

# MEASUREMENT SYSTEMS

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## TERMS AND CONDITIONS OF SALE

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1. **GENERAL** - Measurement Systems is hereinafter referred to as the Seller. Subject to the terms and conditions specified herein, Seller agrees to sell and Buyer agrees to purchase the products, labor and services described on the face hereof (hereinafter "Products"). No commitments shall be binding on Seller unless accepted in writing by Seller. Any terms and conditions in addition to or inconsistent with those specified herein shall not be binding upon Seller unless expressly accepted in writing by Seller, and failure of Seller to object to any such additional or inconsistent terms and conditions shall not be construed as acceptance of any such provisions, nor as a waiver of any of Seller's terms and conditions.
2. **VALIDITY** - Seller's written price quotations become void unless accepted by the Buyer within Ninety (90) days of their date. Prior to such acceptance, prices are subject to change without notice. Prices may also change under circumstances described in the paragraph entitled "PRICES, ESCALATOR" below.
3. **WARRANTY** - Seller warrants, to the Buyer only, that the Products furnished to the Buyer hereunder will be free from defects in material and workmanship under normal and proper usage for a period of three (3) years from date of invoice, and THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Seller's obligation under this Agreement is limited to replacing or repairing, at Seller's option, products or parts there of determined by Seller to be defective. All dismantling and assembly at Buyer's plant and necessary packaging and transportation shall be at Buyer's sole cost and expense. Warranty of replacement parts is limited to ninety (90) days or the unexpired portion of the warranty period of the Product on which the parts are being used, whichever is longer. Replacement Products shall be shipped subject to all the same terms, conditions and charges (except for the purchase price) as and original shipment. Seller shall be under no obligation to repair any Product which has been subjected to improper operation, maintenance or storage, accident, alteration, abuse or failure to follow normal operating procedures. Alteration or repair by any other than authorized Seller personnel shall invalidate this Warranty. Seller does not authorize any person to assume for it any other obligation or liability not specified in this Warranty.
4. **LIMITATION OF LIABILITY**-Seller's liability of breach or default specifically excludes the legal remedy of "specific performance" and Seller's liability for normal damage for breach of or default under this Agreement shall be limited to pecuniary damage, which shall not, in the aggregate, exceed 10% of the purchase price on the Products under this Agreement. Seller shall not be liable for delays, deprivation of use, or for other loss or damage directly arising from the use, operation or failure of the Products or any other cause, or for special, incidental or CONSEQUENTIAL DAMAGES of any type whatever. Seller shall not be responsible for checking or verifying Buyer's drawings prior to estimating the price of the Products, and Buyer shall reimburse Seller for any loss or increased expense resulting from errors in Buyer's drawings or bills of material. Seller reserves the right to change its technical specifications as long as overall performance of the Product is not degraded.
5. **INDEMNIFICATION** - Buyer shall defend, indemnify, and hold Seller harmless against any and all claims, damages, and expenses (including reasonable attorney's fees) of any nature whatsoever which may be made against Seller of which Seller may sustain by reason of injury to or death of any person or persons or damage to or loss of property, arising out of the use of the Products.
6. **PATENTS** - In the event of a claim against Buyer for infringement of any United States patent arising out of the sale or use in the form supplied by Seller of Products designed and/or manufactured by Seller, Seller, at its option, will modify the Product so that it will not infringe, furnish Buyer with a license to use the Product, or defend and hold harmless Buyer against the infringement claim. Seller will assume no liability with respect to Products specified by either Seller or Buyer, but not designed and/or manufactured by Seller. Buyer will hold Seller harmless against any liability for infringement of any United States patent involving Products furnished by Buyer. The party assuming liability, as above stated, shall be notified immediately of any assertion of infringement, and shall have the absolute control of the defense thereto, including the right to settle, defend against legal action, or make changes in the Products to avoid infringement.
7. **DELAY IN DELIVERY** - Delivery dates are based on normal expectancy and are approximate. Delay in delivery of any installment of Products shall not relieve Buyer of his obligations to accept subsequent deliveries. Seller shall not be liable for damages as a result of any delay whether or not due to any cause beyond Seller's control, including without limitation, act of God, act of the Buyer or his representative, embargo or other governmental act, regulation or request, fire accident, strike, slow down, war, riot, delay in transportation or inability to obtain necessary labor, materials, fuel, or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of delay, and if such delay is caused by an act of the Buyer or his representatives, Seller shall be reimbursed for any additional costs arising from such delay.
8. **PAYMENT** - Purchase orders are accepted subject to an approved credit rating. Unless otherwise specified herein, the terms of payment shall be net 30 days, unless Paragraph 22 applies. Invoices are normally issued when the Products are shipped. Where shipment is delayed at the request or through the fault of Buyer, Seller may issue its invoice as of the date the Products are ready for shipment. Amounts past due are subject to a late charge of 1% for each 30 day period that such amounts are past due. All quoted prices and payments shall be in U.S. Dollars, unless specifically stated otherwise by Seller. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. If the work covered by this Agreement is delayed by Buyer's request or through the fault of the Buyer, upon invoice or demand by Seller payments shall be made on the purchase price based upon percentage of completion. Such delayed Products held for the Buyer shall be at the risk and expense of the Buyer unless otherwise agreed to in writing by the Seller. Seller reserves the right to make collection of all or part of any payment by sight draft, C.O.D. or any other terms. A 3% surcharge applies to credit card payments, and a \$50 charge applies to each dishonored check or returned payment.
9. **WITHDRAWAL OF CREDIT** - Seller may at any time limit or withdraw Buyer's credit and may require full or partial payment prior to shipping without affecting the obligations of the Buyer under this Agreement. In the event of bankruptcy or insolvency of the Buyer or if Buyer fails to pay Seller any sum when due, or any prepayment on invoice or demand as provided above, then upon seven (7) calendar days written notice, Seller may cancel any order then outstanding under this Agreement, sell all or any undelivered Product without notice at public or private sale, and hold Buyer responsible for all expenses and losses.

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10. **SECURITY INTEREST** - Seller retains title to and a security interest in all Products sold to Buyer hereunder and/or the proceeds there of until the purchase price and other charges, if any are paid in full. Buyer also grants to Seller a security interest in any equipment which is owned by Buyer and serviced under this agreement by Seller. This Agreement constitutes a security agreement within the meaning of the Uniform Commercial Code and Seller shall have all rights and remedies of a secured party there under. Buyer authorizes Seller to file continuing financing statements covering Seller's security interest in the Products and all after acquired Products. Seller may retake possession of the Products with or without legal process if the terms and conditions as provided herein or otherwise agreed to by the Buyer are not met by Buyer.
11. **RISK OF LOSS** - Risk of loss or damage to, or destruction of the Products shall pass to Buyer on delivery at F.O.B. Seller's location at Arlington Texas. Loss or damage to, or destruction of, the Products shall not in any manner release the Buyer from the obligation to make payment on any amount owed to Seller.
12. **TAXES** - In addition to the purchase price or service rate, Buyer agrees to bear all taxes, fees and other impositions or charges which may be demanded or assessed by any country, state, or municipality and not specifically imposed by law upon the Seller with respect to Products sold by the Seller under this Agreement. All such additional charges shall be for Buyer's account and shall be invoiced to Buyer unless Buyer furnishes valid exemption documentation on or before shipment. Buyer shall reimburse the Seller promptly upon demand for all such charges paid by Seller.
13. **FREIGHT ALLOWANCE** - All prices quoted are F.O.B. point of delivery. All transportation and storage costs beyond point of delivery and any special packing costs will be charged to Buyer. Seller will prepay such charges and add to the invoice for the Products. Absent timely instructions from Buyer, Seller will select method of transportation and routing of shipment.
14. **CANCELLATION** - In any instance where Buyer is legally entitled to cancel this Agreement, such cancellation shall be by written notice to Seller and subject to the following conditions:
  - 14.1 There will be no charge for standard equipment that has not shipped and has not been modified to meet any special requirements of this Agreement when such notice is received. There will also be no charge for any prepaid travel expenses which can be fully refunded.
  - 14.2 For all other parts of this Agreement not falling under 14.1, and all special or custom materials and supplies ordered by Seller to fill all or any part of this Agreement, as of the date of receipt of such notice by Seller shall, at Seller's option, shall become the property of Buyer and be paid for in full by Buyer on the basis of Seller's cost plus ten percent (10) thereof, which cost shall include without limitation, general administrative, selling, and manufacturing expenses.
15. **PRICES, ESCALATOR** - Prices are firm for Products quoted for delivery within one (1) year from date of Buyer's order. Prices for Products quoted for delivery beyond one (1) year from date of Buyer's order are subject to adjustment to Seller's prices applying as of the dates of delivery. Prices and terms of payment shall not be subject to any offset or counterclaim of the Buyer unless agreed to in writing by Seller. In the event that Buyer delivers a check to Seller in payment for the Products in an amount less than the prices quoted on the face hereof and all other additional charges, Seller expressly reserves the right to demand the balance due and Seller's negotiation of said check will not affect an accord and satisfaction notwithstanding the fact that the words "Final Payment" or any similar words are inscribed thereon. Buyer agrees to hold Seller harmless from any damage, loss or expense as a result of its use of such restrictive endorsement on a negotiable instrument.
16. **GOVERNMENT CONTRACTS** - In the event this order is for Products to be furnished by Buyer under any government contract or purchase order, Seller shall have all rights of Buyer that are available to Buyer under such government contract or purchase order, whether or not Buyer is a prime contractor or supplier to the government or is a subcontractor at any tier.
17. **REGULATORY LAWS AND/OR STANDARDS** - Seller does not warrant or represent that its Products will conform to any federal, state or local laws, ordinance, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as part of this Agreement between Buyer and Seller. Seller's prices do not include the cost of any related inspections or permits.
18. **MODIFICATION OF AGREEMENT** - This Agreement contains the entire agreements of the parties, and no prior or contemporaneous negotiations, correspondence, conversations, prior course of dealing or usage of trade shall in any way affect the specific terms and conditions hereof. No subsequent modification of, or addition to, this Agreement shall be effective unless in writing, signed by both parties.
19. **ASSIGNMENT** - This Agreement may not be transferred or assigned by the Buyer without prior written consent of Seller.
20. **JURISDICTION** - The laws of the State of Texas shall govern this Agreement and its performance. Buyer agrees that Venue and Jurisdiction to enforce this Agreement will be Dallas County Texas. Buyer waives any rights to change Venue.
21. **NO WAIVER OF CONDITIONS** - Failure of Seller to insist upon strict performance of any of the terms and conditions of this Agreement shall not constitute a waiver of such terms and conditions or a waiver of any default.
22. **EXPORT** - Prices may change for systems that are exported. Payments for shipments outside the US are due when the order is ready to ship. Any equipment supplied under this agreement may not be exported from the United States unless the Buyer identifies the final destination and obtains approval from the Seller. Because of U.S. National Security and Export Administration Regulations, some buyers may be required to provide a letter identifying the end user and final destination even if the equipment will remain in the United States. If such letter is required, the Seller will advise the customer before the equipment ships, and the Buyer agrees to provide such letter before the equipment is shipped.

BUYER Signature \_\_\_\_\_ BUYER Name \_\_\_\_\_ Date \_\_\_\_\_