

# CASI Terms and Conditions

## **1. Introduction**

- 1.1 These Terms and Conditions ("T&Cs") are entered into as of the date of the Proposal by Cornerstone Automation Systems, LLC, a Texas limited liability company ("CASI") and Customer with respect to the provision by CASI to Customer of the System described in the Proposal. All terms not defined herein shall have the meaning ascribed to them in the Proposal.

## **2. System to be Provided**

- 2.1 CASI agrees that it will provide, test and, install (if provided for in the Proposal) the equipment, hardware and software for the System. The location provided in the Proposal forms an integral part of the System, and the location may not be modified without the prior written consent of CASI.

## **3. System Specifications**

- 3.1 Customer and CASI agree that supporting detail for the System specifications and capabilities contained within the Proposal will be further defined within a System Requirements Document ("SRD"), jointly developed after receipt of the initial payment for the System and approved by Customer upon document completion. Customer acknowledges that the purpose of the SRD is to clearly document the requirements that are within the System scope of the Proposal, and that requested deviations from that original System scope could result in a price modification by amendment to these T&Cs or change order.

## **4. Intellectual Property and System Software**

- 4.1 Customer and CASI each retain all right, title and interest (including all trademarks, trade secrets, copyrights, patents and any other intellectual property or proprietary rights) in and to its respective Background Intellectual Property. "Intellectual Property" consists of each party's concepts, data, designs, developments, documentation, drawings, hardware, improvements, information, inventions, processes, software, techniques, technology, tools, and any other intellectual property, and any third-party licenses or other rights to use any of the foregoing. "Background Intellectual Property" means Intellectual Property owned, developed, and/or licensed by a party prior to the Effective Date. Retained Intellectual Property cannot be duplicated or copied and may be used only in connection with the use of the System which is the subject of these T&Cs at the locations specified in the Proposal.
- 4.2 Any Intellectual Property developed by CASI during the term of the Proposal shall be the sole property of CASI. Without limiting the generality of the foregoing, CASI will retain all right, title and interest in all of CASI's ideas, know-how, approaches, methodologies, concepts, skills, tools, techniques, expressions, processes, and hardware, including, without limitation, generally-applicable software and code (and related components), independently-developed software and code (and related components), and any Intellectual Property rights in any of the foregoing, whether possessed by CASI prior to, or acquired, developed, or refined by CASI during performance of the Proposal. In the course of viewing and accessing the System, Customer may furnish information, ideas, or know-how ("Feedback") to CASI. Customer agrees and does hereby assign all right, title, and interest it may have in the Feedback to

CASI. The Customer agrees to perform any further act and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Section. Customer acknowledges and agrees that CASI may provide services to, or prepare materials for, third parties that may be the same or similar to the System provided to Customer under the Proposal.

4.3 The software and firmware licenses provided by CASI are those specified within the Proposal.

## **5. Scope of Work**

5.1 The scope of work for each of CASI and the Customer shall be that specified within the Proposal, unless subsequently modified by written amendment or change order.

5.2 If applicable, the Customer agrees to provide CASI with all relevant Customer business rules required to develop the software design for the System within two (2) weeks of SRD approval, and acknowledges that additions, modifications, or subtractions to the business rules after this timeframe could result in a delay to System Completion and/or a price modification.

## **6. System Completion**

6.1 CASI agrees that the System shall be ready for the Factory Acceptance Test (FAT) within the time period set forth in the Proposal, subject to such modifications as the parties may agree based upon written amendments or change orders, delays caused by Customer, including the failure to provide information or make milestone payments on a timely basis, and Excusable Delays (the "Deadline"). The term ("Excusable Delay") means any delay in delivery that is beyond the reasonable control of CASI provided it gives Customer timely written notice of such Excusable Delay and takes commercially reasonable measures to mitigate such Excusable Delay.

## **7. Event of Default; Remedies; Early Cancellation.**

7.1 An "Event of Default" shall be deemed to exist hereunder if (a) either party fails to make a required payment hereunder within the time period provided in the Proposal and shall fail to cure such failure within ten (10) days following receipt of written notice (a "Monetary Default"), or (b) either party shall otherwise breach a provision of these T&Cs and fail to cure such failure within sixty (60) days following receipt of written notice (a "Non-Monetary Default"). Breach shall include a failure to perform services or deliver goods as required hereunder (including the SRD, FAT or CAT), to make sufficient progress towards completion of the System so as to endanger timely and proper completion and installation of the System.

7.2 Following the occurrence of a Monetary Default, the non-defaulting party may, at its option, cease performance hereunder until the Event of Default is cured, any completion deadlines shall be extended by one day from the expiration of the 10-day cure period until cured, and otherwise exercise such other rights and remedies as are available at law or equity, including the termination of these T&Cs.

7.3 Following the occurrence of a Non-Monetary Default, the non-defaulting party may, at its option, cease performance hereunder until the Event of Default is cured and otherwise exercise such other rights and remedies as are available at law or equity, including the termination of these T&Cs.

- 7.4 NOTWITHSTANDING ANY OTHER PROVISIONS OF THESE TERMS AND CONDITIONS OR IN ANY OTHER DOCUMENT, UNDER NO CIRCUMSTANCES IS EITHER PARTY NOR ANY OF THEIR AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, MEMBERS, SHAREHOLDERS OR PARTNERS LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, MULTIPLE, ADMINISTRATIVE, OR PUNITIVE DAMAGES, OR ANY DAMAGE OF ANY INDIRECT OR CONSEQUENTIAL NATURE ARISING OUT OF OR RELATED TO THE MAKING OR ITS PERFORMANCE UNDER THE PROPOSAL, WHETHER BASED UPON BREACH OF ANY AGREEMENT, WARRANTY, NEGLIGENT MISREPRESENTATION OR NEGLIGENCE AND WHETHER GROUNDED IN TORT, CONTRACT, CIVIL LAW, OR OTHER THEORIES OF LIABILITY EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. CASI'S TOTAL LIABILITY, INCLUDING BUT NOT LIMITED TO LIABILITY FOR INDEMNITY, DEFENSE, AND HOLD HARMLESS OBLIGATIONS, IS LIMITED TO NO MORE THAN THE AMOUNT PAID TO CASI BY CUSTOMER.
- 7.5 Customer shall have the right to cancel these T&Cs for convenience upon written notice to CASI and subject to the payment to CASI of an amount equal to the sum of all direct material costs (including restocking charges), all direct labor and related burden costs, along with a proportionate level of profit on all such costs associated with these T&Cs solely as determined by CASI. The minimum cancellation fee is an amount equal to thirty percent (30%) of the contract price at the time of cancellation.

## **8. Miscellaneous.**

- 8.1 Notices. All notices required or permitted under these T&Cs shall be in writing and shall be deemed given when (i) personally delivered; (ii) mailed by first class certified mail, return receipt requested; (iii) sent by a national express courier or delivery service, with receipt confirmed; or (iv) sent by email, with receipt acknowledged. Notices will be sent to the applicable party as set forth below:

If to CASI: Cornerstone Automation Systems, Inc., Attn: CEO 10601 Clarence Drive, Suite 100, Frisco, TX 75033. with a copy to the Legal Department at the same address.

If to Customer: Customer address in the Proposal

- 8.2 Confidentiality. Neither party shall disclose any proprietary or confidential information obtained from the other unless so directed by a court of law or government authority. Customer agrees to keep the pricing provided by CASI confidential except as may be necessary to share with employees, accounting and legal professionals and governmental agencies.
- 8.3 Contractor Status. The relationship of CASI to Customer is that of an independent contractor and not that of an agent or employee of Customer. It is expressly understood and agreed by the parties that Customer shall not have, nor exercise, any control or direction over the manner or methods by which CASI provides services other than the right to require that the performance of such services be in accordance and consistent with the terms set forth in the Proposal.

## **9. Indemnification.**

- 9.1 Subject to the limitation on liability contained in Section 7.4, Customer shall at all times indemnify and save CASI harmless against and from all claims, losses, liability, expenses, and

other detriments of every nature and description to which CASI may be subjected by reason of any act or omission of Customer, its subcontractors, consultants, agents, officers, directors, managers, members and employees where such loss, liability, expense or other detriment caused by the negligent performance of or the failure to perform under the Proposal, including, but not limited to, personal injury (including death) and loss of or damage to property of CASI or other.

Subject to the limitation on liability contained in Section 4.4, CASI shall at all times indemnify and save Customer harmless against and from all claims, losses, liability, expenses, and other detriments of every nature and description to which Customer may be subjected by reason of any act or omission of CASI, its subcontractors, consultants, agents, officers, directors, managers, members and employees where such loss, liability, expense or other detriment is caused by the negligent performance of or the failure to perform under the Proposal, including, but not limited to, personal injury (including death) and loss of or damage to property of Customer or others. This indemnity includes any claim, loss or other detriment arising from any alleged infringement of the software or any of the equipment comprising the System as to the intellectual property rights of any other party.

The foregoing indemnities shall not include any losses or other detriments caused by the negligence or willful misconduct of any indemnified party.

- 9.2 Entire Agreement. The Proposal, any related appendices and the documents and agreements to be delivered thereunder (including the SRD), taken together, are the exclusive statement of the agreement of the parties with respect to its subject matter and supersede all prior agreements, negotiations, representations, proposals, and awards, written or oral, relating to its subject matter. CUSTOMER ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY ORAL REPRESENTATIONS OF CASI, ANY OFFICER OR EMPLOYEE OF CASI OR ANY OTHER PERSON. Customer and CASI agree that in the event any term, covenant or condition set forth herein is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant or condition shall in no way affect any other term, covenant or condition herein contained. Headings, titles and paragraph captions are inserted for convenience, are descriptive only and shall not be deemed to add to or detract from or otherwise modify the meaning of the paragraphs. In the event of any conflict or inconsistency between the SRD, these T&Cs and the Proposal, the following shall be deemed the order of precedence: SRD, Proposal, T&Cs, and the Exhibits.
- 9.3 Amendments; Waivers. No term of the Proposal may be amended or waived except by a written instrument signed by the party against whom such amendment or waiver is sought.
- 9.4 Disputes. Any disputes, which arise with respect to the Proposal, including the performance of CASI, whether in tort, breach of contract or any other grounds, which cannot be settled amicably by the parties, will be referred for mediation in Dallas, Texas before a mutually approved mediator. Each party shall bear its own costs of such mediation and equally split all costs of the mediator. If the mediator declares an impasse, the dispute shall then be settled by arbitration in Dallas, Texas, by one arbitrator appointed by the American Arbitration Association ("AAA") and conducted under the commercial rules of the AAA. Notwithstanding the foregoing, nothing herein shall limit the right of CASI to enforce its intellectual property rights through a court proceeding, including through injunctive relief.

- 9.5 Limitation on Cause of Action. Except for actions for non-payment or breach of CASI's intellectual property rights, no action, regardless of form, arising out of or in connection with the Proposal may be brought by either party more than one year after the cause of action has accrued.
- 9.6 Attorney Fees. In any proceeding brought to enforce or interpret the terms of the Proposal, including an arbitration proceeding, the prevailing party shall be entitled to recover its attorneys' fees and costs incurred.
- 9.7 Assignment. Neither party may assign or delegate its rights and obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, either party may assign its rights and obligations to any entity which acquires all or substantially all of the assets of such party by acquisition, merger or other form of business combination and expressly assumes all obligations of the assigning party.
- 9.8 Governing Law and Jurisdiction. The Proposal and all other matters between the parties shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to the conflict of laws principles thereof. In the event of any dispute related to or arising under the Proposal, the parties agree to the exclusive jurisdiction of the state and federal courts of Dallas County, Texas. This provision does not modify the provisions of Section 8.7 providing for arbitration as the exclusive method of resolution of disputes except as expressly set forth therein.
- 9.9 Counterparts. These T&Cs may be executed in counterparts, each of which shall be deemed an original, and shall be effective upon execution and delivery by each party of a counterpart hereof.
- 10. CASI MAY UPDATE THIS CASI TERMS AND CONDITIONS, WHICH IS EFFECTIVE UPON POSTING AT: <https://www.casiusa.com/casiterms>. CUSTOMER IS RESPONSIBLE TO REVIEW THE WEBSITE FOR UPDATES.

**Revision control**

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