

## General Terms and Conditions of the INSYS Microelectronics GmbH

### §1 Validity

(1) All deliveries, services and quotations provided by Insys Microelectronics (in the following named "Insys") are effected solely on the basis of the General Terms and Conditions. The General Terms and Conditions are an integral part of all contracts entered into by Insys with any contracting party (in the following named "the customer") concerning any and all deliveries and services provided by Insys. They are valid for all future deliveries, services and quotations provided by Insys to the customer regardless of whether or not any other terms and conditions were agreed upon.

(2) The terms and conditions of the customer or other third parties are not applicable even if Insys does not contradict their validity in individual cases. Even if Insys refers to a letter that includes the terms and conditions of the customer or a third party, it does not signify by any means the acceptance of such.

(3) If the ordered equipment includes any software that was not developed or optimized by Insys (in the following named "third party software") then the license criteria, which Insys will supply on request if they are not already included in the delivery of the software, of the customer or the third party software go into effect. For legal ties between Insys and the customer concerning third party software, the following terms and conditions apply.

### §2 Quotation and Contract Conclusion

(1) All Insys quotations are subject to change and non-binding unless expressly identified as binding or unless they contain a specific term of acceptance. Orders or contracts can be accepted by Insys up to 14 days after receipt.

(2) Definitive for the legal ties between Insys and the customer is the signed contract in conjunction with the General Terms and Conditions. These reflect completely the arrangements made between the parties of the contract concerning the object of agreement. Oral agreements made by Insys before the conclusion of the contract are not legally binding and are replaced by the written contract provided that they are not expressly defined as a continuing component of the contract.

(3) Amendments and modifications to the agreements made, including the General Terms and Conditions, must be in writing in order to be valid. With the exception of the executive director or the authorized signatory, no Insys employees are authorized to make oral agreements differing from the written contract. In keeping with the written form, only amendments and modifications made per telefax are acceptable; other forms of telecommunication, especially email, are unacceptable.

(4) All descriptions of the equipment supplied by Insys, (weight, measurements, serviceability, capacity, tolerances, and technical data) as well as depictions thereof, (i.e. drawings, illustrations) are only approximations unless exact conformance is specified within the contract. The descriptions and depictions are not guaranteed characteristics but designations or features of the delivery or service. Deviations considered trade customary or deviations that are made to comply with legal regulations or that constitute technical improvements, as well as, the substitution of equivalent components is acceptable, as long as the intended function provided for in the contract is not compromised.

(5) Insys reserves the property rights or copyrights on all quotations and estimates of cost as well as any drawings, depictions, calculations, brochures, catalogs, models, tools and any other documents or resources provided by Insys to the customer. It is prohibited for the customer to make available any of the above-mentioned materials whether in original or in summary of content to third parties or otherwise replicate, disclose or use such materials without the express permission of Insys. Upon request of Insys, the customer is required to return completely any such above-mentioned materials and to destroy all copies of documentation if they are no longer needed in the regular course of business or if a contract does not come to conclusion.

### §3 Prices and Payment

(1) The prices are valid for the scope of service and delivery that are defined in the order confirmation. Additional or special orders will be invoiced separately. The prices are in Euros or in the currency valid at the time of the transaction in Germany and ex works, excluding packaging and VAT. For export deliveries,

there will be additional charges for customs, taxes and handling.

(2) If the prices agreed upon form the basis of the Insys list prices and the delivery is planned for more than four months after the conclusion of the contract, then the prices from the most current Insys pricelist will be considered valid (with the arranged discounts in place).

(3) Invoices are to be paid in full within 20 days of the invoice date. All prices are strictly net unless otherwise agreed upon in writing. The date of the receipt of payment is the date the payment is actually credited to the Insys account. Invoices paid by check are not considered paid until they have cleared. If the customer does not pay by the payment due date, the outstanding amount will be charged 5% interest p.a. from the payment due date. If the delay in payment continues, Insys reserves the right to increase the interest percentage and claim compensation for damages.

(4) The imposition of counterclaims by the customer or withholding of payment because of such claims is only admissible when the counterclaims are indisputable or legally binding.

(5) Insys has the right to insist on prepayment for outstanding deliveries or services or to insist on some form of security when after the conclusion of the contract, circumstances emerge that could compromise the creditworthiness of the customer; and thus, render the customer incapable of settling his open accounts with Insys (including other individual orders that are valid under the same framework agreement).

#### **§4 Delivery and Delivery Time**

(1) All deliveries are ex works.

(2) All proposals for deadlines and time limits made by Insys for deliveries and services are only approximations unless a fixed date is agreed upon or stipulated in the contract. If the consignment is agreed upon, then the delivery deadline or delivery dates refer to the date of transfer to the forwarder or other third party assigned with the delivery.

(3) If the customer is delayed in complying with its contractual commitments, Insys can - without prejudice to any rights – insist upon an extension or adjustment of the delivery date of

equipment or services to include the delay caused by the customer.

(4) Insys is not liable in any way for the impossibility or delay of delivery due to force majeure or other occurrences that were unforeseeable at the time of the conclusion of the contract for which Insys cannot be held responsible (i.e. company disruptions of any kind, difficulty in material or energy procurement, transportation delays, strikes, legal lockout, shortage of manpower, energy or raw materials, difficulty in the procurement of the necessary official permits, governmental measures; or the absence of, incorrect or delayed delivery by suppliers). If such occurrences cause the delivery of the equipment or service to be considerably delayed or impossible to provide and the situation will not be rectified in the near future, then Insys has the right to withdraw from the contract. However, in the case of a temporary delay, the delivery dates or service deadlines will be extended or postponed for the same amount of time as the delay in addition to an adequate start-up period. If the customer cannot be expected to accept delivery due to circumstances caused by the delay, then he may withdraw from the contract by means of a prompt letter of explanation.

(5) Insys only has the right to partial deliveries if

- the customer is able to use the contents of the partial delivery as intended in the contractual framework,
- the delivery of the remaining equipment is guaranteed,
- the customer is not caused any significant additional work or expenses (unless Insys is prepared to assume the costs).

(6) If Insys should fall behind in a delivery or service or if providing such should prove impossible, regardless of the reason, Insys will be liable for compensation only under §9 of these general terms and conditions.

(7) If the product ordered is a prototype or a pre-production sample (in the following “non-serial product”), then it has not been released for serial production, fully analyzed or thoroughly tested. If the customer asks specifically for non-serial products, Insys will provide such only under the condition that the customer agrees to consider himself fully liable for all risks and dangers involved with the use of non-serial products. The customer must take precautionary measures to ensure that non-serial

products are not used in the running production but only in a closed, protected test environment. Insys can only be held liable for damages caused by deliberate intention or gross negligence or when health is harmed or violations of the contractual obligations have taken place. The same is true for cases in which Insys provides non-serial software for test purposes that has not been released yet.

(8) For customer orders made for delivery on call, Insys has the right to ship and invoice any orders, even unrequested, that have not been called for within twelve months of the order date. Alternatively, Insys can insist on the return of any volume discounts that were based on earlier orders for delivery on call.

### **§5 Assembly and Installation**

The following stipulations apply for the assembly and installation unless otherwise determined in a written agreement:

- (1) The customer must provide punctually and at his own costs the following:
  - (a) The utensils and materials necessary for the assembly and commissioning,
  - (b) On-site power including all connections and lighting.
- (2) Before the beginning of the assembly work, the customer must inform Insys of all hidden cables and pipelines for electricity, gas or similar.
- (3) All supplies and materials necessary for the assembly or installation must be on site before work begins and all pre-assembled components must be so advanced in their assembly that the main assembly or installation can begin on time and afterwards continue without interruption. All access roads and the assembly or installation areas must be level and cleared.
- (4) If the assembly, installation or commissioning are delayed for reasons that Insys cannot be held responsible for, then the customer will be liable for any costs involving idle time or additional trips to the site by Insys or other installation personnel.
- (5) The customer must inform Insys of the working hours of the assembly personnel and must promptly certify the completion of the assembly, installation or commissioning.

### **§6 Place of fulfillment, Shipping, Packaging, Transfer of Risk, Acceptance**

- (1) Unless otherwise specified, the place of fulfillment for all commitments in the contractual relationship is Regensburg. Should Insys be responsible for the installation, then the place of fulfillment is the address where the installation is to take place.
- (2) The shipping and packaging are subject to the conscientious discretion of Insys.
- (3) The transfer of risk occurs at the latest with the delivery of the article of sale (where the beginning of the loading process is relevant) to the shipper or forwarding agent or whichever third party has been contracted with the delivery to the customer. This also holds true for partial deliveries or when Insys is contractually responsible for other services (i.e. shipping and installation). If the delivery is delayed for reasons caused by the customer, then the transfer of risk begins on the day the article of sale is ready to be shipped and the customer has been notified by Insys of the delivery status.
- (4) The customer is responsible for warehouse charges after the transfer of risk. If the storage is provided by Insys, then the costs for this service will be 0,25% of the invoice charge per week for the articles stored. Insys reserves the right to the claim and proof of further or lower warehouse costs.
- (5) Insys will only insure the shipment against theft, breakage, and transport, fire or water damage on the specific request of and at the cost of the customer.
- (6) Insofar as the inspection and approval of the article of sale is concerned, the article of sale is considered accepted when
  - the delivery and the installation, if installation was ordered, are completed.
  - Insys notifies the customer of notional acceptance under article §6(6) of the General Terms and Conditions and requests the acceptance of the delivery,
  - twelve business days have passed since the delivery or installation or the customer has already begun using the articles of sale (i.e. the equipment has been put into operation) and in this case, if six business days have passed since the delivery or installation, or

- the customer fails to give its acceptance within the above-mentioned time period for reasons other than a defect indicated by Insys which considerably impairs the use of the article of sale or even makes the use impossible.

### **§7 Warranty, Material Defects**

(1) The warranty period is valid for one year from the date of delivery or if an inspection and approval is necessary, then from the date of the approval.

(2) The delivered articles must be inspected promptly after the delivery to the customer or the customer's third party representatives. They are considered approved if Insys does not receive a written notification of defects concerning obvious defects or other defects that are noticeable in a prompt and thorough examination within seven business days after delivery or within seven business days after the discovery of a defect or any earlier point in time in which the defect, without close examination, became noticeable for the customer through normal use of the product. At the request of Insys, the defective product is to be returned freight paid. If the complaint is legitimate, then the least expensive shipping rate will be reimbursed to the customer. This does not hold true if the article of sale is located at a place other than the original place of use.

(3) For defects in materials in the delivered products, Insys is required to and has the right to either repair or replace the product within a reasonable period of time. If Insys is unable to repair or replace the product in question within a reasonable period of time due to impossibility, unreasonability or refusal, then the customer has the right to withdraw from the contract or reduce the price stipulated in the contract accordingly.

(4) If Insys cannot repair defects in parts from other manufacturers due to licence rights or other reasons, then Insys will either make its own warranty claims to the manufacturer or supplier for the customer or cede these rights to the customer. Warranty claims against Insys for such defects are valid under other conditions and provisions of these General Terms and Conditions only when the legal enforcement of the claims against the manufacturer or supplier was unsuccessful or for example, in the event of bankruptcy, futile. During the duration of the legal proceedings, the expiry of the

period of limitation for the warranty claims of the customer against Insys shall be suspended.

(5) The warranty is not applicable if the customer or any third party modifies the article of sale without the express consent of Insys, whereby making the repair of such impossible or unreasonably difficult. In any case, the customer is responsible for any additional costs incurred as a result of any modifications made on his part.

(6) If in a particular case, the customer agrees upon the delivery of used articles of sale then this is at the exclusion of any warranty for material defects.

(7) Claims for customer damages because of a material defects are prohibited. This does not hold true for fraudulent concealment of the material defect, negligence in upholding a guarantee of quality, fatal injury, bodily harm, hazard to health or liberty, premeditated or grossly negligent violation of obligations by Insys or breach of integral parts of the contract. A modification in the burden of proof to the disadvantage of the customer is in no way associated with the above-mentioned provisions. Further rights or rights other than those customer rights regulated in §7 concerning material defects are excluded.

(8) Warranty extension: A warranty extension can only be purchased together with an INSYS device at the same time. A subsequent warranty extension is excluded. The warranty extension is only effective for the device denominated by the serial number and mentioned in the sales confirmation and associated invoice issued by INSYS and cannot be transferred to other devices. The warranty extension is associated to the warranty device and all claims according to the warranty extension are exclusively entitled to the legitimate owner of the warranty device. The maximum possible warranty extension is a total of 4 years.

### **§8 Industrial Property Rights and Intellectual Property Rights; Defective Title**

(1) Rights of the customer to the software:  
 (a) Insys grants the customer unexclusively and for an unlimited time the right to use the

software products in the object code (standard and system software) on the hardware designated in the specifications. The customer does not have the right to reconstruct the source code or to modify or reproduce software products and their corresponding documentation. If not otherwise specified on the data carrier, the customer is allowed to make up to two backup files.

(b) In the case of custom software (user software), the customer has the right to make the necessary backup files of and use the software in the equipment described in the specifications for an unlimited time period. Insys has the right to use and salvage the custom software, even in modified form.

(2) Responsibilities of the customer with regard to the software:

(a) The software and documentation contain trade secrets that belong to Insys and their licensors; they are protected by copyright. The customer is required to respect this and, for example, not delete any copyright notations.

(b) The customer will not give access of the software and documentation to third parties without the explicit written consent of Insys.

(c) The customer is obligated not to make any claims resulting from the use of the software against Insys licensors.

(3) Insys owns the exclusive and unlimited rights of exploitation for all the hardware and software standards contained in the scope of supply and services (i.e. CAD symbols, standard logic arrays) that are developed by the Insys engineering department.

(4) If a third party should make legitimate claims against the customer for any violations of industrial property rights or copyrights (following: property rights) for products or services delivered by Insys according to the contractual stipulations, then Insys is liable to the customer within the time period stipulated under §7(1) as follows:

(a) Insys will at its own choice and at its own costs either obtain a right of use, make modifications so that the property rights are not violated or exchange the product or service. If these possibilities are not available at reasonable terms and conditions, then the customer is entitled to exercise its right of cancellation of the contract or its right to the reduction of the prices stipulated in the contract. The responsibility of Insys to pay damages is regulated under §10.

(b) The above-mentioned responsibilities of Insys only exist if the customer informs Insys promptly in writing of any claims made by third parties, a violation is not recognized and Insys reserves the right to concrete defense measures and settlement negotiations. If the customer insists on the cessation of the use of the products delivered because of the mitigation of damages or other important reasons, he is obligated to inform third parties that this is not associated with an acknowledgement of a violation of property rights.

(5) Claims by the customer are unacceptable if the customer is responsible for the violation of property rights.

(6) Claims by the customer are also unacceptable if the violation of property rights was caused by the customer's particular specifications, an application which was unforeseeable by Insys or the fact that the products were modified by the customer or used in conjunction with products that were not supplied by Insys.

(7) In cases of violations of property rights or other deficiencies in title, the regulations in article §7 apply accordingly.

(8) Further or other customer claims caused by deficiency in title made against Insys and its vicarious agents that cannot be regulated under §8 are invalid.

### **§9 Impossibility; Adaptation of Contract**

(1) If the delivery is impossible, the customer has the right to claim damages unless Insys cannot be held responsible for the impossibility. However, the customer's damage claim is limited to 10% of the value of the particular part of the delivery that because of impossibility cannot be put into useful operation. This limitation is invalid with regard to cases of mandatory liability when deliberate intent, gross negligence, fatal injury, bodily harm, hazard to health or breach of fundamental parts of the contract are involved. A change in the burden of proof to the disadvantage of the customer is not associated with this limitation. The right of the customer to cancel the contract remains unaffected.

(2) If force majeure should significantly change the economic relevance or the content of the

delivery or cause Insys to make substantial changes in its operations, then the contract will be modified appropriately while taking into account the principles of equity and good faith. If the possible solutions prove to be uneconomical, then both the customer and Insys have the right to withdraw from the contract. Should either party decide to exercise their right to withdraw from the contract, then that party must immediately inform the other party as soon as they become aware of the consequences of the occurrence even if a reasonable extension of the delivery time has been agreed upon. Damage claims by the customer are invalid. These regulations are not applicable with regard to cases of mandatory liability when deliberate intent, gross negligence, fatal injury, bodily harm, hazard to health or breach of fundamental parts of the contract are involved. A change in the burden of proof to the disadvantage of the customer is not associated with the above-mentioned regulations.

#### **§10 Damage Claims; Statute of Limitations**

(1) Customer damage claims, regardless of the reason, but particularly in the case of violation of contractual obligations or unlawful acts are invalid.

(2) This does not apply in cases of mandatory liability, for example, within the framework of the Product Liability Act, or when deliberate intent, gross negligence, fatal injury, bodily harm, hazard to health or breach of fundamental parts of the contract are involved. A change in the burden of proof to the disadvantage of the customer is not associated with the above-mentioned regulations. Damage claims for breach of contract are limited to typical, foreseeable damages insofar as deliberate intent or gross negligence are not involved or unless liability for fatal injury, bodily harm or hazard to health is involved. A change in the burden of proof to the disadvantage of the customer is not associated with the above-mentioned regulations.

(3) If the customer should be entitled to damage claims, these expire at the end of the period of limitations stipulated in §7(1). The same is true for customer damage claims related to measures implemented to prevent claims (i.e. product recall). The legal statute of limitations applies for damage claims that fall under the Product Liability Act.

#### **§11 Retention of Title**

(1) The following agreed upon retention of title serves as a security for all current and future outstanding invoices from Insys to the customer that result from the supply relationship between the contracting parties (including any balance demands related to the limited current account of the supply relationship).

(2) The merchandise delivered by Insys remains its property until all outstanding invoices have been paid in full. Hereafter, the merchandise, as well as, the retention of title merchandise will be named retained goods.

(3) The customer stores delivered retained goods free of charge for Insys.

(4) The customer has the right to sell or use the retained goods in the normal course of business until an enforcement event occurs (i.e. default of payment). (Article 9). Use of the retained goods as securities or collateral is prohibited.

(5) Should the retained goods be further processed by the customer, then an agreement will be made so that the processing is done in the name of and for the account of Insys as manufacturer; and thus, Insys immediately gains ownership of the newly created product. However, if the further processing contains components from other manufacturers or the value of the newly created product is higher than that of the retained goods, then Insys acquires joint ownership or ownership in pro rata shares, of the newly created product. The percentage of the acquired ownership is relative to the value of the retained goods in comparison to the newly created product. If no acquisition of property by Insys is to take place, then the customer assigns its future property or, as mentioned above, the pro rata share of joint ownership of the newly created product as a security to Insys. If the retained goods are combined with other components to make a single product or combined in such a way that they are inseparable and one of the components is considered the main element, then Insys confers a pro rata share of joint ownership of the single product to the customer as in the relationship described in §11(5) sentence 1, insofar as the main element of the single product belongs to Insys.

(6) The customer hereby assigns to Insys by way of security, any and all future claims – with the joint ownership by Insys of the newly created products, the pro rata share of the joint ownership – in the case of the resale of the retained goods. The same holds true for any other claims that result from the retained goods, i.e. insurance claims or tort claims for loss or destruction. Insys grants the customer revocable authorization to collect payments/receivables assigned to Insys, in his own name on the behalf of Insys. This collection authorization can only be rescinded in the case of an enforcement event (i.e. default of payment).

(7) Should any third parties attempt to seize the retained goods, especially through a levy of an execution, then the customer must immediately identify the property of Insys as such, as well as, immediately inform Insys of the levy of execution, so that property rights can be enforced. If the third party cannot reimburse Insys for any court costs or costs incurred out of court related to the levy of execution, then the customer is liable for these costs.

(8) Insys shall release any retained goods and, in its sole discretion, any items and/or receivables replacing it upon according request, in the event that the value thereof shall exceed the collateralized claims by more than 50%.

(9) Should Insys withdraw from the contract because of the infringement of the contract on the part of the customer – especially through default of payment – (enforcement event), then Insys has the right to reclaim the retained goods.

## **§12 Final Provisions**

(1) The place of jurisdiction for all disputes resulting from the business relationship between Insys and the customer is at the sole discretion of Insys and will be either Regensburg or the customer's place of business. Regensburg is the exclusive place of jurisdiction for any and all claims filed against Insys. Any binding legal provisions concerning the exclusive place of jurisdiction shall remain unaffected by this regulation.

(2) All relations between Insys and the customer are governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the Inter-

national Sale of Goods from 11. April 1980 (CISG) does not apply.

(3) Should the contract or these General Terms and Conditions contain any escape clauses, then the regulations that would have been agreed upon with respect to the economic goals of the contract and the scope of these General Terms and Conditions (if the escape clauses had been recognized in advance) shall apply and be legally binding.

### **Notice:**

The customer takes note and approves that Insys will store the data from the contract relation under article §28 German Data Protection Act for the purpose of data handling and reserves the right to convey the data to third parties (i.e. to insurers) insofar as is necessary for the fulfillment of the contract.