



## **TERMS AND CONDITIONS OF SALE**

When ordering, please refer to the Quotation Reference Number appearing on the quotation issued by Avensys Inc. ("AVT").

Herein Known as "Avensys"

### **1. GOVERNING AGREEMENT**

These Terms and Conditions constitute the entire agreement between Avensys and Customer and supersede any previous or future communications, representations or agreements between the parties, whether oral or written, regarding the transactions contemplated hereunder. Customer's additional or different terms and conditions or any provision or condition of Customer's order which is in any way inconsistent with these Terms and Conditions shall not be applicable hereto or binding upon Avensys. If Customer objects to any terms or conditions herein, such objection must be in writing and received by Avensys at the address stated on the face hereof prior to commencement of performance by Avensys. Retention by Customer of any products delivered by Avensys hereunder shall be conclusively deemed to be an acceptance of the Terms and Conditions hereof. Avensys failure to object to provisions contained in any communications from Customer will not be a waiver of the provisions hereof.

### **2. TAXES**

Unless otherwise specified, all prices and all billings are exclusive of all federal, provincial, municipal, state or foreign taxes or duties of any kind whatsoever, now or hereinafter enacted, applicable to the products sold in this transaction, which taxes or duties will be added by Avensys to the sale price where Avensys is required by law to collect the same and will be paid by Customer unless Customer provides Avensys with a resale or a tax exemption certificate acceptable to the authorities imposing the same, such certificate to be provided to Avensys prior to the initial shipment of products.

### **3. REQUESTED DELIVERY DATES**

Avensys will make every reasonable effort to meet any estimated delivery date set forth on its quotation and confirmed in Avensys's acknowledgement of Customer's order. However, Avensys is not liable for any loss whatsoever Customer may suffer due to delay in performance or shipment hereunder because of unforeseen circumstances or causes beyond Avensys control.

### **4. DELIVERY, TITLE AND RISK OF LOSS**

All shipments of products shall be delivered F.O.B. Avensys' plant, Montreal, Quebec Canada. Title to such products and risk of loss or damage thereof shall pass to Customer upon delivery of products by Avensys to a carrier for shipment to Customer and any loss or damage thereafter shall not relieve Customer from any obligations hereunder. In the absence of written agreement to the contrary, the means of shipment will be at the discretion of Avensys, but Customer will pay for all costs of insurance and transportation for such shipments and shall be responsible for all taxes, and any other expenses incurred or licenses or clearances required at destination.

### **5. PACKING**

Contract prices are quoted exclusive of shipping charges. Unless otherwise specified, products shall be shipped in standard commercial packaging. When special packaging is required or requested, the cost of such special packaging will be separately invoiced.

### **6. TERMS AND METHOD OF PAYMENT**

Upon credit approval of Customer prior to shipment of products, payment shall be due 30 days from Avensys' invoice date. Past due amounts bear interest at the monthly rate of 2% until full payment thereof and interest thereon. Payment shall be made for the products without regard to whether

## **6. TERMS AND METHOD OF PAYMENT – Cont'd**

Customer has made or may make any inspection of the products. Avensys has the right, as well as any other remedy, to terminate this contract or to suspend further deliveries under same in the event Customer does not comply with the terms of payment. If Customer causes a delay in contract completion, Customer, unless otherwise agreed by Avensys, shall pay Avensys' usual storage charges and the contract prices 30 days after receipt of Avensys' notice that the products are ready for shipment. Notwithstanding paragraph 4 above, risk of loss shall pass to Customer as of the date Avensys receives Customer's postponement request.

## **7. SUBSTITUTIONS AND MODIFICATIONS OF PRODUCTS**

Avensys may modify the specifications of products designed by Avensys and substitute products manufactured to such modified specifications for those initially covered herein, provided the products performance or utility is not materially and adversely affected or contract stipulations are not violated. Customer requested contract changes require Avensys' prior written consent and changes may result in price increase and/or extension of performance time.

## **8. WARRANTIES**

- a) Avensys warrants that, at the time of delivery of products sold hereunder, Avensys has title to same, free and clear of any and all liens and encumbrances.
- b) Unless otherwise specified in the applicable quotation issued by Avensys, all products are warranted against defects in materials and workmanship for one year from the date of shipment. Avensys will, at its option, (i) repair; (ii) replace or (iii) reimburse to Customer the value of the products that prove to be defective during the warranty period and which shall be returned according to the provisions of paragraph 10 below. All products repaired or replaced under warranty are only warranted for the remaining period of time in the original warranty for the particular defective product. Customer must claim under the warranty no later than (30) thirty days after the claimed defective product is discovered. All claims under this warranty must be made by the Customer and no claim will be accepted from any third party.
- c) The above warranties do not apply to defects resulting from (i) improper or inadequate maintenance or calibration by Customer; (ii) Customer or third party supplied software, interfacing or supplies; (iii) unauthorized modification; improper use of operation outside of the specifications for the product; (iv) abuse, negligence, accident, loss or damage in transit; (v) improper site preparation; or (vi) unauthorized maintenance or repair.
- d) THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER DUTIES, WARRANTIES OR CONDITIONS, WHETHER WRITTEN, ORAL OR IMPLIED BY STATUTE OR AT LAW, ARE EXPRESSED OR IMPLIED. AVENSYS SPECIFICALLY DISCLAIMS ANY DUTIES, WARRANTIES OR CONDITIONS IMPLIED BY STATUTE OR AT LAW, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Avensys' warranties as herein above set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of, Avensys' rendering of technical advice or service in connection with Customer's order of the products furnished hereunder.

## **9. LIMITATION OF LIABILITY AND REMEDIES**

Avensys' liability to Customer, if any, for any cause whatsoever and regardless of the form of action, shall be limited to those actually proven as directly attributable to Avensys, subject to the following limitations: (a) Avensys shall not be liable under any circumstances for any lost profits or other indirect, special, consequential and punitive damages; and (b) Avensys total cumulative liability in respect of all claims hereunder, for any cause whatsoever and regardless of any form of action, shall not exceed the total payments made for the products sold hereunder; and (c) in no event will Avensys be liable for any damages if and to the extent caused by Customer's failure to perform its responsibilities; and (d) upon expiration or termination of this agreement, neither party may bring an action, regardless of form, arising out of this agreement more than one (1) year after the cause of action has arisen or the date of discovery of such cause, whichever is later.

#### **10. RETURN OF PRODUCTS**

Products may not be returned for any reason unless authorized in writing by Avensys under a Return Merchandise Authorization ("RMA"). Products returned without an RMA shall be refused by Avensys. Risk of loss and shipping charges for all products returned to Avensys shall, at all time, be the responsibility of the Customer.

#### **11. TERMINATION AND CANCELLATION**

- a) If Customer terminates this Agreement in whole or in part, before full completion thereof, it must provide written notice of termination to Avensys. In such event, Customer shall be liable for termination charges, which shall include a price adjustment based on the quantity of products actually delivered, stocking charges and all costs, direct and indirect, incurred and committed for this agreement together with an allowance for pro-rated expenses and anticipated profits.
- b) If, in Avensys' judgment, the Customer's financial condition does not justify the terms of payment specified, Avensys may cancel this agreement unless Customer shall immediately pay for all products which have been delivered and pay in advance for all products to be delivered.

#### **12. NON-WAIVER OF DEFAULT**

In the event of any default by Customer, Avensys may decline to make further shipments. If Avensys elects to continue to make shipments, Avensys' action shall not constitute a waiver of any default by Customer or in any way affect Avensys' legal remedies for any such default.

#### **13. FORCE MAJEURE**

Neither party shall be held responsible for any delay or failure in performance of any part of the agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of nature, or other similar causes beyond its control and without the fault or negligence of the delayed or non performing party or its subcontractors ("Force Majeure Conditions"). If any Force Majeure Condition occurs, the party delayed or unable to perform shall give immediate notice to the other party, stating the nature of the Force Majeure Condition and any action being taken to avoid or minimize its effect. The party affected by the other's delay or inability to perform may elect to: (1) suspend this agreement for the duration of the Force Majeure Condition and/or (2) when the delay or nonperformance continues for a period of at least fifteen (15) days, terminate, at no charge, this agreement or the part of it relating to products not already delivered. Unless written notice is given within forty-five (45) days after the affected party is notified of the Force Majeure Condition, (1) shall be deemed selected.

#### **14. APPLICABLE LAW**

This agreement shall be governed by the laws of the Province of Quebec, and the laws of Canada applicable therein.

#### **15. MODIFICATION / ACCEPTANCE**

Acceptance by Customer of this agreement by acknowledgement, shipment or other performance shall be unqualified, unconditional and subject to and expressly limited to these Terms and Conditions. Avensys shall not be bound by terms additional to or different from those in this agreement that may appear in Customer's acknowledgment, invoices or in any other communications from Customer unless such terms are expressly agreed to in writing signed by Avensys. Pre-printed provisions on the reverse side of any orders and all provisions on Customer's forms shall be deemed deleted.

#### **16. ASSIGNMENT**

This agreement shall be binding upon and endure to the benefit of the parties and their successors and assigns of the entire business and goodwill of either Customer or Avensys or of the part of the business of either used in the performance of this agreement, but shall not be otherwise assignable by Customer.