



A Rockwell Automation Company

## ICS TRIPLEX ISAGRAF STANDARD TERMS AND CONDITIONS OF SALE

The following terms and conditions are an integral part of all ICS Triplex ISaGRAF quotations and sales for all ICS Triplex ISaGRAF Software Products and Services (the "Product" or the "Products"). By submitting a purchase order to ICS Triplex ISaGRAF, the DISTRIBUTOR or USER (the "Buyer") acknowledges that he understands and agrees to be bound by the following terms and conditions:

### ACCEPTANCE

Any changes made after ICS Triplex ISaGRAF's acceptance of a Purchase Order that affect the specifications or configurations of the Products or otherwise affect the scope of the order, will become binding only if submitted in writing by the Buyer and approved by ICS Triplex ISaGRAF. The Buyer will submit to ICS Triplex ISaGRAF for approval a revised written change order. Resultant shipping delays and/or additional expenses to ICS Triplex ISaGRAF will be also noted on the revised change order.

### DELAYS

In the event that the Buyer delays the scheduled delivery of any engineering service, the Buyer will be responsible for reimbursing ICS Triplex ISaGRAF for all costs incurred as a result of the delay including, but not limited to, material and labor price increases, travel and expenses, demobilization and re-mobilization costs, packing and storage cost, and production and labor rescheduling inefficiencies.

### DUTIES AND TAXES

The Buyer agrees to pay, collect, and remit on the dates that they are due, all value-added taxes, sales, use, property and other taxes, duties, and assessments imposed by any governmental agency of the Territory with respect to the Products or Services being purchased by the Buyer. The Buyer agrees to indemnify and hold ICS Triplex ISaGRAF harmless against any liabilities related to tax and duty issues.

The Buyer warrants that it is and will remain at all times in compliance with all customs, import, export or, re-export control laws, regulations, and any other governmental authorization

requirements with respect to this agreement, including but not limited to Canadian, French, U.S export control laws or regulations (collectively the "Export Laws"). The Buyer will pay all costs and expenses in connection with such procurement and renewal.

The Buyer will be exclusively responsible, at its own expense, for compliance with all local laws relating to the Products or Services in the countries in which the Buyer licenses, sells, or markets the Products or Services.

### FORCE MAJEURE

Neither party will be liable to the other party or be in default for failure to perform in accordance with the terms of this Agreement if such failure is due to acts of God or of the public enemy, acts of government in either its sovereign or contractual capacity, fires, earthquakes, floods, epidemics, quarantine restrictions, freight embargoes, or for unavailability of transportation of materials or similar reasons beyond such party's control.

### LIMITATION OF LIABILITY

Except to the extent that liability may not lawfully be excluded in an agreement of this nature, ICS Triplex ISaGRAF will not be liable to any person or legal entity for loss or damage, whether direct, indirect, special, incidental or consequential damages including without limitation, damages for loss of business profits, business interruption and the like, arising out of the use or inability to use the Products or Services, any documentation, manual or training relating to, including without limitation, arising out of its generated applications, even if advised of the possibility of such damages, whether resulting from a breach of contract, a breach of warranty or any other cause of action. The entire risk as to the results and performance of the Product or Service is assumed by the End-User. In any event, in no case will ICS Triplex ISaGRAF liability exceed the amount of the license fee.

### PAYMENT

Granting of credit to the Buyer is subject to prior credit verification. Terms of payment are Net 30 days from the date of the invoice. All payments to ICS Triplex ISaGRAF shall be made in the

# ISaGRAF

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currency specified in the quotation that ICS Triplex ISaGRAF provided to the Buyer. Past due (beyond 30 days) unpaid invoices may be subject to 1,5 % per month service charges (18% annually). Continuing shipments may be interrupted until all past due invoices and service charges are received. Disputed invoices, acknowledged by ICS Triplex ISaGRAF, as long as the undisputed amount is paid will not cause shipment interruption.

## **PRICE CHANGES**

ICS Triplex ISaGRAF retains the right to change fees and price lists at any time upon thirty (30) days prior written notice. Price increases will not apply to orders accepted by ICS Triplex ISaGRAF before new fees and prices become effective. Valid price quotes issued by the Buyer prior to written notification of price changes by ICS Triplex ISaGRAF will be honored until such time as the quote expires, not to exceed however thirty (30) days. In case of a reduction in price, the Licensee will benefit from the lower prices for any Product ordered but not yet shipped by ICS Triplex ISaGRAF.

## **PRODUCT ORDERS**

All Product orders will be subject to acceptance by ICS Triplex ISaGRAF electronically or in writing at its principal place of business and will not be binding until such acceptance or shipment.

ICS Triplex ISaGRAF will make its best efforts to fill all orders within seven (7) days after acceptance. All Product shipments will be made F.O.B. point of shipment with shipping and handling charges prepaid and added to the invoice. ICS Triplex ISaGRAF will pay for shipping charges for "bug" fixes and marketing/advertising materials. F.O.B. point of shipment means that all risk of loss and responsibility for claims with shipping company passes to the Buyer upon shipment. Products will be packed and shipped in accordance with ICS Triplex ISaGRAF standard procedures.

The Buyer will inspect and evaluate all Products upon arrival and will, within ten (10) business days of arrival, notify ICS Triplex ISaGRAF, in writing, of any claim for shortage or damage. If no such written rejection is received by ICS Triplex ISaGRAF, the Buyer will be deemed to have accepted the Product for all purposes. If

the Buyer rejects the Product, the Buyer will, at ICS Triplex ISaGRAF's option, promptly return to ICS Triplex ISaGRAF, or destroy, all data, software, whether in source code or object code form, written materials and all other information and tangible know-how associated with the Products and provided by ICS Triplex ISaGRAF to the Buyer under this Agreement, along with all copies made thereof. Within thirty (30) days of receipt by ICS Triplex ISaGRAF of said Products and materials or of confirmation of their destruction, ICS Triplex ISaGRAF will refund any payments made by the Buyer to ICS Triplex ISaGRAF.

Notwithstanding the foregoing, the Buyer shall have no right to reject and shall remain fully liable to pay for any of the Products where the Buyer has access, in part or in whole, to the Product source code. This includes without limitation, the following Products: I3-IDK, I3-IDC, I3-IIO, I4-PRDK, I4-PRDC, I4-PIO, I5-PRDK, I5-PRDC, I5-PIO, IE-PRDK, IE-DDK-os, IE-ODK-os, IE-IDK-os, HB-SBDK-RTTK, HB-HBDC

Notwithstanding any provision to the contrary, if in ICS Triplex ISaGRAF's reasonable opinion, the Buyer's credit becomes a cause for concern, ICS Triplex ISaGRAF retains the right to, in its discretion and without notice, (i) delay delivery of the Software to the Buyer, or (ii) secure payment prior to delivery.

Any order submitted by the Buyer or the Buyer's customer which contains terms different from, or in addition to those contained in this Agreement, will be deemed governed by the terms of this Agreement unless expressly accepted by ICS Triplex ISaGRAF in writing.

## **PRODUCT WARRANTY**

ICS Triplex ISaGRAF warrants that the Product, if properly installed and used by the Buyer or End-User, the whole in accordance with ICS Triplex ISaGRAF instructions, will operate in substantial or material conformity with the current Product documentation issued by ICS Triplex ISaGRAF for a period of 90 days from receipt of the Product.

If the Product does not operate in such substantial or material conformity, ICS Triplex ISaGRAF's only obligation and liability to the



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Buyer or the End-User or any other person or entity under this Agreement will be, at ICS Triplex ISaGRAF's option, to correct or replace the Product so that it will perform in accordance with the Product documentation or to refund the applicable Product payments upon return of the applicable Product materials.

The Buyer acknowledges that the limited warranty, as stated here in this Section, **is in lieu of all other warranties, express or implied, including but not limited to the manufacturer's warranties of merchantability, quality, fitness for a particular purpose, functionality or economic benefit, and is the only warranty made in connection with the Software Product, support services or other assistance.** The warranty provisions of the applicable law are hereby expressly excluded to the extent permitted.

Without limiting the generality of the foregoing, ICS Triplex ISaGRAF makes no warranty that the Product will operate with any hardware or software other than what is described by the current product documentation that the licensed software shall satisfy the Customer's own specific requirements, that copies of the Software Product other than those provided or authorized by ICS Triplex ISaGRAF shall possess functional integrity or that the operation of the licensed software shall be free from defects. The limited warranty will become void, and ICS Triplex ISaGRAF or any other person will be released from all obligations of performance and all liability in the event that the Product is modified by anyone other than ICS Triplex ISaGRAF or if Distributor or End user has breached his Agreement in any way.

#### **SOFTWARE PROVISIONS**

The ICS Triplex ISaGRAF Software products are licensed not sold. The use and sale of the ICS Triplex ISaGRAF software products is subject to the Software License Agreement that accompanies the software.

#### **TERMINATION & SUSPENSION**

Provided that ICS Triplex ISaGRAF receives 30 days written notice from the Buyer, the Buyer may terminate or suspend performance of a purchase order at Buyer's convenience subject to the payment of the costs incurred to point of

termination and an additional Cancellation Fee of 15% of the contract price.

#### **EMBARGOED COUNTRIES**

These commodities, technology or software are subject to the United States Export Administration Regulations. Diversion contrary to U. S. law and other relevant export controls is prohibited. They may not be shipped to Cuba, Iran, Sudan, Syria or any other country where shipment is prohibited; or to end-use (r) involved in chemical, biological, nuclear, or missile weapons activity.

#### **GOVERNING LAWS**

The laws of the province of Ontario, Canada will govern this agreement. Any litigation or procedure whatsoever concerning this agreement will be decided exclusively by arbitration conducted in accordance with the International Chamber of Commerce rules of arbitration. Such arbitration will take place in the city where the defendant is located, except for injunctive relief for which Plaintiff may choose, at its sole discretion, any other court having jurisdiction where the fault was committed. The parties agree that one arbitrator will hear the arbitration and the award of the arbitrator will be enforceable in any court having jurisdiction thereof.

**IN CONSIDERATION OF THE HEREIN STATED PURCHASE PRICE OF THE PRODUCTS, ICS TRIPLEX ISAGRAF GRANTS ONLY THE ABOVE EXPRESS WARRANTY. ALL OTHER WARRANTIES ARE EXPRESSLY EXCLUDED INCLUDING, BUT NOT LIMITED TO, EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**