

Annex 2: GE Inspection Technologies Terms and Conditions for Sales and Lease/Rent of Products and Service

NOTICE: Sale Lease or Rental of any Products and/or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any additional or different terms proposed by Buyer are expressly objected to and will not be binding upon Seller unless agreed to in writing by Seller; provided however, that no pre-printed facility entry form shall modify these Terms and Conditions even if signed by Seller's representative. Any oral or written representation, warranty, course of dealing or trade usage not contained in these Terms and Conditions or the Contract shall not be binding on either party. Any order to perform work and Seller's performance of work shall constitute assent to these Terms and Conditions.

1. Definitions

Unless otherwise agreed to by Seller, the following terms shall be defined as follows:

"Buyer" means the entity to which Seller is providing Products and Services under the Contract.

"Contract" means the documents that comprise the agreement between Buyer and Seller for the sale of Products and Services, including these Terms and Conditions, the final quotation, the agreed scope(s) of work, and Seller's order acknowledgement.

"Leased or Rented Equipment" means all Products Seller has agreed to lease or rent to Buyer under the Contract, as well as all equipment of Seller which will be located at the Site during all or some portion of the term of the Contract without Seller's personnel present, such as remote diagnostic equipment.

"Products" means all equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract.

"Seller" means the entity providing Products or performing Services under the Contract, its affiliates, subcontractors and suppliers of any tier, and their respective agents and employees, whether individually or collectively.

"Services" means all services Seller has agreed to perform for Buyer under the Contract.

"Site" means the premises where Products are delivered and/or Services are performed.

"Terms and Conditions" means these Terms and Conditions for Sale of Products and Services.

2. Payment

Except as otherwise agreed to by Seller in writing, and upon approved credit, the following payment terms apply.

2.1 Should Seller require payment from Buyer under letter of credit, Buyer shall establish an irrevocable letter of credit confirmed by a Chinese bank that is acceptable to Seller. Buyer shall pay all banking charges.

2.2 If at any time Buyer's financial condition does not justify the continuation of Seller's performance, Seller may require full or partial payment in advance or shall be entitled to terminate the Contract.

3. Taxes and Duties

Prices do not include, and Buyer is responsible for, all taxes, duties, fees, or other charges of any nature (other than taxes imposed on Seller's net income) imposed by any government authority upon production, sale, shipment, import, or use of Products and performance of Services.

4. Delivery; Title Transfer; Risk of Loss; Storage

4.1 Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Specifically time shall not be considered of the essence. Unless otherwise specified by Seller, title shall pass to Buyer upon the delivery of goods. Risks of loss or damage will pass to Buyer at the point of delivery as defined in the Purchase Order, interpreted in accordance with Incoterms 2000.

4.2 Title to Services shall pass to Buyer as performed. Notwithstanding the foregoing, for any software provided by Seller hereunder, only the license to the software transfers as set forth herein, and title to Leased or Rented Equipment shall remain at all times with Seller.

5. Excusable Delays

Seller shall not be liable nor in breach or default of its obligations under the Contract to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of Buyer or Buyer's suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of such excusable delay. If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall be entitled to an equitable price and/or performance adjustment.

6. Compliance with Laws, Codes and Standards

6.1 Seller represents that the Products will be produced in compliance with applicable fair labor standards laws, occupational safety and health laws, and laws related to nonsegregation and equal employment opportunity.

6.2 The Contract price will be equitably adjusted to reflect additional costs incurred by Seller resulting from a change in industry specifications, codes or standards, or changes in applicable laws and regulations.

6.3 All transactions hereunder shall at all times be subject to and conditioned upon compliance with all applicable trade control laws and regulations. Buyer hereby agrees that it shall not transship, re-export, divert or direct products other than in and to the ultimate country of destination specified on buyer's order or declared as the country of ultimate destination on seller's invoice, except as permitted by applicable laws and regulations.

6.4 Notwithstanding any other provisions herein, buyer shall timely obtain any required authorization, such as an export license, import license, foreign exchange permit, work permit or any other governmental authorization, even though seller may apply for such.

7. Warranty

7.1 Seller warrants to Buyer that (i) Products shall be free from defects in material, workmanship and title and (ii) Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. Except as expressly authorized by Seller in writing, any items manufactured by entities other than Seller carry only the warranty provided by the manufacturers thereof and Seller gives no warranty on behalf of the manufacturers of such items.

7.2 Unless otherwise stated in Seller's documentation, the duration of the warranty period for Products shall be one (1) year from shipment of the Products. Unless otherwise stated in Seller's documentation, the duration of the warranty period for Services shall be ranging from 3 months to 9 months, based on different kind of products. Modification of any portion of Products or Services, including calibration services performed by parties other than Seller shall render such warranty null and void.

7.3 If Products or Services do not meet the above warranties during the applicable warranty period, Buyer shall promptly notify Seller in writing within such warranty period. Seller shall thereupon, at its option, (i) repair or replace the Products, (ii) re-perform the Services, or (iii) refund/credit monies paid by Buyer for that portion of Products or Services that do not meet the above warranties. Any repair, replacement or reperformance by Seller hereunder shall not extend the applicable warranty period.

7.4 Seller shall not be responsible for removal or replacement of systems, structures or other parts of Buyer's facility. The costs of de-installation, re-installation and transportation of Products to Seller and back to Buyer shall be borne by Buyer and this warranty does not include any such costs.

7.5 The warranties and remedies set forth herein are conditioned upon the proper storage, installation, operation, and maintenance of Products and conformance with the operation instruction manuals (including revisions thereto) provided by Seller and/or its suppliers or subcontractors, as applicable.

7.6 In no event shall Seller be liable for any loss or damage whatsoever arising from the use of Products or Services by Buyer against the advice of Seller.

7.7 This Section 7 sets forth the exclusive remedies for all claims based on failure of or defect in Products or Services, whether the failure or defect arises before or during the applicable warranty period and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. The foregoing warranties are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. **NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.**

8. Limitations of Liability and Indemnities

8.1 Seller agrees to indemnify and save harmless Buyer from and against any loss, expense or claim asserted by third parties for damage to third party tangible property, or for bodily injury, or both, arising out of the performance of this agreement, to the extent such damage or injury is attributable to the negligence of Seller; provided that Buyer gives Seller prompt notice of any such claim and all necessary information and assistance so that Seller, at its option, may defend or settle such claim and Buyer does not take any adverse position in connection with such claim. In the event that any such damage or injury is caused by the joint or concurrent negligence of Seller and Buyer, the loss, expense or claim shall be borne by Seller and Buyer in proportion to their negligence.

8.2 The total liability of Seller, on all claims of any kind, whether in contract, warranty, tort (including Seller's negligence), strict liability, or otherwise, arising out of the performance or breach of the Contract or use of any Products or Services shall not exceed the price of the specific product or service which gives rise to the claim. All Seller's liability under the Contract shall terminate upon the expiration of the applicable warranty period, provided that Buyer may enforce a claim of such liability accruing during the applicable warranty period by an action timely commenced in accordance with the applicable statute of limitations and/or statute of repose, but in no event greater than one (1) year after the expiration of such warranty period.

8.3 In no event, whether as a result of breach of contract, warranty, tort (including Seller's negligence), strict liability, indemnity, or otherwise, shall Seller be liable for loss of profit or revenues, loss of use of Products or Services or any associated equipment, interruption of business, cost of capital, cost of substitute equipment, facilities, services or replacement power, downtime costs, or for any special, consequential, incidental, indirect or exemplary damages.

8.4 If Buyer cannot obtain for Seller from any subsequent purchaser(s) the protections specified in this Section 8, Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims made by any subsequent purchasers of Products or Services against Seller for loss or damage arising out of the performance or non-performance of Products or Services provided under the Contract.

8.5 If Seller furnishes Buyer with advice or assistance that is not required under the Contract, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

8.6 The provisions of this Section 8 shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the Contract, except to the extent that such provisions further restrict Seller's liability.

9. Dispute Resolution, Governing Law

9.1 Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under China International Economic and Trade Arbitration Commission arbitration rules in effect at the time of applying for arbitration, which Rules are deemed to be incorporated by reference into this clause. The seat, or legal place, of arbitration shall be Shanghai, China. The arbitration shall be conducted in the Chinese language. The decision of the arbitrator shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authorities to appeal for revisions of such decision.

9.2 The validity, performance and all matters relating to the interpretation and effect of the Contract shall be construed and interpreted in accordance with the laws of (i) the Commonwealth of Massachusetts, if Products and Services are delivered in the U.S. or (ii) People's Republic of China if Products and Services are delivered outside of the U.S., excluding its law on the conflict or choice of laws, provided that any provision of such law invalidating any provision of the Contract or modifying the intent of the parties as expressed in the Contract shall not apply. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

10. Health and Safety Matters.

10.1 Buyer shall take all necessary precautions, at all times, for the safety of Seller personnel at the Site. If, in Seller's opinion, the safe execution of the Contract at the Site is, or is apt to be, imperiled by local conditions, Seller may remove some or all of its personnel from the Site and/or supervise performance of all or any part of the Contract at a location solely determined by Seller; any such removal by reason of health or safety matters shall be considered to be an excusable delay as set forth in Section 5 above.

10.2 Before issuing its purchase order, Buyer shall advise Seller in writing of all applicable and relevant Site-specific rules, regulations, safety codes, and laws.

11. Termination and Suspension

11.1 Buyer shall have the right to terminate the Contract (or any portion thereof) for cause in the event that Seller: (i) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or (ii) substantially breaches and fails to comply or perform its material obligations hereunder (but only with respect to a material obligation for which the Contract does not provide exclusive remedies), provided that: (a) Buyer shall first have provided Seller with written notice of the nature of such breach and of Buyer's intention to terminate the Contract as a result of such breach, and (b) Seller shall have failed, within thirty (30) days after receipt of such notice (or such extended period as is considered reasonable by the parties), to either (1) commence to cure such breach and diligently thereafter to pursue such cure, or (2) provide reasonable evidence that no such breach has occurred. Any other reason for termination of the Contract will be considered a full breach of the Contract by Buyer. If Buyer terminates the Contract as provided in this Section 11.1, Buyer shall pay to Seller (i) that portion of the Contract price allocable to Products completed or partially completed prior to the termination and (ii) all hours for Services performed at the Seller's then-current standard time and material rates.

11.2 Seller shall have the right to terminate the Contract (or any portion thereof) immediately for cause in the event that: (i) Buyer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; (ii) there is an excusable delay (as per Section 5 above) lasting longer than one hundred and twenty (120) days; or (iii) Buyer fails to comply with any terms of the Contract, including but not limited to, failure to make any payment when due or to fulfill any payment conditions.

11.3 If the Contract (or any portion thereof) is terminated for any reason other than those set forth in Section 11.1 above, Seller shall be paid for all Products completed or partially completed and Services performed prior to the date of termination, plus a cancellation charge equal to thirty percent 30% of the Contract price allocable to the uncompleted Products and unperformed Services. The following shall apply when determining the amount due from Buyer for Services performed prior to the date of termination: (i) for Services performed under time and material pricing, Buyer shall pay for all hours performed at Seller's then-current standard time and material rates and (ii) for Services performed under a firm fixed price, Buyer shall pay (a) the applicable price for all milestones achieved and (b) for any milestone not yet achieved, all hours performed in connection with the unachieved milestone(s) at Seller's then-current standard time and material rates.

11.4 The Seller shall have the right to suspend any work immediately upon the failure of Buyer to make any payment when due. Any expenses incurred by Seller in accordance with a suspension under this Section 11.4 (including storage costs) shall be payable by Buyer upon submission of Seller's invoice(s). Performance of Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of such suspension.

12. Software / Intellectual Property

12.1 Unless subject to a separate license or agreement, any software furnished hereunder whether separate or incorporated with supplied hardware, including any subsequent updates, is furnished under the following terms and conditions:

- (a) The software, and any part thereof, is designed for use only on the type unit on which the software is first installed.
- (b) No exclusivity of use of the software is transferred to Buyer.
- (c) Software and documentation copyrighted by Seller shall not be copied in whole or in part, but additional copies of software and documentation in printed form may be obtained from Seller or its representatives at Seller's then-standard charges, subject to applicable import and export laws and regulations. Buyer agrees that any copyright, proprietary, trade secret or similar notices appearing on and in software will be reproduced and included on and in any modifications and copies, in whole or in part, of software.
- (d) The source code for software is not included unless specifically listed as an item in the Sellers specification.

(e) On occasion, third party licensed software is provided. It will be identified as such and Buyer will be required to complete any sublicense specified by the software licensor and provided by Seller.

(f) If a separate software license agreement is required by Seller, Buyer shall execute the software license agreement on or before installation, and the provisions of the separate software license agreement shall supersede the foregoing subparagraphs to the extent they are inconsistent with such license.

12.2 Buyer agrees that no intellectual property rights of any kind owned by Seller or its suppliers are transferred to Buyer under the Contract

13. Patent Indemnification

13.1 Subject to the terms of the Contract, Seller shall indemnify Buyer against any damages, costs and expenses arising out of any suit, claim, or proceeding (collectively referred to as a "Claim") alleging that Products or Services infringe a patent presently issued in the U.S. or country of delivery (provided there is a corresponding U.S. patent), or U.S. copyright or copyright registered in the country of delivery; provided that: (a) Buyer promptly notifies Seller in writing of any such Claim; (b) Buyer makes no admission of liability and gives Seller sole authority, at Seller's expense, to direct and control all defense, settlement, and compromise negotiations; and (c) Buyer provides Seller with full disclosure and assistance that may be reasonably required to defend any such Claim.

13.2 Seller shall have no obligation or liability with respect to any Claim based upon: (a) any Products or Services that have been altered, modified, or revised; (b) the combination, operation, or use of any Products or Services with other products when such combination is part of any allegedly infringing process; (c) failure of Buyer to implement any update provided by Seller that would have prevented the Claim; (d) unauthorized use of Products or Services, including, without limitation, a breach of the provisions of the Contract; or (e) Products or Services made or performed to the Buyer's specifications.

13.3 Should any Products or Services, or any portion thereof, become or, in Seller's opinion, are likely to become the subject of a Claim of such an infringement, Seller shall at its option (a) procure for Buyer the right to continue using Products or Services, or any portion thereof, (b) modify it to make it non-infringing, or (c) failing (a) or (b), take back Products or Services and refund any fees received by Seller attributable to the infringing Products or Services.

13.4 This states Seller's entire liability for indemnification for patent, trademark, copyright, and trade secret infringement for Products and Services.

13.5 Notwithstanding the foregoing, with respect to any Products or Services, or portions thereof, which are not manufactured/developed by Seller, only the indemnity of the manufacturer/developer, if any, shall apply.

14. General Clauses

14.1 Products and/or Services sold hereunder are not intended for use in connection with any nuclear facility or activity without the written consent of Seller. Buyer warrants that it shall not use, or permit others to use Products and/or Services for such purposes, unless Seller agrees to such use in writing. If, in breach of the foregoing, any such use occurs, Seller disclaims all liability for any nuclear or other damages, injury or contamination and in addition to any other legal or equitable rights of Seller, Buyer shall indemnify and hold Seller harmless against any such liability. In the event Seller agrees in writing to any such nuclear use, Seller's Special Terms and Conditions for Nuclear Applications shall be attached hereto and incorporated fully herein by reference.

14.2 Seller may assign or novate its rights and obligations regarding the Contract, in part or in whole, to any affiliate companies controlled by General Electric Company. The delegation or assignment by Buyer of any or all of its duties or rights under the Contract without Seller's prior written consent shall be void.

14.3 If any provision of the Contract is found to be void or unenforceable the remainder of the Contract shall not be affected and the parties hereby agree that they will replace any such void or unenforceable provision with a new provision that achieves substantially the same practical or economic effect and which is valid and enforceable.

14.4 The following Sections shall survive termination of the Contract: 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, and 14, and all attachments and exhibits appended hereto.