

INVENSYS CONTROLS UK LTD – CONDITIONS OF PURCHASE

The Seller's attention is drawn in particular to the provisions of clauses 7 (Delivery), 10 (Warranties), 11 (Remedies) and 12 (Indemnity).

1. INTERPRETATION

1.1 In these Conditions, the following terms shall have the following meanings: *Affiliate* means in respect of the Buyer, any entity which controls, is controlled by or is under common control with the Buyer, and *control* means the ability, directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise; *Buyer* means Invensys Controls UK Ltd, with its registered office at Portland House, Bressenden Place, London, SW1E 5BF United Kingdom, with company number 00739180; *Confidential Information* means the disclosing party's information in any form whether oral, documentary, magnetic, electronic, graphic or digitised, relating to the disclosing party's business and including information relating to patents, trademarks, registered/unregistered rights, design rights, copyright formulations, engineering drawings, specifications, data, know-how, inventions, models, sample components, formulae, manufacturing methods, analytical and quality control methods, sales data, anticipated sales volumes, information relating to potential or actual customers, business structure, assets, liabilities, operations, budgets and strategies; *Contract* means the contract for the sale and purchase of the Goods whether expressly in writing or through delivery of the Goods pursuant to an Order; *Goods* means any goods agreed in the Contract to be bought by the Buyer from the Seller as described in the Order; *Order* means the Buyer's purchase order to which these Conditions are annexed or to which these Conditions are applicable; *Seller* means the person so described in the Order.

2. GENERAL

2.1 These Conditions are the only conditions upon which the Buyer is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions submitted. No terms or conditions endorsed upon, delivered with, or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions. These Conditions apply to all the Buyer's purchases of the Goods and any variation to these Conditions shall have no effect unless expressly agreed in writing by the Buyer.

2.2 The Order shall be deemed to be an offer by the Buyer to buy the Goods subject to these Conditions and no Order shall be accepted until the Seller either expressly, by giving notice of acceptance, or impliedly, by fulfilling the Order, in whole or in part accepts the offer. The Order will lapse unless accepted by the Seller within 10 days of the date of its receipt by the Seller.

2.3 Delivery terms used in the quotation, tender or Contract shall be interpreted in accordance with INCOTERMS 2000 Edition as amended or superseded from time to time.

2.4 Nothing in these Conditions shall limit or exclude liability for gross negligence, wilful misconduct, fraud or fraudulent misrepresentation or for any other matters for which it would be illegal to exclude or to attempt to exclude the Buyer's liability.

3. SPECIFICATION/QUALITY

3.1 The quantity, quality and description of the Goods shall, subject to the provisions of these Conditions, be as specified in the Order and/or in any applicable specification supplied or advised by the Buyer to the Seller.

3.2 If a standard of performance is specified, the Goods should be capable of the required performance and where applicable, Test Certificates, Certificates of Conformity including EC Declarations of conformity regarding EMC, Low Voltage or Machinery and the relevant Installation Instructions regarding such Directives and/or material Analysis Certificates and as specified in the Order will be required to be provided by the Seller to the Buyer.

3.3 At any time prior to delivery of the Goods the Buyer shall have the right to inspect and test the Goods. The Buyer will be entitled to inspect and test the Goods during manufacture, processing and storage. The Buyer's representatives, or the agent of any government department or other customer concerned, shall be allowed to visit the Seller's premises where the Goods are being manufactured, processed or stored at any reasonable time to inspect the progress of the Goods.

3.4 If the results of such inspection or testing cause the Buyer to be of the opinion that the Goods do not conform, or are unlikely to conform, with the Order or to any specifications supplied or advised by the Buyer to the Seller, the Buyer shall inform the Seller and the Seller shall immediately at its cost take such action as is necessary to ensure conformity. Any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract or imply acceptance of the Goods pursuant to an Order.

4. COMPLIANCE WITH LAWS

4.1 For the purpose of this clause 4; "Applicable Laws" shall mean all applicable laws, rules, regulations, ordinances and codes of practices including, but not limited to, the following: (i) manufacture, packaging, packing and delivery of the Goods; (ii) employment rights; (iii) all import/export laws, rules, regulations and requirements; and (iv) environmental laws; and "undertakes" shall mean represents, warrants, certifies and covenants.

4.2 The Seller undertakes that it shall fully comply with all Applicable Laws in the performance of this Contract. If the Goods are manufactured in a country other than the country in which the Goods are delivered to the Buyer, the Seller will mark the Goods "Made in (country of origin)". Upon the Buyer's request, the Seller shall promptly furnish any reports, required information, and/or certifications required under such Applicable Laws.

4.3 The Seller undertakes that the Goods fully comply with all Applicable Laws in locations in which the Goods are likely to be used or sold and shall provide for any of the Goods, upon request, all reports and required information including, but not limited to, certifications, component natural resources, confirmation that the Chemicals Hazard and Information and Packaging for Supply Regulations 2002 ("CHIP") and the Control of Substances Hazardous to Health Regulations 2002 (or local equivalent regulation) have been complied with as required under such Applicable Laws. The Seller shall maintain and retain sufficient documentation to enable the country of origin of the Goods to be traced within the Goods sold to the Buyer.

4.4 The Seller undertakes that the Goods have not and will not be produced or supplied (by the Seller or its suppliers) in segregated facilities or any location in which segregated facilities are maintained; by using forced, indentured, convict or child labour; in violation of minimum wage, hour of service or overtime laws of the country of manufacture or in any jurisdiction in which the Goods are provided; or in non-compliance (without limitation) with the following Directives and Regulations: (i) European Union Directive 2002/95/EC (27 January 2003) (RoHS Directive); (ii) European Union Directive 2002/96/EC on Waste and Electronic Equipment (WEEE); (iii) The Electronic Waste Recycling Act (California SB20/50) (where relevant); and; (iv) Regulation 1907/2006 of the European parliament and of the Council (REACH Regulation: 18 December 2006); each as amended at the time of any Contract and within its whole term, unless expressly agreed in writing by the Buyer.

5. PRICE AND PAYMENT

5.1 The price of the Goods shall be stated in the Order in British Pounds Sterling and unless otherwise agreed in writing by the Buyer shall be exclusive of value added tax but inclusive of all other charges. No variation in the price nor extra charges can be made without the prior consent of the Buyer in writing.

5.2 Unless otherwise stated in the Order, the Buyer shall pay the price of the Goods to the Seller within 120 days after the receipt at the Buyer's invoice address of a correctly submitted and undisputed invoice, or if later, the acceptance of the Goods by the Buyer.

5.3 A separate invoice for each individual consignment of Goods shall be sent by the Seller to the Buyer as soon as it is reasonably practicable after dispatch or performance, or in accordance with the schedule of payments in the event of part or progress payments being agreed.

5.4 Time for payment will not be of the essence of the Contract, but if any undisputed sum under the Contract is not paid when due, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over EURIBOR rate from time to time in force during that period. The Seller acknowledges and agrees that this clause provides the Seller with a substantial remedy in respect of late payment of sums due under the Contract and any right to receive statutory interest shall not apply to any payment of sums under the Contract.

5.5 Without prejudice to any other right or remedy, the Buyer reserves the right to set-off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Contract.

6. DOCUMENTS/PACKING, MARKING AND DISPATCH OF GOODS

6.1 All advice notes, invoices and delivery notes shall quote the number of the Order, the date of the Order, and shall include a description of the Goods.

6.2 Unless otherwise specified in the Order: (i) all Goods shall be properly packed, marked and dispatched at the Seller's expense in accordance with the requirements of the Buyer; (ii) the Seller shall mark the outside of each package with his business name, registered seat and with full details of the destination and include a packing note stating the contents and reference number of the Buyer's Order; and (iii) the Buyer shall not be liable to pay for or return to the Seller any packaging or crating.

7. DELIVERY

7.1 Unless otherwise stated in the Order, the Goods shall be delivered, DDP to the delivery address stated on the Order, or to such other place of delivery as is notified in writing by the Buyer to the Seller prior to delivery of the Goods. All deliveries shall be made during the Buyer's usual business hours.

7.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the receipt of the Order. Time for delivery shall be of the essence.

7.3 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, in addition to the requirements set out in clause 6, the number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

7.4 If the Goods are not delivered by the due date and it was not caused by the Buyer or by its non-cooperation, then, without prejudice to any other rights which the Buyer may have, the Buyer reserves the right to: (i) cancel the Contract in whole or in part; (ii) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make; (iii) deduct from the price of the Goods (or if the Buyer has already paid the price) to claim from the Seller by way of liquidated damages for delay, 1% of the purchase price for every week's delay, up to a maximum of 10%; and (iv) claim damages for any costs, loss or expenses incurred by the Buyer and not compensated by the liquidated damages, which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

7.5 If the Buyer receives any early delivery of the Goods, it may return them to the Seller at the Seller's expense.

7.6 Where an Order is for scheduled deliveries over a specific period, the Buyer may on reasonable notice to the Seller, amend the design or specification of the Goods ordered for any remaining deliveries.

7.7 The Buyer shall be entitled to reject Goods that are not in accordance with the Contract and shall not be deemed to have accepted the Goods until it has had 14 days to inspect them following delivery. The Buyer shall also have the right to reject the Goods at any time during the warranty period if any latent defect in the Goods is discovered.

8. RISK AND PROPERTY

8.1 Without prejudice to any right of rejection which may accrue to the Buyer under these Conditions, the Goods shall remain at the risk of the Seller until delivery to the Buyer is completed (including off-loading and stacking) when ownership of the Goods shall pass to the Buyer. If there is any conflict between this clause and the applicable Incoterm, this clause shall prevail unless the parties have otherwise agreed in writing.

8.2 If the Goods are rejected by the Buyer, ownership and risk shall re-pass to the Seller within 48 hours of notice of such rejection being given by the Buyer to the Seller.

9. SPARE PARTS

9.1 The Seller shall supply the Buyer with spare parts for the Goods, or provide equivalent sources of supply, for a period of 10 years.

10. WARRANTY

10.1 The Seller warrants that the Goods supplied shall, under normal conditions of use, be: (i) free from defects in design, material and workmanship; and (ii) are appropriate in form, fit, and function for the purpose intended; for a period of 24 months from delivery. The Seller warrants that the Goods supplied shall: (i) be new, not refurbished or reconditioned; and (ii) conform to the specification in the Contract, and if provided, any parts per million quality levels. Seller also warrants that any services performed in the provision of the Goods shall be rendered in a good and workmanlike manner by skilled personnel.

10.2 Seller extends to Buyer any and all warranties received from Seller's sub-suppliers and subcontractors and agrees to enforce such warranties on Buyer's behalf. All of Seller's warranties shall run collectively and separately to Buyer, its successors, assigns, customers, and users of Buyer's Goods sold by Buyer. The above warranties are in addition to any warranties implied by law or otherwise made by Seller and will survive acceptance and payment by Buyer.

10.3 The Buyer shall on discovery of a defect in the Goods promptly notify the Seller.

11. REMEDIES

11.1 Without prejudice to any other right or remedy which the Buyer may have and regardless whether or not any part of the Goods have been accepted by the Buyer; if any of the Goods are not supplied in accordance with the Contract, or the Seller fails to comply with any of the terms of the Contract, the Buyer at its discretion is entitled to avail itself of any one or more of the following remedies: (i) to require the Seller to repair the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled (at Seller's cost and expense) within 14 days of receipt of notice from the Buyer; (ii) to refuse to accept any further deliveries of the Goods but without any liability to the Seller; (iii) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller; and (iv) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

12. INDEMNITY

12.1 The Seller will keep the Buyer fully indemnified and hold the Buyer harmless against all actions, proceedings, claims, demands, damages, costs, charges and expenses whatsoever brought or made against the Buyer or sustained or incurred by the Buyer, the Buyer's employees or agents or by any third party, in respect or as a result of: (i) any defective workmanship, quality, design or materials, including any product recall or corrective action procedure; (ii) infringement or alleged infringement of any form of intellectual property right caused by the use, manufacture, or sale of any article, Goods or materials supplied to the Buyer unless to the extent that the infringement is due to the Seller having followed the Buyer's design or instruction; (iii) any injury loss or damage to persons or property caused by the act, default or negligence of the Seller, sub contractors or agents or by faulty design, workmanship or materials unless to the extent that the injury, loss or damage is caused by the negligence of the Buyer; (iv) any failure by the Seller to comply with the provisions of clause 4; (v) all claims which at any time be made upon the Buyer and which arise out of accidents to the Seller's employees or the employees of the Seller's sub-contractors; and (vi) all liabilities of whatever nature which may at any time result from the wrongful acts or omissions of the Seller's employees or the employees of the Seller's sub-contractors, if the above mentioned was not caused by the Buyer or by its non-cooperation.

13. INSURANCE

13.1 The Seller undertakes to effect and maintain adequate insurance cover to meet the risks specified under clause 12 to the reasonable satisfaction of the Buyer, and will upon request from the Buyer, produce to the Buyer the relevant policy and evidence of payment of the current premium.

14. LICENCE TO USE EMBEDDED SOFTWARE/INTELLECTUAL PROPERTY RIGHTS

14.1 Any software or firmware incorporated into Goods is supplied under licence for the use of the software only, and all other rights are retained by the Seller. The Seller grants to the Buyer a licence to use such software or firmware only in connection with those Goods and only to the extent required to use the Goods for their intended purposes. The licence shall include a right to grant sub licences to the extent required lawfully to sell the Goods. The duration of this licence shall be the life of the Goods into which the software or firmware is incorporated.

14.2 To the extent that any Goods are created or modified in accordance with Buyer's specific requirements and/or technical or functional specifications then any intellectual property arising out of or created during the performance of the Order shall be the property of the Buyer. The Seller shall (at Buyer's reasonable expense) execute such documents as are required to give effect hereto and shall assist in the defence of any proceedings against the Buyer.

15. CONFIDENTIALITY

15.1 The receiving party will not divulge or communicate to any person without the prior written consent of the disclosing party any Confidential Information and shall not use the Confidential Information for any purpose other than the manufacture and purchase of the Goods under these Conditions.

15.2 The obligation of confidentiality will continue to apply at all times during the continuance of any Contract incorporating these Conditions and for a period of 5 years after the expiration or termination of the Contract but will cease to apply to information which is at the date of the disclosure public knowledge through no fault of the receiving party or is disclosed subject to a legal or regulatory requirement.

15.3 Each disclosing party shall have the right, immediately upon expiration or earlier termination of the Contract (for any reason whatsoever), to request the other receiving party to return all Confidential Information in its possession.

16. THE BUYER'S PROPERTY

16.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Buyer to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods, shall at all times be and remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing.

17. TERMINATION

17.1 The Buyer shall have the right at any time and for any reason to immediately terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation on a pro-rata Contract price basis for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

17.2 The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if: (i) the Seller commits a material breach of any of the terms and conditions of the Contract; or (ii) any distress, execution or other process is levied upon any of the assets of the Seller; or (iii) the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or (iv) the Seller ceases or threatens to cease to carry on its business; or (v) the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

17.3 No notice of termination may be given by either party except in accordance with the express provisions of these Conditions.

17.4 The termination of the Contract, however arising, shall be without prejudice to: (i) the rights and duties accrued prior to termination; and (ii) the conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding the termination or expiry of the Contract.

18. ASSIGNMENT

18.1 The Buyer may assign the rights and benefits of any Contract or any part of it to any of its Affiliates. Any other assignment of this Contract shall not be permitted unless the other party consents in writing to such assignment (such consent not to be unreasonably withheld or delayed).

19. FORCE MAJEURE

19.1 The Buyer reserves the right (without any liability to the Seller for any expenses or loss incurred by the Seller) to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

20. MISCELLANEOUS

20.1 Each right or remedy of a party under the Contract is without prejudice to any other right or remedy of the party whether under the Contract or not.

20.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

20.3 Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

20.4 Any waiver by the Buyer of any breach of, or any default under, any provision of the Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

20.5 Notices must be in writing and delivered by hand, first class post, or facsimile to the other party at its registered office or trading address at the date of the Contract.

20.6 This Contract shall be governed by and construed in accordance with the laws of England and Wales without regard to its conflict of laws provisions. The parties submit to the exclusive jurisdiction of the courts of England and Wales.

20.7 In the event that the parties enter into a master supply agreement for the supply and purchase of the Goods, such agreement shall prevail over these Conditions to the extent that any provisions conflict.

20.8 The United Nations 'Convention on Contracts for the International Sale of Goods' signed in Vienna in 1980 shall not apply to this Contract.

20.9 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a person to it.