

ACS Standard Terms and Conditions

1 GENERAL SCOPE

- 1.1 These terms and conditions (TC) apply to the provision of controls engineering and all related services by Advanced Control Systems (ACS) to the Customer under the 'Notice to Proceed' agreement and are governed by the terms of this agreement.
- 1.2 These TCs apply to all service performances by ACS, even in the cases where follow-on business is provided to the same Customer and the seller no longer refers to these TCs when accepting follow-on work orders. Unless other provisions are agreed upon in writing.
- 1.3 All changes, amendments or verbal agreements must be acknowledged by ACS in writing. If permissible based on the status of work being performed, ACS may approve the modification or cancellation of part or parts of the 'Scope of Work' defined within proposal documentation by means of a written statement. The costs that arise from modification or cancellation shall be borne by the Customer.
- 1.4 Diverging conditions on the part of the customer, which ACS has not acknowledged in writing, shall not be binding to ACS.

2 PROPOSALS, FORMAL QUOTES, & WORK ORDERS

- 2.1 All information and pricing within ACS documentation or future Work Orders from the customer shall be non-binding until both parties provide confirmation of acceptance in writing such as the ACS 'Notice to Proceed' agreement. All ACS documentation with prices quoted and unsigned in the Customer's possession are valid for a period of 45 days.
- 2.2 Verbal offers are non-binding and require written confirmation of ACS.
- 2.3 Description of services in advertisement mediums to include the ACS website are non-binding.
- 2.4 ACS does not guarantee or warranty any Customer pre-existing equipment being used, repurposed, or integrated within the 'Scope of Work'.
- 2.5 Signatures on behalf of ACS and the Customer on a 'Notice to Proceed' agreement shall be considered a binding agreement. The Customer will be given a 3-day grace period from the date of the final signature to exercise a service cancellation without incurring a late cancellation fee. 10% Late fee is negotiable.

3 PERFORMANCE OF SERVICES

- 3.1 The information contained in ACS documentation that pertains to proposed scheduling milestones and deadlines are intended to provide reference values, and do not constitute fixed due dates.
- 3.2 ACS 24/7 support is provided at labor rates explained in 4.3
- 3.3 In the event that ACS personnel are NOT allowed access and permission to enter and modify Customer equipment – additional charges will apply.

4 PRICING & COSTS

- 4.1 All pricing quoted is net, in US Dollars.
- 4.2 Quoted prices are comprised of all time and materials needed to complete all phases of the project and staying within the defined 'Scope of Work'. Quoted prices include travel time and expenses to and from work sites when listed.
- 4.3 ACS has a standard labor rate of \$135/hour during business hours with a 4 hour minimum. Emergency rate is \$155/hour during business hours also with a 4 hour minimum. ACS has discounted 'Rapid Response Program' rates that are predicated on a minimum 10 hours monthly billable labor. Rates are multiplied by 1.5 after business hours Mon-Sat and by 2.0 for holidays and Sun. Any requirement for an ACS employee to remain near a work site in an overnight capacity will invoke a per diem charge to the Customer of \$250/day.
- 4.4 Professional Service Agreements that exist between ACS and the Customer were designed to meet long term service needs, and contain a specific pricing structure to accompany the agreement. The PSA's service term must be agreed upon to be at least 12 months with a minimum 240 hours annual billable labor to receive the following rates.
Professional Engineering Services: \$165/hour,
SCADA Services: \$135/hour,
Electrical Drafting Services: \$135/hour

5 BILLING & PAYMENT CONDITIONS

- 5.1 Cost for capital equipment and/or change orders are 100% due upon contract execution and work cannot begin prior to payment.
- 5.2 The project payment schedule of total cost to the Customer is generally as follows:
40% engineering retainer due upon 'Acceptance of Service'
30% due upon approval of Factory Acceptance Testing
20% due upon demonstration of Operational Readiness Testing
10% due upon project completion as defined by Scope of Work

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- 5.3 All hourly charges will be assessed by ACS on the 21st of the month, and all invoices are due and payable 10 days net after the date of the invoice. If a Customer fails to pay any undisputed amount when due, Customer shall pay a late fee of 1.5 percent until the sum is paid in full.
- 5.4 An additional monthly charge of 1% of the total price will be levied for customer imposed project delays continuing from 2 months after the original project anticipated completion date not caused by ACS
- 5.5 The Customer shall notify ACS within 30 days of receiving an invoice any charge being disputed in writing. In no way does a Customer's dispute notice relieve the Customer's obligation to pay, in full, all undisputed charges and amounts. The parties shall work in good faith to resolve the matter expeditiously. If the dispute is resolved in favor of ACS, the Customer will pay any disputed amount plus applicable late fees. If the dispute is resolved in favor of the Customer, ACS will apply the appropriate credit to the Customer's account on the next billing cycle.

6 FORCE MAJEURE

- 6.1 Except with respect to the Customer's payment obligations for services rendered prior to the commencement of a Force Majeure event, notwithstanding any other provision of the agreement, neither party shall be liable to the other party for any delay or failure in performance of the agreement to the extent such delay or failure is caused by fire, flood, explosion, accident, war, strike, embargo, governmental requirement, civil or military authority, Act of God, inability to secure materials or labor or any other causes beyond its reasonable control. Any such delay or failure shall suspend the agreement until the Force Majeure ceases.

7 CAREFREE SCADA T&Cs

- 7.1 Carefree agreement provisions
- Carefree "Vale Class" systems including a failsafe computer guarantee a maximum of 72 hours of data storage in the event of a communications disconnection.
 - The Carefree agreement can be canceled at any time in writing by the Customer with a minimum of 30 days written notice
 - In the event that the agreement is canceled prior to 10 years, ACS will provide a copy of system data acquired over the duration of the agreement in electronic format.
 - In the event that the agreement is canceled after 10 years, ownership of all PLC, SCADA and HMI programming code is transferred to the Customer. Additional charges will apply to transfer code to new licensure and

infrastructure.

- The customer owns the RTU. ACS is not responsible for RTUs beyond the 1 year warranty, and no equipment warranty beyond that is extended or implied.

- 7.2 Carefree payments are due on the first day of each month. All other payment and billing inquiries shall be directed to section 5 of the TC.

- Invoicing begins the 25th day of the month immediately after Customer agreement execution. The Carefree agreement is for 10 years and continues until canceled in writing by the Customer.

- 7.3 Carefree SCADA fixed and monthly fees are part of packaged pricing that carry baseline conditions. All ACS time and materials outside the below conditions may be billed separately at time and materials.

- Labor will be billed for customer requested programming beyond standard functionality
- I/O includes up to 16 inputs and 12 outputs per site
- Indoor wall or outdoor pedestal is prerequisite at control panel location
- I/O and power prerequisite already wired and piped to desired control panel location
- ACS makes no warranty/guarantee on pre-existing equipment used to support Carefree SCADA
- ACS supplied equipment is limited to the Carefree SCADA PLC control panel
- Programming changes to pre-existing re-purposed Customer equipment/instruments are not included
- Includes one screen per station and one event/alarm screen
- Carefree Mobile supports up to 5 separate users, 15 points of monitoring and up to 5 points of control
- Control Point contingent on accessibility of pre-existing control system I/O and sensors

- 7.4 Carefree SCADA "Vale Class" plant system adheres to the previous section 7.3 with the following exceptions:

- Fixed price is based on total I/O count
- Requires use of customer provided high speed internet connection

- 7.6 ACS will make every effort to provide the following Cloud Based Hosting Services.

- 24/7 remote emergency response w/in 2 hours of initial call
- 24/7 telephone technical support for questions and system issues

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- 24/7 concurrent ACS alarm monitoring*
- 24/7 maintenance notifications
- Updates of Cloud server system hardware and software
- Guarantee of Cloud based data integrity with regular backups
- On-going improvements in Carefree SCADA performance and user experience
- Unlimited Cloud based data storage
- Initial ½ day training at no cost for 60 days*

* Concurrent ACS alarm monitoring purpose is to assist ACS in providing accurate and reliable service. As a courtesy, ACS will often bring erratic or unusual alarm activity to the attention of the Customer. ACS responsibilities beyond monitoring alarms for service quality assurance purposes are outside of scope.

* Subsequent training beyond 60 days is billable.

8 RAPID RESPONSE PROGRAM

- 8.1 Rapid Response Program (RRP) is a 36 month agreement where the Customer pays the premium on the first business day of each month, or year depending on payment preference. RRP will remain in effect from the date of agreement for 36 months and then will become a month to month contract until a new agreement is signed. The Customer can cancel the RRP anytime by submitting a

cancellation request in writing to ACS.

- 8.1 Travel beyond 60 miles one-way distance to customer site will incur discounted hourly rate charges and are not covered under the monthly recurring RRP premium.

9 PROFESSIONAL SERVICES AGREEMENT

- 9.1 Professional Services Agreement (PSA) is a 12 month agreement where the Customer is invoiced each month. PSA will remain in effect from the date of agreement for 12 months and then will become a month to month contract until a new agreement is signed. The Customer can cancel the PSA after the first year by submitting a cancellation request in writing to ACS.

10 OTHER PROVISIONS

- 10.1 In the event that parts of the contract between ACS and the Customer shall prove to be null and void or ineffective, the obligations of the respective other provisions shall remain unaffected. Null and void or ineffective provisions shall be replaced by provisions that most closely resemble the business intent of the original provisions.
- 10.2 All equipment and programming provided by ACS is warranted against defect or failure for 1 year
- 10.3 ACS reserves the right to change these terms and conditions at any time without prior notice.