

**GENERAL TERMS AND CONDITIONS**  
**FOR THE SUPPLY**  
**OF INTESA SERVICES AND PRODUCTS**

## Contents

	<b>Introduction</b>	<b>3</b>
	<b>page</b>	
<b>1.0</b>	<b>General Part</b>	<b>4</b>
1.1	Definitions	4
1.2	Contractual structure	6
1.3	Delivery	7
1.4	Amounts due and payments	7
1.5	Changes to the conditions	9
1.6	Business Partners	9
1.7	Reciprocal obligations of the Parties	10
1.8	Customer's obligations	10
1.9	Patents and copyright	11
1.10	Limitation of liability	12
1.11	Further obligations	12
1.12	Geographical scope	13
1.13	Express termination clause	13
1.14	Applicable law and court of jurisdiction	13
<b>2.0</b>	<b>Warranties</b>	<b>14</b>
2.1	Warranty on Machines	14
2.2	Warranty on INTESA Programs	14
2.3	Warranty on INTESA services	14
2.4	Scope of the warranty	14
2.5	Warranty exclusions	15
<b>3.0</b>	<b>Machines</b>	<b>16</b>
3.1	Ownership and risks of loss	16
3.2	Installation	16
<b>4.0</b>	<b>Programs</b>	<b>17</b>
4.1	Licence	17
4.2	Licence conditions	17
4.3	Program Components that cannot be used on the Specified Machine	18
4.4	DSLO licences	18
4.5	Program Test	18
4.6	Programs with licence conditions included	18
4.7	Protection of Programs	18
4.8	Services to Programs	19
4.9	Withdrawal from licence	19
<b>5.0</b>	<b>Services</b>	<b>20</b>
5.1	INTESA Services	20
5.2	Personnel	20
5.3	Ownership and licensing of Materials	20
5.4	Changes to Products and/or Services conditions	20
5.5	Renewal	21
5.6	Termination and withdrawal	21
5.7	Safety	22
5.8	Identification Codes	22
5.9	Complementary products	22
5.10	Use of the Services	23
<b>6.0</b>	<b>Particular Provisions</b>	<b>24</b>
6.1	Invoicing arrangements	24

## Introduction

The General Terms and Conditions for the Supply of INTESA Services and Products (hereinbelow “Conditions”) are applicable to the contractual relations between IN.TE.S.A. (“Iniziativa Telematiche per i Servizi Applicativi”) S.p.A. (hereinbelow “INTESA”) and its customers (below “the Customer(s)”) relating to Services or Products.

The Conditions, together with the Order Documentation and Supplementary Conditions that may be applicable, represent the totality of the agreements between INTESA and the Customer with regard to a specific deliverable, and replace any written or verbal communication having taken place between INTESA and the Customer before the order.

When the Customer undersigns an order referring to the Conditions:

- INTESA and the Customer undertake to consider equivalent to the original all reproductions of the Conditions, of the Supplementary Conditions or of the Order Documentation, made using reliable means such as facsimile machine, photocopier or published on the Internet at the official INTESA site: <http://www.intesa.it>
- the deliverable referred to by the order shall also be subject to – in addition to the Conditions, which are at any rate applicable to the Customers as a whole, even if not undersigned – the Order Documentation and any Supplementary Conditions that may be applicable.

This edition of the Conditions is applicable to new contractual relationships starting from 1<sup>st</sup> July 2007.

INTESA has filed the original of the document at the offices of dott. Morone, a notary public in Turin. INTESA has also rendered the Conditions public knowledge:

1. by making them available for consultation or copy form at each INTESA site or branch and each authorized representative;
2. by publishing them on the Internet at the above-mentioned official INTESA site; and
3. and by informing its Customers as a whole of the adoption of this edition of the Conditions.

The terms indicated in upper case letters above have the meanings attributed to them in the Conditions.

## **1.0 General Part**

### **1.1 Definitions**

#### **Specified Operating Environment**

These are the Machines and Programs with which a Program is intended to work, as indicated in the Specifications of the Program in question.

#### **Date of Installation**

The Date of Installation:

1. for a Machine where the installation is performed by INTESA, the first working day following that on which INTESA installs it or, if the Customer postpones the installation, the first working day following that on which INTESA puts it at the disposal of the Customer for subsequent installation by INTESA;
2. for an ADC machine, the fifth day following the date of shipment;
3. for a Program, the last day by order of date between:
  - a. the day following the end of the test period indicated in the Order Documentation;
  - b. the tenth day following the date of shipment;
  - c. the day, specified in the Order Documentation, on which INTESA authorizes the Customer to make a copy of the Program; or
  - d. the day on which the Customer distributes a copy of a payable component in compliance with the authorized usage of the program.

#### **Corporate Group**

A group of companies or legal entities wherein one of the aforesaid possesses or controls, directly or indirectly, more than fifty per cent of the shares with voting rights or of the stakes held by all the other components of the group.

The term Corporate Group is applicable only to the part of Corporate Group existing in Italy.

INTESA and the Customer may establish by common accord that certain other companies, suitably listed in a table, may be considered as belonging to the Corporate Group of one of the Parties.

#### **Machine**

More than a machine, also its devices, its model conversions and increments, machine elements, accessories, or any combination thereof.

#### **Machines Activated by the Customer (ADC)**

Machines Activated by the Customer (hereinbelow “ADC Machines”) are the Machines that the Customer installs independently, following the instructions accompanying the same.

## **Specified machine**

Specified machine is:

1. the machine on which the Customer uses a Program and for which INTESA asks the Customer to inform it of the type/model and serial number; or
2. any machine upon which the Customer uses the Program, where INTESA does not ask the Customer to supply the identification as under the previous point 1.

## **Materials**

Literature or other intellectual works (such as programs, lists of programs, programming tools, documentation, pictures, drawings and similar works) that INTESA may provide the Customer as part of a Service. The term "Materials" does not include Programs or the Licence microprogram possibly provided by the Machine manufacturer.

## **Party or Parties**

The Customer and/or INTESA and any of their successors and dependants.

## **Product**

A Machine or a Program.

## **Program**

An original Program and a full or partial copy thereof, comprised as follows:

1. instructions for processing data or data banks in machine readable form;
2. components of the Program;
3. audio-visual content (such as images, text, recordings or figures);
4. materials under licence associated with the Program.

The term "Program" comprises both an INTESA Program and any non-INTESA Program that INTESA may supply to the Customer. The term "Program" does not include the Licence microprogram or Materials.

## **Service**

The performing of a task, the provision of consultancy or assistance, or the enablement to access a resource (such as the access to a data bank) that INTESA makes available to the Customer.

## **Specifications**

The document containing the technical specifications of a Product.

## **1.2 Contractual structure**

### **Separation of the obligations**

Except where specifically agreed, the Customer agrees that each of his orders with reference to these Conditions, relating to Machines, Programs or Services, represents a separate contract, legally independent of the others. Under the terms of article 1246 of the Italian Civil Code, the Customer waives in advance the right to object to compensation.

Examples of Order Documentation are: orders, additional documentation, attachments, bulletins, changes to Services, addendum.

In the event that any provision of these Conditions is held to be invalid or unenforceable, the remaining provisions of these Conditions remain in full force and effect.

### **Supplementary Conditions**

Certain Products and Services are subject to conditions in addition (“Supplementary Conditions”) to those set down. These conditions, where applicable, are accepted by the Customer in the form of undersigning the same or the Order Documentation referring thereto. These Supplementary Conditions are binding part of the Conditions.

### **Order Documentation**

For each deliverable, INTESA delivers to the Customer the appropriate "Order Documentation", which specifies the characteristics of the deliverable. It is subject to undersigning by the Customer and acceptance by INTESA or it is subject to undersigning by INTESA and acceptance by the Customer according to the procedures set out in section “Acceptance of an Order or of a Proposal”.

The following are some examples of Order Documentation and the contents thereof:

1. addenda (defining the duration of the contract period, the starting date and quantity);
2. attachments (Products identified by categories);
3. bulletins (Product classification bulletins);
4. services order forms (defining the extent of the Services, responsibilities, results, criteria for completion, estimated works program or contractual period, payment amounts, etc.);
5. a proposal and its related acceptance modules;
6. supplements (Product order forms listing type and quantity of certain Products, price, estimated date of shipment, warranty period, etc.);
7. invoices and documents accompanying goods in transit.

### **Prevalence of the documents in cases of conflict**

In the event of conflicting provisions between different contractual documents, those contained in the Supplementary Conditions shall prevail over those of the Conditions. The provisions contained in the Order Documentation shall prevail over both those contained in these Conditions and those of any Supplementary Conditions.

## **Acceptance of an order or a proposal**

By means of an order or the acceptance of a proposal, the Customer approves specific clauses of the Conditions according to articles 1341 and 1342 of Italian Civil Code.

Where the Customer has the legal status of "consumer", the provisions of article 1469 *bis et seq.* of the Italian Civil Code shall also apply.

INTESA may accept an Order undersigned by the Customer (depending therefore on the Products or Services the subject of these Conditions) in one of the following ways:

1. by returning to the Customer the Order Documentation with the INTESA acceptance; or
2. by shipping the Machine or making the Program available; or
3. by starting execution of the Service.

The Customer may accept the proposal issued by INTESA (and Product and/or Services will become subject to these Conditions) by any of the following:

1. issuing to INTESA the acceptance of the proposal; or
2. issuing an order to INTESA which makes reference to INTESA's proposal.

## **Electronic Contract**

INTESA and the Customer agree that the Orders and other contractual documentations may be effected through an exchange of electronic documents with digital signature based on the system of asymmetrical keys. The activation of this procedure may only take place following the stipulation of an open contract, defining the specific contractual conditions applying, the duration, maximum total amount and the methods of communication needed for execution of the contract.

### **1.3 Delivery**

INTESA shall endeavour to satisfy the Customer's delivery requirements for Products and Services ordered from it, and undertakes to keep the Customer informed about the delivery situation. Any shipping costs to be paid by the Customer are indicated in the Order Documentation or in the Supplementary Conditions.

### **1.4 Amounts due and payments**

The amounts due for Products or Services supplied by INTESA may be:

1. in a one-off sum (for example, the selling price of a Machine);
2. periodic (for example, the periodic fee for a Program or a Maintenance Service);
3. measurement or by time and materials, (for example, Services at an hourly rate);
4. lump-sum or fixed price (for example, the price agreed for a customized Service); or
5. a combination of the methods specified above.

Depending on the type of Product, or Service, or specific circumstances, additional amounts may be applicable (such as for example, those for a particular activity or travel expenses). Where such additional amounts are applicable, INTESA shall inform the Customer in advance.

Periodic fees commence:

1. for a Program, from the Date of Installation;
2. for a Service, from the Service start date or, where this date is not the first of a month, from the first day of the month after.

Amounts due for Services are invoiced according to the arrangements specified in the Order Documentation, and in particular: in advance, or periodically during the provision of the Service, or after the Service has been completed.

The annual subscription fee for Services, leaving aside any additional supporting services, is understood as inclusive of all the activities normally conducted at the start of each period of 12 months, and for the installation, start-up and tuning of the Service.

Except where otherwise indicated on the Order Documentation or the invoices, the amounts due are payable on receipt of the invoice; Customer shall pay the specified amounts according to the terms specified in the Order Documentation, usually within 30 (thirty) days from the date of invoice, in the Conditions and in the Supplementary Conditions, late payment fees included.

Should the invoice not be paid or only partially be paid, or should INTESA have to take any action against the Customer, whether in court or out of court, interest on arrears will only become payable once INTESA has issued the Customer with a formal notification of placement in default, sent by registered letter, notwithstanding article 4 of Legislative Decree no. 231 of October 9, 2002, and in accordance with article 7 of that same decree.

By way of exception to article 5 of Legislative Decree no. 231 of October 9, 2002, interest on arrears will be calculated from the final date of payment of the invoice at the interest rate set by the Central European Bank in force on the last day of the month in which the invoice was payable, plus 7%.

By way of exception to article 1406 of the Italian Civil Code, INTESA has the right to transfer all or part of the obligations to which the Conditions are applicable, including contracts in which the Conditions are referred to.

Whenever an authority imposes on any supply made according to these Conditions a tax, levy, duty or contribution, excluding those set on the INTESA taxable income, the Customer shall pay the relative amount as specified on the invoice; if the Customer benefits from exemptions, he shall provide INTESA the documentation proving this. Customer is responsible for any personal property taxes for each Product from the date IBM ships it to Customer.

Amounts due as a one-off sum and periodic amounts may be determined according to measurement of the actual or authorized usage of the Product and/or of the Services (for example, for Programs, the number of users or the processor capacity; for the maintenance of certain machines, the measurement made by special counters; for certain network Services, the connection time). Where INTESA requires, the Customer shall promptly provide the actual usage information. Where the Customer makes changes to his processing environment that have an effect on amounts due determined on the basis of usage (as for example, change of the processor capacity or configuration of the Programs), the Customer undertakes to notify INTESA immediately and to pay the corresponding amounts due. The periodic fees shall be adjusted accordingly. Except where otherwise agreed in writing, INTESA shall not grant the Customer

credits or refunds for amounts due already payable or paid. Where INTESA changes the basis for measuring usage, the conditions for the fee variations shall apply.

INTESA may increase the periodic amount due for Products and Services, and also the tariffs and minimum rates of Services supplied according to the Conditions, giving the Customer written notification with three months notice.

The increase applies from the first day of the charge period, coinciding with or immediately after the effective date of the increase, as indicated in the notice.

If the yearly increase exceeds 8% of the last applicable charge, Customer have the right to terminate the contract by giving IBM a thirty days' written notice by registered letter with return receipt, the whole charges related to the contractual term will remain due to INTESA.

INTESA may increase the amounts due in a one-off sum without need for notification. However, increasing the amounts due in a one-off sum does not apply if INTESA receives the order before the increase announcement date, provided that in the three months following receipt of the order one of the following circumstances obtains:

1. INTESA ships the Customer the Machine or makes the Program available;
2. the Customer makes an authorized copy of a Program, or distributes a payable component of a Program on another Machine, or starts using the Service; or
3. an increased fee is due following a change in the Program conditions of use;

The Customer may benefit from reductions in the amounts due established by INTESA for the amounts payable starting from the effective date of the reduction.

Services with a fee to be paid in advance must be used inside the relative contractual period; except where otherwise indicated by INTESA, no refunds or credits may be envisaged where the said Services are not used.

## **1.5 Changes to the Conditions**

INTESA reserves the right to modify the Conditions. Changes are not retroactive. They apply only to new orders in each of which the edition of the Conditions applicable thereto shall be indicated. The Services section of the Conditions contains further provisions in relation to changes to the conditions of single supplies of Services.

Notwithstanding the provisions of the first paragraph of this article, changes to the Conditions must, subject to ineffectiveness, be approved in writing by both Parties. Changes to the Conditions, made through Customer's communications, including written, are ineffective in relation to INTESA.

Notwithstanding the above, if INTESA and the Customer agrees to modify an order for a Service, INTESA will issue the written agreed modification that will be accepted by the Parties. The modification prevail on the original order for Services content and on precedent modifications.

## **1.6 Business Partner**

INTESA has concluded agreements with trading organizations (called hereinbelow "INTESA Business Partner"), with a view to promoting, putting on the market, and providing assistance for certain Products and Services.

When Customer orders INTESA Products or Services marketed by INTESA Business Partners under these Conditions, INTESA confirms that it is responsible for providing the Products or Services to Customer under the warranties and other terms of these Conditions.

INTESA shall not in any case be considered responsible for:

1. the initiatives of INTESA Business Partners;
2. any additional obligation that INTESA Business Partners have assumed in relation to the Customer;
3. any product or service that INTESA Business Partners supply the Customer according to their specific contracts.

### **1.7 Reciprocal obligations of the Parties**

INTESA and the Customer undertake as follows:

1. the Parties do not intend to concede, and do not concede one to the other the right to use their own (or those of their Corporate Group) trademarks, brand names or other designations in all types of publication, including promotional, without the prior written consent of the other, owner Party;
2. all information exchanged between the Parties must be considered not confidential. Where the Parties intend to communicate, receive, exchange confidential information, they undertake to stipulate and undersign a specific confidentiality agreement;
3. the Parties are free to stipulate agreements with third parties with contents similar to that of the Conditions;
4. each Party grants the other only the licences and rights specified. No other licences or rights are granted (including licences or rights deriving from patents);
5. each Party may communicate with the other using electronic means and said communication is equivalent to a written document, without prejudice to the irrevocable rules of law. The identification code (designated "User ID") contained in the electronic document, even if different from the digital signature, shall be sufficient for the identification of the sender and the authenticity of the document;
6. each Party shall perform the obligations under these Conditions in good faith and grant the other every reasonable possibility to perform its obligations before taking action for non-performance;
7. the Parties undertake not to take legal action, whether in or out of court, for the protection of their rights, after more than two years have transpired from the date of the event justifying such action. Shorter expiry or prescription time limits established by law are excepted. The Parties acknowledge that such time limit does not violate the provisions of art. 2965 of the Italian Civil Code.

### **1.8 Customer obligations**

The Customer is obliged:

1. not to dispose of or transfer in any other way to third parties the contractual relationships governed by the Conditions or any right deriving therefrom, not to delegate the performance of its services, nor to sell on to third parties the Services supplied by INTESA, without the

- prior written consent of INTESA. Violation of the provisions contained in this point 1. Renders ineffective the disposal or the transfer;
2. purchase the Machines for its own use or that of its Corporate Group and not for reselling, leasing or transfer to third parties. The provision contained in this point “2” does not apply to the case of a lease-back operation with the purpose of financing the Machines;
  3. assume responsibility for the results obtained from using the Products or Services;
  4. ensure INTESA free access, sufficient space and suitable safety conditions, and generally take all necessary and possible steps so that the latter may perform its obligations; and
  5. observe all laws and other sources in force concerning export and import;
  6. make sure that these conditions are respected, discharging, within the limits of law, INTESA from all responsibility, including where the Customer grants third parties access to the Service or use of a Product supplied by INTESA, strictly for purposes related to the use of the Deliverable by the Customer.

## **1.9 Patents and copyright**

For the purposes of this article, the term Product also includes Materials, supplied alone or in combination with other Products that INTESA supplies as a single system.

Where a third party takes action against the Customer claiming that a Product supplied by INTESA to the Customer violates its patents or copyright, INTESA shall assume, at its cost, the defence of the Customer and shall bear all legal costs, damages and expenses recognized in a sentence handed down in judgement on condition that the Customer:

1. informs INTESA in good time and in writing of the third party action;
2. allows INTESA to conduct the defence and any negotiations for the settlement of the dispute, cooperating with INTESA.

Where a third party brings an action such as that described in this article, or the bringing of such an action is, in INTESA’s opinion, probable, the Customer agrees that INTESA puts it in condition to continue using the Product, or that it modifies the Product or that it substitutes it with another, at least functionally equivalent one. If INTESA decides that none of the possibilities illustrated is reasonably pursuable, the Customer shall return the Product to INTESA at the latter’s written request and INTESA shall acknowledge a credit equal to:

1. for a Machine: the Customer’s net book value on condition that the latter has applied generally accepted accounting criteria;
2. for a Program: the amount paid by the Customer or, if lower, the fee for 12 months;
3. for Materials: the amount paid to INTESA for the Materials.

The provisions of this article represent the sum total of INTESA’s obligations towards the Customer for each case of violation of patents or copyright.

INTESA shall not have any liability where the claim concerns:

1. any component or other item supplied or at any rate coming from the Customer and incorporated in a Product or INTESA’s compliance with any designs, specifications, or instructions provided by Customer or by a third party on Customer’s behalf;
2. changes made by the Customer to a Product, or the use of Programs in an environment other than the Specified Operating Environment;

3. the combination, operativity or use of a Product with other Products not supplied by INTESA as a single system, that is to say the combination, operativity or use of a Product with products, data, or equipment that have not been supplied by INTESA;
4. the violation due to a non-IBM Product supplied alone, unlike the case where it is supplied by INTESA in combination with Products as a single system.

### **1.10 Limitation of liability**

Circumstances may arise wherein, through an act ascribable to INTESA or other acts for which INTESA must respond according to the law, the Customer is entitled to compensation for damages from INTESA. In each of these cases, independently of the fact that the Customer is entitled to ask for compensation (including non-performance, including serious, negligence, incorrect declaration and other acts both contractual and non), and without prejudice to the provisions of art. 1229 of the Italian Civil Code and of the other irrevocable rules of law, the INTESA liability is limited to:

1. the payments indicated in the previous clause "Patents and Copyright";
2. personal injury damages (including death);
3. in the case of any other effective damage, up to the amount corresponding to 100,000 EURO or up to the amount due as payment for the Product or Service the subject of the claim (a yearly instalment in cases of periodic fees), where this amount is greater than 100,000 EURO. For the purposes of this point 3 the term "Product" includes Materials and the Licence microprogram.

This limitation also applies to INTESA subcontractors and INTESA Program developers; the amount indicated above is the maximum amount for which INTESA and its subcontractors and Program developers are liable as a whole.

Without prejudice to the provisions of art. 1229 of the Italian Civil Code and of the other irrevocable rules of law, in no case shall INTESA, its subcontractors and Program developers be responsible for:

1. claims for damages brought by third parties against the Customer (except where admitted under the first two points as set out above);
2. loss of or damage to documents in the Customer's archives or data;
3. indirect damages of any kind including economic damage of a consequential type, including lost profits or savings, even if INTESA was informed of the likelihood of the same.

### **1.11 Further obligations**

The provisions of the Conditions which, by their nature, extend beyond the time limit of the Conditions, remain in force until they have been performed in full, and are binding on the heirs, successors and dependants of the Party concerned.

### **1.12 Geographical scope**

The rights of the Customer and the INTESA obligations are valid solely in Italy, in the Republic of San Marino and in the Vatican City state.

With the prior written agreement of the Parties, the rights of the Customer and the INTESA obligations are also valid in the country in which the Product is put into productive use, with the exception of licences which are only valid as expressly established.

Except where otherwise established by irrevocable legal provisions, INTESA does not assume any obligation to supply Services to Machines that are located outside the national territory.

### **1.13 Express termination clause**

It is expressly agreed that INTESA may terminate with effect 30 (thirty) days after the notification (registered mail with acknowledgement of receipt) any Contract wherein the use of the Service or Program under Licence takes place in violation of these Conditions, with simultaneous shutdown of the Service and/or withdrawal of the License. In any event, INTESA maintains the right to undertake all further legal action.

### **1.14 Applicable law and court of jurisdiction**

The Conditions are governed by Italian law. The Vienna International Convention of 11 April 1980 on the sale of movable property does not apply. The Conditions do not in any way limit the rights of consumers which may not be given up or which may not be limited conventionally. In this case, the Conditions are supplemented or replaced by article 1469 *bis, et seq.* of the Italian Civil Code.

For any dispute over the validity, application, interpretation, execution and termination of the Conditions, including those concerning this clause 1.13, the court of Turin shall have sole jurisdiction.

## **2.0 Warranties**

Except where otherwise indicated by INTESA, the following warranties apply solely in the country in which the Products and Services are purchased.

### **2.1 Warranty on Machines**

INTESA does not provide any warranty of its own for Machines supplied, INTESA transfers to the Customer the warranty of the Machine supplier or manufacturer.

### **2.2 Warranty on INTESA Programs**

When an INTESA Program is guaranteed, it is intended that it is compliant with its Specifications, if used correctly in the Specified Operating Environment.

The warranty period for a Program expires when the Services for that Program are no longer available. During the warranty period, INTESA supplies free of charge the Services to Programs for all the Customer's requests for intervention regarding the Program code when the latter is not operating in accordance with its Specifications.

The Services to Programs, for guaranteed Programs, shall be available for at least one year starting from date the Program is generally available for Customers ("General Availability");

If an INTESA Program does not work as guaranteed during the first year following purchase of the licence, and INTESA is unable to make it work as guaranteed, the Customer shall be entitled to return the Program to INTESA, who shall refund the Customer for the amount paid.

This provision is applicable only if the Program licence was purchased by the Customer when the Services for the said Program were available (irrespective of their residual duration).

Further conditions regarding Services to Programs may be found in the "Programs" section of the Conditions.

### **2.3 Warranty on INTESA Services**

For each INTESA Service, INTESA guarantees its execution:

2.4 with all due care and competence;

2.4 in accordance with the description provided (including the criteria of completion) in the Order Documentation, in any Supplementary Conditions and in the Conditions.

### **2.4 Scope of the warranty**

The INTESA warranties lapse in cases of: improper use; incidents; changes; unsuitable physical or operating environment; use under conditions other than the Specified Operating Environment; improper maintenance interventions; removal or alteration of the identification of Products or part of Product; failures due to products for which INTESA is not responsible; natural disasters and damage in shipment; crimes committed against the Customer.

**THESE WARRANTIES ARE THE SOLE WARRANTIES ISSUED AND REPLACE ALL OTHER WARRANTIES BY LAW OR OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLICIT, INCLUDING, BY WAY OF EXAMPLE, IMPLICIT TRADING AND SUITABILITY WARRANTIES OR CONDITIONS FOR A SPECIFIC PURPOSE, WITHIN THE IRREVOCABLE LIMITS OF LAW.**

## **2.5 Warranty exclusions**

INTESA does not guarantee error-free or unbroken operation of a Product or Service, nor that INTESA will fix each and any defect.

The Order Documentation and Supplementary Conditions indicate which, if any, INTESA Products are supplied without warranty.

Except where otherwise indicated by INTESA, INTESA does not provide any warranty of its own for non-INTESA Materials, Products, and for non-INTESA Services.

However, manufacturers, suppliers or publishers other than INTESA may offer the Customer their warranties.

## **3.0 Machines**

### **3.1 Ownership and risks of loss**

The ownership of a Machine sold by INTESA to the Customer, or to the rental company indicated by the latter, is transferred with the full payment of the price.

For each Machine, INTESA bears the risk of loss or damage up to the time it is delivered to the INTESA-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine will be covered by insurance, arranged and paid for by INTESA for Customer, covering the period until it is delivered to Customer or Customer designated location. For any loss or damage, Customer must 1) report the loss or damage in writing to INTESA within 10 business days of delivery and 2) follow the applicable claim procedure.

### **3.2 Installation**

To operate properly, the Machines must be installed in a suitable environment. The Customer is obliged to provide an environment satisfying the specific requirements stated by the manufacturer of the Machines.

INTESA has standard installation procedures. INTESA will successfully complete these procedures before it considers a Machine (other than a Machine for which Customer defers installation or a Customer-set-up Machine) installed.

Customer is responsible for installing a Customer-set-up Machine and, unless INTESA agrees otherwise, the other Machines.

## **4.0 Programs**

### **4.1 Licence**

With the acceptance of the Customer's order by INTESA, INTESA grants the Customer a Program user licence that is non-exclusive and non-transferable valid solely in Italy, the Republic of San Marino and in the Vatican City state.

The Programs are the property of International Business Machines Corporation or one of its subsidiary and/or associate companies or of a supplier of INTESA, and are protected by copyright law and are granted under licence (they are not sold).

### **4.2 Licence conditions**

On the basis of the licence, INTESA authorizes the Customer to:

1. use the part of the machine readable Program only on the Specified Machine.  
Where the Specified Machine cannot be used, the Customer may use another machine temporarily, and at any rate only for as long as strictly necessary. If the Specified Machine is unable to assemble or compile the Program, the Customer may perform these operations on another Machine. In the case of a change of the Specified Machine from the one initially

- identified by the Customer as such, the Customer shall notify in good time the change and the date on which the change is made;
2. use the Program within the limits of the authorizations that the Customer has acquired;
  3. copy and install copies of the Program, within the limits of the usage authorized, provided that the Customer reproduces on each copy, or partial copy, of the Program the indications regarding copyright and any other indications regarding the rights of ownership; and
  4. use a part of the Program that INTESA has supplied to the Customer in source language, or marked "Restricted" (such as, for example "Restricted Materials of INTESA") solely for:
    - a. solution of problems relating to use of the Program;
    - b. changes to the Program so that the latter works in connection with other products.

The Customer is bound to adhere to further conditions that INTESA may establish in relation to specific Programs. Such conditions are contained in the Specifications of the Program or in the Order Documentation.

### **Actions that the Customer may not undertake**

The Customer undertakes not to proceed to:

1. reverse compile or assemble the Program, or in any other way translate the same, except in cases where this is expressly allowed for by the irrevocable rules of law; or
2. sublicense, hire out or rent the Program.

### **4.3 Program Components that cannot be used on the Specified Machine**

Certain Programs have components that are designated for use of machines other than the Specified Machine upon which the Program is used.

The Customer may make copies of a component and of the associated documentation within the scope of the authorized usage of the Program itself, provided that the Customer informs INTESA in writing of the effective date of distribution of the component.

### **4.4 DSLO Licences**

For certain Programs, the Customer may make a copy under the conditions as specified under the "Distributed System License Option" (called DSLO licence). The fees for a DSLO licence are less than those of the original licence (called "Base" licence). For the lower fee, the Customer undertakes with each DSLO licence to:

1. have a Base licence for the Program;
2. provide the documentation regarding problems found and receive the Services to the Program (if available) only through location of the Base licence; and
3. distribute and install, on the Specified Machine for the DSLO licence, the releases, i.e. the information on correction of the defect or a by-pass procedure that INTESA supplies for the Base licence.

#### **4.5 Program Test**

For certain Programs there is a test period allowing the Customer to assess if they satisfy his requirements. If a test period is provided, it starts from the tenth day following the date of shipment, or from a different date specified in the Order Documentation.

INTESA shall indicate the duration of the test period of the Program in the Order Documentation. DSLO licences are not covered by a test period.

#### **4.6 Programs with licensing conditions included**

INTESA supplies the Customer certain Programs (called “Packaged Programs”) together with the relative licence agreement. Such Programs are granted under licence at the conditions set down in the agreement accompanying the Programs in question.

In particular, with regard to Programs subject to IPLA (“IBM International Program License Agreement”), the relative Licence Conditions have been made known by IBM through the same arrangements as used for the Conditions and specified in the introduction thereto.

#### **4.7 Protection of Programs**

For each Program, the Customer is obliged to:

1. guarantee that whoever uses it (via local or remote access) does so only within the scope of the authorized usage and adheres to the INTESA conditions applying to the Programs; and
2. keep a record of all copies made, to be provided to INTESA at the latter’s request.

#### **4.8 Services to the Programs**

For Programs under warranty and certain other Programs, INTESA supplies Services to the Programs.

If INTESA can reproduce the problem reported by the Customer in the Specified Operating Environment, INTESA shall release the information regarding correction of the defect, a limitation of usage, or a by-pass procedure. INTESA supplies Services to the Program only for the part not modified by the current Program release.

INTESA supplies Services to the Programs:

1. for an unlimited time, until when INTESA notifies in writing their termination, with six months notice;
2. until a date determined in advance by INTESA; or
3. for a limited period of time determined by INTESA.

#### **4.9 Withdrawal from the licence**

The Customer may withdraw from the licence of a Program, providing INTESA written notification and respecting a period of notice of three months, or at any time during the test period.

Licenses for certain replacement Programs may be obtained for an upgrade charge. When Customer obtains licenses for these replacement Programs, Customer agrees to terminate the license of the replaced Programs when charges become due, unless INTESA specifies otherwise. INTESA may resolve the licensing contract in the case of failure by the Customer to fulfil the applicable contractual conditions, and in particular the conditions set down in this Section "Programs" or in the article "Amounts due and payments" in the Section "General Part" of the Conditions, subject to providing written demand to perform within a due period. In this case, the right to use the Program is withdrawn.

## **5.0 Services**

### **5.1 INTESA Services**

Services may be standard or customised, depending on the specific requirements of the Customer. Each deliverable of Services may comprise one or more of the following Services:

1. limited time period services, which are concluded on the completion of a job, or at an agreed date;
2. Services defined as Renewable, which have a specific contractual duration and are renewed automatically upon expiry as is better defined in the subsequent articles Renewals;
3. unlimited time period services, which are available for the Customer until either of the Parties withdraws from the contract relating to the Services.

### **5.2 Personnel**

Each Party is responsible for the supervision, management and control of its own personnel. INTESA reserves the right to determine at its discretion the personnel to be used to fulfil its contractual commitments.

INTESA has the right to subcontract a Service, or a part thereof, to suppliers chosen by it.

### **5.3 Ownership and licensing of Materials**

INTESA declares in the Order Documentation which Materials shall be handed over to the Customer.

For Materials under the Service that are made during execution of the latter or at other times, for example before the start of the Service, the ownership and all other rights (including ownership of the copyright) belong exclusively to INTESA or to third parties.

INTESA shall deliver to the Customer a copy of the Materials indicated in the Order Documentation. INTESA grants the Customer an irrevocable, non exclusive licence valid throughout the world and prepaid allowing to use, dispose, reproduce, show and distribute copies of these Materials, solely inside the Corporate Group of the Customer. The Customer is bound to reproduce the indication of the copyright and any other indication demonstrating ownership on each copy made according to the licence granted under the terms of this clause.

Each idea, concept, know-how or technique relating to the subject of a Service, developed or supplied by one of the Parties, or by both together, in the execution of a Service, may, notwithstanding any patents or copyrights applicable, be used freely by each of the Parties.

### **5.4 Changes to Products and/or Services conditions**

INTESA may modify the conditions of Products and/or of renewable and unlimited time Services, serving the Customer written notice of three months. These changes however shall not be retroactive. They are applied immediately to all deliverables subject to renewal starting from the date specified in the prior notice. For all deliverables outstanding at the time notice is given, both renewable and unlimited time type, the changes shall be applicable as of the date indicated on the INTESA written notice where the Customer does not withdraw from the current contract within the aforesaid term of notice.

Notwithstanding the above, if INTESA and the Customer decide together to change the contents of an Order for a Product or a Service, INTESA shall provide a written description of the agreed change, which shall be accepted by both Parties. The contents of said change shall have precedence over the Order having as its subject the original Products and/or Service and over any prior changes.

## **5.5 Renewal**

Contracts relating to Renewable Services are renewed automatically upon expiry for a period equal to the initial term, except where one of the Parties notifies the other Party in writing, with at least three months notice with respect to the current contractual period of its intention not to renew said contracts. The cancellation of these Services shall have effect only from the end of the first contractual period. In special cases, in accordance with the provisions of the Order Documentation, the first contractual period may have a different duration from subsequent ones.

## **5.6 Termination and withdrawal**

Without prejudice to the provisions of earlier Article 1.7 step 6) and of article 1455 of the Italian Civil Code, either Party may resolve the contract relating to a Service if the other Party does not fulfil its obligations.

The Customer may withdraw from the contract relating to a Service for an unlimited time period, without any further charge, giving written notification to INTESA with three months notice, provided the Customer has fulfilled the minimum requirements as set down in the Order Documentation and in the Supplementary Conditions.

The Customer may withdraw from a contract relating to Renewable Services or from a maintenance contract for an unlimited period, without any further charges, by way of simple written notification to INTESA, provided it has fulfilled the minimum requirements set down in the Order Documentation and in the Supplementary Conditions and, in addition, one of the following circumstances is obtaining:

1. the Customer permanently removes the Product for which the Service is rendered from productive use within its Corporate Group;
2. the site in which the Service is rendered is no longer legally available to the Customer (for example, following sale or shut-down);
3. the increase in the fee for Service, following one or more increases in the prior period of twelve months, has resulted in the exceeding of the maximum percentage increase as specified in the Order Documentation for the Service. This circumstance, and the associated right of the Customer, are not applicable for Services for which no maximum percentage has been defined.

In all other cases, the Customer may withdraw from a contract relating to a renewable or unlimited period Service giving INTESA written notification with three months notice.

In case of periodic fees, the withdrawal has effect from the end of the charging period in force upon expiry of the notice.

The Customer shall pay for all Services rendered and the Products and Materials delivered until the end of the Service, and also for any expenses or charges sustained by INTESA on account of the interruption of contracts with its suppliers and subcontractors.

INTESA may withdraw from the market a renewable or an unlimited time Service, namely the support for a specific Product; in such a case, INTESA may withdraw from the relative contracts in force by serving written notification to the Customer with three months notice. If the withdrawal refers to a Service already paid for by the Customer and which INTESA has still not rendered in full, the Customer shall be entitled to a pro rata refund.

Contractual conditions the effect of which extends, by their nature, even beyond the cancellation or withdrawal from the market, remain in force until fulfilled and are binding upon the successors, heirs and dependants of the Party concerned.

## **5.7 Security**

Programs and data belonging to the Customer that are entrusted to INTESA in relation to the Services supplied according to these Conditions shall be handled according to the same security procedures as arranged by INTESA for its own data and programs. The Customer is responsible for defining own data and information requiring special security arrangements and requesting that INTESA apply them; in the absence of specific requests, the INTESA procedures shall be assumed as meeting the Customer's requirements.

The security of INTESA Services is based upon correct access verification procedures and upon monitoring routing of the information through network controls (user-id, password), user and terminal recognition procedures, automatisms and associations defined in advance between user profiles and activities permitted in the network, to encryption, authentication and reciprocal recognition tools conforming to the ISO standards.

## **5.8 Identification codes**

INTESA shall assign the Customer Identification codes (e.g. user-id, password) authorizing access to the Services. All charges posted by INTESA for their use shall be payable by the Customer who shall be responsible for the use of these Codes by the personnel of the Customer's or of third parties to whom the Customer has communicated the said Codes.

Use of the Identification codes must not be made in the intent to sub-charter, resell, transfer to another title any part of the Services or Programs referred to by these Conditions.

## **5.9 Complementary Products**

Within the context of certain INTESA Services, arrangements may be made to supply associated equipment and programs (Licensed Internal Code), called Complementary Products, intended solely for the use of these Services. Said Complementary Products, supplied on loan to the Customer, remain the property of INTESA or their legitimate owner. INTESA shall supply the information to permit correct installation in the Customer's context.

INTESA shall

- install the Complementary Products at the Customer's premises, except where otherwise arranged in the Order Document,

- perform maintenance of the same and be responsible for de-installing, removing and taking them away from the Customer's site.

The CUSTOMER shall

- at its own cost, make available the rooms and electric power supply necessary to use the Complementary Products, maintain them with adequate security measures,
- be responsible for damage or losses, including where caused by third parties,
- provide any assistance reasonably necessary to allow INTESA access to the rooms, installation, maintenance, including technical changes, and de-installation,
- undertakes not to transfer them to other sites, without the prior written consent of INTESA, to keep them free of charge, and to apply a suitable label indicating that they are the property of INTESA, to return them, together with their documentation, to INTESA or a person designated by the latter when the Service for which they were supplied is withdrawn by INTESA, terminates and is not renewed.

### **5.10 Usage of the Services**

The Customer shall use the Services, referred to by these Conditions, according to the operating arrangements and service times in force that they shall be notified of together with the Contracts. Any changes to the hardware and software configuration involving significant variations of the procedures used by the Customer, shall be communicated by INTESA with at least 3 (three) months notice. Where INTESA Services are used to provide access to networks belonging to third parties, the INTESA Service is understood to be intended exclusively for transit to such networks, the access to or use of which are not included in the INTESA Services except by way of a specific written indication in the Contract. Where not otherwise specified, the speed indicated for connections is to be understood as the maximum permitted speed; the actual speed at any time shall be determined by the actual traffic situation. In cases of supplies of Professional Services where timing of the activities is envisaged, it is agreed that the times indicated shall be the best possible estimate and may be modified following new facts that may arise while the Services are being provided. The supply of Professional Services shall be considered completed following the production of what is described as the subject of each Contract. Use of INTESA Services excludes the possibility of acquiring patents, licence or commercial rights or copyrights or intellectual property rights of any kind, without prejudice to what is written down in each Contract.

## **6.0 Special provisions**

### **6.1 Invoicing arrangements**

In the case of a sale of Machines, the invoice shall be issued by INTESA upon shipment of the same.

In the case of Programs, for all-in fees, the invoice shall be issued according to the following cases:

1. on shipment, where no allowance is made for a test period;
2. at the Date of Installation, where allowance is made for a test period; or
3. at the Date set down in the Order Documentation; or
4. at the date of variation of the processing capacity of the Specified Machine or the authorized usage.

Fees for Maintenance Programs and Services with monthly frequency shall be invoiced each quarter, on the first day of the first month of each calendar quarter.

In the case of Programs, split periods shall be counted on the basis of a month having a conventional duration of thirty days.

Periodic fees for Programs, in the case of variation of the processing capacity of the Specified Machine or of the authorized usage, shall commence from the date on which one of the two above-mentioned events occurs.