

Dy 4 Systems Inc. dba Curtiss-Wright Controls, Embedded Computing ("CWCEC")

REPAIR /RE-WORK TERMS AND CONDITIONS

- 1. ACCEPTANCE BY BUYER - ENTIRE AGREEMENT.** The terms and conditions set forth herein shall constitute the entire agreement between CWCEC and the Buyer. CWCEC shall not be bound by any terms of Buyer's order that are inconsistent with the terms herein set forth. This contract shall not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealing not made a part of the contract by its express terms. The failure by CWCEC to enforce at any time the provisions of this contract, or to exercise any election or option provided herein, shall in no way be construed as a waiver of such provisions or options, nor in any way to affect the validity of this agreement or any part thereof, or the right of CWCEC thereafter to enforce each and every such provision. Buyer hereby acknowledges that he has not entered into this agreement in reliance upon any warranty or representations by any person or entity except for the warranties or representations specifically set forth herein.
- 2. PRICE AND TAXES.** A fixed price in U.S. dollars shall be charged on all repair or re-work done and is exclusive of all taxes or duties now in existence or enacted in the future. Any such tax, fee or charge of any nature whatsoever imposed by any governmental authority on, or measured by, the transaction between CWCEC and the Buyer shall be paid by the Buyer in addition to the prices invoiced. In the event CWCEC is required to pay any such tax, fee or a charge, at the time of sale or thereafter, the Buyer shall reimburse CWCEC. **At no time shall the Buyer impose debits on CWCEC. All repairs are subject CWCEC invoice and payment is Net 30 days.** Prices are determined by board type. Full fixed price shall be charged on all No Fault Found (NFF) repair orders and these shall be subject to the same warranty as described in item 11, below. In the first instance of a NFF, the product shall be returned to the Buyer without notification from CWCEC. Should a NFF be discovered on any subsequent returns of the same product, the product will then be forwarded to CWCEC Customer Support and Buyer will be contacted.
- 3. DELIVERY.** For returns from outside Canada or the US, DDP CWCEC Ottawa (INCOTERMS 2000). For returns from the US, FCA Alexandria Bay (INCOTERMS 2000).
- 4. SHIPMENT. For returns to Canada:** Buyer shall be responsible for shipping costs. Shipments will be FCA Ottawa (INCOTERMS 2000). Should Buyer not provide Shipping Account Information, the sum of \$100 USD shall be applied to CWCEC's invoice and CWCEC will then ship by the method it deems most advantageous. Buyer is obligated to obtain insurance on any shipment. Packaging will be standard commercial. **To have product repaired under warranty or firm fixed pricing all product must be returned to CWCEC properly packaged to prevent physical and ESD damage. MIL-E 17555 "ESD Packaging Requirements" or equivalent should be adhered to.** **For returns to the United States:** Buyer shall be responsible for shipping costs and all costs associated with the temporary import of the goods into the United States. Shipments will be FCA Leesburg (INCOTERMS 2000). Actual broker fees and any fees incurred in association with the temporary import of the goods will be billed back to the Buyer. Buyer is obligated to obtain insurance on any shipment. Packaging will be standard commercial. **To have product repaired under warranty or firm fixed pricing, all product must be returned to CWCEC properly packaged to prevent physical and ESD damage. MIL-E 17555 "ESD Packaging Requirements" or equivalent should be adhered to.**
- 5. ACCEPTANCE.** The terms and conditions stated herein shall be deemed accepted by the buyer upon receipt by CWCEC of the goods.
- 6. TERMS AND METHOD OF PAYMENT.** With approved credit, terms are net thirty (30) days from date of invoice. Otherwise, terms are cash in advance. Buyer shall pay interest on amounts not paid when due, at the rate of 1-1/2% per month. All payments shall be sent to: CWCEC Systems Inc., 333 Palladium Drive, Kanata, Ontario, Canada K2V 1A6, Attention: Accounts Receivable.
- 7. WORKMANSHIP.** Workmanship for repairs will be done to IPC-7721. Workmanship for re-work will be done to IPC-B-610, Rev C, Class 3. ESS shall be carried out in accordance with CWCEC procedure 811786. CWCEC Conformal Coat acceptance criteria is governed by CWCEC procedure 811608.
- 8. MRB.** MRB authority rests solely with CWCEC.
- 9. DOCUMENTATION.** Updates only for data packages will be provided with the return of the product. The updates may consist of CoF, Acceptance Test Procedure Results, DST results and the associated corrective actions taken if applicable.
- 10. SOURCE INSPECTION.** To be completed at the Buyer's request and expense, at the CWCEC's site.
- 11. LIMITED WARRANTY.** CWCEC warrants that the CWCEC manufactured products repaired hereunder will be free from defects in material and workmanship for a period of ninety (90) days from the initial date CWCEC delivers the repaired products to Buyer. CWCEC's liability is limited to replacing or repairing, or granting a credit for the purchase price of (at CWCEC's sole discretion and option), any defective products that are returned to CWCEC's designated repair facility at Buyer's expense. In no case are products to be returned without first obtaining a Return Materials Authorization number (RMA) from CWCEC. CWCEC disclaims all liability with respect to data in returned products. The warranty does not cover malfunctions, failures or defects resulting from abuse, misuse, accident, alteration, neglect, improper maintenance, or unauthorized or improper repair or installation. EXCEPT AS PROVIDED HEREIN SELLER MAKES NO WARRANTIES OF ANY KIND, EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.
- 12. LIMITATION OF LIABILITY.** SELLER'S MAXIMUM LIABILITY UNDER ANY CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT, SHALL BE LIMITED TO THE PURCHASE PRICE. IN NO EVENT SHALL SELLER BE LIABLE FOR COSTS OF PROCURING SUBSTITUTE GOODS, LOSS OF PROFITS OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR RELIANCE DAMAGES, LOSSES OR EXPENSES HOWEVER CAUSED, AND WHETHER BASED ON CONTRACT, TORT, EQUITY OR ANY OTHER THEORY OF LIABILITY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR EXPENSES.
- 13. SUBSTITUTIONS AND MODIFICATIONS.** CWCEC shall have right to make substitutions and modifications in the specifications of products repaired by CWCEC provided that they will not materially affect overall product performance.
- 14. CANCELLATION & RESCHEDULING.** This contract may be canceled by Buyer only upon payment of reasonable cancellation charges, which shall include but not be limited to expenses already incurred for labor and material costs, overhead, commitments made by CWCEC, and a reasonable profit. Buyer shall be entitled to reschedule a shipment not more than once, and only if Buyer gives at least forty-five days written notice of such reschedule and the rescheduled shipment date is no later than ninety days after the originally schedule delivery date.
- 15. BANKRUPTCY.** If Buyer becomes bankrupt, insolvent, makes an assignment for the benefit of creditors, or commences to be wound up or suffers a receiver to be appointed, CWCEC shall be at liberty by notice in writing to cancel this contract without judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which has accrued or shall accrue thereafter to CWCEC.
- 16. PATENT AND COPYRIGHT INDEMNITY.** CWCEC will defend at its expense any action brought against Buyer or its customers based upon the claim that the product directly infringes any validly patent or copyright issued as the date of this contract and CWCEC agrees to pay all damages and costs finally awarded against Buyer or its customers attributable to such claim; provided CWCEC has sole control of any such action and settlement negotiations and provided Buyer notifies CWCEC promptly in writing of such claim, and gives CWCEC authority, information and assistance, at CWCEC's expense, necessary to settle or defend such claim. CWCEC assumes no liability hereunder for infringement claims arising out of or related to: (i) the combination of the product with any products not supplied by CWCEC; (ii) designs, instructions, specifications, or intellectual property supplied or specified by Buyer; (iii) modification of the products by any party other than CWCEC, and/or (iv) Buyer's failure to substitute any non-infringing replacement product in accordance with CWCEC's instructions. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.
- 17. APPLICABLE LAW.** This contract shall be construed in accordance with the laws of Ontario.
- 18. DISPUTES.** If a dispute or controversy arises regarding this contract, the parties will attempt in good faith to settle the dispute by mediation.
- 19. EXPORT.** Buyer shall not directly re-export, any technology, products incorporating technology, or information pertaining thereto to any country for which Buyer's Government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval.
- 20. FORCE MAJEURE.** Neither party hereto shall be in default or liable for any delay or failure to comply with this Agreement if such delay or failure is due to causes beyond its reasonable control, provided that such party notifies the other party in writing promptly, within fifteen (15) calendar days after discovery of the circumstances.