

Rev date: November 26, 2006

## Terms and Conditions

ASA sales of services, products and support and ASA's license of software are governed by these ASA Terms and Conditions of Sales. All orders are subject to acceptance by ASA.

### Modifications to ASA Standard Terms

Submission of a purchase order (PO) to this ASA quotation constitutes full acceptance of the terms, conditions, and requirements (hereafter collectively referred as language) stated herein. Standard language/boilerplate contained in any subsequent PO or referred document may NOT modify any of the language herein. Any conflicting terms or requirements in the standard language of any PO for this ASA Quotation number will be considered to be superseded by the terms, conditions, and requirements contained in this document, including, but not limited to, standard language references in the PO to the resolution of "conflicting terms". Changes to language may be negotiated and attached to this quotation, with original signatures of authorized representatives of both parties appearing on the attachment to indicate mutual acceptance.

Note that these Standard Terms and Conditions of Sale do not override any signed, written negotiated agreements between ASA and Customer (e.g. negotiated purchase agreements).

### Price and Delivery

Quoted prices are valid for the period indicated on the Quotation.

Quoted service rates are firm for 21 days unless otherwise specified.

**Taxes** and other charges such as duties, customs, tariffs, imposts and government imposed surcharges are not included in quoted prices or rates and are the sole responsibility of the customer.

This rate/price may be **specific to Customer** and may be **ASA-confidential** information. In this event, it may not be disclosed or transferred to any other parties.

Quoted prices are valid only for the country stated on the Quotation.

Prices quoted are EXWORKS/FOB origin (MA), unless otherwise specified.

Quoted delivery times are estimated time from receipt of order. This is on a best effort basis and specific delivery commitments cannot be made until time of order placement. All deliveries are subject to product availability from ASA suppliers.

## Returns

ASA does not accept returns for items purchased via Purchase Order under any circumstances. For items purchased via credit card, ASA will accept returns only if the Security Seal on the packaging remains intact, and then only within five (5) business days of receipt by Customer. Return shipping costs are the customer's responsibility, and packaging must clearly display the Return Merchandise Authorization number provided by ASA. A handling and/or restocking fee may apply.

Regardless of purchase method, defective materials will be replaced in accordance with the Limited Warranty as set out in the Customer License Agreement.

## Payment

To receive standard pricing, terms are strictly **Net 30 days** from ASA invoice date for receipt of full payment by ASA, unless otherwise specified. Credit terms will be charged for payments past due. This charge will be **1% per month on any unpaid past due balances**.

ASA recognizes that some customers prefer 45-day payment terms and when appropriate, ASA quotations include a 45-day term at an uplifted price (10% higher than standard pricing). It is Customer's responsibility to opt for 45 day pricing when they issue the purchase order under net-45 terms, and to use the uplifted price. Purchase orders received that use the standard price will be treated as net-30 orders regardless of any conflicting terms stated on the PO.

Payments past due by more than **90 days** will be turned over to a collection agency. **Customer** will be responsible for all collection fees and expenses incurred by ASA.

The term "payment-in-full" (or similar language) on any check or other instrument of payment shall not be considered valid or binding without a separate written agreement executed by both ASA and Customer.

ASA software products employ various forms of activation and security technology. In order to be activated beyond the initial 30/45 day period, ASA must provide an activation code which Customer enters into the product. Procedures which renew the enabling hardware security for ASA software products will not be performed until payment in full and a completed Registration form have been received by ASA. Note that ASA software will not function with an expired security key. Also note that if a security key expires due to late payment that Customer will be subject to a \$250 **Security Key reactivation fee** which may also require the return of the Security Key to ASA.

For certain specific ASA software products (M1™/LabView and M1/TTE™ at this time), the Security Key must be renewed every six months, at no cost to Customer, in accordance with the governing Customer License Agreement for that product.

For ASA Technical Support products, the Incident Code(s) associated with a particular invoice shall be temporarily void if payment on said invoice is past due. The Incident Code(s) will be restored when ASA receives full payment for the relevant invoice.

## General

ASA reserves the right to refuse to sell, for any reason, to any company, person or entity, including but not limited to those that it regards as a competitor, or one who does not conform to its overall business/IP plan.

Any term of these ASA Terms and Conditions of Sale and Service, or of other ASA governing documents referred to herein, which is held by a court of competent jurisdiction to be void, invalid, unenforceable, or illegal will be deemed modified or omitted to the extent necessary, but the remainder of these terms will continue in full force and effect.

If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.

Neither party may assign rights or obligations without prior written consent of the other party.

Neither party's failure to exercise any of its rights under these terms will constitute or be deemed a waiver or forfeiture of those rights.

No government procurement regulations or contract clauses are binding on either party unless mutually agreed.

Customer who exports products assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. Customer will not export or re-export products or any technical data in violation of applicable export regulations.

Any disputes arising in connection with these ASA Terms and Conditions of Sale and Service will be governed by the laws of the Commonwealth of Massachusetts, U.S.A., and must be resolved in courts which have jurisdiction over Springfield, Massachusetts.

### **Shipment and Risk of Loss**

ASA will ship EXWORKS/FOB Origin (MA) according to standard commercial practice, unless otherwise directed by the Customer. Customer requested special packing instructions must be mutually agreed, and charges will be billed separately to Customer. Title to products and risk of loss and damage will pass to Customer at ASA's shipping dock.

Customer will pay transportation and related charges for returning products to ASA if product orders are canceled after shipment. Title to product does not pass to Customer under this situation, but risk of loss and damage for returned products are the responsibility of Customer until product is accepted at ASA shipping dock.

### **Warranty**

ASA Warranties are governed by the applicable product or services warranty or license agreement.

- ASA M1 software products are governed by *Customer License Agreement for M1 Software*.

- ASA consulting and services are governed by the document, *General Terms - ASA Consultation and Services*.

**Limitations of Remedies and Liability**

ASA will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control. In NO event will ASA be liable for the loss of data or for direct, accidental, special, incidental, consequential (including lost profit), or other damage whether based in contract, tort, or otherwise.

ASA Product, Assistance, and Consulting Liability information is officially stated in the applicable product or services warranty or license agreement.