



Cross Technologies  
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## **STANDARD TERMS & CONDITIONS**

### **1. Applicability.**

(a) These Standard Terms & Conditions (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") and/or services ("**Services**") by Cross Technologies, Inc. d/b/a/ Cross Company ("**Company**" or "**our**") to the buyer identified on the quotation, invoice, and/or order acceptance that references these Terms ("**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and/or Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The quotation, invoice, order acceptance or confirmation of sale that references these Terms (any of which, the "**Sales Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Quoted prices and terms of sale are subject to credit approval. Purchase orders shall not be binding on Company until received and approved at Company's home office in Greensboro, North Carolina. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. A written purchase order is required (in electronic format such as .pdf) before orders for specials, blanket orders, etc. can be processed. Purchase orders should be emailed to Cross Company at info@crossco.com.

### **2. Delivery of Goods and Performance of Services.**

(a) The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Company shall not be liable for any delays, loss or damage in transit.

(b) Except as listed on the Sales Confirmation or as otherwise agreed in writing by the parties, Company shall deliver the Goods to Company's location (the "**Delivery Point**") using Company's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within two (2) business days of Company's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

(c) Company may, in its sole discretion, without liability or penalty, make delivery in installments. Such installments may be separately invoiced and paid for when due without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Company's notice that the Goods have been delivered at the Delivery Point, or if Company is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Company, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

(e) Company shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only.

(f) With respect to the Services, Buyer shall (i) cooperate with Company in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Company, for the purposes of performing the Services; (ii) respond promptly to any Company request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Company to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Company may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

**3. Shipping Terms.** Company shall make delivery in accordance with the terms on the face of the Sales Confirmation and if no such terms are listed, then Delivery shall be made FOB the Delivery Point. Delivery of the product(s) to a common carrier or a licensed trucker or Buyer's driver shall constitute delivery to Buyer, and all risks of loss or damage in transit shall be borne by Buyer. Requested shipping date must be noted on Buyer's purchase order for Company's scheduling. Tentative dates will not be used in scheduling. Actual shipping dates will be established by Company, based on material availability. Company is responsible only for shipping within a week determined by Company unless otherwise confirmed by Company in writing.

**4. Order Modifications and Cancellations.** Requests to cancel existing orders, change quantities, or reschedule shipments require the prior written approval of the Company. In the event of a cancellation notice or stop work request by Buyer received by Company, in the event Company, in its sole discretion, agrees to such request, Buyer agrees to pay for all expenses in connection with the cancelled order or stop work request, including but not limited to (a) engineering work performed, (b) all finished goods, (c) all raw material, (d) work in progress, (e) all supplies and commitments made by Company in connection with said cancelled order, and (f) any miscellaneous expenses attributable to said cancelled order. Company may, in its sole discretion, give Buyer an allowance for standard components and salvage value of material. All products classified non-stock or non-returnable to our suppliers shall be non-cancelable and/or subject to a 100% restocking charge. Standard products may be returned for credit only with prior, written authorization and may be subject to a restocking charge. Unless otherwise stated, engineering services supplied herein include standard rates only. If



project schedule is accelerated or shifted causing services outside of base hours of operation (Mon - Friday, 7 AM to 7 PM local time) then overtime/adjusted rates shall apply as per our rate sheet. Company reserves its rights as a seller under the UCC as enacted in North Carolina to cancel an order.

**5. Title and Risk of Loss: Security Interest.** Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. Losses and damages during the shipment are the responsibility of the Buyer. (Some customers are paying insurance provided by Cross Company to offset these costs; please inquire with a Cross Company representative if this is of interest). As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Company a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the North Carolina Uniform Commercial Code. In the event payment extends beyond 10 days from the date of delivery of the Goods, Buyer irrevocably authorizes Company at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Goods sold hereunder. Buyer agrees to provide all information described in the immediately preceding sentence to Company promptly upon request by Company, including without limitation, by executing and delivering a UCC-1 in proper form to Company.

**6. Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

**7. Inspection and Rejection of Nonconforming Goods.**

(a) Buyer shall inspect the Goods within ten (10) calendar days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Company in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Company. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Company of any Nonconforming Goods, Company shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Company's facility located at Company's current place of business. If Company exercises its option to replace Nonconforming Goods, Company shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Company shall not be liable for damages of any kind resulting from errors, omissions, or inconsistencies in Buyer's drawings, plans, or specifications, nor shall Company have any responsibility to ascertain whether such drawings, plans, or specifications are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 7(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Company.

**8. Price.**

(a) Buyer shall purchase the Goods and Services from Company at the price(s) (the "**Price(s)**") set forth in the Sales Confirmation.

(b) Buyer agrees to reimburse Company for all reasonable travel and out-of-pocket expenses incurred by Company in connection with the performance of the Services.

(c) Buyer will be charged for any taxes which Company may be required to collect or pay upon the sale of the products. Company will invoice for said tax with the original invoice or at any date subsequent to such original invoice.

**9. Payment Terms.** Title to goods and freight costs are FOB the Delivery Point. Terms are Net 30 days based on credit approval. Custom, Modified, or Non-Returnable equipment may require a deposit. Buyer shall pay interest on all late payments at the rate of 1.5% per month or the highest rate permissible under applicable law (whichever is less), calculated daily and compounded monthly. Buyer shall reimburse Company for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Company does not waive by the exercise of any rights hereunder), Company shall be entitled to suspend the delivery of any Goods or performance of any Services if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) business days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Company, whether relating to Company's breach, bankruptcy or otherwise. In the event of an invoice or shipment error, notification is required within 30 days. Unless otherwise noted, (i) quoted prices are protected for orders entered and shipped within 30 days, and (ii) Purchase Orders placed after 30 days of original quote may be subject to change of price and availability of parts. After 30 days of original quote, shipments are "price in effect at time of shipment". Prices may be quantity sensitive and are based upon 'shipment release' quantities - not total quantities.

**10.** Buyer will be notified before processing Purchase Order if any known changes have occurred. Credit Card transactions are subject to fees based on the current transaction rate by the card being used: Visa, AmEx, etc. Rates typically range from 0-4% depending on the card.

**11. No Intellectual Property Rights Transferred: Embedded Software.**

(a) Except as otherwise expressly provided in these Terms or another written contract signed by both parties covering the sale of the Goods and/or Services covered hereby, Buyer will acquire no intellectual property rights of any person or entity, and no intellectual property rights are licensed to Buyer, either expressly or by implication, under this Agreement or as a result of the sale or transfer of the Goods to Buyer under this Agreement.

(b) Buyer acknowledges that certain software may be embedded in, and required to operate, the Goods. Although Company will use commercially reasonable efforts to identify any such software to Buyer prior to Company's delivery of the applicable Goods to Buyer under this Agreement, Buyer will be solely responsible, at its cost, for obtaining any license, agreement, or other rights of a third party necessary for Buyer's possession or use of such embedded software or the Goods containing it. If the consent of a third party is required, as determined by Company in its sole discretion, in regard to Company's transfer to Buyer of such software or the Goods containing it: (a) Company will not be required to transfer such software or the applicable Goods prior to Company's receipt of such consent; and (b) Company will use commercially reasonable efforts to obtain such consent; provided, however,



that, at Company's request, Buyer will fully cooperate with Company regard to obtaining such consent, and Buyer will be solely responsible for the cost of any such consent (including any new license, updated maintenance, or similar fees). In no event will Company be required to incur any such costs or fees in regard to any such consent, or otherwise provide any financial accommodation or guarantee, or incur any liability, in regard to any such consent.

(c) If software is included with the product(s), Buyer agrees to notify Company promptly upon discovery of any unauthorized possession, use, or knowledge of any part of physical form of the software, or of any other confidential information made available to Buyer, by anyone not authorized by Company to have such possession, use, or knowledge, and will cooperate with Company in every reasonable way to help Company regain possession, prevent further unauthorized use, and/or recover damages caused by such use.

**12. Functional Specification for Software Development.** For control system projects requiring software development, an approved proposal or an approved functional specification (either of which, a "**Functional Specification**") shall be jointly developed by Cross Company and Buyer. This Functional Specification will contain specific operational guidelines for the successful completion of the project as proposed herein. A mutually agreed upon copy of the Functional Specification must be submitted before any work can be started. Associated project timeline milestones will be subject to the date of receipt of the Functional Specification and the associated Purchase Order. Any functional deviations or changes requested prior to project completion and acceptance will require a written change order to Cross Company and/or may incur additional charges. For a period of 120 calendar days from installation, the Company warrants that Company developed software will be free from errors in program logic and will function according to final specifications. If the software does not meet the above warranty, and if the Buyer promptly notifies the Company and provides the description of the error and complete information about the manner of its discovery, the Company shall thereupon correct any defect or error (at its option); (a) by modifying or making available to the Buyer instructions for modifying any erroneous program, or (b) by making available at the Company's plant necessary corrected or replacement programs. In the event Company, in its sole discretion, waives any warranty period time limit, such waiver shall not constitute a waiver of any other prior, concurrent, or subsequent warranty period time period. The foregoing warranty shall not apply to effects resulting from: (1) unauthorized modification; (2) Buyer-supplied software or interfacing. **OTHER THAN THE FOREGOING WARRANTY, COMPANY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

**13. No Express or Implied Warranty; Pass-through Warranties.**

(a) **COMPANY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(b) Products and/or parts manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Company agrees to pass through to Buyer any Third Party Product warranties given by their manufacturers to the extent permitted by the terms and conditions of such warranties. For the avoidance of doubt, **COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** In the event Company, in its sole discretion, waives any warranty limitation set forth in this Agreement, such waiver shall not constitute a waiver of any other prior, concurrent, or subsequent warranty limitation.

(c) **FOR THE AVOIDANCE OF DOUBT, COMPANY SHALL NOT BE LIABLE FOR BUYER'S SHIPPING COSTS, LABOR COSTS, DOWNTIME OR ANY OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ASSOCIATED WITH ANY DEFECTIVE GOODS OR SERVICES PROVIDED BY COMPANY.**

**14. Limitation of Liability.** In all cases, Buyer shall be limited in its damages to repair, replacement, credit, or refund of the money paid for Goods and/or Services hereunder, at Cross Company's sole option and election. In no event shall either party be liable for lost profits, cost of procurement, or substitute goods, or any other special reliance, incidental, or consequential damages, however caused and under any theory of liability whether based on contract, tort (including negligence) or otherwise. BUYER AGREES TO INDEMNIFY AND HOLD HARMLESS COMPANY FROM ALL CLAIMS BY THIRD PARTIES WHICH EXTEND BEYOND THE FOREGOING LIMITATIONS ON COMPANY'S LIABILITY.

**15. Insurance.** [intentionally omitted]

**16. Indemnification.** Buyer agrees to indemnify Company against and hold it harmless from all claims, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) incurred by Company which arise out of or result from the negligence or intentional misconduct of Buyer or its employees, agents, or independent contractors or subcontractors or from the failure of Buyer to perform its obligations to Company. Buyer agrees to be responsible for and to pay all reasonable attorneys' fees, costs and expenses incurred by Company in enforcing its rights against Buyer hereunder.

**17. Compliance with Law.** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Company may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

**18. Termination.** In addition to any remedies that may be provided under these Terms, Company may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) calendar days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.



**19. Waiver.** No waiver by Company of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Company. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provision of this Agreement. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**20. Confidential Information.** All non-public, confidential or proprietary information of Company, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Company to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Company in writing. Upon Company's request, Buyer shall promptly return all documents and other materials received from Company. Company shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

**21. Force Majeure.** The Company shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Company including, without limitation, (a) the acts or omissions of Buyer or its employees, agents, or independent contractors; (b) changes ordered in the work to be performed by Company for Buyer; or (c) acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic or pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, shortage of labor, fuel, power, or supplies, failure or breach of vendors to Company, materials or telecommunication breakdown, or power outage.

**22. Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Company. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

**23. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**24. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

**25. Governing Law and Venue.** This Agreement is governed by, and shall be construed in accordance with, the laws of the State of North Carolina, except that any conflict of laws rule of that jurisdiction that may require reference to the laws of some other jurisdiction shall be disregarded. Any lawsuit brought to enforce any provision of this Agreement shall only be brought in a state court in Guilford County, North Carolina, or the nearest federal court to said County and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**26. Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), certified or registered mail (in each case, return receipt requested, postage prepaid) or email. Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**27. Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**28. Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Limitation of Liability, Indemnification, Compliance with Laws, Confidential Information, Governing Law and Venue, Severability and Survival.