

Disclaimer and Limitation of Liability

The software code components quoted herein are offered with a 3 months warranty as described below. The hardware components and software licenses quoted herein are provided with the original equipment manufacturers warranty period. No oral or written information or advice given by EandM or its authorized representatives shall create any additional warranty or in any way increase or enlarge the scope of EandM liability hereunder.

To the maximum extent permitted by applicable law, EandM disclaims all other warranties, including without limitation any implied warranties of merchantability, fitness for a particular purpose, title and noninfringement. The entire risk arising out of the use, inability to use, or performance of the hardware and software quoted herein remains with Customer.

To the maximum extent permitted by applicable law, in no event shall EandM or its authorized representatives be liable for any reliance, consequential, incidental, direct, indirect, special, compensatory, punitive or other damages, including, but not limited to, damages for personal injury, property and equipment damage, inconvenience, loss of business profits, business interruption, loss of business information, or any other pecuniary loss arising from Customer's use, or inability to use, the hardware and software. Additionally, EandM is not privy to, and hereby disclaims all liability associated with any form of liquidated damages that may be suffered by Customer. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitations may not apply to Customer. Notwithstanding anything contained herein, in no event shall EandM be liable to Customer for any claim in tort, contract, equity or otherwise arising in connection with the use or inability to use the hardware and software quoted herein that exceeds in the aggregate the amount paid to EandM for said hardware and software.

Terms and Conditions

Please reconfirm all pricing before issuing a purchase order. If applicable, all purchase orders must explicitly reference the proposal number shown on the title page of this proposal.

Invoicing Terms

EandM, E&M Electric, Inc., E&M PSG and E&M SIG, (hereinafter EandM) standard terms are Net 30 with no discount for early payment. Any unpaid portions beyond 30 days are assessed a finance charge of 1.5% per month, 18% annually.

Term of Proposal

This proposal is valid for 60 days from the date of the latest revision listed in the revision section of this document.

Indemnification

Customer agrees to indemnify and hold EandM harmless from any and all liability and damages, real or alleged, arising from this contract, including reasonable attorney fees and costs, except for liability arising solely from the negligence of EandM.

Governing Law

All rights and obligations of EandM and Customer arising hereunder, and any claim and cross-claim arising herefrom, whether in tort, contract, equity or otherwise, shall be governed by, and determined in accordance with, the laws of the State of California. If any civil action is commenced to enforce, interpret, determine the legality or applicability of the terms and conditions set forth herein, or otherwise, EandM and Customer agree that jurisdiction and venue for said action shall be the Superior Court of the State of California, County of Sonoma.

Severability Provision

If any term or provision herein is subsequently determined by a court of competent jurisdiction to be invalid or unenforceable, for any reason, the remaining provisions shall otherwise remain in full force and effect. If any provision of this Agreement shall be found by a court to be void, invalid, or unenforceable, the same shall be reformed to comply with applicable law or stricken if not conformable, as not to affect the validity or enforceability of this Agreement.

Structured Payment

Whether labeled milestone payments, deliverable payments, or any other similar nomenclature. Any form of apportioned payment(s), as defined in **Billing Schedule** of this proposal, shall create a dependent covenant for any continued conjunctional service provided by EandM. Apportioned payment(s) are defined within the **Billing Schedule** of this proposal. Unless otherwise agreed to, by means of memorandum bearing the signature of all parties, request for compensation for each apportioned payment will be either: A separated invoice or a separate line item on a common invoice. Prior to issuance of invoice Customer will receive a payment release form to review. The payment release form will serve as notice that deliverables, if any, for this apportioned payment have been substantially completed. The order of apportioned payment listing in **Billing Schedule** does not imply, and should not be construed to be an order of which invoices will be dispatched, or an order of which payment is made. Failure of Customer to tender timely compensation for any request for apportioned payment will suspend EandM's duty to provide, or continue to provide any services offered in relation to this proposal. Upon failure of Customer to make timely compensation of any requested apportioned payment as defined in **Billing Schedule**, EandM reserves the right to suspend any service in progress, or future services, in relation to this proposal; Services subject to suspension are typically, but are not limited to, on-site installation, providing equipment, shipment of goods, providing training, providing documentation, scheduled installations, consulting, clearing punch-list items, customer support, system assistance, design, and development. This list is for example purposes only and is not intended to be all inclusive. Suspension of performance, in any capacity or form, by EandM will not effect the warranty period.

Signoff for Installation

Installation of the system will not start until Customer has been presented with and signed off on the design description or specification, updated with those changes that typically occur during the analysis, design or development phase.

Beneficial Use

For the purposes of this proposal, beneficial use is defined as 8 hours of productive usage, including but not limited to, normal operation, production, demonstration, training, or any other usage which may be construed as in furtherance of Customer's, or End User's goals with ten percent or less of downtime.

Downtime

For the purpose of this proposal, downtime is defined as a time period where because of a major error the Customer or End User is substantially prevented from using the system. Errors which remedy themselves or self-clearing errors are not considered major errors and will not be considered to contribute to the downtime period. Errors which require minor user interaction to remedy will not be considered to contribute to the downtime period, unless chronic. Any error which does not directly affect the primary purpose of the system is not considered a major error and will not be considered to contribute to the downtime period. Any errors in printed or viewed reports, statistical calculations, or graphical displays are not considered major errors and will not be considered to contribute to the downtime period, unless reports, statistical calculations or graphical displays are the primary purpose of the system.

EandM as Sub-Contractor

In the event that Customer is not the End User or EandM is a sub-contractor, acceptance will be governed by the provisions listed above. In addition, In the event that that system testing is not possible because of events outside control of EandM, unless Customer can demonstrate a substantial defect, Customer will be considered to have accepted the system thirty days after notification of completion by EandM.

End User payment to, or receipt of payment by Customer shall not be considered a condition precedent for payment(s) due to EandM. That is, any compensation due to Customer by a third party, for any reason, shall not be a condition of any payment due to EandM.

Acceptance

Ten days, or eighty hours of beneficial use will constitute Acceptance by Customer. Alternatively, at any time Customer can expressly proffer acceptance meaning that they agree that in scope and quality the system performs to and in accordance with this Proposal, a Controls Description, Specification or any other similar document can expressly proffer Acceptance. When EandM feels the system is ready to be accepted, it will deliver a letter to Customer requesting a formal sign-off at the bottom of the letter indicating acceptance; however ten days, or eighty hours of beneficial use by Customer use will constitute acceptance by Customer. Acceptance does not relieve EandM of its obligations to continue to monitor and work on Punch List items as per the terms of the Warranty Period.

System Non-Usage

In the event that the system is not used because of any reason beyond the control of EandM, unless Customer can demonstrate a substantial defect, Customer will be considered to have accepted the system thirty days after notification of completion by EandM. This provision expressly includes situations where, because of events beyond the control of EandM, EandM is prevented from installing, commissioning or fully testing the system.

Punch Lists

Customer will maintain a written "punch list" consisting of outstanding controls issues and items relating to work that has been completed, tested, installed and subsequently found to have a functional problem or deficiency. A Punch List with multiple items is a normal part of any system installation. The existence of clean or cleared Punch List shall not be considered a condition precedent to Acceptance. Customer will, within 80 hours of usage, supply a copy of this list, with priorities assigned to each item for correction, to EandM. EandM is only responsible for correcting the items shown on the Punch List. Items cannot be added to the Punch List upon the completion of the warranty period. EandM will indicate to Customer when an item has been corrected. Both EandM and Customer will test the item and sign the item off as complete if the test is completed satisfactorily.

Warranty Period

Warranty support of the system extends for 3 months of 8 hour days, 5 day per weeks or 520 hours, whichever occurs first, beyond Beneficial Use or acceptance of the system by the customer of the functions described in the specification.

Change Orders

Enhancements will be purchased under a separate purchase order and all scheduling impacts will be mutually agreed upon. Change orders will be billed separately from the Billing Schedule.

Exclusions

All items not specifically included in this proposal are excluded from this proposal and are either the responsibility of the Customer or will require a change order for inclusion in the scope of this proposal. These items include but are not limited to, user's manuals (other than third party supplied manuals), electrical wiring installation, cabling installation, electrical field devices, signage, electrical outlets, furniture, applicable taxes, permits, permit fees, building or code inspections, and bonds or fees for bonds.

Taxes

All applicable state and federal taxes will be billed to the customer as incurred and are not included in this quotation.

Freight

All freight charges will be billed to the customer as incurred and are not included in this quotation.

Written Assent to Additional Terms Required

This proposal/quote is subject to acceptance only upon the terms and conditions stated herein. All additional or different terms and conditions proposed by Customer, (offeree) are hereby rejected and shall be of no force or effect. Any additional terms and conditions proposed will not be considered part of the contract unless expressly assented to in writing by EandM. There shall be no contract formed except upon the terms and conditions provided in this offer.

In lieu of signing and returning this document, issuance of a signed purchase order by the Customer for the work described herein shall represent acceptance of the terms and conditions contained herein.

Back Charges

EandM will not accept nor have liability for any Back Charges from Customer unless a request has been submitted in writing in advance, and the validity and amount of Back Charges has been authorized by EandM.

Assignment

(a) Except as permitted by subsection (b), this Agreement is not assignable without the express written consent of EandM.
(b) If Customer sells all or any part of the business, Customer may as part of any such sale assign this Agreement to the purchaser, and in that event the purchaser shall be entitled to enforce this Agreement and shall be liable under this Agreement in the same manner and to the same extent as Customer, (current customer.) The assignment is not considered complete unless the new owner notifies EandM of said assignment within thirty days of business transfer or sale. Failure to notify EandM of assignment, as previously specified, will result in a forfeiture of Customers rights under this contract.

Schedule Changes

Any changes in an arranged schedule made within seventy-two business hours of the, or any, scheduled event at issue will result in a minimum service charge of 8 Base Labor Rate hours for each engineer.