

Training Terms and Conditions

Emerson Process Management Training Centre

- All courses will be conducted at an Emerson Process Management Training Centre unless other arrangements are made with the Training Manager.

Training Equipment and Materials

- Emerson will provide all required instruction manuals, technical manuals and training materials for courses.
- For courses conducted at customer site, adequate classroom facilities must be provided.
- The customer must also provide access to the site equipment and facilities for set-up and training purposes. Required equipment will include a white board and data projector.
- On completion of a course, each student will receive a Certificate of Completion.

Enrolment and Payment Procedures

- We recommend that you enrol as early as possible, because class size is limited.
- You can begin enrolment by submitting a [Web Registration Request Form](#). Educational Services will then contact you to complete and confirm your enrolment, including your method of payment.
- You can pay by way of Purchase Order, cheque or Credit Card.
- Enrolments are accepted on a first-come, first-served basis.
- Enrolments must be received at least three weeks prior to the start date of the course.
- You can enquire about training by using contact information available at <http://www2.emersonprocess.com/en-US/brands/edservices/globaltrainingcenters/asiapacificcontacts/Pages/Melbourne.aspx>.
- Emerson reserves the right to change the schedule, discontinue or cancel courses. In the event that students are enrolled in courses that have been changed or cancelled, Emerson Process Management will notify these students two weeks prior to the scheduled starting date, where practicable. These students will be given first priority to enrol in the next scheduled class.
- All lodging, transportation, living expenses and meals outside of training hours are the responsibility of the student.
- Emerson reserves the right to amend pricing at any time without prior notice.

Cancellation

- If written notice is received 28 days or more before the start of the course, we will refund the course fees.
- If written notice is received less than 28 days before the start of the course, 50% of the paid fees will be refunded.
- No fees will be refunded if written notice is received less than 14 days before the start of the course. Alternately, a credit may be requested for a later course session.

Training at Customer Sites

- The customer is responsible for providing adequate facilities and equipment to be used for training purposes.
- All expenses including lodging, meals, transportation, air tickets, freight, taxes and set-up time will be charged or provided by the customer.

Export Compliance

The acceptance of an order and the fulfilment of any contractual obligations as a consequence of the acceptance is subject to all current applicable import, export control and sanctions, laws, regulations, orders and requirements, including those of the United States where applicable. However, such laws and regulations may be amended from time to time including during the processing of an order. If Emerson Process Management (The Company) should fail to receive any necessary or advisable licenses, authorizations or approvals, even arising from inaction by any relevant government authority, or if any such licenses, authorizations or approvals are denied or revoked, or if there is a change in any applicable laws, regulations, orders or requirements that would prohibit the Company from fulfilling any order, or would in the reasonable judgment of the Company otherwise expose the Company to a risk or liability under such laws, regulations, orders or requirements if it fulfilled the order, the Company shall be relieved without penalty of all obligations with respect to any order resulting from this offer.

Terms and Conditions Precedence

The Training Terms and Conditions are issued subject to Emerson Process Management Australia Pty Limited terms and conditions, a copy of which is annexed below and is also available on request. To the extent that the summary of terms set out above is inconsistent with the Emerson standard terms and conditions, the latter prevail. Except to the extent otherwise agreed in writing by Emerson Process Management Australia Pty Ltd: (a) Emerson Process Management Australia Pty Ltd rejects any counter-offer made by the Buyer to purchase the goods offered on terms and conditions other than the standard Emerson terms and conditions; and (b) instead, acceptance by the Buyer of an order under this offer constitutes acceptance by the Buyer of Emerson Process Management's offer to supply the said goods on Emerson's standard terms and condition of supply (annexed to this document or otherwise available on request).

TERMS AND CONDITIONS OF SALE OF GOODS AND SERVICES

These terms and conditions, the attendant proposal or acknowledgement and all documents incorporated by reference therein, for the sale of goods and/or the licence of software and/or firmware which are preloaded, incorporated, or to be loaded or incorporated, into the goods or otherwise to be used in conjunction with the goods ("Goods") and the provision of services ("Services") to be supplied hereunder by Emerson Process Management Australia Pty Ltd, hereinafter "Seller", and the buyer identified in the quotation or proposal, hereinafter "Buyer", and constitute the entire agreement ("Agreement") between Buyer and Seller regarding such supply.

- 1) **ACCEPTANCE AND OBLIGATION TO SUPPLY:** The Seller's obligation to supply the Goods and/or Services is subject to the Seller receiving and accepting an unconditional, complete authorisation from the Buyer for the immediate manufacture and shipment of the Goods and/or supply of Services in accordance with the Seller's standard order processing procedures thirty (30) days (or other time period specified by Seller in writing) of the date of any quotation or proposal issued by the Seller. A binding contract between Seller and Buyer shall come into effect on Seller's acceptance in writing or otherwise the Buyer's offer to purchase the Goods and/or Services on the terms and conditions set out in the applicable quotation or proposal.

RETENTIONS: Where retention money forms part of Buyer's request for supply, the Seller will provide a bank guarantee in lieu of cash retention. No bank guarantee will be issued without a firm expiry date.

- 2) **PRICES:** Unless otherwise specified in writing, the prices stated for the Goods and/or Services are effective for thirty (30) days from the date of Seller's quotation or proposal. The Price payable for the Goods and/or Services is as stated in the Price Summary in the Seller's quotation. Notwithstanding anything in these terms and conditions to the contrary, the Price for the Goods and/or Services sold by Seller, but manufactured or supplied by others, shall be Seller's price in effect at the time of shipment to Buyer. Prices for Goods do not cover storing, installing, starting up or maintaining Goods unless expressly stated in Seller's quotation.
- 3) **EXCHANGE RATE VARIATION:** Quoted prices are based on currency exchange rates current on the quotation date. The Seller reserves the right to pass on to the Buyer increased costs due to exchange rate variation.
- 4) **TERMS OF PAYMENT:** Unless otherwise expressly agreed by Seller and subject to the approval of Seller's Credit Department, Buyer shall pay each invoice within 30 days from date of Seller's invoice in the currency stated in such invoice, except for applicable milestone payments set forth in Section 19 below, or export shipments for which Seller may require other arrangements. If any payment owed to Seller hereunder is not paid when due, it shall bear interest, at a rate equal to the standard prime rate quoted by Citibank Australia, to be calculated on a daily basis from the date on which it is due until it is paid. Without prejudice to the foregoing, Seller shall have the right, among other remedies, either to terminate the Agreement or to suspend further deliveries under this and/or other agreements with Buyer, in the event Buyer fails to make any payment hereunder when due. Buyer shall be liable for all expenses attendant to collection of overdue amounts, including reasonable attorneys' fees.
- 5) **CREDIT:** If in Seller's reasonable opinion there is a material adverse change in the Buyer's financial condition and/or Buyer has not within the agreed time frame fully paid for Goods previously shipped or Services provided under this and/or another agreement(s) with Seller, Seller reserves the right to revoke Buyer's credit and/or suspend performance on this Agreement and/or other orders and future shipments.
- 6) **DELIVERY:** All delivery or shipping dates are approximate and are based upon Seller's prompt receipt of all necessary information from Buyer to properly process the order. Seller may make partial shipments. Title to the Goods and risk of loss thereto shall pass to Buyer upon delivery. Unless otherwise specified in the proposal or acknowledgement, all Goods shall be shipped Ex-Works (point of supply) (Incoterms 2000). In the event Buyer delays or fails to provide any information necessary for Seller, Seller shall be entitled to a sufficient extension of time to overcome such delay or failure and to a reasonable adjustment in the price. In the event Buyer requests a delay in delivery or is unable to accept delivery for any reason whatsoever, Buyer agrees Seller may in its discretion place the Goods with a third party storage vendor for Buyer's account and risk, and in such case the Goods shall be deemed delivered to Buyer for all purposes hereof as of the date the Goods are delivered into the custody of the third party storage vendor. Shipping, storage and/or insurance contracts made by Seller other than in accordance with Seller's delivery obligations shall be at Buyer's account and all costs and additional expenses relating thereto shall be borne by Buyer, unless otherwise specified by Seller. All claims for loss or damage to the Goods after risk passes to Buyer shall be made by Buyer against the carrier. Buyer shall be liable to Seller for the full price of the Goods irrespective of loss or damage in transit.
- 7) **DOCUMENTATION:** Seller shall provide Buyer with that data/documentation which is specifically identified in the quotation. If additional copies of data/documentation or non-standard data/documentation are to be provided by Seller, they shall be provided to Buyer at Seller's price then in effect.
- 8) **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or unforeseen circumstances or causes beyond Seller's reasonable control.
- 9) **TERMINATION AND SUSPENSION BY BUYER:** Buyer may terminate or suspend its order for any or all of the Goods / Services covered by the Agreement, provided that Buyer gives Seller reasonable advance written notice of such termination or suspension and reimburses Seller for all losses, damages, costs and expenses arising from such termination or suspension in accordance with Seller's applicable policies or practices governing such termination or suspension.
- 10) **SOFTWARE AND FIRMWARE:** Notwithstanding any other provision herein to the contrary, Seller or applicable third party owner shall retain all rights of ownership and title in its respective firmware and software, including all copyrights relating to such firmware and software and all copies of such firmware and software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, royalty-free license to use firmware and software, and copies of firmware and software, incorporated into the Goods only in conjunction with such Goods and only at the Buyer's site where the Goods are first used. Buyer shall not reverse engineer, adapt, modify or copy (except for a single copy for backup purposes) any firmware or software unless specifically licensed to do so. Buyer's use of certain firmware

(as specified by Seller) and all other software shall be governed exclusively by Seller's and/or third party owner's applicable license terms.

- 11) **LIMITED WARRANTY:** Subject to the limitations contained in Section 12 and 13 herein, Seller warrants that the licensed firmware embodied in the Goods will execute the programming instructions provided by the Seller, and that the Goods manufactured or Services provided by Seller will be free from defects in materials or workmanship under normal use and care and Services will be performed by trained personnel using proper equipment and instrumentation for the particular Service provided. The foregoing warranties shall apply until the expiration of the applicable warranty period. Goods are warranted for twelve (12) months from the date of initial installation or eighteen (18) months from the date of shipment by Seller, whichever expires first. Consumables (which include, without limitation, glass parts and electrodes, membranes, liquid junctions, electrolytes and reagents, o-rings, plastic tubing etc.) and Services are warranted for a period of ninety (90) days from the date of shipment or completion of the Services. Products purchased by Seller from a third party for resale to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. Buyer agrees that Seller has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. If Buyer discovers any warranty defects and notifies Seller thereof in writing during the applicable warranty period, Seller shall, at its option, correct any errors that are found by Seller in the firmware or Services, or repair or replace Ex-Works (point of supply), that portion of the Goods or firmware found by Seller to be defective, or refund the purchase price of the defective portion of the Goods / Services. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources or environmental conditions, accident, misuse, improper installation, modification, storage or handling, improper repair use of unsuitable or unauthorized replacement parts, or any other cause not the fault of Seller are not covered by this limited warranty, and shall be at Buyer's expense. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by Seller. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel and representatives for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Seller. Goods repaired and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer. This limited warranty is the only warranty made by Seller and can be amended only in a writing signed by an authorised representative of Seller. To the full extent permitted by law, except as otherwise expressly provided in the Agreement, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SERVICES.
- 12) **LIMITATIONS OF REMEDY AND LIABILITY:** TO THE FULL EXTENT PERMITTED BY LAW, SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE, AND THE BUYER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY HEREUNDER (UNLESS OTHERWISE IMPOSED BY LAW, INCLUDING THE AUSTRALIAN TRADE PRACTICES ACT 1974 (CTH)), SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT UNDER THE LIMITED WARRANTY CLAUSE IN SECTION 11. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS MANUFACTURED OR SERVICES PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION, AND SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS WILL BE REDUCED BY THE EXTENT, IF ANY, TO WHICH BUYER AND/OR ITS CUSTOMERS CONTRIBUTED TO THE LOSS OR DAMAGE. TO THE FULL EXTENT PERMITTED BY LAW, BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF INTEREST, LOSS OF GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS OF OR INTERRUPTION TO BUYER'S AND OR ITS CUSTOMERS' BUSINESS, DAMAGES OR SUMS PAID BY BUYER AND/OR ITS CUSTOMERS TO THIRD PARTIES, COST OF CAPITAL AND DAMAGE OR LOSS OF OTHER PROPERTY OR EQUIPMENT, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES OR LOSSES.
- 13) **LIMITATION OF IMPLIED WARRANTIES AND OBLIGATIONS:** CERTAIN LEGISLATION, INCLUDING THE AUSTRALIAN TRADE PRACTICES ACT 1974 (CTH) MAY IMPLY WARRANTIES OR CONDITIONS OR IMPOSE OBLIGATIONS WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED EXCEPT TO A LIMITED EXTENT. THIS AGREEMENT MUST BE READ SUBJECT TO THOSE STATUTORY PROVISIONS. IF THOSE STATUTORY PROVISIONS APPLY TO THE SUBJECT MATTER OF THIS AGREEMENT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, TO THE EXTENT TO WHICH SELLER IS ENTITLED TO DO SO, SELLER LIMITS ITS LIABILITY IN RESPECT OF ANY CLAIM UNDER THOSE PROVISIONS TO: (A) IN THE CASE OF GOODS, AT SELLER OPTION: (I) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; (II) THE REPAIR OF THE GOODS; (III) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR (IV) THE PAYMENT OF HAVING THE GOODS REPAIRED, AND (B) IN THE CASE OF SERVICES, AT SELLER OPTION: (I) THE SUPPLY OF THE SERVICES AGAIN; OR (II) THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.
- 14) **PATENTS:** Subject to the limitations contained in Section 12, Seller shall defend any suits brought against Buyer based on a claim that use of the Goods manufactured by Seller constitutes an infringement of a valid patent of the United

- States or the laws of the location where the Goods are first used, and shall pay any damages awarded therein against Buyer, provided that Buyer promptly notifies Seller in writing of the filing of such suit or the threat thereof; permits Seller to control completely the defence or compromise of such claim of infringement; and provides all reasonable assistance and cooperation requested by Seller for the defence of such suit. In the event that only the Goods manufactured by Seller are held to be infringing in such suit and their use is enjoined, Seller shall at its sole option and expense, provide a commercially reasonable alternative, including but not limited to procuring for Buyer the right to continue using the Goods, replacing them with a non-infringing product, modifying them so they become non-infringing or refund the purchase price of such Goods. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefor, if infringement is based upon the use of Goods in connection with goods not manufactured by Seller or in a manner for which the Goods were not designed by the Seller or if the Goods were not designed by the Seller or if the Goods were designed by the Buyer or were modified by or for the Buyer in a manner to cause them to become infringing.
- 15) **INSTALLATION:** Buyer shall be responsible for receiving, storing, installing, starting up and maintaining all Goods. Seller shall provide a quotation for services to assist Buyer in these functions if requested.
- 16) **TAXES:** Any tax, import duties, or other duties, or governmental charge or increase in same hereafter becoming effective increasing the cost to Seller of producing, selling, or delivering the Goods or of procuring material used therein, and any tax now in effect or increase in same payable by the Seller because of the manufacture, sale or delivery of the Goods (including Australian or New Zealand goods and services tax (GST)), may at Seller's option be added to the price herein specified. Buyer will be responsible for the payment of any GST applicable in respect of the Goods, provided that Seller issues a valid tax invoice (within the meaning of the relevant Australian or New Zealand GST legislation) to Buyer.
- 17) **INTELLECTUAL PROPERTY:** Buyer is granted a non-exclusive, royalty free license only for Buyer's use of the firmware and software. Under this license Buyer may use the firmware and software with the Goods provided in accordance with the terms of this Agreement and the Seller's or third party owner's applicable license agreement. It is recognized and agreed that title to all firmware and software provided by Seller shall remain with Seller (or applicable third party owner) and that such firmware and software shall be furnished to, and used by, Buyer only at the Buyer's plant site where the Goods are first used in accordance with Seller's or third party owner's applicable license agreement and, to the extent applicable, after execution of Seller's (or third party owner's) license agreement. Except to the extent expressly provided in this Agreement, Buyer acknowledges that it neither has nor shall secure by this Agreement (including by its acts during the continuance thereof) any intellectual property right, or any other right not expressly granted under this Agreement, including any right to any of the formulae or designs for the Goods or any firmware or software or to any trademarks, symbols or trade names (including without limiting the generality of the foregoing, the name of Seller or its affiliates), whether or not registered, or to any labeling or packaging designs used by Seller or any of its affiliates in connection with any of the Goods, nor any right to use any of such trademarks, symbols or trade names, or style or part thereof. Title to and the right to use all such formulae, trademarks, symbols, trade names and designs shall at all times remain vested in Seller or its affiliates, or the applicable third party. All powers (if any) conferred on Buyer by Section 26 of the Australian Trade Marks Act 1995 (Cth) are expressly excluded.
- 18) **CONFIDENTIAL INFORMATION:** Specifications, drawings, data, documentation, software and other information transmitted by Seller to Buyer are the property of Seller, or Seller's affiliates or its suppliers. Information marked proprietary or confidential are trade secrets and is only disclosed in confidence to Buyer on a need to know basis on the condition that it is not to be reproduced, copied, reverse engineered or used for any other purpose than the purpose for which it is provided and shall not be disclosed by Buyer to third parties without the prior written consent of Seller. The obligations in this Section shall not apply to that part of information which (i) is or becomes available to the public through no fault of Buyer, (ii) is already in the possession of Buyer prior to disclosure by Seller, (iii) is received by Buyer from a third party who is not under any obligation of confidence. If Buyer is required by any agency or by operation of law to disclose any confidential information, Buyer shall notify Seller of the disclosure requirement beforehand and shall provide assistance as requested by Seller in objecting to or limiting such disclosure.
- 19) **MILESTONE PAYMENTS:** Unless otherwise provided milestone payments shall be made by Buyer when the price of Goods exceeds A\$100,000. In such cases, invoices shall be issued by Seller and paid by Buyer based on the following milestones: Milestone 1: 30% of price upon acceptance of order by Seller. Milestone 2: 30% of price upon release by Seller of approved bills of material to manufacturing for assembly. Milestone 3: 40% of price upon shipment of the Goods by Seller. Seller reserves the right to designate additional Milestones where the Agreement provides for engineering services or Services in excess of A\$50,000.
- 20) **BUYER SUPPLIED DATA:** To the extent that Seller has relied upon any specifications, information, representation of operating conditions or other data supplied in writing by Buyer to Seller ("Buyer's Data") in the selection or design of the Goods and/or the provision of Services and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by Seller or the Buyer's Data is inadequate or inaccurate, any warranties or other provisions contained herein which are affected by such conditions shall (to the full extent permitted by law) be null and void, unless otherwise mutually agreed upon in writing.
- 21) **GENERAL PROVISIONS:** (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent. (b) Save for that provided for in Section 13 (Limitation of Implied Warranties and Obligations), there are no understandings, agreements or representations, express or implied, not specified in this Agreement. (c) To the extent permitted by law, no action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause for action has accrued. (d) Any modifications of these terms and conditions must be set forth in a written instrument signed by a duly authorised representative of Seller. (e) If Goods / Services supplied hereunder are to be used in nuclear applications, including, without limitation, any power generation facility, Buyer fully indemnifies Seller pursuant to Seller's "Special Nuclear terms of Sale" a copy of which is available upon request.
- (f) Failure by the Seller to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.
- 22) **COMPLIANCE WITH LAWS:** Buyer agrees that all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union and the jurisdictions in which Seller and Buyer are established or from which items may be supplied, and the requirements of any licences, authorisations, general licences or licence exceptions relating thereto will apply to its receipt and use of hardware, software, services and technology. In no event shall Buyer use, transfer, release, export or re-export any such hardware, software or technology in violation of such applicable laws, regulations, orders or requirements or the requirements of any licences, authorisations or licence exceptions relating thereto. Buyer agrees furthermore that it shall not engage in any activity that would expose the Seller or any of its affiliates to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any customer or supplier. Buyer agrees to comply with all appropriate legal, ethical and compliance requirements.
- 23) **GOVERNING LAW AND DISPUTE RESOLUTION:** The Agreement is formed and shall be construed, performed and enforced under the laws of the State of Victoria and the parties agree to the non-exclusive jurisdiction of the courts of such State.