

The following terms and conditions of sale shall apply to any sale of goods or services by Zimmer Surveillance Solutions, a Div. of Zimmer Controls and Contracting Limited (hereinafter called "Zimmer Surveillance") and acceptance of these terms and conditions is an express condition of such sale. Purchaser shall be deemed to have full knowledge of the terms and conditions herein and such terms and conditions shall be binding if the goods or services are requested, ordered, or delivered to and accepted, by Purchaser. Alternatively, if the Purchaser has not yet requested, ordered or received the good or services, it shall be deemed to have accepted these terms and conditions if it does not within five days from the date of receiving them deliver to Zimmer Surveillance its written objection to said terms and conditions or any part hereof.

1. GENERAL

In the event of any conflict or inconsistency between the terms and conditions of sale herein and the terms and conditions contained in Purchaser's order or in any other form issued by Purchaser, whether or not any such form has been acknowledged or accepted by Zimmer Surveillance, Zimmer Surveillance's terms and conditions herein shall prevail. No waiver, alteration or modification of these terms and conditions shall be binding upon Zimmer Surveillance unless made in writing and signed by a duly authorized representative of Zimmer Surveillance.

2. WARRANTY

Zimmer Surveillance warrants that its workmanship and the services provided in supplying, servicing, repairing and/or overhauling the equipment or those parts of the equipment specified in the contract shall reflect the normal and accepted practice within industry for such work. This warranty shall survive for a period of one year from the date of completion of the work done or services provided and will be void if the Purchaser fails to provide written notice of warranty claim to Zimmer Surveillance within seven days of it becoming aware of any breach of warranty. Zimmer Surveillance is not a manufacturer of parts and extends no warranty on the sale of any parts other than as required by any applicable statute and the Purchaser acknowledges that any warranty it may have with respect to such goods is limited to the warranty available, if any, from the original manufacturer. If any part or component proves to be defective under normal and proper use within one year from the completion date of the work or services hereunder, Zimmer Surveillance will assist the Purchaser in completing a warranty claim from the manufacturer of such part or component.

This warranty is limited to the scope of the work specified in this contract and the defining of the scope of work shall be the sole responsibility of the Purchaser. All other representations and warranties whether express or implied are hereby excluded. Zimmer Surveillance shall not be liable for any failure to be specific nor for any inaccuracy in delimiting shall the scope of work and the terms of any general specification be limited to Zimmer Surveillance's capability in terms of skills and equipment at the service location where the work is to be done or service provided.

To the extent that Zimmer Surveillance has relied upon any specifications, information, representation or operating conditions or other data supplied to it by the Purchaser, or in the event that operating conditions or other conditions differ from those represented by the Purchaser and relied upon by Zimmer Surveillance, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.

This constitutes the only warranty of Zimmer Surveillance and no other warranty or condition, statutory or otherwise, shall be implied and in no event shall the total liability of Zimmer Surveillance exceed the total amount paid for work under this contract. The Purchaser acknowledges that this limitation is reasonable and the contract price has been negotiated with this limitation in mind.

3. QUOTATIONS

Unless otherwise state, Zimmer Surveillance's quotation shall be null and void unless accepted by Purchaser within sixty (60) days from the date of quotation.

4. PRICES/COST OF TRANSPORTATION

All quoted prices are based on current exchange rates, tariff and costs of manufacture. Unless otherwise stated in the quotation, quoted prices are subject to change by Zimmer Surveillance with or without notice until Purchaser's acceptance. Prices are subject to correction for error at any time. Unless otherwise stated, all prices are f.o.b. factory and include domestic packing. Customary methods of transportation shall be selected by Zimmer Surveillance and such transportation will be at Purchaser's expense. Special methods of transportation will be used upon Purchaser's request and at Purchaser's additional expense provided reasonable notice of Purchaser's transportation requirements are given by Purchaser to Zimmer Surveillance prior to shipment.

5. TAXES

Prices do not include Harmonized Sales Tax, Provincial or Municipal sales, use, value-added or similar tax. Accordingly, in addition to the price specified herein, the amount of any present or future sales, use, value-added or similar tax applicable to the sale of the goods hereunder to or the use of such goods by Purchaser shall be paid by Purchaser to the entire exoneration of Zimmer Surveillance.

6. DELIVERY

Delivery schedules are approximate and are based on prevailing market conditions applicable respectively at the time of Zimmer Surveillance's quotation and Zimmer Surveillance's acceptance of Purchaser's order.

Delivery shall also depend on the prompt receipt by Zimmer Surveillance of the necessary information to allow manufacturer's engineering and manufacturing schedules. Zimmer Surveillance may extend delivery schedules or may, at its option, cancel Purchaser's order in full or in part without liability other than to return any deposit or prepayment which is unearned by reason of the cancellation.

7. HEALTH AND SAFETY

Purchaser shall furnish a safe and healthful place to work and take all necessary precautions to ensure the safety of Zimmer Surveillance's personnel at all times, including them in the Purchaser's safety practices and ensuring a safe and effective lock-out tag procedure is in effect with respect to all electrical or mechanical equipment. Except as otherwise agreed, Purchaser shall be responsible for the operation of all equipment (including cranes, rigging and tools), and shall provide free access to all utilities that Zimmer Surveillance may require to carry out any of its services. Purchaser shall immediately take such precautions as may be required to legally eliminate any hazardous or toxic substances or wastes or other contaminants so that the provision of services required hereunder may proceed. If the presence of the foregoing causes an increase in the cost of carrying out this agreement, an equitable adjustment will be made to the contract price to reflect such increased costs. Purchaser shall indemnify Zimmer Surveillance with respect to any claims, damages, losses, or expenses arising out of the Purchaser's failure to properly notify and protect Zimmer Surveillance and its on-site personnel about and from any hazards existing at the site.

8. FORCE MAJEURE

Zimmer Surveillance shall not be responsible or liable for any loss or damage incurred by Purchaser herein resulting from causes beyond the reasonable control of Zimmer Surveillance including, without limitation, acts of God, war, terrorism, invasion, insurrection, riot, the order of any civil or military authority, fire, flood, weather, acts of the elements, delays in transportation, unavailability of equipment or materials, breakdown, sabotage, lock-outs, strikes or labor disputes, faulty castings or forgings, or the failure of Zimmer Surveillance's suppliers to meet their delivery promises. The acceptance of delivery of the equipment by Purchaser shall constitute a waiver of all claims for loss or damage due to any delay whatsoever.

9. TITLE

Title to the goods or any part thereof shall not pass from Zimmer Surveillance to Purchaser until all payments due hereunder have been duly made in cash, except as otherwise expressly stipulated herein. The goods shall be and remain personal or moveable property, notwithstanding their mode of attachment to realty or other property. If the goods are deemed to become fixtures, the Purchaser represents and warrants to Zimmer Surveillance that the Purchaser, if not owner of the real property to which the goods are affixed, is the duly authorized agent of the owner and authorizes the supply of services and goods to the real property in question. If default is made in any of the payments herein, Purchaser agrees that Zimmer Surveillance may retain all payments which have been made on account of the purchase price as liquidated damages, and Zimmer Surveillance shall be free to enter the premises where the goods may be located and remove them as Zimmer Surveillance's property, without prejudice to Zimmer Surveillance's right to recover any further expenses or damages Zimmer Surveillance may suffer by reason of such nonpayment. This retention of title constitutes a security interest in the goods securing payment of all debts due to Zimmer Surveillance by the Purchaser. This security interest may be enforced by any remedy available at law to secured parties generally in similar transactions. Zimmer Surveillance is authorized to register such notices or other documentation as necessary to fully evidence or affect such security interest.

10. LIMITATION OF LIABILITY

Notwithstanding any other provision of this contract or any applicable statutory provisions, Zimmer Surveillance, its directors, officers and employees, including their respective heirs and assigns shall not be liable to the Purchaser for indirect, special, consequential, incidental or punitive damages (including, without limitation, damages for or in relation to loss of use of facilities, lateness in delivery, loss of revenue or profits, downtime costs, the cost of capital or of substitute equipment or services, or the cost of replacement power) arising directly or indirectly from any breach of this contract (fundamental or otherwise) or from any warranties or indemnities contained herein, or from any acts or omissions of its officers, employees or agents which may give rise to legal liability (whether in tort, including for negligence, strict liability or under any other theory of legal liability). In no event shall the liability of Zimmer Surveillance exceed the unit price of the defective services, products or parts provided hereunder, and all such liability shall terminate upon the expiry of the warranty period.

The provisions of this article and of all other sections of this agreement providing for limitation of or protection against liability of Zimmer Surveillance, its directors, officers and employees, including their respective heirs and assigns shall survive the termination, cancellation or expiration of this agreement, and shall also protect, to the full extent permitted by law, its direct and indirect suppliers and sub-contractors and their respective agents and employees.

In the event any product, part or service sold by Zimmer Surveillance hereunder is the subject of a resale by the Purchaser, Purchaser agrees to bind its customer or customers to provisions limiting liability of Purchaser and its suppliers and sub-contractors which are substantially the same as the corresponding provisions of this agreement and Purchaser shall indemnify and save harmless Zimmer Surveillance its directors, officers and employees, including their respective heirs and assigns from any claims, loss or damage arising directly or indirectly from the Purchaser's failure to do so.

Zimmer Surveillance shall not be liable to Purchaser for any damage caused by Zimmer Surveillance to Purchaser's property to the extent that such damaged property is insured by the Purchaser.

11. RETURNED GOODS

No goods may be returned to Zimmer Surveillance without Zimmer Surveillance's prior written permission. Zimmer Surveillance reserves the right to decline all returns or to accept them subject to a handling/restocking charge. Even after Zimmer Surveillance has authorized the return of goods for credit, Zimmer Surveillance reserves the right to adjust the amount of any credit given to Purchaser on return of the goods based on the conditions of the goods on arrival in Zimmer Surveillance's warehouse. Credit for returned goods will be issued to Purchaser only where such goods are returned by Purchaser and not by any subsequent owner of the goods. Goods will be considered for return only if they are in their original condition and packaging

12. TERMS OF PAYMENT

Unless otherwise stated, invoices on "open account" shipment are payable within thirty (30) days of invoice date. Unless specifically provided, no cash discount shall be available to Purchaser. When a cash discount is offered, the discount price is computed from the date of invoice. Zimmer Surveillance does not offer any cash discounts under normal circumstances, conditions or use on C.O.D. shipments. Should payment not be made to Zimmer Surveillance when due, Zimmer Surveillance reserves the right, until the price has been fully paid in cash, to charge the Purchaser with interest on such overdue payments at the rate of 2% per month. The charging of such interest shall not be construed as obligating Zimmer Surveillance to grant any extension of time in the terms of payment. Purchaser agrees to indemnify and hold harmless Zimmer Surveillance for all costs incurred by it for collection of unpaid accounts including all court fees, registration costs and legal fees on a solicitor client basis and all such fees and expenses shall bear interest at the rate of 2% per month and shall be a further debt of the Purchaser to Zimmer Surveillance.

13. CHANGES AND CANCELLATION

Orders accepted by Zimmer Surveillance are not subject to changes or cancellation by Purchaser, except with Zimmer Surveillance's written consent. In such cases where Zimmer Surveillance authorizes changes or cancellation, Zimmer Surveillance reserves the right to charge Purchaser with reasonable costs based upon expenses already incurred and commitments made by Zimmer Surveillance including, without limitation, any labor done, material purchased and also including Zimmer Surveillance's usual overhead and reasonable profit and similar cancellation charges from Zimmer Surveillance's suppliers.

14. AGREEMENT

An acceptance and official confirmation of Purchaser's order by Zimmer Surveillance shall constitute the complete agreement, subject to the terms and conditions of sale herein set forth and shall supersede all previous quotations, orders or agreements. Any waiver, indulgence or extension granted by Zimmer Surveillance or any failure by Zimmer Surveillance to insist upon its strict legal rights shall not operate as a waiver, indulgence or extension unless agreed to in writing in advance by Zimmer Surveillance. The laws of the Province of Ontario and laws of Canada applicable therein shall govern the validity, interpretation and enforcement of these terms and conditions of sale and of any contract of which these terms and conditions are a part. The parties hereto attorn to the jurisdiction of the courts of the Province of Ontario.