

## THOMSON INSTRUMENT COMPANY TERMS AND CONDITIONS OF SALE

These Terms and Conditions apply to the sale of the Thomson products specified in any quote or purchase order (“Products”) by and between Thomson Instrument Company (“Thomson”) and the buyer (“Buyer”). These Terms and Conditions, any quote provided by Thomson to Buyer, and any accepted purchase order will constitute the entire agreement (“Agreement”) between Thomson and Buyer with respect to the purchase, sale and delivery of the Products and supersedes all previous written or verbal agreements relating on this subject matter between the parties.

1. **Orders.** All orders are subject to acceptance by Thomson. Once an order is accepted by Thomson, Buyer’s order cannot be canceled without the written consent of Thomson. Thomson will have the right to cancel and/or hold any or all orders placed by Buyer and any or all shipments of Product, regardless of any prior confirmation or acceptance by Thomson. Buyer may use its own purchase order form, however, any additional terms or conditions which may be added to the purchase order by Buyer, will have no legal force or effect whatsoever and are expressly rejected, unless otherwise agreed to in writing and no course of dealing, usage of trade, or course of performance will be relevant to explain or modify any term expressed in this Agreement.

2. **Product Pricing, Shipping and Taxes.** For all Products ordered by Buyer and shipped or otherwise delivered by Thomson, Buyer agrees to pay Thomson the price of Products as set forth in the Quote and Order form provided by Thomson. Prices in the Quote and Order form are only valid for the sale of the specified quantities of Products listed in that particular form. Thomson reserves the right to change the prices of its products at any time. The Product prices in the Quote and Order form do not include shipping and handling, insurance or any applicable sales, use, value-added, excise and/or withholding taxes, customs duties, or import fees. All taxes, tariffs, customs and import fees (if applicable) and other charges imposed in connection with the sale and delivery of the Products, except income taxes imposed upon Thomson, will be paid directly by Buyer. In the event Thomson pays any such fees, taxes, tariffs or charges, Buyer will promptly reimburse Thomson therefor. If any prices for shipping, handling or taxes are listed in the quote, such prices shall be estimates only.

3. **Payment.** Thomson shall invoice Buyer at the time of shipment for Products included in said shipment along with any applicable taxes, shipping and handling charges. Payment shall be due within thirty (30) days after Thomson’s shipment of such Products. If any payment under this Agreement is late, interest shall accrue on the past due amount at a rate equal to the lesser of (a) a rate of 1½ % per month, and (b) the maximum rate permitted by law. Time for any payments hereunder shall be of the essence.

4. **Security Interest.** Buyer hereby grants Thomson, and Thomson hereby retains, a purchase money security interest and lien on the Products, wherever located, and all replacements or proceeds of the Products, until the invoice for the applicable Products is paid in full, including any late charges and costs of collection. Buyer consents to

Thomson’s use of this Agreement, as well as Product invoices, as financing statements for protecting this security interest and appoints Thomson as Buyer’s agent for service of process.

5. **Delivery of Products.** Thomson will ship or deliver the Products to Buyer to the destination stated on the Quote and Order, in the quantities ordered, as soon as reasonably practicable. Thomson reserves the right to fill orders on a pro rata basis if inventory shortages of Products arise. All delivery dates for the Products are best estimates based on prevailing conditions when given and Thomson will not be in breach of this Agreement or otherwise liable to Buyer if it fails to meet any delivery dates. If Thomson, for any reason whatsoever, fails or is unable to deliver any Products ordered by Buyer and accepted by Thomson within the estimated delivery dates, then Buyer’s sole and exclusive remedy shall be the recovery of the purchase price, if any, paid by Buyer to Thomson for such Products. Thomson shall not incur any liability whatsoever for any delay in the delivery to the designated delivery location of any Products. In no event shall Thomson be liable for any punitive, incidental, consequential or other damages arising out of any failure to deliver any Products to Buyer or any delay in the delivery thereof. Each Product or group of Products will be packaged and labeled with Thomson’s label(s) and will be accompanied by Thomson’s user manual containing instructions with respect to the use, operation, and storage of the Product(s) (such packaging, labeling, and manual are collectively called the “Supplemental Materials”).

6. **Risk of Loss For Delivery of Products to Buyer.** Thomson will ship all Products on an FOB origin basis (i.e., title to and all risk of loss of and damage to the Products will transfer from Thomson to Buyer upon Thomson placing the Products in the custody of the shipping agent, and shipping and handling costs incurred by Thomson will be added to Thomson’s invoice to Buyer for reimbursement).

7. **Inspection and Acceptance.** Buyer will inspect and reject all items of defective Products within thirty (30) days after the date of Buyer’s receipt thereof. Buyer shall communicate to Thomson, in writing within thirty (30) days of receipt, if Buyer believes that any Product is defective or if there is a shortage or other nonconformance with the order. If Buyer fails to provide such a written documentation within the 30-day period, Buyer will be deemed conclusively to have accepted such Product. If the Products are not defective upon Thomson’s inspection of the same, Thomson may charge Buyer for any shipping, return or restocking fees incurred by Thomson. Thomson shall, in

its sole and complete discretion, either replace the defective Products or issue a credit. Such credit, once issued by Thomson, may be applied against any current or future amount owed by Buyer to Thomson.

## 8. Warranties.

8.1 **Thomson's Limited Warranty.** Thomson warrants that (i) the Products operate in accordance with the descriptions contained in and on the Supplemental Materials, and (ii) the Supplemental Materials correctly describe and explain the Products and the purposes, use, and operation of the Products. The provisions of Section 7 above shall be the sole and exclusive remedy available to Buyer with respect to any Product that fails to meet the warranties in this Section 8.1.

8.2 **Disclaimer of Warranties.** THOMSON IS SELLING THE PRODUCTS AND SUPPLEMENTAL MATERIAL UNDER THIS AGREEMENT "AS IS." EXCEPT FOR THE LIMITED WARRANTY SET FORTH HEREIN IN SECTION 8.1, THOMSON HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND NON-VIOLATION OF THIRD-PARTY RIGHTS, AND ANY WARRANTIES THAT MAY ARISE DUE TO COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, WHETHER RELATED TO PRODUCTS, OR ANY THOMSON MARKETING MATERIAL, AS APPLICABLE, OR OTHERWISE.

9. **Limitation of Liability.** IN NO EVENT WILL THOMSON BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE, DAMAGED REPUTATION, OR RECALL EXPENSES WHETHER BASED ON BREACH OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, OR THE DELIVERY OF OR FAILURE TO DELIVER, ANY OF THE PRODUCTS OR COMPONENTS, EVEN IF THOMSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY WILL REMAIN IN FULL FORCE AND EFFECT REGARDLESS OF WHETHER BUYER'S REMEDIES HEREUNDER ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THE ENTIRE LIABILITY OF THOMSON, AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER, FOR ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER (WHETHER IN CONTRACT, TORT, OR OTHERWISE) WILL NOT EXCEED THE PURCHASE PRICE PAID FOR

THE PRODUCT WHICH IS THE SUBJECT OF SUCH CLAIM OR CAUSE OF ACTION.

## 10. Confidentiality.

10.1 **Confidential Information.** With respect to this Agreement, "Confidential Information" means any proprietary, confidential information whether or not patentable or copyrightable, and whether or not disclosed verbally, visually, in writing, or in other tangible form, which is owned or controlled by the disclosing party or any parent, subsidiary, affiliate, or a division of the disclosing party, including without limitation trade secrets, know-how, drawings, designs, products, product samples, product plans and formulations, prototypes, data, processes, formulas, methods, materials, analyses, technology, research, inventions, improvements, unpublished patent applications, ideas, engineering, manufacturing techniques, software, marketing strategy, business plans, financial information (including without limitation costs, pricing, and profits), licenses, buyers, strategic partners, suppliers, customer lists, and other customer information, without regard to the manner of preparation, transmittal, or storage of such information. Verbally and visually disclosed Confidential Information shall be noted as such at the time of the disclosure. Written disclosures of Confidential Information shall be marked as "confidential" or "proprietary" or other equivalent designation. Notwithstanding the foregoing, information that is disclosed by the disclosing party in writing without an appropriate letter, stamp or legend, or that is verbally or visually disclosed by the disclosing party, shall constitute Confidential Information of such party if (a) the disclosing party, within thirty (30) days after such disclosure, delivers to the receiving party a written document or documents describing the information, indicating that such information constitutes Confidential Information, and referencing the place and date of such verbal, visual, or written disclosure, or (b) information is of the type that is customarily or legally considered to be confidential information.

10.2 **Nondisclosure of Confidential Information.** During the performance of this Agreement, each party may have access to or may be exposed to the Confidential Information of the other party. Except as provided in Section 10.3 below, that parties shall hold all Confidential Information in strict confidence and shall not directly or indirectly use, disclose or disseminate Confidential Information to any person or entity, except that Confidential Information may be used as needed and disclosed to those employees who require knowledge, solely for the purpose of performing the parties' obligations in accordance with this Agreement and who are obligated to protect the confidentiality thereof consistent with the party's obligations under this Agreement. Each party shall be responsible for any breach of this Section 10.2 by any of its employees. The parties agree to safeguard and protect all

Confidential Information with at least the same means, methods, and degree of care that each party employs for the protection of its own confidential and/or proprietary information, but in no case less than a reasonable standard of care. Each party will immediately notify the other party upon discovery of any loss or unauthorized disclosure of Confidential Information.

**10.3 Exceptions.** The provisions of Section 10.2, above, shall not apply to information that (i) is or becomes generally available to the public other than as a result of a breach of this Agreement by the receiving party or its employees or wrongful act of any third party; (ii) becomes available to the receiving party on a non-confidential basis from a third party source, provided such source is not bound by a confidentiality agreement with, or other contractual, legal, or fiduciary obligation of confidentiality to, the disclosing party, any Affiliate, or any other person or entity with respect to such information; (iii) is known to the receiving party on a non-confidential basis prior to receipt of the Confidential Information, as evidenced by the receiving party's written records existing prior to the disclosure of the Confidential Information to the receiving party; (iv) is independently developed by the receiving party without reference to or reliance upon the Confidential Information, as evidenced by the receiving party's records existing prior to the disclosure of the Confidential Information to the receiving party; or (v) is required to be disclosed pursuant to a lawful order, subpoena, or other process of a court or other governmental body of competent jurisdiction, provided that (A) the receiving party gives notice of the order, subpoena, or other process to the disclosing party as soon as practicable and by the most expedient means available (B) cooperates reasonably (at the disclosing party's cost) with the disclosing party's efforts to prevent disclosure of Confidential Information, (C) all reasonable legal means and remedies available to the parties to maintain Confidential Information in confidence have been exhausted, and (D) if disclosure of any Confidential Information is lawfully required, supply only that portion of the information which is legally necessary and make reasonable efforts to try to obtain confidential treatment for any such information required to be disclosed. For the purposes of this Section 10.3, Confidential Information shall not be deemed to be publicly available or already in the possession of the receiving party because disclosures concerning the same general subject matter are in the public domain or in the prior possession of the receiving party.

**10.4 Return of Confidential Information.** The parties acknowledge and agree that all Confidential Information is and shall remain the property of the disclosing party. Within five (5) business days of the disclosing party's request, the receiving party agrees (i) to return all Confidential Information, regardless of the form, together with all copies thereof; and (ii) that all documents, memoranda, notes, and other writings whatsoever prepared

based upon, derived from, or pertaining to the Confidential Information shall be destroyed, regardless of form, and such destruction shall be certified in writing to the disclosing party by an authorized officer of the receiving party supervising said destruction.

**11. Indemnification.** Buyer will indemnify, defend, and hold harmless Thomson and its affiliates partners, officers, directors, agents, employees, subsidiaries, parents, successors and assigns, against any and all losses, claims, damages and expenses (including attorneys' fees) arising out of or related to (a) Buyer's modifications of and/or additions to Products; (b) Buyer's breach of this Agreement or (c) Buyer's omissions, misrepresentations, or negligence.

**12. Relationship of the Parties.** No provision of this Agreement will or will be deemed to create a partnership, joint venture or other combination between Thomson and Buyer. Buyer and Thomson are independent contractors. Neither party will make any warranties or representations or assume any obligations on the other party's behalf. Neither party is nor will claim to be a legal representative, partner, franchisee, agent or employee of the other party.

**13. No Licenses Granted; Ownership of Rights.** The sale of Products to Buyer does not convey to Buyer any license or any other intellectual property rights in such Products, including but not limited to any rights under any patent, trademark, copyright, or trade secret ("Intellectual Property Rights"). Buyer acknowledges that, as between the parties, the Thomson is the sole and complete owner of any and all Intellectual Property Rights in and to the Products. To the extent that any of the Products are customized for Buyer, the parties agree that Thomson shall be the sole owner of any and all rights in and to any such customized Products, prototypes and tooling and any and all Intellectual Property Rights thereto. Distributor agrees that any improvements made to the Products, whether generated by Buyer or Thomson, and all right, title and interest to any such improvements and any and all Intellectual Property Rights thereto, shall inure to the benefit of Thomson and shall be assigned and is hereby assigned to Thomson for no additional consideration.

**14. Restrictions On Use.** Buyer will use the Products furnished by Thomson solely in accordance with the terms of this Agreement and Buyer shall not, directly or indirectly, disassemble, decompile, reverse engineer, manufacture or analyze the physical construction of, any of the Products for any purpose, nor authorize, assist, or encourage others to do so.

**15. Use Of Thomson Name.** Buyer may not use the Thomson name or other Thomson trademarks or refer to Buyer as an authorized seller or reseller of Thomson products, implying that Buyer and Thomson are partners, creating the impression that Thomson is affiliated with Buyer or has sponsored, authorized, approved or endorsed

Buyer's business, or any offer or any marketing, advertising or promotion thereof. Buyer may not register or use any domain name or business name containing or confusingly similar to any name or mark of Thomson's. Buyer will not say or do anything to injure Thomson's or its Product's name or reputation.

16. **Nonexclusive.** For the avoidance of all doubt, the sale of the Products to Buyer is not exclusive. Thomson reserves the right to sell the Products to any person and/or company throughout the world without limitation.

17. **Assignment.** Buyer will not assign this Agreement or any right or interest under this Agreement, or delegate any obligation to be performed under this Agreement without Thomson's prior written consent. Any attempted assignment without consent will be void.

18. **Export; Re-Sale.** Buyer agrees that it will not export, re-export, resell, ship or divert directly or indirectly any Products in any form or technical data furnished hereunder without Thomson's prior written approval.

19. **Notices.** All notices must be in writing and delivered by overnight or express courier, facsimile with confirmation, or email if confirmed by the receiving party in writing and addressed to the parties at the contact information set forth in the Quote and Order above.

20. **Applicable Law.** The Agreement will be governed by the laws of the State of California, without regard to conflict of law principles.

21. **Arbitration of Disputes.** Any dispute or claim, in law or in equity, arising out of or relating to this Agreement or any relationship between the parties, no matter how described, pleaded or styled, shall be resolved through final, binding arbitration under the substantive and procedural requirements of the Federal Arbitration Act. The arbitration shall be conducted by a single, neutral arbitrator chosen by the parties, conducted under the Commercial Arbitration Rules of the American Arbitration Association, and conducted in San Diego County. The parties agree that the arbitrator, and not a court, shall have exclusive jurisdiction over the interpretation, validity, and scope of this arbitration agreement. The arbitrator's decision shall be set forth in writing and shall set forth the essential findings and conclusions upon which the decision is based. Any remedy available from a court under the law shall be available in the arbitration. The award rendered by the arbitrator may be entered in any court having jurisdiction. Should either party refuse or neglect to choose an arbitrator or otherwise sincerely and in good faith participate in the arbitration process, then the arbitrator is empowered to proceed with one side alone. Neither party shall file or maintain any lawsuit in any court against the other, and agree that any suit filed in violation of this Agreement shall be dismissed by the court in favor of an arbitration conducted pursuant to this Agreement. The costs of the arbitration filing fee,

arbitrator's compensation, and facilities fees will be split by the parties. Each party shall pay for its own attorneys' fees and costs. However, the arbitrator may award the prevailing party to recover fees and costs to the extent permitted by applicable law. If any provision of this arbitration agreement is adjudged to be void or otherwise unenforceable, in whole or in part, such adjudication shall not affect the validity of the remainder of the Agreement. If this arbitration agreement is declared unenforceable and cannot be administered, interpreted, or modified to be enforceable, the parties agree to waive any right to a jury trial with respect to any dispute to which this Agreement applies and any such dispute shall be commenced and maintained exclusively in the state or federal courts in the County of San Diego and the parties each consent to the personal jurisdiction of said courts.

EACH PARTY UNDERSTANDS THE NATURE OF ARBITRATION, THAT ARBITRATION IS FINAL AND BINDING, AND EACH PARTY IS WAIVING CERTAIN RIGHTS, INCLUDING, BUT NOT LIMITED TO, THEIR RIGHT TO LITIGATE THEIR DISPUTE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL, DISCOVERY AND APPEAL.

22. **Miscellaneous Provisions.** The section headings used herein are for convenience of reference only. If any provision of this Agreement is void or unenforceable, the remainder of this Agreement will remain in full force and will not be terminated. Neither party will be liable for any delays resulting from circumstances or causes beyond the party's reasonable control. No addition to or modification of this Agreement will be effective unless made in writing and signed by the respective representatives of Thomson and Buyer. Any delay or failure to enforce at any time any provision of the Agreement will not constitute a waiver of the right thereafter to enforce each and every provision thereof. The rights and remedies expressly provided to Thomson herein are not exclusive, but are cumulative. The parties' rights and obligations which by their sense and context are intended to survive any termination or expiration of this Agreement will so survive.