



# ELECTRO-CHEMICAL DEVICES

Liquid Analytical Instrumentation for Process Control

Bringing Simplicity  
to a Solution

## TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE.** If this writing differs in any way from the terms and conditions of Buyer's order or if this writing is construed as an acceptance or as a confirmation acting as an acceptance, then Seller's acceptance is **EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN BUYER'S WRITING.** Further, this writing shall be deemed notice of objection to such terms and conditions of Buyer. If this writing is construed as the offer, acceptance hereof is **EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN.** In any event, Buyer's acceptance of the goods shall manifest Buyer's assent to Seller's terms and conditions. No addition to or modification of these terms will be effective, unless set forth in writing and agreed to by Seller.
2. **WARRANTIES AND REMEDIES**
  - a. **Warranty.** Seller warrants to Buyer that it holds and will pass marketable title to the goods sold hereunder. Seller warrants to Buyer that the items and components manufactured by Seller will be free from defects in material and workmanship (subject, however, to tolerances and variances permitted by the trade hereunder) for a period one (1) year for non-consumable products. Consumable electrodes and sensors have a conditional warranty based shelf life and process conditions and is determined by Seller.
  - b. **Exclusion and Conditions.** Seller's obligations with respect to the express warranties and remedies contained herein are conditioned on the following: (i) Buyer's return of the non-conforming goods, if authorized by Seller; (ii) Buyer shall not assign its rights under these express warranties and any attempted assignment shall render such warranties, but not any disclaimers or limitations, void and the goods sold shall be sold **AS IS**; and (iii) all products shall be carefully inspected for damage by Buyer upon receipt, be properly calibrated for Buyer's particular use, and be used, repaired, and maintained by Buyer in accordance with the instructions set forth in Seller's product literature. Repair and maintenance by non-qualified personnel, product subjected to misuse or negligence, and/or damaged during shipment will invalidate the warranty, as will the use of non-approved consumables or spare parts. As with any other sophisticated product, it is essential, and a condition of Seller's warranty, that all personnel using the product be fully acquainted with its use, capabilities and limitations as set forth in the applicable product literature.
3. **DISCLAIMER OF IMPLIED WARRANTIES.** Seller gives no warranties except those expressly contained herein. Seller **disclaims** all other warranties implied by law usage of the trade, course of dealing or course of performance including, but not limited to, **the Implied warranties of MERCHANTABILITY and fitness for a particular purpose.**
4. **LIMITATIONS OF LIABILITY.** The following limitations of Seller's liability are acknowledged by the parties to be fair and reasonable and shall apply to any act or omission hereunder, and to any breach of this contract of which these terms and conditions form a part:
  - a. **Disclaimer of Damage.** In no event shall Seller be liable for special, indirect, consequential or incidental damages whether arising under contract, warranty, tort, strict liability or any other theory of liability. Such damages include but are not limited to loss of profits, loss of use of goods, damage to property, and claims of third parties.
  - b. **Suitability.** Buyer acknowledges that it alone has determined the intended purpose and suitability of the goods sold hereunder. It is expressly agreed by the parties that any technical or other advice given by the Seller with respect to the use of the goods or services is given without charge and at Buyer's risk; therefore Seller assumes no obligation or liability for the advice given or results obtained.
  - c. **Notice and Time of Claims.**
    - i. Buyer agrees to check and inspect all products against shipping papers and for damage or shortage upon receipt of goods at destination.
    - ii. Every claim for shortage, damage in transit, or other cause visible upon inspection shall be deemed waived by the Buyer, or the Buyer's customer in the case of resales, unless delivered in writing to Seller by Buyer thirty (30) days from the tender of delivery of the goods to Buyer, provided, however, that claims for shortage must be made within seven (7) days of receipt.
    - iii. The parties expressly waive the statute of limitations and agree that any legal proceeding for any breach of this contract shall be waived unless filed within one (1) year after the accrual of the cause of action thereof.
5. **FORCE MAJEURE.** Seller shall not be liable for any delay in delivery, or failure to deliver, due to any cause beyond the Seller's control including but not limited to fires, floods, or other forces of the elements; strikes, or other labor disputes; accidents to machinery; acts of sabotage; riots; precedence or priorities granted at the request or for the benefit, directly or indirectly of the federal or any state government or any subdivision or agency thereof; delay in transportation or lack of transportation facilities; restrictions imposed by federal, state or other governmental legislation or rules or regulations thereof. If Seller, in its sole discretion, determines that Seller's performance hereunder would result in a loss to Seller's on this sale as computed under Seller's normal accounting procedures because of causes beyond Seller's control, then the Seller may terminate this agreement in whole or in part without liability for any delay in the delivery of, or failure to deliver, the goods sold hereunder
6. **TAXES AND OTHER CHARGES.** The Buyer will pay, or reimburse Seller if it pays, any and all taxes or tariffs or any other similar charges imposed upon this contract, the goods covered hereby or the delivery or use or resale thereof.
7. **FREIGHT CHARGES.** If the sale hereunder is other than F.O.B. Seller's facility, this acknowledgement is based upon the freight charges now in effect. In the event of an increase or decrease in applicable freight charges before the goods are shipped, such charge in freight will be for the Buyer's account.
8. **PRICES AND DELIVERY.** Prices quoted herein are F.O.B. shipping point. Deliveries specified are only our best estimate and are subject to change. This quotation is based upon freight charges now in effect. Buyer will be invoiced at the freight charge prevailing at the date of shipment. Prices are firm for orders meeting Seller's normal shipping schedules. If shipments are held or postponed for any reason other than Seller's fault, and a price increase becomes effective during the period of such hold or postponement, the increase will apply to all shipments that are held or postponed thirty (30) days or more from the effective date of the increase.
9. **PAYMENTS.** If in the judgment of Seller the financial condition of Buyer at any time prior to shipment does not justify the terms of payment specified, Seller may cancel the order, withhold shipment, and/or require full or partial payment in advance. If payment is not made when due, Seller may suspend all future delivery or other performance with respect to Buyer without liability or penalty and, in addition to all other sums payable hereunder, Buyer shall pay to Seller (i) the reasonable costs and expenses incurred by Seller in connection with all actions taken to enforce collection or to preserve and protect Seller's rights hereunder, whether by legal proceedings or otherwise, including without limitation reasonable attorneys' fees, court costs and other expenses and (ii) interest on all amounts unpaid after 30 days charged at the monthly rate of 1-1/2% or the highest rate permitted by law, whichever is lower.
10. **CANCELLATION OR ALTERATION.** Buyer may not alter or cancel any order without Seller's written consent. For any order altered or cancelled with Seller's consent, Buyer must pay for all expenses and labor incurred up to the time of Seller's consent, plus a reasonable percentage for profit. Any order delayed or deferred by Buyer will be subject to price escalation for increased costs of production, and any other expenses caused by the delay. Material on such orders will be stored at Buyer's risk. Seller reserves the right to invoice Buyer and require payment before shipment of any delayed or deferred order.
11. **TITLE AND RISK OF LOSS.** Title and risk of loss shall pass to buyer at Irvine, California, unless otherwise specified in the contract. If delivery is made by common carrier, risk of loss shall pass upon delivery to the carrier. Claims for loss or damage in transit must be made by Buyer to the carrier. Seller accepts no responsibility for loss or damage to product in transit.
12. **PATENT OR TRADEMARK INFRINGEMENT.** If the goods sold hereunder are to be prepared for manufacture according to Buyers specification, Buyer shall indemnify Seller against any claim or liability for patent, trademark, service mark or trade name infringement on account of preparation, manufacture and/or sale.
13. **NON-WAIVER.** If Government Contract Regulations require the addition, deletion, or modification of these terms and conditions upon prior notification to Seller and Seller's written acceptance thereof, such changes shall become a part of these terms and conditions. Seller shall not be bound by any Government Contract Regulations applicable to Buyer's contracts with the U.S. Government unless Buyer has expressly acknowledged, on the face of this document, the applicability of such Regulations to the transaction between Buyer and Seller contemplated herein. Absent such acknowledgement, Seller is making the assumption in issuing this document that no such Regulations apply.
14. **JURISDICTION.** All such disputes shall be resolved in a court of competent jurisdiction in Orange County, California. Buyer hereby consents to the jurisdiction of the State and Federal Courts sitting in Orange County. Notwithstanding the above, should either party contest the jurisdiction of such courts, the other party may institute its suit in any court of competent jurisdiction.
15. **APPLICABLE LAW.** All questions arising hereunder or in connection with the quotations or any order submitted in connection therewith and/or the performance of the parties hereunder shall be interpreted and resolved in accordance with the laws of the state of California without regard to its conflict of law provisions and excluding the United Nations Convention on the International Sale of Goods.

Revision B