



John H. Carter Co., Inc.

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Shipping Terms: Prepaid and Bill

Incoterms: FOB Shipping Point

Rev:

TOTAL	34,162.70
excluding freight, tax, and alternates	

Did you know that John H. Carter Company offers a wide variety of products? We even offer service & repair on most of these, as well as automated process control systems. For your convenience, please visit www.johnhcarter.com for a complete list of products & services.

**JOHN H. CARTER Co., Inc.
CONTROLWORX, L.L.C.****Terms And Conditions Of Sale**

NOTE: These Terms and Conditions of Sale control the rights and responsibilities of the parties in connection with goods and/or services sold to any customer or purchaser of goods or services hereunder (hereinafter, "Buyer") by John H. Carter Co., Inc. its affiliates and/or its subsidiary, ControlWorx, L.L.C. (individually and/or collectively "Seller"). Please read this document carefully because of its significant legal consequences.

1. ACCEPTANCE. Acceptance by Seller of Buyer's order or proposal is expressly made conditional on assent to these Terms and Condition of Sale, either by written acknowledgement or by conduct by Buyer that recognizes the existence and controlling nature of these Terms and Conditions of Sale.

2. FORM OF CONTRACT AND NO WAIVER. Seller will not be deemed to have accepted any proposal or sales order through course of dealing, performance, implied consent, or waiver. Specifically, but without limitation, Seller's (i) supplying products or performing services in response to Buyer's purchase order or proposal, and/or (ii) failing to complain of Buyer's non-compliance with these Terms and Conditions of Sale or the presence of any conflicting terms and conditions in any other purchase order or similar document, and/or (iii) accepting payment for products or services, shall not be construed as acceptance of any terms and conditions proposed by Buyer. No attempted modification by Buyer of these Terms and Conditions of Sale will be effective against Seller unless expressly accepted in a writing signed by Seller's competent authority who has the express authority by Seller to make such agreements.

3. CONFLICTING PROVISIONS VOID. Seller hereby objects to and rejects any terms and conditions included in Buyer's purchase order or other writing or modification that conflict with these Terms and Conditions of Sale. Any inconsistent terms and conditions contained in Buyer's purchase order, terms and conditions, or any other writing that represents Buyer's offer are not a part of the agreement between Seller and Buyer and shall have no effect.

4. PAYMENT. Payment terms are net cash twenty (20) days from the date of Seller's invoice. Should a single order of a group of orders for a single project (from a single Buyer) exceed \$100,000, progress payments will be required. Such progress payments will be made on the basis of one third of the total price being due upon acceptance of order, one third due upon 50% completion, and one third due at completion, unless otherwise agreed in writing. If payment is not made when due, the unpaid balance will be subject to a finance charge of two percent (2%) of the unpaid balance per month or at the highest interest rate allowed by law, whichever is lesser. The amount of all finance charges will be added to the balance owed to Seller. If Buyer fails to pay any invoice when due, or if the financial condition or credit of Buyer becomes unsatisfactory to Seller, Seller, at its sole option and without affecting any other lawful remedy, may change the terms of payment or suspend work and further deliveries, or both, until Buyer provides security or other assurances of performance as demanded by Seller. In the event Seller institutes legal or collection action against Buyer for non-payment, Buyer shall be liable to Seller for all reasonable costs and attorney's fees incurred by Seller in connection therewith. In the event of a dispute between Seller and Buyer regarding any separate sale(s), purchase(s), project(s), or service(s), Buyer shall not be entitled to withhold payments due Seller as a setoff for claims based on separate sale(s), purchase(s), project(s), or service(s).

5. LIMITED WARRANTY. Subject to the limitations contained below, Seller warrants that goods manufactured by Seller or consumables and services provided by Seller will be free from defect in materials and workmanship under normal care and use until the expiration of the applicable warranty periods hereafter set forth. Said goods are warranted for eighteen (18) months from the date of shipment or twelve (12) months from date of initial operation, whichever is the lesser. Said consumables and services are warranted for a period of ninety (90) days from the date of shipment or provision. If Buyer discovers any warranty defects and notifies Seller thereof in writing and during the applicable warranty period, Seller shall, at its sole discretion, promptly correct any errors that are found by the Seller in the services, or repair or replace at its manufacturing or service facility that portion of the goods found by Seller to be defective, or refund the purchase price of the defective goods/services. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable environmental conditions, accident, misuse, or by improper installation, modification, repair, storage, or handling, 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 and in advance by an authorized Seller representative. All costs of transportation and time and expenses of Seller's personnel for site travel and diagnosis under this warranty clause will be borne by Seller if it is determined to be a warrantable repair. If Seller determines that it is not a warrantable repair, these same costs shall be borne by the Buyer. Goods repaired and parts replaced during the warranty period shall be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer. This limited warranty is the sole warranty made by Seller and can be amended only in writing signed by an authorized representative of Seller.

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 other than making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. OTHER THAN AS EXPRESSED ABOVE, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AT LAW, BY CONTRACT, OR OTHERWISE, AS TO THE MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS, CONSUMABLES OR SERVICES.

6. LIMITATION OF REMEDY AND LIABILITY. In no event, regardless of the form of the claim or cause of action (including but not limited to claims based in contract, patent or trademark infringement, negligence, strict liability, other tort, or otherwise), shall Seller's liability to Buyer and/or its affiliates exceed the contract price. The parties agree that in no event shall either party's liability to the other and/or their affiliates extend to include incidental, consequential, punitive, or exemplary damages. The term "consequential damages" shall include, but not be limited to, lost or deferred production, loss of anticipated profits, loss of use, loss of revenue, and cost of capital.

7. DELIVERY: Seller's obligation is to deliver the goods F.O.B. Seller's warehouse, place of manufacture, or other place from which the goods are actually shipped within the U.S.A., at which point risk of loss shall pass to Buyer. Freight will be prepaid and added to invoice. Delivery dates given to Buyer in any manner are approximate. Seller will not be liable for failure to make delivery or delay in making delivery that directly or indirectly results from or is contributed to by any cause beyond Seller's reasonable control, including but not limited to: fire, flood or other acts of God; strikes or other labor disagreements; accidents; acts or requirements of government or civil authorities; riot; war; embargo; shortages of labor, material or energy; delays in transportation; failures or delays by subcontractors or suppliers; or necessary changes in production or shipment schedules. In the event of such delay, Seller will have the right to apportion available supplies among its customers, including Buyer, in any manner that Seller decides to be fair and reasonable, and any delivery date will be postponed for a period of time equal to the delay. If shipments are held at Seller's premises at request of Buyer, invoices will be rendered for all completed goods as though actually shipped, and Buyer will also pay Seller for all extra expenses incurred.

8. CANCELLATION BY BUYER. Buyer may cancel its order, or any part of it, by sending written notice of cancellation to Seller and by paying Seller a reasonable cancellation fee. The reasonable cancellation fee will be determined by Seller and will reflect, among other factors: the expenses already incurred, other commitments made by Seller, sales and administrative overhead, and profits. If Buyer has received any price discounts due to the quantity of goods ordered by Buyer, but has not purchased the applicable quantity at the time of cancellation, Buyer must also pay to Seller the difference between the price Buyer paid and the price it would have been paid had Seller's price been based on the quantity actually purchased.

9b. RETURNS: Credit for returned goods can only be considered for material returned with our permission and issuance of a John H. Carter Company returned goods authorization number (RGA#). Credit will be subject to our inspection and confirmation that the material is new, unused and in the original packaging. Returns must be made within 90 days of receipt by customer. Credit can only be allowed for items normally carried in JHC inventory. If material is special-ordered at the customer's request, credit for return will be subject to the discretion and policies of the respective vendor or factory involved.

9. PRICES: Unless otherwise specified by Seller, Seller's prices for the goods shall remain in effect for thirty (30) days from the date of Seller's quotation or acceptance of the order for the goods, whichever occurs first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the goods pursuant to Seller's standard invoicing procedures is received and accepted by the Seller from the Buyer within such time period. After such thirty (30) day period, Seller shall have the right to revise the price of the goods up to Seller's price in effect for the goods at the time the order is released by Buyer and Seller prior to final manufacture and shipment, provided, however, that any such price revision for goods manufactured by the Seller shall not exceed seven percent (7%) during the six (6) month period following the date of Buyer's order or Seller's quotation, whichever occurs first. The price for any Resale Products shall be Seller's price in effect at the time of shipment to Buyer.

10. PATENTS: Seller warrants that goods manufactured by Seller and sold pursuant to these Terms and Conditions of Sale, or their use as provided below, do not infringe any valid U.S. Patent in existence as of the date of delivery. This warranty is given upon condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged, and if Seller is affected, that Buyer permit Seller to control completely the defense or compromise of any such allegation of infringement. Seller's warranty as to use only applies to infringements arising solely out of the inherent operation (i) of such goods or (ii) of any combination of goods sold hereunder in a manner designed by Seller. This warranty shall not apply to goods manufactured by Seller specifically for Buyer according to Buyer's specifications.

11. INSTALLATION: All goods shall be installed by and at the expense of the Buyer.

12. TAXES: Any tax 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 materials used therein, and any tax now in effect or increase in same payable by the Seller because of the sale of the goods, such as Sales Tax, Use Tax, Retailer's Occupational Tax or Gross Receipts Tax may, at Seller's option, be added to the price hereon specified.

13. 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 plant site where the Goods are first used. Buyer may negotiate with Seller separate licenses to use such copies of firmware and software at other plant sites. 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.

14. COMPLIANCE WITH CERTAIN LAWS: Unless otherwise expressly provided herein, the goods shall be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and Executive Order 11246 the provisions of which are incorporated herein by reference.

15. ASSIGNMENT: Buyer shall not (by operation of law or otherwise) assign its rights or delegate its performance hereunder without the prior written consent of Seller, and any attempted assignment or delegation without such consent shall be void.

16. INDEMNIFICATION: Buyer shall release, defend, indemnify, and hold Seller harmless against liability or obligation, whether in contract, tort (including but not limited to negligence and strict liability) or otherwise, with respect to any expense, loss, injury or damage to Buyer and to any other person or entity resulting from goods subjected to: (a) improper installation or storage, (b) accident, damage, abuse or misuse, (c) abnormal operating conditions or applications, (d) operating conditions or applications above the rated capacity of the goods, (e) operating conditions or applications not made known to or contemplated by Seller at the time of the agreement, or (f) a purpose or application other than or varying in any degree from that for which the goods were designed.

17. GOVERNING LAW: The validity, interpretation, and performance of these Terms and Conditions of Sale and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of Louisiana, excluding its conflicts of laws rules.

18. ENTIRE AGREEMENT AND SAVINGS CLAUSE: These Terms and Conditions of Sale (and any of Seller's purchase or work orders in connection therewith) constitute a complete and exclusive statement of the agreement between Seller and Buyer. These Terms and Conditions of Sale control over any conflicting provision in any purchase or work order issued by Seller. There are no other promises, conditions, understandings, representations or warranties. All provisions are severable, and if any of these Terms and Conditions of Sale are found by a court of competent jurisdiction to be unenforceable, then the Terms and Conditions of Sale shall be deemed modified only to the extent necessary to make them enforceable.

19. EXPORT CONTROLS STATEMENT: The items that are sold and shipped to Buyer pursuant to any order/invoice are subject to the export laws of the United States and perhaps other countries as well. Seller and its subsidiaries are committed to compliance with all relevant export control laws. Buyer shall cooperate with any U.S. and foreign regulatory requirement or any government inquiry, audit, investigation or other inquiry, upon notice to Buyer by Seller or any relevant government or government agency, department, or division. If Buyer intends to resell or re-export these products to another country(ies), Buyer is hereby notified and aware that these products are sold and/or exported by Seller in accordance with U.S. export control laws. Buyer is hereby notified and aware that compliance with these laws is mandatory on all parties anywhere in the world under U.S. law and deviation of products or acts contrary to U.S. relevant foreign export laws is prohibited and may subject Buyer to significant penalties and other sanctions. Moreover, Buyer shall release, defend, indemnify and hold Seller harmless from are against any liability or obligation (including, but not limited to, penalties, other sanctions, and defense costs) arising from or in any way connected to Buyer's failure to comply with such laws or to cooperate with such government entities.

20. HIRING OF EMPLOYEES: Buyer agrees that during the execution of the Services by Seller, and for a period of 24 months after completion of the Services, Buyer will not directly or indirectly, individually or as a shareholder, investor, advisor, partner, member, manager, owner, director, officer, employee, consultant or agent of any corporation, partnership, limited liability company, or any other entity (a) solicit, encourage or have contact with any of Seller employees for the purpose of encouraging them to end their employment with Seller; (b) hire any employee of Seller; (c) solicit, encourage or have contact with any of Seller contractors or their employees for the purpose of encouraging them to end their relationship with Seller; or (d) hire any Seller contractor or employee of a Seller contractor.

If Buyer breaches this Section 20, in addition to any and all other remedies available to Seller in law or equity, Buyer shall pay as damages, and not as a penalty, \$125,000 for each breach. The parties agree that the foregoing damages shall not preclude Seller from obtaining any further damages, in law or in equity, in connection with any and all breaches in this Section 20. In addition Buyer agrees that in the event that Seller institutes or becomes involved in any action to enforce or defend this Section 20, Seller shall be entitled to recover from Buyer its reasonable attorney's fees and costs related to such action.