

Sensus UK Terms of Sale

1. **DEFINITIONS.** "Customer" means the party purchasing goods or services pursuant to these Terms of Sale ("Terms"). "Sensus" means Sensus UK Systems Ltd., a company registered in England and Wales under company number 2621960. "Deliverables" means the Sensus goods and services sold or otherwise provided pursuant to this Agreement (as defined in clause 3). Software licenses are **not** covered by these Terms and the Customer has no right to use any Sensus software without a written software license signed by Sensus.
2. **CONTRACT OF SALE.** All Deliverables are offered for sale subject to the prices and other terms specified in (a) the applicable Sensus quotation, proposal or pricelist, and (b) these Terms (together "the Proposal"), all of which are subject to the correction of clerical errors. A Customer's purchase order or similar writing shall constitute an acceptance of the offer to sell; however, any inconsistent, additional or different terms to the Proposal contained in a Customer's request for quotation or purchase order (collectively, "Additional Terms") are hereby objected to and rejected by Sensus. Such Additional Terms will not become part of the contract of sale unless accepted by Sensus in a writing signed by a vice president (or higher) of Sensus.
3. **ENTIRE AGREEMENT.** These Terms, Customer's purchase order (except any Additional Terms), Sensus' Acknowledgement Form (if any), and Sensus' invoice constitutes the entire agreement ("Agreement") between the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, understanding or other communications, whether written or oral, formal or informal, between them in respect of the order. No waiver, amendment, supplement or modification shall be binding unless in writing and signed by a vice president (or higher) of Sensus.
4. **PRICES.** Unless otherwise specifically stated to the contrary, quotations, tender responses, or other offers made by Sensus to Customer are not binding on Sensus and Sensus shall be entitled to amend, add or delete any of the same at any time prior to acceptance of any purchase order by Sensus. The Customer accepts that it shall be irrevocably bound by any purchase order that it sends to Sensus. However, the Customer acknowledges and agrees that Sensus shall not be bound by the purchase order until Sensus either confirms its acceptance in writing or it starts to collate and manufacture such purchase order. Notwithstanding the previous sentence, if (following Sensus acceptance of any purchase order) (i) any law, directive, or regulation comes into effect ("Law Change") and such Law Change increases Sensus' cost of performing (as determined in Sensus' discretion); or (ii) the Customer attempts to introduce Additional Terms or (iii) the cost of Sensus completing the purchase order (for any reason) increases by more than 10%, then Sensus may either terminate the purchase order or modify such purchase order in Sensus' discretion. Prices quoted for blanket orders are subject to review and retroactive adjustment, if necessary, based on actual quantities shipped.
5. **PAYMENT TERMS.** Customer shall pay all invoices within thirty (30) days of the invoice date. All payments shall be made in Pounds Sterling. No deductions whether by way of set-off, counterclaim, withholding, or otherwise, shall be made by the Customer. Sensus reserves the right to establish credit limits for Customer and may require full or partial payment prior to provision of any Deliverables. All payments shall be made via electronic payment according to instructions provided by Sensus. The Customer must notify Sensus, in writing, within seven days of receipt of an invoice if the Customer disputes such invoice. In the absence of such notice, the Customer shall not be entitled to dispute an invoice. Save for any invoices disputed in good faith in accordance with the previous sentence, if the Customer does not pay within the time provided in this Agreement, the amount due shall bear interest at the rate of 4% above the then current base lending rate of Barclays Bank plc. Such interest will accrue from the date the invoice should have been paid until the date of actual payment. Sensus shall not be required to carry out any of its obligations to the Customer (whether under this Agreement or otherwise) if the Customer is in default of any payments due to Sensus.
6. **TAXES AND SHIPPING COSTS.** All prices quoted are exclusive of VAT and other taxes imposed on this Agreement and the Customer shall be liable for and shall pay such VAT and taxes or on the Deliverables. All prices quoted are exclusive of all costs related to importation and exportation, loading, unloading, carriage, insurance, and other shipping charges ("Shipping Costs"). Customer shall be liable for all Shipping Costs and associated VAT or other sales tax.
7. **TITLE AND RISK OF LOSS.** Save as varied by this Agreement, all Deliverables are shipped Ex Works shipping point and prepay freight. Title to, and risk of loss in, the Deliverables shall pass to Customer upon shipment. The Customer is responsible for unloading the Deliverables.
8. **PACKAGING.** Sensus reserves the right to select the manner in which Deliverables are packaged. Quoted prices include regular packaging. Special requirements for packaging will be subject to extra charges.
9. **DELIVERY.** Shipping dates and other dates quoted by Sensus are made in good faith but are not guaranteed. Dates cited for delivery are approximate only. If no dates are specified, Sensus will use its discretion to determine the shipping date. Sensus reserves the right to extend shipping dates and/or to make partial shipments as Sensus deems necessary in its sole discretion, without liability to Customer. In the absence of shipping instructions from Customer, Sensus will use its discretion as to the selection of shipping services and routings. If the Customer fails to take delivery of the Deliverables within seven (7) days of notification that the Deliverables are ready for delivery, Sensus shall be entitled, but is not required, on behalf of the Customer to put the relevant Deliverables into storage at the Customer's expense and risk. Delivery to storage shall constitute delivery to the Customer. The Customer is responsible for the installation of the Deliverables unless otherwise agreed in writing.
10. **CANCELLATION OR AMENDMENT.** Orders submitted to Sensus may not be cancelled or amended or deliveries deferred by Customer except with Sensus' prior written consent, and then only upon such terms as accepted by Sensus.
11. **FORCE MAJEURE.** If Sensus becomes unable, either wholly or in part, by an event of Force Majeure, to fulfil its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. "Force Majeure" means an event beyond the reasonable control of Sensus, including without limit, acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, immigration, unavailability of component parts of any Deliverables provided hereunder, acts of public enemies, border disputes, border disruptions, delivery vehicle impound, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of any government, any arrests and restraints, civil disturbances and explosions.
12. **WARRANTIES; EXCLUSIVE REMEDIES; EXCEPTIONS; LIMITATIONS.**
 - (a) **Warranties.** (i) **GOODS.** Sensus warrants the Sensus goods to be materially in compliance with their respective specifications under normal use and service, and to be free from material defects in materials and workmanship for a warranty period of twelve (12) months from the date of shipment. The warranty period for repaired or refurbished parts repaired by Sensus is ninety (90) days from the date of shipment, unless repaired pursuant to a warranty, in which case the repair is warranted for the time remaining of the original warranty period. Notwithstanding anything to the contrary herein, Sensus does not warrant any goods manufactured or software supplied by third parties. (ii) **SERVICES.** Sensus warrants that its services shall, at the time of performance, materially conform to the contract requirements, and shall be performed in a professional and workmanlike manner, free from material defects in workmanship.
 - (b) **EXCLUSIVE REMEDIES.** (i) **GOODS.** If any item of goods fails during the applicable warranty period and such failure is due to a breach of the warranties given in 12(a) above (a "Failed Good"), Sensus' obligation, and Customer's exclusive remedy, is, at Sensus' option, to either (i) repair or replace the Failed Good, provided the Customer (a) returns the product to the location designated by Sensus within the warranty period, and (b) prepays the freight costs both to and from such location; or (ii) deliver replacement components to the Customer provided the Customer installs, at its cost, such components in or on the Failed Good (as instructed by Sensus). In all cases, upon Sensus' request, Customer shall be responsible for returning the Failed Good or components thereof to Sensus, including all costs associated with the return of the Failed Good or components, and Sensus shall be responsible for shipping the repaired or replaced good or component back to Customer's warehouse. If the Customer does not return the Failed Good or components as requested by Sensus, then Sensus may invoice Customer for any replacement goods and/or components provided to Customer. Customer shall, in all cases, be responsible for the In/Out Costs (defined below). If Sensus determines that the returned good is not Failed Good, Customer shall pay and/or reimburse Sensus for all expenses incurred by Sensus in the examination of the returned good. (ii) **SERVICES.** Customer's remedy under the warranty for services shall be, at Sensus' sole cost and expense, to correct or re-perform any defective or non-conforming services to assure compliance with the contract requirements. (iii) **This Section 12(b) sets forth the Customer's sole remedy with respect to a Failed Good or any defective or non-conforming service. Sensus assumes no liability for costs or expenses associated with lost revenue or with the removal or installation of equipment.**
 - (c) **EXCEPTIONS.** The warranty does not include costs for removal or installation of goods, or costs for replacement labour or materials, which are the responsibility of the Customer. The warranties do not apply to goods that have been: installed improperly or in non-recommended installations; installed to a socket that is not functional, or is not in safe operating condition, or is damaged, or is in need of repair; tampered with; modified or repaired with parts or assemblies not certified in writing by Sensus, including without limitation, communication parts and assemblies; improperly modified or repaired (including as a result of modifications required by Sensus); converted; altered; damaged; read by equipment not approved by Sensus; for water meters, used with substances other than water, used with non-potable water, or used with water that contains dirt, debris, deposits, or other impurities; subjected to misuse, improper storage, improper care, improper maintenance, or improper periodic testing (collectively, "Exceptions"). If Sensus identifies any Exceptions during examination, troubleshooting or performing any type of support on behalf of Customer, then Customer shall pay for and/or reimburse Sensus for all expenses incurred by Sensus in examining, troubleshooting, performing support activities, repairing or replacing any Deliverables that satisfies any of the Exceptions defined above. The above warranties do not apply in the event of Force Majeure.
 - (d) **The warranties set forth in Section 12(a) are the only warranties given with respect to the Deliverables sold or otherwise provided by Sensus. To the fullest extent permitted by law, Sensus expressly disclaims any and all other representations, warranties, conditions, expressed, implied, statutory, or otherwise, regarding any matter in connection with this warranty or with this**

Agreement. This warranty expressly excludes, and Sensus expressly disclaims, any warranties as to fitness for a particular purpose, merchantability, satisfactory quality, and non-infringement of third party rights.

13. **INTELLECTUAL PROPERTY.** No Intellectual Property is assigned to Customer hereunder. Sensus shall own or continue to own all Intellectual Property used or created in the course of performing these Terms. To the extent, if any, that any ownership interest in and to such Intellectual Property does not automatically vest in Sensus, and instead vests in Customer, Customer agrees to assign and hereby assigns to Sensus all right, title, and interest that Customer may have in and to such Intellectual Property. Customer agrees not to reverse engineer any Deliverables purchased or provided hereunder. "Intellectual Property" means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, database rights, specifications, drawings, designs, maskwork rights, and other intellectual property rights, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United Kingdom, United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto. The Customer waives any moral rights they may have in the Intellectual Property.
14. **LIMITATION OF LIABILITY.**
- (a) Except as set forth in Section 14(e), Sensus' aggregate liability in any and all causes of action arising under, out of, or in relation to this Agreement, its negotiation, performance, breach or termination (collectively, "**Causes of Action**"), shall not exceed the total amount paid by Customer to Sensus under this Agreement. This is so whether the Causes of Action are in tort, including without limitation, negligence or strict liability, in contract, under statute or otherwise.
- (b) Except as set forth in Section 14(e), as a separate and independent limitation of liability, Sensus' liability shall be limited to direct damages. Sensus shall not be liable for (i) any indirect, incidental, special or consequential damages; nor (ii) any revenue or profits lost by Customer or its Affiliates from any End User irrespective of whether such lost revenue or profits is categorized as direct damages or otherwise; nor (iii) claims made by a third party; nor (iv) any In/Out Costs; nor (v) manual meter read costs and expenses; nor (vi) damages arising from equipment striking any goods and damaging the goods in any way, over range capacity usage, excessive gas pressure above allowable operating pressure, nor (vii) any damage of any kind, whether to the goods or otherwise, arising from the use of the goods with erosive, corrosive, or potentially freezing liquids or gases; nor (viii) damages arising from maincase or bottom plate breakage caused by freezing temperatures, water hammer conditions, or excessive water pressure. "In/Out Costs" means any costs and expenses incurred by Customer in transporting goods between its warehouse and its End User's premises and any costs and expenses incurred by Customer installing, uninstalling, and removing goods. "End User" means any user of electricity/water/gas that pays Customer for the consumption of electricity/water/gas, as applicable.
- (c) Except as set forth in Section 14(e), the limitations on liability set forth in this Agreement are fundamental inducements to Sensus entering into these Terms. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Sensus the maximum protection permitted under law.
- (d) To the maximum extent permitted by law, no Cause of Action may be instituted by Customer against Sensus more than twelve (12) months after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than twelve (12) months prior to the filing of the Cause of Action shall be recoverable.
- (e) The limitations of liability set forth in this Section 14 shall not apply to: (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by negligence; and (c) any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- (f) If Customer is not the sole end user and ultimate owner of the Deliverables, then Customer shall ensure by its contract(s) with the end user and ultimate owner (collectively, "**Owner**") that Sensus is given the benefit of the exclusions and limitations set out in this Agreement. Customer agrees to indemnify and defend Sensus from and against all Losses (defined below) alleged by any Owner to the extent that Sensus would not be liable to Customer under this Agreement if the claim had been made by Customer.
15. **INDEMNIFICATION.** Customer agrees to indemnify and defend Sensus from and against all claims, liabilities, demands, damages, losses, costs and expenses, in law or in equity, of every kind and nature whatsoever (collectively, "**Losses**"), to the extent arising out of Customer's use of the Deliverables (or any aspect of it), except to the extent such Losses arise solely out of a breach of this Agreement by Sensus. Customer agrees to indemnify and defend Sensus from and against all Losses in respect of or consequent to pollution or to the release of substances capable of causing harm to living organisms or interfere with ecological systems arising from the Deliverables.
16. **CONFIDENTIALITY.** Customer shall (and shall cause its employees, contractors, and any Owner to) keep all Sensus Confidential Information strictly confidential and shall not disclose it to any third party or use it, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation. As used herein, "Sensus Confidential Information" means any and all non-public information disclosed by Sensus, including without limitation, all technical information about products or services, pricing information, marketing and marketing plans, Services, provision of the Deliverables, performance of the Deliverables, Deliverables architecture and design, other business and financial information, software and all trade secrets. Sensus Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by Customer. Notwithstanding the foregoing, "Sensus Confidential Information" shall not include: (i) any information in the public domain other than due to Customer's breach of this Agreement; (ii) any information in the possession of the Customer without restriction prior to disclosure by Sensus; or (iii) any information independently developed by the Customer without reliance on or access to the information disclosed hereunder by Sensus.
17. **RETURNS.** No Deliverables may be returned for credit or repair without the prior written authorization of Sensus. Authorised return shipments must be returned in good condition to Sensus' designated receiving point, must be shipped in suitable packaging, must be accompanied by a packing slip, including Sensus' Return Authorisation Number, and must have transportation charges prepaid. Deliverables are deemed returned upon Sensus' receipt of the relevant Deliverable (in compliance with this section) at the address designated by Sensus. Correspondence concerning all returned Deliverables must be addressed to the appropriate Sensus office. Sensus reserves the right to deduct an adequate service charge to cover all inspection, testing, and handling from any credit.
18. **DISPOSAL OF DELIVERABLES.** The Customer hereby agrees that Sensus' obligation to collect or arrange for the disposal of waste electrical and electronic equipment (WEEE) under the UK WEEE regulations is transferred to the Customer on expiration of the applicable warranty provisions.
19. **ASSIGNMENT.** Customer may not assign, transfer or delegate this Agreement or any part of Customer's rights or duties without prior written consent of Sensus. Any attempted assignment in violation of this section shall be null and void.
20. **GOVERNING LAW AND DISPUTE RESOLUTION.** This Agreement shall be governed by, construed and enforced in accordance with the laws of England and Wales, without regard to conflicts of law principles. Any and all disputes arising under, out of, or in relation to this Agreement or its performance ("**Disputes**") shall first be resolved by internal escalation within the respective organizations. If the Dispute is not resolved within sixty (60) days after the start of such negotiations, the parties agree to submit the Dispute to the exclusive jurisdiction of the English Courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
21. **THIRD PARTY RIGHTS:** The parties agree that no condition will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any third party.
22. **COMPLIANCE WITH LAWS, INCLUDING ANTI-CORRUPTION LAWS.** Customer shall comply with all applicable laws and regulations, as set forth at the time of acceptance and as may be amended, changed, or supplemented. Customer shall not take any action, or permit the taking of any action by a third party, which may render Sensus liable for a violation of applicable laws.
- (a) **EXPORT CONTROL LAWS.** Customer shall: (i) comply with all applicable U.K. and local laws and regulations governing the use, export, import, re-export, and transfer of products, technology, and services; and (ii) obtain all required authorizations, permits, and licenses. Customer shall immediately notify Sensus, and immediately cease all activities with regards to the applicable transaction, if the Customer knows or has a reasonable suspicion that the Deliverables may be directed to countries in violation of any export control laws. By ordering Deliverables, Customer certifies that it is not on any U.K. or U.S. government export exclusion list.
- (b) **ANTI-CORRUPTION LAWS.** Customer shall comply with the U.K. Bribery Act of 2010; the United States Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd-1, et seq.; laws and regulations implementing the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the U.N. Convention Against Corruption; the Inter-American Convention Against Corruption; and any other applicable laws and regulations relating to anti-corruption in the Customer's county or any country where performance of this Agreement, or delivery or use of Deliverables will occur.
23. **SEVERABILITY.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
24. **NON-WAIVER.** Failure or delay of Sensus to exercise a right or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.