

## **General Terms and Conditions**

### **- Products -**

1. **Sole agreement and acceptance:** Except as provided in herein, the terms and conditions set forth contain the sole, entire and exclusive agreement between the Seller and the Buyer in this transaction and supersede all prior discussions, proposals, negotiations, representations, and agreements; except as expressly provided herein any additional or conflicting terms, whether or not material, shall not, in any manner, by implication, by waiver, or otherwise, govern the relationship between Seller and Buyer. Seller objects to and shall not be bound to any past or future terms or conditions not set forth herein, including any additional terms shown on Buyer's purchase order or acknowledgment or shipping documents, which order, acknowledgment or shipping document shall be accepted for billing purposes only, and any inconsistencies therein with the provisions hereof shall be null and void. Shipment pursuant to Buyer's order containing different or additional terms does not constitute acceptance of such terms. ANY WAIVER, MODIFICATION, OR AMENDMENT OF THESE TERMS AND CONDITION SHALL ONLY BE EFFECTIVE AS AGAINST EITHER PARTY IF SUCH WAIVER, MODIFICATION, OR AMENDMENT IS CONTAINED IN A WRITTEN INSTRUMENT DULY EXECUTED BY OR ON BEHALF OF BOTH PARTIES.
2. All orders are subject to acceptance by Seller.
3. **Price and payment:** All orders shall be priced in accordance with Seller's price quotation in effect on the date of shipment. Payment for all shipments hereunder shall be made by Buyer against Seller's invoice within thirty (30) days from date of the invoice, terms net cash, unless otherwise indicated on the face hereof. Past due invoices shall be subject to a finance charge of 1.5% per month or the maximum rate allowed by law, whichever is less. If at any time in Seller's opinion, the financial responsibility of Buyer becomes impaired or unsatisfactory to seller, or inadequate to meet the obligations hereunder, the terms of payment may, at Seller's option, be revised or withdrawn, and Seller may require cash or other satisfactory security before making further shipments to Buyer. In addition to any other legal remedy, if Buyer fails to fulfill the terms of payment, Seller may defer further delivery of goods hereunder or may, at its option, cancel all further delivery of goods to Buyer. In the event Seller is required to commence collection action to recover unpaid invoices of goods sold and delivered, Seller shall be entitled to interest on the unpaid balance at the highest legal rate permitted from the due date of invoice, attorney's fees, and costs of suit.
4. **Taxes:** Any tax, excise (manufacturer's or otherwise), inspection fee, duty (import or export), license fee (import, export, or otherwise), tonnage charge, assessment of other tax, fee, assessment or charge which is levied, assessed, or imposed by federal, state, or local authorities upon the products, transactions, and / or services contemplated hereunder (including the delivery, sale, use, production, or consumption of the products or privilege of doing any of the same), and / or which is imposed on or measured by the price of the products or the proceeds of a sale hereunder, shall be added to the price or prices set forth herein and shall be paid by Buyer, unless said price or prices specifically state that they include any such charge or charges.
5. **Delivery:** Shipment dates are based upon Seller's best judgment, are subject to production limitations and factory schedules, and hence are not guaranteed. All sales are F.O.B. Seller's Shipping Point.
6. **Title and risk of Loss:** Title and risk of loss of the goods shall pass to the Buyer upon loading of the goods into transportation equipment at the Shipping Point.
7. **Force majeure:** Neither party hereto shall be responsible for any delay or failure of performance of these terms and conditions (other than to make payments due hereunder) if such delay or nonperformance is caused by acts of God, floods, fire, explosions, storms, transportation difficulties, strikes, lockouts, or other labor or industrial disturbances: wars, any law, rule, order, or action of any court, agency, or other instrumentality of the federal or any state or local government; exhaustion, reduction, or unavailability of product at the source of supply from which deliveries are normally made hereunder; or exhaustion or unavailability or delay in delivery of any product or material necessary in the manufacture of the goods to be sold hereunder (regardless of whether or not such exhaustion, reduction, unavailability, or delay is beyond such party's control, provided only that the same is not willfully done or brought about for the purpose of excusing failure or omission to perform under these terms and conditions); failure or presupposed conditions, commercial impracticability, or other cause or causes beyond a party's control whether similar or dissimilar to those stated above. In the event of any of the contingencies or conditions referred to in this provision, Seller shall have the right to curtail deliveries or allocate its supply of materials among all of its customers in any manner which in its sole discretion is fair and reasonable in the circumstances, and buyer shall not hold seller responsible in any manner for losses or damages which Buyer may incur as a result of any such failure, curtailment, or allocation by Seller. Seller shall not be required to make up any goods not so delivered.
8. **Inspection And Acceptance:** Inspection and testing by Buyer shall be performed in such manner as to not delay the Contract. Seller may charge Buyer any additional costs related to inspection and testing by Buyer. Such costs may include a Demurrage Charge.
9. **Warranty and Liability:** The Seller warrants that the goods furnished shall meet the specifications stated herein or attached hereto. Any technical advice given by Seller in reference to the use of its products is given gratis and without any warranty whatsoever as to advice given or results obtained. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO SAID GOODS, EXCEPT AS SPECIFICALLY SET FORTH HEREIN. Buyer assumes all risk, liability, and damage resulting from the use of the goods, whether used singularly, or in combination with other goods, of technical advice furnished, or of specification changes. If any model or sample was shown Buyer, such model or sample was used merely to illustrate the general type and quality of the goods and not to represent that the goods would necessarily be of that type and nature. No agent, employee, or representative of the Seller has any authority to bind the Seller to any other affirmation, representation or warranty, concerning the goods sold hereunder, than those set forth in these terms and conditions, and unless such is specifically included within these terms and conditions, if shall not be enforceable by buyer.
10. **Intellectual Property Rights**
  - A. Any invention, improvement, discovery, proprietary information, maskwork, software, or system resulting from the Work performed under the Sales Agreement shall be the sole property of Seller. All copyrightable material, patents, formulas, copyrights, trade secrets, techniques, designs, trademarks, maskworks or other intellectual property resulting from Work under the Sales Agreement shall be the sole property of Seller. Seller shall have the full right to use such property in any manner without any claim on the part of Buyer and without any duty to account to Buyer for such use.
  - B. The Seller retains all interest in any work or authorship created under the Sales Agreement, including all rights to derivative works.
  - C. The Sales Agreement DOES NOT confer or grant to Buyer, in any manner whatsoever, any license or right under any patent, trademark, trade secret, maskwork, copyright or other intellectual property right held by Seller, unless specifically set forth in the body of the Sales Agreement.

11. **Buyer Furnished Property:** Any and all tools, patterns, equipment, material, or other property which is either (i) supplied to Seller by Buyer or (ii) purchased by or on behalf of Buyer at Buyer's direction to perform under the contract (hereinafter "Buyer Furnished Property") shall carry no guarantee buy Seller as to adequacy of form, fit or function with respect to any intended use or fitness for any intended purpose.
12. **Remedies of Buyer:** The Seller's liability and Buyer's exclusive remedy is expressly limited, at Seller's option, to either the repair of defective goods or the replacement thereof with conforming goods at the F.O.B. Shipping Point, or the repayment of the net unit billing price. Claims for shortage or defects must be made within ten (10) days after the receipt of goods. As a condition of repayment for defective goods, Buyer must, after obtaining authority from Seller, return such goods to Seller for inspection and / or repair. If material supplied by Seller is declared to be defective or to fail to meet the accepted specification, Buyer shall not return the goods, but shall notify Seller immediately, stating full particulars in support of his claim. Seller will adjust the matter fairly and promptly. Material returned without specific authorization from Seller will not be received or credited. Seller shall not be obligated to allow claims for consequential damage or for any expense incurred by use of defective or unsatisfactory material. No allowance can be made for material converted to forms other than originally shipped by Seller.
13. **Limitation of liability:** The remedies of Buyer set forth herein are exclusive. The total liability of Seller, with respect to the goods furnished hereunder, or with respect to the manufacture, sale, delivery, repair, or technical direction covered by or furnished pursuant to these terms and conditions, whether such liability of Seller based on contract, warranty, negligence, strict liability, indemnity, or otherwise, shall not exceed the purchase price of the goods. Seller shall in no event be liable to the Buyer, any successors in interest or assignees of the Buyer; any customers of Buyer or any beneficiary or assignee of Buyer, for any consequential, incidental, indirect, special, or punitive damages arising out of any defect in, or failure of or malfunction of the goods sold hereunder, whether such damages are based upon lost good will, lost profits or revenue, interest, work stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation, loss of use of related goods or operations and / or cost of purchase of replacement goods, whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.
14. **Certification of material goods:** Should Buyer request certification of materials or goods after sale. Seller reserves the right to quote additional charges for such request. Unless otherwise included under these terms and conditions, no certification is given concerning either the material or goods sold hereunder.
15. **Patent infringement:** Seller reserves the right to discontinue deliveries of any material, the manufacture, sale or use of which in its opinion would involve patent infringement.
16. **Patent license:** The contract of sale formed by these terms and conditions in no way provides Buyer with any license, expressed or implied, to practice any patented inventions or discoveries owned by Seller, except any patented invention or discovery that is embodied by the form and / or composition of the product(s) as sold by Seller to Buyer.
17. **Cancellation:** Seller may cancel the Agreement formed by these terms and conditions at any time in the event that Buyer shall fail to perform or observe any term or condition hereof by giving Buyer ten (10) days written notice of cancellation. Cancellation hereunder shall not prevent Seller from pursuing any other remedy available to Seller by law or from seeking all such damages to which Seller may be entitled. In the event of cancellation of any order by purchaser, purchaser shall be liable for reasonable cancellation costs which shall not exceed the contract price for the items canceled.
18. **Assignment:** This Agreement shall extend to and be binding upon the parties hereto, their successors and assigns, provided, however, that neither party shall assign their rights or delegate their duties under this Agreement without the written consent of the other party.
19. **Notices:** All notices hereunder shall be deemed given if delivered in writing personally or sent by certified mail or telegram to Buyer or Seller at the addresses set forth on the front of this form. Any notice given by certified mail shall be deemed given at the time such notice is deposited in a U.S.A. post office, postage prepaid.
20. **Confidentiality:** Nothing stated herein shall be construed to relieve Buyer from any obligation of confidentiality owed to Seller or its affiliates with respect to any materials or information furnished to Buyer subject to such obligation.
21. **Changes:** If the purchaser at any time makes changes within the general scope of any order and if any such changes cause an increase or decrease in the cost of or the time required for performance of any purchase order or any other order affected by such change, an equitable adjustment in the price, the delivery schedule or both shall be made and such order shall be modified accordingly.
22. **Errors subject to correction:** All typographical, stenographic and arithmetical errors are subject to correction.
23. **Rights to Data -** There are not rights to any of Test Devices' data or patents unless specifically stated as an invoice-able item.
24. **Choice of law:** The performance and interpretation of the Sales Agreement shall be governed by the laws of the Commonwealth of Massachusetts, USA, exclusive of its conflicts of law provisions.
25. **Dispute resolution:** Seller and Buyer shall use all reasonable efforts to amicably resolve disputes arising out of the Sales Agreement, prior to commencing any formal legal proceedings. Any action or proceeding filed by Buyer against Seller under the Sales Agreement shall be filed exclusively in the state or federal courts in Massachusetts, which shall then have exclusive jurisdiction.

FOR THE BUYER:

Signature: \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_