



TERMS AND CONDITIONS

1. **Acceptance** - The terms and conditions contained herein constitute the sole terms and conditions governing the purchase by the buyer stated on the face hereof ("Buyer") from Delsys Inc. ("Delsys") of the instruments and equipment specified on the face hereof (collectively the "Equipment"). Buyer may acknowledge its acceptance of these Terms and Conditions by executing and returning the attached acknowledgment copy to Delsys and, in any event, Buyer shall be deemed to have accepted and agreed to these Terms and Conditions by its receipt of the Equipment. Any terms and conditions different from or in addition to those contained herein, including any contained in Buyer's purchase order or in any other document furnished by Buyer, shall be of no force or effect in connection with the sale of the Equipment and Delsys hereby objects to and rejects in their entirety all such terms and conditions, as Delsys' agreement to sell the Equipment is expressly made conditional upon the use of these Terms and Conditions.
2. **Delivery** - Delivery of the Equipment will be made F.O.B. Delsys' facility and title to and all risk of loss of or damage to the Equipment shall pass to Buyer at the F.O.B. point.
3. **Payment** - Delsys shall invoice Buyer in full for the price of the Equipment upon delivery of the Equipment to the F.O.B. point. Buyer shall pay all invoices in full no later than thirty (30) days after the date of the invoice. All invoices not paid within such period shall bear interest at the rate of one and one half percent (1.5%) per month until paid.
4. **Security Interest** - Buyer hereby grants to Delsys a purchase money security interest in the Equipment and any proceeds thereof to secure Buyer's obligation to pay the full price of the Equipment. Such security interest shall terminate upon payment in full by Buyer of such price. Buyer shall execute such further documents, financing statements and other instruments as may be requested by Delsys to perfect such security interest.
5. **Taxes** - The prices for the Equipment specified on the face hereof are exclusive of all sales, use, excise and similar taxes and duties and any such taxes and duties shall be the sole responsibility of Buyer.
6. **Warranty** -
 - (a) Delsys warrants to Buyer that the Equipment will be free from defects in material and workmanship and in compliance with Delsys' specifications therefore under normal storage, use and service for a period of three hundred and sixty-five (365) days after delivery to the F.O.B. point. Delsys' sole responsibility under this warranty shall be to adjust, repair or replace, at its option, any part or component which is or becomes defective in material or workmanship or non-compliant with such specifications during said three hundred and sixty-five (365) day period, provided that Buyer promptly and completely reports such failure to Delsys in writing and Delsys, upon inspection, finds such part or component to be defective in material or workmanship or non-compliant with such specifications. Ordinarily, but solely at the option of Delsys, such adjustment, repair or replacement will be performed at Delsys' facility. Buyer must obtain shipping instructions from Delsys for the return of any item covered by this warranty, and compliance with such shipping instructions shall be a condition of Delsys' obligations under this warranty.
 - (b) Said warranty is contingent upon proper use of the Equipment by Buyer in the application for which the Equipment was intended and does not cover Equipment which has been modified or altered or which has been subjected to unusual physical or electrical stress or on which the original identification marks or serial or model numbers have been removed or altered. Said warranty will not apply if adjustment, repair or replacement is required because of accident, neglect, misuse, damage in transportation, functional difficulties or defects due to improper handling or maintenance, or any cause whatsoever other than normal use.
 - (c) Said warranty extends only to Buyer and not to any third parties to whom Buyer might furnish the Equipment.
 - (d) EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, DELSYS MAKES NO WARRANTY, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY EQUIPMENT. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXPRESSLY EXCLUDED.
 - (e) The sole remedy of Buyer, and the sole liability of Delsys, for breach of warranty, shall be limited to the adjustment, repair or replacement set forth in this Article.
7. **Limitation of Liability** - IN NO EVENT SHALL THE LIABILITY OF DELSYS HEREUNDER WHETHER FOR BREACH OF WARRANTY OR CONTRACT, TORT (INCLUDING NEGLIGENCE), PATENT, COPYRIGHT OR OTHER INFRINGEMENT OR OTHERWISE, EXCEEDS THE PURCHASE PRICE OF THE EQUIPMENT OR PART OR COMPONENT THEREOF, WHICH ALLEGEDLY CAUSED THE DAMAGE. IN NO EVENT SHALL DELSYS HAVE ANY LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.
8. **Miscellaneous Provisions** -
 - (a) **Non-Assignment** - Buyer shall not assign any of its rights or obligations hereunder.
 - (b) **Governing Law** - This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
 - (c) **Force Majeure** - Delsys shall have no liability for loss or damage due to delays resulting from any cause beyond its reasonable control, including, without limitation, government law or regulation, acts of God, acts or omissions of Buyer, weather, labor difficulties, public disturbance, transportation, problems with suppliers, or any other cause whatsoever. Any such cause shall extend the time for Delsys' performance to the extent of the delay so incurred.
 - (d) **Entire Agreement** - These Terms and Conditions, the provisions on the face hereof and any other documents incorporated by reference on the face hereof are the sole and exclusive statement of the agreement between the parties concerning the purchase and sale of the Equipment and supersede any prior agreements, orders, quotations, demonstrations, samples, proposals or understandings in connection therewith. This Agreement may only be amended, modified, waived or revoked by a written instrument executed by both parties hereto.