

CONDITIONS OF SALE (Conditions)

1. DEFINITION/INTERPRETATION

Confidential Information	information whether oral, documentary, magnetic, electronic, graphic, digitised or otherwise, relating to Invensys' business or Goods 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 disclosed.
Contract	any contract between Invensys and Customer for sale of Goods;
Customer	the buyer of Goods;
Delivery Point	the place where delivery of the Goods takes place under condition 3;
Goods	any goods agreed in the Contract to be supplied to Customer by Invensys;
Intellectual Property Rights	means patents, trademarks, service marks, copyright, moral rights, design rights, know-how, Confidential Information and all or any other intellectual property rights whether or not registered or capable of registration together with any or all goodwill relating to or attached to those rights;
Invensys	Invensys Controls UK Limited.
Proper Use	storage, installation, commissioning, operation and maintenance in accordance with Invensys' advice and good industry practice;
Year	12 (twelve) calendar months;
1.1	Headings are for convenience and do not affect the construction of these Conditions.
1.2	Words importing persons include firms, corporations and any organisation having legal capacity. Words importing the singular will include the plural and vice versa where required.
1.3	References to statutes/statutory provisions will, be construed as a reference to the statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

2. GENERAL

- 2.1 Quotations/tenders made by Invensys and any resulting Contract will be governed by these Conditions unless expressly agreed in writing and signed by a director of Invensys. Quotations and tenders lapse 30 (thirty) days from date made.
- 2.2 Subject to variation under 2.3, these Conditions apply to all Contracts. Any other terms and conditions including any Customer purports to apply under any purchase order, confirmation of order, specification or other similar document will not form part of the Contract.
- 2.3 Variations to these Conditions and representations about Goods have no effect unless expressly agreed in writing and signed by a director of Invensys.
- 2.4 An order for Goods from Customer constitutes an offer to purchase Goods subject to these Conditions.
- 2.5 Invensys will only accept an order when a written acknowledgement is issued or (if earlier) Goods are delivered to Customer.
- 2.6 Customer must ensure that its order/specifications are complete and accurate. Customer is responsible for satisfying itself as to the sufficiency and suitability of the Goods for its application
- 2.7 Drawings, descriptive matter, specifications, advertising materials, or illustrations in Invensys catalogues/brochures are for illustrative purposes only and do not form part of the Contract.
- 2.8 Statements concerning the scope of supply, performance or characteristics of Goods will only be binding if expressly incorporated in the Contract unless the statements have been made fraudulently.
- 2.9 Invensys may, at its discretion, impose a surcharge to cover handling costs, in respect of orders placed which are below a minimum consignment value; the sum of which may be varied by Invensys from time to time.
- 2.10 In the event that Invensys, for any reason, accepts the cancellation of all or part of such an order, Customer shall be liable for payment in full all costs incurred by Invensys up to the point of cancellation or, if the manufacture of Goods has been completed, for the full price of Goods.
- 2.11 In the event that Invensys accepts the return of Goods other than under warranty, a restocking charge of 10% of the invoice

value of the Goods accepted for return.

3. DELIVERY

- 3.1 If no destination is specified in a quotation, tender or order acknowledgement delivery of Goods will take place at Invensys' place of business.
- 3.2 If a destination is specified then Goods will be delivered to the nearest point of suitable access and Customer will be responsible for unloading Goods.
- 3.3 Delivery terms such as FCA, FOB, CIF etc used in the quotation, tender or Contract will be interpreted in accordance with INCOTERMS 2000 as amended from time to time.
- 3.4 Invensys may deliver Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with these Conditions.
- 3.5 Customer will take delivery of Goods within 5 (five) days of being given notice that Goods are ready for delivery.
- 3.6 Delivery dates are estimates and delivery time is not of the essence. If no delivery dates are specified, delivery will be within a reasonable time.
- 3.7 Subject to condition 3.12, if there is a delay in delivering Goods Invensys will not be liable for (including but not limited to) any loss of profits; damages; charges; any expenses caused directly or indirectly by any delay even if caused by Invensys' negligence.
- 3.8 Customer may terminate or rescind the Contract if the delay in delivering Goods exceeds 180 (one hundred and eighty) days from the date requested by Customer.
- 3.9 Risk in Goods will pass to Customer if: Customer refuses to accept delivery of any Goods when they are ready for delivery; Customer advises that it will not take delivery on Invensys advising Customer that Goods are ready; Invensys is unable to deliver Goods on time because Customer has not provided appropriate instructions, documents, licences or authorisations.
- 3.10 If any of the events in condition 3.9 occur Goods will be deemed to have been delivered and Invensys may store Goods until actual delivery at which point Customer will be liable for all related costs and expenses including, without limitation, storage and insurance.
- 3.11 If Invensys delivers a quantity of Goods of up to 5% more or less than the quantity ordered Customer will not be entitled to object to or reject 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 Customer will notify Invensys of the surplus or shortfall within 5 (five) days of receiving a surplus or shortfall of Goods.
- 3.12 Invensys will pay Customer liquidated damages for delay calculated on the Contract price of the delayed Goods at a rate of 0.5% per week up to a maximum of 5% of the Contract price if Invensys fails to meet any guaranteed delivery date in the Contract and by reason only of the delay Goods cannot be put into operational use by Customer at the intended time.
- 3.13 The obligation to pay liquidated damages in condition 3.12 will not apply to delay caused by any action or inaction of Customer or any cause mentioned in condition 12.
- 3.14 The liquidated damages provided for in condition 3.12 will be in full and final satisfaction of all claims and liabilities arising from any delay.
- 3.15 Customer requests for expedited delivery (defined as a delivery requirement at variance with Invensys' normal carriage arrangements) will be subject to a charge, additional to any standard carriage charge to reflect the additional costs incurred in meeting the Customer's requirements.
- 3.16 Customer will inspect Goods upon delivery and give Invensys written notice of any defects/non-conformance with the Order within 5 (five) days. If such notice is not received within 5 (five) days the Customer will be deemed to accept Goods and not be entitled to reject them.

4. NON DELIVERY

- 4.1 The number of Goods recorded on leaving Invensys' place of business will be conclusive evidence of the number received by Customer on delivery unless Customer can prove the contrary.
- 4.2 Invensys will not be liable for non-delivery of Goods, even if caused by Invensys negligence, unless written notice is given to Invensys within 5 (five) days of the date Goods should have been received by Customer.
- 4.3 Invensys' liability for non-delivery will be limited to replacing Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

5. OWNERSHIP/RISK

- 5.1 Goods are at the risk of Customer from the time of delivery.
- 5.2 Ownership in Goods will not pass to Customer until Invensys has received in full, in cash or cleared funds, all sums due to it in respect of Goods and all other sums which are or which become due to Invensys from Customer on any account.
- 5.3 Until ownership of Goods has passed to Customer, Customer must:
 - 5.3.1 hold Goods on a fiduciary basis as Invensys' bailee;
 - 5.3.2 at no cost to Invensys, store Goods separately so they are easily identifiable as Invensys property;

- 5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to Goods;
 - 5.3.4 maintain Goods in satisfactory condition;
 - 5.3.5 insure Goods for their full price on Invensys' behalf against all risks to the reasonable satisfaction of Invensys and on Invensys' request produce the policy of insurance to Invensys; and
 - 5.3.6 hold the proceeds of the insurance referred to in condition 5.3.5 on trust for Invensys and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 5.4 Customer's right to possession of Goods will terminate immediately if: a bankruptcy order is made against Customer; or Customer makes an arrangement or composition with its creditors; or Customer takes the benefit of any legislation for the time being in force for the relief of insolvent debtors; or Customer convenes a formal or informal meeting of creditors; or Customer enters into voluntary or compulsory liquidation, except for a solvent voluntary liquidation for the purposes only of reconstruction or amalgamation; or a receiver, manager, supervisor, administrator or administrative receiver is appointed over Customer's undertaking or any part of it; or a resolution is passed or a petition presented to any court for the winding up of Customer or for the granting of an administration order; or any proceedings are commenced relating to the insolvency or possible insolvency of Customer; or Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it; or Customer fails to observe or perform any of its obligations under these Conditions or any other agreement between Invensys and Customer; or Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or Customer ceases to trade; or Customer encumbers or in any way charges Goods.
- 5.5 Invensys will be entitled to recover payment for Goods despite the fact that ownership of Goods has not passed to Customer.
- 5.6 Invensys may, before ownership of Goods has passed to Customer, require the return of Goods. If Customer fails to return Goods within 5 (five) days of the request Invensys may, despite any other rights and remedies it may have, repossess, use, remove or dispose of Goods.
- 5.7 Customer grants Invensys, its agents and employees an irrevocable licence at any time to enter any premises where Goods are stored in order to inspect or recover them. Invensys may sever Goods from any other property without liability for any resulting damage.

6. PRICE

- 6.1 Unless otherwise agreed by Invensys in writing the price of Goods will be the price set out in Invensys' price list applicable on the date of delivery.
- 6.2 The price for Goods will be exclusive of any value added tax and of all non UK taxes, duties and levies and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts Customer will pay in addition when it is due to pay for Goods.
- 6.3 If any law or regulation comes into force after the date of Invensys' quotation or tender which increases or reduces the cost of performing the Contract, the Contract price will be adjusted accordingly.
- 6.4 If there is an increase in the cost of raw materials required to produce Goods Invensys may increase the price of Goods ordered by the Customer to reflect the increase in the cost of raw materials.

7. PAYMENT

- 7.1 Payment for Goods is due 30 (thirty) days from the date of invoice.
- 7.2 Payments will be made in Pounds Sterling to the designated account of Invensys. Payments from outside the UK will be paid by telegraphic transfer into the designated Invensys account.
- 7.3 Time for payment of the invoice will be of the essence.
- 7.4 Payments due will be made in cleared funds in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless Customer has a valid court order requiring an amount equal to such deduction to be paid by Invensys to Customer. Payments made by Customer it has not apportioned to specific debts will be apportioned as Invensys believes correct.
- 7.5 If Customer fails to pay any due amount on the due date Invensys may elect to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

8. WARRANTY.

- 8.1 Invensys warrants that upon delivery and for 12 (twelve) months from the date of delivery Goods under Proper Use, will be free from defects in design, material and workmanship and conform to the specification in the Contract or given to Customer.
- 8.2 Invensys will not be liable for a breach of warranty in condition 8.1 unless:
- 8.2.1 Customer gives written notice of the defect to Invensys, or (if the defect is as a result of damage in transit) to the carrier, within 7 (seven) days of the time when Customer discovered or should have discovered the defect; and
 - 8.2.2 Invensys is given reasonable opportunity after receiving notice of the defect to examine Goods and Customer returns Goods to Invensys' place of business at Customer's cost for the examination.

- 8.3 Invensys will not be liable for a breach of warranty in condition 8.1 if the failure or defect was caused by: fair wear and tear; designs and specifications and items which are outside Invensys' scope of supply whether commented on by Invensys or not; accidents, misuse or neglect; repairs or modifications to Goods which have been made without Invensys' approval.
- 8.4 Subject to conditions 8.2 and 8.3 if Goods do not conform with the warranty in condition 8.1 Invensys will at its option repair or replace Goods and it will have no further liability for a breach of the warranty in condition 8.1.
- 8.5 Replaced Goods belong to Invensys and any repaired or replacement Goods will be guaranteed for the unexpired portion of the 12 (twelve) month period.
- 8.6 Invensys will have no liability for the costs of dismantling, transportation, re-assembly, re-installation and re-testing of Goods affected under this warranty.
- 8.7 If Invensys did not manufacture Goods Customer is entitled only to such benefits as Invensys receives under guarantees given to Invensys.

8.8 CUSTOMER IS AWARE THAT:

8.8.1 THIS WARRANTY IS IN PLACE OF AND EXCLUDES ALL OTHER WARRANTIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED;

8.8.2 IMPLIED WARRANTIES OR CONDITIONS OF FITNESS AND QUALITY WILL NOT APPLY;

8.8.3 INVENSYS' LIABILITIES AND CUSTOMER'S REMEDIES IN RESPECT OF DEFECTS WHETHER ARISING FROM BREACH OF CONTRACT, STATUTORY DUTY, WARRANTY, NEGLIGENCE OR OTHERWISE ARE SOLELY AND EXCLUSIVELY AS STATED IN THIS CONDITION, AND INVENSYS WILL HAVE NO LIABILITY OF ANY KIND FOR ANY SUCH DEFECTS OR DAMAGE WHICH APPEAR AFTER EXPIRY OF THE WARRANTY PERIOD DESCRIBED ABOVE.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 No title to any of Invensys' Intellectual Property Rights is transferred to Customer under these Conditions. All Intellectual Property Rights are retained by Invensys and /or its suppliers.
- 9.2 Customer will not without the consent of Invensys cover, obscure or in any way alter any distinctive mark forming part of or impressed on or affixed to Goods received by Customer from Invensys and any of Goods which will have been so covered, obscured or altered without such consent will not be sold.
- 9.3 Customer will promptly notify Invensys of any actual, threatened or suspected infringement of or claim in respect of Goods or of the Intellectual Property Rights of Invensys which come to Customer's notice and will at the request and expense of Invensys take all action as may be reasonably required to assist Invensys in relation to any infringement or claim.
- 9.4 Invensys will indemnify Customer against all damages and costs awarded against Customer for infringement of any intellectual property right granted or registered at the date of contract and resulting from the use or sale of Goods.
- 9.5 The indemnity in condition 9.4 will not apply to any infringement which is due to:
- 9.5.1 the association or combination of Goods with any other article, apparatus or device; or
- 9.5.2 any Goods or parts of made to designs supplied by Customer.
- 9.6 The indemnity in condition 9.4 is conditional on Customer giving Invensys prompt written notice of any claim for infringement and permitting Invensys, at Invensys' expense, to conduct on Customer's behalf any litigation or negotiations in respect of any claim.
- 9.7 Condition 9 states Invensys' entire liability for intellectual property right infringement.
- 9.8 All rights in any software supplied to Customer remains the property of Invensys. Customer is given a personal non-exclusive licence to use the software for Customer's internal business purposes in the country in which the software was furnished and for execution on the system for which it was provided.
- 9.9 Customer may make copies of the software for back up purposes only.
- 9.10 Customer will not export or re-export the software without the appropriate licences. Customer must not reverse engineer, decompile or disassemble the software or rent or lease the software to any third parties.

10. LIMITATION OF LIABILITY

- 10.1 Invensys will not, in any circumstances, be liable to Customer or a third party for any: loss of use; or loss of production; or loss of reputation; or loss of goodwill; or loss of profit; or loss of business; or loss of contracts; or loss of revenues; or loss of anticipated savings; or increase in operating costs; or financial or economic loss; or indirect loss; or consequential loss; or any other damage suffered
- 10.2 Subject to condition 10.3 the exclusions set out in condition 10.1 will apply to all claims whether as a result of breach of contract, statutory duty or warranty, negligence or otherwise on the part of Invensys, its employees, agents, subcontractors or suppliers who will have no greater liability in relation to these Conditions than Invensys.
- 10.3 Invensys will compensate Customer for any legal liability for personal injury to or death of any person or damage to any property to the extent that such personal injury or death or damage is caused by the negligence of Invensys or of its employees or agents.
- 10.4 In the case of damage to property, other than Goods supplied, such compensation will unless otherwise specified be limited

to half the value of Goods delivered in respect of any one occurrence or series of occurrences originating from one incident.

- 10.5 The total aggregate liability of Invensys for all other claims of any kind for any loss or damage resulting from its performances or lack of performance under these Conditions in any one Year will not in any event exceed an amount equal to half the value of Goods delivered in that Year.
- 10.6 Customer will indemnify Invensys against any and all claims in respect of or consequent to pollution or to release of substances capable of causing harm to living organisms or interference with ecological systems arising from Goods except in respect of personal injury or death, whether or not resulting from the negligence of any person.
- 10.7 If Customer is not the sole end user and ultimate owner of Goods, then Customer will ensure by its contract with the end user or ultimate owner or its buyer that Invensys is given the benefit of the exclusions and limitations of liability set out in this condition by all such users, owners and buyers and will indemnify Invensys against claims of any kind by them to the extent that Invensys would not be liable to Customer under these Conditions if the claim had been made by Customer.

11. ASSIGNMENT

- 11.1 Customer will not assign any Contract or any part of it without obtaining the prior written consent of Invensys.
- 11.2 Invensys may assign any Contract or any part of it to any person, firm or company.

12. FORCE MAJEURE

- 12.1 Subject to Customer's payment obligations in condition 7 if a party fails to perform its obligations under these Conditions it will be excused from and will not be liable for the failure if the failure prevention delay or restriction was beyond the reasonable control of the party and caused by any act of God; or act or omission of government; or war, hostilities or act of terrorism; or industrial dispute; or failure or delay in source of supply of materials or equipment; or fire, explosion, accident; or breakdown of essential machinery or equipment; or other cause whether similar or not to any of the above.
- 12.2 If the performance of a party's obligations is prevented, delayed or restricted as detailed in condition 12.1 then the time for performance will be extended accordingly.
- 12.3 If performance is prevented, delayed or restricted for more than 3 (three) months by anything in condition 12.1 and the parties have not agreed upon a revised basis for continuing the work after 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 (thirty) days' notice in writing to the other party.

13. SUSPENSION

- 13.1 If Customer fails to make any payment when due or perform any of its other obligations on time under the Contract:
- 13.1.1 Invensys may suspend performance of the Contract until the failure is remedied and/or terminate the Contract; and
- 13.1.2 the time for performance of the Contract by Invensys will be extended accordingly; and
- 13.1.3 any cost including financial costs and storage, demurrage or other charges incurred by Invensys as a result of Customer's failure will be paid by Customer.
- 13.2 If performance of the Contract is for any reason suspended and such suspension continues for more than 3 (three) months in aggregate in any 6 (six) month period Invensys will be entitled at any time during that continued suspension by giving not less than 30 (thirty) days' written notice to terminate the Contract immediately.

14. CONFIDENTIALITY

- 14.1 Customer will not divulge or communicate to any person or use (unless the use is necessary to comply with its obligations under these Conditions) or exploit for any purpose whatsoever any Confidential Information.
- 14.2 The restriction in condition 14.1 will continue to apply at all times during the continuance of any Contract incorporating these Conditions and for a period 10 (ten) years after the expiration or earlier termination of the Contract (for any reason whatsoever) but will cease to apply to information which is at the date of the disclosure public knowledge through no fault of Customer or can be shown by Customer to the reasonable satisfaction of Invensys to have been known to it before its being disclosed by Invensys to Customer.
- 14.3 Customer will immediately upon expiration or earlier termination of the Contract (for any reason whatsoever) return to Invensys free of charge all Confidential Information in Customer's possession or control together with a certificate that no copies of it have been retained.

15. TERMINATION

- 15.1 A party may terminate a Contract by written notice to the other immediately if the other party:
- 15.1.1 commits a continuing or material breach of these Conditions and where a breach is capable of remedy fails to

- 15.1.2 remedy it within 21 (twenty one) days of a written notice requiring the breach to be remedied; or 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
- 15.1.3 ceases or threatens to cease to carry on business.
- 15.2 Any waiver by either party of a breach of these Conditions will not be considered as a waiver of any subsequent breach of the same or any other condition.
- 15.3 The rights to terminate a Contract will not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

16. MISCELLANEOUS

- 16.1 Invensys may perform its obligations and exercise the rights granted under these Conditions through any company which at the relevant time is its holding company or subsidiary (as defined by section 736 of the Companies Act 1985) or the subsidiary of any such holding company and any act or omission of any such company will for the purposes of these Conditions be the act or omission of Invensys.
- 16.2 Invensys may carry out its obligations under these Conditions through any agents or sub-contractors appointed by it in its absolute discretion for that purpose.
- 16.3 Except as provided in conditions 16.1 and 16.2 a Contract is personal to the parties and neither of them may without the written consent of the other assign, mortgage, charge (otherwise than by floating charge) or dispose of any of their rights or sub-contract or otherwise delegate any of their obligations under these Conditions.
- 16.4 If any of these Conditions 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 will to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of these Conditions and the remainder of such provision will continue in full force and effect and, if necessary, be so amended as will be necessary to give effect to the spirit of these Conditions so far as possible.
- 16.5 Failure or delay by Invensys in enforcing or partially enforcing any provision of these Conditions will not be construed as a waiver of any of its rights.
- 16.6 Subject to where provided the parties agree that no condition will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any third party.

17. NOTICES

- 17.1 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, or such other address it may designate by written notice to the other.
- 17.2 Notices will be deemed to have been received by the addressee:
 - 17.2.1 2 (two) working days, excluding Saturdays, Sundays and bank and public holidays, following the date of dispatch if sent by first class post;
 - 17.2.2 on the day of delivery if delivered by hand;
 - 17.2.3 on the day of transmission if sent before 4.00pm and otherwise on the next working day if sent by facsimile.

18. LAW/JURISDICTION

- 18.1 These Conditions and any Contract between the parties will be made in England and construed in accordance with the law of England and Wales. The Parties submit to the exclusive jurisdiction of the English courts.
- 18.2 The United Nations Convention on Contracts for the International Sale of Goods signed in Vienna 1980 will not apply.
- 18.3 Nothing will prevent Invensys from applying to any appropriate court in any other jurisdiction for any injunction or other like remedy to restrain Customer from committing any breach or anticipated breach of these Conditions and for consequential relief.