



## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms and Conditions the following words shall have the following meanings where the context so permits:-  
"the Contractor" shall mean Ensys Limited  
"the Customer" shall mean the person, firm or company making a Contract with the Contractor  
"Services" shall mean the installation services to be provided by the Contractor under the Contract  
"Goods" shall mean the goods (including any instalment of the goods or any parts of them) which the Contractor is to supply under the Contract  
"the Contract" shall mean the Contract for the sale of Goods and/or provision of Services between the Contractor and the Customer  
"Normal Working Hours" shall mean the hours of 8am to 6pm (inclusive) on any Working Day  
"Working Day" shall mean any day other than a Saturday or Sunday or a UK Bank Holiday or UK Public Holiday

- "Writing" includes telex, cable, facsimile transmission and comparable means of communication  
1.2 In these Terms and Conditions the masculine gender shall include the feminine and the singular, the plural and vice versa  
1.3 Any reference in these Terms and Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time

- 1.4 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation  
2. GENERAL

- 2.1 Where an order is placed by a designer, architect or other person on behalf of an end-user, such designer, architect or other person is deemed for all purposes to contract with the Contractor jointly and severally with that end-user  
2.2 Where the goods are to be installed at the premises of a third party the Customer shall inform the Contractor of the identity of that third party and, if possible, give the Contractor details of the owners of the freehold and any leasehold interests in those premises

- 2.3 The Contractor shall sell the Goods and provide the Services and the Customer shall purchase and receive the same in accordance with any written quotation or tender of the Contractor or any written order of the Customer which is accepted by the Contractor, subject in either case to these Terms and Conditions, which shall govern the Contract to the exclusion of any other Terms and Conditions subject to which any such quotation or tender is accepted or purported to be accepted or any such order is made or purported to be made, by the Customer. These Terms and Conditions shall prevail over any other Terms and Conditions contained or referred to in the Customer's purchase order or in correspondence or elsewhere, or implied by trade, custom, practice or course of dealing

- 2.4 No variation to these Terms and Conditions shall be binding unless agreed in Writing by a Director of the Contractor  
2.5 The Contractor's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Contractor in Writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed

- 2.6 No dealing or conditions of any main building contract or sub-contract shall affect these Terms and Conditions  
2.7 Any advice or recommendation by the Contractor or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Contractor is followed or acted upon entirely at the Customer's own risk and accordingly the Contractor shall not be liable for any such advice or recommendation which is not so confirmed

- 2.8 Any typographical, clerical or other error or omission in any sales literature, drawing, illustration, quotation, specification, performance data, price list, acceptance of offer, invoice or other document or information issued by the Contractor shall be subject to correction without any liability on the part of the Contractor  
3. ORDERS AND SPECIFICATIONS

- 3.1 Any quotation or tender of the Contractor may be withdrawn at any time by the Contractor prior to acceptance by the Customer  
3.2 Unless previously withdrawn quotations and tenders are open for acceptance for the period stated therein or if no period is stated within 30 days thereof

- 3.3 No order submitted by the Customer shall be deemed to be accepted by the Contractor unless and until confirmed in Writing by a Director of the Contractor

- 3.4 The Customer shall be responsible to the Contractor for ensuring the accuracy of the Terms of any order (including any applicable specification) or specification submitted by the Customer

- 3.5 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Contractor's quotation or tender (if accepted by the Customer) or the Customer's order (if accepted by the Contractor)

- 3.6 All facilities, services, information, drawings, approvals and any free issuing materials as the Contractor may require from time to time to be supplied by the Customer shall be supplied to the Contractor in good time so as to enable the supply of the Goods and Services in one continuous uninterrupted working and in the most economic manner

- 3.7 In the absence of agreement in Writing signed by a Director of the Contractor all prices (whether contained in the Contractor's tender or quotation or current price list) are based upon the Contractor being able to supply the Goods and perform the Services in one continuous uninterrupted working during Normal Working Hours with the Customer making sufficient clear areas available to perform the Services in the most economic manner and on the basis of the Customer complying with its obligations under clause 3.6

- 3.8 In the event of the Customer failing to comply with its obligations under clause 3.6 or in the event of the Contractor not being able to perform the Services in one continuous uninterrupted working during Normal Working Hours as a result of the fault of the Customer, whether as a result of making insufficient clear areas available or otherwise, the Contractor shall be entitled to increase the price to be paid for the Goods and/or Services to reflect any increase in the cost to the Contractor resulting therefrom

- 3.9 All prices quoted, tendered or set out in the Contractor's current price list are subject to change without notice and are exclusive of Value Added Tax or any other Sales Tax

- 3.10 Quotations and tenders are made and orders accepted on the basis that the Contractor will be able to obtain those goods and materials which form part of the Goods or are needed to complete the Services which it has to obtain from third parties at the prices on which it has based its quotation or tender or on the basis of which it has accepted the Customer's order and in sufficient time to comply with its obligations under the Contract. The Contractor shall incur no liability under the Contract arising from the failure of a third party to deliver such goods and materials in sufficient time to enable the Contractor to comply with its obligations under the Contract

- 3.11 The Contractor reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods and/or Services are to be supplied to the Contractor's or the Customer's specification, which do not materially affect their quality or performance

- 3.12 If the Customer, after the Customer has accepted the Contractor's quotation or tender or after the Contractor has accepted the Customer's order, wishes the Contractor to supply additional Goods and/or provide additional Services, the Customer shall first obtain the agreement in Writing of a Director of the Contractor. The Directors of the Contractor shall be under no obligation to agree to supply such additional Goods and/or provide such additional Services. If such written agreement is obtained the supply of such additional Goods and/or the provision of such additional Services shall be subject to these Terms and Conditions. The Customer nor its agents shall not give direct instructions to the Contractor's employees or agents

### 4. PRICES

- 4.1 Subject to clauses 3.8 and 3.9 the price for the Services and/or Goods shall be the Contractor's quoted price, the price specified in the Contractor's tender or, where no price has been quoted (or a quoted price is no longer valid) or specified in a tender, the price listed in the Contractor's published price list current at the date of acceptance of the order

- 4.2 The Contractor reserves the right, by giving notice to the Customer any time before the Goods have been delivered or the Services have been performed in full, to increase the price to be paid for the Goods and/or Services or reflect any increase in the cost to the Contractor which is due to any factor beyond the control of the Contractor (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the cost of labour, materials or other costs of manufacture), any change in the delivery dates, quantities or specifications for the Goods and/or Services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Contractor adequate information or instructions

### 5. PAYMENT

- 5.1 Unless otherwise specified in the quotation or tender or otherwise agreed in Writing by a Director of the Contractor, the Customer shall pay the Contractor upon acceptance by the Customer of the Contractor's quotation or tender or upon receiving notification that the Contractor has accepted the Customer's Order 35% of the total sum to be paid under the Contract (as ascertained on the date of such acceptance or notification) plus stage payments as required by the Contractor during the Contract as it progresses for Goods already delivered and Services already performed and with the balance on completion of delivery of the Goods and/or completion of the Services, all payments being due when invoiced by the Contractor (the "Due Date")

- 5.2 Unless specifically agreed in Writing by the Contractor, no retention shall be made by the Customer out of any sums due to the Contractor under this Contract

- 5.3 If payment is not made within seven days of the Due Date then without prejudice to any other right or remedy available to the Contractor, the Contractor shall be entitled to:-

- 5.3.1 cancel the Contract or suspend any further deliveries to the Customer  
5.3.2 appropriate any payment made by the Customer to such of the Goods (or the Goods supplied under any other Contract between the Customer and the Contractor) and/or the Services (or any Services supplied under any other Contract between the Customer and the Contractor) as the Contractor may think fit (notwithstanding any purported appropriation by the Customer) and;

- 5.3.3 charge to Customer interest (both before and after any judgement) on the amount unpaid at a rate of 2% per calendar month or part thereof from the Due Date until payment is made in full

- 5.4 The Contractor reserves the right at any time to demand full or partial payment of all sums which are due or which will become due under the Contract before proceeding or proceeding further with the Contract

### 6. DELIVERY

- 6.1 Any times or dates given by the Contractor for delivery of the Goods or performance of the Services are approximate only and the Contractor shall not be liable for any delay in delivery of the Goods or performance of the Services howsoever caused. Time for delivery of the Goods or performance of the Services shall not be of the essence. The Goods may be delivered and the Services may be performed by the Contractor in advance of the quoted delivery and/or performance date upon giving reasonable notice to the Customer

- 6.2 The Contractor reserves the right to deliver the Goods in instalments and perform the Services in stages unless otherwise agreed in Writing and these Terms and Conditions shall apply (mutatis mutandis) to each instalment and/or stage

- 6.3 Delivery of the Goods shall take place at the premises where they are to be installed

- 6.4 If the Contractor fails to deliver the Goods or to perform the Services for any reason other than any cause beyond the Contractor's reasonable control or the Customer's fault, and the Contractor is accordingly liable to the Customer, the Contractor's liability shall be limited to the excess (if any) of the cost to the Customer in the cheapest available market of similar Goods to replace those not delivered over the price of the Goods and/or similar Services to the Services

### 7. CANCELLATION

- 7.1 The Customer may only cancel or suspend the Contract with the Contractor's Written agreement and in such event the Contractor shall indemnify the Contractor against all loss (including loss of profits) costs (including the cost of all labour and materials used), damages, charges, and expenses incurred as a result of cancellation

- 7.2 Where the Contractor has specially ordered Goods for the Customer any charges made by the Manufacturer or sub-contractor or other supplier to the Contractor will be passed onto the Customer  
7.3 If the Contractor accepts such a cancellation it will (without prejudice to its other rights and remedies) charge a sum of ten per cent of the total Contract price as a cancellation charge to cover handling and other expenses

- 7.4 The Customer must also pay all sums which are already due to the Contractor at the time of cancellation and for all Goods delivered and Services performed with any apportionment of price being reasonably determined by the Contractor

- 7.4.1 The Contractor shall be entitled to invoice the Customer for all Goods delivered and Services performed under 7.4 above and for the cancellation charge under 7.3 above and payment shall be made within fourteen days of the date of invoice the provisions of 3.9 and 5.3.3 above shall apply to the invoice sum

### 8. RISK

- 8.1 The risk in the Goods shall pass to the Customer when the Goods leave the premises of the Contractor or the Contractor's supplier (if the Goods are being transported from there directly to the place of installation). The Customer shall insure accordingly

### 9. RETENTION OF TITLE

- 9.1 Notwithstanding delivery and the passing of risk in the Goods, or any provision of these Terms and Conditions, the property in the Goods shall not pass to the Customer until the Contractor has received in cash or cleared funds payment in full of all the sums due under the Contract under which the Goods and/or Services are provided (which shall include any interest that may be due to the Contractor)

- 9.2 Until such time as the property in the Goods passes to the Customer, the Contractor shall be entitled at any time to require the Customer to deliver up the Goods to the Contractor and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods

- 9.3 The Customer shall not be entitled to pledge or in any way charge by way of security for an indebtedness any of the Goods which remain the property of the Contractor

- 9.4 If so required by the Contractor, the Customer shall use its best endeavours to obtain from the owners of any freehold or leasehold interests in the property at which the Goods are to be installed by the Contractor and/or the Services are to be performed, a signed agreement acknowledging that the Goods remain the property of the Contractor until payment has been received as described in clause 9.1

### 10. FORCE MAJEURE

- 10.1 The Contractor shall not be liable or responsible for any loss or damage caused by delay in performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Contractor's reasonable control including but not limited to an Act of God; War (whether declared or not); civil disturbance; requisitioning; governmental or parliamentary restriction; prohibitions or enactments of any kind; import and export regulations; strike; lockout or trade dispute (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials including (but not limited to) fuel, breakdown of machinery, fire or accident; non availability or delay of vessels or other transport stock. Should any such event occur the Contractor may cancel or initially suspend then cancel the Contract without incurring any liability for any loss or damage thereby occasioned

### 11. DAMAGES AND LIABILITY

- 11.1 In no circumstances whatsoever shall the Contractor be liable in contract or tort or otherwise for any consequential or indirect damage or loss, howsoever caused

- 11.2 In any event, subject to clause 6.2, the Contractor's liability to the Customer in respect of any breach or non-performance of the Contractor's obligations howsoever caused shall be limited to the sums to be paid by the Customer to the Contractor under the Contract

- 11.3 Nothing herein shall affect the liability of the Contractor for death or personal injury caused by the Contractor's negligence

- 11.4 Except where the Customer is dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law

### 12. SUB-CONTRACTS AND ASSIGNMENTS

- 12.1 The Contractor shall be entitled to carry out its obligations under the Contract by sub-contractors provided that the Contractor shall provide each sub-contractor with a specification of the relevant work

- 12.2 The Customer shall not assign or transfer or purport to assign or transfer its rights or liabilities under the Contract to any other person

### 13. INSOLVENCY OF THE CUSTOMER

- 13.1 This clause applied if:

- 13.1.1 the Customer makes any voluntary arrangement with its creditors or becomes subject to an Administration Order or (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

- 13.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

- 13.1.3 the Customer ceases, or threatens to cease, to carry on business; or

- 13.1.4 the Contractor reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly  
13.2 If this clause applies then, without prejudice to any other right or remedy available to the Contractor the Contractor shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered and/or Services provided but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

### 14. GENERAL

- 14.1 Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice

- 14.2 No waiver by the Contractor of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision

- 14.3 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of any other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected thereby

- 14.4 The Contract will be governed by the laws of England