

## **ITRON GENERAL TERMS AND CONDITIONS OF SALE**

### **I. PREAMBLE**

**1.1** – The present general terms and conditions of sale (the “General terms and Conditions of Sale” or the “GTC”) govern all sales by ITRON, unless otherwise agreed in writing. Any different or additional terms are hereby expressly excluded except if specifically agreed to in writing by a duly authorised representative of ITRON prior to the conclusion of any contract.

**1.2** – An issued purchase order constitutes an acceptance by the Purchaser of the General Terms and Conditions of Sale without any reservations and a waiver by the Purchaser of its own general conditions of purchase contained or referred to in the Purchaser's order or correspondence, or in any other commercial documentation irrespective of when these conditions are received by ITRON.

### **II. AGREEMENT BETWEEN THE PARTIES**

**2.1** – Unless otherwise agreed in writing, offers made by ITRON remain open for acceptance for a period of one (1) month from their date of issue. After expiry of this period such offers can be extended by ITRON at its own discretion provided that any such offer extension is made in writing.

**2.2** – No orders or commitments of whatever nature will be valid unless confirmed in writing by a duly authorised representative of ITRON.

**2.3** – The contract shall only be binding if and when the Purchaser has received written acknowledgement of the order from ITRON. Notwithstanding that an offer or quotation has already been given by ITRON, this requirement applies to both the initial purchase order and to any subsequent orders or amendments thereto.

**2.4** – Once accepted in writing, no order may be amended or modified without ITRON's prior written agreement and subject to the Purchaser bearing all costs, if any, that may arise therefrom.

**2.5** – In case of discrepancy between the relevant purchase order and its acknowledgement, the written acknowledgement of the purchase order by ITRON shall prevail, unless the Purchaser refuses it in writing within two (2) calendar weeks following the date of issue of the said acknowledgement.

**2.6** – Offers, estimates and acknowledgements of orders from ITRON are strictly limited to the products/software expressly mentioned therein.

### **III. FIRMWARE**

When applicable, firmware that is imbedded into ITRON's product shall be provided on a perpetual, non-exclusive, non-transferable, irrevocable license to use with the product. License of the firmware imbedded into third party products shall be between the Purchaser and the third party.

### **IV. TRADE TERMS**

**4.1** – Unless otherwise stated in the acknowledgement of purchase order by ITRON, all sales are concluded "Ex-Works".

**4.2** – The term "Ex-Works" or any other terms of sale or shipping terms provided for in the contract shall be interpreted according to the Incoterms published by the International Chamber of Commerce, 2000.

**4.3** – If ITRON, at the Purchaser's request, carries out some of the tasks which are otherwise the responsibility of the Purchaser in accordance with the contractual Incoterm, any such tasks shall be deemed performed on behalf of and for the account of the Purchaser. Such performance shall not modify the allocation of risks and responsibilities otherwise applicable in accordance with the contract and the contractual Incoterm. All costs arising out of or in connection with the above shall be borne exclusively by the Purchaser who shall reimburse such costs to ITRON upon receipt of the relevant invoice.

### **V. DOCUMENTATION**

**5.1** – The “Documentation” shall mean all drawings, designs, specifications, plans and particulars of weights, size and dimensions submitted by ITRON or contained in the technical or commercial documentation of ITRON.

**5.2** – Documentation supplied to the Purchaser shall remain the exclusive property of ITRON and shall not be disclosed to third parties or copied without the prior written approval of ITRON and shall not be used for any purpose other than the performance of the contract.

### **VI. DELIVERY - TRANSFER OF RISKS - TITLE**

**6.1** – The products shall be deemed to be delivered and the title and risk of loss or damage passed to the Purchaser once the products are placed at the Purchaser's disposal in accordance with the contractual Incoterm. No right of ownership in the software, its documentation and the intellectual property rights related thereto shall be transferred or assigned to the Purchaser.

**6.2** – Products delivered in conformity with the purchase order accepted by ITRON shall not be returned or exchanged.

**6.3** – ITRON reserves the right to deliver products in one or more installments with corresponding partial invoices; for payment purposes each installment shall be treated as a separate contract, unless ITRON and the Purchaser expressly agree in writing otherwise.

### **VII. DELIVERY TIME**

**7.1** – Except where otherwise agreed in writing by the ITRON and the Purchaser, any delivery period quoted by ITRON is a best estimate only and ITRON shall not be liable to the Purchaser for any failure to deliver on a particular date.

**7.2** – Unless otherwise provided in a delivery schedule agreed upon in writing by ITRON and Purchaser, calculation of the delivery time starts from the latest of the following dates: (i) receipt by ITRON of all information necessary to execute the order or (ii) receipt of the down-payment (if applicable), or (iii) written confirmation of the opening of an irrevocable letter of credit confirmed by a bank approved by ITRON in ITRON's country, and (iv) receipt of the import license as well as any and all other documents, permits, authorisations or licenses necessary for the export of the products. Delivery dates quoted do not take into account the closing of factories for the national and local holidays whether by law or custom and any delay caused by the Purchaser in case of late removal

of the products which shall be added to the delivery time. The quoted delivery dates do not take into account closing of factories for the national and local holidays whether by law or custom and any delay caused by the Purchaser in case of late removal of the products which shall be extended the delivery time accordingly.

**7.3** – Where no delivery time is stated in the contract, ITRON undertakes to deliver the products according to its production capabilities.

**7.4** –In case of delay in the delivery, the Purchaser shall not be able to cancel the order or claim any indemnity including but not limited to liquidated damages unless otherwise agreed in writing by a duly authorised representative of ITRON and subject to the aggregate compensation due to the Purchaser for delay which shall not exceed 5% of the total purchase price of the products not delivered in accordance with the agreed upon schedule.

#### **VIII. ACCEPTANCE TESTING**

**8.1** – Products sold by ITRON are tested in its factories in accordance with its standard procedures and shall be deemed conforming when they have passed such factory acceptance tests.

**8.2** – If Itron and the Purchase agree on a specific acceptance tests, such tests shall be carried out in accordance with the agreed upon procedure at the ITRON factory at the Purchaser's expense within fifteen (15) calendar days of the issue by ITRON of a written notice requesting the Purchaser to attend the tests. All acceptance tests shall be followed by a written report signed by both parties.

**8.3** – If the Purchaser fails to attend the tests at the time and place indicated in the notice or if the tests are being unduly delayed by the Purchaser, ITRON shall be entitled to proceed with the testing procedures and the tests shall be deemed to have been made in the presence of the Purchaser who shall not be able to contest the results of such tests at a later stage.

#### **IX. LATE REMOVAL**

**9.1** – If the Purchaser fails to take delivery at the place and on the date stated in the applicable purchase order and order acknowledgment, the Purchaser shall nevertheless be required to make all payments due on the dates specified in the contract and the products and the software shall be stored by ITRON at a place of its choice at the Purchaser's sole risk and expense.

**9.2** – If, one (1) month after the delivery date specified in the contract and eight (8) calendar days following the date of issue of a registered letter formally requesting the Purchaser to take delivery of the products in accordance with the present article, the latter has not done so, ITRON reserves the right to terminate the contract as far as the said products and software are concerned without having to request a court order for such termination. All sums due by the Purchaser for the products already delivered shall become immediately payable and ITRON shall be entitled to claim full compensation for the damages suffered in relation thereto.

#### **X. WARRANTY**

##### **(I) PRODUCT WARRANTY:**

**10.1** – Subject to Clause 10.2 below, ITRON warrants to the Purchaser that the products manufactured and delivered by ITRON (the “ITRON Products”) will be free from defects in materials and workmanship and will conform substantially to the applicable ITRON specifications as stated in the Documentation for a period of one (1) year from the date of shipment. ITRON's sole obligation and the Purchaser's exclusive remedy in connection with the breach of warranty provided under this Section X shall be for ITRON, at its own discretion, to repair or replace non-conforming ITRON Products after Purchaser has returned non-conforming ITRON Products properly packaged and prepaid to a repair facility designated by ITRON. If ITRON, in its sole discretion, determines that it is unable to repair or replace such non-conforming ITRON Products, Itron will refund to Purchaser the amount paid for such ITRON Products or another amount as may be specified in writing in a separate agreement between ITRON and the Purchaser. ITRON Products repaired or replaced pursuant to this Section will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. Purchaser will pay the cost of returning non-conforming ITRON Products to the place of repair designated by ITRON and ITRON will pay the cost of delivering repaired or replacement ITRON Products to Purchaser.

**10.2** – The warranty defined in Clause 10.1 above applies only as long as ITRON Products are used for their intended purpose and in the intended environments as set forth in the Documentation. The warranty provided herein does not cover damage or non-performance due to any external causes, including accidents, acts of vandalism, abuse, misuse, inadequate maintenance, unknown or unforeseen electromagnetic disturbances on the network, problems with electrical power, or with the quality of the water, the energy or the network, acts of God; service (including installation or de-installation) not performed or authorized by ITRON; usage not in accordance with product instructions or in a configuration not approved by ITRON; normal wear and tear; and problems caused by use of parts and components not supplied by ITRON. The warranty provided herein shall be void if the ITRON Products are modified in a way not authorized in writing by ITRON. The above warranty does not cover any third party products provided by ITRON (“Third Party Products”). ITRON will make commercially reasonable efforts to provide the Purchaser warranties for such equipment on a “pass through” basis if authorized by the agreement between ITRON and the third party vendor.

##### **(II) WARRANTY DISCLAIMER.**

**10.3** EXCEPT AS EXPRESSLY SET FORTH IN CLAUSE 10, TO THE MAXIMUM EXTENT PERMITTED BY LAW ITRON DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, CONDITIONS OR REPRESENTATIONS INCLUDING, WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND AGAINST INFRINGEMENT. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED UNDER THE APPLICABLE LAW, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD.

#### **XI. LIABILITY**

**11.1** – TO THE MAXIMUM EXTENT PERMITTED BY LAW, ITRON SHALL NOT BE LIABLE, WHETHER IN CONTRACT, NEGLIGENCE, TORT, OR ON ANY OTHER BASIS, (I) FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, (II) FOR LOSS OF ACTUAL OR ANTICIPATED PROFITS; (III) LOSS OF USE; (IV) BUSINESS INTERRUPTION; (V) LOSS OF, DAMAGE TO, OR CORRUPTION OF DATA; (VI)

**LOSS OF OPPORTUNITY; (VII) LOSS OF GOODWILL; (VIII) LOSS OF REPUTATION IN CONNECTION WITH OR ARISING OUT OF THE USE OR RESALE OF THE PRODUCTS AND/OR RELATED DOCUMENTATION. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF ITRON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**11.2 – SUBJECT TO CLAUSE 11.1, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ITRON FOR DAMAGES SHALL NOT IN ANY EVENT EXCEED THE AMOUNT PAID BY PURCHASER TO ITRON FOR THE DELIVERED GOODS UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING BY ITRON AND PURCHASER.**

**11.3- Notwithstanding Clauses 11.1 and 11.2, nothing in this General Terms and Conditions of Sale shall exclude or limit Itron's liability for (i) tort of deceit, (ii) death or personal injury caused by its breach of duty, (iii) Itron's liability under Clause 15.1 (infringement indemnity), or (iv) any other liability which cannot be excluded or limited by applicable law..**

**11.4 ITRON SHALL NOT BE LIABLE FOR ANY CLAIM MADE THE SUBJECT OF A LEGAL PROCEEDING MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION ASSERTED IN SUCH CLAIM AROSE.**

**11.5 ITRON'S PRICING REFLECTS THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.**

## **XII. PRICES**

**12.1 –** Unless otherwise agreed in writing, the prices specified in ITRON's offer or order acknowledgement apply to products and software delivered Ex-Works but excluding packing and are exclusive of VAT and any other tax or duties or other costs such as installation or commissioning which shall be added to the price.

**12.2 –** ITRON reserves the right to revise such prices up to the agreed date of delivery in accordance with any escalation clause defined in the sales contract if applicable.

**12.3 –** An invoice will be issued and sent to the Purchaser for each delivery.

## **XIII. PAYMENT**

**13.1 –** Interest shall be payable on overdue accounts at the rate of five per cent (5%) over EURIBOR rate to run from the due date for payment of the accounts until receipt by ITRON of the full amount.

In addition and without prejudice to ITRON' remedies at law and under the contract or otherwise, in case of late payment, ITRON shall be entitled to i) suspend performance of its obligations under the contract until full payment has been received, or ii) terminate the contract without having to request a court order for such termination in case the Purchaser fails to proceed with payment eight (8) calendar days after the date of the formal notice sent by ITRON to the Purchaser requesting it to do so.

**13.2 –** In case of late payment, ITRON reserves the right for any outstanding order and irrespective of the payment terms contained therein to require full payment of the price prior to delivery or suspend or terminate any outstanding order.

**13.3 –** Payment of invoices shall be made in full without any deduction or set off within thirty (30) days of the date of invoice.

## **XIV. LOCAL TAXES - PAYMENT AND EXEMPTION**

In order to benefit from any tax-free sales regime at the time of invoicing, the Purchaser shall, when placing the order, provide ITRON with the relevant export documents. Payment of ITRON' invoices when due including of any relevant taxes cannot be deferred due to the late dispatch by the Purchaser of such documents, any reimbursement of exonerated taxes being only possible after receipt of such documents by ITRON.

## **XV. INTELLECTUAL PROPERTY RIGHTS**

**15.1 –** ITRON shall defend the Purchaser from and against any claim that the actual use of the products provided by ITRON directly infringe the intellectual property rights of any third party in the Purchaser's country or, at its discretion settle the same, provided that: (i) ITRON shall have been promptly notified in writing of the suit and of any claim preceding the suit and that, (ii) ITRON shall have the right to assume sole authority to conduct the defense or settlement of such claim or any negotiations related thereto at ITRON's expense and that, (iii) the Purchaser shall provide ITRON with all reasonable information and assistance requested by ITRON in connection with such claim or suit and that, (iv) the Purchaser shall have used the products strictly in accordance with the terms and conditions of the contract and, if any, with ITRON's instructions.

**15.2 –** The indemnity given above is expressly limited to any damages awarded to a third party in a court of final judgment or to the amount of money, settlement or compromise agreed upon by ITRON.

**15.3 –** In case the use of the products is enjoined as a result of such claim, ITRON may at its option either: (i) replace the infringing products by non infringing products with functionalities similar to those of the infringing products or, (ii) procure a license to the Purchaser to use the products at reasonable conditions or, (iii) refund to the Purchaser the purchase price of the products subject to ten (10) years straight line amortization.

**15.4 –** The foregoing states the entire liability of ITRON with regard to the infringement of any third party intellectual property rights by the products.

## **XVI. FORCE MAJEURE**

**16.1 –** In case of an event of force majeure herein defined as any event beyond the control of either party including but not limited to Act of God, war, riot, labour dispute, accident, breakdown of plant or machinery, shortage of transportation, shortage of raw materials, fire, lack of supply impeding the fulfilment of one of the parties' obligations under the contract, that party shall be excused from the performance of such obligations for so long as the circumstances of prevention or delay may continue. To benefit from this extension, the party wishing to invoke one of the events hereabove referred to must immediately advise the other party in writing of both the occurrence of such event and its termination.

**16.2** – If as a result of a case of force majeure, performance of the contract within a reasonable period is rendered impossible, ITRON shall be entitled to terminate the contract by a simple written notice, without having to request a court order for such termination.

#### **XVII. PAYMENT DUE**

Termination of the contract for any reasons whatsoever shall not relieve the Purchaser from paying any monies due to ITRON.

#### **XVIII. REEXPORTATION**

**18.1** – Any reexportation of the products by the Purchaser shall be made under the sole responsibility of the Purchaser who undertakes to comply with any applicable regulations related to the control of the final destination of goods, including - but not limited to - the Export Administration Regulations of the Department of Commerce of the United States of America.**18.2** – The Purchaser agrees to defend and hold ITRON harmless from and against any liability in case of non compliance by the Purchaser with the above and to indemnify ITRON from and against any and all damages, costs, fines, penalties and more generally to reimburse to ITRON any amount of money (including attorney's fees) ITRON would have to pay as a consequence of the non compliance by the Purchaser with any such applicable regulations.

#### **XIX. SEVERABILITY**

Should any term, clause or provision contained in these General Terms and Conditions of Sale be declared or held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision contained in these General Terms and Conditions of Sale.

#### **XX. ORIGINAL VERSION**

The original version of these General Terms and Conditions of Sale is written in English. Should it be translated into another language for convenience of the Purchaser or to comply with the legal requirements and should discrepancies appear between the English text and the text in the foreign language, the English version shall prevail.

#### **XXI - LAW AND ARBITRATION**

**22.1** – The present General Terms and Conditions of Sale and any contract pursuant thereto shall be governed by and construed in accordance with the laws of England (excluding its rules of conflict of laws).

**22.2** – Unless otherwise agreed in writing, any dispute arising out of or in connection with the contract for sale of the products or the licence of the software which cannot be settled amicably by the parties within thirty (30) days of its notification by one party to the other shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The arbitration shall be held in the English language and shall take place in Brussels (Belgium).