

I – Enforceability - Applicability

These standard terms and conditions of sale (hereafter “T&Cs”) apply from 1 January 2016 to all sales between the subsidiaries of Groupe InnoVista Sensors™ (“Subsidiaries”) and professional buyers and supersede the standard terms and conditions of sale previously in effect.

II - General

By placing an order, customers are deemed to accept these T&Cs and waive the right to rely on any documents they might have unilaterally drafted, notably their standard terms and conditions of purchase. If differing special terms are negotiated, these must be recorded in writing. In the event of a written agreement, the stipulations of the T&Cs not contradicted by the agreement shall apply to the business dealings between the Subsidiary and the customer.

The Subsidiary reserves the right to modify the products and associated technical and commercial documentation at any time, without any obligation to modify products previously delivered or currently on order. As far as possible, the Subsidiary shall endeavour to inform the Customer of such modifications with sixty (60) days’ notice, on the express understanding that failure to adhere to this notice period shall not in any way incur the liability of the Subsidiary vis-a-vis the customer.

More generally, information included in catalogues and brochures is only given as a guide and the Subsidiary reserves the right to make any modifications it might consider necessary at any time and without notice.

Unless stipulated otherwise, the minimum order is five hundred Euros (€500) excluding tax or the equivalent amount in the currency in which the sale is made. Below this threshold, the orders must be sent to the Subsidiary’s authorized distributors (list provided on request).

III – Conclusion of sale

3.1 The sale is only concluded after the Subsidiary has expressly and unreservedly accepted the order, whether or not this is based on a quote submitted by the Subsidiary. Such acceptance is formalised by an order confirmation sent by the Subsidiary. If the order does not correspond to the Subsidiary’s quote, the sale is only concluded after the Subsidiary has expressly and unreservedly accepted the counter-proposal.

3.2 Any modification of a confirmed order must be expressly accepted by the Subsidiary in writing.

3.3 The Subsidiary reserves the option to refuse an order or specify the quantities available to the Customer for certain specific product lines due in particular to production constraints and/or difficulties in sourcing raw materials.

3.4 Unless expressly stipulated otherwise, quotes are valid for one (1) month from date of issue. After this period, the quote ceases to be valid.

IV – Intellectual property

4.1 The customer acknowledges that the Subsidiary owns all the intellectual property rights covering the products and associated tools, but also any trademark or logo of the InnoVista Sensors™ group as well as any other distinctive signs (particularly its typeface) and copyright associated with its products. Unless stipulated otherwise, the customer is not granted any right of use or reproduction for such elements.

In general, the customer undertakes:

- not to alter any of the Subsidiary’s intellectual property rights and not to use them in such a way that would discredit or devalue the Subsidiary’s products;
- not to cause any likelihood of confusion, in the minds of third parties, in any way whatsoever, between its products and the Subsidiary’s products;
- not to reproduce, in all or part, any of the intellectual property rights owned by the Subsidiary, subject to legal action, and/or disclose any information whatsoever to third parties allowing the total or partial reproduction of such rights.

4.2 Should a customer become aware of a possible infringement of the Subsidiary’s intellectual property rights, said customer shall inform said Subsidiary immediately by fax or e-mail.

4.3 In order to limit the risks of infringement and unless stipulated otherwise, the customer is not granted any rights to produce spare parts or have them produced.

4.4 However, with regard to technology owned by one of the Subsidiaries and/or third parties and incorporated into the product, notably software (hereafter the “Programme”), the customer benefits from a non-exclusive and perpetual licence to use the Programme solely for the purpose of using the products for the purpose for which they are intended. The customer undertakes to comply with the instructions for the Programme in particular or, where applicable, the technical documentation provided by the Subsidiary. Consequently, the customer undertakes not to copy, reproduce, decompile or disassemble the source code of the Programme or try in any other way to reconstitute it. The terms of use of software and data bases are set out in the accompanying licences.

4.5 If the products sold are produced according to plans, designs and specifications provided by the customer, the customer indemnifies the Subsidiary for all claims and damages resulting from the alleged or actual infringement of industrial or intellectual property rights owned by third parties resulting from the use by the Subsidiary of the technical documents provided by the customer.

4.6 Should the customer fail to comply with the obligations defined in this article, the Subsidiary has the option to immediately terminate any agreement in effect with the customer, without prejudice to any legal action or claim for damages.

V – Confidentiality

5.1 The Subsidiary’s technology and know-how, patented or not, as well as plans, diagrams, technical and commercial nomenclatures, recommendation documents, test results, catalogues, brochures, notices, patents and registered designs are and remain the exclusive property of the Subsidiary and any information related thereto must be kept in strict confidence by the Customer.

Consequently, the customer undertakes not to share such information with any third party, intentionally or unintentionally, and undertakes to only use it for the purposes of the operation, use and maintenance of the products.

5.2 The Subsidiary is in no way required to provide its production or execution drawings even if the products are delivered with an installation diagram. Any diagrams, documents and technical information sent to the customer remain the property of the Subsidiary and are strictly confidential.

5.3 The obligations stipulated in this article shall remain in effect throughout the duration of the commercial dealings between the parties and the confidentiality obligations shall continue for a period of five (5) years after commercial dealings end, whatever the reason.

VI – Prices – Payment terms – Tax

6.1 The prices applicable are those in effect at the time the sale agreement is formed. The prices are stipulated net of tax, regardless of the country where the products are delivered. Accepted orders are invoiced in the currency applicable to the country of the Subsidiary's head office.

6.2 When the Subsidiary has submitted a quote, the prices and terms of this quote only relate to the products (specifications and quantity) indicated.

6.3 The customer acknowledges and accepts that in the event of a significant variation in the sale price of the products due in particular to an increase in the cost of the raw materials of the products and/or the production costs of the products, the Subsidiary can adjust the prices and, in particular, the prices of current orders to take account of said variation.

6.4 Unless stated otherwise, products are payable at thirty (30) days from date of invoice, by bank transfer, to the bank and at the address indicated by the Subsidiary. If an address is not indicated, payment is made at the Subsidiary's head office.

6.5 In the event of late payment and failing specific legal stipulations, costs will be claimed for their actual amount in accordance with applicable law.

6.6 Should the customer owe the Subsidiary several payments, such payments shall be allocated as a priority to the oldest debts. If the matter is referred to the courts, all associated costs and fees shall be paid by the Customer.

6.7 In the event of late payment or non-payment, a decline in the customer's creditworthiness (particularly in the event of a charge being applied or winding up, modification, change in control, change in management and so on), a risk relating to the customer's solvency, insufficient information being obtained by the Subsidiary on the customer's financial position or in the event of a new or unusual customer, the Subsidiary has the option to:

- require payment of the order before the products are shipped;
- reduce the customer's credit limit which may result in a suspension of current orders;
- reduce the payment time or request cash payment of current and future orders;
- request specific guarantees (independent guarantee, bank guarantee and so on).

If such guarantees cannot be obtained, for any reason, the Subsidiary reserves the right not to honour the sales and/or to suspend and/or cancel the sales.

6.8 The customer cannot cite any dispute or return under the warranty as grounds for suspending the payment for products.

6.9 If payment is more than ten (10) days late, the sale can be cancelled by the Subsidiary if no action is taken to remedy this within one week after a notice to pay.

6.10 The above provisions shall apply without prejudice to any damages the Subsidiary might claim.

VII – Delivery

7.1 Unless stipulated otherwise, products are sold FCA (ICC incoterm version 2010), facility of the Subsidiary.

7.2 The Subsidiary must be notified of any issues upon receipt of the products within twenty-four (24) hours after receipt of the products.

7.3 If the customer fails to take possession of the products on the delivery date, the agreement can be cancelled as of right by the Subsidiary, if no action is taken within one (1) week after the delivery of a notice to perform, without prejudice to any damages. If the Subsidiary does not exercise this option, the customer shall bear the handling and storage costs of the products until it has taken charge of the products.

VIII – Delivery times – Penalties

8.1 Delivery times are given as a guide, unless firm delivery dates are expressly accepted by the Subsidiary.

8.2 Delivery times start from the later of the following dates:

- acceptance of the order by the Subsidiary;
- receipt by the Subsidiary of certain information to be provided by the customer upon which the performance of the agreement is dependent (delivery address, delivery date and so on).

8.3 In the event of late delivery due to a failure solely attributable to the Subsidiary, when a fixed date has been accepted and unless stipulated otherwise, at the express request of the customer providing proof of the loss it has actually sustained in order to establish the Subsidiary's liability, a penalty in full discharge of 1% of the ex works price of the products delivered late shall be applied for each full week of delay, after a grace period of one week, on the understanding that such penalty shall be in any event limited to 10% of such amount. These default penalties shall be the sole remedy available to the customer in the event of delay.

IX – Retention of title

9.1 Notwithstanding the passing of risk which occurs in accordance with the provisions of article VII, the Subsidiary retains title to the products until the payment in full of the principal amount and additional sums.

9.2 If the products are processed or incorporated into other products, the processed products or the goods into which they are incorporated, are the Subsidiary's surety until payment in full of the price due. The customer undertakes to ensure that the products are segregated and cannot be confused with the products of other suppliers and to mention the existence of the retention of title clause to third parties to which it might resell the products as is or incorporated into a specific product.

9.3 The customer is authorised to resell the product delivered in the normal course of its business. Where applicable, the customer undertakes to assign its claims against subsequent buyers to the Subsidiary for the amount of the sums due. The customer undertakes to inform any third party, particularly in the event of attachment, that the products under the retention of title clause belong to the Subsidiary and to inform the Subsidiary immediately of any attachment or similar operation applied to the products. The customer also undertakes not to pledge or assign title to the products by way of a surety.

9.4 Products held under retention of title must be immediately returned to the Subsidiary, in the event of a written claim by the subsidiary or its representative. The return of the products results automatically in the cancellation of the agreement. The Subsidiary retains the option, in all circumstances, not to claim title to the products and to continue the agreement and therefore claim full payment of the price due.

X – Packaging

The Subsidiary chooses the packaging. Should the customer request a type of packaging other than that usually used by the Subsidiary, an additional sum shall be charged. Unless stipulated otherwise, the Subsidiary shall not take back any packaging under any circumstances.

XI – Environment

11.1 Any party in possession of waste products shall be responsible for the disposal thereof. For electrical and electronic equipment (“EEE”) covered by Directive 2012/19/EU of 13 August 2012 and Directive 2006/66/EC of 6 September 2006 amended by Directive 2013/56/EU of 20 November 2013 and by the resulting implementing provisions, financing the collection and treatment of waste resulting from such EEE put on the market after 13 August 2005 is transferred to the customer which accepts. The customer undertakes, firstly, to arrange for the collection and removal of the waste and, secondly, the treatment and recycling of such waste. Should the customer fail to fulfil its associated obligations, penalties, including criminal penalties, might be applied, as stipulated by each member state of the European Union.

11.2 For products delivered after publication of the candidate list for authorisation as per the REACH regulation n° 1907/2006 and various updates, the Subsidiary informs the customer at its request, if such candidate substances are present in excess of a mass to total weight ratio of 0.1%, in order to allow the safe use of said product. The Subsidiary shall inform the customer in the same way when it is aware of changes in the composition of the products concerned.

The Subsidiary warrants that the substances, whether on their own or in substances or products that it has incorporated for the production concerned, have been used in accordance with the provisions relating to registration, authorisation and restriction.

XII – Warranty

12.1 All products undergo rigorous controls prior to shipping as attested by a mark indicating the month and year of production. However, the Subsidiary does not provide any warranty as to the suitability of the products to achieve the customer’s set objectives or meet the specific uses expected by the customer when such objectives and/or uses have not been expressly accepted in writing by the Subsidiary.

12.2 The warranty only applies to defects that become apparent during the warranty period; unless stipulated otherwise, the warranty period for the products will be twelve (12) months from their delivery date as per article VII. If the delivery date of the products cannot be determined for any reason whatsoever, the warranty shall then start on the date of the manufacturing code shown on each product, and in this case, the warranty period shall be eighteen (18) months.

12.3 The Subsidiary undertakes to remedy any operating defect in the products caused by a fault in design, materials or workmanship. This obligation does not apply in the event of a defect resulting from:

- failure to maintain the products in accordance with the Subsidiary’s instructions or, failing such instructions, with accepted standards,

or

- unsuitable storage conditions, or

- failure to adhere to the installation and/or connection guides

Furthermore, there is expressly no warranty for consumables and/or replacements or repairs resulting from normal wear of the products, deterioration and/or accidents resulting from failure to properly monitor the products and/or failure to use the products in accordance with their purpose and/or the Subsidiary’s instructions and, in general, for any incident for which the Subsidiary is not liable. The warranty cannot be applied if the customer or a third party has made changes and/or additions and/or repairs to the products without the express prior written agreement of the Subsidiary.

12.4 In the event of the repair, modification or replacement of the product or product components during the warranty period, this cannot result in an extension of the warranty period of the product.

12.5 Under the terms of this warranty, the Subsidiary shall remedy defects detected, at its cost, as soon as possible and using the means it deems appropriate. Replaced parts are returned to the Subsidiary’s ownership and shall be returned to it upon request. However, the warranty is expressly limited to reimbursement for or replacement or repair of the products or parts recognised as defective by the Subsidiary, with the exclusion of any compensation for whatever reason, and in particular for losses and damages of any kind (indirect damages, loss of earnings, damage to reputation and so on). Under no circumstances does the warranty cover the costs of finding the defective part on the site or disassembling and reassembling the product in its environment.

12.6 If, given the nature of the products, the repair has to take place on site, the Subsidiary assumes the labour costs of the repair (except for waiting times and costs resulting from the non-availability of the products).

If in repairing the product, the Subsidiary has to use equipment owned by the customer, the Subsidiary’s liability for any deterioration, destruction or damage caused to the customer’s equipment can only be incurred in accordance with the provisions of article 13.

If in repairing the product, due to the incorporation of the product in a product belonging to the customer, the Subsidiary has to carry out work on equipment belonging to the customer, the Subsidiary’s liability for any deterioration, destruction or damage caused to the customer’s equipment can only be incurred in accordance with the provisions of article 13.

12.7 The Subsidiary rejects any liability for any equipment and/or components it has not delivered and, in particular, any liability for other equipment or components used by the customer in order to be integrated into a specific system. In particular, the Subsidiary’s liability cannot be incurred when the failure of one of its components or one of its products is caused by other neighbouring components or components with which it has been combined by the customer.

12.8 In order to be able to invoke this warranty, the customer must inform the Subsidiary of the alleged defects in the products as soon as they occur and provide all supporting evidence in this regard. The customer shall offer the Subsidiary every assistance for the purposes of examining such defects and repairing them.

XIII – Liability

13.1 In general, the Subsidiary’s liability can only be sought by the customer when the customer establishes a failure attributable to the Subsidiary, a loss and a direct and exclusive causal link between the failure and the loss concerned.

13.2 The Subsidiary cannot under any circumstances be held liable for any indirect and/or consequential loss, including in particular and not limited to loss of earnings, loss of data, loss of profit or loss of production.

13.3 In any event, whatever the cause, object and basis of the claim and at the express request of the customer providing proof of the loss actually sustained, the Subsidiary’s liability is strictly limited, per claim, to the lower of these two limits:

- two times the net amount of the sale;

- the loss actually sustained by the customer.

In any event, the Subsidiary's liability, per year, is limited to twenty per cent of the net amount of annual sales between the Subsidiary and the customer. Above this maximum amount, the customer and its insurers shall not make any claim against the Subsidiary and its insurers and shall hold the Subsidiary and its insurers harmless against third parties' claims

13.4 The Subsidiary's liability cannot under any circumstances be sought if the products fail to comply with standards and regulations that come into effect after the delivery of the products or if the customer fails to store or handle the products appropriately or uses the products under abnormal conditions.

13.5 The customer acknowledges the existence of commercial restrictions applied by the European Union to certain countries in relation to imports and/or exports. The customer therefore undertakes to comply with said restrictions and notably the requirement not to use, resell or adapt the Subsidiary's product for military purposes if said product is not intended for such.

XIV – Force Majeure

The obligations of the Subsidiary and the customer shall be suspended if an event beyond their control occurs, preventing or delaying the delivery of the products, contractually classed as force majeure.

The same will apply in particular for events impacting the Subsidiary or the customer or their suppliers and/or service providers, such as: lock-out, strike, war, embargo, fire, flood, equipment accident, scrapping of parts during manufacture, interruption or delay in transport or supplies of raw materials, energy or components, or any other event beyond the control of the Subsidiary or the customer or their suppliers and/or service providers.

This article does not apply to payment obligations.

XV – Suspension – Cancellation

If the customer fails to fulfil any of its obligations, and notably its payment obligation, and without prejudice to the provisions of article VI, the Subsidiary has the option to suspend current orders and/or deliveries and/or cancel agreements without prior notice.

XVI – General clauses

16.1 Should the Subsidiary fail to enforce any provision of the T&Cs at any time, this shall not be deemed a waiver of such provision at a later date.

16.2 If the customer is sent several versions of the T&Cs, the version in the language of the address of the head office of the Subsidiary concerned shall prevail.

16.3 If any provision of the T&Cs is found by a competent court to be invalid or unenforceable, this shall not affect the other provisions of the T&Cs which shall remain in full force and effect.

16.4 Unless there is a legal provision to the contrary, regardless of the kind of service carried out by the Subsidiary, actions for liability against the Subsidiary are limited to a period of one year from the delivery of the product.

16.5 In the event of late payment, the customer shall be liable for the payment of a default penalty calculated from the due date with the interest rate applied by the Central European Bank to its most recent refinancing transaction plus ten percentage points, and in any event a rate of at least 3 times the statutory rate applicable. The customer shall also be liable for the payment of a fixed penalty for collection costs in the sum of forty (40) Euros.

16.6 In the case of a subcontracting service, the provisions of Article L441-9 of the Commercial Code apply without any possible derogations.

XVII – Governing law – Disputes

The T&Cs and resulting agreements are governed by the applicable law of the location of the Subsidiary's head office.

Any dispute relating to the T&Cs and/or resulting agreements and/or commercial dealings, which cannot be settled amicably, shall be submitted exclusively to the Court of the address of the Subsidiary's head office, including for interim proceedings, actions against guarantor or in the event of multiple defendants.

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