



CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Conditions:

- "Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods and/or the Services or whose order for the Goods and/or Services is accepted by the Seller;
- "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) including any special terms and conditions agreed in Writing between the Buyer and the Seller;
- "Contract" means the contract for the purchase and sale of the Goods and/or Services; and
- "Goods" means the Goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions;
- "Seller" means ISGUS UK Limited;
- "Services" means the installation and other services which the Seller may provide in accordance with these conditions;
- "Writing" includes telex, cable, facsimile transmission and comparable means of communication. Provided that any communication by facsimile transmission shall be followed by a hard copy thereof sent by post.

1.2 Any reference in these 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.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or Services in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted to the Seller and for giving the Seller any necessary information relating to the Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of any specification for the Goods and/or Services shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation in which case the Buyer shall pay the Seller's invoice within seven days of its date.

4. PRICE OF THE GOODS

4.1 The price of the Goods and/or Services shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery date, quantities or specifications for the Goods and/or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.4 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the payment date.

5. TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods and/or Services on or at any time after delivery of the Goods and/or performance of the Services and where the Goods are to be supplied and/or the Services are to be rendered over a period of time the Seller shall be entitled to render periodic invoices for Goods delivered and Services rendered up to the date of each invoice.
- 5.2 The Seller shall be entitled to recover the price of the Goods (plus valued added tax) notwithstanding that property in the Goods has not passed to the Buyer.
- 5.3 Unless the Seller has agreed some other payment period with the Buyer in writing the Buyer shall pay the price of the Goods and/or Services (less any discount to which the Buyer is entitled, but without any other deduction) within 7 days of the date of the Seller's invoice. The time of payment of the price shall be of the essence of the Contract.
- 5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.4.1 cancel the Contract or suspend any further deliveries of the Goods and/or performance of the Services;
 - 5.4.2 appropriate any payment made by the Buyer to such of its invoices as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 5.4.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of four per cent (4%) per annum above Barclays Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. DELIVERY

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods and/or provision of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or performance of the Services howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods and/or Services are to be delivered or provided in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver anyone or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of anyone or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Seller fails to deliver the Goods and/or perform the Services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods and/or services to replace those not delivered over the price of the Goods and/or Services.
- 6.5 If the Buyer fails to take delivery of the Goods and/or fails to provide adequate facilities for the provision of the Services at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault), then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract;
 - 6.5.3 invoice the Buyer for all costs and expenses incurred by it in connection with the delay caused in the provision of the Services.

7. RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of actual delivery or, if the Buyer wrongfully fails to take delivery to the Buyer of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and/or Services and all other goods and services agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall not let, sell, charge or otherwise dispose, transfer or deal with the Goods or any part thereof and the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8. SITE ACCESS AND PREPARATION

- 8.1 Where the Contract includes the provision of Services by the Seller the Buyer shall ensure that the Seller has all necessary access to the site at which the Services are to be performed and that all necessary facilities and services are available to the Seller to enable the Services to be performed.
- 8.2 Where the Services to be performed under this Contract comprise the installation of the Goods or any part thereof the Buyer shall be responsible for ensuring that all preparatory works have been carried out to the site and that all necessary consents, licences, permissions and approvals have been obtained so as to enable the Seller to carry out the Services. The price for the Goods and Services does not include;
- 8.2.1 the work of other trades such as cutting away and making good wall surfaces, ceilings, flooring or any redecoration; or
 - 8.2.2 the provision of cableways or other cable trunking; or
 - 8.2.3 the connection of the Goods to any equipment or systems not being supplied by the Seller.

9. WARRANTIES AND LIABILITY

- 9.1 Subject to the conditions set out below the Seller warrants that:
- 9.1.1 the Goods will correspond with their specification at the time of delivery and will be free from defect in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire;
 - 9.1.2 the Services will be carried out with reasonable skill and care

- 9.2 The above warranty is given by the Seller subject to the following conditions:
- 9.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 9.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 9.2.3 the Seller shall be under no liability under the above warranty where the Goods have not been installed in accordance with all installation instructions provided by the Seller;
- 9.2.4 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 9.2.5 if parts, materials or equipment are not manufactured by the Seller, then the Seller may at its sole option pass to the Buyer the benefit of any warranty or guarantee given to the Seller by the manufacturer of the parts, materials or equipment.
- 9.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer contracts Regulations 1994), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law
- 9.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the Buyer are not affected by these Conditions.
- 9.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specifications shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 9.6 Where any valid claim is notified to the Seller in accordance with these Conditions in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification or the incorrect 'Installation of the Goods where such installation has been carried out by the Seller the Seller shall be entitled to repair or replace the Goods (or the part in question) and/or carry out corrective installation services free of charge or, at the Seller's sole discretion refund to the Buyer the price of the Goods and/or Services (or a proportionate part of the price) and the Seller shall have no further liability to the Buyer.
- 9.7 The Seller's liability for damage to tangible property resulting from breach of contract and/or any negligent act or omission of the Seller or its employees, agents or sub-contractors shall be limited to £1,000.00 in respect of anyone incident or £2,500.00 in respect of any series of incidents arising from a common cause
- 9.8 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or the In of the Services.
- 9.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 9.9.1 Act of God, explosion, flood, tempest, fire or accident;
- 9.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.9.4 import or export regulations or embargoes;
- 9.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 9.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery; 9.9.7 power failure or breakdown in machinery.

10. INDEMNITY

- Save as is otherwise provided in these Conditions if any claim is made against the Buyer that the Goods infringe or that their use infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 10.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 10.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 10.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 10.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy (which the Buyer shall use its best endeavours to do);
- 10.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 10.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

11. COPYRIGHT AND SOFTWARE

11.1 The Copyright in all documents including (but not limited to) drawings, specifications, manuals and technical information furnished to the Buyer by the Seller in connection with this Contract shall remain vested in the Seller and all such documents shall only be used by the Buyer for their intended purpose.

11.2 All Copyright and other intellectual property rights in any software comprised in the Goods shall remain vested in the Seller who hereby grants to the Buyer a non-exclusive non-assignable licence to use such software for the purposes of the operation of the Goods but not otherwise.

12. PERFORMING RIGHTS

If the Goods are used by the Buyer for the public performance, playing or showing of any Copyright material for which the Buyer does not hold the Copyright or appropriate licence such use will infringe the provisions of the Copyright, Designs and Patents Act 1988 and may render the Buyer liable to pay damages to the owner of the Copyright. In such circumstances the Buyer warrants to the Seller that he has or will obtain all necessary licences for the public performance, playing or showing of any Copyright material prior to using the Goods. If the Seller becomes aware or believes that the Goods are being used in such a way as may infringe Copyright the Supplier may notify the relevant authorities.

14. INSOLVENCY OF BUYER

14.1

This clause applies if:

14.1.1 the Buyer makes any voluntary arrangements 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

14.1.2 an encumbrancer takes possession of or a receiver is appointed over any of the property or assets of the Buyer; or

14.1.3 a winding up petition (if a company) or a bankruptcy petition (if an individual) is presented against the Buyer; or 14.1.4 the Buyer ceases, or threatens to cease, to carry on business; or

14.1.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

14.2

If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered and/or the Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

15. GENERAL

15.1

The Seller is a member of the group of companies whose holding company is Isgus Informatik GmbH, and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.

15.2

The Seller shall be entitled to sub contract the provisions of the Services or any part of the Services as it sees fit.

15.3

Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that 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.

15.4

No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

15.5

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

15.6

The Contract shall be governed by the laws of England and any dispute arising under or in connection with these Conditions or the sale of the Goods shall be subject to the jurisdiction of the English courts.