



TERMS AND CONDITIONS OF SALE

ACCEPTANCE BY ORION INSTRUMENTS, LLC ("Seller") OF ANY OFFER OR PURPORTED OFFER TO PURCHASE PRODUCTS IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS OF SALE WITHOUT VARIATION OR ADDITION (these "Terms"). BUYER is defined as the party specified as "SOLD TO" on Seller's Customer Acknowledgment form. Seller hereby rejects any additional or different terms in Buyer's offer or purported offer to purchase products.

- 1. Prices:** Unless otherwise specified in writing, quotations are valid for thirty (30) days. Pricing is based upon the quantity and type of product specified and subject to revision when interruptions, engineering changes, or changes, including but not limited to, shipments made sixty (60) days from the date of order receipt are caused by the Buyer. Prices quoted do not include any sales, use, excise, occupational or other tax or freight unless otherwise specified. There is a minimum charge of \$100 for all shipments within the US and Canada and \$150 for anywhere else on all orders to cover packing, order processing, billing and other handling expenses.
- 2. Acceptance/Returns:** All orders are subject to approval and written acceptance by Seller's headquarters in Aurora, Illinois. No product may be returned without Seller's or its representative's prior written approval and a Return Material Authorization number must be obtained from Seller prior to any return. Buyer is responsible for all freight and shipping charges associated with returns. A restocking charge (see below), at Seller's discretion, may be applied against material returned for credit. Products made to Buyer's specifications are not returnable and orders for such products cannot be canceled after manufacturing of such products has commenced. Labor for all repairs/modifications will be charged to Buyer at \$100/hour.
- 3. Cancellation and Restocking Policy:**
 - For Order Types STO, ATO (ESP) - 25% of invoice based on restockability
 - For Order Types CTO and ETO (excluding "flanged chambers") - 35% of invoice based on restockability
 - For Order Types ETOS, ETOE (Engineered Orders) and "flanged chambers" - 65% to 100% of invoice based on restockability
 - For Order Types NSR and EOR/Special Designs ◦ No Credit
 - **NOTE:** (1) Transducers and probes are built to Buyer-specified lengths and are not restockable; (2) Credit will not be issued for material that has been used in hazardous media; (3) Credit will not be issued for material that is no longer required unless replacement material is ordered.
- 4. Delivery/Risk of Loss/Title:** Delivery lead times are approximate estimations and based on receipt of timely and accurate information from Buyer. Seller reserves the right to make partial shipments and invoice therefor. Domestic and International deliveries are FCA Factory (Incoterms 2010). If, because of Buyer's inability to take delivery, the products are not shipped or returned, Seller may have them stored for Buyer at Buyer's expense, risk, and account, and for all other purposes they shall be considered "shipped". A storage charge of 2%/month will be applied for the period of time between the date of notice of completed fabrication or original requested shipping date, whichever occurs later, and the date of shipment for orders Buyer is unable to receive delivery. Title shall pass to Buyer upon payment in full.
- 5. Packaging/Shipments:** All items sold hereunder shall be packed or crated and shipped in accordance with Seller's specifications. Any special packing, crating, shipping or unloading requirements of Buyer will be at Buyer's expense and must be agreed upon by Seller in advance. Weights listed, if any, are approximate.
- 6. Inspection:** Buyer shall inspect products upon arrival and shall give written notice of any damage or shortage to Seller and carrier within five (5) business days. Failure to give such written notice of any damage or shortage will constitute satisfactory shipment by Seller and irrevocable acceptance by Buyer of all items listed as contained. Claims for shipping damage should be made directly to the carrier by the Buyer.
- 7. Force Majeure:** Neither Party assumes liabilities for delays or non-performance resulting from, but not limited to, Acts of God, fire, explosion, flood, war, terrorism or threats of terrorism, act of or as authorized by any government, accident, labor trouble or shortage, inability to obtain equipment, material, transportation, acts of the other Party or any acts beyond their control.
- 8. Repairs and Alterations:** Any repairs or alterations made to products other than by Seller as set forth in Paragraph 9 shall void all warranties and be at the expense of Buyer unless specifically authorized in writing by Seller. In no event shall Seller accept back charges for unauthorized repairs or alterations.
- 9. Limited Warranty:** Subject to the limitations contained herein, Seller warrants against defects in workmanship and material for the following products and during the following warranty periods: (i) mechanical level and

flow products, including pneumatic Modulevel®, chambers and floats are warranted for five (5) years from the date of shipment; and (ii) electronic level and flow products, including electromechanical Modulevel®, visual indicators and chamber insulation are warranted for a period of eighteen (18) months from the date of shipment by Seller. Consumables are not covered under this product warranty. If within thirty (30) days after Buyer's discovery of any warranty defects within the warranty period, Buyer notifies Seller thereof in writing, Seller's shall, at its option, and as Buyer's exclusive remedy, replace or repair any defective product determined by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Replacement and repaired parts are warranted for the greater of ninety (90) days from the date of shipment of the replaced or repaired part or the unexpired portion of the original product warranty period, whichever is longer. The warranty does not apply to any defect, malfunction, damage, or failure of Seller's product caused by (i) repairs, modifications or alterations not made by or without the consent of Seller, (ii) improper handling, operation, or maintenance by someone other than Seller, or (iii) abuse, misuse, neglect, tampering, accident or damage by circumstances beyond Seller's control, including without limitation, acts of God, war, acts of government, corrosion, power fluctuations, differences with workmen, riots, explosions, vandalism, or malicious mischief. The warranty on component parts not manufactured by Seller is limited to that of the manufacturer thereof, if any. Seller does not cover reimbursement for transportation, removal, installation, or other expenses which may be incurred in connection with replacement or repair other than labor and parts. **THE FOREGOING WARRANTIES ARE SELLER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR OR REPLACEMENT.**

- 10. LIMITATION OF LIABILITY:** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OTHER PERSON OR ENTITY FOR INCIDENTAL, CONSEQUENTIAL, DIRECT, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES OR ANY OTHER LOSSES OR EXPENSES, INCLUDING WITHOUT LIMITATION, FOR INJURIES TO PERSONS OR DAMAGE TO PROPERTY, LOSS OF PROFIT OR REVENUES, COST OF SUBSTITUTE PRODUCTS, LOSS OF USE, OR DOWNTIME COSTS, AND IN ADDITION, IN SELLER'S CASE, CLAIMS OF BUYER'S CUSTOMERS EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO ANY PRODUCTS PURCHASED SHALL NOT EXCEED THE PURCHASE PRICE ACTUALLY RECEIVED BY SELLER FOR THE ALLEGEDLY DEFECTIVE PRODUCT(S).
- 11. Cancellation:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and to cover commitments made, by Seller and a reasonable profit thereon. Seller's determination of such termination charges shall be conclusive.
- 12. Changes:** Buyer may request changes or additions to the Goods consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price(s) and date(s) of delivery. Seller reserves the right to change designs and specifications of the Good without prior notice to Buyer, except with respect to Goods being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods manufactured prior to the date of such change.
- 13. Disposal:** Buyer shall be responsible and fully liable for the disposal of any product, including, without limitation, spent product or material, and shall perform such disposal in compliance with all federal, state and local laws and regulations relating thereto.
- 14. Service:** Seller may, at its sole discretion, make available to Buyer the services of a trained representative at Seller's then current prevailing rates, plus travel, living and out of pocket expenses. In no event shall charges for technical direction of field installation and/or start-up be considered as included in the quoted price unless otherwise expressly stated in writing by Seller.
- 15. Indemnity:** Buyer shall fully indemnify and hold harmless (collectively "indemnify" and "indemnification") Seller and its directors, officers, employees, agents, stockholders and Affiliates (collectively, "Indemnified Parties") from and against all claims, demands, actions, suits, damages,



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- liabilities, losses, settlements, judgments, costs and expenses, whether or not involving a third party claim, which arise out of or relate to (1) any breach of any representation or warranty of Buyer contained in this Agreement, (2) any breach or violation of any covenant or other obligation or duty of Buyer under this Agreement or under applicable law, or (3) third party claims for specific matters such as property damage, personal injury, intellectual property infringement or misappropriation. Such indemnification obligations shall exclude Claims to the extent resulting from the sole negligence of the Seller, as determined. Seller retains the exclusive right and power to defend itself against any third party demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses, including third party infringement claims against Seller's intellectual property or other disputes affecting the scope or ownership or validity or enforceability of its intellectual property or property rights. All costs associated with such defense (including reasonable attorney's fees) shall be the responsibility of the Buyer.
- 16. Payment Terms:** Seller's standard payment terms are net thirty (30) days, without offset or deduction, from date of invoice in U.S. currency unless otherwise expressly stated in writing by Seller. Payment terms are subject to credit approval. Invoices not paid when due are subject to a late payment service charge of the lesser of one and one half percent (1 1/2%) per month or the maximum legal service charge permitted under the law. If Buyer fails to make any payment when due, Buyer shall be liable for all expenses related to collection of past due amounts, including, without limitation, attorneys' fees, third party collection agency fees and costs.
- 17. Letter of Credit:** A charge of \$300.00 will be made for all export orders requiring a letter of credit, including Performance and Warranty Bonds in the form of a Standby Letter of Credit. In addition to the Letter of Credit charge, handling charges from the forwarder and bank will be added as required by each order. All charges are to be borne by the Buyer.
- 18. Suspension/Termination:** Should Buyer suspend the Purchase Order for any reason, all costs associated with such suspension, including but not limited to storage costs, transportation costs and packaging costs, shall be the sole responsibility of the Buyer. Seller reserves the right to cancel the Purchase Order if it is suspended for more than ninety (90) days. In addition to Seller's other rights and remedies, Seller may by written notice to Buyer terminate this order (in whole or in part) if Buyer fails to perform or breaches Buyer's duties and obligations hereunder; and Seller shall not be liable to Buyer for any losses, damages or expenses incurred by Buyer as a result of such termination. Upon any termination, any amounts due and owing to Seller by Buyer, including costs incurred pursuant to Seller's Cancellation and Restocking Policy (as set forth herein), shall become immediately due and payable.
- 19. Compliance:** The products furnished herein may not comply with all international, federal, state, and local laws, regulations or ordinances unless expressly agreed to in writing. All shipments hereunder are subject to export control laws and regulations of the United States, European Union and the jurisdictions in which Seller and Buyer are established or from which items may be supplied ("Export Laws"). Buyer shall comply with such Export Laws and obtain any license, permit, or authorization required to transfer, sell, export, re-export, or import the products and related technology and documentation. Buyer shall also provide any and all documents or information requested by Seller to comply with Export Laws. The 1980 United Nations Convention on Contracts for International Sale of Goods does not apply to these Terms.
- 20. Nuclear Related Applications:** Buyer agrees to defend, indemnify and hold harmless Seller from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages arising from use of the products in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.
- 21. Government Contracts:** Unless otherwise specified in a Buyer's request for bid or purchase order, Seller is relying on Buyer's representation that the sale of products is not made pursuant to a U.S. Government prime contract and that no Federal Acquisition Regulation (FAR) or Defense Federal Acquisition Regulation Supplement (DFARS) provisions or clauses thereto will be applicable to these Terms, unless specifically stated in the purchase order. Buyer shall have no recourse against Seller in the event that it is subsequently determined that applicable U.S. Government requirements have not been included in these Terms. Further, Buyer agrees to indemnify and hold Seller harmless for any damages whatsoever pursued by the U.S. Government relating to Seller's performance under these Terms to the extent that such damages result directly or indirectly from Buyer's determination that U.S. Government procurement statutes and regulations are inapplicable and not incorporated in these Terms.
- 22. Tooling/Drawings:** Tool, die and pattern changes are in addition to the price of products and payable upon completion of tooling. All such tools, dies and patterns remain the property of Seller unless otherwise agreed in writing by Seller. Seller's prints and drawings furnished to Buyer in connection with these Terms are the property of Seller and Seller retains all rights, including, without limitation, exclusive rights to use, license and sell the prints and drawings. Upon termination of these Terms or at anytime upon Seller's request, all such prints and drawings and any copies thereof shall be immediately returned to Seller.
- 23. Intellectual Property:** All Intellectual Property Rights associated with, produced from or arising as a result of the performance of this Agreement, including but not limited to patents, trademarks and copyrights, shall remain and, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate documents or the making of agreements with third parties. Title to and ownership of the copyrights in software and/or firmware incorporated into or provided for use with the Goods ("Software") and documentation supplied with the Goods ("Documentation") shall remain with Seller and is not transferred hereby to Buyer. Except as otherwise provided herein, Seller hereby grants to Buyer a non-exclusive, royalty-free license to the Software and Documentation in conjunction with the use of the Goods. Seller shall retain all of its rights of invention and copyrights from the works derived from its execution of this Order. All rights of inventions, discoveries and improvements belong to Seller.
- 24. Documentation:** Seller shall provide Buyer with documentation identified in the quotation. Additional costs may apply for non-standard documentation or if additional copies are requested.
- 25. Typographical Errors:** Seller is not responsible for typographical errors made in any of its publications or for clerical errors made in preparation of quotations, sales orders or acknowledgments. All such errors are subject to correction.
- 26. Applicable Law:** The laws of the State of Illinois shall govern these Terms and the courts of Illinois shall be the exclusive venue and jurisdiction.
- 27. Governance:** Buyer and Seller each agree that these Terms shall govern and control with respect to all orders by Buyer from Seller, and no term, condition, warranty or representation appearing in any purchase order of Buyer or order acknowledgment, invoice or other sales documentation of Buyer, will govern unless agreed to in writing by Seller.
- 28. Nondisclosure:** Buyer shall not disclose any information regarding any subject matter hereof or proprietary technical information received from Seller, if any, except to the extent that disclosure is required by law or is otherwise agreed to in writing by the parties.
- 29. Third Party Inspections:** Buyer shall provide at least ten (10) business days' notice to Seller for all third party inspections. Buyer must provide proof of liability insurance for said inspector and a signed non-disclosure agreement. The inspector must be able to communicate in English. Plant safety guidelines including (but not limited to) the use of safety glasses and safety shoes are to be followed while on-site. Final Inspections (Dimensional review and documentation review) are charged at \$250 USD. The charge for all other inspections will be quoted by the factory.
- 30. Miscellaneous:** Buyer shall not assign its rights or obligations under these Terms without Seller's prior written consent. Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other. In the event that any provision herein shall be found to be void or unenforceable, this shall not be construed to render any other provisions void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are invalid or unenforceable shall substantially affect the rights or obligations granted to or undertaken by the Parties. Any changes or revisions to these Terms must be authorized in writing by a representative of Seller. No waiver by Seller with respect to any breach of default of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default of any other right or remedy, unless such waiver be expressed in writing signed by Seller. These Terms together with the exhibits referenced and attached hereto embodies the entire understanding between Buyer and Seller and there are no agreements, understandings, conditions, warranties, or representations, oral or written, express or implied, with reference to the subject matter hereof which are not merged herein.