

MICROSENSE, LLC STANDARD TERMS AND CONDITIONS OF SALE

1. TERMS OF ACKNOWLEDGMENT: Unless otherwise expressly stated on the applicable Quotation with respect to a given term or subject matter, this Agreement contains the terms and conditions that apply to any Buyer ("Buyer") purchase from MicroSense, LLC ("MicroSense") for MicroSense systems, equipment, software, related products and/or services and support (the systems, equipment, software, documentation, related products and/or services and support being collectively referred to in this Agreement as the "Products" or the "Product"). MicroSense expressly rejects any terms or conditions of any Order or other document issued by Buyer purporting to relate to this Agreement that are in addition to or that varies from those stated herein except as expressly agreed in writing by ATI's authorized representative. These terms and conditions may not be modified, supplemented, or amended by the use of any other document(s), except as otherwise noted. Any attempt to modify, supplement or amend this document or to enter an order for Products that are subject to additional or modified terms and conditions will be null and void, unless agreed to in writing by an authorized representative of MicroSense.

2. SHIPMENTS/DELAYS: Unless otherwise expressly stated on the front side hereof, shipping terms are governed by Incoterms 2000 and are Ex-Works, MicroSense's facility. Delivery shall be deemed to occur at the Ex-Works point, with all transportation and insurance charges for the Products being borne by the Buyer from said point. In addition, title (except for software) and risk of loss shall pass at the Ex-Works point. Buyer agrees to be responsible for filing and pursuing, at its own expense, any and all necessary claims against any carriers or insurers for loss of or damage to shipped Products. Products held or stored by MicroSense for Buyer at Buyer's request after the agreed upon shipment date shall be so held or stored at the sole expense and risk of Buyer. Quoted shipping dates are approximate. Final shipment date will be based on MicroSense's receipt of Buyer's order and complete project requirements, specifications and scope. MicroSense shall not be liable for any loss, penalty or damage, consequential or otherwise, because of delay or failure to ship all or any part of any order for any reason. Partial shipments will be considered as separate sales and will be invoiced accordingly.

3. TERMS OF PAYMENT: All terms of payment are subject to credit approval. The terms of payment shall be as stated on MicroSense's applicable Quotation, or if not so stated, Buyer shall make payment to MicroSense within thirty (30) days after the date of invoice issued by MicroSense. Payment for transportation, custom duties, taxes, installation and custom services shall be made upon receipt of MicroSense's invoice. MicroSense reserves the right to ship Products "COD" at any time MicroSense, acting in good faith, deems itself insecure with Buyer's ability to pay for the Products ordered. Buyer's default in any payment due MicroSense shall entitle MicroSense to terminate or cancel its performance of any obligation hereunder and to receive payment for or reimbursement of (a) interest at the rate of one and one half percent (1.5%) per month for each month or portion thereof during which such payment is late, plus (b) reasonable attorneys' fees and (c) any other costs incurred as a result of said default or other breach of this Agreement. All remedies available to MicroSense are cumulative and recourse to any one remedy shall not preclude recourse to others. Notwithstanding any provision to the contrary in this Agreement, all payments arising under any order shall be non-refundable once payment is issued to MicroSense.

4. WARRANTIES: MicroSense warrants the Magnetics Products (ie., VSM's and other metrology tools) and Dimensional Products (ie., gauges, instruments, etc., excluding probes) delivered hereunder to be free from defects in material and workmanship for a period of twelve (12) months from the date of shipment from MicroSense's applicable facility. MicroSense warrants Dimensional Probes delivered hereunder to be free from defects in material and workmanship for a period of ninety (90) days from the date of shipment from MicroSense's applicable facility. Returned Merchandise repairs ("RMA's") shall have a ninety (90) day warranty unless otherwise noted on the front side hereof. Spare parts shipped as new shall have a six (6) month warranty; used spare parts shall have a ninety (90) day warranty; and on-site services performed shall carry a ninety (90) day warranty, unless otherwise noted on the front side hereof. If within the period of this warranty, the Products should fail due to such a defect, the Buyer may call MicroSense's applicable facility, obtain a return authorization number and return the defective part(s) to an MicroSense authorized service center. MicroSense will repair the part, or exchange it for a new part or a part rebuilt to as-new condition, at no charge. The warranty services herein shall only be provided at an MicroSense facility selected by MicroSense and only during normal local business hours. Repair service will be performed subject to MicroSense's normal repair lead-time. MicroSense's subsidiaries, affiliates, agents or distributors may perform warranty services. Buyer shall pay transportation costs of shipping the part to MicroSense's facility and MicroSense shall pay transportation costs of returning the part to the Buyer. The warranty under this paragraph shall not apply to any Products which have failed due to Buyer's improper or extraordinary use of the Products; failure caused by parts not supplied by MicroSense, or improper electrical power; vandalism, fire, chemicals or other casualty; lack of prescribed preventative maintenance; and improper servicing, relocation or reinstallation of Products without prior written approval of MicroSense. Corrective services of any nature required from MicroSense for the Products due to inadequate or inaccurate information supplied by Buyer, changes in Buyer's business requirements, or any of the conditions listed in the previous sentence, are not included as part of MicroSense's obligations or warranties, and will be provided, depending on available resources, at MicroSense's then current rates. MicroSense's obligation under this warranty does not include, and MicroSense shall not have any liability for, any work required to restore or rebuild files or other data or material destroyed due to system malfunction. THE FOREGOING WARRANTY IN THIS SECTION 4 IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN. MicroSense MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. CANCELLATION/POSTPONEMENTS: All notices of cancellation or postponements must be in writing or by facsimile followed by a confirming letter to MicroSense's Sales and Marketing Department.

a. **Cancellation of Products:** If Buyer cancels a released and scheduled order for Products, the Buyer shall be invoiced for and shall pay all costs and expenses incurred through the date of cancellation for materials, engineering, and program management, plus a twenty percent (20%) administrative and restocking charge by MicroSense. Any cancellation of Magnetics Products within sixty (60) days of the originally scheduled shipment date or any cancellation of Dimensional Products within thirty (30) days of the originally scheduled shipment date shall confer a right by MicroSense to invoice Buyer for payment of the full list price of the cancelled portion of the order.

b. **Postponements:** Buyer may request a delay in the planned ship schedule for Magnetics Products, without penalty, until sixty (60) days and for Dimensional Products, without penalty, until thirty (30) days, prior to confirmed shipping date. Any requested delay to the planned ship schedule cannot exceed ninety (90) days. Requested delays greater than ninety (90) days shall confer a right by MicroSense, at its sole option, to either a) invoice the Buyer for the delayed items as though they were shipped on the confirmed shipping date, or b) consider the order 'cancelled' and therefore subject to the cancellation terms of this Section 5. Buyer may only reschedule this order once in accordance with this subsection.

6. ACCEPTANCE: There may be two tiers to Buyer's acceptance of the Products:

a. **Factory Acceptance (Magnetics Products Only):** MicroSense shall test the MicroSense Products prior to shipment from MicroSense's factory in accordance with MicroSense's standard factory testing procedures. Buyer may attend such testing, or if Buyer fails to attend, shall be deemed to have waived its right to observe such testing. Unless otherwise agreed in writing, the MicroSense Products shall be considered accepted by Buyer for shipment upon completion of testing by MicroSense. Any notice of rejection or revocation of factory acceptance by Buyer of all or part of the Products delivered must be given by Buyer in writing stating, in detail, the claimed nonconformity and received by MicroSense no later than twenty-one (21) days after the earlier of Products testing or shipment.

b. **Site Acceptance (Magnetics Products Only):** If a Site acceptance is required by the Buyer, site acceptance shall take place upon the first occurrence of any one of the following three events: i) Buyer sign-off of MicroSense's Customer Acceptance Report, ii) Products are used by Buyer, or iii) thirty (30) days has passed since shipment of the Products to Buyer. Equipment purchased under any order that has been installed and that has been successfully tested under MicroSense's standard factory acceptance testing shall be non-returnable to MicroSense.

7. LIMITATION OF LIABILITY: IN NO EVENT SHALL MicroSense BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. MicroSense'S LIABILITY ARISING OUT OF THE MANUFACTURE, SALE OR SUPPLYING OF A PRODUCT OR ITS USE OR DISPOSITION, WHETHER BASED UPON WARRANTY, CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL PURCHASE PRICE PAID BY BUYER FOR SUCH PRODUCT.

8. CIRCUMSTANCES BEYOND MICROSENSE'S CONTROL: MicroSense shall in no event be liable for any damages or losses resulting from any delay in delivery or failure to deliver all or part of the Products ordered due to (a) any acts or omissions by Buyer, its agents or employees which hinder or disrupt MicroSense's performance, or (b) other causes beyond MicroSense's reasonable control, including, without limitation, acts of God; acts of terrorism; governmental action (or failure to act), laws or regulations; strikes or other labor troubles; freight embargoes; fire, flood, epidemics, unusually severe weather conditions or other natural disasters; unavailability of parts, materials, labor, fuel or other supplies; power or communications line failures; or failures of MicroSense's subcontractors or suppliers occasioned by such causes. Should MicroSense's inability to make timely delivery of all or part of the Products ordered result from acts or omissions of Buyer, its agents or employees, MicroSense at its option, without liability and without limitation of other remedies it might have for a breach or default by Buyer (a) may cancel all or part of any deliveries so affected and (b) as to those deliveries, or portions thereof not so cancelled, may extend the delivery schedules applicable thereto for a period of time equal to the delay caused MicroSense by Buyer, with Buyer being obligated to accept delivery of conforming Products on the delivery date(s) so extended.

9. INSOLVENCY OF BUYER: If an assignment is made of Buyer's business for the benefit of creditors, if a receiver or trustee in bankruptcy is appointed to take all or part of Buyer's property, or if Buyer is unwilling or unable to do business, MicroSense may declare the Buyer in default, cancel the order by written notice and, to the extent permitted by law, make claim for the return of the Products and/or of any damages caused by such default. Should MicroSense at any time be insecure concerning Buyer's solvency, MicroSense may demand in writing that Buyer give written assurances within five (5) business days that Buyer is not then insolvent and has no reason to believe that it will become insolvent during the remaining term of this Agreement.

10. INDEMNIFICATION: MicroSense shall defend any suit or proceeding brought against Buyer, based on a claim that MicroSense's Products standing alone, i.e., not in combination with any other non-MicroSense Products or materials, constitutes an infringement of a valid United States copyright, trademark, patent or a misappropriation of trade secrets protected under United States law, provided that (1) the infringement claim shall not be attributable to MicroSense's compliance with Buyer's specifications or special instructions, (2) Buyer gives MicroSense prompt written notice of the claim of infringement or threat of suit, and (3) Buyer provides MicroSense with all authority, information and assistance that MicroSense shall request in writing for the defense of said suit. MicroSense, in defending such a suit, shall have full authority without Buyer's prior consent or approval, to make or agree to any settlement thereof that it deems advantageous or convenient in its sole and absolute discretion. MicroSense agrees to pay all costs and damages assessed against Buyer or consented to as part of such a settlement, and if the use of the MicroSense Products involved is enjoined, or if the settlement terms forbid Buyer's further use of the MicroSense Products involved, then MicroSense, at its option, will either (a) procure for Buyer the right to continue using the Products, (b) replace said Products with non-infringing, equivalent substitutes, (c) or, if neither of the foregoing is reasonably available, request that Buyer return the Products after which return MicroSense will refund any amounts paid by Buyer therefore, less a reasonable offset for Buyer's use. If the Products are the subject of such a claim, and if Buyer elects to continue use of the Products until there has been an injunction or the claim has been withdrawn, then Buyer agrees to defend any action involving such claim and to indemnify MicroSense with respect to all costs, damages and attorneys' fees attributable to use by Buyer after notice by MicroSense. MicroSense's total liability and Buyer's exclusive remedy under this Section 10 shall in no event exceed the total purchase price paid by Buyer for the MicroSense Products.

11. TAXES: Taxes in any country, now or hereafter imposed with respect to this Agreement (with the exception of income taxes or other taxes imposed upon MicroSense and measured by the gross or net income of MicroSense) shall be the sole responsibility of Buyer, and if paid or required to be paid by MicroSense, the amount thereof shall be added to and become a part of the amounts payable by Buyer under Section 3, above. This paragraph shall survive the termination of this Agreement. MicroSense's right to payment shall accrue as of the date MicroSense actually incurs any liability for such tax or such tax is withheld.

12. PROPRIETARY INFORMATION AND CONFIDENTIALITY: Unless otherwise agreed in writing by an officer of MicroSense and except insofar as it shall voluntarily be made public by MicroSense, all information or knowledge, including without limitation specifications, drawings, technical publications and manuals furnished by MicroSense in connection with the Products to be delivered hereunder shall be deemed proprietary and confidential to MicroSense and shall not be disclosed by Buyer except to those of its employees or agents who require access to it in order to operate and maintain the Products subject to this Agreement. MicroSense agrees to treat as proprietary and confidential all such information or knowledge furnished by Buyer in connection with this Agreement, provided that such information (i) was not already generally available to the public, (ii) hereafter did not become generally available to the public, through no fault of MicroSense, (iii) was not already known to MicroSense prior to the disclosure thereof, (iv) was not developed by MicroSense independently of and without the aid of the information received from Buyer, (v) was not lawfully known to MicroSense through a third party which disclosed such information to MicroSense without breaching confidentiality obligations to Buyer and (vi) was not disclosed pursuant to court order or as otherwise required by law, after giving Buyer notice of such required disclosure and after assisting Buyer in its reasonable efforts to prevent or limit such disclosure. In any event, Buyer shall conspicuously label its information as proprietary and confidential before furnishing it to MicroSense.

13. SOFTWARE LICENSE: Buyer is granted a non-exclusive, royalty-free, perpetual license to use the software supplied by MicroSense solely in conjunction with the Products supplied or designated by MicroSense and conditioned on Buyer's compliance with all terms of this Agreement. Buyer may use the MicroSense software only in machine-readable form. All computer programs or software, in whatever form embodied, supplied to Buyer hereunder shall be deemed proprietary and confidential information of MicroSense. Buyer agrees not to cause or allow any of its agents, servants or employees to disassemble, reverse compile or tamper with said software, or to use said software for any unauthorized purpose. Buyer agrees that the source code, the use of the software and certain other aspects of the software are the trade secrets of MicroSense. MicroSense grants no rights to Buyer to the source code, and Buyer has no right to acquire the source code or to require MicroSense to reveal, provide or transfer the source code to any person or entity. Except for the limited rights granted hereunder, all copyright, trademark, patent, trade secret, confidential information and other intellectual and proprietary rights in said software are and shall remain the valuable property of MicroSense. Buyer must reproduce and include the original copyright notice and other proprietary notices on any copy, in whole or in part, made of the MicroSense software programs and related documentation. Where there exists a user software license agreement upon software start-up, those terms and conditions shall supersede this Section 13. If there are any inconsistencies between the rest of this Agreement and any user software license agreement, this Agreement shall control.

14. APPLICABLE LAW: The parties agree that this Agreement shall be construed in accordance with and governed by the law of the Commonwealth of Massachusetts, not including i) its conflicts of laws principles; (ii) the United Nations Convention on Contracts for the International Sale of Goods; (iii) the 1974 Convention on the Limitation Period in the International Sale of Goods (the "1974 Convention"); and (iv) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980. MicroSense and Buyer hereby agree to observe and comply with all valid, applicable federal, state and local rules and regulations, including those relating to equal employment opportunity, in the performance of this Agreement.

15. ASSIGNMENT: This Agreement is not assignable or transferable by Buyer in whole or in part, except with the advance written consent of MicroSense. MicroSense may assign this Agreement, upon giving written notice to Buyer. Buyer shall not sell, assign, lease, hypothecate, license, sublicense, disclose, give or otherwise transfer any Products or any copy or derivative thereof to any other person or entity, except with the advance written consent of MicroSense.

16. ENTIRE AGREEMENT OF THE PARTIES: The terms and conditions of this Agreement constitute the complete and exclusive understanding between MicroSense and Buyer and supersede and terminate all other prior or contemporaneous arrangements, understandings and agreements, verbal and written. This Agreement may be modified or amended only by a writing signed by duly authorized representatives of both parties.

17. MISCELLANEOUS PROVISIONS: If any provision of this Agreement shall be held to be unenforceable, such holding shall not affect the enforceability of any other provisions hereof. Waiver of any breach of this Agreement by MicroSense shall not be considered a waiver of any other or subsequent breach. All notices or other communications hereunder shall be in writing and shall be deemed given if delivered or mailed by registered or certified mail, return receipt requested, or by recognized overnight carrier, to the address specified on the reverse side hereof or such other address as may be specified in a written notice delivered in accordance with this Section. Headings in this Agreement are for reference purposes only, and shall not be used to interpret or construe this Agreement.