

# INTESA GENERAL CONDITIONS OF CONTRACT (April 2016 edition)

## Forewords

The INTESA General Conditions of Contract, April 2016 edition (hereinafter the "Conditions") apply to contractual relations between In.Te.S.A Iniziative Telematiche per i Servizi Applicativi S.p.A. (hereinafter "INTESA") and its clients (hereinafter "the Client(s)"), relating to the sale of Services and/or Products.

The Conditions, together with the supply order (hereinafter "Order" or "Contract") and any Supplementary Conditions which may be applicable or annex, represent the whole agreement between INTESA and the Client on a specific supply and supersede any verbal or written communications exchanged between INTESA and the Client prior to the signature of the Contract.

The Conditions apply regardless of any conflicting, additional or contrary conditions of sale contained in any purchase Order or other written communication from the Client to INTESA.

When the Client signs a Contract that refers to the Conditions:

- INTESA and the Client undertake to consider equivalent to the original any reproduction of the Conditions, Supplementary Conditions (as defined below) or Contract Documentation made with reliable means, such as facsimile, copies or the on-line version published on INTESA official website: <http://www.intesa.it>;
- the supply concerned by the Contract shall also be subject – in addition to the Conditions, which are nevertheless applicable even if not signed – to the Contract Documentation (as defined below) and to any Supplementary Conditions which may be applicable.

These Conditions supersede all prior General Conditions for the supply of INTESA products and services. The invalidity of a single clause of these General Conditions will not involve the invalidity of the others clauses of the Conditions. Any amendments to the General Conditions shall be confirmed in writing by INTESA or by written agreement between the Parties.

This edition of the Conditions shall apply to all new contractual relationships between INTESA and its Clients from 1<sup>st</sup> April 2016.

The Conditions are available for consultation in all INTESA offices and branches, furthermore, they are published on the above mentioned INTESA official website.

# 1.0 General Section

## 1.1 Contractual structure

The Conditions comprise six Sections:

Section 1 – General section, includes: conditions concerning the contractual structure, Supplementary Conditions, Contract Documentation and Contract, Precedence of documents in the event of conflict, Definitions, Acceptance of the Conditions, Prices, Fees and Payment Separation of obligations, General principles of the relationship between the Parties, Intellectual Property Protection, Limitation of liability, Delivery, Withdrawal and termination, Geographic scope and Applicable law, Data Protection.

Section 2 – Warranties, defines the Warranty applicable to the Machines and Programs, Warranty Service, scope of Warranty, Exclusion from Warranty.

Section 3 – Machines, includes: the conditions applicable to Machines in connection with the Ownership, risk of loss and Disposal of the Machines.

Section 4 – Programs, includes: License, License Conditions, Program Protection.

Section 5 – Services, includes: Intesa Services, Personnel, Ownership and License of Materials, Amendment on the conditions of the Product and/or Service, Termination, Withdrawal, Withdrawal from the Market, Security, Identification Codes, Complementary Products, Use of Services,

Section 6 – Special Provisions, includes: Invoicing procedures, Shipping services and Storage devices delivery, Organisation, Management and Control Model, Business Conduct Guidelines, End Users.

## 1.2 Supplementary Conditions

Some of the Products or the Services are subject to additional conditions ("**Supplementary Conditions**") to those set out herein. These conditions, where applicable, are accepted by the Client by signing them or by signing the Contract Documentation referring to them. The Supplementary Conditions constitute integral part of the Conditions.

## 1.3 Order Documentation and Contract

For each supply, INTESA will provide the Client with the appropriate "**Order Documentation**" that specifies the characteristics of the supply. It has to be signed by the Client and accepted by INTESA or, conversely, signed by INTESA and accepted by the Client as described in the section "Acceptance of an Order or a Proposal" below.

From the date of acceptance, the Order or the sale proposal (hereinafter "Proposal"), with any Appendices, may be defined "**Contract**".

For the avoidance of doubt, a Proposal is valid for 30 (thirty) days from the date of its transmission, unless otherwise specified in the document itself.

## 1.4 Precedence of documents in the event of conflict

In the event of any inconsistency between the terms of the Conditions and the terms of any other provisions in the rest of the documentation, the terms of the Supplementary Conditions shall prevail over the General Conditions. The provisions contained in the Contract shall prevail over both.

In the event of a conflict between the provisions of the various documents contained in the Contract Documentation, the Order shall prevail over the Technical Annex.

## ***1.5 Separation of obligations***

Except for specific agreements, the Client agrees that any Contracts referring to these Conditions represents a separate contract, legally independent of the others.

Pursuant to Art. 1246 of the Italian Civil Code, the Client hereby renounces to offset.

## ***1.6 Definitions***

The terms used hereinafter shall have the same meaning in singular and in plural; the words written in uppercase shall have the same meaning if written in lowercase.

### **Specified Operating Environment**

Machines and Programs with which a Program should operate, as indicated in the Specifications of the Program itself.

### **Fees**

The fees can be defined:

- variable price based on time and/or materials (for example for hourly-based Services);
- fixed price (for example the price agreed for a custom Service);
  - lump sum;
  - periodic (for example the periodic fee for a Maintenance Service);

or

- a combination of the methods specified above.

- **With variable price based on time and/or materials**

Fees due on completion

- **With fixed price**

- **Lump sum**

Fees payable once only – One-Time (O)

- **Periodic fee or Annual fee in advance**

Recurring fees start:

1. for a Program, from the date of installation;
2. for a Service, from the Service Start Date, as defined below, or, if such date does not coincide with the first day of the month, from the first day of the following month.
3. Instalment: portion of the annual fee calculated from the Service Start Date or from the end of the month following the date of each activation, until the end of the current period or the date specified in the Contract.

### **Service Start Date**

The actual date of commencement of the Service which shall be communicated to the Client or, in the absence of express communication, start from the month specified in the invoice.

### **Effective Date**

The Contract shall take effect from the signature of both Parties.

In particular:

- in the case of a Contract, from the date of acceptance of the latter by INTESA which will be communicated to the Client in writing, to the person indicated by the same, or,

failing such express acceptance, reference shall be made to the date of issue of the first invoice

- in the case of a Proposal, from the date of acceptance of the same by the Client using the specific form.

### **Works Start Date**

It's communicated by INTESA by written notice or email.

### **End Users or EU**

INTESA can provide Services or Products to third parties “**End Users**” or “**EU**”, upon Client request.

### **Duration of the Contract**

The Duration of the Contract is defined in the specific Contracts case by case.

### **Corporate Group**

A group of companies or legal entities in which one of them owns or controls, directly or indirectly, over fifty percent of the shares with voting rights or of the shares of all the other members of the group.

The term Corporate Group only applies to the companies of the Group located in Italy.

INTESA and the Client may agree that certain other companies, listed in a specific table, can be considered as belonging to the Corporate Group even if located abroad.

### **Commercial Information**

It's the commercial information sent by the Client to INTESA, including names, positions, business addresses, telephone numbers and e-mail concerning the Client or the its employees. Commercial Information also includes information relating to the Client legal entity (e.g. Client turnover data and other information related to its commercial operations).

### **Materials**

Are any intellectual works (such as programs, program lists, programming tools, documentation, tables, drawings and similar works) that INTESA may provide to the Client as part of a Service. The term "Materials" does not include the Programs or any firmware under license supplied by the Machine manufacturer.

### **Contract or Order Form**

Documentation with which the Client requests INTESA to execute the supply and/or Service that refers to or contains:

- acceptance of these Conditions with a specific approval of the unfair clauses pursuant to and due to the effects of Articles 1341 and 1342 of the Italian Civil Code
- an indication of prices, fees, Duration, invoicing procedures and applicable conditions
- any annexes and attachments.

All documents which are part of the agreement between the Parties upon a specific supply can also be referred as a whole as “**Contractual Documentation**”.

### **Party or Parties**

The Client and/or INTESA and their successors in title, if present.

### **Product**

A Machine or a Program.

## **Proposal**

Documentation containing the proposal made by INTESA to the Client concerning the proposed supply and/or Service, including all its annexes.

## **Service(s)**

It's the execution of a task, a service of support or the performance to enable the Client to access to a resource that INTESA makes available to him.

For the execution of the Services, preparatory activities for the effective start of them may be envisaged.

With the Service, INTESA may supply:

- **Machine(s)**

Hardware, devices, model conversions and changes, machine parts, accessories or any combination thereof.

- **Program(s)**

A set of instructions executed on a Machine.

The term "Program(s)" includes INTESA Programs as well as any non-INTESA Program which INTESA may supply to the Client.

## **Optional Services**

If Optional Services are envisaged and quoted in the Contract, these shall be requested by the Client within the expiry of the Contractual Duration, or within the shorter term established between the Parties, by means of a specific amendment and/or supplement to the Contract following the procedures envisaged for the conclusion of the Contract, unless otherwise agreed between the Parties.

## **Specifications**

The document that contains the technical specifications of a Product.

## **Storage device(s)**

A storage device on which information (data) is recorded.

It can be magnetic, optical or digital.

## **Amendment, Supplement**

Documentation that amends or add contents to the Contract to which it refers.

### ***1.7 Acceptance of a Contract or a proposal***

With the acceptance of the Contract or the proposal, the Client accepts the Conditions, any Supplementary Conditions relating to the specific Service and specifically approves certain clauses of the Conditions pursuant to Articles 1341 and 1342 of the Italian Civil Code.

In the event that the Client has the legal status of "consumer", the provisions of Article 1469 of the Italian Civil Code, including the amendments from paragraph 1 to paragraph 6, shall apply.

The supply of a Product or Service shall be governed by these Conditions, subject to acceptance of the Proposal by the Client.

### ***1.8 Prices, Fees and payment***

#### ***1.8.1 - Prices***

The price (hereinafter “Price(s)”) indicated in the Contract shall remain unchanged for the period specified in the Contract itself or, if the period is not indicated, it will remain unchanged until the expiry of the Contractual Duration.

Unless otherwise agreed, the Prices indicated in the Contract shall be net of levies or taxes; net of transport, packing and insurance costs; net of any expenses of the Client or importation fees.

If an authority imposes a tax, levy or duty on any supply which is subject to these Conditions and with the exclusion of those imposed on the taxable income of INTESA, the Client shall pay the amount as specified in the invoice; should the Client be entitled to exemptions, it shall provide to INTESA the relevant documentation proving so. Any income tax arising from the Product shall be the sole responsibility of the Client from the date of its shipment.

### ***1.8.2 - Additional fees***

Depending from the type of Service, or due to specific circumstances, additional fees or amounts may apply (such as those relating to a particular activity or to travel costs). Should such additional fees be applicable, they shall be charged against receipts, except otherwise specified in the Contract Documentation.

Fees for a Program or a Service are invoiced on the date of installation or on the Service Start Date, except if otherwise specified in the Contract Documentation.

### ***1.8.3 - Fee modification***

Periodically, INTESA may modify the fees.

The Client shall benefit from any fee reductions for the due amounts from the effective date of the reduction.

In case of advance payment, the relevant Service shall be used within the corresponding contractual period. Unless otherwise specified by INTESA, no refunds or credits are envisaged if the Services is not used.

INTESA may increase the periodic fees of Products and Services, as well as the rates and minimum amounts of Services provided based on the Conditions, giving 3 (three) months written notice to the Client. The increase shall apply from the first day of the charge period, coinciding with or immediately following the effective date of the increase, specified in the notification.

Should the increase exceed 8% of the last fee applicable, in a period of 12 (twelve) months, the Client shall have the right to terminate the contract giving prior written notice of 30 (thirty) days to INTESA by registered letter with return receipt, remaining due to INTESA the total amount for the entire contract period.

### ***1.8.4 - Payment***

Unless otherwise specified in the Contract Documentation or invoices, Fees are due upon receipt of the invoice; the Client undertakes to pay them in accordance with that specified in the Contract Documentation (usually within 30 (thirty) days starting from the invoice date), in the Conditions and in the Supplementary Conditions, including arrears interest.

In the event of instalment payments, should the Client fail to pay even only one instalment within the established deadline, the Client shall be subject to application of acceleration clause pursuant to Art. 1186 of the Italian Civil Code and, consequently, all the amounts, even those not yet due, shall become immediately due.

In the event of failure to pay even only one instalment, INTESA shall have the right to suspend all further supplies and to terminate the contracts that have not been performed, without prejudice to:

- a) immediate payment for the obligations already fulfilled;
- b) compensation for any damage resulting from interruption of the Service;

c) termination of the contract concerning the unpaid supply pursuant to Art. 1456 of the Italian Civil Code.

Any disputes relating to invoices shall be sent by registered letter with return receipt to INTESA registered office within 8 (eight) working days starting from the date of receipt of the invoice, otherwise they shall not be taken into consideration and the supplies provided and services rendered shall be deemed as accepted without conditions.

Should the Client fail the payment obligation or in case of partial payment, and also in the event of lawsuit carried out by INTESA (even out of the court proceedings) to recover the due amount, as waiver to Art. 4 of Legislative Decree no. 231 of October 9, 2002, and in accordance with the provisions of Art. 7 of said Decree, arrears interest shall be due only following a request by INTESA by means of a formal notice to comply (registered letter with return receipt) addressed to the Client.

Notwithstanding Art. 5 of Legislative Decree no. 231 of October 9, 2002, such interest shall be calculated from the due date of the invoice, based on the interest rates of the European Central Bank in force at the end of the month in which the payment was due to INTESA, increased by the percentage established by law and valid at the time of the formal notice.

As exception to Art. 1406 of the Italian Civil Code, INTESA shall have the right to assign all or part of the obligations to which the Conditions apply, including contracts in which the Conditions are referred to.

### ***1.9 Business Partners***

INTESA has concluded agreements with commercial organizations (hereinafter “**INTESA Business Partners**”), in Contract to promote, market and provide assistance for certain **Products and Services**.

When the Products and Services are purchased by the Client via an INTESA Business Partners based on these Conditions, INTESA declares to be responsible for providing the Products and Services to the Client under the warranty terms and other terms of the Conditions.

INTESA may in no way be held responsible for:

1. INTESA Business Partner initiatives;
2. any additional obligations that INTESA Business partners took vis-a-vis the Client;
3. any product or service that INTESA Business Partners provide to the Client according to their specific contracts.

### ***1.10 Mutual obligations of the Parties***

INTESA and the Client mutually undertake the following obligations:

1. The Parties do not grant each other the right to use their brands (or those of their Corporate Group), trade names, logos, or other denominations in any kind of publication, including promotional, without the prior written consent of the Party owning the rights thereto;
2. all information exchanged between the Parties is non-confidential. Should the parties intend to communicate, receive or exchange confidential information, they will sign a confidentiality agreement;
3. the Parties are free to sign agreements with third parties with similar content to the Conditions;
4. each Party grants to the other only the specified licenses and rights. No other licences or rights (including patent rights or licenses) are granted;

5. each Party may communicate with the other by electronic means and such communication shall be equivalent to a written document except otherwise provided by mandatory legislation. The identification code ("user ID") contained in electronic documents, although different from a digital signature, will constitute identification of the sender and will confirm the authenticity of the document;

6. each Party shall perform the obligations in compliance with the Conditions, in good faith and shall give the other Party a reasonable opportunity to comply with its obligations before taking action for breach;

7. the Parties undertake not to start legal proceedings to assert their rights more than two years after the date of the event that gave the right for the lawsuit, without prejudice to shorter expiry or limitation periods established by law. The Parties acknowledge that this term does not violate the provisions of Art. 2965 of the Italian Civil Code.

### ***1.11 Client Obligations***

The Client undertakes:

1. to not assign or otherwise transfer the contractual relations governed by the Conditions or any right arising from them to third parties, to not delegate the execution of its services or resell the Services provided by INTESA to third parties, without the prior written consent of INTESA itself. The violation of the provisions of this section will make the assignment or the transfer void and ineffective;

2. to accept any responsibility arising from the use of the Products or Services;

3. to grant to INTESA free access, space and adequately safe conditions and, in general, implement everything necessary and possible to enable INTESA to fulfil its obligations;

4. to comply with laws and other legal sources relating to export and import, including the United States legislation prohibiting or restricting the export for certain uses or to certain end users.

6. to grant the compliance to the Conditions relieving INTESA from any liability, without prejudice to the limits of law, even if the Client allow third parties to access to the Service or use a Product supplied by INTESA.

### ***1.12 Intellectual Property Protection***

For the purposes of this article, the term Product shall include Materials.

#### ***1.12.1 - Third Party Claim***

Should any third party start a legal proceeding against the Client, alleging that a Product supplied by INTESA violates its patents or copyrights, INTESA shall, at its own expense, defend the Client and pay all costs, damages and legal fees stated by a decision became res judicata or recognised by INTESA in settlement, provided that the Client:

a. promptly informs INTESA in writing of the lawsuit by the third party; and

b. allows INTESA to manage the defense and any negotiations aimed at settlement of the dispute, cooperating with INTESA.

#### ***1.12.2 - Compensation***

Should a third party start such a suit or should it appear likely, the Client shall allow INTESA take the countermeasures permitting the Client to continue using the Product by modifying it or replacing it with another Product that is functionally equivalent. Should INTESA establish that none of these alternatives is reasonably feasible, the Client shall return the Product upon the written request of INTESA and the latter shall issue a credit note equal to:



1. for a Machine: the net book value of the Client calculated in accordance with the generally applied accounting standards;
2. for a Program provided by INTESA: the amount paid by the Client or, if lower, the amount of the fees within a 12 (twelve) month period;
3. for Materials: the amount paid to INTESA for the development of the Materials.

### ***1.12.3 - INTESA's liability exclusions***

INTESA shall have no liability if the claim concerns:

- a. any component supplied by the Client or by a third party on behalf of the Client, should the latter have been incorporated into a Product; if the Product has been developed by INTESA in compliance with any drawings, specifications or instructions provided by the Client or by a third party on behalf of the Client;
- b. any modification of a Product carried out by the Client or by a third party on behalf of the Client or for any use of a Programs provided by INTESA in other ways than those provided for by the respective licence conditions or the applicable limitations of use;
- c. any combination, operation or use of a Product with any product, hardware, program, data, equipment, methodology or process that has not been provided by INTESA.

### ***1.13 Limitation of liability***

Circumstances may arise in which, for reasons due to INTESA or other reasons for which INTESA is liable according to the law, the Client is entitled to compensation for damages from INTESA. In each of these cases, regardless of what entitles the Client to claim such compensation (including severe breach, negligence, erroneous declaration and other contractual or extracontractual event), and without prejudice to Art. 1229 of the Italian Civil Code and by other mandatory provisions of the law, the liability of INTESA shall be limited to:

1. the payments provided in section 1.12 "Intellectual Property Protection";
2. physical injuries to persons (including death);
3. for any other actual direct damages, up to the amount of 100.000,00 euros or up to the amount paid for relevant Product or Service of the claim (one annual fee in the case of periodic fees), should such price exceed 100,000 euros. This limit also applies to INTESA subcontractors and INTESA Program developers; the amount specified above is the maximum amount for which INTESA and its subcontractors and Program developers will be collectively liable.

Without prejudice to what provided by Art. 1229 of the Italian Civil Code and other mandatory provisions of the law, under no circumstances INTESA, its subcontractors and Program developers shall be liable for:

- a) third parties claim against the Client for damages (except as provided for in points 1 and 2 above);
- b) loss or damage to Client archive documents or data;
- c) indirect damages of any kind, including any consequential financial loss, including lost profits or lost savings, even if INTESA was aware of such possibility.

### ***1.14 Further obligations***

The provisions of the Conditions which, by their very nature, extend beyond the duration of

the Conditions themselves, shall remain in force until full performance, and shall bind the heirs, successors and rightful claimants of the concerned party.

### ***1.15 Territory***

The Client's rights and INTESA's obligations will only be valid and binding within the territory of Italy, of the Republic of San Marino and of the Vatican City State.

With the prior written agreement of the Parties, the Client's rights and INTESA's obligations could also be valid in the country in which the Product is used, except for Products whose licenses don't permit it.

Except as otherwise provided by any mandatory provisions of law, INTESA undertakes no obligation concerning the provision of Services and Machines that are located outside the national territory.

### ***1.16 Termination clause***

INTESA may terminate any Contract if the Client use the Service or the Licensed Program in violation of these Conditions, the effect of the termination will take place on the 30th day following the due notification by registered letter with advice of receipt. Termination entails the immediate interruption of the Service and/or the withdrawal of the License, without prejudice to the right of INTESA to take any further legal action.

### ***1.17 Applicable law and Jurisdiction***

The Conditions are governed by Italian law. The Vienna Convention of April 11, 1980 on the international sale of goods does not apply. The Conditions don't narrow in any way the rights of consumers that cannot be waived or cannot be restricted by agreement. In this case, the Conditions shall be supplemented or replaced by Arts. 1469 *bis* et seq of the Italian Civil Code.

Any dispute concerning the validity, application, interpretation, execution and termination of the Conditions, including those relating to this clause, shall be submitted exclusively to the Court of Turin.

### ***1.18 Occupational Safety and Health Laws***

The Parties undertake to be totally compliant with current legislation concerning occupational health and safety, including, without limitation, the provisions of the Legislative Decree 81/08, as amended.

Unless otherwise stated in the Interference Risk Assessment Document (Documento unico per la valutazione dei rischi da interferenze - DUVRI), INTESA declares that the average cost for the occupational safety of employees involved in provision of the Services is €0.23 per hour for each employee.

### ***1.19 Data Protection***

The Parties undertake to fulfil their respective obligations in compliance with current legislation on personal data protection. The Data Controller, pursuant to Art. 28 of Legislative Decree 196/2003, appoints INTESA, as Data Processor pursuant to Art. 29 of said Decree, by signing the Contract. Processing shall take place in the manner and for the purposes indicated in the relevant Contract.

#### ***1.19.1 - Third parties' personal data processing***

If the Client transmits and/or provides to INTESA third parties' ("**Third Parties**") personal data that have to be processed for the execution of the Services, the Client shall ensure to

INTESA to fulfil all the obligations arising from the law concerning personal data protection (Legislative Decree 196/03, as amended) by signing the Contract.

INTESA may, therefore, lawfully process any Personal Data of Third Parties provided by the Client itself to INTESA in execution of the related Contract.

The Client shall indemnify INTESA and its subcontractors from any type of damage, claim, charge or expense which may arise, directly or towards third parties, as a result of violations by the Client relating to the above mentioned law.

### ***1.19.2 – Business Information***

The Client authorises INTESA to process and use the business and sale information contained in the Contract to promote commercial and business relationships between the Client and INTESA, including the marketing of Products and Services ("Specific Purposes"), based on the Privacy Policy (pursuant to article 13 of Legislative Decree 196/03) that shall be provided to the Client by INTESA.

If required by Personal Data Protection law, the data processing shall be subject to the related consent.

The Client agrees that the business information may be communicated, processed and used by INTESA, in compliance with Personal Data Protection law, for the Specific Purposes.

In accordance to the aforementioned legislation, the Client shall cooperate with INTESA (Data Controller) for the transmission of the Privacy Policy to the Commercial Contacts of Personnel (Data Subjects), in order to obtain from them the related consent to the processing and use of the business Information.

INTESA may also transfer the Commercial Information outside the European Union, provided that any transfer will be made following the contractual conditions approved by the Authority for Personal Data Protection and granting an adequate protection of the rights of the data subject(s).

## **2.0 Warranties**

Unless otherwise specified by INTESA, the following warranties apply only in the country where the Products and Services are purchased.

### ***2.1 Warranty for Machines and Programs***

INTESA does not provide further or additional warranties for Machines and Programs; INTESA shall transfer to the Client any warranty provided by the supplier or by the manufacturer of the Machine or Program.

### ***2.2 Warranty for INTESA Services***

Each INTESA Service will be executed:

1. with reasonable care and skill;
2. in compliance with the description provided in the Contract Documentation, in any Supplementary Conditions and in the Conditions (including the completion criteria).

### ***2.3 Scope of warranty***

INTESA warranty shall no longer apply in the case of: misuse; accidents; changes; use in an unsuitable physical or IT environment; use in conditions other than the Specified IT Environment; improper maintenance interventions; removal or alteration of Product identification or Product parts; faults caused by products for which INTESA is not responsible; natural disasters and transport damage; criminal acts committed against the Client.

These warranties are the only warranties provided and replace all other warranties or conditions, express or implied, including, without limitation, implied warranties or conditions of merchantability and fitness for a particular purpose, without prejudice to the mandatory

limits of the law.

## **2.4 Exclusion from warranty**

INTESA does not warrant the uninterrupted or error-free operation of a Product or Service nor that INTESA will correct any defects.

The Contract Documentation and Supplementary Conditions indicate any INTESA products which are provided without warranty.

Unless otherwise specified by INTESA, it does not provide any own warranty on Materials, on non-INTESA Products and on non-INTESA services.

Nevertheless, manufacturers, suppliers or publishers, other than INTESA, may provide their warranty to the Client.

## **3.0 Machines**

### **3.1 Ownership and risk of loss**

Ownership of a Machine sold by INTESA to the Client, or to the leasing company specified by the Client, shall be transferred upon full payment of the price.

For each Machine, INTESA incurs the risk of loss and damage until the Machine is delivered to the carrier for shipment to the Client's seat or the other location specified by it. From that moment, the Client assumes all risks.

### **3.2 Machine disposal**

All obligations imposed by law and by the implementation regulations of Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003, regarding waste electrical and electronic equipment ("WEEE"), are the responsibility of the Client as owner.

## **4.0 Programs**

### **4.1 License**

Should the Service include the use of a license, it shall be subject to the conditions of the provider attached to the Contract Documentation, unless otherwise specified.

Should the above conditions not apply, the following conditions ("License Conditions") will apply.

### **4.2 License Conditions**

Starting from the Effective Date of the relevant contract, INTESA grants the Client a non-exclusive and non-transferable user license for the Program valid only in Italy, in the Republic of San Marino or in Vatican City State, unless otherwise specified in the Contract Documentation.

The Programs are INTESA's (or INTESA suppliers') property, they are protected by copyright law and granted under license, without prejudice to the other existing rights on them.

Under the license, INTESA authorises the Client to:

1. use the Program within the limits of the authorisations that the Client acquired;
2. copy and install copies of the Program within the authorised limits of use, provided that the Client reproduces on each copy or partial copy of the Program the indications relating to copyright and any other indication relating to property rights.

The Client is required to accept and comply with the additional conditions that INTESA may establish with regard to specific Programs. The additional conditions could be contained in the Program Specifications or in Contract Documentation.

**Actions that the Client should not perform:** the Client undertakes to not sublicense, rent or lease the Program.

### ***4.3 Program Protection***

For each Program, the Client is required:

1. to ensure that anyone using it (via local or remote access) comply with the authorised use and abides by the INTESA conditions applicable to the Programs; and
2. to keep a record of all copies made, which will be provided to INTESA at its request.

## **5.0 Services**

### ***5.1 INTESA Services***

Services may be standard or customised according to specific Client requirements.

### ***5.2 Personnel***

Each Party is responsible for the supervision, management and control of its 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 outsource a Service, or parts thereof, to suppliers of its choice.

### ***5.3 Ownership and license of Materials***

INTESA shall specify in the Contract Documentation which Materials shall be delivered to the Client.

For Materials concerning a Service that are implemented during the execution of the same or at different moments, also before the start of the Service, ownership and all other rights (including copyright ownership) shall be and shall remain exclusively INTESA's or the other owner's, even if it is third party.

INTESA shall provide to Client a copy of the Materials listed in the Contract Documentation. INTESA grants the Client an irrevocable, non-exclusive, worldwide and prepaid license to use, execute, reproduce, display and distribute copies of these Materials, within the Corporate Group of the Client. The Client is required to reproduce the copyright notice and any other information certifying the ownership on each copy made under the license granted pursuant to this clause.

Any idea, concept, know-how or technique regarding a Service or a part of it, developed or provided by either Party, or by both jointly, in execution of a Service, may, without prejudice to any applicable patents or copyrights, be freely used by each Party.

### ***5.4 Amendment on the conditions of the Product and/or Service***

INTESA may amend the conditions of the Products and/or Services with 3 (three) months written notice to the Client. However, such amendments will nor have retroactive effect. They shall immediately apply to all supplies subject to renewal from the date indicated in the notice. For all supplies in progress at the time of notification, such amendments shall apply from the date specified in the written notification, without prejudice to the right of the Client to withdraw from the relevant contract within said notice period.

Should INTESA and the Client jointly decide to amend a Contract, INTESA shall prepare a written description of the amendment, which shall be accepted by both Parties. The content of such amendment shall prevail over the Contract concerning the original Product and/or Service and over any previous amendments.

### ***5.5 Termination***

Without prejudice to Art. 1.10 paragraph 6) and Art. 1455 of the Italian Civil Code, each Party may terminate the Contract should the other fail to fulfil its obligations within 30 (thirty) days of notification in writing to comply.

### **5.6 *Withdrawal***

Unless otherwise agreed by the Parties in the Contract Documentation, Art. 1671 of the Italian Civil Code shall apply.

The Client therefore undertakes to pay INTESA:

- i) all fees for Services rendered and any Product or Material delivered up to termination of the Service; and
- ii) all reimbursable costs incurred by INTESA up to termination of the Service.

The Client also agrees to pay, in the event of withdrawal, any additional balance or fee for withdrawal, as well as any expense to be incurred due to termination of the Service. In any case, INTESA shall make a reasonable effort to limit such costs.

### **5.7 *Withdrawal from the market***

INTESA may withdraw a Service or the support for a specific Product from the market; in this case, INTESA may withdraw from the relevant contracts with 3 (three) months written notice to the Client. If the withdrawal concerns a Service already paid by the Client and INTESA has not yet fully delivered it, the Client shall be entitled to a pro rata refund.

Contractual conditions whose effectiveness, by their nature, also extends after the withdrawal, shall remain in force until fulfilled and shall bind the successors, heirs and rightful claimants of the Party concerned.

### **5.8 *Security***

Programs and data owned by the Client and provided to INTESA for the execution of the Services provided under these Conditions will be managed according to the same security procedures provided for by INTESA for its own data and programs. The Client is responsible for the definition of its data or information requiring special security procedures and for requesting INTESA to apply such procedures; in the absence of specific requests, INTESA's procedures are considered as fulfilling Client's requirements.

The security of INTESA Services is based on procedures for verifying the correctness of access and monitoring the routing of information through network controls (user ID, password), procedures for recognition of the user and terminal, automatisms and associations defined a priori between user profiles and permitted network activities, as well as ISO standard encryption, authentication and mutual recognition tools.

### **5.9 *Identification Codes***

INTESA will assign Identification Codes to the Client (e.g. user ID, password) authorising access to the Services. All charges for their use shall be paid by the Client. The Client is responsible for the use of such Codes by the its personnel or by any third parties to which the Client may have communicated such codes. Use of the Identification Codes shall not be made with the intent to sub-rent, resell or transfer in any other way any part of the Services or Programs covered by these Conditions.

### **5.10 *Complementary Products***

Certain INTESA Services may entail the supply of associated equipment and programs (Licensed Internal Code), defined as Complementary Products, exclusively for the purpose of using such Services. These Complementary Products, supplied on loan for use to the Client,

shall remain property of INTESA or of their rightful owner. INTESA shall provide information to allow their correct installation in Client's environment.

**INTESA:**

- shall install the Complementary Products on the Client's premises, unless otherwise specified in the Contract Documentation,
- shall be responsible for their maintenance and uninstallation, removal and transport from Client's premises.

**THE CLIENT:**

- shall, at its own expense, make available the premises and power supply necessary for use of the Complementary Products and protect them with appropriate security measures,
- shall be responsible for any damage or loss, even if caused by third parties,
- shall provide assistance for the access to the premises by INTESA and the assistance for installation and maintenance, included technical modifications and uninstallation,
- undertakes to not transfer them without the prior written consent of INTESA, keep them free from liens and apply a specific label indicating the INTESA's ownership, return them, together with their documentation to INTESA or to its representative when the Service for which they were supplied is withdrawn by INTESA, terminates and/or is not renewed.

### **5.11 Use of Services**

The Client shall use the Services covered by these Conditions, according to the operating procedures and hours of service in force, which shall be communicated together with the Contracts. Any hardware and software configuration modification that could involve a significant change in the procedures used by the Client shall be communicated by INTESA with at least 3 (three) months' notice. When using INTESA Services for access to third parties' networks, INTESA Service should be considered as mere transit to such networks, the access to these networks or their use is not included in INTESA Services, except if specifically set in writing in the Contract.

Unless otherwise agreed, the connection speed specified in the Contract Documentations is the maximum speed allowed; the effective speed at any time shall be determined by the actual data traffic situation. In the case of supplies of professional services that include timing of activities, it is agreed that the times indicated shall represent the best estimate available and may be subject to modifications as a result of any new circumstances emerging during Service delivery. The provision of professional services shall be deemed to have been completed following the implementation of what described in the scope of the relevant Contract. The use of INTESA Services excludes the possibility of acquiring patents, licences, commercial rights, copyrights or intellectual property rights of any kind, except as specifically written in each relevant Contract.

## **6.0 Special provisions**

### **6.1 Invoicing procedures**

Unless otherwise specified in the Contract Documentation, the fees shall be invoiced as follows:

- One-time: invoicing upon completion of the activities, or on the date of delivery of the supply covered by the Contract;
- Periodic fee: invoiced annually, in advance to the Service Start Date and at the beginning of each subsequent period;
- Surpluses compared to the rates provided for by contract shall be calculated according to use and invoiced as specified in the Contract Documentation;
- Rates on request or optional rates will be invoiced according to monthly use based on actual

Client requests;

- In the case of sale of Machines and/or Programs the invoice shall be issued by INTESA on the date of delivery; in the case of delivery in separate lots, upon delivery of each lot.

## ***6.2 Shipping services and Storage devices delivery***

INTESA shall strive to meet the delivery requirements of the Client for the storage devices it ordered.

Any transport costs borne by the Client shall be specified in the Contract Documentation Supplementary Conditions.

The Client acknowledges and agrees that the delivery dates stated in the Contract and/or communicated by INTESA are approximate, therefore INTESA shall not be liable for failure to deliver Storage devices to the Client within the abovementioned dates.

Should delivery of Storage devices take place via shipping, the ownership of the devices and the related risk of loss and damage shall be deemed to be transferred from INTESA to the Client at the time of the delivery to the carrier.

INTESA shall in any case be available to allow the Client, upon request, of collecting the Storage devices at its registered office or elsewhere that may be appropriately communicated. At the time of collection, the ownership and related risk of loss and damage of the Storage devices shall be deemed to be transferred from INTESA to the Client.

## ***6.3 Organisation, Management and Control Model, Business Conduct Guidelines***

INTESA declares:

- to be aware of current legislation concerning the administrative liability of legal entities, companies and associations and, in particular, of the provisions of Legislative Decree 231/2001;
- by virtue of said legislation, to have adopted and effectively implemented its own Organisation, Management and Control Model;
- as a member of the IBM group, applies the IBM Business Conduct Guidelines and, according to company policies, does not sign similar document proposed by the Client. The IBM Business Conduct Guidelines is published on the website <http://www.ibm.com>;
- in conducting its business and in the management of internal and external relations, it follows and applies the principles contained therein.

## ***6.4 End Users***

Should the Client request the provision of a Service or Product in favour of a EU and, should INTESA agree to such request, the Client, by signing the Contract, represents and warrants that it shall enter into specific agreements with the EU before the execution of the Service by INTESA vis-a-vis such parties and that such agreements shall include, for the benefit of INTESA, the following obligations:

1. unless otherwise provided for by mandatory provisions of the law, the EU will not exercise any action and will not be part of any action or legal proceedings, directly or indirectly, against INTESA, its subsidiaries or its employees, managers or directors, arising out of or relating to the relevant Contract between INTESA and the Client.
2. The EU will send all communications to the Client and not to INTESA, unless established otherwise. Acceptance by INTESA of certain communications from EU or following up the same, cannot be considered as consent, even indirect, to the establishment of a contractual relation between INTESA and



the EU.

3. The Client will be fully responsible for fulfilling its obligations under the contract signed in connection with the Services provided to the EU.
4. If the EU is a data controller, the Client undertakes to ensure that the EU appoint INTESA as Data Processor, providing them the letter of appointment of INTESA as data processor of the EU data.
5. Acceptance by INTESA of such appointment doesn't imply for the latter additional obligations to those taken with said appointment.
6. Nothing in this provision relieves the Client of its obligations or increases the obligations of INTESA under the relevant Contract.