

Durham Instruments, Inc. General Terms and Conditions of Sale

1. **Definitions.** "Seller" means Durham Instruments, Inc. "Buyer" means the person, firm or company to whom the purchase order ("Purchase Order") is issued by Seller. "Supplier" means the person, firm or company producing the "Product" for the "Seller". "Products" means materials, supplies, items, equipment, work and/or services covered by the Purchase Order.
2. **Quotations.** Prices, specifications and dates for delivery referenced in Seller's quotations are for information purposes only and shall not be binding on Seller until all technical requirements have been agreed and Seller has accepted Buyer's order. Quotations terminate if not accepted by Buyer within 30 days.
3. **Acceptance:** Upon Seller's acceptance of the Purchase Order in writing, the Buyer and Seller expressly acknowledge and agree that the terms and conditions that (a) are set forth in these Terms and Conditions, (b) appear or are specifically referenced in the Purchase Order, and/or (c) are set forth on any other attachments to the Purchase Order and/or these Terms and Conditions shall collectively constitute the sales contract between the parties, all of which are incorporated herein by this reference (collectively, the "Sales Contract").
4. **Full Agreement:** The Sales Contract between Buyer and Seller shall consist of the terms and conditions contained in the Sales Contract together with any revisions or modifications of such terms mutually agreed to in writing by Buyer and Seller. Seller shall not be bound by any additional or different terms not contained in the Sales Contract or otherwise agreed to in writing by Buyer and Seller, including, without limitation, (a) any additional or different terms in the Buyer's form of purchase order, (b) any other communication from Buyer to Seller, and/or (c) any prior courses of dealing, usages of the trade, and/or verbal agreements.
5. **Modification; Termination:**
 - a. Except as otherwise provided in this Sales Contract, the terms of this Sales Contract cannot be modified, terminated, and/or repudiated, in whole or in part, except as agreed upon by Buyer and Seller in writing. Seller, at its option, may treat any attempted modification, termination, or repudiation by Buyer to which Seller does not assent in writing as a breach of the entire Sales Contract by Buyer and, in such event, Seller shall have all remedies available under the Sales Contract or applicable law. If Seller's performance of its obligations under this Sales Contract is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants or employees, Seller shall not be deemed in breach of its obligations under this Sales Contract or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.
 - b. If all or part of the Sales Contract is terminated by a written agreement between Buyer and Seller ("Termination Agreement"), except as otherwise provided in such Termination Agreement, Buyer shall pay termination charges to Seller as follows: (a) the price provided in the Sales Contract for all Products assembled in whole or in part on or before the effective date of the Termination Agreement, (b) the actual expenses incurred by Seller in connection with the uncompleted portion of the terminated order, and/or (c) any reasonable profit estimated by Seller on the uncompleted portion of the order as of the effective date of the Termination Agreement. Notwithstanding anything to the contrary in this Sales Contract, Seller reserves the right to independently increase pricing for Products under the Sales Contract at any time or times if cost of materials for the Seller with respect to such Products increases ten percent (10%) or more prior to the delivery of such Products for reasons beyond Seller's reasonable control.
 - c. Upon the termination of this Sales Contract, and subject to Buyer's payment of all outstanding fees and other amounts owing and compliance with the terms of this Sales Contract, each party shall promptly return to the other party all documents and tangible materials which include the other party's confidential information and permanently erase any of such confidential information from its computer systems.
6. **Purchase Price and Delivery:** The price of Products is set forth in the Sales Contract. Unless otherwise provided in the Sales Contract, Buyer shall pay the purchase price for Products within thirty (30) calendar days from the date of Seller's shipment of such Products. Seller may, in its sole discretion, determine at any time that Buyer's financial condition requires payment in advance, and, if such requirement is not met, may cancel the order or any part thereof and receive reasonable cancellation charges. Terms are FOB-Shipping Point (the Seller's place of business). Buyer shall pay all shipping costs and bear the risk of loss of any shipment once such shipment leaves the Seller's place of business, provided however that title to any software incorporated within or forming part of the Products shall remain with the Seller or the licensor(s) thereof, as the case may be. If Buyer fails to pay any payment due hereunder when due, Supplier may recover, in addition to the payment, interest thereon at the rate of 1.5% per month where lawful, otherwise the maximum lawful monthly interest rate, and reasonable collection expenses, including legal fees.
7. **Sales or Use Taxes:** The price for any Product as reflected on the Sales Contract does not include any applicable tax or other governmental charges upon the sale, shipment or use of such Product including, without limitation, any sales, use, excise, privilege

or similar taxes. To the extent that Seller is required to pay or collect such tax or other charges from the Buyer, Buyer shall pay such tax or other charge to Seller along with the purchase price unless Buyer furnishes any applicable exemption certificates to Seller that are in form and substance acceptable to Seller and the appropriate taxing authority.

8. **Time of Delivery:** Buyer acknowledges that any shipment schedules provided by the Seller are approximate and are based on conditions at time of the Seller's acceptance of this Sales Contract. Seller shall attempt to effect delivery of Products by the date specified for the delivery of such Products in the Sales Contract, but Seller shall not be responsible or liable for delays in or failure to make deliveries as a result of any cause beyond Seller's reasonable control. In such cases, Seller reserves the right to terminate the order or to reschedule the delivery within a reasonable time. In no event shall Seller be liable for incidental or consequential damages resulting from failure to meet any requested delivery schedules.
9. **Warranty:** Except as otherwise provided in the Sales Contract, Seller notes that product warranty will be noted by the Supplier(s). Buyer shall promptly notify Seller in writing of any malfunction in the Products, which notification shall describe the malfunction in sufficient detail to permit Seller to isolate the malfunction. Upon Seller's receipt of written notification from Buyer, Seller will provide Buyer with instructions on returning the Product under a warranty claim. Upon receipt of any Product returned by Buyer, Seller (or Supplier) shall test the Product in order to isolate any malfunctions in the Product. The Products purchased by Buyer are not manufactured by Seller and are additionally subject to the terms and conditions of the Supplier or manufacturer of such Product. Other than the warranty contained herein, Seller expressly disclaims all other warranties related to the Products, including but not limited to the delivery, merchantability, fitness for use, or any other implied warranty which may be imposed upon the Products.
10. **Software.**
 - a. Supplier and its licensors and suppliers shall at all times have and retain title and full ownership of all software, firmware programming routines, and documentation thereof supplied by Supplier for use with equipment, and of all copies thereof made by Buyer (collectively "software"). If software is owned by a third party and a license from such third party is being provided to Buyer, then (i) the scope of the rights and entitlements granted to the Buyer shall be determined in accordance with the third party's license terms, which Supplier will include in the delivery and which Supplier will send in advance upon request by Buyer and (ii) Supplier will provide suitable advance notice to the Buyer in the event that software from third parties will be included in the delivery (e.g., by naming the third party manufacturer in the order documentation). The foregoing applies specifically to software such as operating systems and comparable components of the delivered systems.
 - b. For all other software delivered to Buyer by Supplier for installation and use by Buyer on computers (i.e., software not embedded in equipment), Supplier grants Buyer a nonexclusive and non-transferable license to use such software solely for use in conjunction with the equipment and solely on a single computer system for each copy (other than update or replacement copies) delivered to Buyer, unless Supplier expressly provides otherwise. Buyer shall not transfer or otherwise provide such software to any third party except to transfer such software with the applicable equipment to a third party, in which case the software must be completely deleted from the Buyer's system and the media on which it was delivered, including all documentation related thereto, must be transferred to the purchaser of the equipment, such that the Buyer does not keep a copy of the software and that the Buyer no longer uses the software. Buyer shall not, and shall not permit any third party, to: (a) modify or create any derivative work of any part of the software; (b) rent, lease, or loan the software; (c) permit any third parties to use the software; (d) disassemble, decompile or reverse engineer the software or otherwise attempt to gain access to the source code of the software; (e) sell, license, sublicense, publish, display, distribute, assign or otherwise transfer to a third party the software, any copy thereof, or any rights thereto, in whole or in part, except to the extent expressly permitted herein; (f) copy the software except for installing and loading the software into computer memory for the purpose of executing the program and except to make a reasonable number of copies solely for back-up and testing purposes; and/or (g) use the software in a service bureau or software as a service capacity.
11. **Limitation of Liability:** In no event shall Seller be liable to Buyer or any other party for any indirect, incidental, consequential, special or punitive damages of any kind or nature arising out of relating to this Sales Contract or connected with or resulting from the manufacture, sale, delivery, resales, repair, replacement, or use of any Product, whether such liability is based in contract, tort, negligence, strict liability or otherwise, even if such party had been warned of the possibility of any such damages.
12. **Indemnity.** Buyer shall indemnify, defend and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (collectively "Losses") to the extent arising from or in connection with (1) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (2) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (3) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (4) use of a Product in an application or environment for which it was not designed; (5) modifications of a Product by anyone other than the manufacturer without such manufacturer's prior written approval or (6) any breach of this Sales Contract.

13. **Return Policy:** Products that consist of non-standard catalog parts or custom part orders are accepted by Buyer on a non-cancellable/non-returnable policy, except with respect to any warranty claim by Buyer. Subject to Section 14 below, the Seller (in its sole discretion) reserves the right to approve in writing a return of any standard catalog items within thirty (30) calendar days of Buyer's receipt of shipment, provided that (a) Buyer shall pay all shipping costs and shall pay Seller a restocking fee, which amount shall be paid to Seller immediately upon Seller's approval of such return except to the extent that the Seller, at their option, elects to offset such amount against the purchase price previously paid to Seller by Buyer for such Product, and (b) the Product has not been installed and is returned by Buyer in a like-new resalable condition as determined by Seller in its sole discretion.
14. **Return Authorization:** A Return Authorization (RMA) executed by Seller, in its sole discretion, is required for all customer returns of any Product under the Sales Contract. Prior to the return of any Product, Buyer shall provide Seller with the following information with respect to such Product: (a) part number, (b) serial number, (c) a technical description of the defect to include test data or written observations of the failure, as well as specific corrective action required, and (d) sales order or purchase number from the initial purchase transaction.
15. **Export.** Regardless of any disclosure made by Buyer to Seller of the ultimate destination of Seller products, Buyer shall not export either directly or indirectly any Seller product, or any system incorporating said product either in contravention of statute or regulation or without first obtaining all required licenses and permits from Global Affairs Canada and any other relevant agencies or departments of the Government of Canada (or, if being exported from a country other than Canada, in compliance with the applicable laws of such country). Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Buyer harmless from any Losses, or in connection with, any violation of this Section by Buyer or its employees, consultants, agents, or customers.
16. **Relationship of Buyer and Seller.** The Seller is an independent contractor of Buyer. Nothing contained in this Sales Contract shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.
17. **Solicitation of Seller's staff.** Buyer agrees that it will not, without the prior written consent of Buyer, solicit, recruit, hire or otherwise employ or retain any employee of Buyer or its affiliates or subsidiaries during the term of this Sales Contract.
18. **Force Majeure.** Neither Buyer or Seller shall be liable to the other for any delay or failure in performing its obligations under the Sales Contract or to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("**Force Majeure Event**"). *Force Majeure* Events include, without limitation, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes.
19. **Severability.** In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain.
20. **Applicable Law; Venue:** THIS SALES CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE PROVINCE OF ONTARIO AND FEDERAL LAWS OF CANADA APPLICABLE THEREIN, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE PROVINCE OF ONTARIO OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE PROVINCE OF ONTARIO. ANY ACTION BROUGHT TO ENFORCE THIS SALES CONTRACT OR BASED ON ANY MATTER ARISING OUT OF THIS SALES CONTRACT SHALL BE COMMENCED AND MAINTAINED ONLY IN FEDERAL OR PROVINCIAL COURT IN THE GREATER TORONTO REGION, PROVINCE OF ONTARIO, CANADA. THE APPLICATION TO THIS AGREEMENT OF THE U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS HEREBY EXPRESSLY EXCLUDED.
21. **No Waiver.** Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.