



Innovasea Systems Inc.
P.O Box 66125
Baton Rouge, LA 70896 USA
Phone: 225 755 0026 Fax: 225 755 0995

Terms and Conditions of Sale

1. SCOPE a) All sales by Innovasea Systems, Inc., (hereinafter "Seller") of any of its own products and/or of any of the products of its manufacturing principals for whom Seller acts as a sales representative, distributor or Value Added Reseller (VAR) (each, a "Third Party Manufacturer"), including associated engineering, service and/or field technical support and/or supervision (hereinafter inclusively known as "Equipment"), to any original purchaser thereof (hereinafter "Purchaser") are subject to these Terms and Conditions of Sale which shall constitute an integral part of any contract for the purchase of Equipment resulting from Seller's offer of quotation being accepted by the Purchaser, whether by purchase order, subcontract or performance. For the avoidance of doubt, these Terms and Conditions of Sale shall govern the purchase and sale of the Equipment, notwithstanding any contrary terms in any request for quotation, offer of quotation or purchase order, all of which contrary terms are hereby expressly rejected and/or superseded hereby.

2. TERMS OF PAYMENT Upon proper credit approval, all equipment sold to Purchaser will be subject to the payment terms listed on INNOVASEA's Price Quotation. All overdue balances will be subject to an interest charge, based on the total balance due, of the maximum legal limit.

3. TAXES It is Purchaser's obligation to provide Seller with a valid tax exemption certificate; Purchaser shall be solely responsible for, and shall indemnify Seller for, and hold Seller harmless from, the payment of any excise, privilege, sales, use and/or any other taxes applicable to the sale, delivery, importation, installation and/or use of the Equipment.

4. DELIVERY- Delivery dates are good faith estimates only. Deliveries shall be the INCOTERMS indicated in the quote, proposal or similar document presented by INNOVASEA TO PURCHASER. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, CONSEQUENTIAL, SECONDARY, INCIDENTAL OR OTHERWISE, HOWEVER ARISING, DUE TO LATE DELIVERY. Risk of loss of the Equipment shall pass to the Purchaser upon the earlier of delivery to Purchaser, Purchaser's agent or to any common carrier. Purchaser shall inspect all Equipment upon receipt and shall be responsible for reporting damage and negotiating with the carrier.

5. CANCELLATION/CHANGES Orders are subject to cancellation or change by Purchaser only with the prior, written consent of Seller and upon terms that will fully indemnify and compensate Seller for all loss, cost and expense, including loss of profit, resulting from the cancellation or change.

6. RETURNS FOR CREDIT Returns by Purchaser for credit will be accepted only with the prior, written approval of Seller and shipment to the factory prepaid, utilizing the original shipping containers or equivalent replacement containers. Returns will be subject to a 20% restocking charge (minimum of \$100.00) plus any additional expenses incurred by Seller in restoring equipment to salable condition.

7. LIMITED WARRANTY a) Seller warrants that all Equipment provided hereunder, with the exception of Third Party Manufacturer components, will be free of defects in material and workmanship and will perform in accordance with Seller's Specifications for a period of twelve (12) months from date of shipment by Seller. The warranty of the Third Party Manufacturer components shall be that of the original manufacturer.

(b) Purchaser's sole remedy for any warranty claim will be for Seller, at its sole option, to repair or replace, F.O.B. Seller's plant, Equipment found to be defective, but Seller will not be responsible for freight from Purchaser to Seller's plant or for the removal and reinstallation labor or for the resolution of general systems problems outside of the Equipment specification applicable to Seller's Equipment.

(c) Seller will use its commercially reasonable efforts to correct design defects but reserves the right to refund the Purchaser the full purchase price to the extent "proven" design defects cannot be corrected within a reasonable time. d) **THIS LIMITED WARRANTY IS CONTINGENT ON ALL OF THE FOLLOWING CONDITIONS BEING MET:** 1) Purchaser has notified Seller within five (5) days of discovery of any claim under this warranty; 2) Purchaser has returned the defective Equipment, freight prepaid, in its original container or an equivalent one to Seller and Purchaser has used its best efforts to pack it properly; 3) Seller's test of the defective Equipment, or investigation into the circumstances, does not disclose: (i) any cause of malfunction due to Purchaser's or any third person's wrong application, misuse, neglect, improper installation, incorrect testing or unauthorized attempt to repair; (ii) any damage caused by improper handling, shipment or storage; any failure of Purchaser to assign competent/trained personnel to install, test or operate Equipment; or (iii) any accident, fire, flood, weather condition, electric power surge/loss or any other occurrence beyond Seller's reasonable control.

(d) THE LIMITED WARRANTIES OF SELLER SET FORTH HEREIN ARE IN LIEU OF, AND PURCHASER HEREBY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE SELLER, WHICH NEITHER ASSUMES, NOR AUTHORIZES OTHERS TO ASSUME FOR IT, ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH THE WARRANTED EQUIPMENT OR ANY PART THEREOF. THE PURCHASER ACKNOWLEDGES THAT THE SELLER DOES NOT WARRANT THE EQUIPMENT OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 7(a) AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PURCHASER AND SELLER AGREE THAT THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION OF THE EQUIPMENT IN SELLER'S OFFER OF QUOTATION AND AS SET FORTH IN SECTION 7(a). SELLER WILL NOT BE LIABLE FOR INCREASED MANUFACTURING/PROCESS COSTS, LOSS OF PROFIT, LOSS OF BUSINESS, OR ANY CONSEQUENTIAL, SECONDARY OR INCIDENTAL DAMAGES, HOWEVER ARISING.

8. FORCE MAJEURE Seller shall not be responsible to the Purchaser, or to any third party, without limitation, for any costs, expenses, losses, liabilities, damages or claims of any nature whatsoever, arising out of the non-performance, performance or delay in performance of any purchase order caused by events beyond Seller's reasonable control, including, but not limited to: acts of God; acts or omission of any Government in its sovereign or contractual capacity (including changes in applicable law); wars; riots; strikes; accidents, unavailability of suitable and sufficient materials, fuel or manufacturing capacity; delays in transportation or communication; fires; floods; epidemics or quarantine restrictions; or customs delays.

9. PROPRIETARY RIGHTS Purchaser agrees that Seller and/or Seller's principals retain proprietary rights in and to all product data, designs, engineering details, discoveries, patents and trade secrets relating to the Equipment and its associated firmware and software, including those resulting from the application of the Equipment for Purchaser's use. The Equipment is offered for sale, and is sold by Seller in every case, on the condition that such sale does

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not convey any license, expressly or by implication, estoppel, or otherwise, to manufacture, duplicate, or otherwise copy or reproduce any of the Equipment or related firmware and software.

10. SAFETY NOTICE Purchaser acknowledges that PROCESS/MANUFACTURING SYSTEMS IMPROPERLY INSTALLED, MAINTAINED OR OPERATED CAN POSE SERIOUS AND DANGEROUS THREATS TO WORKER SAFETY, ENVIRONMENTAL INTEGRITY AND PRODUCT/PROCESS QUALITY. Seller's Equipment is provided with various safety, performance and operating limits, designs and devices which, if disconnected, altered, tampered with or changed by Purchaser, Purchaser's agents or other acting on Purchaser's behalf, with or without Purchaser's knowledge, will become Purchaser's sole risk and responsibility and such actions will absolve Seller of any obligations and liabilities with respect to the function of such limits, designs and devices. Purchaser shall, at its own cost and expense, indemnify and hold harmless Seller, its directors, officers, employees, and agents, from and against any and all losses, damages, liabilities, penalties, claims, demands, suits or actions, and related costs and expenses of any kind, including, without limitation, expenses of investigation and recall, counsel fees, judgments and settlements, for injury to or death of any person, property damage or any other loss suffered or allegedly suffered by any person or entity and arising out of or otherwise in connection with any defect of any product or system of Purchaser or any third party that incorporates the Equipment delivered by Seller to Purchaser or any third party hereunder (except for non-conformities with the warranties set forth in Section 7(a) solely attributable to the Equipment).

11. COMPLIANCE Seller will be responsible for compliance with applicable U.S. Federal, State, Province, Local or foreign governmental safety, environmental, licensing, permitting or performance statutes, ordinances, rules or regulations only to the extent specifically noted on the face of Seller's quotation or Purchaser's **order**, and then only with respect to such statutes, ordinances, rules or regulations which are published and in force as of the date of Purchaser's order.

12. REPRESENTATIONS BY PURCHASER- Purchaser acknowledges that Seller has based all quotations, system specifications, engineering designs, models and other plans on the data and information provided by the Purchaser. The Purchaser certifies that all information and data provided to Seller is true and accurate to the best of its knowledge. Purchaser acknowledges that Seller is not responsible for any error, mistake, miscalculation or misrepresentation, whether intentional or unintentional, made by Purchaser in the dissemination of information to Seller that materially affects the suitability or performance of the Equipment.

13. ULTIMATE END USERS Purchaser **shall** obtain a written and signed acknowledgment from any ultimate end user of the Equipment (if not Purchaser) that it 1) understands and agrees to these Terms and Conditions; 2) shall comply with all requirements imposed upon Purchaser; and 3) waive any right of subrogation that may allow them to assert the rights of Purchaser.

14. COMPLIANCE WITH EXPORT LAWS

(a) Purchaser hereby agrees: (i) to assist Seller in obtaining any required export licenses or permits by supplying such documentation or information as may be requested by Seller; (ii) to comply with all applicable decrees, statutes, rules and regulations of the government of the United States and agencies or instrumentalities thereof; (iii) to maintain the necessary records to comply with such decrees, statutes, rules and regulations; (iv) not to re-export any Equipment except in compliance with such decrees, statutes, rules and regulations; (v) to obtain all governmental approvals and licenses necessary to import the Equipment into the ultimate country of destination; (vi) not to sell, transfer or otherwise dispose of the Equipment in violation of the export laws of the United States; and (vii) to indemnify, defend and hold harmless Seller from any and all fines, damages, losses, costs and expenses (including reasonable attorneys' fees) incurred by Seller as a result of any breach of this Section 14 by Purchaser or any third party.

(b) Purchaser hereby expressly acknowledges that the technical data and the direct product thereof contained in the Equipment may be subject to export controls of the United States and agrees that neither such technical data nor the direct product thereof will be transferred, directly or indirectly, to any destination contrary to the requirements of the law of the United States, including but not limited to the terms of any export license and the terms of Part 774 (re-exports) of the U.S. Export Administration Regulations. Further, Purchaser hereby provides its assurance that it will not participate in any transaction which may involve any commodity or technical data, or the direct product thereof, exported or to be exported from the United States, or in any re-export thereof, or in any other transaction that is subject to export controls of the United States, if a person denied export privileges from the United States may obtain any benefit from or have any interest in, directly or indirectly, these transactions.

15. LIMITATION OF LIABILITY IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION, LOST PROFITS OR LOSS OF USE). SELLER'S LIABILITY ARISING OUT OF THE MANUFACTURE, SALE OR SUPPLY OF THE EQUIPMENT OR ITS USE OR DISPOSITION, WHETHER BASED UPON WARRANTY, CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL PURCHASE PRICE PAID BY PURCHASER FOR THE EQUIPMENT IN QUESTION.

16. GOVERNING LAW This Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Louisiana, U.S.A., excluding: (i) its conflicts of laws principles; (ii) the United Nations Convention on Contracts for the International Sale of Goods; (iii) the 1974 Convention on the Limitation Period in the International Sale of Goods (the "1974 Convention"); and (iv) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980.

17. ARBITRATION All disputes arising out of or relating to this Agreement shall be finally resolved by arbitration conducted in the English language in Baton Rouge, Louisiana, U.S.A. under the commercial arbitration rules of the United Nations Commission on International Trade Law. Each party shall appoint an arbitrator and the two arbitrators so appointed shall jointly appoint a third arbitrator. Both parties shall bear equally the cost of the arbitration. All decisions of the arbitrator(s) shall be final and binding on both parties and enforceable in any court of competent jurisdiction. Notwithstanding anything contained in this Section to the contrary, Seller shall have the right to institute judicial proceedings against Purchaser or anyone acting by, through or under Purchaser, in order to enforce Seller's rights hereunder through reformation of contract, specific performance, injunction or similar equitable relief, and Purchaser consents to the exclusive jurisdiction of the state and federal courts sitting in Baton Rouge, Louisiana for any such proceeding.



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18. MISCELLANEOUS

- (a) These Terms and Conditions of Sale constitutes the entire agreement between the parties with regard to the matters dealt with herein, and supersedes all prior representations, negotiations, understandings and agreements, oral or written, between the parties with respect thereto.
- (b) These Terms and Conditions of Sale are not assignable or transferable by Purchaser in whole or in part, except with the written consent of Seller.
- (c) The failure of Seller or Purchaser to enforce any of these Terms and Conditions of Sale shall not be deemed a waiver of any right to enforce any of these Terms and Conditions of Sale.
- (d) In case any one or more of the provisions, or portions of provisions, of these Terms and Conditions of Sale shall be deemed by any governmental authority to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions, or portions of provisions, contained herein shall not be in any way affected or impaired thereby.
- (f) It is the responsibility of Purchaser to obtain, at its own expense, any non-United States government consents, authorizations, approvals, filings, permits or licenses required for each of it or Seller to exercise its rights and to discharge its obligations under these Terms and Conditions of Sale.