

## CONDITIONS OF PURCHASE

The Seller's attention is drawn in particular to the provisions of clauses 7 (Delivery), 10 (Warranties), 11 (Remedies) and 12 (Indemnity).

## 1. INTERPRETATION

1.1 In these Conditions, the following terms shall have the following meanings: *Australian Consumer Law* means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time; *Affiliate* means in respect of the Buyer, any entity which controls, is controlled by or is under common control with the Buyer, and control means the ability, directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise; *Buyer* means Robertshaw Australia Pty Limited ACN 000 163 646, whose registered office is at 3B Lenton Place, North Rocks, NSW, 2145; *Confidential Information* means the disclosing party's information in any form whether oral, documentary, magnetic, electronic, graphic or digitised, relating to the disclosing party's business and including information relating to patents, trademarks, registered/unregistered rights, design rights, copyright formulations, engineering drawings, specifications, data, know-how, inventions, models, sample components, formulae, manufacturing methods, analytical and quality control methods, sales data, anticipated sales volumes, information relating to potential or actual customers, business structure, assets, liabilities, operations, budgets and strategies; *Contract* means the contract for the sale and purchase of the Goods whether expressly in writing or through delivery of the Goods pursuant to an Order, and incorporating these Conditions; *Goods* means any goods agreed in the Contract to be bought by the Buyer from the Seller as described in the Order; *GST Act* means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); *Non-excludable Obligation* means any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute, the exclusion, restriction or modification of which would (i) contravene that statute; or (ii) cause any term of these Conditions to be void; *Order* means the Buyer's purchase order to which these Conditions are annexed or to which these Conditions are applicable; *Seller* means the person so described in the Order.

## 2. GENERAL

2.1 These Conditions are the only conditions upon which the Buyer is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions submitted. No terms or conditions endorsed upon delivered or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions. These Conditions apply to all the Buyer's purchases of the Goods and any variation to these Conditions shall have no effect unless expressly agreed in writing by the Buyer.

2.2 The Order shall be deemed to be an offer by the Buyer to buy the Goods subject to these Conditions and no Order shall be accepted until the Seller either expressly, by giving notice of acceptance, or impliedly, by fulfilling the Order, in whole or in part accepts the offer. The Order will lapse unless accepted by the Seller within 10 days of the date of its receipt by the Seller.

2.3 Delivery terms used in the quotation, tender or Contract shall be interpreted in accordance with INCOTERMS 2010 Edition as amended or superseded from time to time.

2.4 Nothing in these Conditions shall: (i) limit or exclude liability for gross negligence, wilful misconduct, fraud or fraudulent misrepresentation; or (ii) exclude, restrict or modify the application of any Non-excludable Obligation.

## 3. SPECIFICATION/QUALITY

3.1 The quantity, quality and description of the Goods shall, subject to the provisions of these Conditions, be as specified in the Order and/or in any applicable specification supplied or advised by the Buyer to the Seller.

3.2 If a standard of performance is specified, the Goods should be capable of the required performance and where applicable, Test Certificates, Certificates of Conformity including EC Declarations of conformity regarding EMC, Low Voltage or Machinery and the relevant Installation Instructions regarding such Directives and/or material Analysis Certificates and as specified in the Order will be required to be provided by the Seller to the Buyer.

3.3 At any time prior to delivery of the Goods the Buyer shall have the right to inspect and test the Goods. The Buyer will be entitled to inspect and test the Goods during manufacture, processing and storage. The Buyer's representatives, or the agent of any government department or other customer concerned, shall be allowed to visit the Seller's premises where the Goods are being manufactured, processed or stored at any reasonable time to inspect the progress of the Goods.

3.4 If the results of such inspection or testing cause the Buyer to be of the opinion that the Goods do not conform, or are unlikely to conform, with the Order or to any specifications supplied or advised by the Buyer to the Seller, the Buyer shall inform the Seller and the Seller shall immediately at its cost take such action as is necessary to ensure conformity. Any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract or imply acceptance of the Goods pursuant to an Order.

## 4. COMPLIANCE WITH LAWS

4.1 For the purpose of this clause 4; "Applicable Laws" shall mean all applicable laws, rules, regulations, ordinances and codes of practices including, but not limited to, the following: (i) manufacture, packaging, packing and delivery of the Goods; (ii) employment rights; (iii) all import/export laws, rules, regulations and requirements; (iv) the Australian Consumer Law; and (v) environmental laws; and "undertakes" shall mean represents, warrants, certifies and covenants.

4.2 The Seller undertakes that it shall fully comply with all Applicable Laws in the performance of each Contract. If the Goods are manufactured in a country other than the country in which the Goods are delivered to the Buyer, the Seller will mark the Goods "Made in (country of origin)". Upon the Buyer's request, the Seller shall promptly furnish any reports, required information, and/or certifications required under such Applicable Laws.

4.3 The Seller undertakes that the Goods fully comply with all Applicable Laws in locations in which the Goods are likely to be used or sold and shall provide for any of the Goods, upon request, all reports and required information including, but not limited to, certifications, component natural resources, confirmation that the Chemicals Hazard and Information and Packaging for Supply Regulations 2002 ("CHIP") and the Control of Substances Hazardous to Health Regulations 2002 (or local equivalent regulation) have been complied with as required under such Applicable Laws. The Seller shall maintain and retain sufficient documentation to enable the country of origin of the Goods to be traced within the Goods sold to the Buyer.

4.4 The Seller undertakes that the Goods have not and will not be produced or supplied (by the Seller or its suppliers) in segregated facilities or any location in which segregated facilities are maintained; by using forced, indentured, convict or child labour; in violation of minimum wage, hour of service or overtime

**INVENSYS CONTROLS AUSTRALIA PTY LIMITED**  
**CONDITIONS OF PURCHASE**

laws of the country of manufacture or in any jurisdiction in which the Goods are provided; or in non-compliance (without limitation) with the following Directives and Regulations: (i) European Union Directive 2002/95/EC (27 January 2003) (RoHS Directive); (ii) European Union Directive 2002/96/EC on Waste and Electronic Equipment (WEEE); (iii) The Electronic Waste Recycling Act (California SB20/50) (where relevant); and; (iv) Regulation 1907/2006 of the European parliament and of the Council (REACH Regulation: 18 December 2006); each as amended at the time of any Contract, unless expressly agreed in writing by the Buyer.

**5. PRICE AND PAYMENT**

- 5.1 The price of the Goods shall be stated in the Order in Australian Dollar and unless otherwise agreed in writing by the Buyer shall be inclusive of any and all taxes (including GST), duties, and all other charges. No variation in the price nor extra charges can be made without the prior consent of the Buyer in writing.
- 5.2 Unless otherwise stated in the Order, the Buyer shall pay the price of the Goods to the Seller within 90 days after the receipt at the Buyer's invoice address of a correctly submitted and undisputed tax invoice (as defined in the GST Act), or if later, the acceptance of the Goods by the Buyer.
- 5.3 A separate tax invoice (as defined in the GST Act) for each individual consignment of Goods shall be sent by the Seller to the Buyer as soon as it is reasonably practicable after dispatch or performance, or in accordance with the schedule of payments in the event of part or progress payments being agreed. The Buyer need to make a payment for a taxable supply (as defined in the GST Act) made under or in connection with this Contract until it receives a tax invoice (as defined in the GST Act) for the supply to which the payment relates.
- 5.4 Time for payment will not be of the essence of the Contract, but if any undisputed sum under the Contract is not paid when due, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over LIBOR rate from time to time in force during that period. The Seller acknowledges and agrees that this clause provides the Seller with a substantial remedy in respect of late payment of sums due under the Contract and any right to receive statutory interest shall not apply to any payment of sums under the Contract.
- 5.5 The Buyer may set-off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Contract.

**6. DOCUMENTS/PACKING, MARKING AND DISPATCH OF GOODS**

- 6.1 All advice notes, invoices and delivery notes shall quote the number of the Order, the date of the Order, the article number, and shall include a description of the Goods.
- 6.2 Unless otherwise specified in the Order: (i) all Goods shall be properly packed, marked and dispatched at the Seller's expense in accordance with the requirements of the Buyer; (ii) the Seller shall mark the outside of each package with his name and with full details of the destination and include a packing note stating the contents and reference number of the Buyer's Order; and (iii) the Buyer shall not be liable to pay for or return to the Seller any packaging or crating.

**7. DELIVERY**

- 7.1 Unless otherwise stated in the Order, the Goods shall be delivered, DDP in accordance with the Incoterms 2010 to the delivery address stated on the Order, or to such other place of delivery as is notified in writing by the Buyer to the Seller prior to delivery of the Goods. All deliveries shall be made during the Buyer's usual business hours.
- 7.2 The date for delivery shall be specified in the Order. Time for delivery shall be of the essence.
- 7.3 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, in addition to the requirements set out in clause 6, the number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 7.4 If the Goods are not delivered by the due date then, without prejudice to any other rights which the Buyer may have, the Buyer reserves the right to: (i) cancel the Contract or any outstanding Order in whole or in part; (ii) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make; (iii) deduct from the price of the Goods or if the Buyer has already paid the price, to request a full refund for the relevant Goods by the Seller; (iv) to claim from the Seller by way of liquidated damages for delay, 1% of the purchase price for every week's delay and claim damages for any costs, loss or expenses incurred by the Buyer and not compensated by the liquidated damages, which are in any way attributable to the Seller's failure to deliver the Goods on the due date.
- 7.5 If the Buyer receives any early delivery of the Goods, it may return them to the Seller at the Seller's expense.
- 7.6 Where an Order is for scheduled deliveries over a specific period, the Buyer may on reasonable notice to the Seller, amend the design or specification of the Goods ordered for any remaining deliveries.
- 7.7 The Buyer shall be entitled to reject Goods that are not in accordance with the Contract and shall not be deemed to have accepted the Goods until it has had 14 days to inspect them following delivery. Without limitation to any Non-excludable Obligation, the Buyer shall also have the right to reject the Goods at any time during the warranty period if any latent defect in the Goods is discovered.

**8. RISK AND PROPERTY**

- 8.1 Without prejudice to any right of rejection which may accrue to the Buyer under these Conditions, the Goods shall remain at the risk of the Seller until delivery to the Buyer in compliance with clause 7 is completed (including off-loading and stacking) at which point ownership and risk of the Goods shall pass to the Buyer. If there is any conflict between this clause and the applicable Incoterms, this clause shall prevail unless the parties have otherwise agreed in writing.
- 8.2 If the Goods are rejected by the Buyer, ownership and risk shall re-pass to the Seller within 48 hours of notice of such rejection being given by the Buyer to the Seller.

**9. REPAIRS AND SPARE PARTS**

**INVENSYS CONTROLS AUSTRALIA PTY LIMITED**  
**CONDITIONS OF PURCHASE**

9.1 The Seller shall, for a period of 10 years from the date of supply: (a) supply the Buyer with spare parts for the Goods, or provide equivalent sources of supply; and (b) if requested by the Buyer, ensure that reasonable facilities are available for the repair of the Goods.

**10. WARRANTY**

10.1 The Seller warrants that the Goods supplied shall, under normal conditions of use: (i) be of acceptable quality within the meaning of the Australian Consumer Law; (ii) be fit for all the purposes for which Goods of that kind are commonly supplied; (iii) be acceptable in appearance and finish; (iv) be free from defects in design, material and workmanship (including any 'safety defect' within the meaning of the Australian Consumer Law); (v) be safe; (vi) be durable; (vii) be new; not refurbished or reconditioned; (viii) conform to the specification in the Contract, and if provided, any parts per million quality levels; (ix) be fit for all the purposes for which Goods of that kind are commonly supplied, and appropriate in form, fit, and function for the purpose intended, represented, made known or disclosed; (x) conform with any description or sample provided to the Buyer; and (xi) comply with any express warranty or representation made by the Seller to the Buyer in relation to the Goods, for a period of 24 months from delivery or a period that is reasonable in the circumstances, whichever is the longer.

10.2 The Seller warrants that any services performed in connection with the provision of the Goods: (i) shall be rendered with due care and skill in a good and workmanlike manner by skilled personnel; (ii) are fit for the purpose intended, represented, made known or disclosed; and (iii) will be supplied within a reasonable time.

10.3 Seller extends to Buyer any and all warranties received from Seller's sub-suppliers and subcontractors and agrees to enforce such warranties on Buyer's behalf. All of Seller's warranties shall run collectively and separately to Buyer, its successors, assigns, customers, and users of Buyer's Goods sold by Buyer.

10.4 The warranties set out in this clause 10 apply in addition to any warranties or conditions implied, or guarantees, rights, remedies or liabilities conferred, by law or that are otherwise made by Seller and will survive acceptance and payment by Buyer.

10.5 The Buyer shall on discovery of a defect in the Goods notify the Seller without undue delay, however, the Buyer shall normally not be obliged to inspect the Goods upon delivery.

**11. REMEDIES**

11.1 To the extent permitted by law, and without prejudice to any other right or remedy which the Buyer may have and regardless whether or not any part of the Goods have been accepted by the Buyer; if any of the Goods are not supplied in accordance with the Contract, or the Seller fails to comply with any of the terms of the Contract, the Buyer at its discretion is entitled to avail itself of any one or more of the following remedies: (i) to require the Seller to repair the Goods or to supply replacement Goods (at Seller's cost and expense) within 14 days of receipt of notice from the Buyer; (ii) to refuse to accept any further deliveries of the Goods but without any liability to the Seller, (unless the Seller can prove that the further deliveries fully comply with the Contract); (iii) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller; and (iv) to claim damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

**12. INDEMNITY**

12.1 To the extent permitted by law, the Seller will keep the Buyer fully indemnified and hold the Buyer harmless against all actions, proceedings, claims, demands, damages, costs, losses (including consequential losses), charges and expenses whatsoever brought or made against the Buyer or sustained or incurred by the Buyer in respect or as a result of: (i) any defective workmanship, quality, design or materials, including any product recall or corrective action procedure; (ii) infringement or alleged infringement of any form of intellectual property right by the use or sale of any article, Goods or materials supplied to the Buyer unless to the extent that the infringement is solely due to the Seller having followed the Buyer's design or instruction; (iii) any injury loss or damage to persons or property caused by the act, default, negligence or fraud of the Seller or its employees, sub contractors, employees of the Seller's sub contractors or agents, to the extent that the injury, loss or damage is not caused by the negligence of the Buyer; (iv) any failure by the Seller to comply with the provisions of clause 4; (v) all claims which at any time be made upon the Buyer and which arise out of accidents to the Seller's employees or the employees of the Seller's sub-contractors; (vi) all liabilities of whatever nature which may at any time result from the wrongful acts or omissions of the Seller's employees or the employees of the Seller's sub-contractors; and (vi) any breach by the Seller of the warranties set out in clause 10.

**13. INSURANCE**

13.1 The Seller undertakes to effect and maintain adequate insurance cover to meet the risks specified under clause 12 to the reasonable satisfaction of the Buyer, and will upon request from the Buyer, produce to the Buyer the relevant policy and evidence of payment of the current premium.

**14. LICENCE TO USE EMBEDDED SOFTWARE/INTELLECTUAL PROPERTY RIGHTS**

14.1 Any software or firmware incorporated into Goods is supplied under licence for the use of the software only, and all other exploitation rights are retained by the Seller. The Seller grants to the Buyer a licence to use such software or firmware only in connection with those Goods and only to the extent required to use the Goods for their intended purposes. The licence shall include a right to grant sub licences to the extent required lawfully to sell the Goods. The duration of this licence shall be the life of the Goods into which the software or firmware is incorporated.

14.2 To the extent that any Goods are created or modified in accordance with Buyer's specific requirements and/or technical or functional specifications then any intellectual property arising out of or created during the performance of the Order shall be the property of the Buyer. The Seller shall (at Buyer's reasonable expense) execute such documents as are required to give effect hereto and shall assist in the defence of any proceedings against the Buyer.

**15. CONFIDENTIALITY**

15.1 The receiving party will not divulge or communicate to any person without the prior written consent of the disclosing party any Confidential Information and shall not use the Confidential Information for any purpose other than as contemplated under the Contract .

15.2 The obligation of confidentiality will continue to apply at all times during the continuance of any Contract incorporating these Conditions and for a period of 5 years after the expiration or termination of the Contract but will cease to apply to information which is at the date of the disclosure public knowledge through no fault of the receiving party, or which is rightfully received by the receiving party without obligations of confidentiality, or is developed by the receiving party without breach of these Conditions . If the receiving party is required to disclose Confidential Information to a government body, court or

**INVENSYS CONTROLS AUSTRALIA PTY LIMITED**  
**CONDITIONS OF PURCHASE**

other official department with the authorization to issue such request subject to a legal or regulatory requirement, the receiving party agrees to give the disclosing party prompt notice so that disclosing party may contest the disclosure or obtain a protective order.

- 15.3 Each disclosing party shall have the right, immediately upon expiration or earlier termination of the Contract (for any reason whatsoever), to request the receiving party to return all Confidential Information in its possession.

**16. THE BUYER'S PROPERTY**

- 16.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Buyer to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods, shall at all times be and remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing.

**17. TERMINATION**

- 17.1 The Buyer shall have the right at any time and for any reason to immediately terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation on a pro-rata Contract price basis for work-in-progress at the time of termination.
- 17.2 Either Party may immediately terminate a Contract by giving prior written notice to the other Party, if the other Party: (i) commits a material breach of the Contract which is not capable of remedy, (ii) commits a continuing breach of the Contract and fails to remedy it within 15 days of a written notice requiring the breach to be remedied; (iii) is dissolved, becomes insolvent, is over indebted, 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 (iv) ceases or threatens to cease to carry on business.
- 17.3 No notice of termination may be given by either Party except in accordance with the express provisions of these Conditions.
- 17.4 The termination of the Contract, however arising, shall be without prejudice to: (i) the rights and duties accrued prior to termination; and (ii) any obligations contained herein which survive the termination or expiry of the Contract.

**18. ASSIGNMENT**

- 18.1 The Buyer may assign the rights and obligations of any Contract or any part of it to any of its Affiliates. Any other assignment of this Contract shall not be permitted unless the other Party consents in writing to such assignment (such consent not to be unreasonably withheld or delayed).

**19. FORCE MAJEURE**

- 19.1 The Buyer reserves the right (without any liability to the Seller for any expenses or loss incurred by the Seller) to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

**20. MISCELLANEOUS**

- 20.1 Each right or remedy of a Party under the Contract is without prejudice to any other right or remedy of the Party whether under the Contract or not.
- 20.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, or unenforceable it shall, to the extent of such illegality, invalidity, voidness, voidability, or unenforceability, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 20.3 Failure or delay by a Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 20.4 The failure by either Party to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 20.5 Notices must be in writing and delivered by hand, first class post, or facsimile to the other Party at its registered office or trading address at the date of the Contract.
- 20.6 This Contract shall be governed by and construed in accordance with the laws of the State of Victoria, Australia. All disputes arising in connection with the Contract or its validity or these Conditions or their validity shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with said Rules unless the parties agree on one (1) arbitrator. The arbitration shall take place in Melbourne, Australia and the arbitration proceedings shall be conducted in the English language. The decision rendered by the said Commission should be final and binding upon both parties; neither Party shall seek recourse to a law court or other authorities for revising the decision. The arbitration fee shall be borne by the losing party. Both parties shall continue the fulfilment of the Contract except the parts in arbitration.
- 20.7 The Seller acknowledges that it is fully aware of, and knowledgeable about, the export and re-export controls regulations, ordinances and laws in the jurisdiction from which the Goods are exported or the services are provided and agrees to obtain all necessary export and re-export permits or licenses at the Seller's expense to ensure that the Buyer enjoys the full benefit under the relevant Purchase Order and these Conditions. Further, the Seller shall supply the Buyer with the information regarding any applicable export controls rules and required permits or licenses for the Goods or works to be shipped, in writing within three (3) working days from the receipt of Purchase Order. The Seller shall also notify the Buyer in writing of any changes to such export and re-export controls regulations and/or permit or licensing requirements which may affect the Buyer's benefits under the Contract. The Seller undertakes to

**INVENSYS CONTROLS AUSTRALIA PTY LIMITED**  
**CONDITIONS OF PURCHASE**

comply with all export and re-export controls regulations or rules in relation to the delivery of the Goods, the works and the provision of the services and shall indemnify Buyer against all liability, losses, damages, and expenses (including reasonable attorney's fees) resulting from the Seller's non-compliance or violations of such export and re-export controls regulations.

- 20.8 In the event that the Parties enter into a master supply agreement for the supply and purchase of the Goods, such agreement shall prevail over these Conditions to the extent that any provisions conflict.
- 20.9 The United Nations 'Convention on Contracts for the International Sale of Goods' signed in Vienna in 1980 shall not apply to this Contract.
- 20.10 The Parties agree that no condition of, or benefit conferred by, the Contract will be enforceable by any third party.