



GENERAL TERMS AND CONDITIONS
PROGNOST SYSTEMS, INC.

1. APPLICABILITY: The terms and conditions stated herein shall be an integral part of any contract resulting from any purchase order, quotation, system order or service order placed with Prognost Systems, Inc. ("Prognost"), whether attached or not attached thereto (and these Terms and Conditions, the quotation, purchase order or service order to which they relate, and the specifications, drawings and documents related thereto shall hereinafter be referred to collectively as the "Agreement"). Any statement made on any form issued by Purchaser shall not operate to defeat the intent of these General Conditions of Sale unless specifically agreed upon in writing by Prognost.

Additional specific conditions may be included in an offering and shall apply to that offering in conjunction with these Terms and Conditions. Such additional conditions shall govern wherever the two may be inconsistent. The term "Order" means a written contract, Service Order, Work Order or Purchase Order or field ticket, as applicable, pursuant to which Prognost will provide certain Work enumerated therein. The term "Products" means the goods, materials, supplies, components, equipment, software, data and information to be sold, leased, licensed or otherwise provided to Customer pursuant to an Order. The term "Services" means all tasks, activities, services, services, jobs, projects and related activities to be provided to Purchaser as described in an Order.

2. QUOTATIONS: Quotations are valid for (30) days, and if not so acted upon shall be deemed withdrawn. Quotation are not a contract or offer to sell and may only become so upon receipt of Purchaser's Order, and confirmation by Prognost's as acknowledgment of Order. Prognost is under no obligation to enter an Order acknowledgment and may rescind its quotation at any time prior to Prognost's acknowledgment.

3. DELIVERY AND SHIPPING: The estimated shipping schedule is approximate, and based upon prompt receipt of all necessary information from Purchaser. Prognost will notify Purchaser promptly of any material delay and will specify the revised dates as soon as practicable. All prices are EXW factory unless otherwise specified. Method and route of shipment are at Prognost's discretion, unless Purchaser supplies explicit instructions in writing at least 3 weeks prior to shipment. Title and risk shall pass from Prognost upon delivery to Purchaser's carrier at the EXW point.

4. PAYMENT TERMS: Unless otherwise stated, terms are:

4.1 Payment is due within 30 days of date of invoice. Past due invoices shall bear interest at the rate of 1% per month.

4.2 Prognost reserves the right to require progress payments for all Orders. Unless otherwise formally agreed to, the following invoice schedule shall apply:

- Hardware, Software & Factory Services:

40% upon delivery of preliminary project documentation package, (E-Plan, Project Specification Document, Technical Data Sheets and Hazardous Area Certificates as applicable).

60% upon notification of readiness to ship.

- Services:
100% upon completion of Services rendered.

4.3 Each shipment shall be considered as a separate and independent transaction, and payment shall be made accordingly.

4.4 Service work shall be invoiced upon completion of Services performed.

5. TAXES AND OTHER CHARGES: All quoted prices are subject to additions which may be necessary to cover taxes such as sales, duties, value added tax, levies, import duties, gross receipts, use, value added, excise, duty or similar taxes, unless Purchaser shall provide a tax exemption certificate that is acceptable to the taxing authorities.

6. CHANGE ORDERS: All changes affecting equipment configuration or otherwise affecting the scope of the Order are to be documented in writing for approval and authorization to incorporate such changes into the Order. All changes authorized by Purchaser are binding only if accepted by Prognost, and may result in price, delivery and/or condition changes. Pricing of changes shall be based on the then current prices.

7. CANCELLATION: Purchaser may cancel its Order by written notice, provided Purchaser pays cancellation charges on the basis of the percentage of work and/or materials completed on the date cancellation notice is received by Prognost. Standard cancellation/restocking charges are published for standard products, and such charges are available from Prognost upon request.

8. SOFTWARE LICENSE:

8.1 LICENSE GRANT: All software programs provided by Prognost shall remain the property of Prognost and are subject to the terms set forth in the software license in this Section 8 (the "License"), in which Purchaser is provided solely with a personal and nonexclusive license to use such programs solely for their internal business purposes in the country in which the software was furnished and for execution on the system for which it was provided.

8.2 COPYRIGHT AND TITLE: No title to the intellectual property in the software programs or material is transferred to Purchaser under this License. All software and its copyrights are owned by Prognost and/or its suppliers. The software is protected by United States copyright laws and international treaty provisions. Therefore, Purchaser must treat the software like any other copyrighted material (e.g., a book or musical recording) except that Purchaser may make copies of the programs for use only with the system for which such



software was acquired. Purchaser must reproduce and include the copyright notice on any backup copy. The written materials and firmware may not be copied.

8.3 RESTRICTED USE: Purchaser shall not export or re-export the software or written material without the prior written approval of Prognost. Purchaser must not reverse engineer, decompile, or disassemble the software. Purchasers such as Engineering Contractors may not rent or lease the Software to any third parties, but may transfer the software and written materials on a permanent basis to the end user provided no copies are retained and the recipient agrees to the terms of this License by executing a written form provided by Prognost. Storage media or other hardware may contain certain software other than software identified on an applicable Order, which Purchaser receives from Prognost, may contain certain imbedded software, for which no license or authority to use is being transferred to Purchaser. Purchaser's right to use such imbedded software is limited to the normal and intended use of such hardware. If Purchaser desires to use or license this imbedded software, Purchaser must obtain a specific software license from Prognost.

9. WARRANTIES AND LIMITATIONS OF LIABILITY:

9.1 PROGNOST EXPRESSLY WARRANTS THE PRODUCTS MANUFACTURED BY IT AS MEETING THE APPLICABLE SPECIFICATIONS BY PROGNOST, OR OTHERWISE AGREED IN WRITING BETWEEN PROGNOST AND PURCHASER, BUT MAKES NO OTHER WARRANTIES EITHER EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). PURCHASER RETAINS RESPONSIBILITY FOR THE APPLICATION AND FUNCTIONAL ADEQUACY OF THE PRODUCTS AND SERVICES. IN ADDITION, THE FOLLOWING SHALL CONSTITUTE THE EXCLUSIVE REMEDIES FOR ANY BREACH BY PROGNOST OF ITS WARRANTIES HEREUNDER. IN NO EVENT, REGARDLESS OF CAUSE, SHALL PROGNOST BE LIABLE FOR INCIDENTAL, DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE, EITHER REAL OR ALLEGED. PROGNOST' MAXIMUM LIABILITY TO PURCHASER ARISING FOR ANY REASON RELATING TO PROGNOST'S SALE OF PRODUCTS OR PERFORMANCE OF SERVICES SHALL BE LIMITED TO THE AMOUNT OF FEES PAID TO PROGNOST FOR THE PERFORMANCE OF SUCH SERVICES OR THE PRICE FOR SUCH PRODUCTS, AS APPLICABLE. PURCHASER ACKNOWLEDGES THAT PROGNOST HAS SET ITS PRICES AND SHALL ENTERED INTO AN AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THESE TERMS AND CONDITIONS WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.



9.2 MATERIAL, WORKMANSHIP, AND TITLE: Prognost warrants to Purchaser that all products manufactured by Prognost shall be free from defects in workmanship and title. Prognost does not warrant any equipment, materials, tools or services provided by a third party which are required for the installation or use of Prognost products, nor does Prognost warrant against any damages caused or exacerbated by non-Prognost equipment or materials, such as communications lines, which are provided by Purchaser or by a third party. Prognost agrees to either replace or repair, free of charge, any such product, component, or part thereof which shall be returned to the nearest authorized Prognost repair facility within twenty four (24) months from date of shipment or eighteen (18) months from date of installation, with transportation charges prepaid for the account of Purchaser. Some products may contain refurbished components and if so shall be equivalent to new products. The cost to diagnose or replace defects at the job site, if required, shall be the responsibility of Purchaser based on Prognost's then current schedule of professional fee. Any product or component, or part thereof so replaced or repaired shall be warranted by Prognost only for the remainder of the original warranty period. Any and all such replacements or repairs necessitated by inadequate preventative maintenance, or by normal wear and usage, or by the fault of the Purchaser, or power sources supplied by others, or by attack and deterioration under unsuitable environmental conditions shall be for the account of Purchaser. Prognost shall not be obligated to pay any costs or charges including "back charges" incurred by Purchaser or any other party except as may be agreed upon in writing in advance by Prognost. Purchaser agrees to inspect and maintain all equipment purchased from Prognost in accordance with Prognost's recommendations.

9.3 PARTS: The warranties specified in Paragraph 9.1 are modified to twelve (12) months for spare parts for Products supplied subsequent to an original Order, unless provided pursuant to a warranty claim.

9.4 SYSTEM PRODUCTS: Prognost shall correct any hardware or software which Purchaser can demonstrate does not meet the applicable specifications, provided written notice is given to Prognost within three (3) months from date of shipment of the system or one (1) month from installation, with transportation charges prepaid for the account of Purchaser. The cost to diagnose defects at the job site, if required, shall be for the account of Purchaser. This warranty is void in the event of influencing deficiencies, including but not limited to, input signal of poor quality, incomplete or inaccurate process data supplied to Prognost by Purchaser, and unauthorized modification by Purchaser. Any additional Prognost expenses, which result from such deficiencies, inaccuracies, etc., shall be for the account of Purchaser.

9.5 STANDARD SOFTWARE: Prognost warrants that the software sold to Purchaser will be free from clerical errors and will perform the functions defined in the applicable specifications. Prognost agrees to correct any such error or failure to perform which affects the functional performance of the system in which the program is used, provided written notice is given to Prognost within fifteen (15) months from the date of shipment of the system. Prognost will perform diagnostics via remote connection if required diagnostics which show no error or failure to perform will be for the account of Purchaser. This warranty is void if any program or equipment with

which it is used is modified or if programs are improperly loaded by Purchaser. Any additional Prognost expenses which result from such Purchaser modifications or improper loading shall be for the account of Purchaser.

10. FORCE MAJEURE: Neither party shall be liable for delays or lack of performance caused by Force Majeure. The term "Force Majeure" shall include acts of God, strikes or other industrial disturbances, epidemics, accidents, fire, flood, wind, earthquake, explosions, wars, riots, shortage of material, failure of supplies from ordinary sources, governmental restrictions and other causes beyond the reasonable control of the parties.

11. INDEMNITY.

11.1 To the fullest extent permitted by law, and except as provided herein, Purchaser expressly and unconditionally agrees to indemnify, defend, save and hold harmless Prognost, its officers, agents, representatives and employees, from any and all costs, expenses, reasonable attorney's fees, claims, suits, causes of action, damages, losses or liabilities for injuries to property, or persons (including employees or representatives of Prognost or any subcontractor), including death, and from any other costs, expenses, reasonable attorney's fees, claims, suits, causes of action, damages, losses or liabilities of any and every nature whatsoever arising in any manner, directly or indirectly, except for Prognost's own gross negligence or willful misconduct, out of or in connection with or in the course of or incidental to Prognost's performance of the Services or provision of equipment, including the negligence, sole negligence, error or omission, joint negligence, concurrent negligence, comparative negligence, active negligence, passive negligence, negligence per se, gross negligence, failure to comply with any of the provisions hereof, or strict liability of Purchaser and its employees.

11.2 Purchaser hereby agrees to indemnify, hold harmless and defend Prognost from and against all liabilities incurred by or asserted against Prognost in connection with any third party claim to the extent such liabilities result from the use of: (i) the Services other than in accordance with applicable documentation or instructions supplied by Prognost or for other than Purchaser's internal purposes; or (ii) any altered or modified Product that was not expressly authorized in writing by Prognost; provided that Prognost shall (a) promptly notify Purchaser of any third party claim subject to indemnification hereunder, (b) give Purchaser the right to control and direct the preparation, defense and settlement of any such claim and (c) give full cooperation to Purchaser for the defense of same.

12. MISCELLANEOUS:

12.1 The validity, construction, and interpretation of these conditions or of any contract of sale including these conditions, and the rights and duties of the parties thereto, shall be governed by the laws of the State of Texas.



12.2 Any offering or contract of which these conditions are a part constitutes the final, complete and exclusive statement of representations made by Prognost., and Prognost. shall not be bound by any representations, promise or inducement of any kind unless

set forth herein nor shall Prognost be bound to any representations made herein except to the designated recipient of any offering or contractual commitment.

12.3 No waiver, alteration or modification of any of the provisions herein or of the provisions of any contract arising here from shall be binding on Prognost unless modified in writing and signed by Purchaser and Prognost.

12.4 Nothing herein shall be construed as transferring to Purchaser any right, title, or interest in or to any patent, trade-mark, copyright, industrial design, proprietary information, drawing, process or know-how (“Intellectual Property”), which is proprietary to Prognost, including, without limitation, any Intellectual Property developed, modified, or improved by Prognost during the performance of any Services for and on behalf of Purchaser.

12.5 The indemnity and release provisions of these Terms and Conditions which by their nature are intended to survive the termination, cancellation, completion or expiration of any applicable agreement shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

12.6 If any provision or any part of any provision of these Terms and Conditions be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part of that provision, or any other provision. In the event of a conflict between these Terms and Conditions and another written agreement, these Terms and Conditions shall take precedence unless otherwise specified herein.

12.7 Failure to enforce any of the provisions of these Terms and Conditions stated herein in a particular instance shall not constitute a waiver or preclude enforcement of such terms and conditions as to subsequent events.

12.8 Any lawsuit, litigation, arbitration or other form of action of any kind against Prognost by Purchaser must be commenced within one (1) year from the date such right, claim, demand or cause of action shall first have accrued.

(Revised 04/25/2016)