# Standard Terms and Conditions

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## 1. Application, acceptance and definitions

These Standard Terms and Conditions ("Terms") apply to every quote, proposal and Statement of Work issued by **DNA Controls, LLC**, a Wisconsin limited liability company, 2499 Ontario Road, Green Bay, WI 54311 ("Contractor"), to the customer named in it ("Customer") and to all Work Contractor performs for Customer. If a Master Services Agreement signed by both parties is in effect, that agreement governs instead and these Terms do not apply. If Customer owns the property where Work is performed, Customer is also the "Owner." All amounts are in U.S. dollars (USD).

Section numbers in these Terms match Contractor's Master Services Agreement. When an SOW refers to the MSA or to a section of the MSA, it means these Terms or the same section of these Terms.

Definitions:

1.1 **"Work"** means the controls engineering, PLC/PAC programming, HMI/SCADA development, panel design and build, installation, startup, commissioning, training and related services and materials described in a Statement of Work or otherwise requested by Customer on a time-and-materials basis.

1.2 **"Statement of Work" or "SOW"** means a quote, proposal or statement of work issued by Contractor. Customer accepts an SOW and these Terms by signing the SOW. Customer's issuance of a purchase order that references an SOW constitutes Customer's acceptance of that SOW and these Terms and will be binding on Customer to the same extent as if Customer had signed that SOW. If Customer authorizes Contractor to begin Work without an accepted SOW, Customer accepts these Terms for that Work.

1.3 **"Deliverables"** means programs, HMI/SCADA applications, drawings, documentation, panels and other items Contractor delivers under an SOW.

1.4 **"Site"** means the Customer or Owner facility where on-site Work is performed.

If these Terms conflict with an SOW, the SOW controls only for that project's scope, schedule and price. Pre-printed terms on a Customer purchase order, portal or invoice have no effect, even if accepted electronically.

## 2. Scope of work and change orders

2.1 **Scope.** Contractor will perform only the Work described in each SOW. Anything not expressly listed is excluded, including (unless listed): field wiring, conduit, electrical permits, mechanical work, third-party equipment programming, network/IT infrastructure and code or safety certifications (UL, NFPA 79, risk assessments).

2.2 **Assumptions.** Each SOW is priced on the information Customer provides (I/O lists, drawings, sequences of operation, existing code). If that information is inaccurate or incomplete, the resulting added work is a change order.

2.3 **Change orders.** Any change to scope, schedule or site conditions requires a written change order (email is acceptable) stating the price and schedule impact. Contractor is not required to perform changed Work until the change order is accepted either by Contractor signing the change order or accepting the change order by affirmatively acknowledging and accepting the change order via email. Work performed at Customer's direction without an accepted change order is billed at the Current Rates (as defined below).

2.4 **Schedule.** Dates in an SOW are good-faith estimates. Contractor is not liable for delays caused by Customer, equipment lead times, other contractors or events beyond its reasonable control (Section 9.4).

2.5 **Subcontractors.** Contractor may use qualified subcontractors and remains responsible for their work.

## 3. Pricing, invoicing and payment

3.1 **Pricing.** All prices, rates and payments under these Terms and each SOW are in U.S. dollars (USD). Fixed-price Work is billed per the SOW milestones. Time-and-materials Work is billed at the Current Rates unless the SOW states otherwise. "Current Rates" means the rates and billing terms in Contractor's Schedule of Rates provided to Customer with the SOW, as updated by written notice under Section 3.2.

3.2 **Rate adjustments.** Contractor may adjust the Current Rates once per calendar year by giving Customer at least 30 days' written notice. New rates apply only to Work performed after they take effect. Fixed prices in SOWs Customer has already accepted do not change.

3.3 **Deposits and milestones.** Unless the SOW says otherwise: 30% on acceptance, 30% at design approval, 30% at hardware delivery or factory acceptance test (FAT) and 10% at startup/commissioning. Hardware may be invoiced on shipment.

3.4 **Payment terms.** Invoices are due net 15 days from invoice date.

3.5 **Late payment.** Past-due amounts accrue interest at 1.5% per month (18% per year) or the maximum rate allowed by law if lower. Customer pays reasonable collection costs and attorney fees for past-due amounts.

3.6 **Disputes.** Customer must notify Contractor in writing of any disputed invoice item within 10 days of receipt and pay the undisputed portion on time.

3.7 **Sales and use tax.** Prices exclude taxes. Contractor will charge Wisconsin sales or use tax where required unless Customer provides a completed, signed Wisconsin Sales and Use Tax Exemption Certificate (Form S-211) or other valid exemption. Customer is responsible for any tax, interest or penalty resulting from an exemption it claims.

3.8 **Title.** Title to hardware passes to Customer on full payment for that hardware. Risk of loss passes on delivery to the Site or Customer's carrier.

## 4. Customer responsibilities and site safety

Customer will, at its own cost:

4.1 Provide timely, accurate technical information and a single point of contact with authority to approve Work and changes.

4.2 Provide safe access to the Site and equipment during agreed hours, including utilities, network/remote access where specified and a secure area for tools and materials.

4.3 Make equipment available for testing and commissioning and provide qualified operators and maintenance staff during startup.

4.4 Inform Contractor of all Site safety rules, hazards and lockout/tagout (LOTO) procedures. Contractor's personnel will follow them. Customer remains responsible for the overall safety of its facility, machine guarding and safety-rated systems unless the SOW expressly assigns that design to Contractor.

4.5 Back up existing programs and data before Contractor modifies any system. Contractor is not responsible for lost data or pre-existing defects in Customer equipment or code.

4.6 Obtain any permits, landlord or Owner approvals and inspections unless the SOW assigns them to Contractor.

If Contractor reasonably believes Site conditions are unsafe, it may stop Work without penalty until the condition is corrected. Standby time caused by Customer delays is billable.

## 5. Acceptance and warranty

5.1 **Acceptance.** Deliverables are accepted on the earliest of: (a) Customer's written acceptance or completion of the acceptance test in the SOW; (b) 10 business days after Contractor gives notice of completion without Customer identifying a material nonconformance in writing; or (c) Customer's use of the Deliverable in production.

5.2 **Workmanship warranty.** For 12 months after the Completion Date, Contractor warrants that its Work will be free from defects. Customer's sole remedy for defective Work is that Contractor will, at its option, correct the defective Work, or refund the fees paid for it. The "Completion Date" is the date Contractor invoices the final milestone under the SOW or, for time-and-materials Work, the date Contractor completes the Work.

5.3 **Third-party products.** Hardware and software made by others (PLCs, drives, HMIs, licenses) carry only the manufacturer's warranty, which Contractor passes through to Customer to the extent allowed.

5.4 **Exclusions.** The warranty does not cover issues caused by changes to code or hardware by anyone other than Contractor, misuse, improper maintenance, power or network problems, Customer-supplied equipment or information, or normal wear.

5.5 **Disclaimer.** EXCEPT AS STATED IN THIS SECTION, CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 6. Intellectual property and confidentiality

6.1 **Project-specific Deliverables.** On full payment for an SOW (or, for time-and-materials Work, the invoices for that Work), Customer owns the programs, HMI/SCADA applications and drawings created specifically for that SOW or Work, including source files ("Project Deliverables"). Until Customer pays in full, Contractor owns them and Customer has only a limited, revocable license to use them. Contractor keeps ownership of its pre-existing and general-purpose code, function blocks, libraries, templates and know-how ("Contractor IP"), even when included in a Project Deliverable. Customer receives a perpetual, non-exclusive, royalty-free license to use and modify that Contractor IP as part of its Project Deliverables.

6.2 **Contractor's right to reuse.** Although Customer owns its Project Deliverables, Customer grants Contractor a perpetual, irrevocable, royalty-free license to use, copy, modify and license any or all of the code and designs in them for any other customer or project. Contractor may also freely reuse all Contractor IP. Contractor will not disclose Customer's confidential information under Section 6.4, such as proprietary recipes, process parameters, production data or facility-specific details, and will remove it from anything it reuses.

6.3 **Customer materials.** Customer keeps ownership of its existing code, drawings and data and grants Contractor a license to use them to perform the Work.

6.4 **Confidentiality.** Each party will keep the other's non-public business, technical and process information confidential, use it only to perform the Work and protect it with reasonable care. Notwithstanding the above, information shall not be considered confidential information under these Terms if (a) it is or becomes publicly available through no act or omission of either party or its employees or agents; (b) was already known to either party at the time of disclosure, (c) was independently developed by either party, or (d) to the extent that the disclosure of such information is required by a court or regulatory agency acting within its authority; provided, however, notice shall be provided to the other party to allow for a challenge to the disclosure requirement.

All confidential information provided remains the sole property of the disclosing party. The recipient party shall hold and maintain the confidential information of the disclosing party in strictest confidence and in trust and shall use such confidential information only for the specific purpose for which it was disclosed or delivered. For a period of three (3) years after the Work ends, the recipient party shall not disclose the confidential information of the disclosing party to any person or entity (except as permitted under this Section 6.4).

The recipient party shall restrict access to confidential information of the disclosing party only to employees who clearly need such access in order to participate in the business relationship and who have been instructed to comply with these Terms.

Each party acknowledges and agrees that the use or disclosure of confidential information of the other party in violation of these Terms may cause substantial and irreparable injury to the other party and that the disclosing party may obtain injunctive or other equitable relief to prevent such use or disclosure and the disclosing party may also pursue any and all other rights and remedies it may have under the law, in equity or under these Terms.

Upon request of the disclosing party, the recipient party shall return to the disclosing party or destroy, as determined by the disclosing party, all records, notes, analyses, memoranda, drawings and other written or tangible materials, documents or media containing any confidential information, including all copies and reproductions thereof. In the event the disclosing party requests that the recipient party destroy all such documents and information, the recipient party shall promptly provide the disclosing party with an affidavit affirming that such destruction was performed.

6.5 **References.** Contractor may list Customer's name as a client unless Customer objects in writing. Contractor will not publish photos or details of Customer's facility without written consent.

## 7. Liability, indemnity and insurance

7.1 **No consequential damages.** NEITHER PARTY IS LIABLE TO THE OTHER FOR LOST PROFITS, LOST PRODUCTION, DOWNTIME, SCRAP, LOSS OF DATA OR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, EVEN IF ADVISED THEY WERE POSSIBLE.

7.2 **Cap.** CONTRACTOR'S TOTAL LIABILITY ARISING OUT OF ANY SOW OR OTHER WORK, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID TO CONTRACTOR UNDER THAT SOW OR, FOR TIME-AND-MATERIALS WORK WITHOUT AN SOW, THE FEES PAID FOR THAT WORK IN THE 12 MONTHS BEFORE THE CLAIM.

7.3 **Mutual indemnity.** Each party will defend and indemnify the other against third-party claims for bodily injury, death or damage to tangible property, to the extent caused by the negligent acts or omissions or willful misconduct of the indemnifying party or its personnel. Neither party is required to indemnify the other for the other's own negligence. The party seeking indemnity must give prompt notice and reasonable cooperation.

7.4 **Insurance.** While performing Work, Contractor will maintain, at a minimum: commercial general liability of $1,000,000 per occurrence and $1,000,000 aggregate; workers' compensation as required by Wisconsin law; and, if carried, professional/E&O liability of $1,000,000. Contractor will provide a certificate of insurance on request.

## 8. Term and termination

8.1 **Term.** These Terms apply to each SOW and other Work from acceptance until that Work is completed or terminated. They continue to apply to later SOWs and Work unless the parties sign a Master Services Agreement.

8.2 **Suspension for nonpayment.** If any undisputed invoice is more than 10 days past due, Contractor may suspend Work, withhold Deliverables and source files, or both, after 5 days' written notice. The schedule is extended, and reasonable demobilization and remobilization costs are billable.

8.3 **Termination for cause.** Either party may terminate an SOW if the other materially breaches it and does not cure within 15 days after written notice.

8.4 **Termination for convenience.** Contractor may terminate an SOW for convenience with 10 days' written notice.

8.5 **Payment on termination.** On any termination, Customer will pay for Work performed through the termination date, all hardware and materials purchased or ordered for the project (whether or not delivered), other third-party costs and any reasonable wind-down costs. For fixed-price Work, Work performed is measured by percentage of completion. Contractor will credit any deposit against these amounts. If the deposit is more than the amount owed, Contractor will refund the difference within 30 days. If it is less, Customer will pay the balance under Section 3. Once paid for, purchased and ordered items belong to Customer and will be delivered to Customer.

8.6 **Survival.** Sections 3, 5.5, 6, 7, 8.5, 9 and 10 survive termination.

## 9. General provisions

9.1 **Governing law and venue.** Wisconsin law governs these Terms and each SOW. Any lawsuit will be brought in the state courts for Brown County, Wisconsin, and both parties consent to that venue. Before filing suit, the parties will try in good faith to resolve the dispute through a meeting of decision-makers within 15 days of written notice. This does not stop Contractor from filing a construction lien to protect its rights.

9.2 **Independent contractor.** Contractor is an independent contractor. Nothing here creates a partnership, joint venture or employment relationship.

9.3 **Non-solicitation.** While Work is being performed and for a period of one (1) year after it ends, Customer will not, without the prior written consent of Contractor, solicit, or attempt to solicit, an employee to leave his/her employment and begin employment with Customer, nor shall Contractor initiate any contact with the Customer’s employee for the purpose of discussing future employment.

9.4 **Force majeure.** Neither party is liable for delay caused by events beyond its reasonable control, such as severe weather, fire, labor disputes, supply shortages, pandemics or government action. Payment obligations are not excused.

9.5 **Notices.** Notices must be in writing and delivered by hand, courier, certified mail or email with confirmation of receipt. Notices to Customer go to the Customer contact listed in Section 1 of the SOW, and notices to Contractor go to the address and email shown at the top of these Terms.

9.6 **Assignment.** Neither party may assign these Terms or an SOW without the other's consent, except to a successor of its business.

9.7 **Entire agreement.** These Terms, together with the Schedule of Rates, the SOWs and change orders, are the entire agreement between the parties for the Work and replace any prior discussions. It may be changed only in a writing signed by both parties, except that the Schedule of Rates may be updated under Section 3.2.

9.8 **Severability and waiver.** If any provision is unenforceable, the rest remains in effect, and the provision will be enforced to the maximum extent allowed. Failure to enforce a provision is not a waiver.

9.9 **Counterparts and e-signatures.** An SOW may be signed in counterparts and electronically, and electronic signatures are binding.

## 10. Wisconsin construction lien notice

The notice below is required by Wis. Stat. § 779.02(2)(a) when a prime contractor contracts directly with the property Owner. In this notice, "Claimant" means DNA Controls, LLC and "Owner" means the owner of the Site. If Customer is not the Site Owner, Customer will give Contractor the Owner's name and address before Work starts.

**NOTICE OF LIEN RIGHTS**

**AS REQUIRED BY THE WISCONSIN CONSTRUCTION LIEN LAW, CLAIMANT HEREBY NOTIFIES OWNER THAT PERSONS OR COMPANIES PERFORMING, FURNISHING, OR PROCURING LABOR, SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE CONSTRUCTION ON OWNER'S LAND MAY HAVE LIEN RIGHTS ON OWNER'S LAND AND BUILDINGS IF NOT PAID. THOSE ENTITLED TO LIEN RIGHTS, IN ADDITION TO THE UNDERSIGNED CLAIMANT, ARE THOSE WHO CONTRACT DIRECTLY WITH THE OWNER OR THOSE WHO GIVE THE OWNER NOTICE WITHIN 60 DAYS AFTER THEY FIRST PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE CONSTRUCTION. ACCORDINGLY, OWNER PROBABLY WILL RECEIVE NOTICES FROM THOSE WHO PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE CONSTRUCTION, AND SHOULD GIVE A COPY OF EACH NOTICE RECEIVED TO THE MORTGAGE LENDER, IF ANY. CLAIMANT AGREES TO COOPERATE WITH THE OWNER AND THE OWNER'S LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID.**

Contractor will also include this notice in each SOW for Work at a Site. If Work starts before a signed SOW containing this notice is in place, Contractor will deliver this notice in writing within 10 days after first performing Work, as the statute requires.