

TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS GOVERN THE SALE OR LEASE OF ALL PRODUCTS AND SERVICES (“PRODUCTS”) BY PACIFIC INSTRUMENTS, INC. (“SELLER”) AND APPLY NOTWITHSTANDING ANY CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN ANY PURCHASE ORDER OR OTHER DOCUMENT OR COMMUNICATION (“PURCHASE ORDER”) FROM BUYER. THESE TERMS AND CONDITIONS MAY ONLY BE WAIVED OR MODIFIED IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. NEITHER SELLER’S ACKNOWLEDGEMENT OF A PURCHASE ORDER NOR SELLER’S FAILURE TO OBJECT TO CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN A PURCHASE ORDER SHALL BE DEEMED AN ACCEPTANCE OF SUCH TERMS AND CONDITIONS OR A WAIVER OF THE PROVISIONS HEREOF.

1. **ORDERS:** Orders shall be initiated by Buyer issuing a Purchase Order or otherwise placing an order by electronic means acceptable to Seller. Orders shall identify the Products, unit quantities, part numbers, descriptions, applicable prices and requested delivery dates. All orders are subject to acceptance by Seller. No orders for standard Products (“Standard Products”) may be cancelled or rescheduled without Seller’s consent, which consent may be given by Seller in its sole discretion. Seller reserves the right to allocate sales of Products among its customers in its sole discretion. **Notwithstanding any provision of these Terms and Conditions to the contrary, orders for special, custom and non-standard Products, work-in-process and Products otherwise identified by Seller as “NCNR” or “Non-Cancelable and Non-Returnable” (“Non-Standard Products”) shall be non-cancelable and non-returnable.**
2. **PRICES:** Prices shall be as specified by Seller and shall be applicable for the period specified in Seller’s quote. If no period is specified, prices shall be applicable for thirty (30) days. Prices are exclusive of taxes, impositions and other charges, including: sales, use, excise, value added and similar taxes or charges imposed by any government authority, international shipping charges, forwarding agent’s and broker’s fees, consular fees, document fees and import duties. If Seller shall be liable for or shall pay any of the foregoing, Buyer shall pay same to Seller in addition to the price of the Products.
3. **TERMS OF PAYMENT:** Payment shall be net thirty (30) days from date of invoice or as otherwise specified by Seller. Buyer agrees to pay the entire net amount of each invoice from Seller pursuant to the terms of each such invoice without offset or deduction. Orders are subject to credit approval by Seller, which may in its sole discretion at any time change the terms of Buyer’s credit, require payment in cash, bank wire transfer or by official bank check and/or require payment of any or all amounts due or to become due for Buyer’s order before shipment of any or all of the Products. If Seller believes in good faith that Buyer’s ability to make payments may be impaired or if Buyer shall fail to pay any invoice when due, Seller may suspend delivery of any order or any remaining balance thereof until such payment is made or cancel any order or any remaining balance thereof, and Buyer shall remain liable to pay for any Products already shipped and all Non-Standard Products ordered by Buyer. Buyer agrees to submit such financial information from time to time as may be reasonably requested by Seller for the establishment and/or continuation of credit terms. Checks are accepted subject to collection and the date of collection shall be deemed the date of payment. Any check received from Buyer may be applied by Seller against any obligation owing from Buyer to Seller, regardless of any statement appearing on or referring to such check, without discharging Buyer’s liability for any additional owing from Buyer to Seller, and the acceptance by Seller of such check shall not constitute a waiver of Seller’s right to pursue the collection of any remaining balance. Buyer shall pay interest on any invoice not paid when due from the due date to the date of payment at the rate of one-half (1-1/2 %) percent per month or such lower rate as may be the maximum allowable by law. If Buyer fails to make payment when due, Seller may pursue any legal or equitable remedies, in which event the Seller shall be entitled to reimbursement for costs of collection and reasonable attorneys fees.
4. **DELIVERY AND TITLE:** All shipments by Seller are F.O.B. point of origin and all transportation charges shall be paid by Buyer in addition to the price of the Products. Subject to Seller’s right to stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Buyer and risk of loss shall thereupon pass to Buyer, however, title shall remain in Seller until Buyer makes payment in full for the Products. Selection of the carrier and delivery route shall be made by Seller unless specified by Buyer. Seller shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer’s requested delivery dates. Buyer acknowledges that delivery dates provided by Seller are estimates only and that Seller is not liable for failure to deliver on such dates. Seller reserves the right to make deliveries in installments. Delivery of a quantity, which varies from the quantity specified, shall not relieve Buyer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Buyer to cancel other installments.
5. **ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS:** Inspection and acceptance of the Products shall be Buyer’s responsibility. Buyer is deemed to have accepted the Products unless written notice of rejection is received by Seller within ten (10) days after delivery of the Products. Buyer waives any right to revoke acceptance thereafter. Buyer shall report any discrepancy in shipment quantity or damage within ten (10) days after delivery. No return of Products shall be accepted by Seller without a Return Material Authorization (“RMA”) Number, which may be issued by Seller’s in its sole discretion. Returned Products must be in original manufacturer’s shipping cartons complete with all packing materials. All Products for return shall be returned freight prepaid in the manner specified in the RMA. If returned Products are claimed to be defective, a complete description of the nature of the defect must be included with the returned Products. Products not eligible for return shall be returned to the Buyer, freight collect.
6. **FORCE MAJEURE:** Seller shall not be liable for failure to fulfill its obligations herein or for delays in delivery due to cause beyond its reasonable control, including, but not limited to, acts of God, natural disasters, acts of omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, riots, war, acts of terrorism, delays in transportation or inability to obtain labor or materials through its regular sources. Seller’s time for performance of any such obligation shall be extended for the time period of such delay or Seller may, at its option, cancel any order or remaining part thereof without liability by giving notice of such cancellation to Buyer.
7. **LIMITATION OF LIABILITIES, BUYER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, REMOVAL AND/OR REINSTALLATION COSTS, REPROCUREMENT COSTS, LOSS OF PROFIT OR REVENUE,**
8. **LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER’S RECOVERY FROM SELLER FOR ANY CLAIM SHALL NOT EXCEED BUYER’S PURCHASE PRICE FOR THE PRODUCT GIVING RISE TO SUCH CLAIM IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. SELLER SHALL NOT BE LIABLE FOR AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON SELLER’S COMPLIANCE WITH BUYER’S DESIGNS, SPECIFICATIONS OR INSTRUCTIONS, OR MODIFICATION OF ANY PRODUCTS BY PARTIES OTHER THAN SELLER, OR USE IN COMBINATION WITH OTHER PRODUCTS.**
8. **USE OF PRODUCTS IN LIFE SUPPORT, NUCLEAR AND CERTAIN OTHER APPLICATIONS:** Products sold by Seller are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Products for use in any such applications: (1) Buyer acknowledges that such use or sale is at Buyer’s sole risk; (2) Buyer agrees that Seller and the manufacture of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and (3) Buyer agrees to indemnify, defend and hold Seller and the manufacturer of the Products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.
9. **EXPORT CONTROL:** The sale, resale or other disposition of Products and any related technology or documentation are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Buyer agrees to comply with all such laws, regulations and orders and acknowledge that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Buyer acknowledges its responsibility to obtain any license to export, re-export or import, as may be required.
10. **STATEMENTS AND ADVICE:** If statements or advice, technical or otherwise are offered or given to Buyer, such statements or advice shall be deemed to be given as an accommodation to buyer and without charge and Seller shall have no responsibility or liability for the content or use of such statements or advice.
11. **INTELLECTUAL PROPERTY:** If an order includes software or other intellectual property, such software or other intellectual property is provided by Seller to Buyer subject to the copyright and user license, the terms and conditions of which are set forth in the license agreement accompanying such software or other intellectual property. Nothing herein shall be construed to grant any rights or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement.
12. **WARRANTIES:** The terms and conditions set forth in the Seller’s Commercial Certifications, Software License & Warranties found on Seller’s website at: www.pacificinstruments.com/PI-Sellers-Warranty-and-License.pdf are hereby incorporated by reference into these Terms and Conditions.
THE FOREGOING WARRANTIES BY SELLER ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESSED, OR IMPLIED; AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE HEREBY EXCLUDED.
13. **INDEMNIFICATION:** Buyer shall indemnify, defend and hold harmless Seller from and against any and all claims, actions, damages, obligations, losses, liabilities, costs and expenses (including reasonable attorneys’ fees, costs of collection and other costs of defense) arising out of or relating to Buyer’s negligence, willful misconduct, or violation of these Terms and Conditions.
14. **ARBITRATION:** If the parties are unable to resolve a dispute under these Terms and Conditions by informal means, Buyer and Seller hereby agree that such dispute shall be resolved through binding arbitration administered by the American Arbitration Association (AAA) in California in accordance with the Commercial Arbitration Rules. Any proceeding to enforce this arbitration agreement must be brought in any California federal or state court of competent jurisdiction.
15. **GENERAL:** As used herein, terms appearing in the singular shall include the plural and terms appearing in the plural shall include the singular. No rights, duties, agreements or obligations hereunder may be assigned or transferred by either party, by operation of law, merger or otherwise, without the prior written consent of the other. Any attempted or purported assignment shall be void. Notwithstanding the foregoing, Seller’s obligations under these Terms and Conditions may be performed by division, subsidiaries or affiliates of Seller. The obligations, rights, terms and conditions hereof shall be binding of the parties hereto and their respective successors and assigns. The waiver of any provision hereof or of any breach or default here under shall not be deemed a waiver of any other provision hereof or breach of default hereunder. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of California excluding any law or principle, which would apply the law of any other jurisdictions. The United Nations Convention for the International Sale of Goods shall not apply.