

# PCS Instruments Limited

## Terms and Conditions of Sale

### 1. GENERAL

Orders are accepted by PCS Instruments Limited ("Seller") subject to these terms and conditions. In case of a conflict, inconsistency or addition not expressly accepted in writing by Seller, the terms and conditions of sale provided herein shall be considered as superseding the conflicting, inconsistent or additional terms stated in or attached to any purchase order or otherwise. The acceptance of an order by Seller will supersede all prior communications and constitute a complete and binding contract between the party ("Buyer") purchasing instruments, consumables and spares ("Equipment") hereunder and Seller, which contract cannot be modified or cancelled without the written agreement of both parties.

### 2. SHIPMENT

Equipment will be delivered within a reasonable time after the receipt of Buyer's order and acceptance thereof by Seller, subject to availability of ordered Equipment. Seller shall not be liable for any delays, loss or damage in transit. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Equipment to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the Equipment shipped, subject to the terms hereof, whether such shipment is in whole or partial fulfilment of Buyer's order. In the event of a default by Buyer, Seller may decline to make further shipments without waiving any of its rights under such order. If, despite such default, Seller elects to continue to make shipment, its action shall not constitute a waiver regarding, or otherwise diminish, Seller's legal remedies with respect to such default or any future default.

### 3. TITLE AND DELIVERY

All sales are made , Incoterms® 2010 to the Buyer's nominated delivery address. Buyer is responsible for obtaining all necessary licenses for importing the goods and paying all relevant taxes, duties and inspection costs. Title and risk of loss or damage shall pass from Seller to Buyer upon arrival at the Buyer's nominated delivery address.

### 4. PRICES

Irrespective of any prices quoted by Seller or listed on Buyer's order, an order is accepted only at the prices shown on Seller's written quotation (the "Quotation").

### 5. PAYMENT TERMS

- (a) Invoices are payable at the place set forth in the Quotation or the invoice no later than thirty (30) days after the date of the invoice. Any exchange charges, any charges for clearance of cheques or collection charges will be paid by Buyer. Any amounts not paid when due will bear interest at a rate of 18% per annum or, if lower, the maximum rate permissible by law.
- (b) All orders are subject to credit approval by Seller. The amount of any credit extended by Seller to Buyer may be changed, and such credit may be withdrawn by Seller. With respect to an order on which credit is not extended by Seller or, if extended, is subsequently withdrawn, shipment or delivery shall be made, at Seller's election, cash with order (in whole or in part), C.O.D. or letter of credit Sight Draft attached to Bill of Lading or other shipping documents, with all costs of collection (plus 18% interest on Sight Drafts not paid at maturity) for the account of Buyer. If,

in the judgment of Seller, the financial condition of Buyer does not justify continuation of production or shipment on the terms of payment originally specified, Seller may require full or partial payment in advance. In the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Seller shall be entitled, in addition to any other remedies at law or in equity, to (i) stop or divert any shipment in transit, (ii) cancel any order then outstanding and/or (iii) receive reimbursement for its cancellation charges.

- (c) Each shipment shall be considered a separate independent transaction, and payment therefore shall be made accordingly. If for any reason Buyer is not prepared to accept delivery of goods, Seller may store the goods at Buyer's expense and risk in the name of Buyer, and such storage shall constitute shipment and delivery to Buyer.

## 6. TAXES

Quoted prices do not include value added tax (VAT) or any other local excise, sales, use or similar taxes, which Buyer shall additionally be liable to pay. Accordingly, in addition to the prices specified on the Quotation, the amount of any applicable VAT, excise, sales, use and/or similar taxes will appear as separate items on the invoice and will be paid by Buyer unless prior to shipment Seller receives an appropriate tax exemption certificate from Buyer.

## 7. CUSTOMER SPECIFIC ACCEPTANCE ("CSA")

Except as provided in the Quotation, Seller's standard commercial factory acceptance test(s) performed at Seller's factory will comprise acceptance for the Equipment sold by Seller. If the Quotation references CSA provisions, then Buyer will accept the purchased Equipment in accordance with such CSA provisions. Buyer and Seller will give priority to achieving CSA and the purchased Equipment shall not be used by Buyer for material production, for development of new processes or for any purposes other than achieving CSA, prior to successful completion or waiver of the CSA provisions. Any such use of the Equipment prior to successful completion of the CSA provisions shall be deemed to constitute CSA passage. It is the responsibility of the Buyer to ensure that all the required facilities are ready and site preparation is completed for successful commencement of CSA on delivery of the Equipment. If CSA has not been commenced within 30 days after delivery and completed within 60 days after delivery (through no fault of Seller), the Equipment shall be deemed accepted and as having achieved CSA.

## 8. INSTALLATION

If the Quotation includes installation of the Equipment by Seller at the Buyer's business location then Seller shall be responsible for all unpacking, set up and commissioning of the Equipment. Buyer must not unpack any shipment or commence set up prior to the arrival of Seller's installation personnel.

## 9. FORCE MAJEURE

Seller shall not be liable for failure to perform occasioned by strikes, lockouts, labour difficulties, riots, inability or difficulty in obtaining or procuring supplies, labour or transportation, fires, storms, floods, earthquakes, explosions, accidents, acts of God, interference by civil or military authorities, whether legal or de facto, acts of the public enemy, war, rebellion, insurrection, sabotage, embargoes, orders given priority by any public authority or any other cause beyond the reasonable control of Seller.

## 10. PATENTS

If a third party claims that the purchased Equipment infringes that party's patent or copyright, Seller will defend Buyer against that claim and will pay all costs, damages and attorneys' fees that a court

finally awards, provided that Buyer: (a) promptly notifies Seller in writing of the claim, and (b) allows Seller to control, and cooperates with Seller in, the defence and any related settlement negotiations. If such a claim is made or appears likely, Seller, at its option, may obtain a license to enable Buyer to continue to use the product, may modify the product or may replace it with one that is functionally equivalent. If Seller determines that none of these alternatives is reasonably available, Buyer will return the product to Seller upon Seller's written request, in which case Seller will credit Buyer with an amount equal to the price paid for such product less a reasonable amount for depreciation. Seller's liability is limited to repair, replacement or adjustment as determined by Seller. Seller shall not be liable for any claim based on (i) anything Buyer provides which is incorporated into a product, (ii) Buyer's modification of a product or use thereof other than in its specified operating environment, or (iii) the combination, operation or use of a product with products provided by other manufacturers or other products not provided by Seller as a system. This is the exclusive warranty and liability of Seller with respect to intellectual property matters and is in lieu of all other warranties and remedies, express or implied. Sale of products or parts thereof does not confer on Buyer any license relating to (a) the structure of any devices to which the products or parts may be applied or (b) a process or machine in connection with which they may be used.

## 11. CANCELLATION

Buyer may cancel its order prior to shipment only upon written notice and upon payment to Seller of cancellation charges which shall take into account, among other things, expenses incurred, and commitments already made by Seller.

## 12. WARRANTY

- (a) Seller warrants to the Buyer that new Equipment will materially conform to Seller's published specifications in effect as of the date of manufacture, if any, and will be free of defects in material and workmanship for a period of one year (365 days) commencing on final acceptance or ninety (90) days from shipping, whichever occurs first. This warranty covers the cost of parts and labour (including, where applicable, field service labour and travel) required to restore the Equipment to normal operation.
- (b) Seller warrants to the Buyer that replacement parts will be new or of equal functional quality and warranted for the remaining portion of the original warranty or 90 days, whichever is longer.
- (c) Seller warrants to the Buyer that software will perform in substantial compliance with the written materials accompanying the software. Seller does not warrant uninterrupted or error-free operation.
- (d) Seller's obligation under these warranties is limited to repairing or replacing at Seller's option defective non-expendable parts or software. These services will be performed, at Seller's option, at either Seller's facility or Buyer's business location. For repairs performed at Seller's facility, Buyer must contact Seller in advance for authorization to return Equipment and must follow Seller's shipping instructions. Freight charges and shipments to Seller are Buyer's responsibility. Seller will return the Equipment to Buyer at Seller's expense. All parts used in making warranty repairs will be new or of equal functional quality.
- (e) The warranty obligation of Seller shall not extend to defects that do not impair service or to provide warranty service beyond normal business hours, Monday through Friday (excluding Seller holidays). No claim will be allowed for any defect unless Seller shall have received notice of the defect within thirty (30) days following its discovery by Buyer. Also, no claim will be allowed for Equipment damaged in shipment. Within thirty (30) days of Buyer's receipt of Equipment, Seller must receive notice of any defect which Buyer could have discovered by prompt inspection.

- (f) Expendable items, including, but not limited to, filters, lamps, fuses, drive belts, probes, fluids, O-rings and seals ARE SPECIFICALLY EXCLUDED FROM THE FOREGOING WARRANTIES AND ARE NOT WARRANTED.
- (g) All used Equipment, including ex-demonstration Equipment, is sold AS IS, WHERE IS, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. Regular maintenance is excluded from this warranty.
- (h) Specifically excluded from this warranty is all standalone computer and data storage hardware not manufactured by Seller (including, but not limited to, computers, monitors, printers and peripherals). Such hardware will carry only the original manufacturer warranty.
- (i) Seller assumes no liability under the above warranties for Equipment or system failures resulting from (i) abuse, misuse, modification or mishandling; (ii) damage due to forces external to the machine including, but not limited to, acts of God, flooding, power surges, power failures, defective electrical work, transportation, foreign Equipment/attachments or Buyer-supplied replacement parts or utilities or services such as gas; (iii) improper operation or maintenance; or (iv) failure to perform preventive maintenance in accordance with Seller's recommendations (including keeping an accurate log of preventive maintenance).
- (j) This warranty does not apply if any Equipment or part has been modified without the written permission of Seller or if any Seller serial number has been removed or defaced.
- (k) No one is authorized to extend or alter these warranties on Seller's behalf without the written authorization of Seller.
- (l) THE ABOVE WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES (INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), AND OF ANY OTHER OBLIGATION ON THE PART OF SELLER. SELLER DOES NOT WARRANT THAT ANY EQUIPMENT OR SYSTEM CAN BE USED FOR ANY PARTICULAR PURPOSE OR WITH ANY PARTICULAR PROCESS OTHER THAN THAT COVERED BY THE APPLICABLE PUBLISHED SPECIFICATIONS.

### 13. NO CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY.

- (a) SUBJECT TO CLAUSE 12 (B), IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S LIABILITY FOR DAMAGES HEREUNDER EXCEED THE AMOUNTS ACTUALLY PAID BY BUYER UNDER ANY APPLICABLE ORDER, STATEMENT OF WORK OR OTHER AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 12 ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION LEVIED IN CONNECTION WITH THESE TERMS AND CONDITIONS OF SALE, AND BUYER FURTHER ACKNOWLEDGES THAT SELLER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.
- (b) Nothing in these terms and conditions shall limit or exclude Seller's liability for: (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979, or (iv) any other matter in respect of which it would be unlawful for Seller to exclude or restrict liability.

### 14. APPLICABLE LAW AND JURISDICTION

The contract created hereby shall be interpreted and construed under the laws of England and Wales. The exclusive jurisdiction for any disputes (including non-contractual disputes or claims) arising out of or in connection with such contract shall be the courts of England and Wales.

## 15. SEVERABILITY

If any provision of these terms and conditions of sale shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.