

Standard Terms and Conditions of Sale

1. Interpretation

1.1 In these Conditions:

"Buyer" means the person whose order for the Goods and/or Services is accepted by the Seller

"Conditions" or "Agreement" means these standard terms and conditions of sale and (unless the context otherwise requires) includes 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

"Delivery" means the actual or deemed delivery of the Goods in accordance with clause 6

"Goods" means the goods (including any instalment of the goods) which the Seller is to supply in accordance with these Conditions

"Order Acknowledgement" means the acceptance in writing by the Seller in response to the Buyer's order, to sell the Goods and/or provide the Services in accordance with the Seller's quotation

"Seller" or "Irisys" means Infrared Integrated Systems Limited

"Services" means the services that the Seller is to supply in accordance with these Conditions.

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 provisions of Appendices 1- 5 shall apply in addition to these conditions where applicable.

2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or Services in accordance with any written order of the Buyer which is accepted by the Seller by way of Order Acknowledgement, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions. Unless otherwise agreed in writing, prior communications between the parties concerning the Goods or Services do not form part of the Contract.

2.2 No variation to these Conditions shall be binding unless agreed in writing by a Director of the Seller. No other employee or agent of the Seller is authorised to make any representation varying these Conditions.

2.3 The Seller endeavours to ensure that all descriptions, drawings and other information in sales literature and other documentation issued by the Seller is accurate, however, all of the foregoing are intended to give a general idea of the Goods and, except where expressly stated on the Order Acknowledgement, do not form part of the Contract.

2.4 Typographical or clerical errors or omissions in quotations, price lists, Order Acknowledgements, invoices or other such documentation issued by the Seller shall be subject to correction without any liability on the part of the Seller.

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2.5 Any performance data, which may be given by the Seller to the Buyer, are based on the Seller's experience and give only an indication of the performance levels the Goods are expected to achieve. The Seller accepts no liability for failure of the Goods to achieve such performance levels unless they have been specifically guaranteed in writing by the Seller on the Order Acknowledgement and provided that such failure is outside of any tolerance limits which may be applicable in the relevant industry.

3. Orders

- 3.1 All quotations given by the Seller shall be valid for the period stated on the quotation.
- 3.2 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by way of Order Acknowledgement.
- 3.3 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Order Acknowledgement.
- 3.4 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), damages, charges and expenses incurred by the Seller as a result of such cancellation.
- 3.5 In the event that the Buyer wishes to amend an order, the Buyer should notify the Seller in writing and the Seller will respond within 14 days of receipt of such notification with details in writing of any timescale and/or price implications of such proposed amendment. The Buyer must then advise the Seller in writing within 7 days of receipt of such response whether it wishes to proceed with the proposed amendment on that basis.
- 3.6 Goods supplied pursuant to the Contract may be subject to United Kingdom export control and may also be subject to export and/or import restrictions in other countries. The Buyer shall not and shall procure that its buyers do not, sell or re-export the Goods outside of the European Community to buyers in any countries to which the export of the Goods is controlled under English or other applicable law unless the Buyer has obtained all relevant licences and has complied with all such applicable laws and regulations. The Seller shall give the Buyer reasonable assistance in obtaining any relevant licenses or permissions but accepts no liability for the Buyer's failure to comply with the above.

4. Price

- 4.1 The price of the Goods and/or Services shall be the price quoted by the Seller and confirmed in the Order Acknowledgement.
- 4.2 Except as otherwise stated in the Order Acknowledgement prices for Goods shall be ex-works (as defined in Incoterms 2020) the Seller or the Seller's supplier and where the Seller agrees to deliver the Goods otherwise than at the premises of the Seller or its supplier, the Buyer shall be liable to pay the Seller's charges for any transport, packaging and insurance as stated on the Order Acknowledgement.
- 4.3 The price is exclusive of VAT or other applicable value added tax and other taxes including but not limited to import duties, which the Buyer shall be additionally liable to pay for where appropriate.

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5. Terms of Payment

- 5.1 Unless otherwise agreed in writing by the parties payment of the price shall be due and payable in advance, prior to shipment until a satisfactory trading history is established.
- 5.2 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:
- 5.2.1 to cancel the Contract or suspend any further deliveries or Services to the Buyer;
- 5.2.2 to appropriate any payment made by the Buyer to such of the Goods or Services (or the goods or services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.2.3 to charge interest to the Buyer at a rate of 2% per month on the unpaid balance (such interest to accrue on a day to day basis from the due date for payment until receipt by the Seller of the full amount whether before or after judgement); and the Buyer shall indemnify Seller against all costs and expenses (including legal costs and expenses on a full indemnity basis) incurred or sustained by Seller in recovering sums due or in exercising rights pursuant to clause 5.
- 5.3 Unless otherwise agreed in writing by the parties prices are quoted ex-works (Northampton) and exclusive of VAT or any import or related taxes.
- 5.4 The Buyer shall be responsible for obtaining any export or import licences which may be required.

6. Delivery

- 6.1 Unless otherwise agreed all deliveries are ex-works and in accordance with the terms defined in Incoterms 2020. Where the Goods are to be collected by the Buyer, Delivery occurs when the Goods are handed over to the Buyer or its carrier by the Seller or its representatives. If the Seller has agreed to transport the Goods, Delivery shall occur when the Seller or its carrier arrives at the delivery address specified on the Order Acknowledgement and notifies the Buyer of such arrival.
- 6.2 Any dates quoted for Delivery of the Goods are approximate only and the Seller shall not be liable for any delay in Delivery of the Goods howsoever caused. Time of Delivery shall not be of the essence.
- 6.3 The Seller reserves the right to deliver the Goods in instalments.
- 6.4 If the Buyer or its representative fails to take Delivery of the Goods or fails to give the Seller adequate delivery instructions when notified that the Goods are ready for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer its storage charges current at the date thereof (including insurance).

7. Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon Delivery.
- 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 all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

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7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) 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 situated and repossess the Goods.

8. Warranty

8.1 Subject to the conditions set out below, the Seller warrants that the Goods will, for a period of twelve (12) months, from the date of Delivery, correspond with any specification of the Goods forming part of the Contract, will be free from defects (except minor defects) in material or workmanship and will conform to the relevant safety standards governing goods of that nature in force from time to time. The Seller warrants that any software which may accompany the Goods will perform in accordance with any specification supplied with such software for a period of 90 days from Delivery. The employee detecting lanyard (IWC6205-50/500) is excluded from any warranty agreement.

8.2 The Seller shall be under no liability under the above warranty in respect of:

8.2.1 any defect in the Goods arising from any drawing; product, circuit or other design; specification or materials supplied by the Buyer;

8.2.2 any defects arising in the Goods as a result of installation unless such installation was carried out by the Seller;

8.2.3 the replacement of consumables such as the employee identification lanyard;

8.2.4 any defect arising from fair wear and tear; wilful damage, incorrect movement, misuse, alteration or maintenance of the Goods (other than by the Seller or its agents or with the Seller's approval); or failure to follow the Seller's instructions (whether oral or in writing);

8.2.5 any Goods for which the total price has not been paid by the due date;

8.2.6 any Goods or parts thereof which are not manufactured by the Seller (for which Goods or parts the Seller will extend the manufacturer's warranty to the Buyer to the extent that it is able to do so.)

8.3 In the event of loss or damage occurring to Goods during transit where the Goods are transported by the Seller or its carrier the Buyer must give written notice to the Seller within two working days of the date of Delivery and further where such Goods are consigned by a carrier of the Seller the Buyer or its representative must in addition comply in all respects with that carrier's conditions of carriage for notification for omissions from the delivery or loss or damage in transit. The Buyer or its representative must give written notice to the Seller within three working days of receipt of invoice if the Goods have not been delivered by the Seller or its carrier to the destination agreed in the Contract. Failure to give written notice pursuant to this clause shall mean that the Buyer or its representative shall be deemed to have accepted the Goods as being in good order and in conformity with the Contract.

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- 8.4 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 specification shall be notified in writing 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 and the defective Goods should be returned to the Seller carriage paid. If 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.
- 8.5 Where any valid claim 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 is notified to the Seller in accordance with these Conditions, the Seller shall at its option repair or replace the Goods (or the part of the Goods in question) and deliver the same to the Buyer free of charge but the Seller shall have no further liability to the Buyer.

9. Liability

- 9.1 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 (other than a fraudulent 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 loss of profits, business or anticipated savings or for any indirect or consequential loss or damage howsoever arising out of or in connection with the supply of the Goods or their use or resale by the Buyer or the supply of Services to the Buyer.
- 9.2 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods 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: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Seller or a third party; difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery or vehicles.
- 9.3 Subject as expressly provided in these conditions, and except where the Goods are sold or Services provided to a person 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.
- 9.4 Save for liability for death or personal injury resulting from negligence of the Seller or for fraudulent misrepresentation, the Seller's aggregate liability under these Conditions and any Contract for:
- 9.4.1 damage to the Buyer's tangible property resulting directly from the Seller's negligence or that of its employees shall not exceed €5,000,000;
- 9.4.2 any other loss or damage not covered by clause 9.4.1 and which arises directly out of the Seller's negligence shall not exceed €500,000 per claim or series of connected claims;
- 9.4.3 any other direct loss not covered by clauses 9.4.1 or 9.4.2 shall not exceed 100% of the price of the Goods that are the subject of the claim.

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10. Intellectual Property

- 10.1 If the 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 intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 10.2 All intellectual property in or relating to the Goods is and shall remain the absolute property of the Seller or third party licensors and the Buyer shall not use or permit any third party to use any such intellectual property, other than in the use of the Goods in the normal course of business, without the prior written consent of the Seller.
- 10.3 The Buyer agrees not to remove, alter or deface or allow to be removed, altered or defaced any marks, names or numbers affixed to the Goods without the prior written consent of the Seller.

11. FCPA/Anti-Corruption Provisions with Non-U.S. Third Parties

11.1 Independent contractor

The relationship created by this Agreement is that of independent contractor and neither the Buyer nor any of its owners, directors, employees, representatives or agents is authorized to hold itself out as an employee or agent of Irisys appoint others as partners, distributors, resellers or agents of Irisys, enter into contracts or commitments in the name of Irisys or bind or otherwise obligate Irisys in any manner. Nothing contained in this Agreement is intended to create, nor does it create, a joint venture or partnership, or other relationship between the Buyer and Irisys other than the relationship of independent contractor.

11.2 Compliance with laws

The Buyer shall comply fully with all applicable laws, rules and regulations, including those of the United States, Irisys' home country (if not the United States), and any and all other jurisdictions globally, which apply to the Buyer's business activities in connection with this Agreement.

Without limiting any provision in this Agreement, the Buyer specifically agrees to the following:

- (a) The Buyer represents and warrants to Irisys that the Buyer shall comply with all local, national, and other laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to the Buyer's business activities in connection with this Agreement, and that the Buyer will take no action that will cause the Buyer or Irisys to violate any such laws.
- (b) The Buyer specifically represents and warrants to Irisys that the Buyer is familiar with the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), and the U.K. Bribery Act and that the Buyer shall comply with the FCPA and the U.K. Bribery Act, and will take no action that will cause the Buyer or Irisys to violate these laws. The Buyer also represents and warrants that it understands and will adhere to the Standards of Conduct of Fortive Corporation (Irisys' ultimate parent company or any successor company), published at <http://fortive.com/integrity-and-compliance>, when transacting its business.
- (c) It is the intent of the Buyer and Irisys, and the Buyer represents and warrants to Irisys, that no payment of money or provision of anything of value will be offered, promised, paid or transferred,

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directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for the Buyer or for Irisys, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of the Buyer's activities related in any way to this Agreement, including without limitation any payment of money or provision of anything of value to any employee of any customer in order to secure a sale.

- (d) The Buyer agrees that should it learn or have reason to know of any offer, promise, payment or transfer of money or provision of anything of value that would violate the FCPA, the U.K. Bribery Act, Fortive Corporation's Standards of Conduct or the anti-corruption and anti-bribery laws which apply to the Buyer's business activities in connection with this Agreement, the Buyer shall immediately disclose it to Irisys.
- (e) Irisys shall have reasonable access to the Buyer's books and records and the right to audit them on a periodic basis to ensure the Buyer's compliance with all applicable laws and the provisions of this Agreement. The Buyer shall cooperate fully and promptly with any compliance investigation Irisys may initiate to review the Buyer's performance under the Compliance with Laws or Additional anti-corruption provisions of this Agreement.
- (f) The Buyer shall provide annual certifications of compliance with the FCPA, the U.K. Bribery Act and all other laws applicable to the Buyer's activities related to this Agreement in the form provided from time to time by Irisys. The Buyer shall participate in anti-corruption/anti-bribery training offered by Irisys as Irisys may direct from time to time.
- (g) Irisys may withhold payments under this Agreement, suspend or cancel orders, reduce discounts or terminate this Agreement immediately (including by email), if it believes, in good faith, that the Buyer has breached the provisions of clause 11.2 or caused Irisys to violate the FCPA, U.K. Bribery Act, Fortive Corporation's Standards of Conduct or other applicable laws. Irisys shall not be liable to the Buyer for any claim, losses, or damages related to Irisys' decision to exercise its rights under this provision.

11.3 Export restrictions and controls

- (a) Goods, software and technical data supplied by Irisys are subject to U.S. and E.U. export control and sanctions laws and regulations. These laws and regulations apply to all transactions, including domestic sales, and restrict to whom and to which countries such Goods, software and technical data can be sold and how they can be used. The Buyer will comply with all applicable restrictions regarding exports, re-exports and transfers, including obtaining any required U.S., E.U. or other country licenses, authorizations, as required by law. It is the Buyer's responsibility to determine if local export control or sanctions laws outside the U.S. or E.U. apply. The Buyer will inform each of its customers (where the circumstances suggest the customer may be exporting) of applicable restrictions on exports, re-exports, or transfers at the time the Buyer resells or otherwise disposes of any Goods, software or technical data supplied by Irisys to such customer.

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- (b) The Buyer agrees to comply with any export control certification provided by Irisys to the Buyer at or around the time of entry into this Agreement (the "Partner Export Control Certification"), to maintain controls adequate to comply with applicable export control laws and regulations and to certify its compliance annually. The Buyer agrees that all of the Buyer's sales associates and any other personnel with a need to know have been informed of and understand the requirements established by these laws and regulations.
- (c) Irisys reserves the right to cancel any order if requirements under the Partner Export Control Certification are not met.
- (d) The Buyer agrees to maintain complete records of all exports, re-exports, and transfers of Goods for at least five years, and Irisys reserves the right to review the Buyer's export control procedures and point-of-sale data/export, re-export and transfers records for compliance with U.S., E.U. or other applicable country export control and sanctions laws. Non-compliance with these laws may result in termination of this Agreement. Any Goods, software or technical data supplied in violation of export controls laws cannot be serviced or supported by Irisys. Irisys' warranties for any such Goods, software or technical data is therefore void.

12. Insolvency of Buyer

- 12.1 This clause applies if the Buyer makes any voluntary arrangements with its creditors; becomes subject to an administration order; goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or if an encumbrancer takes possession, or an administrative receiver or administrator is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business or suffers any action in consequence or debt; or the Seller reasonable apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 12.2 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 liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13. General

- 13.1 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.
- 13.2 If any provision of these Conditions is held by a competent authority to be invalid or enforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- 13.3 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 13.4 The Contract shall be governed by the laws of England and Wales and any dispute arising out of or in connection with it shall be determined by the non-exclusive jurisdiction of the English courts.

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Appendix 1

Additional clauses where the order involves disclosure of confidential information

1. **"Confidential Information"** shall mean all data, drawings, models, documentation and information of all kinds whether in oral, documentary, electronic or any other form relating to the subject matter of the order which are clearly identified by the party disclosing such Information ("the Disclosing Party") as confidential.
2. The party receiving Confidential Information ("the Receiving Party") agrees to receive in confidence all such Confidential Information, not to reproduce such Confidential Information nor disclose the same to any third party nor use such Confidential Information for its own benefit or for the benefit of any third party without the Disclosing Party's prior written consent.
3. The Receiving Party agrees to treat the Confidential Information disclosed to it as confidential and to use its best efforts to prevent the disclosure of such Confidential Information to others. In this respect, the Receiving Party agrees to disclose such Confidential Information only to those of its employees or advisers who need to know such Confidential Information and who are under obligations of confidentiality to the Receiving Party.
4. The Receiving Party shall not be liable in damages for inadvertent, accidental or mistaken disclosure of confidential Information by its employees provided that the Receiving Party shall have exercised the same degree of care in protecting such Confidential Information as it would have taken in respect of its own Confidential Information of a similar nature and provided that the Receiving Party takes such additional precautions as may be reasonable to prevent further disclosure.
5. The foregoing restrictions and obligations shall not apply to Confidential Information which:
 - 5.1 at the time of disclosure is in the public domain or which subsequently comes into the public domain other than as a result of a breach of this Appendix 1;
 - 5.2 at the time of disclosure is already in the possession of the Receiving Party;
 - 5.3 is subsequently disclosed to the Receiving Party by a third party without restrictions as to use or disclosure;
 - 5.4 the Receiving Party can show was independently developed by employees of the Receiving Party who have not had access to the Confidential Information;
 - 5.5 is required to be disclosed by law.
6. Notwithstanding any of the foregoing provisions, the parties understand and agree that nothing contained in this Appendix shall be construed as giving the Receiving Party any licence or other rights in respect of any of the Confidential Information provided to it under these terms.
7. All Confidential Information shall be and remain the property of the Disclosing Party and upon completion of the purpose for which such Confidential Information was supplied or upon earlier request by the Disclosing Party, the Receiving Party shall return all tangible material provided to it (whether in documentary form or on electronic media) to the Disclosing Party together with all copies.

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Appendix 2

Additional clauses where the order is for the provision of services

1. For the purpose of this Appendix:
 - 1.1 **"Deliverables"** means any software, prototypes, models or other such output supplied by the Seller in connection with its performance of the Services;
 - 1.2 **"Intellectual Property"** means any patent, trade mark, copyright, registered or unregistered design, database right and applications for any of the same, trade secret, right in unpatented know-how, right of confidence and any other intellectual property right of any nature throughout the world.
2. The Seller warrants that it will exercise reasonable skill and care in the performance of the Services.
3. In the event that the Seller is in breach of its warranty at 2. above, the Seller's sole liability shall be to re-perform the Services or, where such re-performance is not possible, to refund the price paid for such Services by the Buyer.
4. Any advice or recommendation given by the Seller to the Buyer in its performance of the Services shall represent solely the views of the Seller on the relevant subject and is followed or acted upon entirely at the Buyer's own risk. The Seller makes no warranties or representations on the sufficiency or accuracy of such advice or recommendation and shall not be liable for any loss or damage suffered by the Buyer as a result of its reliance on the same.
5. This sub-clause shall apply in respect of Deliverables in lieu of clauses 8.1, 8.4 and 8.5 of the Conditions. In the event that any Deliverables are found to be defective or do not perform substantially in accordance with any claim made by the Seller in respect thereof within three months of their supply to the Buyer, the Seller shall rectify such defect free of charge provided that written notice is given to the Seller of such defect within 14 days of its discovery and that the Seller is satisfied that such defect was due to a failure by the Seller to perform the Services in accordance with the specification on the Order Acknowledgement.
6. Unless otherwise agreed by the parties in writing, all Intellectual Property arising, obtained, developed or generated by the Seller in the Deliverables or otherwise in the course of the provision of the Services by the Seller shall be and remain the exclusive property of the Seller.

Appendix 3

Additional clauses where the order is for research and development services.

1. For the purpose of this Appendix:
 - 1.1 **"Intellectual Property"** means any patent, trade mark, copyright, registered or unregistered design, database right and applications for any of the same, trade secret, right in unpatented know-how, right of confidence and any other intellectual property right of any nature throughout the world;
 - 1.2 **"Background Intellectual Property"** means any Intellectual Property used in the performance of the services other than Foreground Intellectual Property;
 - 1.3 **"Foreground Intellectual Property"** means any Intellectual Property that arises or is obtained, developed or generated in the performance of the research and development services ordered by the Buyer.

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2. All Background Intellectual Property is and shall remain vested in the party owning such Intellectual Property. The Buyer shall be deemed to have granted to the Seller a licence to use any Background Intellectual Property provided by the Buyer in the performance by the Seller of the Services ordered by the Buyer.
3. All Foreground Intellectual Property generated by the Seller is and shall remain the exclusive property of the Seller
4. All Foreground Intellectual Property generated or otherwise acquired jointly by the Buyer and the Seller shall belong to the parties jointly and except that applications for patents or other protections related to such Foreground Intellectual Property shall be made in joint names, each party shall have the freedom to exploit the same (including the granting of licences) in any manner and anywhere without reference or accounting to the other joint owner.

Appendix 4

Additional clauses where the order is for export sales

PAYMENT

1. In the case of orders for the export of any Goods, the Seller may require the Buyer to arrange payment by letter of credit in the following manner:
 - 1.1 the Buyer shall ensure that payments are made to the Seller according to the payment schedules set out in the Order Acknowledgement from an irrevocable Letter of Credit issued by a United Kingdom bank of the Seller's choice ("the ILOC");
 - 1.2 the terms of the ILOC shall be subject always to the Seller's agreement;
 - 1.3 the Buyer shall open the ILOC within 30 days of the date of the Order Acknowledgement initially in the sum of 100% of the price in such Order Acknowledgement and shall amend it from time to time to accommodate any changes in the price;
 - 1.4 the price shall be paid upon delivery and presentation of the following documentation, each bearing the ILOC reference number and order number:
 - 1.4.1 one copy of the relevant Seller's invoice; and, where applicable,
 - 1.4.2 a complete set of the relevant clean on board bills of lading, blank endorsed and marked freight prepaid, or, alternatively, one complete set of the relevant clean airway bills, or, alternatively, one copy of the forwarding agent's store or warehouse receipt in lieu of such bills of lading as appropriate.
 - 1.5 The costs of setting up and administering the ILOC shall be borne by the Buyer.

Export and Import Licences

2. Any order accepted by the Seller shall be subject to the following:
 - 2.1 the procurement by the Buyer at his own expense of any import licence necessarily required for the import of the Goods into the country to which the Goods are to be exported. The import licence number and expiry date must be furnished at the time that the order is placed with the Seller in order for the Seller to accept such order. In the event that the licence expires before the Goods have been made

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available it shall be the responsibility of the Buyer to obtain a renewal of such licence. The Seller shall not be liable for any expense or loss caused by delay in obtaining such import licence or the renewal thereof; and

- 2.2 in the case of an order placed from an address in the United Kingdom, the procurement by the Buyer at its expense of any export licence, which may be required for the export of the Goods from the United Kingdom. Where the Seller has, however, accepted responsibility for shipping arrangements, the Seller will make reasonable endeavours, at the Buyer's cost, to obtain such export licence;
- 2.3 where the order is placed from an address outside of the United Kingdom, the Seller will, at the Buyer's expense, make reasonable endeavours to obtain any export licence which may be necessary.

Appendix 5

Additional clauses where the order includes software licence, software support, and extended hardware warranty

Software Licence

- 1.1 As used in this Appendix "Licensee shall mean the Buyer "Licensor" shall mean the Seller. "Software" shall mean the proprietary Licensor Software known as Harvester and / or the Validation Suite including any sub-modules therein

2. LICENCE GRANT

- 2.1 Subject to clause 2.3 (below) and the Licensee's compliance with clause 3, the Licensor grants the Licensee a non-exclusive, non-transferable licence to use the object code of the Software for business purposes. The Licensee is granted a license to use the Software for a period of one (1) year from purchase subject to the terms, fees, conditions, restrictions and limitations contained herein.
- 2.2 The Software license may be renewed for additional one year terms by paying the annual license fee. The Software must not be used after a period of one (1) year if the Software license fee has not been paid, (or provide a written purchase order or other written or electronic confirmation of intent to renew and pay) the annual license fee. All terms and conditions of this Agreement will apply during the renewal term(s).
- 2.3 The Licensee may make a single copy of the Software for the purposes of back-up and disaster recovery as is reasonably necessary for the lawful use of the Software in accordance with this Agreement.

3. LICENCE RESTRICTIONS

- 3.1 Except as otherwise agreed in this Agreement, or in any other Licensor agreement to which the Licensee is a party, such as a distribution agreement, the Licensee may not:
 - (i) modify, alter, adapt, translate or customise the Software in any way, or create derivative works of the Software or documentation, including translation or localisation;
 - (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code of the Software (except to the extent expressly permitted by law);
 - (iii) redistribute, encumber, sell, rent, lease, or otherwise transfer rights to the Software other than by way of sub-licence to an end customer;

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- (iv) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software;
- (v) publish any results of benchmark tests run on the Software to a third party;
- (vi) reproduce or otherwise exploit any firmware supplied with and used in conjunction with the Software.

4. FEES

- 4.1 The licence fee for the Software of the Licensor must have been paid in full.

5. TERMINATION

- 5.1 Without prejudice to any other rights, the Licensor may terminate this Agreement if the Licensee breaches any of its terms and conditions.
- 5.2 Upon termination of the Agreement, the Licensee shall destroy all copies of the Software provided that the Licensee shall retain the right to use any equipment formerly used in connection with the Software, including any firmware installed on, or embedded in, that equipment.
- 5.3 The Software licence may be time limited by Licensor. In such an event the term of the licence will be displayed on installation of the Software, or a timely reminder given when the term is nearly expired. Any time extension to the licence must be agreed with Licensor by the Licensee prior to the expiry of the time limited licence.
- 5.4 If the Software licence expires and is not renewed by the Buyer, the Buyer shall fully indemnify the Seller against any costs arising from the Seller's reasonable actions to stop such misuse by the Buyer its employees, agents, assigns or end use customers.

6. INTELLECTUAL PROPERTY

- 6.1 The Licensee acknowledges that all intellectual property rights created, developed, subsisting or used in or in connection with the Software are and will remain the property of the Licensor, and that the Licensee shall have no right in or to the Software except as permitted by this Agreement.
- 6.2 The Licensee shall take no action that could jeopardise, limit or interfere in any way with Licensor's ownership of, or rights in connection with, the Software.

7. LIABILITY

- 7.1 Nothing in this Agreement shall exclude or limit the Licensor's liability for
 - (i) fraud;
 - (ii) death or personal injury caused by negligence;
 - (iii) breach of the implied terms as to title set out in section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (iv) any other liability which cannot be excluded or limited by law.

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7.2 Except as expressly set out in the Agreement, the Licensor shall not have any liability to the Licensee in contract, tort (including negligence or breach of statutory duty) or otherwise arising out of or in connection with the Agreement for any:

- (i) loss of goodwill, profits, revenue, business, contracts or anticipated savings;
- (ii) special, indirect or consequential loss or damage (not falling within (i) above); or
- (iii) loss of data.

7.3 Subject to clause 7.1 above, the Licensor excludes any liability resulting from the use of the Software in the circumstances set out in clause 7.5 (below).

7.4 The Licensee acknowledges that the Software is not fault tolerant and is not designed, manufactured or intended for use or resale as online control equipment in hazardous environments requiring failsafe performance. The Licensor expressly excludes any express or implied warranty as to fitness of the Software for such uses.

These include but are not limited to the following:

- (i) the operation of nuclear facilities;
- (ii) aircraft navigation or communication systems;
- (iii) air traffic control;
- (iv) direct life support machines;
- (v) weapons systems.

7.5 Subject always to clause 7.1 above, and except as provided in clause 7.2, the Licensor's maximum aggregate liability in contract, tort (including negligence or breach of statutory duty) or otherwise for any default (or series of related events of default) and in respect of which the Licensee suffers any loss shall be limited to damages which in no event should exceed the fee paid for the Licensor Software.

Software Support & Extended Warranty

7.6 This Software support contract starts the day that its purchase is completed and continues for a period of one (1) year. It is exclusive of and in addition to the ninety (90) day warranty period detailed in clause 8 to this Agreement.

7.7 Software support Contracts are renewable on an annual basis, based on the original date of Software purchase.

7.8 Where the Licensee has purchased and paid for (including subsequent annual fees) Software with support and extended warranty, Seller will provide the following services;

- (i) a service desk facility via telephone and e-mail which shall operate Monday to Friday from 09:00 to 17:00 (GMT / BST) in the UK excluding UK public holidays;
- (ii) an additional twelve (12) months warranty on the Goods on the terms contained in Clause 8.

7.9 Where the Licensee fails to purchase and pay for subsequent software support and extended warranty

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