

Standard Terms & Conditions

§1 Scope

- 1) SCADA International A/S (registration no. 29526443) ("SCADA International") will perform the work and provide its expertise and services (such work, expertise and services are collectively referred to as "the Services") solely in accordance with the contract entered into between SCADA International and the client (the "Client") (SCADA International and the Client are also individually referred to as a "Party" or collectively referred to as the "Parties"), under these standard terms and conditions ("Standard Terms and Conditions") and any special terms and conditions agreed between the Parties (the contract, the Standard Terms and Conditions and any special terms and conditions are collectively referred to as "the Contract").
- 2) The headings in these Standard Terms and Conditions are for convenience only and shall have no other legal meaning.
- 3) Terms and conditions of the Client which differ from these Standard Terms and Conditions shall be disregarded and in no way be part of the contractual relationship of the Parties except in the event that SCADA International has acknowledged them explicitly in writing.

§2 Supply of the Services

- 1) The Contract forms the basis for SCADA International's obligations in relation to the supply and performance of the Services. Any and all agreements relating to the performance of the Services including oral agreements or statements need the written confirmation of SCADA International to become effective and valid.
- 2) SCADA International has the right at its sole discretion to decide freely after due assessment of the circumstances, what is necessary to perform the Services including the performance of all necessary and usual studies at the Clients reasonable costs, gathering information, investigations, travelling and inspections as well as taking pictures and preparing maps without any prior or subsequent approval by the Client.
- 3) In case of Force Majeure, including without limitation any act of God, fire, flood, plant breakdown, malicious damage, theft, industrial action, act of government or other public authority, civil disturbance, terrorism or war, all obligations of the Parties shall be suspended during the time this situation persists. In the event Force Majeure makes the fulfilment of the Contract entirely impossible both Parties shall be released from their contractual obligations. Payments for rendered Services shall not be refunded or granted back. In case SCADA International has provided any Services that were not paid until the occurrence of Force Majeure, the Client shall be obligated to pay to SCADA International the proper fee for these Services which have been carried out by SCADA International.
- 4) Before SCADA International starts its performance of the Services, the Client shall inform SCADA International about relevant safety issues and take all necessary safety-related measures to ensure a safe work environment for the persons carrying out the Services for SCADA International and shall comply with all legal and other safety regulations.
- 5) SCADA International may at any time without notifying the Client make changes to the Services which are necessary to comply with any applicable safety or other statutory requirements.
- 6) The Client acknowledges and consents to the fact that SCADA International may subcontract work and services which form part of this Contract to any third Party. SCADA International is responsible for the work performed by its subcontractors in accordance with the provisions of this Contract.

§ 3 Obligation to Cooperate

- 1) The Client will at its own expense and in due time supply SCADA International with all necessary and requested documents.
- 2) The Client has to support SCADA International and ensure that SCADA International is able to inspect the relevant site/assets and provide access/connection at the request of SCADA International.
- 3) The Client shall immediately inform SCADA International if there are changes or modifications which are relevant for the performance of the Services. In the event that Client's non-cooperation delays the performance of the Services, SCADA International shall be entitled to a time extension and shall be entitled to claim its additional costs and damages arising out of such delay.

§ 4 Confidentiality

- 1) Either Party agrees to keep strictly confidential all information provided by or on behalf of the disclosing Party (the "Disclosing Party") to the other Party (the "Recipient") in connection with the Contract including, without limitation, any and all technical information and information about the commercial, business and financial activities of either Party whether disclosed on, before or after the commencement date of the Contract or disclosed in writing, orally or otherwise (collectively the "Confidential Information"). The Recipient shall not either during the period of the Contract or at any subsequent time:
 - a. disclose Confidential Information provided by the Disclosing Party to any person other than the Recipient's affiliates and representatives in confidence ; or
 - b. use or permit its representatives or affiliates to use Confidential Information provided by the Disclosing Party for any purpose other than for fulfilling its obligations under the Contract or the implementation of the Contract; without the prior written consent of the Disclosing Party.
- 2) Any Party disclosing Confidential Information in accordance with Section 4 paragraph 1(a) shall procure that the person to whom such information is disclosed is made aware of the obligations of confidentiality in Section 4 of the Contract and complies with those obligations as if it were a Party to the Contract.
- 3) Sections 4 paragraph 1 and paragraph 2 do not apply to Confidential Information:
 - a. which is in or comes into the public domain other than through a breach of the Contract;
 - b. insofar as it comes lawfully into the possession of the Recipient from a third Party;
 - c. which the Recipient can prove was already known to it before its receipt from the Disclosing Party;
 - d. which has been independently developed by the Recipient otherwise than in the course of exercise of that Party's rights under the Contract or the implementation of the Contract;
 - e. to the extent that it is required to be disclosed by law or the requirements of any recognized stock exchange, or authority of competent jurisdiction to whose rules the Party making the disclosure is subject
- 4) SCADA International is permitted to make and/or retain a copy of any Confidential Information which is disclosed to SCADA International by the Client, if the making and retention of such a copy is required for the purpose of satisfying SCADA International's insurance requirements or where SCADA International is legally required to retain Confidential Information.
- 5) All obligations in this Section 4 relating to the use and disclosure of Confidential Information shall survive any termination or expiry of the Contract and shall apply for a period of 3 years from the earlier of the date of termination of the Contract or the date of the final invoice.

- 6) Except for the provisions of Section 4 paragraph 4, upon termination or expiry of the Contract for any reason and upon request, all Confidential Information, documentation, catalogues, samples and price lists issued by the Disclosing Party are to be promptly returned or destroyed by the Recipient.

§ 5 Ownership and licensing of expertise results and intellectual property rights

- 1) SCADA International retains full ownership and copyright to all offers, quotations, drawings, calculations, data and any other materials made available to the Client.
- 2) Furthermore, SCADA International retains full ownership to all of its intellectual property rights – including without limitation any and all rights to patents, trademarks, copyrights, design, know-how and software - created, acquired or otherwise obtained by SCADA International prior to the date of execution of this Contract. Furthermore, all intellectual property rights developed during the course of the performance of the Services shall belong to SCADA International.
- 3) The Client hereby grants to SCADA International a limited, non-exclusive, non-transferable, non-perpetual, without any right to sub-license, fully paid-up royalty-free license to exploit Client's intellectual property rights as provided to SCADA International by the Client to the extent necessary for SCADA International to perform SCADA International's obligations under the Contract including performance and delivery of the Services.
- 4) Subject to the Client's payment of all amounts owed including all fees payable in due course to SCADA International, SCADA International hereby grants to the Client a non-exclusive, perpetual, world-wide, non-transferable, without a right to sub-license, fully paid-up and royalty free license to use the Services which have been approved by the Client for the Client's own internal business purposes only.
- 5) Notwithstanding anything to the contrary set out in this section 5, SCADA International may exploit any and all general knowledge including information technology, ideas, concepts, know-how or techniques obtained through the performance of this Contract and the Services and SCADA International shall thus be free to develop, manufacture and distribute products and services identical or similar to any third Party.
- 6) The Client hereby grants to SCADA International, for the benefit of continuous improvement of SCADA software, the full rights to gather, store and use anonymized data collected as a part of this Contract.

§ 6 Payment

- 1) The fee is exclusive of any applicable Value Added Tax and of any other tax, duty, tariff or charge arising in Denmark or elsewhere. Where delivery is to take place outside of Denmark, the fee is exclusive of any import duties, local taxes or other local charges which may be in force from time to time. Any expenses, outlays or disbursements in connection with the provision of the Services and paid to third parties on behalf of the Client, including reasonable travel and hotel expenses etc. will be charged separately.
- 2) SCADA International may invoice the Client on a monthly basis at the end of each month.
- 3) Unless the fee is quoted to be a fixed price, the fee will be calculated based on time spent by SCADA International to perform the Services and based upon SCADA International's standard rates currently in force. These standard rates are subject to review from 1st January each year.
- 4) In general all invoices of SCADA International are due within 14 days of their invoice date. In the event of late payment, interest will be charged in accordance with the provision of the Danish Interest Act.

- 5) The Client is not entitled to hold back or set off payments based on claims disputed by SCADA International.
- 6) Projects in where milestones are defined to be fulfilled by the Client as a precondition for the time schedule and payment plan. Should the Client fail to comply with these milestones and SCADA International have fulfilled their obligations, SCADA International will be entitled to invoice the work equivalent to completion. Notwithstanding the Client not being able to comply with SAT, or other reasons being out of SCADA Internationals control, for example, but not limited to weather conditions, and SCADA International have fulfilled their obligations; SCADA International will be entitled to invoice the full amount 1 week after completed installation.

§ 7 Acceptance tests hardware and software

- 1) Factory Acceptance Tests (FAT) provided for in the contract shall, unless otherwise agreed, be carried out at the place of SCADA International during normal working hours. Site Acceptance Tests (SAT) provided for in the contract shall, unless otherwise agreed, be carried out at the relevant site during normal working hours. If the contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of SCADA International.
- 2) SCADA International shall notify the Client in writing of the acceptance tests in sufficient time to permit the Client to be represented at the tests. If the Client is not represented, the test report shall be sent to the Client and shall be accepted as accurate.
- 3) If the acceptance tests show the Product not to be in accordance with the contract, SCADA International shall without delay remedy any deficiencies in order to ensure that the Product complies with the contract. New tests shall then be carried out covering the affected parts at the Client's request, unless the deficiency was insignificant.
- 4) SCADA International shall bear all costs ex. travelling and living expenses for acceptance tests carried out. The Client shall bear all travelling and living expenses for his representatives in connection with such tests.

§ 8 Service and Maintenance

- 1) Service and maintenance shall be carried out as specified in the Service Level Agreement Contract.
- 2) If SCADA International shall make a report In Writing for the Client containing observations, recommendation and measures taken, this report shall be in English unless otherwise stated in the Contract.
- 3) Unless otherwise agreed, SCADA International and the Client shall only use parts of the original brand or parts of equivalent quality when carrying out service and maintenance.
- 4) The Client shall not, without SCADA international's consent, himself carry out or have others carry out the service and maintenance which under the Contract shall be carried out by SCADA International. If the Client does so, SCADA International's responsibility for previously performed service and maintenance shall cease.
- 5) The Client shall without undue delay inform SCADA International by notice In Writing of any alterations concerning the Equipment or its operation or other measures taken by the Client which may affect SCADA International's obligations under the Contract. If such alterations or measures seriously affect SCADA International's obligations, and if the parties fail to agree on how to amend the Contract in

respect thereof, SCADA International may, with immediate effect, terminate the contract by notice In Writing to the Client. SCADA International shall in case of such termination also be entitled to compensation.

- 6) The Client shall ensure that the service and maintenance is not carried out under dangerous or unhealthy conditions, and shall take all necessary measures to protect SCADA International's personnel from exposure to any safety or health hazard. The Client shall ensure that SCADA International's personnel are informed of any safety regulations in force at the place where the maintenance is carried out. SCADA International shall inform the Client of any special hazards that the maintenance work may entail.
- 7) The Client shall provide the technical documentation (e.g. up to date drawings, descriptions, charts and instructions) in his possession, which is necessary for carrying out the agreed service and maintenance. SCADA International may not use such documentation for any purpose other than to fulfil the Contract.
- 8) Unless otherwise agreed, SCADA International shall notify the Client in advance of the time when service and maintenance will be carried out.
- 9) The Client shall ensure that SCADA International has access to the Equipment at the agreed or notified time for service and maintenance. Unless otherwise agreed, the service and maintenance shall be carried out during SCADA International's normal working hours.

§ 9 Delivery of hardware and software. Passing of risk

- 1) Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the contract. If no trade term is specifically agreed, the delivery shall be Ex works (EXW). If, in the case of delivery Ex works, SCADA International, at the request of the Client, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier. Partial shipments shall be permitted unless otherwise agreed.
- 2) If a SAT is part of the contract, the date of delivery is when the SAT has been conducted and accepted by the Client. If SCADA International have fulfilled their obligations and a SAT cannot be conducted on the date agreed upon, of reasons being out of SCADA Internationals control, then the date of delivery are the planned SAT date.

§ 10 Time for delivery of hardware and software. Delay

- 1) If the parties, instead of specifying the date for delivery, have specified a period of time on the expiry of which delivery shall take place, such period shall start to run as soon as the contract is entered into, all official formalities have been completed, payments due at the formation of the contract have been made, any agreed securities have been given and any other preconditions have been fulfilled.
- 2) If SCADA International anticipates that he will not be able to deliver the Product at the time for delivery, he shall forthwith notify the Client thereof in writing, stating the reason, and, if possible, the time when delivery can be expected.
- 3) If delay in delivery is caused by Force Majeure, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

§ 11 Time for delivery of Service and Maintenance. Delay

- 1) The Client shall immediately notify SCADA International if he cannot let SCADA International carry out the service and maintenance at the agreed or notified time. Regardless of the cause for such delay the Client shall reimburse SCADA International for any additional costs that the latter incurs due to the delay.
- 2) If SCADA International fails to carry out the service and maintenance at the agreed or notified time and such delay is not due to the Client following shall apply: In case of 30 days or more delay in service and maintenance the Client shall fix a final period within which SCADA International shall have carried out the service and maintenance. If SCADA International fails to do so, the Client may carry out the service and maintenance himself or employ others to do so.
- 3) Unless the delay is due to force majeure or caused by the Client himself, SCADA International shall reimburse the Client any additional costs he incurs for such service and maintenance that are late by 30 days or more. SCADA International shall, regardless of the cause of the delay, repay the amount he may have received for the service and maintenance in question. Except as specified in this Clause, the Client shall not be entitled to any compensation for SCADA International's delay.

§ 12 Liability for defects

- 1) SCADA International shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials, parts, workmanship or not correctly performed service and maintenance as specified in the Contract.
- 2) SCADA International's liability is limited to defects which appear within a period of one year from delivery and defects in service and maintenance work for a period of six months after the work was performed. If the daily use of the Product exceeds that which is agreed, this period shall be reduced proportionately.
- 3) When a defect in a part of the Product has been remedied, SCADA International shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of one year. For the remaining parts of the Product the period shall be extended only by a period equal to the period during which the Product has been out of operation as a result of the defect.
- 4) Notwithstanding SCADA International shall not be liable for defects in any part of the Product for more than two years from date of delivery.
- 5) The Client shall without undue delay notify SCADA International in writing of any defect which appears. Such notice shall under no circumstance be given later than two weeks after the expiry of the liability period. The notice shall contain a description of the defect. If the Client fails to notify SCADA International in writing of a defect within the time limits set forth in the first paragraph of this Clause, he loses his right to have the defect remedied. Where the defect is such that it may cause damage, the Client shall immediately inform SCADA International in writing. The Client shall bear the risk of damage resulting from his failure so to notify.
- 6) On receipt of the notice SCADA International shall remedy the defect without undue delay and at SCADA International's own cost. Unless otherwise agreed the Client shall send the defect part to

SCADA International for inspection. SCADA International has fulfilled its obligations in respect of the defect when SCADA International delivers to the Client a duly repaired or replaced part.

- 7) If no defect is found for which SCADA International is liable, SCADA International shall be entitled to compensation for the costs he has incurred as a result of the notice.
- 8) The Client shall at his own expense arrange for any dismantling and reassembly of the Product and of equipment other than the Product, to the extent that this is necessary to remedy the defect.
- 9) Unless otherwise agreed, necessary transport of the Product and/or parts thereof to and from SCADA International in connection with the remedying of defects shall be at the risk and expense of Client. The Client shall follow SCADA International's instructions regarding such transport.
- 10) Unless otherwise agreed, the Client shall bear any additional costs which SCADA International incurs for repair, dismantling, installation, travelling and transport as a result of the Product being located in a place other than instructed by SCADA International.
- 11) Defective parts which have been replaced shall be made available to SCADA International and shall be his property.
- 12) If, within a reasonable time, SCADA International does not fulfil his obligations, the Client may by notice in writing fix a final time for completion of SCADA International's obligations. If SCADA International fails to fulfil his obligations within such final time, the Client may himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of SCADA International. Where successful remedial works have been undertaken by the Client or a third party, reimbursement by SCADA International of reasonable costs incurred by the Client shall be in full settlement of SCADA International's liabilities for the said defect.
- 13) Where the defect has not been successfully remedied,
 - a. the Client is entitled to a reduction of the purchase price/yearly fee in proportion to the reduced value of the Product and/or maintenance benefit, provided that under no circumstance shall such reduction exceed 15 per cent of the purchase price/yearly fee, or
 - b. where the defect is so substantial as to significantly deprive the Client of the benefit of the contract, the Client may terminate the contract by notice in writing to SCADA International. The Client is then entitled to compensation for the loss he has suffered up to a maximum of 15 per cent of the purchase price.
- 14) SCADA International is not liable for defects arising out of materials provided, or a design stipulated or specified by the Client.
- 15) SCADA International is liable only for defects which appear under the conditions of operation provided for in the contract and under proper use of the Product. SCADA International's liability does not cover defects which are caused by faulty maintenance, incorrect erection or faulty repair by the Client, or by alterations carried out without SCADA International's consent in writing. Finally SCADA International's liability does not cover normal wear and tear or deterioration.
- 16) SCADA International shall not be liable for any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of SCADA International's liability shall not apply if he has been guilty of gross negligence. Gross negligence shall mean an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious SCADA International would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

§ 13 Limitation of Liability

- 1) Notwithstanding any provision to the contrary, any liability of SCADA International caused by negligent performance of its obligations towards the Client shall be limited to five times the fee but shall in any event not exceed total contract amount paid with a maximum of EUR 100.000. This limitation of liability shall also apply to claims for damages by the Client based on product liability (to the extent not prohibited by law).
- 2) In no event shall SCADA International be liable for special, indirect, consequential, or incidental damages, or damages for lost profits, loss of revenue, loss of data, or loss of use, arising out of, or related to the Contract and the Services provided by SCADA International.
- 3) The attention of the Client is expressly drawn to the fact that it has the possibility of agreeing with SCADA International that the liability of SCADA International be extended beyond what is provided for in these General Terms and Conditions. However, such extension of liability is conditional upon the acceptance by the insurer of SCADA International to assume such additional risk and provided that the Client agrees to bear any additional insurance cost associated with such increase of liability.
- 4) Any claims for damages, with the exception of tortuous claims and/or claims brought under the Danish law on product liability, shall be time barred one year after acceptance by the Client of the performance by SCADA International of the Services.

§ 14 Termination

- 1) Either Party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other Party if the other Party commits a material breach of the Contract and such Party (if capable of remedy) fails to remedy the breach within 30 days after being required by the other Party by written notice to do so, or if the other Party goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors, has a receiver or administrator appointed or becomes unable to substantially perform its obligations.
- 2) If the Contract is terminated by SCADA International due to a material breach by the Client, the Client may not reclaim any payments made to SCADA International. Furthermore the Client is liable to SCADA International for all losses and damages SCADA International has incurred caused by such termination by SCADA International of the Contract, including all profits and gains SCADA International would have realized if the Contract had remained in force.

§ 15 Retention of Title

- 1) SCADA International reserves retention of title on the Services and all deliverables included in the performance of the Services until all outstanding payments are effectively made by the Client.

§ 16 Governing Law and Venue

- 1) Danish law shall govern the interpretation, construction and validity of the Contract and any claims arising out of or in connection with the Contract and the Services excluding any conflict of law rules. The Parties specifically exclude the application of the UN Convention on Contracts for the International Sale of Goods.

- 2) The Danish Courts including the City court of Aarhus as 1st instance shall have exclusive jurisdiction over any claim arising under this Contract. Notwithstanding the foregoing, either Party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such Party's intellectual property rights or in respect of any monetary claims.

§ 17 General

- 1) The Contract supersedes any previous agreement, contract or understanding between the Parties and may not be varied except if approved in writing between the Parties.
- 2) Any request from the Client to carry out variations or changes to the Services to be supplied by SCADA International shall be approved by SCADA International in writing.
- 3) A notice required or permitted to be given by either Party to the other under the Contract shall be in writing addressed to the other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice.
- 4) No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same.
- 5) If any provision of the Contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 6) The Parties agree that any transfer or assignment of the Contract shall be approved in writing by the other non-transferring Party (such approval not to be unreasonably withheld).