

TERMS & CONDITIONS

1. **General.** The sale of services or goods under this Agreement by the Industrial Automation Division of Mitsubishi Electric US, Inc. ("MEUS-IAD") is conditioned upon Customer's acceptance of these terms and conditions by the customer ("Customer") executing this Service Agreement (the "Agreement"). No other different or additional terms and conditions contained in any other document submitted by Customer shall apply to the transactions covered under this Agreement and are hereby expressly rejected. Failure of MEUS-IAD to object to provisions contained in any order or other writing of Customer shall not be construed as a waiver of these terms and conditions or as acceptance of any terms and conditions of Customer. Customer shall be deemed to have expressly accepted these terms and conditions if Customer expressly so agrees in writing, accepts any shipment of goods or the provision of any services from MEUS-IAD.
2. **Services.** MEUS-IAD shall provide Customer maintenance services ("Services") and parts ("Parts") in accordance with the Parts Only Option, Standard Parts and Labor Option and Premium Parts and Labor Option (each, an "Option" and collectively, the "Options") selected by Customer on the Mitsubishi Electric numerical controls, servo controls, and spindle controls listed in the section captioned "Covered Equipment Information" of this Agreement, subject to the determination of eligibility set forth in this Agreement ("Covered Equipment") and at the location set forth in the section captioned "Equipment Location" of this Agreement ("Covered Location"). MEUS-IAD shall provide Customer with telephone access to its Service Department from 7:00 a.m. to 7:00 p.m. Central time, Monday through Friday, excluding MEUS-IAD-recognized holidays.
3. **Covered Equipment Eligibility.**
 - a. Equipment eligible for coverage under the Options include:
 - i. Mitsubishi M6x, M6xx, M7x, M7xx, M8x and M8xx Series CNC controls;
 - ii. Operation Panels and Display Units;
 - iii. Original Mitsubishi cables and connectors used to interface covered equipment; and
 - iv. MDS-B, MDS-C, MDS-D and MDS-E series and MR-J2, MR-J3 and MR-J4 servo amplifiers, except MDS-B-ISV
 - b. Additional equipment eligible for coverage under the Premium Parts and Labor Option include:
 - i. The following servo motors (except built in types) and their corresponding encoders: HA, HC, HF, HG, HS, HP, HQ;
 - ii. SJ spindle motors (except built in types) and spindle feedback units (except as otherwise set forth in this Agreement);
 - iii. MDS-B-ISV Intelligent Servo; and
 - iv. 24/7 technical phone support
 - c. Notwithstanding anything in this Agreement to the contrary, the following equipment is not eligible for coverage under any Option:
 - i. Built-in motors of any kind;
 - ii. Linear motors;
 - iii. Removal and/or installation of any motor, or feedback gears and rotary scale units for integral spindle motors;
 - iv. Consumable parts (including but not limited to batteries, HDD, floppy drives, lamps, fans);
 - v. Parts manufactured by the Machine Tool Builder (a/k/a OEM);
 - vi. Equipment failing which is not provided by MEUS-IAD, including software;
 - vii. Covered Equipment failing due to misuse (including use other than customary manner), neglect, accident, improper installation or repair not performed by MEUS-IAD personnel;
 - viii. Equipment with alterations or modifications not performed by MEUS-IAD; and
 - ix. Equipment damaged or affected by severe weather or improper environmental conditions.
 - d. Equipment not covered by MEUS-IAD's original equipment warranty or a current service agreement in effect within 30 days of the Effective Date of this Agreement is subject to a pre-contract inspection by MEUS-IAD, at its election within the first 45 days of the new contract to determine if such equipment is in acceptable working condition, contains current MEUS-IAD mandatory field modifications, and is otherwise eligible for servicing under this Agreement. If a pre-contract inspection by MEUS-IAD is required, Customer will be charged a one-time inspection fee. Customer shall be billed, at MEUS-IAD's then current rates for parts and labor, for the cost of any repairs or modifications deemed necessary by MEUS-IAD to bring the equipment up to good operating condition. In addition to the foregoing, MEUS-IAD, at its option, may require maintenance be performed on the equipment prior to being eligible for servicing under this Agreement.
4. **Pricing, Exclusions and Additional Charges.**
 - a. Pricing is quoted in USD.
 - b. Pricing for a machine is based on machine model and is established by MEUS-IAD
 - c. Pricing for the Standard Parts and Labor Option and Premium Parts and Labor Option includes the cost of MEUS-IAD service engineers' travel and per diem.
 - d. MEUS-IAD shall charge Customer an extra fee for any service visit outside standard MEUS-IAD business hours, on weekends, or on MEUS-IAD-observed holidays, in accordance with the MEUS-IAD Field Service Terms and Hourly Service Rates, which may be updated by MEUS-IAD from time-to-time and a copy of which is available to Customer upon request.
 - e. A credit card surcharge of 2% will be added to the total invoice value for credit card payments where permissible by law.
 - f. Service labor and parts shall be invoiced as an additional charge to Customer on a time and materials basis under any of the following circumstances:
 - i. Customer attempts to maintain or repair Covered Equipment in a manner other than, or in conflict with, this Agreement, the terms of the original limited warranty or MEUS-IAD recommended procedures;
 - ii. Damage to Covered Equipment is caused by: modification, alteration, repair or service of the Covered Equipment by anyone other than an authorized MEUS-IAD service provider; physical abuse to, or misuse of, the Covered Equipment; operation in a manner contrary to the instructions which accompany the Equipment; use of the Equipment in conjunction with equipment supplied by a third party; or any damage caused by acts of God such as lightning or fluctuation in electrical power;
 - iii. Damage to Covered Equipment that results from Customer's failure to maintain facilities and Equipment in a reasonable manner;
 - iv. Parts and labor required to maintain the Covered Equipment that is not included in the Option selected by Customer;
 - v. Customer denies the MEUS-IAD service engineer ready and reasonable access to the Covered Location or the Covered Equipment;
 - vi. It is necessary, due to local circumstances, to use union labor or hire an outside contractor. In this case, MEUS-IAD service personnel shall provide supervision only and Customer shall be responsible for the cost of such union or contract labor;
 - vii. Covered Equipment that is moved from the Covered Location without MEUS-IAD's prior written consent and has not been inspected by MEUS-IAD following installation at its new location. All charges to provide Service at such other site will be billed at current labor rate until a post move inspection, payable by Customer, is completed by MEUS-IAD; and
 - viii. Cost of completing a service call that is delayed or interrupted by Customer.
5. **Customer's Responsibilities.**
 - a. Prior to submitting to MEUS-IAD a signed copy of this Agreement and request for parts and/or service, Customer must contact Technical Support with Customer's machine model and serial number, 847-478-2500 x2 or service@meau.com, and receive a case number, correlating to tech support recommendations made during the call. Any part not covered and parts ordered without a corresponding tech support recommendation will be charged separately at current list price.
 - b. Customer shall submit to MEUS-IAD a purchase order with current service call rates (for service) and current price list as parts are invoiced at the time of order placement (for parts), together with a fully executed Agreement. Customer shall ensure that the relevant control system and/or other equipment has been properly installed, located, and interconnected.
 - c. Customer shall return all defective parts within ten (10) business days of receiving the exchange part. Failure to return the part within this timeframe will result in the Customer not receiving full credit of the current list price and consequently an additional charge.
 - d. Customer shall notify MEUS-IAD within thirty (30) days if Covered Equipment is moved to a new location, and Customer failing to do so will void this Agreement.
 - e. Customer shall provide MEUS-IAD full and free access to the Covered Equipment at the Covered Location, allocate sufficient time for the provision of services by MEUS-IAD personnel and shall furnish MEUS-IAD personnel with suitable working facilities, space for storage, adequate heat, ventilation and electric power and outlets for providing service at no cost to MEUS-IAD. Customer shall be responsible for providing MEUS-IAD personnel a safe workplace to perform services under this Agreement. Customer shall indemnify, defend and hold harmless MEUS-IAD from any and all claims for injury to or damages suffered by MEUS-IAD's employees, agents and subcontractors while performing Services at the Covered Location.
 - f. Customer shall provide proper and reasonable maintenance of facilities and the Covered Equipment including, but not limited to, the following:
 - i. Maintaining temperature of area where Covered Equipment is located between 0C and +40C (with no freezing) to insure longer life of the Covered Equipment;
 - ii. Controlling humidity to prevent condensation;
 - iii. Keeping the Covered Equipment area free of corrosive atmospheres that would affect the operation, maintenance or useful life of the Covered Equipment; and
 - iv. Keeping the Covered Equipment clean and free of loose dirt and debris.
6. **Timing.**
 - a. Times in this Agreement are Central US Time (Chicago).
 - b. On orders received before 5PM on a business day, Parts for the Covered Equipment will be shipped out the same day. Orders of Parts for the Covered Equipment received after 5PM will be shipped the next business day.
7. **Invoicing and Payment.** Customer shall pay MEUS-IAD the price for the Option selected in advance, plus applicable sales/use taxes. Charges are payable by Customer net thirty (30) days from date of invoice. Services and repairs not covered under the Option will be billed on a labor and parts basis, payable at the time services are rendered unless other arrangements are agreed to by MEUS-IAD in advance. Prices do not include any applicable sales, use or other taxes, and the amount of any such taxes which MEUS-IAD may be required to pay or collect may be added to each invoice or separately invoiced by MEUS-IAD to Customer. Any past due amounts are subject to interest at the lower of one percent (1%) per month or the highest rate permitted by law. Customer is responsible for all costs and expenses incurred by MEUS-IAD, including attorneys' fees and costs, in collecting past due invoices or other payments.
8. **Limited Warranty.**
 - a. The Parts and Services provided by MEUS-IAD under this Agreement do not assure that operation of the Covered Equipment will be uninterrupted or error free.

- b. MEUS-IAD warrants for the longer of the remaining term of this Agreement or ninety (90) days from the date of service (the “**Warranty Period**”) that: (i) Services shall be performed in a competent manner; and (ii) any Parts furnished by MEUS-IAD in connection with this Agreement shall be free from defects in material and workmanship at the time of installation (a breach of either clause (i) or (ii), a “**Covered Defect**”). Customer understands that Parts may include, at MEUS-IAD’s election, replacement of Equipment, parts or components thereof with functionally equivalent reconditioned Equipment, parts or components.
 - c. IF MEUS-IAD RECEIVES WRITTEN NOTICE OF A COVERED DEFECT DURING THE WARRANTY PERIOD, MEUS-IAD’S SOLE AND EXCLUSIVE LIABILITY, AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY SHALL BE, AT MEUS-IAD’S SOLE OPTION, TO ADJUST OR REPAIR, AS SOON AS PRACTICABLE, COVERED EQUIPMENT WHICH IS NOT OPERATING, UNDER NORMAL USE AND SERVICE, IN ACCORDANCE WITH FACTORY SPECIFICATIONS BECAUSE OF A MANUFACTURING DEFECT IN MATERIALS OR WORKMANSHIP, SUBJECT TO THE TERMS, CONDITIONS AND LIMITATIONS DESCRIBED IN THIS LIMITED WARRANTY. THIS LIMITED WARRANTY DOES NOT INCLUDE ON-SITE REPAIR OF COVERED EQUIPMENT.
 - d. The foregoing paragraph sets forth the exclusive remedy of Customer and the sole liability of MEUS-IAD for any and all claims based on MEUS-IAD’s performance of services, or for the failure of or defect in materials, parts or services furnished, under this Agreement, whether such claim is based on contract, warranty, tort (including negligence), strict liability or otherwise. This limited warranty is in lieu of all other warranties whether written, oral, implied, or statutory. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, MEUS-IAD MAKES NO OTHER WARRANTY of any kind whatsoever, EXPRESS OR IMPLIED, to customer, its end users or any third parties, WITH RESPECT TO THE PARTS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY EXCLUDED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MEUS-IAD OR ANY OF ITS EMPLOYEES OR AGENTS SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTY SET FORTH ABOVE, AND NO SUCH PERSON HAS AUTHORITY TO MODIFY ANY ASPECT OF THE WARRANTY PROVIDED ABOVE OR CREATE ANY OTHER WARRANTIES, EXCEPT THROUGH A WRITTEN AMENDMENT OF THIS AGREEMENT.
9. **Regulatory Laws and Standards.** MEUS-IAD makes no promise, representation or warranty that the Parts and Service will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by a duly authorized representative of MEUS-IAD. Prices do not include the cost of any inspections or permits.
10. **LIMITATION OF LIABILITY.**
- a. IN NO EVENT, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL MEUS-IAD BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTIES FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE OF PRODUCTS, LOSS OF USE OF COVERED EQUIPMENT, IMPAIRMENT OF OTHER GOODS OR OTHERWISE, LOST PRODUCTION, LOSS OF CUSTOMERS, LOST GOODWILL OR DOWN TIME.
 - b. Under no circumstances shall MEUS-IAD be responsible directly or indirectly for any damage to the Covered Equipment or any other Customer property, nor for any injuries to or death of any person in connection with MEUS-IAD’s performance under this Agreement, except where such damage, injury or death is directly and solely attributable to the gross negligence of MEUS-IAD. MEUS-IAD’s entire liability and Customer’s sole and exclusive remedy for any and all claims in connection with or arising out of this Agreement or MEUS-IAD’s furnishing of the services and products described in this Agreement shall be limited to Customer’s actual and direct damages, not to exceed the greater of the net book value of the Covered Equipment (cost of Covered Equipment less depreciation to date) or thrice the annual charges for the period of coverage specified in this Agreement, reduced by any damages attributable to the negligence of Customer’s employees or agents. In no event shall MEUS-IAD be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of the Covered Equipment.
11. **Export Control.** Parts are sold to Customer in the United States. Any exporting of the Covered Equipment, Parts or any technology related to Parts or the Covered Equipment is by Customer and not MEUS-IAD. Customer is solely responsible, at its own expense, for complying with all applicable export laws and regulations relating to the export of the Covered Equipment, Parts and components thereof, including the United States Export Administration Act and the Export Administration Regulations promulgated from time to time thereunder, as the same may be amended, and with obtaining any necessary export license, permit or other approval which may be required in connection with the export or re-exportation of any Covered Equipment or Parts. Customer shall execute any documents requested by MEUS-IAD for the purpose of complying with the United States laws and regulations. If such documents are not properly completed and submitted to MEUS-IAD as requested, MEUS-IAD may terminate the sale of the Parts and the servicing of the Covered Equipment to Customer at any time with no further liability of MEUS-IAD to Customer.
12. **Term.** This Agreement shall commence on the Effective Date and continue for a period of one or two years thereafter, as applicable pursuant to the Option selected by Customer and designated in the Agreement.
13. **Default and Termination.** In addition to all other rights and remedies provided to MEUS-IAD at law or under this Agreement, MEUS-IAD, at its option, may terminate this Agreement immediately without further notice to Customer if: (a) Customer fails to make any payment on the date due; (b) Customer makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they mature, a trustee or receiver of all or a substantial part of Customer’s assets is appointed by any court, any bankruptcy or reorganization proceedings are instituted by or against Customer, Customer becomes insolvent or unable to pay its debts as they mature; (c) MEUS-IAD has reasonable basis for insecurity with respect to Customer’s performance of its obligations to MEUS-IAD and Customer fails to provide MEUS-IAD with adequate assurance of Customer’s performance within ten (10) days of MEUS-IAD’s demand for such assurance; or (d) Customer defaults in any of its obligations under this Agreement and fails to cure such default within ten (10) days after receipt of notice thereof.
14. **Force Majeure.** MEUS-IAD shall not be liable for damage as a result of any delay or failure of performance or fulfill its obligations under this Agreement due to any cause beyond MEUS-IAD’s reasonable control, including, without limitation, acts of God, acts of Customer or any of its representatives or agents, embargo or other governmental act, regulation or order, fire, flood, freezing, storm, accident, strike, slow down, war, riot, delay in transportation, inability to obtain necessary labor, materials, fuel or manufacturing facility or any other circumstance, whether similar or dissimilar to the foregoing, which is beyond MEUS-IAD’s reasonable control. In the event of such delay, the date of performance shall be extended for a period equal to the time lost by reason of delay, and, if such delay is caused by an act of Customer or any of its representatives or agents, Customer shall reimburse MEUS-IAD for any additional costs arising from such delay.
15. **Entire Agreement.** The terms and conditions of this Agreement and schedules if any, attached to or referenced herein, constitute the entire agreement between the parties with respect to the subject matter contained herein. All prior and contemporaneous agreements, representations, statements, negotiations, understandings and undertakings with respect to the subject matter of this Agreement are superseded. Each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, nature or description whatsoever made by either party to the other except such as are expressly contained in this Agreement. No modifications or changes to this Agreement shall be effective unless in writing signed by authorized representatives of both parties.
16. **Assignment.** This Agreement is not assignable by Customer. Any attempt by Customer to assign any of its rights, duties or obligations under this Agreement is void. Customer acknowledges and agrees that subcontractors or authorized service providers selected by MEUS-IAD may perform the services described in this Agreement.
17. **Notices.** Whenever under the terms of or in connection with this Agreement any notice, consent, approval, authorization or other information is proper or required to be given by either party, such notice, consent, approval, authorization or other information shall be in writing and shall be given or made by facsimile, by reputable overnight courier with documentation of receipt to the intended recipient thereof or by registered or certified mail, return receipt requested, and with all postage prepaid, to the parties at the address listed beneath the signature of each party in this Agreement, or to such other address as the parties may specify from time to time in a notice given in accordance with this paragraph.
18. **Miscellaneous.**
- a. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
 - b. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The sale of Parts to Customer shall not be governed by, and the parties hereby disclaim the effect of, the United Nations Convention on Contracts for the International Sale of Goods, as amended, the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended, and the Uniform Computer Information Transactions Act.
 - c. Except as otherwise specifically stated herein, all disputes or controversies arising out of or in any manner relating to this Agreement which the parties do not resolve in good faith within thirty (30) days after either party notifies the other of its desire to arbitrate such disputes or controversies shall be settled by binding arbitration before a three (3) arbitrator panel in accordance with the then standard prevailing commercial rules, as modified or supplemented by this article, of the Judicial Arbitration and Mediation Services (“JAMS”). The arbitration shall be held in Chicago, Illinois. The arbitration award shall be in writing and shall specify the factual and legal bases of such award. The arbitration award shall be final and binding, and a judgment consistent therewith may be entered by any court of competent jurisdiction. The parties agree that the arbitration award shall be treated confidentially, and the parties shall not, except as otherwise required by law or court order, disclose the arbitration award to any third party, excluding personnel in their affiliated companies and their attorneys and accountants with a need to know, provided that such recipients agree to be bound by the same restrictions as are contained in this Agreement. The arbitrator shall not have the power to render an award of punitive damages. To the extent of any conflict, this article shall supersede and control JAMS rules. Nothing in this article shall be construed to preclude or in any way prohibit either party from seeking any provisional remedy, such as injunction or a temporary restraining order.
 - d. No waiver of, or the failure of either party to require, strict compliance with, any provision of this Agreement in any respect shall be deemed to be a waiver of such party’s right to insist upon strict compliance with such provision or with all other provisions of this Agreement. No waiver by either party of any breach or default of this Agreement shall constitute a waiver of any other or subsequent breach or default. No waiver shall be binding unless executed in writing by the party against whom the waiver is sought to be enforced.
 - e. The headings contained in these terms and conditions are included for mere convenience of reference and shall not be considered in any construction or interpretation of them.
 - f. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party.
 - g. MEUS-IAD and Customer are independent contractors, and their relationship is not one of principal and agent. No act or obligation of either party is in any way binding upon the other party.