

## Terms and Conditions of Sale

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

### **1. GENERAL.**

World Precision Instruments Germany GmbH ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any document issued by Buyer are expressly rejected and if the terms and conditions in this Agreement differ from the terms of Buyer's offer, this document shall be construed as a counter offer and shall not be effective as an acceptance of Buyer's document. Buyer's receipt of Products or Seller's commencement of the services provided hereunder will constitute Buyer's acceptance of this Agreement. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.

### **2. PRICE.**

All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment. All prices are subject to adjustment on account of specifications, quantities, raw materials, special packaging, cost of production, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation. The Seller reserves the right to designate minimum order quantities and/or minimum handling charges for any products. Seller reserves the right to make an additional charge for additional shipping costs including, without limitation, direct shipments from the manufacturer or any specialized packaging (including hazardous materials).

### **3. TAXES AND OTHER CHARGES.**

Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby, all of which taxes and duties must be paid by Buyer. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

### **4. TERMS OF PAYMENT.**

Seller may invoice Buyer upon shipment for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. If Buyer fails to pay

any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in the invoiced currency of the Seller. The Seller does not accept credit card information via fax or email.

## **5. DELIVERY; CANCELLATION OR CHANGES BY BUYER.**

Unless agreed otherwise, the Products will be delivered EXW (Incoterms 2010) from Seller's facility. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Orders in process may be cancelled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without the prior written consent of Seller.

## **6. TITLE AND RISK OF LOSS.**

Without prejudice to the foregoing, and subject to the Seller's right to suspend delivery of Products in transit, the risk of loss of the Products shall pass to the Buyer (or its carrier) upon delivery of the Products by the Seller. Until full receipt of all payments, the product remains the property of the seller. In the event of breaches of contract by the buyer, including default in payment, the seller is entitled to take back the goods. The buyer must treat the product with care, insure it appropriately and, if necessary, maintain it. If the purchase price has not been paid in full, the buyer must inform the seller immediately in writing if the product is encumbered with rights of third parties or exposed to other interventions of third parties. The buyer is entitled to resell the product subject to retention of title in the ordinary course of business. In this case, however, he hereby assigns to the seller all claims arising from such resale, regardless of whether this takes place before or after any processing of the product delivered under retention of title. Regardless of the Seller's authority to collect the claim himself, the Buyer shall remain entitled to collect the claim even after the assignment. In this context, the seller undertakes not to collect the claim as long as and insofar as the buyer meets his payment obligations, no application for the opening of insolvency or similar proceedings has been filed and there is no suspension of payments. Insofar as the above-

mentioned securities exceed the claims to be secured by more than 10%, the seller is obliged to release the securities at his discretion at the request of the buyer. Any transfer of ownership shall be effected with the understanding that title to any software incorporated into or forming part of the Products shall always remain with the seller or licensor of such software.

## **7. WARRANTY.**

The Seller warrants, for the period specified in the product documentation, in the published technical descriptions or package inserts, that the function or performance of the Products substantially conforms to the published specifications, as well as their freedom from defects in terms of materials and workmanship under their normal, intended and intended use by duly trained personnel. Unless Seller's product documentation, published specifications and/or package inserts specify a period of time, the warranty period is one (1) year from the date of shipment to Buyer for equipment and ninety (90) days for all other products (the "Warranty Period"). Unless they are provided with a specific warranty or shelf life, the warranty for consumer goods applies exclusively at the time of delivery. During the warranty period, the Seller undertakes, at its discretion, to repair or replace defective products so that their operation is substantially in accordance with said published specifications; this is provided that the Buyer (a) notifies the Seller in writing immediately upon discovery of any defects, such notification including the model number and (if any) the serial number of the Product and details of the warranty claim; and (b) that Seller, upon verification by Seller, will provide Buyer with Service Data and/or a Return Merchandise Authorization Number ("RMA Number"), which may include, but is not limited to, biohazard decontamination procedures and other product-specific processing instructions. If the buyer has received an RMA, he can return the defective products to the seller, whereby all costs are to be borne in advance by the buyer. Spare parts may be new or retreaded at the discretion of the seller.

All replaced parts become the property of the seller. The dispatch of repaired or replaced products takes place in accordance with the terms of delivery of the general terms and conditions for deliveries and services of the seller. Consumer goods are expressly excluded from the aforementioned warranty.

In no event shall the Seller be obliged to repair or replace or improve any Products which, in whole or in part, are the result of (i) normal use, (ii) accidents, disasters or force majeure, (iii) misuse or negligence on the part of Buyer, (iv) misuse of the Products for other purposes, (v) external causes such as, but not limited to, power failures or electrical voltage surges, (vi) storage and handling of the Products in an improper manner, or (vii) use of the Product in connection with equipment or software not supplied by Seller. If Seller determines that defects for which Buyer is under warranty are not covered by the warranty, Buyer shall reimburse Seller for all costs of inspecting and responding to such request at Seller's then-current time and material rates. If the Seller provides repair services or spare parts not covered by this warranty, the Buyer shall pay the Seller for this at the applicable time and material rates of the Seller.

**ANY SERVICING, REPAIR AND/OR MAINTENANCE WORK CARRIED OUT BY UNAUTHORIZED OR QUALIFIED PERSONS OR ORGANIZATIONS, DISPLACEMENT OR ALTERATION OR OTHER UNAUTHORIZED MANIPULATION OF OR FROM THE PRODUCTS OR ANY USE OF SPARE PARTS NOT RELEASED BY SELLER WILL IMMEDIATELY RESULT IN THE CANCELLATION AND**

REVOCAION OF ALL WARRANTIES WITH RESPECT TO THE PRODUCTS IN QUESTION. EXCEPT AS OTHERWISE PROVIDED IN THIS DISCLAIMER, SELLER DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE SELLER DOES NOT GUARANTEE THE ACCURACY OF THE PRODUCTS, NOR THAT THEY ACHIEVE A SPECIFIC RESULT.

## **8. INDEMNIFICATION.**

8.1 By Seller. Seller agrees to indemnify, defend and save Buyer, its officer, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) ("Indemnified Items") for (i) injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of services at Buyer's premises under this Agreement and (ii) claims that a Product infringes any valid United States patent, copyright or trade secret; provided, however, Seller shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) improper storage or handling of the Products or use by unqualified personnel, (iv) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing any third party rights, (v) Seller's compliance with Buyer's designs, specifications or instructions, (vi) use of the Product in an application or environment for which it was not designed or (vii) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer shall provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN.

8.2 By Buyer. Buyer shall indemnify, defend with competent and experienced counsel 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 (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) improper storage or handling

of the Products or use by unqualified personnel; (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing any third party rights; (iv) use of the Product for any purpose for which it is not designed, or by a not suitably qualified individual; (v) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (vi) use of a Product in an application or environment for which it was not designed; or (vii) modifications of a Product by anyone other than Seller without Seller's prior written approval.

## **9. SOFTWARE.**

With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Buyer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Accordingly, Seller and Buyer agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

## **10. LIMITATION OF LIABILITY.**

(A) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, SELLER'S LIABILITY (WHETHER IN CONTRACT, TORT, INDEMNIFICATION OR OTHERWISE) SHALL NOT EXCEED THE LESSER OF (A) THE TOTAL PURCHASE PRICE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCTS GIVING RISE TO SUCH LIABILITY, OR (B) ONE MILLION U.S. DOLLARS (US\$1,000,000) (OR EQUIVALENT DEM LOCAL CURRENCY). (B) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, PROVEN, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR DAMAGE TO USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS

OF PROFITS, OR LOSS OF GOODWILL), WHETHER OR NOT SELLER (a) ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; WAS OR (B) WAS NEGLIGENT. (C) IN ADDITION TO THE FOREGOING, THE SELLER SHALL NEVERTHELESS BE LIABLE WITHOUT LIMITATION AND WITHOUT LIMITATION IN THE FOLLOWING CASES:

(aa) IN ALL CASES WHERE SUCH LIABILITY IS MANDATORY BY LAW AND CANNOT BE EXCLUDED;

bb) IN ALL CASES SUBJECT TO THE PRODUCT LIABILITY ACT (ACT OF 15.12.1989);

cc) IN THE EVENT OF INTENT OR GROSS NEGLIGENCE;

dd) IN THE EVENT OF INJURY OR DEATH OF ANY PERSON.

## **11. EXPORT RESTRICTIONS**

Buyer acknowledges that each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively “Items”), is subject to applicable export controls, including those of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the “EAR”), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer shall comply with all the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not, without first obtaining the required license to do so from the appropriate government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. 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 Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, agents, or customers.

## **12. MISCELLANEOUS.**

(a) Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void.

(b) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the country or state of Seller's registered location, without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in the county and state of Seller's registered office address, in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise.

(c) In the event of any legal proceeding between the Seller and Buyer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. Any action

arising under this Agreement must be brought within one (1) year from the date that the cause of action arose.

(d) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

(e) 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.

(f) 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.

(g) Unless otherwise expressly stated on the Product or in the documentation accompanying the Product, the Product is intended for research only and is not to be used for any other purpose, including without limitation, unauthorized commercial uses, in vitro diagnostic uses, ex vivo or in vivo therapeutic uses, or any type of consumption by or application to humans or animals.

(h) Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller. Buyer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public.

(i) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other.