

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

### **1. Preamble**

- 1.1 These General Conditions for Supply (“General Conditions”) shall apply to all supplies of goods (“Products”) from Infinity Avionics Pty Ltd, Australian Company Registration Number - 644-218-182, registered in Building J, 37 Constitution Avenue Reid, Australia, (“Infinity Avionics”) to any buyer (“Buyer”) (Infinity Avionics and the Buyer collectively referred to as the “Parties” and individually a “Party”). Modifications of or deviations from these General Conditions must be agreed upon in writing between the Parties.

### **2. Goods**

- 2.1 Subject to the terms agreed in purchase order or statement of work (“Contract”), Infinity Avionics shall deliver the goods (“the Goods”) to the Buyer.

### **3. Delivery**

- 3.1 The Goods shall be delivered within a period specified in writing between the Parties, after Infinity Avionics receives advance payment which shall be, unless otherwise agreed upon between the Parties, stipulated in clause 4 of this agreement.

### **4. Payment Conditions**

- 4.1 The Buyer is obliged to pay in advance fifty (50) % of the overall amount. The advance payment must be paid within fifteen (15) calendar days after the effective date of Contract. The lead time for the Goods delivery is calculated from the date the advanced payment is received by Infinity Avionics.
- 4.2 The goods shall be ready to be shipped from Infinity Avionics premises within seven (7) calendar days after the final payment is received by Infinity Avionics.
- 4.3 All payments shall be made by transfer to a bank account specified by Infinity Avionics in relevant invoices without any set-off, deduction or withholding except for any tax that the Buyer is required by law to deduct or withhold.

### **5. Shipping**

- 5.1 If the Contract does not refer to any International Chamber of Commerce Incoterms Rules (2020) (“Incoterms”), the default position in relation to the transportation for Goods is Ex Works from Canberra, Australia.
- 5.2 Buyer shall be solely responsible for obtaining all import authorizations and paying any import duty.
- 5.3 Infinity Avionics will not be liable for any delay in delivering, or failure to deliver the Goods where such delay or failure occurs as a result of the Australian Border Force (or any replacement organization from time to time) delaying the grant of, or refusing to grant any required export authorizations.
- 5.4 The Goods shall be packaged in containers/packaging, suitable for long distance air, sea, or land freight transportation and well protected against moisture and shock.

## **6. Defects Apparent on Inspection**

- 6.1 The Buyer shall only be entitled to claim (and then subject to clause 8) for shortages or defects in the Goods as supplied which are apparent on visual inspection if:-
- 6.2 The Buyer inspects the Goods within twenty (20) working days following the date of their delivery at Buyers' premises or other agreed destination; and
- 6.3 a written complaint specifying the shortage or defect is made to Infinity Avionics within seven (7) working days of the inspection in the event of shortage, defect, or non-delivery of any separate part of a consignment, or within fourteen (14) working days of the notified date of dispatch in the event of non-delivery of a whole consignment or (if applicable), within such shorter period as the carrier's conditions require; and
- 6.4 Infinity Avionics is given an opportunity to inspect the Goods and investigate any complaint before any use of or alteration to or interference with the Goods.
- 6.5 If a complaint is not made to us as provided in this clause 6, the Goods shall be deemed to be in all respects in accordance with the Contract.

## **7. Defects Not Apparent on Inspection**

- 7.1 The Buyer shall only be entitled to claim (and then subject to clause 8) in respect of defects in the Goods supplied which are not apparent on visual inspection at the time of delivery if:-
- 7.2 a written complaint is sent to Infinity Avionics as soon as reasonably practicable after the defect is discovered and subsequently no use is made of the Goods or alteration or interference made to or with the Goods before Infinity Avionics is given an opportunity to inspect the Goods; and
- 7.3 the complaint is sent within 6 months of the date of delivery of the Goods
- 7.4 The Buyer shall not be entitled to claim in respect of any repairs or alterations undertaken by the Buyer without prior specific written consent by Infinity Avionics nor in respect of any defect arising by reason of fair wear and tear or damage due to accident, neglect or misuse nor in respect of any Goods to which alterations have been made without such consent or to which replacement parts not supplied by Infinity Avionics have been fitted.
- 7.5 Infinity Avionics may within sixty (60) days of receiving a written complaint inspect the Goods and the Buyer shall take all steps necessary to enable Infinity Avionics to do so.
- 7.6 Infinity Avionics shall not be liable for loss or damage suffered by reason of use of the Goods after the Buyer becomes aware of a defect.

## **8. Warranties relating to the Goods**

- 8.1 Infinity Avionics warrants that Products manufactured by Infinity Avionics and sold to the Buyer will at the time of delivery be constructed of sound materials and be of good workmanship. The Goods shall be of the quality required by the Contract and free from defects in design, workmanship or materials, brand new and unused. Infinity Avionics guarantees that the Goods are made of the materials set forth in the Datasheet or Specifications as agreed upon between the Parties and conforms in all respects with the specification and performance stipulated in above mentioned datasheet and technical manual.

THIS LIMITED WARRANTY COVERS NORMAL HANDLING, TESTING AND INSTALLATION OF THE GOODS AS SPECIFIED IN THE PRODUCT-SPECIFIC USER MANUALS, OPERATING PROCEDURE, DATA SHEETS, AND RELEVANT DOCUMENTS. INFINITY AVIONICS DOES NOT WARRANT AND IS NOT RESPONSIBLE FOR DAMAGES CAUSED BY MISUSE, ABUSE, ACCIDENTS, OR UNAUTHORIZED MODIFICATION, SERVICE OR PARTS REPLACEMENT.

- 8.2 Infinity Avionics guarantees, in the case of Goods being found to be defective in workmanship and/or materials, that Infinity Avionics will as soon as reasonably practicable and at Infinity Avionics' sole option either repair or rectify such defective Goods or deliver replacements or credit the Buyer with the price of the defective Products provided that,
- 8.2.1 the alleged defect arises within the period of six (6) months from the date of delivery of the Product;
- 8.2.2 a written complaint is sent to Infinity Avionics in accordance with the provisions of Clause 6 and 7 and no use has been made of the Goods thereafter and no alterations made thereto, or interference made therewith, before Infinity Avionics have been given the opportunity to inspect the Goods; and
- 8.2.3 any defect Infinity Avionics find on inspection to be due solely to defective workmanship or materials.
- 8.3 Infinity Avionics shall not be liable for any claim:-
- 8.3.1 in respect of any repairs or alterations undertaken by the Buyer without Infinity Avionics prior specific written consent;
- 8.3.2 in respect of any defect arising by reason of fair wear and tear or from damage due to misuse;
- 8.3.3 for loss or damage suffered by reason of the use of the Goods after the Buyer becomes aware of a defect.
- 8.4 If Infinity Avionics repair or rectify the Goods or supply satisfactory replacement Goods or issue a credit the Buyer shall be bound to accept such repaired or replacement Goods or the credit and Infinity Avionics shall be under no liability in respect of any loss or damage whatsoever arising either from the initial delivery of the defective Goods or from the delay before the defective Goods are repaired or replaced or the credit is issued.
- 8.5 Infinity Avionics will not accept returns of allegedly defective goods unless Infinity Avionics have issued prior consent in writing to the Buyer.
- 8.6 All Goods which pursuant to specific agreement are to be returned to Infinity Avionics must be shipped prepaid by the Buyer. Infinity Avionics shall pay the costs of the return of repaired or replacement Goods to the Buyer. Infinity Avionics will also refund the delivery charges for returning a defective Good where they are returned to Infinity Avionics in accordance with these terms.
- 8.7 The warranty in this clause 8 is intended solely for the benefit of the Buyer. All claims must be made by the Buyer and not by any other person, firm or company who may have possession of the Goods.
- 8.8 The sole obligation and liability of Infinity Avionics shall be limited to the repair or replacement of the defective item and the transportation.

## **9. Liability of Infinity Avionics**

- 9.1 Except as otherwise provided in these terms and conditions, INFINITY AVIONICS DISCLAIMS ANY AND ALL OTHER WARRANTIES AS TO ANY MATTER WHATSOEVER WITH RESPECT TO THE GOODS, MATERIALS OR SERVICES FURNISHED BY INFINITY AVIONICS UNDER OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE.
- 9.2 Infinity Avionics shall be under no liability to the Buyer for any loss, damage or injury, direct or indirect, resulting from defects in design, materials or workmanship or otherwise (and whether or not caused by the negligence of Infinity Avionics or its employees) other than liability for death or personal injury resulting from negligence.
- 9.3 Infinity Avionics shall have no liability for any indirect or consequential losses or expenses suffered by the Buyer, however caused, and including without limitation, loss of anticipated profits, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.
- 9.4 The Buyer agrees to indemnify and hold harmless Infinity Avionics, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and cost of any kind, which result from or arise out of any inaccuracy in or failure to provide, or failure to provide timely information, as defined under the Order.
- 9.5 The aggregate liability of Infinity Avionics to the Buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed (50) % of the purchase price of the Goods the Buyer purchased.

## **10. Import Duty**

- 10.1 If the Buyer orders Goods from Infinity Avionics site for delivery outside Australia, they may be subject to import duties and taxes which are levied when the delivery reaches the specified destination. The Buyer will be responsible for payment of any such import duties and taxes. Please note that Infinity Avionics has no control over these charges and cannot predict their amount.
- 10.2 The Buyer must comply with all applicable laws and regulations of the country for which the products are destined. Infinity Avionics will not be liable for any breach by the Buyer of any such laws.

## **11. Confidential Information and Intellectual Property Rights**

- 11.1 All drawings, documents, confidential records, computer software and other information supplied by Infinity Avionics, whether produced by itself or a third party, are supplied on the express understanding that copyright is reserved to Infinity Avionics (or the third party) and that the Buyer will not, without written consent, give away, loan, exhibit or sell any such drawings, documents, records, software or other information or extracts from them or copies of them or use them in any way except in connection with the Goods in respect of which they are issued.

## **12. Non-performance of the Buyer's Obligation to Pay the Price at the Agreed Time**

12.1 If the Buyer fails to pay the price at the agreed time, Infinity Avionics shall fix to the Buyer an additional period of time of fourteen (14) days for performance of payment. If the Buyer fails to pay the price at the expiration of the additional period, Infinity Avionics may terminate Contract in accordance with clause 14 of General Conditions.

## **13. Non-performance of Infinity Avionics' Obligation to Deliver the Goods at the Agreed Time**

13.1 If Infinity Avionics fails to deliver the Goods at the agreed time, the Buyer shall fix to Infinity Avionics an additional period of time of fourteen (14) days for performance of delivery. If Infinity Avionics fails to deliver the Goods at the expiration of the additional period, the Buyer may terminate the purchase in accordance with clause 14 of General Conditions.

## **14. Changes and Termination of Contract**

14.1 The Buyer shall have the right by written order to terminate work or to make changes from time to time in the Goods to be delivered by Seller before the delivery date. In such termination or changes to the Contract, the Buyer shall pay a minimum Contract Termination Fee of 50% of the value of the terminated portion of the Contract. The exact termination fee shall be negotiated based on the stage of the manufacture of the Goods at the time of the written order to suspend the work.

14.2 If changes to the Contract cause an increase in the cost of performance of this Contract or in the time required for its performance, an equitable adjustment shall be negotiated promptly, and the Contract shall be modified in writing accordingly.

14.3 There is a breach of Contract where a party fails to perform any of its obligations under this Contract.

14.4 In case of a breach of contract, the aggrieved party shall, by notice to the other party, fix an additional period of fourteen (14) days for performance. During the additional period of time the aggrieved party may withhold performance of its own reciprocal obligations but may not declare the contract terminated. If the other party fails to perform its obligation within the additional period of time, the aggrieved party may declare the contract terminated.

14.5 A declaration of termination of the contract is effective only if made by notice to the other party.

## **15. Consequences of Termination**

15.1 Termination of the contract releases Parties from their obligation to effect and to receive future performance, subject to any damages that may be due.

15.2 Termination of the contract does not affect any provision in the contract for the settlement of disputes or any other term of the contract that is to operate even after termination.

15.3 If the contract is terminated due to non-performance of the Buyer according to clause 12, Infinity Avionics will not refund the payments already received from the Buyer.

15.4 If the contract is terminated due to non-performance of Infinity Avionics according to clause 13, the damages to the Buyer shall in no circumstances exceed the purchase price of the Goods the Buyer purchased.

## **16. Force Majeure – Excuse for Non-performance**

- 16.1 Force majeure means war, emergency, accident, fire, earthquake, flood, storm, industrial strike, or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of General Conditions or to have avoided or overcome it or its consequences.
- 16.2 A party affected by force majeure shall not be deemed to be in breach of General Conditions, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under General Conditions to the extent that the delay or non-performance is due to any force majeure of which it has notified the other party in accordance with clause 16.3. The time for performance of that obligation shall be extended accordingly, subject to clause 16.4.
- 16.3 If any force majeure occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under General Conditions, it shall notify the other party within a reasonable time as to the nature and extent of the circumstances in question and their effect on its ability to perform.
- 16.4 If the performance by either party of any of its obligations under General Conditions is prevented or delayed by force majeure for a continuous period in excess of three months, the Parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to General Conditions or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of thirty (30) days, the other party shall be entitled to terminate the Contract by giving written notice to the Party affected by the force majeure.

## **17. Entire Agreement**

- 17.1 General Conditions sets out the entire agreement between the Parties. Neither party has entered the Contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in General Conditions. This clause shall not exclude any liability for fraudulent misrepresentation.
- 17.2 General Conditions may not be varied except by an agreement of the Parties in writing (which may include e-mail).

## **18. Notices**

- 18.1 Any notice under General Conditions shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party in a manner that ensures receipt of the notice can be proved.

## **19. Effect of Invalid or Unenforceable Provisions**

- 19.1 If any provision of General Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part, General Conditions shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provision found to be null and void, the Parties would not have concluded the Contract. The Parties shall use all reasonable efforts to replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.



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December 2024

## **20. Law and Jurisdiction**

20.1 This Contract is governed by the laws in force in the Australian Capital Territory and the Parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory to decide any dispute between them relation to this Contract.

## **21. Language of the Contract**

21.1 The Contract has been negotiated and concluded in English. It may be translated into any other language for practical purposes, but the English version shall prevail in the event of any doubt.