

**Canadian Measurement – Metrology INC.**

**STANDARD TERMS & CONDITIONS OF SALE & SECURITY AGREEMENT**

**1. OFFER OF SALE.**

The terms and conditions found on the quotation and those provided below hereby constitute an offer for sale of “Products,” which are identified on a quotation sent by Seller to Buyer. “Seller” means Canadian Measurement – Metrology Inc. (CMMXYZ), or such other entity identified as seller on a quotation. Buyer means the entity as a “bill to” or similar identification on a purchase order, according to section 2 of these standard terms and conditions of sale (these “Terms & Conditions”). Unless otherwise provided on the face hereof, offers are available for acceptance for a period of 30 days from the date of this offer. An order by Buyer, or other conduct by Buyer that recognizes the existence of a contract with respect to the Products, shall constitute an acceptance by Buyer of these Terms & Conditions. The Buyer’s standard terms of business shall not apply even where they are transmitted to Seller in any way and Seller does not object to them.

**2. PURCHASE ORDERS.**

Purchase orders may be placed by Buyer in any commercially reasonable manner that Buyer and Seller determine is appropriate, including facsimile or electronic transmission. The purchase order should confirm the specific Products, specifications related thereto, quantity, price, total purchase price, shipping instructions, requested delivery dates, “bill to” and “ship to” addresses and tax exempt certifications, if applicable. Any other special instructions, and/or other terms or conditions in the Buyer’s purchase order or other documentation, including those which are inconsistent with these Terms & Conditions, are not binding upon Seller and are of no effect, unless Seller gives express written acceptance of same. All purchase orders are subject to acceptance by Seller. Seller reserves the right to correct clerical errors in any quotation or purchaser order referencing a quotation containing such errors. Buyer’s purchase order (as accepted by Seller subject to the foregoing requirement regarding deviations from these Terms & Conditions), Seller’s quotation, these Terms & Conditions, and any other document expressly accepted in writing by Seller as forming part of the contract (collectively, the “Contract Documents”) shall constitute the contract between the parties for the purchase of Products and/or services identified in the Buyer’s purchase order.

**3. PRICE, TAXES AND OTHER CHARGES.**

All prices are in US dollars unless otherwise noted on Seller’s quotation. Sales tax will be charged on all products if a tax exemption certificate is not submitted with the purchase order. In addition to payment of the price of the Products, Buyer agrees to pay Seller, either as included on the original invoice for the Products or as may be subsequently invoiced, for use, excise, sales, value added or any other taxes, governmental charges or assessments paid or required to be paid by Seller with respect to the order. Seller is entitled to retain any export duty drawbacks if Seller is the exporter of record.

**4. RISK OF LOSS, INSURANCE, RETENTION OF TITLE AND GRANT OF SECURITY INTEREST TO SELLER.**

a) Risk of loss or damage and insurance responsibilities pass to Buyer upon delivery to carrier. Although risk of loss or damage passes, title to all software and firmware shall remain with Seller or its licensors. Where Seller provides any information or advice to Buyer in connection with the delivery of any Products other than as specifically required under the Contract Documents, Buyer acknowledges that Seller does not accept any responsibility for providing inaccurate, misleading or incomplete information or advice. Buyer acknowledges that before relying on any information or advice that Seller may supply, Buyer should satisfy itself of the accuracy and appropriateness of that information or advice.

b) Seller and Buyer expressly agree that until Seller has been paid in full for the Products and services performed, the following provisions shall apply: i. legal and beneficial ownership of the Products remains with Seller, and Seller shall have a Security Interest therein; “Security Interest” has the meaning provided under the Ontario Personal Property Securities Act, as amended, replaced or superseded from time to time; ii. Buyer holds the Products as bailee for Seller and that a fiduciary relationship exists between Buyer and Seller; iii. Buyer shall keep the Products separate and in good condition as a fiduciary of

Seller, clearly showing Seller's ownership of the Products; iv. Seller shall be entitled to inspect the Products and may recover all or any part of such Products at any time from Buyer if they are in Buyer's possession and Buyer has breached any of its obligations hereunder and for that purpose Seller, its servants and agents may enter upon any land or building upon or in which such Products are situated; and v. under no circumstances shall Seller be liable to Buyer for any expenses or any damage that Buyer may incur or suffer while acting as the bailee of Seller. Buyer hereby appoints Seller to execute all documents and do all things on its behalf, including filing a financing statement in the applicable personal property security registry system and/or other filings, registrations or notices as may be required in Seller's sole discretion in order to perfect and give full effect to the reservation of ownership rights and/or security interests of Seller pursuant to this Section 4, and to maintain such rights or interest enforceable against third parties in all jurisdictions where the Products may be situated.

## **5. SHIPMENT AND DELIVERY.**

- a) Unless otherwise indicated on Seller's quotation, shipments are FCA Seller's factory or premises as indicated in the quotation. FCA is in accordance with International Chamber of Commerce Incoterms 2010. In the absence of specific instructions from Buyer, Seller may select the carrier and shipping route. Seller will invoice buyer for applicable freight and handling charges.
- b) In the absence of express written agreement to a specific delivery date, delivery schedule and delivery dates are as determined by the lead time in Seller's quotation, the date of Seller's acknowledgment of Buyer's purchaser order, the receipt of the down payment and the information and approvals necessary to proceed with design and manufacture. Delivery extension in response to a Buyer request will be subject to a 1½% per month delivery extension surcharge. A delay in delivery, including delivery later than the date or dates provided in the Contract Documents, shall not constitute a breach of contract and shall not entitle Buyer to avoid the contract or to any other remedy, unless Seller has guaranteed the date of delivery in a warranty set out in the Contract Documents that expressly modifies the provisions of this sentence.
- c) If installation is included in the quotation or purchase order, Seller shall be obligated only to provide such equipment as is specified in the quotation. Buyer is responsible for preparing the site for installation according to Seller's instructions, including, among other things, providing electric power hookup, air supply, if required, or other special equipment as instructed by Seller. Buyer shall pay Seller any costs resulting from Buyer being unprepared on the agreed date for installation of the Products, including, without limitation, the delivery extension surcharge for a minimum of one month or, if greater, the cost of storage of the Products, cancellation fees to installation contractors, if any, or time lost by installation technicians.

## **6. CANCELLATION AND RETURN.**

- a) Cancellations for standard Products customarily kept in inventory can be made only by written request, followed by our written consent and upon terms that will indemnify us against loss. Cancellations for standard products may, in Seller's sole discretion, be accepted with no charge up to thirty (30) days before scheduled shipping date. For cancellations made and accepted within thirty (30) days of the scheduled shipping date, Buyer agrees to pay liquidated damages of 20% of contract price for cancellation of a contract for standard Products, if such cancellation is accepted by Seller in accordance with this paragraph 6(a). Under no circumstances may Buyer cancel an order after shipment.
- b) Buyer may not cancel delivery for integrated systems, nonstandard products and other materials not customarily carried in stock by Seller, or for quantities in excess of the quantity that Seller customarily carries in stock. Liquidated damages for breach of this provision shall be in the form of monetary compensation for performance completed to date equal to costs incurred to date plus a margin. The margin is set at 8% if cancellation occurs within 2 months from contract inception, 10% if cancellation occurs within two to four months from contract inception and 12% if cancellation occurs after four months from contract inception. All partially completed work, shall, upon payment by Buyer, become the property of Buyer and will be shipped to Buyer in an "as is" condition, FCA Seller's factory or premises.
- c) Returns must be authorized by Seller. If the return is accepted and authorized by Seller, return Product is subject to a 10% restocking fee unless the Product is deemed by Seller, in its sole discretion, to be defective in material and/or workmanship. Additional fees may be imposed, at Seller's option, for any merchandise returned damaged, incomplete or not in the original packaging. All refunds will be made in the form of a return credit. Special order, custom or nonstandard assembled products are non-returnable.

## **7. PAYMENT TERMS.**

- a) All Payments must be made in the currency indicated on Seller's invoice. Payment can be made by cheque, wire transfer or EFT/ACH. Payment terms are set out in a quotation or proposal prepared by Seller.
- b) Past-due accounts will be charged interest at the rate of 1 ½ % per month, 18% per annum (or the maximum amount permitted by applicable law, if less) on the amount due until fully paid.
- c) If installation of standard Products is delayed at Buyer request, full payment (including installation charges, if any) is due thirty (30) days from date Product is shipped or ready to ship, notwithstanding any other provision in these Terms & Conditions to the contrary.
- d) Payment shall not be contingent on delivery or performance except as expressly provided in this Section 7, and, notwithstanding any provision to the contrary in these Terms & Conditions, shall not be contingent on the delivery or acceptance of custom software purchased from Seller or any third party under a separate contract or agreement, including application part programming, special functions, or communications modules.
- e) Approved credit may be revoked at any time.
- f) Seller reserves the right to suspend manufacture and delivery upon failure of Buyer to make payments when due, which suspension shall not satisfy Buyer's obligation to pay.
- g) Buyer shall schedule installation, training or part programming services sold with the Product to take place within 12 months from the date of shipment.
- h) Buyer shall not be entitled to withhold payment because of any disputed claim of Buyer in respect of defective Products or any other alleged breach of the Contract Documents, nor shall Buyer be entitled to set off against any amount payable for the supply of the Products or otherwise under the Contract Documents to Seller any monies which are not then presently payable by Seller or for which Seller disputes liability.
- i) Seller shall be entitled to recover from Buyer all costs incurred by Seller or on its behalf in recovering payment of any sum not paid when due and payable. Buyer shall indemnify Seller against all such costs, including legal expenses on a solicitor-and-client basis.
- j) Refer to Seller's quotation and invoice for other specific payment instructions.

## **8. LIMIT OF LIABILITY**

**SELLER AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY LOSS OF USE OR DOWNTIME OR LOST PRODUCTION, REVENUE OR PROFIT, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES WITH RESPECT TO THE PURCHASE, SALE, USE OR NON-USE OF PRODUCTS, CAUSED BY DEFECTIVE MATERIAL OR UNSATISFACTORY PERFORMANCE OF PRODUCTS OR SERVICES, WHETHER SUCH LIABILITY IS BASED UPON CONTRACT (INCLUDING BREACH OF A REPRESENTATION OR WARRANTY), TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHER LEGAL THEORY WHATSOEVER, EVEN IF SELLER HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY WARRANTY OR REMEDY IS HELD TO HAVE FAILED IN ITS ESSENTIAL PURPOSE. THE SELLER'S TOTAL LIABILITY TO BUYER IN RESPECT OF ALL OTHER LOSSES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL IN NO CIRCUMSTANCES EXCEED THE COST OF PRODUCTS DELIVERED OR SOLD BY SELLER IN THE TWELVE MONTHS PREVIOUS TO ANY CLAIM OR LOSS BEING FIRST MADE.**

Nothing in this agreement or any terms and conditions of sale between the parties shall limit or exclude the Seller's liability for death or personal injury caused by Seller's negligence or the negligence of its employees, agents or subcontractors (as applicable), fraud or fraudulent misrepresentation, or any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

## **9. WARRANTY**

### **NEW EQUIPMENT WARRANTY**

- a) Seller will replace or repair, at Seller's option, free of charge, any part or parts, which upon examination Seller finds defective in workmanship or material, provided that, on Seller's request, the part or parts of the machine are returned to Seller's plant or premises at Buyer's expense, and provided further, that there is satisfactory documentation that the Product has been installed, used and maintained in accordance with instructions in the service and/or user manual. The foregoing product warranty will not

apply to or cover Products exported by Buyer out of Canada or the USA. Seller shall not be liable or responsible for any expense or liability resulting from repairs, additions or modifications made upon the product without Seller's written consent.

b) Seller warrants service parts and accessories for ninety (90) days from date of shipment. Seller warrants service labor for thirty (30) days from date of completion.

c) APPLICATIONS SERVICES, TRAINING, PART PROGRAMMING AND OTHER SERVICES CARRY NO WARRANTY, EXPRESS OR IMPLIED. ANY TECHNICAL ADVICE PROVIDED BY SELLER WITH RESPECT TO THE USE OF PRODUCTS SHALL BE FOR INFORMATIONAL PURPOSES ONLY, AND SELLER MAKES NO REPRESENTATION OR WARRANTY, NOR ASSUMES ANY OBLIGATION OR LIABILITY FOR ANY SUCH ADVICE.

d) For all Products not installed by Seller, the warranty period is 12 months from date of delivery. The warranty period for Products installed by Seller is twelve (12) months from the date of installation, not to exceed thirteen (13) months from date of shipment. Warranties are non-transferable and non-assignable. No warranty claim may be made after the expiration of the warranty period.

e) The sole and exclusive remedy for breach of warranty is repair or replacement of any defective part or parts within the warranty period.

#### **USED EQUIPMENT WARRANTY**

For all used products not installed by Seller, the warranty period is 30 days from date of delivery. The warranty period for used products installed by Seller is days from the date of installation, not to exceed six (6) months from date of shipment. Warranties are non-transferable and non-assignable. No warranty claim may be made after the expiration of the warranty period.

e) The sole and exclusive remedy for breach of warranty is repair or replacement of any defective part or parts within the warranty period.

#### **10. OCCUPATIONAL SAFETY AND HEALTH.**

It is Buyer's or the user's responsibility to prepare for install and use any Product in a safe manner in its facility and to provide all proper devices, tools and means to protect all personnel from bodily injury that may result from Buyer's particular use, operation, set-up or service of Seller's Product. Buyer is advised to consult the operator, machine and programming manuals, ANSI Safety Standards and state and federal OSHA regulations. Buyer shall install and use the Products at all times in compliance with the foregoing manuals, safety standards, applicable codes, ordinances, regulations and laws and general standards of care.

#### **11. PRODUCT ACCEPTANCE.**

Machine acceptance tests are agreed to only by express written agreement of the parties. In any event, Products are deemed accepted no later than first commercial use.

#### **12. GOVERNMENT RESTRICTIONS.**

Seller's performance under any contract is subject to the issuance of any required export license or other necessary government authorization. Seller has the right to terminate without liability any order or contract if Seller determines such sale, export or delivery violates applicable law. Termination will not affect the right of Seller to recover the contract price for any unpaid Product already delivered. Buyer shall not export or re-export any Product in violation of applicable law and it is understood that machinery, equipment, documentation and software, if any, including technical data, may not be exported or re-exported in violation of the U.S. Export Administration Act or the Canada Customs Act, their implementing laws and regulations, the laws and regulations of other U.S. or Canadian agencies or the export and import laws of the jurisdiction in which this machinery, equipment, documentation and software, if any, including technical data was obtained. Export to or from any individual, entity, or country specifically designated by applicable law is strictly prohibited.

**13. HARMLESS / INDEMNITY.** Buyer hereby releases and agrees to defend, indemnify and hold Seller harmless from and against all claims, demands, suits and causes of action ("liability") for property damage, personal injury or death, and all loss, cost, damage and expense (including reasonable attorneys' fees) relating to the Products as incurred or as they become due, arising out of: i) Buyer's

modification to, or change of the Products or software or firmware as originally delivered; ii) Buyer's failure to purchase, install, provide or implement any safety part or practice customary in the industry (including, but not limited to, a mechanical, electrical or software interlock or other safety device); or iii) Buyer's negligence, violation of law or other fault.

**14. SEVERABILITY.**

If any provision of these Terms & Conditions or any provision of the contract between Seller and Buyer is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions (or part thereof) shall remain in full force and effect.

**15. NO WAIVER.**

Seller shall have the benefit of all rights and remedies provided by law or equity. Failure of Seller to exercise or reserve any right or remedy shall not be construed as a waiver thereof or of any other right or remedy.

**16. FORCE MAJEURE.**

Neither party shall be responsible for delays or failure in performance of this Agreement (other than failure to pay any amounts due) to the extent that such party was hindered in its performance by any act of God, civil commotion, labor dispute, unavailability or shortages of materials or any other occurrence beyond its reasonable control.

**17. GOVERNING LAW, JURISDICTION.**

Any contract arising out of the Contract Documents shall be governed by the Laws of the Province of Ontario, Canada, exclusive of its conflict of laws rules. This jurisdiction agreement is for the benefit of the Seller, and Seller therefore retains the right to bring any proceeding, suit, action, claim or demand for damages, loss or injury arising out of or in connection with the contract and/or the Contract Documents ("Proceedings") in any court which has jurisdiction other than by virtue of this jurisdiction agreement. Buyer has the right to bring Proceedings only in the courts of the Province of Ontario.

**18. GOVERNING LANGUAGE.**

In the event of translation of these terms and conditions to a language other than English, the English language shall govern.

**19. ENTIRE AGREEMENT.**

The Contract Documents constitute the whole and only agreement between the parties relating to the subject matter of the contract. Buyer acknowledges that in entering into the contract it is not relying upon any pre-contractual statement which is not set out in the Contract Documents. For the purposes of this section, 'pre-contractual statement' means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of the contract made or given by any person at any time prior to the date of this agreement.