

INVENSYS SAM - CONDITIONS OF SALE

The Buyer's attention is drawn in particular to the provisions of clauses 11 (Seller's Warranty) and 14 (Limitation of Liability).

1. INTERPRETATION

1.1 In these Conditions, the following terms shall have the following meanings: *Affiliate* means in respect of the Seller, any entity which controls, is controlled by or is under common control with the Seller, and *control* means the ability, directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise; *Buyer* means the person(s) so described in the Order; *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; *Seller* means Invensys S.A.M. with its place of business at 5, rue du Gabian, MC 98000, Monaco.

1.2 This Condition shall also apply to the Principality of Monaco and accordingly for the purpose of this Conditions "France" also means "Monaco".

2. GENERAL

2.1 Any quotation or tender made by the Seller and any Contract shall be governed only by these Conditions to the entire exclusion of all other terms or conditions unless otherwise agreed in writing by the Seller. An Order for Goods from the Buyer constitutes an offer from the Buyer to purchase the Goods subject to these Conditions.

2.2 Unless otherwise stated in writing quotations and tenders shall be considered as an invitation to treat and shall in any case lapse after 30 days from their date. Orders based on quotations or tenders shall not be binding on the Seller until the Seller accepts such Orders and notifies the Buyer in writing of such acceptance. The Seller will only accept an Order when a written acknowledgement is issued or (if earlier) the Goods are delivered to the Buyer.

2.3 Times quoted for despatch, delivery or completion shall run from the date of such notification.

2.4 Delivery terms such as Ex-works, FCA, FOB, CIF, used in the quotation, tender or Contract shall be interpreted in accordance with INCOTERMS 2000 Edition as amended or superseded from time to time.

2.5 The Seller may, at its discretion, impose a surcharge to cover handling costs, in respect of Orders placed which are below a minimum consignment value which will be reasonably charged by the Seller and notified to the Buyer from time to time; Likewise the Seller shall have the right to impose a surcharge for expedited delivery (defined as a delivery requirement at variance with the Seller's normal carriage arrangements) to reflect the additional logistic and transport costs incurred in meeting the Buyer's requirements. The sum of such costs may be varied by the Seller from time to time.

2.6 In the event that the Seller, for any reason, accepts the cancellation of all or part of an Order, the Buyer shall be liable for payment in full of all costs incurred by the Seller up to the point of cancellation or, if the manufacture of the Goods has been completed, for the full price of the Goods.

3. VARIATIONS

3.1 Any variation to these Conditions shall have no effect unless expressly agreed in writing by the Seller.

3.2 If any variation, suspension or any instruction of the Buyer in respect to a Contract increases or reduces the cost or time to the Seller of performing the Contract, then the price and programme shall be adjusted accordingly. The time for despatch or delivery shall automatically be adjusted in accordance with any variation.

3.3 The Seller shall not be obliged to accept any variation of a Contract where the net effect, together with variations already made, is to increase or reduce the price by more than 15 percent.

3.4 Variations of the Contract shall, if not the subject of a quotation from the Seller which has been accepted by the Buyer prior to the variation being ordered, be priced by reference to the price or where this is not relevant, by cost plus 25 percent.

4. SPECIFICATION

4.1 The Buyer is responsible for satisfying itself as to the suitability of the Goods for the Buyer's application. The Seller shall not be bound by any statement concerning the scope of supply, performance or characteristics of the Goods unless expressly incorporated in the Contract, although nothing in these Conditions shall be construed as attempting to limit either party's liability for fraud or fraudulent misrepresentation.

4.2 All specifications, drawings and particulars of weights and dimensions and other information relating to the Goods submitted with the Seller's quotation or tender are approximate only. Descriptions and illustrations contained in the Seller's catalogues and other advertisement material are intended merely to present a general description of the Goods described therein and none of these shall form part of the Contract.

4.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable legislation and which do not materially affect the quality of the Goods.

5. PRICE

5.1 Unless otherwise agreed by the Seller in writing the price of the Goods will be the price set out in the Seller's price list published or agreed in writing with the Buyer at the time of the Order.

5.2 Except as expressly agreed in writing to the contrary, the quoted price shall be exclusive of any value added tax or similar sales tax, any import tax or other tax payable in the country of the Buyer, and all costs or charges in relation to loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition to the quoted price when it is due to pay for the Goods supplied.

5.3 If any law or regulation comes into force after the date of the Seller's quotation or tender which increases the cost of performing the Contract, the Contract price shall be adjusted accordingly.

5.4 In the event of an increase in the cost to the Seller of materials required to fulfil the Order of more than 5% from the date of Order placement, the Seller reserves the right at any time up to 30 days after the date of the Order to increase the price of the Order by a percentage equivalent to the percentage rise in the cost of materials. The Seller shall notify the Buyer in writing of such a price increase. The Buyer will be entitled to cancel the Order by written notice to the Seller within 5 working days of the date of the Seller's notice of price increase. In the absence of such notice, the price increase will be binding on the Buyer.

6. PAYMENT

6.1 All payments shall be made in clear funds in Euro to the designated account of the Seller. Payments from sources originating outside of Monaco shall be paid by telegraphic transfer, the costs of which shall be borne by the Buyer, into the designated account of the Seller. All sums due to the Seller shall be payable within 45 days of the date of the Seller's invoice and time for payment shall be of the essence. No deduction whether by way of set-off, counterclaim or otherwise, shall be made by the Buyer.

6.2 If any amount due and payable to the Seller under the Contract is overdue for reasons for which the Seller is not responsible, the Seller may, without prejudice to any other right it may have and at its own option, either suspend deliveries or terminate the Contract and in addition charge the Buyer simple interest on amounts overdue at an annual rate of 3 times the legal interest rate from time to time in force during the period that any such amount is overdue (before and after judgement).

6.3 Where payment is to be secured by a letter of credit, then except as otherwise agreed by the parties in writing, such letter of credit shall: (i) be an irrevocable letter of credit; (ii) provide for partial deliveries; (iii) be advised through and confirmed by a bank acceptable to the Seller within 30 days of formation of the Contract; (iv) conform to the latest edition of the International Chamber of Commerce's Uniform Custom and Practice for Documentary Credits (UCP 500); and (v) be valid for at least sixty days beyond the latest despatch or delivery date stated in the Contract. The Buyer shall, at its own expense extend the letter of credit in accordance with any variation or other event which entitles the Seller to any extension of time for despatch or delivery.

6.4 All bank charges arising outside of France (including but not limited to the cost arising in establishing or extending any letter of credit) and charges relating to bank confirmation of the letter of credit shall be paid by the Buyer. All other bank charges arising within France shall be paid by the Seller with the exception of those arising within the Buyer's bank which shall be paid by the Buyer.

7. BUYER'S GENERAL OBLIGATIONS

- 7.1 The Buyer shall provide on time any approval, instruction, material, facilities, equipment or other thing which may be required in relation to the performance of the Seller's obligations and which is not expressly stated to be the Seller's responsibility.
- 7.2 Any authorisation, licence, permit, planning permission or approval required from any regulatory authority for which the Seller is not expressly made responsible in the Contract shall be obtained in due time by the Buyer.
- 7.3 The Buyer shall be responsible for obtaining any necessary customs import clearance and shall give all reasonable assistance to the Seller in obtaining any work letter of invitation, permit, visa and similar document which the Seller or any of its employees or agents may require at no cost to the Seller.
- 7.4 The Buyer shall promptly respond to any and all requests or submissions of documents, drawings or information for comment or approval.

8. DELIVERY

- 8.1 Unless otherwise agreed in writing by the Seller, if no destination is specified in the Contract, delivery shall be made Ex-works at the Seller's place of business. The Seller may deliver the Goods by separate instalments.
- 8.2 Unless expressly agreed to the contrary in writing, dates cited for delivery shall be approximate only, and time for delivery shall not be of the essence. If no delivery dates are specified, delivery shall be made within a reasonable time.
- 8.3 If the Seller delivers a quantity of Goods of up to 5% more or less than the quantity ordered the Buyer will not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and will pay for such Goods at the pro rata Contract rate. The Buyer will notify the Seller of the surplus or shortfall of the Goods within 5 days of receipt.

9. STORAGE

- 9.1 If the Buyer does not take delivery of the Goods within 7 days of notification from the Seller that they are ready for delivery, or the Seller is unable to deliver the Goods because the Buyer has failed to comply with its general obligations under clause 7, the Seller shall be entitled on behalf of the Buyer to put the Goods into storage at the Buyer's expense, and risk in the Goods shall pass to the Buyer. Delivery to storage shall constitute delivery to the Buyer and the Seller shall become entitled to payment upon such delivery.

10. TRANSFER OF TITLE AND RISK

- 10.1 Legal title to and beneficial ownership in any consignment of the Goods (excluding software) shall pass to the Buyer upon receipt by the Seller of all sums due from the Buyer in respect of the Goods. All risks of loss or damage to the Goods shall nevertheless pass to the Buyer on delivery and the Buyer shall maintain the Goods in satisfactory condition and keep them adequately insured on the Seller's behalf for their full price and on request provide evidence of such insurance.
- 10.2 Until the passing of title in the Goods to the Buyer, the Buyer shall hold the Goods as bailee for the Seller and clearly identify them as belonging to the Seller. The Seller may at any time until the passing of title in the Goods to the Buyer require the return of the Goods. If this requirement is not complied within a period of 8 days the Seller may (without prejudice to its other rights and remedies) repossess the Goods and remove, use or dispose of them, and for this purpose if permitted under local law, may enter the premises where they are and sever them from any other property to which they may be attached without liability for any resulting damage, except where such damage arises directly as a result of negligence on the part of the Seller.
- 10.3 The Buyer shall maintain accurate records to ensure the continued traceability of any of the Goods purchased from the Seller under these Conditions and shall provide reasonable assistance to the Seller in the event that any of the Goods it has purchased are affected by a product recall or corrective action procedure implemented by the Seller.

11. SELLER'S WARRANTY

- 11.1 The Seller warrants that the Goods supplied shall, under proper use, be free from defects in design, material and workmanship and conform to the specification in the Contract for a period of 12 months from delivery. "Proper use" means storage, installation, commissioning operation and maintenance in accordance with the Seller's specifications and good industry practice.
- 11.2 The Seller's obligation under this warranty shall be limited to making good by repair or replacement at the Seller's option any defect in the Goods which appears before the expiration of the period of 12 months after delivery or, at the Seller's option, reimbursing the price received by the Seller for the Goods. Where the Seller opts to repair the Goods the Buyer shall return the Goods to be repaired to the Seller's premises at its own cost. In respect of items which have been repaired or replaced by the Seller hereunder, the Seller shall guarantee such items up to the end of the original warranty period. Replaced items shall become the property of the Seller. The Seller's obligation is subject to: (i) the Seller being given notice by the Buyer of the defect within 7 days of the date of delivery, or when the defect was not apparent on reasonable inspection, within a reasonable time after the discovery of the defect; (ii) the Seller being given a reasonable opportunity after receiving notice of the defect to examine the Goods; and (iii) where the Goods are returned by the Buyer to the Seller, compliance with the provisions of clause 11.7. The Seller shall have no liability for the costs of dismantling, transportation, re-assembly, and re-testing of any of the Goods affected under this warranty.
- 11.3 The Seller's obligation shall not extend to failure caused by wear and tear, misuse, neglect, or repairs or modifications to the Goods which have been made without the Seller's approval, or result from; designs and specifications provided by the Buyer, instructions given by the Buyer, software and firmware programs developed by the Buyer and used in or with the Goods and more generally by defects for which the Buyer is to blame or which are caused by activities performed by the Buyer without the Seller's written consent.
- 11.4 SUBJECT TO CLAUSE 14.3, THIS WARRANTY IS IN PLACE OF AND EXCLUDES TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. THE SELLER'S LIABILITIES AND THE BUYER'S REMEDIES IN RESPECT OF DEFECTS IN THE GOODS AND ANY DAMAGE TO THE GOODS RESULTING THEREFROM WHETHER ARISING FROM BREACH OF CONTRACT, STATUTORY DUTY, WARRANTY, NEGLIGENCE OR OTHERWISE ARE SOLELY AND EXCLUSIVELY AS STATED IN THIS SELLER'S WARRANTY CLAUSE, AND THE SELLER SHALL HAVE NO LIABILITY OF ANY KIND FOR ANY SUCH DEFECTS OR DAMAGES WHICH APPEAR AFTER THE EXPIRY OF THE WARRANTY PERIOD DESCRIBED ABOVE.
- 11.5 If the Seller did not manufacture the Goods (or parts or components thereof) which are subject to any warranty claim, then the Buyer is only entitled to such warranties that the Seller receives from the actual manufacturer.
- 11.6 Goods not the subject of a warranty claim may only be returned by the Buyer with the prior written consent of the Seller.
- 11.7 Prior to returning any of the Goods, the Buyer shall inform the Seller's 'Quality' department of its intention to do so by fax (+377 97 98 44 45) listing in the notice the following data: (i) manufacturing part number(s) and serial numbers present in the product label; (ii) the manufacturing date (still present in the product label); (iii) quantity for each part number; and (iv) reason for return for each Good. Only when the Seller's Quality department has authorised the return and given a reference number (which must be printed on all correspondence) are the Goods to be returned. If the Goods are out of warranty an estimate in respect of the cost of repairs will be supplied. The returned Goods will need to be accompanied by: (i) a "Pro-forma" invoice indicating the value of the Goods for custom requirements if the Buyer is not located in France or a despatch note if the Buyer is located in France; and (ii) a statement declaring that the Goods are being returned for examination/repair.

12. INTELLECTUAL PROPERTY RIGHTS AND LICENCE TO USE EMBEDDED SOFTWARE

- 12.1 No title to any of the Seller's industrial or intellectual property or to industrial or intellectual property in the Goods supplied is transferred to the Buyer under these Conditions or the Contract (where intellectual property includes but is not limited to patents, design rights, copyrights, trademarks, database rights, know how and proprietary information). No designs, drawings or goods supplied by the Seller shall be reproduced, disclosed, copied or reverse engineered without the Seller's prior written permission.
- 12.2 The Buyer will not without the consent of the Seller cover, obscure or in any way alter any distinctive mark forming part of or impressed on or affixed to the Goods received by the Buyer from the Seller and any of the Goods which will have been so covered, obscured or altered without such consent will not be sold.
- 12.3 Any software or firmware incorporated into the Goods is supplied under licence only, and title thereto is 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 normal intended commercial purpose. The licence shall include a right to grant sub licences only to the extent required lawfully to sell the Goods. The Buyer will not export or re-export software without the appropriate licences. The Buyer must not reverse engineer, decompile or disassemble the software or rent or lease the software to any third parties.
- 12.4 The duration of this licence shall be the life of the Goods into which the software or firmware is incorporated.

13. INTELLECTUAL PROPERTY RIGHT INFRINGEMENT

13.1 The Seller shall indemnify the Buyer against all damages and costs awarded against the Buyer for infringement of any intellectual property right granted or registered at the date of the Contract and resulting from the use or the sale of the Goods but this indemnity shall not apply to any infringement which is due to the association or combination of the Goods with any article, apparatus or device or to any goods or parts thereof made to designs supplied by the Buyer. This indemnity is conditional on the Buyer: (i) giving the Seller prompt written notice of any claim for infringement; (ii) permitting the Seller (at the Seller's expense) to conduct on the Buyer's behalf any litigation or negotiations in respect thereof; and (iii) the Buyer at the request and reasonable expense of the Seller taking all action as may be reasonably required to assist the Seller in relation to any infringement or claim. Subject to the provisions of clause 14, the foregoing states the Seller's entire liability for intellectual property right infringement.

14. LIMITATION OF LIABILITY

14.1 Subject to clause 14.3, the Seller shall not in any circumstances be liable for any loss of use, production, profit, business, contracts, revenues or anticipated savings, any increase in operating costs, any product recall or corrective action costs or any other financial or economic loss or any indirect or consequential loss or damage whatsoever whether suffered by the Buyer or by any third party.

14.2 The exclusions and limitations of liability contained in these Conditions shall apply to all claims of any kind whether in contract tort or otherwise on the part of the Seller, its employees, agents, sub-contractors or suppliers.

14.3 No limitation or exclusion contained in these Conditions shall apply in cases of fraud or fraudulent misrepresentation or in cases of death or personal injury caused by the negligence of the Seller, or for any other matter for which it would be illegal to exclude or to attempt to exclude the Seller's liability.

14.4 Except as provided under clause 14.3, notwithstanding anything else in this Contract or otherwise, the total aggregate liability of the Seller to the Buyer for all claims of any kind for any loss or damage resulting from its performances or lack of performance under this and all other Contracts under these Conditions in any one calendar year will not in any event exceed 50% of the value of the Goods delivered to the Buyer in such calendar year.

14.5 If the Buyer is not the sole end user and ultimate owner of the Goods, then the Buyer shall use its reasonable endeavours to ensure by its contract with the end user or ultimate owner or its customer that the Seller is given the benefit of the exclusions and limitations set out in these Conditions by all such users, owners and customers. In case of non-compliance with this provision, the Buyer shall remain responsible vis-à-vis the Seller and shall fully indemnify the Seller if the need arises.

15. CONFIDENTIALITY

15.1 The receiving party will not divulge or communicate to any person without 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. FORCE MAJEURE

16.1 If performance of any obligation under the Contract is prevented, restricted or delayed by any act of God, act or omission of government, war, hostilities, acts of terrorism, industrial dispute, failure or delay in source of supply of materials or equipment, fire, explosion, accident or breakdown of essential machinery or equipment or by any cause (whether similar or not to any of the above events) beyond the reasonable control of the party whose performance is affected, then that party shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly.

16.2 If performance is delayed for more than 3 months by any cause referred to above and the parties have not agreed upon a revised basis for continued performance at the end of the delay, then either party may after that period, and while the cause of the non-performance still exists, terminate the Contract by not less than 30 days' notice in writing to the other party.

17. TERMINATION AND SUSPENSION

17.1 A party may immediately terminate a Contract by giving written notice to the other party, if the other party: (i) commits a continuing or material breach of the Contract and where a breach is capable of remedy fails to remedy it within 21 days of a written notice requiring the breach to be remedied; (ii) is dissolved, becomes insolvent, fails or is unable to or admits in writing its inability to pay its debts, institutes or has instituted against it proceedings seeking a judgment of insolvency or bankruptcy, has a resolution passed for its winding up or liquidation, seeks or becomes the subject of the appointment of an administrator, receiver or similar official in respect of its assets; or (iii) ceases or threatens to cease to carry on business.

17.2 The Seller may at its option suspend performance of the Contract: (i) until the events giving rise to the exercise of its rights of termination are remedied; or (ii) if in the Seller's bona fide opinion the Buyer has failed to make payment when due or to perform on time any of its other obligations under the Contract. The Seller shall be entitled to: (i) exercise its rights of termination or suspension at any time during which the event of default giving rise thereto shall not have ceased or have been remedied, and for the avoidance of doubt if the Seller has elected to suspend its performance it may at any time during the period of suspension decide to terminate the Contract; (ii) the time for Seller's completion shall be extended to such extent as is reasonable to take account of such suspension; and (iii) any cost incurred by the Seller as a result of or in connection with such suspension shall be reimbursed to the Seller by the Buyer.

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

17.4 Subject to clause 17.5, upon termination or expiration of this Contract, neither party, shall be entitled to any amount for any cause arising directly or indirectly from such termination or expiration from the other party, provided that within 15 days of the issue by either party of a notice of termination the Buyer shall pay to the Seller the outstanding balance of the Contract value of the Goods which have been delivered at the date of the notice.

17.5 Termination or expiration of this Contract shall be without prejudice to: (i) any party's obligations contained herein which survive the termination or expiration of this Contract; and (ii) any prior rights which either party has accrued prior to the termination or expiration of this Contract.

18. MISCELLANEOUS

18.1 The Seller may perform its obligations and exercise the rights granted under these Conditions through any Affiliate or carry out its obligations through any agents or sub-contractors appointed by it in its absolute discretion for that purpose, and any act or omission of any such entity will for the purposes of these Conditions be the act or omission of the Seller.

18.2 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.

18.3 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.

18.4 Failure or delay by a party 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.

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

18.6 The Seller may assign the rights and benefits arising from this 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).

18.7 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.

18.8 This Contract shall be governed by and construed in accordance with French law without regard to its conflict of laws provisions. Any disputes, controversies or differences arising out of or in any way connected with this Contract shall be determined and finally settled by binding arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce "Rules", by an arbitrator appointed in accordance with such Rules. The venue of arbitration shall be in Paris, France and the arbitration proceedings shall be conducted in either the English or French language (such language for the proceedings to be agreed by the

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parties but in default of agreement the English language shall apply). Documents in both the English and French language are permissible for purposes of evidence. Nothing in this arbitration clause shall prevent a party from applying to any appropriate court in France or the Buyer's country for any injunction or other like interim remedy to restrain the other party from committing any breach or anticipated breach of these Conditions.

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

18.10 The parties agree that no condition of, or benefit conferred by, this Contract will be enforceable by any third party.

18.12 These Conditions are provided in French and English. In the event that there is any conflict in the interpretation of the different language versions of these Conditions, the English version shall prevail.