

ICS – VESDA Technical Wholesale

TERMS AND CONDITIONS OF TRADE

1. Formation and Scope of Contract

1.1. In this document:

- a. unless specified otherwise, all terms have the meaning set out in the Order Acknowledgement; and
- b. Invoice means the invoice for the sale of goods or services provided to Distributor by ICS. Order Acknowledgement means the document marked 'Order Acknowledgement' and forwarded to Distributor by ICS upon receipt of the Order from Distributor.

1.2. Unless there is express written agreement to the contrary, the Contract is governed by the Terms and Conditions set out in the Order Acknowledgement and each of ICS and the Distributor are bound by the Terms and Conditions. Certain Terms and Conditions are repeated in this document. At all times, the Terms and Conditions set out in the Order Acknowledgement prevail, irrespective of any contrary terms printed on or accompanying the Distributor's documentation. To the extent that there are any inconsistencies between this document and the Order Acknowledgement, the Order Acknowledgement prevails.

2. Price

2.1. All Orders will be invoiced at the prices in effect at the time of delivery of the goods or provision of the services.

2.2. Value Added Tax

a. VAT inclusive amounts

For the purposes of the Terms and Conditions where the expression 'VAT inclusive' is used in relation to a price, an amount payable or other consideration to be provided for a supply under the Terms and Conditions, the amount or consideration will not be increased on account of any VAT payable on that supply.

b. Consideration is VAT exclusive

Any consideration to be paid or provided to ICS for a supply made by ICS under or in connection with the Terms and Conditions unless specifically described in the Terms and Conditions as 'VAT Inclusive', does not include an amount on account of VAT.

c. Gross up of consideration

Despite any other provision in the Terms and Conditions, if ICS makes a supply under or in connection with the Terms and Conditions on which VAT is imposed (not being a supply the consideration for which is specifically described in the Terms and Conditions as 'VAT inclusive'):

- i. the consideration payable or to be provided for that supply under the Terms and Conditions but for the application of this clause ('VAT exclusive consideration') is increased by, and the Distributor must also pay to ICS an amount equal to the VAT payable by ICS on that supply; and
- ii. the amount by which the VAT exclusive consideration is increased must be paid to ICS by the Distributor without set off, deduction or requirement for demand, at the same time as the VAT exclusive consideration is payable or to be provided.

d. Reimbursements

If a payment to a party under the Terms and Conditions is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

e. Distributor Warranty and Indemnity

The Distributor warrants that where VAT is imposed on a supply made by ICS under or in connection with the Terms and Conditions and the consideration for that supply was not

increased under this clause 2.2 as the parties mistakenly regarded: the supply as VAT-free, the Distributor will indemnify ICS for and in respect of the VAT (including any interest or penalty) imposed on or in respect of that supply.

3. Payment and default

- 3.1. Unless otherwise expressly agreed in writing, the purchase price shall be paid to ICS in full without deduction in the currency specified in the invoice strictly thirty (30) days from the date of the Invoice for the goods or services.
- 3.2. Where the purchase price is not paid in full on the due date ICS has the right to charge interest on the balance outstanding, calculated from the due date until the date of payment at a rate 8% higher than the rate of interest charged by ICS's bankers on ICS's overdraft from time to time. Such interest shall accrue from day to day on the amount of the purchase price remaining unpaid up to the date of payment (whether before or after any judgment) and shall be payable on demand.
- 3.3. The Distributor shall indemnify ICS against all costs and disbursements which ICS may incur in recovering any sums due to be paid by the Distributor to ICS under any Contract including but not limited to any debt recovery agency fees, court fees or legal fees.
- 3.4. ICS has the right to cancel the remainder of the contract or to suspend deliveries of goods or the provision of services if the Distributor does not strictly observe the terms of payment. ICS also has the right to sell or otherwise dispose of goods that are the subject of the contract and to apply the proceeds of any such sale to the overdue account.
- 3.5 Payment of the purchase price shall become immediately due if:
 - a. the Distributor makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
 - b. the Distributor, being an individual, commits an act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against or any part of the Distributor's property or assets;
 - c. the Distributor, being a company, makes any voluntary arrangement with its creditors, passes a resolution for its winding up (otherwise than for a solvent reconstruction or amalgamation) or enters into liquidation or has an application for winding up filed against it;
 - d. an administrator or a receiver is appointed over any part of the property or assets of the Distributor;
 - e. ICS reasonably apprehends that any of the events mentioned above is about to occur in relation to the Distributor, or
 - f. the Distributor experiences any analogous event having substantially similar effect to any of the events specified above.

4. Delivery Times

- 4.1. Subject to clause 4.2, ICS will use reasonable endeavours to achieve any delivery times stated by ICS.
- 4.2. Times stated by ICS for delivery are estimates only. ICS does not guarantee that the delivery of the goods or services will be within the delivery times stated by ICS and no liability shall attach to ICS in the event of delivery being delayed by any circumstances, including circumstances beyond ICS's control. In no circumstances shall delay amount to, or be deemed to be, a breach of the Contract and the Distributor shall not be entitled to treat the Contract as repudiated by reason of any delay in delivery.

5. Delivery and Risk

- 5.1. Unless expressly agreed otherwise by ICS, and subject to clauses 5.2 and 5.3, all goods sold to Distributor within Europe are delivered 'Ex Works' and the Distributor (or its agent) is responsible for transportation from ICS's premises and insurance from the time of delivery. Risk in such goods shall pass to the Distributor upon the sooner of the happening of the loading of the goods on the Distributor's carrier (or a carrier nominated by the Distributor) or the expiration of one month from the date upon which ICS notifies the Distributor that the goods are ready for delivery.
- 5.2. The Distributor is responsible for all local taxes and any customs or import duties payable for goods sold outside the United Kingdom. ICS may invoice the Distributor for the costs of freight and insurance of goods up to the time of delivery

6. Title to goods

- 6.1. Irrespective of the time when risk in the goods shall pass, passing of property in these goods shall be determined as follows:
- a. property in the goods shall remain with ICS until the Distributor has made payment in full to ICS of the purchase price and any other indebtedness of the Distributor to ICS;
 - b. pending payment in full of the purchase price, the Distributor shall arrange for storage of the goods only at the Distributor's place of business in such a manner that they are readily identifiable as ICS's property and they shall be marked accordingly. The goods shall be adequately insured against all insurable risks pending the passing of title and the Distributor shall produce the insurance policy and latest premium receipt for inspection at the request of ICS;
 - c. if the Distributor defaults in payment of the purchase price in accordance with the terms of the Contract, the goods shall be delivered up to ICS on demand and/or ICS and its employees or agents shall have the right to enter upon the Distributor's premises or any other premises where the goods are known to be stored, to repossess the goods and for that purpose the Distributor shall grant all reasonable rights;
 - d. if, prior to payment, the Distributor sells the goods to a third party and defaults in payment of purchase price, ICS shall be entitled to so much of the proceeds of such sales (which shall be kept separate and identifiable) as represent the purchase price or balance thereof remaining unpaid. The Distributor hereby assigns to ICS the right to receive payment from the third party for the goods.
- 6.2. The Distributor acknowledges that until payment of the purchase price is made in full, the Distributor holds the goods in a fiduciary capacity on behalf of ICS.

7. Product Warranty

- 7.1. ICS warrants that goods manufactured by Xtralis will be free from defects caused by manufacture for a period of 12 months from the date an invoice is issued by ICS. Should any fault occur within that period as the result of such ICS. ICS will make all necessary repairs. or at ICS's sole discretion, replace the goods at no charge to the Distributor except for delivery and duties charges as set out in clause 7.8.
- 7.2. To the fullest extent permitted by laws relevant to the sale and supply of goods by ICS to the Distributor, in the case of goods not manufactured by Xtralis. ICS's warranty in clause 7.1 shall be limited to the warranties implied by law and any further warranty contained in the manufacturer's warranty to the Distributor with the goods.
- 7.3. The warranty contained in clause 7.1 shall not apply in the following circumstances:
- a. in respect of loss or damage caused by the installation, configuration, commission or use of the goods other than strictly in accordance with the terms of use of the goods, including without limitation loss or damage caused as a result of a failure to service or maintain the goods in accordance with ICS's instructions, or caused by rough or negligent treatment of the goods;
 - b. in respect of loss or damage caused by an act of God or any other cause not within ICS's control or otherwise not related to the goods.
- 7.4. To the fullest extent permitted by laws relevant to the sale and supply of the goods or services by ICS to the Distributor, ICS's liability for breach of a condition or warranty implied by such laws, including any incidental or consequential loss which the Distributor may sustain or incur shall be limited to one of the following, at the sole discretion of ICS:
- a. replacement of the goods or supply of equivalent services;
 - b. repair of the goods or re-supply of the services;
 - c. payment of the cost of replacing the goods, acquiring equivalent goods or re-supply of the services; or
 - d. payment of the costs of having the goods repaired.
- 7.5. ICS shall not be liable (whether for breach of the Terms and Conditions, negligence or otherwise) for loss of profits or special, consequential or indirect loss or damage.
- 7.6. Save for the express conditions and warranties herein contained all other conditions and warranties (whether as to the quality, fitness for purpose or any other matter) expressed or implied by statute, the common law, equity, trade custom, usage or otherwise are hereby expressly excluded provided that

nothing in these Terms and Conditions shall exclude or limit the liability of any breach of a term or condition implied by law, the exclusion or limitation of which is not permitted by law.

7.7. Goods returned under warranty for repair or testing will incur a charge, to be fixed by ICS, if no fault is found.

7.8.

- a. The Distributor shall bear the cost of delivery and insurance of any goods returned to ICS under warranty and any customs or import duties payable on the return of such goods from ICS to Distributor after replacement or repair;
- b. ICS shall pay any customs or import duties payable on goods returned under warranty from Distributor to ICS; and
- c. Provided the warranty in clause 7.1 applies, ICS shall bear the costs of delivery and insurance of any repaired or replacement goods from ICS to the Distributor.

7.9. Where goods are returned under warranty or where the Distributor has advised ICS in writing that the goods are faulty but has not as yet returned the goods, ICS may, at its sole discretion and subject to clause 7.10, provide to the Distributor a replacement item with specifications that are not less than those of the goods returned or to be returned.

7.10. ICS shall be entitled to invoice the Distributor in respect of a replacement item provided to the Distributor in accordance with clause 7.9 at the full price of that replacement item if the goods to be returned by the Distributor are not received by ICS within 30 days of the despatch of the replacement item.

7.11. Notwithstanding the provisions of this clause 7 nothing contained in any written warranty or in the Terms and Conditions shall have the effect of restricting or excluding the liability of ICS in respect of death or personal injury resulting from the proven negligence of ICS or under the United Kingdom Consumer Protection Act 1987. In addition, nothing in the Terms and Conditions affects the liability of either party for fraudulent misrepresentation.

8. Claims

8.1. No claims will be recognised in respect of any mistake or shortage or over supply of goods, or shortcomings in performance of services, after seven (7) days from the delivery date.

8.2. Unless otherwise expressly agreed in writing ICS shall not accept any conditions providing for the payment by ICS of liquidated damages or other penalties for delayed delivery of goods or provision of information, for delayed construction or installation programs or for any other reason whatsoever.

9. Return of products

Goods are not supplied on a sale or return basis. At ICS's sole discretion, ICS may accept the return of goods supplied, subject to the following conditions:

- a. goods marked 'non returnable' are non returnable;
- b. goods must be returned to ICS or a nominated agent in good order and condition, be resaleable and be returned within seven days of the date of the delivery;
- c. before returning the goods the Distributor must first obtain a Returned Material Authority (RMA) number from ICS
- d. when returning goods the Distributor shall quote the RMA number and date;
- e. the Distributor shall pay freight charges to return the goods to the place of business of ICS;
- f. the Distributor shall pay a restocking fee of an amount determined by ICS at its sole discretion for handling; and subject to the provision of clause 9.0 of the Terms and Conditions the return of goods for credit will not be accepted except upon prior written agreement from ICS.