VARITEC CONTROLS AND SERVICE SOLUTIONS LLC

PROJECT TERMS AND CONDITIONS

These Terms and Conditions (these "Terms") set forth the only terms under which Varitec Controls and Service Solutions LLC (the "Company") provides you (the "Client ") with the services (the "Services") set forth in one or more documents, including but not limited to, quotes, orders, proposals, statements of work, change orders, or amendments to any of the foregoing (each, a “Contract Document”). By accepting a Contract Document, you agree to be bound by these Terms.

**1. PAYMENT:**

* 1. In consideration for the Services, the Client shall pay to the Company the sums set forth in the applicable Contract Documents. Unless otherwise provided in the applicable Contract Documents, payment of each invoice from the Company is due within 30 days of the date set forth on the invoice. The Client shall bear all taxes, duties, and other governmental charges resulting from the Company's provision of Services to the Client. The Client shall also reimburse the Company for all reasonable expenses incurred in accordance with the Contract Documents, including but not limited to any special licenses or permits needed to complete the Services.
  2. Except for invoiced payments that the Client has successfully disputed, all late payments will bear interest at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. In addition to all other remedies available under these Terms and at law, the Company may suspend the provision of any Services if the Client fails to pay any undisputed amounts when due in full. The Company may apply payments received from the Client, regardless of the Client's designation of such payments, to satisfy any obligations of the Client hereunder, in such order and amounts as the Company, in its sole discretion, may elect.
  3. In no circumstance shall the Client back charge the Company without the Company’s express written consent.

1. **REPRESENTATIONS AND WARRANTIES:**
   1. In performing the Services, the Company may use information supplied by, or on behalf of, the Client without having independently verified the same. The Client warrants that such information is accurate and complete in all material respect, and acknowledges that the Company assumes no responsibility for the accuracy or completeness of such information. Services provided by the Company may include advice and recommendations; however, the Client shall take sole responsibility for all decisions in connection with the implementation of such advice and recommendations. Services are furnished solely for the Client's internal use.
   2. The Client represents and warrants that there exists no pollutant, contaminant or toxic, radioactive, or otherwise hazardous substance, including asbestos, and toxic mold on or within the walls, floors, ceilings, heating, ventilation, and air conditioning systems, plumbing systems, structure, and other components of the site on which the Company will perform the Services. The Company reserves the right, in its sole discretion, to not perform any Services which would present an unsafe or potentially unsafe situation (an "Unsafe Situation"). An Unsafe Situation shall constitute a Force Majeure Event.
   3. The Company warrants that the Services shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Company’s warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which it was not intended, improper or insufficient maintenance, modifications performed by others, or abuse. Contractor’s warranties shall commence on the date of substantial completion or start up, whichever is sooner, and continues for one (1) year.
2. **LIMITATION ON LIABILITY:**
   1. IN NO EVENT SHALL THE COMPANY BE LIABLE TO CLIENT FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT, OR OTHERWISE. FURTHERMORE, IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO THE COMPANY PURSUANT TO THE APPLICABLE CONTRACT DOCUMENTS. THE CLIENT SHALL BRING ANY CLAIM ARISING UNDER OR RELATING TO THESE TERMS WITHIN 12 MONTHS FROM THE DATE OF THE CLAIM ARISING, OR, IF LATER, WITHIN 12 MONTHS FROM THE DATE THE CLIENT FIRST BECAME AWARE OF THE MATTERS LEADING TO THE CLAIM, AND FAILURE TO DO SO SHALL RESULT IN ANY SUCH CLAIM AUTOMATICALLY AND IRREVOCABLY EXPIRING.
   2. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THESE TERMS, THE COMPANY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ALL REPRESENTATIONS, AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.
3. **INSURANCE:** While the Company performs Services for the Client, and for at least 1 year thereafter, the Client shall, at its own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect that includes, but is not limited to, general commercial liability in a sum no less than $2,000,000 combined single limit. Upon the Company's request, the Client shall provide the Company with a certificate of insurance from the Client's insurer evidencing the insurance coverage specified in these Terms.

**5. CONFIDENTIALITY:** From time to time, the Company may disclose or make available to the Client, non-public, proprietary, and confidential information (the "Company's Confidential Information"). The Client shall: (i) protect and safeguard the Company's Confidential Information with at least the same degree of care as the Client would protect its own confidential information, but in no event with less than a commercially reasonable degree of care; and (ii) not use the Company's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under these Terms or the applicable Contract Documents. Any other disclosure shall be deemed a material breach of these Terms and Company will have all appropriate rights and remedies as a result. Client will indemnify, defend and hold Company harmless for any injury caused by Client disclosing Company’s Confidential Information. Confidential Information does not include information that: (a) is or becomes a part of the public domain through no act or omission of Client; (b) is disclosed to Client by a third party without restrictions on disclosure; (c) was known to Client prior to its disclosure, as evidenced by written documentation; or (d) was independently developed by Client without use of or reference to Company’s Confidential Information, as evidenced by written documentation. Nothing in this Paragraph shall be construed to prohibit Client’s disclosure of Company Confidential Information to the extent required by law or valid order of a court or other governmental authority, provided Client gives prompt written notice to Company.

1. **INTELLECTUAL PROPERTY:** The Company retains all intellectual property rights in project materials developed by the Company in the course of providing the Services, including, without limitation, the Company's methodologies, ideas, know-how, techniques, models, tools, skills, generic industry information, knowledge and experience.  The Company grants to the Client during the term in the applicable Contract Documents, a limited, non-exclusive, non-transferable, irrevocable and royalty-free license to use the Company's intellectual property contained or embedded in any reports, findings, or other deliverables resulting from the Services, solely for the Client's internal, or such other, use expressly set forth in the applicable Contract Documents.
2. **INDEMNIFICATION:** To the fullest extent permitted by law and except for in cases of the Company's gross negligence or willful misconduct, the Client agrees to indemnify the Company and its directors, officers, agents, and employees, from and against all claims, liabilities, losses, damages, costs, and expenses as incurred (including, without limitation, reasonable legal fees and costs), in connection with any third-party actions,  proceedings or investigations, whether or not the Company is a party, relating to or arising out of the  Services under any Contract Document or any matter relating to such Services. The Client's obligations under this paragraph shall survive the termination of these Terms. This Paragraph will be enforced to the fullest extent permitted by law and, if found to be overly broad, will be interpreted as providing the greatest protection to Company as permitted by law.
3. **TERMINATION:**  The Company may immediately terminate these Terms and any applicable Contract Documents by providing written notice to the Client, if the Client : (i) becomes insolvent,  admits its inability to pay its debts generally as they become due or the Company has reasonable cause to believe the Client is unable to pay its debts generally as they become due; (ii) is dissolved or liquidated or takes any corporate action for such purpose; (iii) takes a general assignment for the benefit of creditors; or (iv) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
4. **NON-EXCLUSIVITY:** The Client acknowledges and accepts that it is the Company's practice to serve multiple clients within industries, including those with potentially opposing interests. Accordingly, the Company may have served, may be serving, or may in the future serve other clients whose interests may be adverse to those of the Client. In all such situations, the Company is committed to maintaining the confidentiality of each of the Client's information.
5. **WORKING HOURS**: All Services performed by the Company pursuant to these Terms and any applicable Contract Documents will be performed between 5:00 AM to 3:00 PM, Monday to Friday, excluding federal holidays. The Company reserves the right to charge additional fees and expenses to the Client for any Services required to be performed outside of the above referenced time period.
6. **UTILITIES**: The Client agrees to provide the Company any and all field utilities, including but not limited to electricity, toilers, drinking water, lifts, and elevators, without charge.
7. **EQUIPMENT AND MATERIALS**: If equipment or materials needed to fulfill the Services become unavailable for any reason, the Company shall have the right to utilize substitutions. The Client shall reimburse the Company for the difference between the cost of the unavailable equipment or materials and the substitutions.
8. **SUBCONTRACTORS**: [The Company may](https://www.lawinsider.com/clause/subcontractors) hire or engage one or more subcontractors to perform any or all of its obligations under these terms or any applicable Contract Document; provided, however, that the Company shall in all cases remain primarily responsible for all of its obligations under these Terms and any applicable Contract Documents with respect to the scope and quality of the Services.
9. **NON-SOLICITATION:** While the Company provides Services to the Client, the Client shall not solicit for employment, employ, or otherwise engage the service of any consultant or other professional or managerial level employee who is employed by the Company and was involved with the Services described in a Contract Document (or assist any third party in so doing). For purposes of this paragraph, general employment advertising carried on in good faith by the Client that is not, directly or indirectly, targeted to any employee of the Company (and any hiring resulting from such advertising) shall not be deemed to be direct or indirect solicitation (or hiring) in violation of this paragraph.
10. **GOVERNING LAW; VENUE:** These Terms, and all matters arising out of or relating to these Terms are governed by and will be construed in accordance with the laws of Arizona, without giving effect to conflict of laws principals. Each party submits to the exclusive jurisdiction of and agrees that venue is proper in, the state and federal courts located in Maricopa County, Arizona.
11. **NOTICES:** All notices, requests, consents, claims, demands, waivers, and other communications under these Terms must be in writing, addressed to the other party at such address set forth in the applicable Contract Documents, or that the receiving party may designate from time to time.
12. **RELATIONSHIP OF THE PARTIES:** The relationship between the parties is that of independent contractors. Nothing contained in these Terms is intended to create any agency, partnership, joint venture, or other forms of joint enterprise, employment, or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.
13. **ACCEPTANCE OF SERVICES:** The Company has the sole right to control the details of the method and manner for the performance of the Services, and the Company shall be solely responsible for supervising, controlling, and directing the details and manner of the completion of the Services. Notwithstanding the foregoing, the Client has a right to inspect the performance of the Services and to secure satisfactory final completion. The Client will be deemed to have accepted the Services in full unless the Client notifies the Company in writing within 3 days of the Company completing such Services.
14. **ACCESS:** The Client shall provide reasonable means of access to facilities and/or equipment being serviced. Should removal, replacement or refinishing of any structure or any components thereof be necessary for proper access, the Company shall not be responsible for their replacement or cost thereof. The Company shall have the right to start and stop equipment as necessary to complete its scope of work, which will be arranged through Client’s designated representative.
15. **SEVERABILITY:**  It is the intent of the parties that these Terms be enforced to the fullest extent permitted by applicable law. To the extent that any provision of these Terms is found by a court of competent jurisdiction to be illegal or unenforceable, the parties intend for the court to modify or delete the illegal or unendurable term as to afford the party for whose benefit it was intended a benefit equal, or as nearly equal as possible, to the benefit initially agreed to by the parties. If a provision of these Terms is modified or deleted, the balance of the Terms shall not be affected.
16. **AMENDMENT, WAIVER, AND ASSIGNMENT:** These Terms may not be amended, modified, or waived except by a signed written agreement. The Client shall not assign or transfer any of its rights or obligation under these Terms without the prior written consent of the Company.
17. **FORCE MAJEURE: The Company shall not be liable or responsible to the Client for any failure, delay, hindrance, or impracticability in fulfilling or performing the Services or any obligations under these Terms, when and to the extent such failure, delay, hindrance, or impracticability is caused by or results from acts beyond the Company's control, including, without limitation, the following events (each, a "Force Majeure Event"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes, tariffs, supply chain issues or blockades in effect; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) shortage of adequate power or transportation facilities; (i) epidemic or pandemic; or (j) Unsafe Situation (as defined above). The Company shall give notice to the Client within a reasonable number of days of the Force Majeure Event, stating the period of time the occurrence is expected to continue; however, the Company's failure to give notice shall not affect its rights under this paragraph. The Company shall resume the performance of its obligations as soon as reasonably practicable.**
18. **ENTIRE AGREEMENT: All Services provided by the Company are subject to the Client agreeing with and accepting these Terms in their entirety. These Terms 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. These Terms prevail over any of the Client 's terms and conditions of purchase regardless of whether or when the Client has submitted its purchase order or such terms. Any stenographic or clerical errors are subject to correction by the Company. Fulfillment of the Client 's order does not constitute acceptance of any of the Client 's terms and conditions and does not serve to modify or amend these Terms. Furthermore, any proposal for additional or different terms or any attempt by the Client to vary these Terms in any way is hereby objected to and rejected. If these terms are deemed to be the Company's acceptance of a prior offer made by the Client, the acceptance is expressly made conditional on the Client's assent to the additional and different terms in these Terms.** In the event of a conflict between the Terms of Service and the applicable Contract Document, these Terms will prevail.
19. **DISPUTE RESOLUTION: In the event of a dispute or claim (“Dispute”) between the Parties that arises out of, or is related in any way to Services under a Contract Document, the Parties agree that the process outlined in this Paragraph shall be the sole and exclusive remedy. The Parties shall first try to resolve the Dispute through good faith, direct, in person discussion between senior management level personnel with authority to settle the matter. The Parties must make themselves reasonably available to resolve such disputes within ten (10) business days of written notice of the Dispute. Completion of this step is a condition precedent to any additional dispute resolution process. If the Dispute remains unresolved after direct discussions, the Parties agree to binding arbitration in Maricopa County, Arizona and in accordance with AAA Construction Industry Arbitration Rules.**