



**W A S T E C H**  
**CONTROLS & ENGINEERING, INC.**

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**GENERAL TERMS AND CONDITIONS - Service Calls and Maintenance Contracts 02/05**

**1. CONTROLLING PROVISIONS**

Field service, on-site programming and maintenance contracts are defined here. The rights of parties shall be exclusively governed by the terms and conditions hereof. All contracts and agreements must be signed by an officer of Wastech Controls & Engineering, Inc. to be valid.

**2. TERMS AND PRICES**

- a. This contract is a cost type contract. Buyer agrees to pay seller's work invoices as invoiced and within the payment terms indicated. Progress payments or major equipment bills will be billed as invoiced. Buyer will expedite payment of service and part invoices. Service visits may be cancelled and work may be interrupted or delayed if payments are not received within the payment terms indicated.
- b. Buyer shall pay Seller the amount of any excise, sales, privilege, use, or any other taxes Local, State or Federal which arise from the sale or delivery of products covered by this order.
- c. Wastech will charge for all parts not covered under warranty. Additional software, components or replacement parts may be needed to complete a service assignment and will be provided by Wastech if authorized with a written purchase order.
- d. Prices and deliveries are FOB Chatsworth, California unless otherwise stated, and risk of loss shall pass to buyer upon delivery to the carrier or the Buyer's representative on-site.
- e. In return for extended credit buyer agrees to pay all invoices according to terms (normally Net 30 days). Unpaid invoices shall accumulate interest at 1 % per month and all collection costs shall be paid by buyer.

**3. SERVICE CALL SCHEDULING**

Our technician will come to your site to inspect the units, assess the problem and provide corrective action as need or as instructed by your representative. Service calls will be scheduled. Delivery schedules are approximate. Seller will attempt to meet delivery schedule, but under no circumstances will Seller be responsible for or Buyer entitled to consequential damages arising out of or the result of any delays in delivery whatever. In the event of a breakdown requiring emergency service between planned visits, the technician will attempt to arrange the earliest possible visit subject to existing commitments. Such breakdowns are chargeable unless covered under warranty. Requests should be reported to Wastech by telephone during recognized business hours and confirmed in writing by the fastest available means.

**4. CANCELLATIONS, CHANGES OR ALTERATIONS**

Seller will attempt to work with Buyer to incorporate changes requested after the purchase order is issued. Costs or savings resulting from changes shall be the Buyer's responsibility. Substantive changes and/or cancellation shall be in writing and must be acknowledged by the Seller in writing. Seller will be indemnified against any resulting loss. Cancellation will result in charges to the buyer for time expended, material purchased, and restocking or freight charges from vendors.

**5. WARRANTY**

- a. Our service technician or our engineers cannot accept responsibility for the engineering or process design of your system. We are unable to guarantee that we can fix a problem to your satisfaction. No liability can be accepted by the technician for any breakdown of equipment, or consequential losses due to circumstances beyond the control of the technician. Our limited 60 day warranty only covers the services performed from the date of the on-site service.
- b. Seller warrants the products herein described, so far as the same are of Seller's own manufacture, against defects of material and workmanship under normal use and service, for a period of 12 months from the date of installation. This warranty does not cover ordinary wear and tear, corrosion, abuse, misuse, overloading, altered products or materials not of Seller's manufacture.
- b. The obligation of Seller under this warranty shall be limited to repairing or replacing, FOB Seller's facility, or allowing credit at Seller's option, any part or parts which may prove to be thus defective, provided that Buyer provides Seller prompt notice of the defect and, if required by Seller, confirms the defect(s) with documentation. It is expressly agreed that this remedy of repair, replacement or credit, at Seller's option, is the exclusive remedy under this contract. In no event shall Seller be liable for consequential damages resulting from the alleged defect.
- c. On equipment furnished by Seller, but manufactured by others, Seller extends same warranty as seller received from the manufacturer thereof.
- d. Seller will comply with all laws applicable to Seller. Buyer will inspect the product at delivery and determine appropriateness for his application. Compliance with basic safety issues, OSHA or similar federal, state and local laws during startup, operation or use of the product(s) is the sole responsibility of the Buyer.
- e. This sale is made on the express understanding that there are no express warranties other than those contained in this agreement, and that there are no implied warranties as to fitness (process wise, mechanically or otherwise) or merchant-ability nor are there any warranties which extend beyond this description.

**6. PATENTS**

Seller furnishes product(s) and designs for specific use in this contract application; Seller reserves all patent and proprietary rights to information, software code and designs disclosed except as noted. Seller shall pay costs and damages finally awarded in any suit against Buyer to the extent based upon a finding that the design or construction of the product(s) as furnished infringes a United States patent (except infringement occurring as a result of incorporating a design or modification at Buyer's request) provided that Buyer promptly notifies Seller of any charge of such infringement, and Seller is given the right at its expense to settle such charge and to defend or control the defense of any suit based upon such charge. This paragraph sets forth Seller's exclusive liability with respect to patents.

**7. INSTALLATION AND MAINTENANCE**

- a. Should Seller furnish at Buyer's request services of a supervisor or expert, Seller shall have the right to invoice Buyer for time and expenses.
- b. Seller's employees shall not be deemed to be Buyer's agents, servants or employees and shall be furnished from Seller's payroll and covered under Seller's Workers' Compensation Insurance according to the laws of the state of California and with Public Liability Insurance in such limits as mutually agreed.

# Service Calls and Maintenance Contract General Terms and Conditions

## 8. LIABILITY

a. Buyer shall indemnify and hold harmless Seller from any and all liability, including all costs and attorney fees, for injury or damage to persons or property caused in any manner by said product(s) while in possession of Buyer or Buyer's successor in interest.

b. Neither Seller nor Seller's suppliers shall be liable, whether in contract or in tort or under any other legal theory, for loss of use, revenue or profit, or for cost of capital or of substitute use of performance or for incidental, indirect, special or consequential damages or for any other loss or cost of similar type, or for claims by Buyer for damages of Buyer's customers. Likewise Seller shall not under any circumstances, be liable for the fault, negligence or wrongful acts of Buyer or Buyer's employees or Buyer's other contractors or suppliers.

## 9. GOVERNING LAW

The laws of the State of California shall govern the validity, interpretation and enforcement of any contract of which these provisions are a part.

## 1. CONTROLLING PROVISIONS

Sales and rights of parties shall be exclusively governed by the terms and conditions hereof. All contracts and agreements must be signed by an officer of Wastech Controls & Engineering, Inc. to be valid.

2. APPLICABILITY OF TERMS. These terms and conditions apply to transactions between Buyer and Seller unless Buyer and Seller have a written agreement covering the transaction or Buyer has provided Seller with other written terms and conditions specially covering the transaction.

3. ACCEPTANCE. Seller's verbal, written or electronic acknowledgment, or Seller's initiation of performance constitutes acceptance of the Order. Acceptance by Seller is expressly limited to the terms and conditions of this Order. No term or condition stated by Seller in acknowledging or otherwise accepting this Order is binding upon Buyer unless specially agreed to by Buyer in writing. By accepting the order, Seller agrees that Goods covered by the Order are satisfactory for Buyer's intended purpose, if disclosed, and that any defect in the Goods may cause special damages to Buyer. An Order may be modified or cancelled by Buyer at any time prior to acceptance by Seller.

4. DELIVERY. Time is of the essence. If the Goods or Services do not conform to the Order, Buyer may refuse any Goods or services and cancel the Order for any Goods or services. Buyer's acceptance of any part of an Order does not waive Buyer's right to cancel all or any portion of the Goods or services, or to make any claim for damages, including manufacturing costs, loss of profits or other special, incidental, or consequential damages. These rights are in addition to any other remedies provided by law. Shipment of Goods must be made via the most economical route, and in a single shipment unless otherwise instructed in the Order. Delivery is not deemed complete until Goods are actually received and accepted by Buyer. No charge will be made for packing, crating, storage, insurance, shipping, or delivery expenses unless authorized in the Order. Buyer may return over-shipments at Seller's expense. Buyer's count and weight is final and conclusive if a packing slip is not enclosed with the shipment.

5. PAYMENT. Payment of invoice does not constitute acceptance of Goods or Services and is subject to adjustment for errors, shortages, defects in Goods or Services or other failure of Seller to meet the requirements of the Order.

6. INSPECTION. All Goods and services are subject to inspection and test by Buyer, to the practical, at all places and times, including the period of performance, and prior to acceptance. Buyer may inspect at Seller's premises or any of its subcontractors engaged in the performance of this Order except in those areas as determined by the restricted proprietary areas. Seller is not relieved of its obligations to replace any defective Goods or services because of any failure to identify defects.

7. WARRANTY. In addition to any warranty by fact or law, or warranties elsewhere in the Order, Seller expressly warrants that: 1. All Goods are free from defect in design, material, and workmanship, conform strictly to specifications, drawings and approved samples, if any, are fit and sufficient for the purpose intended, and are merchantable; 2. All Services will be performed in a reasonable and workmanlike manner and conform to all requirements in the Order. These warranties, together with all other warranties of Seller, are available to Buyer, its successors, assigns and customers. All warranties survive inspection test acceptance and payment. If Seller refuses to correct promptly defective or nonconforming Goods or Services, Buyer may upon reasonable notice to Seller make the required corrections and charge the Seller with all related costs. Seller will indemnify, defend and hold harmless Buyer from liability, loss, claim, damage and expense, including reasonable attorney's fees, incurred if the Goods or Services do not conform to the warranties. This indemnification is in addition to any other remedies provided by law and, as to consequential damages, is limited as provided in Section 2-715(2) of the Uniform Commercial Code.

8. TERMINATION. (a) Without cause: Buyer may terminate the Order in whole or in part at any time without cause by written notice to Seller, and will reimburse Seller for its reasonable and necessary direct expenses incurred in connection with the Order prior to termination but not already paid, but will not be liable for any loss of profits or other indirect, special, incidental or consequential damages.

(b) With cause: If Seller fails to comply with any Order, or in the event of any proceeding by or against Seller in bankruptcy or for appointment of a receiver or trustee or an assignment for the benefit of creditors, Buyer may, in addition to any other right or remedy provided by this Order or by law, terminate all or part of this Order by written notice to Seller without liability to Seller. If this occurs, Buyer purchases similar Goods or services elsewhere as provided for in 82-712 of The Uniform Commercial Code.

9. DELAYS. Seller is not responsible for damages from a delay in performance or delivery due to causes beyond its reasonable control and without its fault or negligence, including force majeure, provided Seller promptly notifies Buyer in writing. However, if Seller otherwise fails to proceed with performance of the Order or to make deliveries within the time specified in Order, or Buyer has reasonable doubt as to Seller's ability to perform its obligations, Buyer in addition to its remedies at law may approve a revised delivery schedule or terminate the Order in whole or in part without liability to Buyer.

10. BUYER'S RIGHT TO SUSPEND PERFORMANCE. Buyer may require Seller to suspend performance of all the Order for an indefinite period of time. In no event will this exceed twelve (12) consecutive calendar months. If Buyer exercises this right, Seller must cease performance of the Order, as directed by Buyer. Seller agrees to commence performance of the suspended Order within a reasonable time after receiving Buyer's notice. An equitable adjustment in the price and the delivery dates will be made if Buyer requires a suspension of an Order.

## Service Calls and Maintenance Contract General Terms and Conditions

11. CHANGES. Buyer has the right to make changes within the scope of an Order. If any change causes an adjustment in the Order price, or in the time required for performance, an equitable adjustment will be made and the Order will be modified accordingly. Any claim for adjustment must be made within a reasonable time not to exceed ten days from the date the change is ordered.

12. BUYER'S EQUIPMENT. Unless otherwise agreed in writing, all tools, equipment or material furnished to SELLER BY buyer or purchase by seller and reimbursed by Buyer, belong to Buyer (collectively, "Buyer's Equipment"). Buyer's Equipment must be adequately identified by Seller as "Property of Minnesota Mining and Manufacturing Company" and must be safely stored and properly maintained by seller. Seller will not substitute any property for Buyer's Equipment and will not use Buyer's Equipment except in filling Buyer's Orders. Buyer's Equipment will be available for inspection by Buyer at all times. Seller will return Buyer's Equipment on request in the same condition as originally received by Seller, reasonable wear and tear excepted.

13. CONFIDENTIAL INFORMATION. Seller will not, without Buyer's written consent, disclose any drawings, data, designs, plans, specifications, know-how, discoveries, production methods, buyer's customer name or address or other confidential information (collectively, "Confidential Information") belonging to or supplied by or on behalf of Buyer to any person other than personnel of Seller directly involved with the performance of the Order. Seller must take reasonable precautions against any Confidential Information being required by an unauthorized person and must not employ any Confidential information for its own use or for any purpose whatsoever except in the performance of the Order. Buyer retains title to all Confidential Information. Seller will, at Buyer's request or completion of the Order, return or deliver all tangible Confidential Information to Buyer. The term "Confidential Information" does not include information that is generally published or lawfully available to Seller from other sources without restriction or that was known to Seller prior to disclosure to Seller By Buyer.

14. PACKING. All goods must bear markings and labels required by applicable federal, state, and municipal laws and regulations. Prices include all charges for packing, crating, and transportation to f.o.b. point.

15. REGULATORY COMPLIANCE. Seller represent and warrants that the Goods have been designed, manufactures and sold and Services performed in compliance with applicable Federal, State, and municipal laws, and regulations.

16. CHEMICAL SUBSTANCES. Seller represents and warrants that all chemical substances contained in any Goods are included on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act inventory reporting regulations.

18. IDEMNIFICATION. Seller will indemnify, defend and hold the Buyer, its directors, officers, employees and agents harmless from and against all liability, losses, claims, damages, and expenses, including reasonable attorney's fees, which may result in any from: 1. accident, injury, or damage either to person or property or from death of any persons by reason of any act or omission on the part of the Seller, its agents, employees, or subcontractors except to the extent that the accident, injury, damage, or death is due solely and directly to the negligence of the Buyer; and 2. Seller's handling, packaging, labeling, storage, treatment, removal, transportation, and disposal of any waste material made under any environmental laws, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sections 960) et seq. as amended ("CERCLA"), the Hazardous Materials Transportation Act (49 U.S.C. Sections 5101 et seq.) the Resources Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq. ("RCRA"), or any other current or future federal, state or local environmental laws of similar effect. Seller will at all times maintain liability, property, and employee liability insurance to protect Buyer from all the foregoing risks, and will supply on request certificates evidencing this coverage.

19. INTELLECTUAL PROPERTY INFRINGEMENT. Seller will indemnify, defend, and hold Buyer, its directors, officers, employees and agents harmless from and against all liabilities, losses, claims, damages, and expenses, including attorney's fees, resulting from any actual or alleged trademark, patent, trade secret, or copyright infringement or any resulting litigation, with respect to any Goods or Services or their intended use. This obligation survives inspection, acceptance and payment of or any Goods or Services.

20. SUBCONTRACTS. Seller agrees not to subcontract any Goods or Services without Buyer's Prior written approval. Seller is responsible for the acts and omissions of its approved subcontractors, and of persons employed by approved subcontractors. Seller is responsible for ensuring that its approved subcontractors do not further subcontract any Goods or Services without Buyer's prior written approval.

21. WAIVER. Buyer's failure to insist upon strict performance of the Order, or to exercise its rights under the Order, or the waiver of any breach of the Order does not waive subsequent compliance with the Order. All rights and remedies under the Order are cumulative and in addition to any other rights and remedies provided in law or equity.

22. LAW GOVERNING. This Order is governed by the laws of State of California without regard to conflicts of law principles.

23. ASSIGNMENT. Seller may not assign the Order or any of its rights under the Order (including but not limited to any amounts due from Buyer) without Buyer's prior written consent. No purported assignment by Seller is binding on Buyer without its written consent. Seller will require that approves assignees cannot divulge any information concerning the Order except as permitted by the Order. Payments to an assignee of any claim arising under the Order are subject to reduction or set-off for any present or future claims Buyer may have against Seller.

24. COMPLETE AGREEMENT. Subject to any prior Agreements entered into by the parties, the Order contains the complete and entire agreement between the parties. NO CHANGE, ADDITION, OR MODIFICATION OF ANY OF THESE TERMS AND CONDITIONS IS VALID OR BINDING ON EITHER PARTY UNLESS IN WRITING SIGNED BY A AUTHORIZED REPRESENTATIVE OF BUYER. All titles to Articles contained in the Order are for identification only and do not affect the meaning or interpretation of the Order.

# Service Calls and Maintenance Contract General Terms and Conditions