shall be barred.

Unless otherwise specified by AES in writing, it is expressly understood that any technical advice furnished by AES with respect to the use of the System is given without charge, and AES assumes no obligation or liability for the advice given or not given, or results obtained, all such advice being given and accepted at Customer's risk.

Customer expressly acknowledges and agrees that AES has set its prices and entered into the Agreement in reliance upon the limitations of liability and other terms and conditions specified herein, which allocate the risk between Customer and AES and form a basis of this bargain between the parties.

6. Patents and Copyrights: Subject to the limitations of the second paragraph of Section 5, AES warrants that the System sold, except as are performed or delivered specifically for Customer according to Customer's specifications, do not infringe any valid United States patent or copyright in existence as of the date of performance and/or shipment.

This warranty is given upon the conditions that (i) Customer promptly notify AES of any claim or suit involving Customer in which such infringement is alleged and cooperate fully with AES, and (ii) permit AES to control completely the defense, settlement or compromise of any such allegation of infringement. AES's warranty as to use patents only applies to infringement arising solely out of the inherent operation, according to AES's specifications and instructions of such System. In the event such System are held to infringe such a United States patent or copyright in such suit, and the use of such System is enjoined, or in the case of a compromise or settlement by AES, AES will have the right, at its option and expense, to procure for Customer the right to continue using such System, or modify such System to become non-infringing, or grant Customer a credit for the value of any prepaid System. In the event of the foregoing, AES may also, at its option, cancel the Agreement as to future performance of such Services or future deliveries of such Parts without liability.

7. Confidential Information: Any and all information concerning the System or the transaction covered hereunder which AES discloses to Customer, or which Customer otherwise obtains knowledge of hereunder, shall be deemed to be "Confidential Information", remain the exclusive property of AES, not be used for any other purpose other than that which it has been provided and not be made available to third parties without AES's express written consent. Confidential Information shall also expressly include training materials, product information technical documents and computer data files and programs, In regard to the Confidential Information set forth in the prior sentence, it shall also (a) not be copied, filmed, audio- or video-taped (additional copies may be purchased from AES), and Customer hereby agrees to implement appropriate security measures to protect this Confidential Information from unauthorized use, access or disclosure. Upon termination of this Agreement or its breach by Customer, AES may terminate Customer's right to use the Confidential Information and require the destruction of, or secure the return of the Confidential Information and other materials (including translations) embodying the Confidential Information in any tangible form, including any copies, authorized or otherwise, thereof.

Any information, suggestions or ideas transmitted by Customer to AES in connection with performance hereunder are not to be regarded as proprietary or confidential unless expressly provided in a writing signed by AES. AES prior to shipping the custom test system will request a third party or to the end user to sign an NDA, AES will exercise its right to cancel any contract or purchase order in the event that a third party or end user does not sign or is unwilling to sign an NDA. AES will reserve its right to terminate an agent or distributor that fails to performs it's duty in requesting end users or third parties to sign AES NDA.

8. Software: In the event the Test System covered by Customer's order includes or incorporates any software used for the control of the System, regardless of manufacturer, or software used to set up, modify or analyze instrumentation or components incorporated into the System (collectively, "Software") or l programs, including but not limited to code written to a software program for use in controlling the System and

equipment which interfaces with the System or provides computations of factors for the purpose of net oil calculations ((collectively, "Programs"), then Customer's rights with respect to such Software and Licensed Program shall be governed by the terms of the Software provider. Unless expressly excluded in writing by Valin herein, any and all Software and/or Programming Logic included with the System will be treated by Customer as confidential information proprietary to AES..

9. Special Tooling: Notwithstanding any tool, die or pattern charges, all tooling and related items are and remain the property of AES.

10. Shipment and Delivery: Delivery dates are approximate and are based upon prompt receipt of all necessary information from Customer. Shipments are made F.O.B. AES's shipping point. Customer shall pay all rigging, draying, insurance, and transportation charges. AES shall ship in accordance with Customer's shipping instructions, provided that AES deems at its sole discretion that the Customer's instructions are deemed suitable. AES reserves the right to ship by the most appropriate method. Risk of loss of damage and responsibility passes from AES to Customer upon receipt by carrier. Any claims for shortages or damages suffered in transit are the responsibility of Customer and will be submitted by Customer directly to the carrier. Shortages or damages must be acknowledged to AES and signed for at the time of delivery. While AES will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by AES, all shipping dates are approximate and not guaranteed. AES reserves the right to make partial shipments. AES, at its option, is not bound to tender delivery of any System for which Customer has not provided shipping instructions or refused to sign NDA. If the shipment of the System is postponed or delayed by Customer for any reason, Customer agrees to reimburse AES for any and all storage costs and other additional expenses resulting therefrom.

In the event Customer requests changes in specifications after these Terms and Conditions have become binding, such changes shall become part of the purchase order only upon written acknowledgement by AES in its sole discretion, whereupon delivery dates will be reasonably extended, AES shall be compensated for all costs incurred in connection with such change and the price shall be adjusted to maintain AES's anticipated profit margin.

11. Installation: The System shall be installed by and at the expense of the Customer unless otherwise expressly stipulated in the applicable purchase order. Upon request, AES will provide a competent technician to supervise the setting up and/or starting of the System. The Customer shall pay AES for the service of said technician at the rate stipulated plus all reasonable costs and expenses, including, without limitation, travel-related costs. The technician shall be considered an employee of AES, but AES shall not be liable for injury to persons or damage to property occurring in the course of, or as a result of, the technician's presence or any actions relating thereto upon the premises of Customer.

AES shall not be liable for material and equipment or the acts of Customer's employees,

agents or contractors, nor has it any responsibility for the performance of System not set up or started under the supervision of its technician unless deficient performance is caused by defects independent of the installation and within the scope of the warranty set forth in section 4.

AES assumes no responsibility for damages due to deterioration during periods of storage by the Customer prior to installation and operation. If provided for in the proposal or for an extra charge, AES will, if notified, prior to shipment that the System are to be stored, apply preservations to minimize the deterioration.

AES reserves the right to make changes in design or additions to or improvements in its products without liability to install such changes, additions or improvements in any product manufactured prior thereto.

12. Terms of Payment: Except as otherwise specified by AES in writing, terms of payment are 10 (15) days from date of invoice, with no discount allowed for earlier payment and no right of set-off for amounts due or allegedly due from AES to Customer. AES reserves the right to alter or suspend credit terms, require C.O.D. or advance payment, whenever AES has reasonable doubt as to Customer's credit worthiness. If Customer becomes delinquent in payment or refuses to accept C.O.D. shipments, AES shall have the right, in addition to any other right it may have, to cancel any order of Customer's, withhold further deliveries, and declare all unpaid amounts for System previously delivered immediately due and payable. Each shipment shall be considered a separate and independent transaction and payment therefor shall be made accordingly. Amounts past due may be subject to the highest interest charge permitted by law, not to exceed 1.5% per month. Customer shall be liable to AES for all costs and expenses incurred by Valin as a result of non-payment or delinquent payment by Customer, including collection costs, interest, and reasonable attorneys' fees. All invoices are due and payable in cash in United States of America funds.

In the event AES consents to delay shipments after completion of the System or any portion thereof, payment shall become due upon notice to Customer that such System is ready for shipment and such System shall thereafter be held at Customer's risk.

Customer grants to AES a purchase money security interest in the System, services and/or equipment supplied hereunder. Failure of Customer to make any payment when due shall entitle AES, in its sole discretion, to declare all obligations of Customer immediately due and payable; in such event AES shall have all the rights and remedies of a secured party under applicable law. Customer agrees to execute upon request such documents which may be deemed necessary or appropriate by AES to create, perfect and maintain the perfection of its security interest under applicable law. Customer hereby appoints AES as its attorney-in-fact to sign and file a financing statement and such other documents as AES deems necessary to create, file, perfect and maintain the perfection of its security interest.

In the event Customer fails to fulfill the terms of payment of any invoice, or if the

financial responsibility of the Customer shall become impaired or unsatisfactory to AES, or if necessitated by any acts of any governmental authority, including financial disclosures mandated by Section 409 of Sarbanes Oxley Act, AES reserves the right to change terms of payment and/or defer or discontinue further shipments without prejudice to any other lawful remedy, until past due payments are made and satisfactory assurances of Customer's credit standing are received by AES or until such acts or requirements of such governmental authority shall have been complied with.

AES also reserves the right to cancel the contract in the case of any of the events described in the above paragraph, in which event Customer shall compensate AES for any commitments, obligations, expenditures, expenses, and costs including attorney fees, AES may have incurred in connection with the contract. Each shipment by AES shall be considered a separate transaction and if payment is not received therefore within the periods specified herein, AES at its option may bring a separate suit to recover the contract price of each such shipment.

AES shall have the right to demand assurance from Customer that payment in full will be made in any event that; (i) Customer is delinquent in making payment hereunder for a period of 30 days after payment was due, or (ii) Customer fails to meet his obligations with one or more other suppliers as Customer's obligations to such suppliers occur, or (iii) a writ of attachment or judgment is entered in any court of competent jurisdiction. On written demand for assurance by AES, Customer shall, within five (5) days after receipt thereof, furnish, in amount sufficient to secure the full payment of the balance of any monies due hereunder on account of the purchase price, either a penalty bond issued by a competent surety company, or financial security, bank irrevocable letter of credit, or other liquid collateral to be held in escrow by an attorney at law as designated by AES, to secure the payment of the purchase price aforesaid.

All funds received by or owed to Customer from a third party, to the extent that such funds relate to System furnished by AES pursuant to this Agreement, shall be held in trust for the benefit of AES ("**Trust Funds**"). Until such time as AES has been paid in full for the System supplied hereunder, Customer shall account to AES, and within seven (7) days from Customer's receipt of such Trust Funds from a third party, pay over to AES all such Trust Funds received by Customer. Customer further agrees to direct any third party holding any such Trust Funds to pay over such funds to AES upon AES's request. Customer shall retain no greater percentage or amount from the AES than that retained from Customer by any third party to the extent that such funds relate to System furnished by AES pursuant to this Agreement.

All waivers executed by AES shall be effective only to the total dollar amount of payments actually received without any bankruptcy filing ninety (90) days thereafter. Customer agrees that AES retains its mechanic's lien, payment bond or other legal rights for unpaid deliveries, regardless of what other documents have been presented to AES for signature that may imply otherwise. Customer further agrees that AES has the right to determine, in its sole discretion, how to apply payments, and which invoices to pay with all payments, received on account, despite any advice to the contrary.

13. General Provisions: These Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of the Agreement. No change, modification, rescission, discharge, abandonment, or waiver of the Agreement is binding upon AES unless made in writing and signed on its behalf by a duly authorized representative of AES. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the Agreement is binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms are applicable to the Agreement by AES's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If the Agreement is deemed an acceptance of a prior offer by Customer, such acceptance is expressly conditional upon Customer's assent to any additional or different terms set forth in the Agreement. If any provision of the Agreement is invalid or unenforceable in any circumstances, its application in any other circumstances and the remaining provisions of the Agreement are not affected thereby. No waiver by either party with respect to any breach or default or of any other right or remedy, and no course of dealing, is deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by AES in any quotation, acknowledgment, or publication are subject to correction.

All notices, demands, or consents required or permitted under the Agreement shall be in writing. Notice is considered delivered and effective when (i) personally delivered or sent by facsimile or electronic mail, if, in the case of the latter two, such transmission generates a receipt upon being sent; (ii) the day following transmission if sent by facsimile followed by written confirmation by registered overnight carrier or certified United States mail; or (iii) the day after posting when sent by registered private overnight. Notice will be sent to the parties at the addresses as will be given by either party to the other in writing.

14. Applicable Law and Forum: The validity, performance, and all other matters relating to the interpretation and effect of the Agreement are governed by the law of the State of California, without regard to its conflict of laws principles. The U.N. Convention on Contracts for the International Sales of System does not apply to the Agreement. The exclusive jurisdiction and venue for all actions arising out of the Agreement, including any amendments or changes thereto, is only in a state or federal court located in the County of San Diego, State of California and Customer agrees to submit to such jurisdiction and venue.

Customer hereby represents and warrants to AES that it has complied with all local, state and federal laws and regulations; including but not limited to the Trade Practice Rules of the Federal Trade Commission, applicable to this Agreement.

15. Changes, Returns and Cancellations: Customer may request, and AES shall accept, reasonable changes or additions to a purchase order, reflecting modifications in, without limitation, design, control philosophy, components, Software, Programs quantity or delivery dates, in a scope of work. If the changes or additions are accepted by AES, AES may revise the price and delivery dates. Customer shall be subject to a service charge equal to AES's estimate of the actual damages, which will be incurred by AES on account of Customer's change including but not limited to AES's cost of providing and restocking such goods if appropriate. In addition, any such change by Customer establishing an alternate delivery date greater than thirty (30) days from Customer's original order date will constitute a new order and be subject to new pricing, terms and condition.

In the event Customer desires to return System, prior written approval of an authorized representative of AES at AES's offices located in San Diego, California is required. In the event of approval of a return request, (i) any allowed outgoing prepaid freight costs will apply, (ii) all returns must be shipped freight prepaid at Customer's expense, and (iii) Customer must pay AES's return and restocking charge. Customer may cancel orders only upon reasonable advance written notice and upon AES's approval and payment to AES of AES's cancellation charges which include, among other things, all costs and expenses incurred and, to cover commitments made by AES and a reasonable profit thereon. Once construction of the System has commenced, AES reserves the right to assess cancellation charges up to the full amount of the contract. AES's determination of such cancellation charges shall be conclusive.

AES reserves the right to change designs and specifications for System without prior notice to Customer, except with respect to System being made-to-order for Customer. AES has no obligation to install or make such changes in any System manufactured prior to the date of such change.

16. Assignment: Customer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of AES, and any such assignment or delegation, without such consent, is void. For purposes of this Section 16, an assignment shall be deemed to include a transfer by operation of law or a change in the ownership of twenty five percent (25%) or more in the shares in any one or series of transactions of Customer .

17. Drawings: AES's documentation, prints, data, specifications, and drawings (collectively, "Documents"), including, without limitation, the underlying technology, furnished by AES to Customer in any media in connection with the Agreement are the property of AES and AES retains all rights, including, without limitation, exclusive rights of use, licensing and sale, and Customer may not disclose or otherwise the Documents without AES's express prior written consent. Notwithstanding the foregoing, if Customer is not in default of this Agreement, AES hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to the Documents solely in connection with its use of the System.

18. Export/Import: Customer agrees that all applicable import and export control laws, regulations, orders and requirements, including, without limitation, those of the United States, and the jurisdictions in which AES and Customer are established or from which System may be supplied, applies to their receipt and use. In no event will Customer use, transfer, release, import, or export System in violation of such applicable laws, regulations, orders or requirements.

19. Survival: This Agreement shall terminate upon the last of (i) the acceptance of delivery of the System by Customer, (ii) the final provision of any services related thereto by AES, or (iii) the mutual agreement of the parties. Upon such termination or expiration, sections 1-2, 4-5, 7-9, 11-15, and 17-18 shall survive the expiration or earlier termination of the Agreement.

Terms and Conditions Relating to Software and Documentation

Seller has developed, and is the sole owner of all right, title, and interest in and to, proprietary product designs and associated documentation, prints, user manuals, data, specifications, and drawings (collectively, “Documents”), as well as software, as well as

1. Drawings: Seller’s documentation, prints, user manuals, data, specifications, and drawings (collectively, “Documents”), including, without limitation, the underlying technology, furnished by Seller to Buyer in any media in connection with the Agreement are the property of Seller and Seller retains all rights, including, without limitation, exclusive rights of use, licensing and sale, and Buyer may not disclose or otherwise use the Documents without Seller’s express prior written consent. Notwithstanding the foregoing, if Buyer is not in default of this Agreement, Seller hereby grants Buyer a non-exclusive, non-transferable, non-sublicensable, royalty-free license to the Documents solely in connection with its use of the System. All of Buyer’s rights hereunder shall terminate immediately upon Buyer being in breach, or otherwise termination, of the Purchase Agreement, and Buyer shall be required, at Seller’s direction, to return or destroy any Documents licensed hereunder.

2. Software: Seller’s programs, algorithms, and data (collectively, “Software”), as installed on System supplied by Buyer or furnished by Seller to Buyer in any media in connection with the Agreement are the property of Seller and Seller retains all rights, including, without limitation, exclusive rights of use, licensing and sale, and Buyer may not disclose or otherwise use the Software without Seller’s express prior written consent. Buyer shall not copy, reproduce, edit, modify, enhance, adapt, translate, transmit or prepare derivative works from the Software. Notwithstanding the foregoing, if Buyer is not in default of this Agreement, Seller hereby grants Buyer a non-exclusive, non-transferable, non-sublicensable, royalty-free license to the Software solely in connection with its use of the System. All of Buyer’s rights hereunder shall terminate immediately upon Buyer being in breach, or otherwise termination, of the Purchase Agreement, and Buyer shall be required, at Seller’s direction, to return or destroy any Software licensed hereunder.

3. Confidential Information: Any and all information concerning the System or the transaction covered hereunder which Seller discloses to Buyer, or which Buyer otherwise obtains knowledge of hereunder, shall be deemed to be “Confidential Information”, remain the exclusive property of Seller, not be used for any other purpose other than that which it has been provided and not be made available to third parties without Seller’s express written consent. Confidential Information shall also expressly include training materials, product information technical documents and computer data files and programs. In regard to the Confidential Information set forth in the prior sentence, it shall also (a) not be copied, filmed, audio- or video-taped (additional copies may be purchased from Seller), and Buyer hereby agrees to implement appropriate security measures to protect this Confidential Information from unauthorized use, access or disclosure. Upon termination of this Agreement or its breach by Buyer, Seller may terminate Buyer’s right to use the Confidential Information and require the destruction of, or secure the return of the Confidential Information and other materials (including translations) embodying the Confidential Information in any tangible form, including any copies, authorized or otherwise, thereof.

Any information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as proprietary or confidential unless expressly provided in a writing signed by Seller.

AES Headquarters

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