

This document sets forth the Terms & Conditions of Sale for goods manufactured and/or supplied by Katy Instruments Sales, LLC ("KIS") and sold to the original purchaser thereof ("Buyer"). Unless otherwise specifically stated herein, the term "KIS" includes only KIS and none of its affiliates. Unless otherwise specifically stated in a previously-executed written purchase agreement signed by authorized representatives of KIS and Buyer, these Terms & Conditions of Sale establish the rights, obligations and remedies of KIS and Buyer which apply to this offer and any resulting order or contract for the sale of KIS's goods ("Goods").

**1. APPLICABLE TERMS & CONDITIONS:** These Terms & Conditions of Sale are contained directly and/or by reference in KIS's offer, order acknowledgment, and invoice documents. The first of the following acts constitutes an acceptance of KIS's offer and not a counteroffer and creates a contract of sale ("Contract") in accordance with these Terms & Conditions: (i) Buyer's issuance of a purchase order document against KIS's offer; (ii) acknowledgement of Buyer's order by KIS; or (iii) commencement of any performance by KIS pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract from the provisions of these Terms & Conditions of Sale are not a part of the Contract and KIS hereby rejects any additional, different, or inconsistent terms, conditions or limitations contained in or incorporated by reference in any forms, purchase orders or other documents of Buyer that already have been or hereafter may be presented to KIS with respect to the Contract. If Buyer has submitted or will submit additional and/or different terms and conditions to KIS, or submit a counteroffer to KIS, KIS's subsequent performance will not be construed as either acceptance of Buyer's additional and/or different terms and conditions or Buyer's counteroffer, nor will KIS's subsequent performance be viewed as a willingness to accept any provision of the Uniform Commercial Code, as adopted by any State or Commonwealth, that is contrary or in addition to any of the terms and conditions hereof.

**2. CANCELLATION:** Buyer may cancel standard goods orders prior to shipment subject to fair charges for KIS's expenses including handling, inspection, restocking, freight and invoicing charges as applicable. KIS may cancel all or part of any order prior to delivery without liability if the order includes any Goods that KIS determines may not comply with export, safety, local certification, or other applicable compliance requirements.

**3. SPECIFICATIONS, CHANGES, AND ADDITIONAL CHARGES:** Unless KIS has expressly agreed otherwise in writing, it is Buyer's responsibility to ensure that the Goods are the ones that it has requested and that all specifications and quantities are correct. **KIS HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES THAT GOODS CONFORM TO ANY SPECIFICATIONS, DRAWINGS, DESIGNS, OR SAMPLES.** KIS reserves the right to make design changes or improvements to any Goods of the same general class as Goods being delivered hereunder without liability or obligation to incorporate such changes or improvements to Goods ordered by Buyer unless agreed upon in writing before the Goods' delivery date.

**4. PRODUCT SUITABILITY:** Because local safety standards and regulations may vary significantly, KIS cannot guarantee that the Goods meet all applicable requirements in each locality. Buyer assumes responsibility for compliance with such safety standards and regulations in the localities in which the Goods will be shipped, sold and used. Before purchase and use of any Goods, Buyer should review the product application, and national and local codes and regulations, and verify that the use and installation of the Goods will comply with them.

**5. DELIVERY:** Delivery will be accomplished FCA KIS's facility located in Houston, Texas, United States (Incoterms 2010). For orders having a final destination within the U.S., legal title and risk of loss or damage pass to Buyer upon transfer to the first carrier. For orders having a final destination outside the U.S., legal title and risk of loss or damage pass to Buyer when the Goods enter international waters or airspace or cross an international frontier. Unless otherwise agreed in writing, Buyer will pay all insurance costs in connection with delivery of the Goods, if any, and be responsible for filing and pursuing claims with carriers for loss of, or damage to, Goods in transit. KIS will use commercially reasonable efforts to deliver the Goods ordered herein within the time specified on the face of this Contract or, if no time is specified, within KIS's normal lead-time necessary for KIS to deliver the Goods sold hereunder. Upon prior agreement with Buyer and for an additional charge, KIS will deliver the Goods on an expedited basis.

Standard service delivery hours are 8 am – 5 pm Monday through Friday, excluding holidays. If Buyer is unable to receive the Goods when they are tendered, Buyer will be liable to KIS for any losses, damages, or additional expenses incurred or suffered by KIS as a result of Buyer's inability to receive the Goods. Until Buyer has fully and finally paid all amounts owed to KIS for any Goods, Buyer shall hold such Goods in trust for KIS, and KIS may repossess them if Buyer fails to pay for them in a timely fashion.

**6. INSPECTION:** Buyer will promptly inspect and accept any Goods delivered pursuant to this Contract after receipt of such Goods. In the event the Goods do not conform to any applicable specifications, Buyer will promptly notify KIS of such nonconformance in writing. KIS will have a reasonable opportunity to repair or replace the nonconforming product at its option. Buyer will be deemed to have accepted any Goods delivered hereunder and to have waived any such nonconformance in the event such a written notification is not received by KIS within thirty (30) days of delivery.

**7. PRICES & ORDER SIZES:** All prices are in U.S. dollars and are based on delivery as stated above. Prices do not include any charges for services such as insurance; brokerage fees; sales, use, inventory or excise taxes; import or export duties; special financing fees; VAT, income or royalty taxes imposed outside the U.S.; consular fees; special permits or licenses; or other charges imposed upon the production, sale, distribution, or delivery of Goods. Buyer will either pay any and all such charges or provide KIS with acceptable exemption certificates, which obligation survives performance under this Contract. KIS reserves the right to establish minimum order sizes and will advise Buyer accordingly.

**8. PAYMENTS:** All payments must be made in U.S. dollars. Unless otherwise agreed in writing and without regard to delays for inspection or transportation, invoices for all orders are due and payable standard NET 30 DAYS from date of the invoice. KIS reserves the right to charge additional fees for other agreed terms. Payments shall be made by check to KIS or by wire transfer to the account stated on the front of KIS's invoice, or for customers with no established credit, KIS may require cash or credit card payment (additional fees may apply) in advance of delivery. In the event payments are not made or not made in a timely manner, KIS may, in addition to all other remedies provided at law, either: (a) declare Buyer's performance in breach and terminate this Contract for default; (b) withhold future shipments until delinquent payments are made; (c) deliver future shipments on a cash-with-order or cash-in-advance basis even after the delinquency is cured; (d) charge interest on the delinquency at a rate of 1-1/2% per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges and/or inventory carrying charges; (e) repossess the Goods for which payment has not been made; (f) recover all costs of collection including reasonable attorney's fees; or (g) combine any of the above rights and remedies as is practicable and permitted by law. Buyer is prohibited from setting off any and all monies owed under this from any other sums, whether liquidated or not, that are or may be due Buyer, which arise out of a different transaction with KIS or any of its affiliates. Should Buyer's financial responsibility become unsatisfactory to KIS in its reasonable discretion, KIS may require cash payment or other security. If Buyer fails to meet these requirements, KIS may treat such failure as reasonable grounds for repudiation of this Contract, in which case reasonable cancellation charges shall be due KIS. Buyer grants KIS a security interest in the Goods to secure payment in full, which payment releases the security interest but only if such payments could not be considered an avoidable transfer under the U.S. Bankruptcy Code or other applicable laws. Buyer's insolvency, bankruptcy, assignment for the benefit of creditors, or dissolution or termination of the existence of Buyer, constitutes a default under this Contract and affords KIS all the remedies of a secured party under the U.C.C., as well as the remedies stated above for late payment or non-payment.

**9. TRANSFER OF TITLE.**

**10. WARRANTIES.** **KIS HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN OR ORAL, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY CONTRACT, AT LAW, IN EQUITY, BY STRICT LIABILITY OR OTHERWISE, WITH RESPECT TO THE GOODS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY AGAINST DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY AGAINST REDHIBITORY DEFECTS, ANY WARRANTY**

**OF GOOD TITLE, AND ANY WARRANTY AGAINST INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY PATENTS, TRADEMARKS, OR COPYRIGHTS.** KIS shall, however, if given prompt written notice by Buyer of any claim of alleged patent, trademark or copyright infringement with respect to any Goods use its reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may offer with respect to such Goods. This section sets forth Buyer's sole and exclusive remedy against KIS regarding the infringement by any Goods of any third party intellectual property rights, including, without limitation, any patents or trademarks.

**11. LIMITATION OF LIABILITY:** KIS will NOT be liable to Buyer under any circumstances for any special, treble, incidental or consequential damages, including without limitation, damage to or loss of property other than for the Goods purchased hereunder; damages incurred in installation, repair or replacement; lost profits, revenue or opportunity; loss of use; losses resulting from or related to downtime of the Goods or inaccurate measurements or reporting; the cost of substitute Goods; or claims of Buyer's customers for such damages, howsoever caused, and whether based on warranty, contract, and/or tort (including negligence, strict liability or otherwise). The total liability of KIS arising out of the performance or nonperformance hereunder or KIS's obligations in connection with the design, manufacture, sale, delivery, and/or use of Goods will in no circumstance exceed in the aggregate a sum equal to the amount actually paid to KIS for Goods delivered hereunder.

**12. EXCLUSIVE REMEDY:** Buyer's exclusive remedy against KIS for any claim for, or arising out of any in a Good tendered to Buyer is the repair or replacement of the Good, or alternatively, at KIS's sole election, a refund of the purchase price of the Good. This remedy will only be available to Buyer for one year after the Good is tendered to Buyer, and KIS's obligations under this section will be void unless Buyer provides KIS with notice of the defect in the Good within 30 days of discovery of the defect. Any Good returned to KIS for repair, replacement or refund under this section will be returned by Buyer in accordance with KIS's return material authorization procedures then in effect, Returns for a refund may be subject to restocking fees.

**13. TRADEMARKS AND OTHER LABELS:** Buyer agrees not to remove, conceal or alter any indicia of manufacturing origin or patent numbers contained on or within the Goods, including without limitation the serial numbers or trademarks on nameplates or cast, molded or machined components.

**14. INDEMNIFICATION:** Buyer will indemnify, defend and hold harmless KIS, its shareholders, officers, directors, employees, agents and representatives from and against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to the negligence or misuse or misapplication of any goods by the Buyer or any third party affiliated or in privity with Buyer.

**15. EXPORT AND IMPORT LICENSES AND COMPLIANCE WITH LAWS:** Buyer is responsible for obtaining any required export or import licenses. Buyer is solely responsible for compliance with all laws and regulations applicable to the installation or use of all Goods, including applicable import and export control laws and regulations of the U.S., E.U. and any other country having proper jurisdiction, and shall obtain at its sole expense all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Goods delivered hereunder. Buyer will not sell, transfer, export or re-export any KIS Goods for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use KIS Goods or technology in any facility which engages in activities relating to such weapons. Buyer will comply with all local, national, and other laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Buyer's business activities in connection with this Contract, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). Buyer agrees that no payment of money or provision of anything of value will be offered, promised, paid or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Buyer or for KIS, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of Buyer's activities related to this Contract.

**16. INTERPRETATION OF THE CONTRACT:** None of KIS's or Buyer's shareholders, directors, officers, partners, managers, employees, agents or

representatives have any authority to orally modify or alter in any way the terms and conditions of the Contract. The terms, conditions, and limitations set forth in the Contract can be modified, altered, or added to only by a subsequent written instrument signed by an authorized representative of KIS or by language included on the face hereof. Regardless of how many times Buyer purchases, or has purchased, Goods from KIS by whatever means, each time Buyer accepts the Contract, Buyer and KIS enter into a separate Contract that will be interpreted without reference to any other Contract between Buyer and KIS, or what Buyer may claim to be a course of dealing or course of performance that has arisen between Buyer and KIS. No inconsistent usage of trade or industry custom, if any, prior to, contemporaneous with or subsequent to the making of the Contract will waive, vary, serve to explain or serve to interpret any of the terms, conditions and limitations of the Contract. The Contract is the sole and exclusive Contract with respect to the matters discussed herein and the provision of Goods hereunder, (except for any contemporaneous writing agreed to in writing by KIS expressly modifying the terms and conditions hereof, which is hereby incorporated herein by reference and made a part hereof) and supersedes all prior and contemporaneous agreements and understandings, negotiations, inducements, representations or conditions, whether oral or written, whether express or implied, with respect to such matters. Failure by KIS to enforce any of the terms, conditions and limitations of the Contract will not constitute a waiver of those terms, conditions and limitations or a waiver of any other terms, conditions or limitations of the Contract, and the failure of KIS to exercise any right (whether provided by the Contract, law, equity, or otherwise) arising from Buyer's default under the Contract will not constitute a waiver of that right or any other rights.

**17. FORCE MAJEURE:** KIS is excused from performance of its obligations under this Contract to the extent caused by acts or omissions that are beyond its control, including but not limited to Government embargoes, blockages, seizures or freeze of assets, delays or refusals to grant an export or import license or the suspension or revocation thereof, or any other acts of any Government; fires, floods, severe weather conditions, or any other acts of God; quarantines; labor strikes or lockouts; riots; strife; insurrections; civil disobedience or acts of criminals or terrorists; war; material shortages or delays in deliveries to KIS by third parties. In the event of the existence of any force majeure circumstances, the period of time for delivery, payment terms and payments under any letters of credit will be extended for a period of time equal to the period of delay. If the force majeure circumstances extend for six months, KIS may, at its option, terminate this Contract without penalty and without being deemed in default or in breach thereof.

**18. NON ASSIGNMENT AND WAIVER:** Buyer will not transfer or assign this Contract or any rights or interests hereunder without KIS's prior written consent. Failure of either party to insist upon strict performance of any provision of this Contract, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Contract will not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same will continue and remain in force and effect as if no waiver had occurred.

**19. CHOICE OF LAW; CHOICE OF VENUE:** The negotiation, execution, performance, termination, interpretation and construction of the Contract will be governed by the law of the State of Texas, except for Texas' choice of law rules, and expressly excluding the United Nations Convention on Contracts for the International Sale of Goods. If either KIS or Buyer brings a lawsuit or any other action arising out of the Contract against the other party, such party must file its lawsuit or other action in a state or federal court located in Houston, Texas. KIS and Buyer expressly submit to the exclusive jurisdiction of those courts and consent to venue in those courts, and KIS and Buyer consent to extra-territorial service of process on KIS and Buyer. In the event of litigation pertaining to any matter covered by the Contract, each of KIS and Buyer hereby agree to waive any right that it may have to a jury trial of any or all issues that may be raised in such litigation. Nothing contained in the Contract will be construed to limit or waive any rights of KIS under applicable United States federal, state, or local laws. Any provision of the Contract held to be invalid, illegal or unenforceable will be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof.