

## ACCUMETRICS, INC. STANDARD TERMS AND CONDITIONS

**NOTICE:** Sale of any products and/or services ordered by Buyer is expressly conditioned on Buyer's assent to the additional or different terms contained herein, including Seller's quotation. Any additional or different terms proposed by Buyer are expressly objected to and will not be binding upon Seller unless specifically assented to in writing by Seller. Any order for, or any statement of intent to purchase hereunder, or any direction to perform work and Seller's performance, shall constitute assent to Seller's terms and conditions. Seller's quotation is valid for 30 days, unless withdrawn by Seller prior to receipt of Buyer's acceptance.

**1. WARRANTIES:** Seller warrants to Buyer that products and any services furnished hereunder will be free from defects in material, workmanship and title and will be of the kind and quality specified in Seller's written quotation. The foregoing shall apply only to failures to meet said warranties (excluding any defects in title) which appear within one year from the date of shipment hereunder; provided, however, that if Buyer, in the course of its regular and usual business, transfers title to or leases such products (including equipment incorporating such products) to a third party, such period shall run until one year from such transfer or lease or eighteen months from shipment by Seller, whichever occurs first. Products not manufactured by Seller are warranted only to the extent and in the manner warranted to Seller by the manufacturer and then only to the extent Seller is reasonably able to enforce such warranty.

If any product or service fails to meet the foregoing warranties (except title), Seller shall correct any such failure at its option, (i) by repairing any defective or damaged part or parts of the products either at Buyer's facility, or Seller's facility with shipping at Seller's expense, at Seller's option, or (ii) by making available, any necessary repaired or replacement parts, Ex Works Seller's facility (Incoterms 2010), shipping and insurance prepaid by Buyer. Where a failure cannot be corrected by Seller's reasonable efforts, the parties will negotiate an equitable adjustment in price. All costs and risks of access to the equipment, disassembly, transportation to and from Seller's service facility (if necessary) and reassembly associated with the corrective action shall be borne by Buyer.

The preceding paragraph sets forth the exclusive remedies for claims (except as to title) based on defect in or failure of products or services, whether the claim is in contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise and however instituted. Upon the expiration of the warranty period, all such liability shall terminate and Buyer shall have a reasonable time, within fourteen days after the warranty period, to give written notice of any defects that appear during the warranty period. Except as set forth in Article 2, "Patents", the foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. **NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY.** Seller does not warrant any products or services of others which Buyer has designated.

The conditions of any tests shall be mutually agreed upon and Seller shall be notified of, and may be represented at, all tests that may be made. Seller's obligations under this Article shall not apply to any product or portion thereof, which (i) is defective due to normal wear and tear including that due to environment or operation, including but not limited to excessive operation at peak capability, erosion, corrosion or material deposits from fluids or otherwise, or (ii) has a normal life inherently shorter than the warranty period, or (iii) is not properly stored, installed, used or maintained other than pursuant to Seller's written instructions or approval, or (iv) has been subjected to any other kind of misuse or detrimental exposure or has been involved in an accident. In addition, this warranty shall be void if (i) Buyer makes any repairs to, or effects any changes in, products or any portion thereof or mechanical, electrical, or electronic interconnections, which have not been authorized by Seller in writing, or (ii) Seller is not promptly notified of any failure in writing or has not been given prompt access to the failed products.

**2. PATENTS:** (a) Subject to the provisions of this Article, Seller warrants that products furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, and contingent upon Buyer not taking any position adverse to Seller in connection with such claim, Seller shall defend, or may settle, at its expense, any suit or proceeding against Buyer so far as based on a claimed infringement which would result in a breach of this warranty and Seller shall pay all damages and costs awarded therein against Buyer due to such breach. In case any product or part thereof is in such suit held to constitute such an infringement and the use for the

purpose intended of said product or part is enjoined, Seller shall, at its expense and option, either procure for Buyer the right to continue using said product or part, or replace same with a noninfringing product or part, or modify same so it becomes noninfringing, or remove the product and refund the purchase price (less reasonable depreciation for any period of use) and any transportation costs separately paid by Buyer. The foregoing states the entire liability of Seller for patent infringement by said products or any part thereof.

(b) The preceding paragraph shall not apply to any product or part specified by Buyer or manufactured to Buyer's design, or to the use of any product furnished hereunder in conjunction with any other product in a combination not furnished by Seller as a part of this Contract. As to any such product, part, or use in such combination, Seller assumes no liability whatsoever for patent infringement and Buyer will hold Seller harmless against any infringement claims arising therefrom.

**3. DELIVERY, TITLE AND RISK OF LOSS:** Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Unless otherwise specified by Seller, delivery will be made Ex Works Seller's facility (Incoterms 2010), shipping and insurance prepaid by Buyer. Title will pass to Buyer upon Seller's receipt of all payments for the products under this Contract. Risks of loss and damage pass to Buyer on delivery.

**4. EXCUSABLE DELAYS:** Seller shall not be liable for delays in delivery or performance, or for failure to manufacture, deliver or perform, due to (i) a cause beyond its reasonable control, or (ii) an act of God, act of Buyer, act of civil or military authority, governmental priority, strike or other labor disturbance, fire, severe weather condition, earthquake, flood, epidemic, war, riot, terrorist act, delay in transportation or car shortage, or (iii) inability on account of a cause beyond the reasonable control of Seller to obtain necessary materials, components, services or facilities. The date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of such excusable delay. Seller shall notify Buyer, as soon as practicable, of the revised date of delivery or of performance. If Seller is delayed by acts or omissions of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall also be entitled to an equitable price adjustment. In the event of an unexcused and material delay, the parties will mutually agree to an equitable solution.

**5. PAYMENTS AND FINANCIAL CONDITION:** Unless otherwise specified by Seller in its quotation, pro rata payments shall become due without setoff as shipments are made. If Seller consents to delay shipments, payment shall become due on the date when Seller is prepared to make shipment. Products held for Buyer shall be at Buyer's risk and expense. Buyer agrees to reimburse Seller for collection costs, including attorney's fees, if Buyer fails to make any payment within the earlier of thirty (30) days after shipment or receiving an invoice, including interest at 1.5% per month or part thereof.

If Buyer fails to fulfill any condition of its payment obligations, Seller may suspend performance and delivery. Any cost incurred by Seller in accordance with such suspension, including storage costs (including storage at Seller's facility), shall be payable by Buyer upon submission of Seller's invoices. Performance of Seller's obligations shall be extended for a period equaling the period of Buyer's nonfulfillment of any portion of the payment terms, whether or not Seller suspends performance and such additional time as may be reasonably necessary in the circumstances. If Buyer does not correct such failure in the manner and time satisfactory to Seller, then Seller may, at its option, terminate the Contract in respect to the portion of the products not delivered and work not yet performed. Buyer shall pay Seller its reasonable and proper termination charges in the event of such termination, in addition to the amounts owed up to the date of termination.

Any order for products by Buyer shall constitute a representation that Buyer is solvent. In addition, upon Seller's request, Buyer will furnish a written representation concerning its solvency at any time prior to shipment.

If Buyer's financial condition at any time does not justify continuance of the work to be performed by Seller hereunder on the agreed terms of payment, Seller may require full or partial payment in advance or shall be entitled to terminate the Contract and receive termination charges. In the event of Buyer's bankruptcy or insolvency or in the event any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against Buyer and shall receive reimbursement for its proper cancellation charges. Seller's rights under this Article are in addition to all rights available to it at law or in equity.

**6. TAXES:** In addition to any price specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or delivery of any products or services furnished hereunder or to their use by Seller or Buyer, or Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities.

**7. LIMITATIONS OF LIABILITY:** (a) In no event, whether as a result of breach of contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise, shall Seller's liability to Buyer or its insurers for any loss or damage arising out of, connected with, or resulting from the Contract, or from its performance or breach, or from the products or services furnished hereunder or any extension or expansion of the Contract (including remedial warranty efforts), exceed the price of the specific product or service which gives rise to the claim, and except as to title, any such liability shall terminate upon the expiration of the warranty period specified in Article 1, "Warranties". Any such claim of liability must be timely commenced in a court of competent jurisdiction in accordance with the applicable statute of limitations and/or of repose, but in no event later than one year from the termination of the warranty period.

(b) In no event, whether as a result of breach of contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise, shall Seller be liable for special, incidental, exemplary, indirect or consequential damages including, but not limited to, loss of profits or revenue, loss of use of any property, products or any associated equipment, damage to associated equipment, cost of capital, cost of purchased power, cost of substitute equipment, facilities, products, services, replacement power, downtime costs, or claims of Buyer's customers for such damages and Buyer will indemnify Seller against any such claims from Buyer's customers. If products or services being provided by Seller are transferred by Buyer to a third party by contract or relate to a contract between Buyer and a third party, Buyer shall obtain from such third party a provision affording Seller the protection of this entire Article 7. Any such transfer without such protection shall, in addition to any other legal or equitable rights of Seller, make Buyer the indemnitor of Seller to the same extent that Seller would have been protected had no such transfer taken place.

(c) In no event shall Seller be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of products or caused by the use of products by Buyer against the advice of Seller. If Seller furnishes Buyer with advice or assistance concerning any product supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this Contract, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise.

(d) The products sold hereunder are not intended for application, and are prohibited from use, in connection with any hazardous application. A hazardous application is one in which any failure, malfunction or inaccuracy of a product carries a risk of death or serious bodily injury, such as, but not limited to nuclear facilities, medical equipment, aircraft operation or navigation or communications, air traffic control, weapons systems, life support or other applications representing a similar degree of hazard. Buyer warrants that it shall not use any products for such applications, or permit others to use the products for any such applications. If, in breach of the foregoing, any such use occurs, Seller shall have no liability for any damages or injuries, including but not limited to nuclear or other damage, injury or contamination, and Buyer shall indemnify, defend and hold Seller harmless from all claims, losses, damages and expenses, including reasonable attorney's fees, arising from any prohibited use or hazardous

application of any product, whether based on breach of contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise.

(e) Buyer waives rights of recovery against Seller, whether Buyer's claim is brought under breach of contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise, for loss or damage to the property of Buyer to the extent such claim is covered by insurance maintained by Buyer. For the purposes of this entire Article 7, the term "Seller" includes Seller's employees, subcontractors and suppliers.

**8. SOFTWARE:** Unless otherwise agreed in writing by Seller, there are no rights to software granted to Buyer under this Contract. In the event that Buyer desires to license any software used by Seller, Buyer must contact the owner of such software to negotiate a software license agreement with such owner in order to use such software. Seller makes no representation that it is the owner or licensee of any software, or that it has any right to sell, or grant any license to Buyer to use, any software.

**9. GENERAL:** The provisions of this Contract are for the benefit of the parties hereto and not for any other party or person except as specifically provided herein.

Any products delivered hereunder will be produced in compliance with the Fair Labor Standards Act of 1938, as amended and applicable. Seller will comply with applicable federal, state and local laws and regulations as of the date of any quotation which relate to (i) nonsegregated facilities and equal employment opportunity, and (ii) workers' compensation. Price and, if necessary, delivery will be equitably adjusted to compensate Seller for the cost of compliance with any other laws or regulations.

The delegation or assignment by Buyer of any or all of its duties or rights hereunder without Seller's prior written consent shall be void. Any representation, promise, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on Seller. These Terms and Conditions, including Seller's quotation, collectively referred to herein as the "Contract", contain the entire and only agreement between Buyer and Seller respecting the terms and conditions and supersedes and cancels all previous negotiations, agreements, commitments, representations and writings in respect thereto. No modification, amendment, rescission, waiver or other change shall be binding on Seller unless assented to in writing by Seller. The validity, performance, and all matters relating to the interpretation and effect of this Contract and any amendment hereof shall be exclusively governed by the law of the State of New York, except for any of its conflict of law principles that would require the application of the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The invalidity, in whole or part, of any of the articles or paragraphs in these Terms and Conditions will not affect the remainder of such article or paragraph or any other article or paragraph. Nothing in this Contract shall be construed to impose any overall "system responsibility" on Seller.

The Contract cannot be canceled, terminated or modified by Buyer in whole or in part except with Seller's consent in writing and then only upon terms and conditions then to be agreed upon which shall include protection of Seller against all losses.

Any information, suggestions or ideas transmitted by Buyer to Seller are not to be regarded as secret or submitted in confidence, unless agreed to by Seller in writing.

The following Articles survive termination of this Contract in accordance with their terms: Article 1 (Warranties), Article 2 (Patents), Article 6 (Taxes), Article 7 (Limitation of Liability), Article 9 (General) and any remaining payment obligations of Buyer.