



**TERMS AND CONDITIONS OF SALE  
COMMERCIAL ITEMS TO GOVERNMENT AGENCIES**

This Terms and Conditions of Sale document sets forth the terms and conditions under which Seller agrees to sell and Buyer agrees to purchase certain commercial items and products manufactured by Seller. These terms and conditions are consistent with the requirements of FAR Clauses 52.212-4, 'Contract Terms and Conditions-Commercial Items', and 52.212-5, 'Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items'.

**1. DEFINITIONS**

The definitions of terms used herein are in accordance with FAR Clause 2.101, 'Definitions', subject to the following additions and modifications: "Seller" means the Contractor, or Teledyne Instruments, Inc., doing business as Teledyne Analytical Instruments. "Buyer" means the U.S. Government agency purchasing Goods from Seller. "Goods" means the commercial items and products offered by Seller and/or purchased by Buyer. "Offer" means any quote, proposal, or offer to sell Goods provided by Seller to Buyer. "Contract" means any purchase order or similar instrument issued by Buyer, and accepted by Seller. Seller and Buyer are sometimes referred to herein individually as a "Party", and collectively as the "Parties".

**2. ACCEPTANCE**

The terms and conditions included in this Terms and Conditions of Sale document apply to all Offers made by Seller to Buyer and all of Buyer's Contracts accepted by Seller. Acceptance of Buyer's Contract, and any changes or amendments thereto, is expressly conditioned upon Buyer's assent to these terms and conditions. Unless specifically agreed to in writing by a duly authorized representative of Seller, Seller objects to, and is not bound by, any terms or conditions that differ from or add to the terms and conditions specified herein. Seller's failure to object to any terms and conditions or any other provisions contained in any communication from Buyer, including, but not limited to, Buyer's Contracts, does not waive any of the terms and conditions specified herein. Seller's acceptance of any resulting Contract or Buyer's receipt of Goods, whichever occurs first, will conclusively evidence Buyer's unconditional acceptance of these terms and conditions.

**3. ORDER OF PRECEDENCE**

Any inconsistencies in the Terms and Conditions of Sale document and Seller's Offer will be resolved by giving precedence in the following order: (1) authorized amendments to Seller's Offer (reverse date order), (2) Seller's Offer, and (3) this Terms and Conditions of Sale document.

Any inconsistencies within Buyer's Contract will be resolved by giving precedence in the order set forth in FAR Clause 52.212-4, Subparagraph '(s)'.

**4. PRICES**

Unless stated otherwise in writing by Seller, all prices are stated in U.S. Dollars and are valid for a period of thirty (30) days from the date of Seller's Offer. Unless accepted in its entirety within this period, Seller reserves the right to withdraw its Offer.

**5. TAXES**

The amount of any present or future sales, use, excise, import duty, or other tax applicable to the manufacture, sale, or lease of Goods will be added to the invoice and must be paid by

Buyer, unless the Buyer provides Seller with a tax exemption certificate acceptable to the applicable taxing authority.

**6. INVOICE**

Seller will submit an original invoice and three (3) copies (or electronic invoice, if authorized) to the address designated in the Contract to receive invoices. Such invoice will include:

- a. Name and address of the Seller;
- b. Invoice date and number;
- c. Contract number, Contract line item number and, if applicable, the order number;
- d. Description, quantity, unit of measure, unit price, and extended price of the items delivered;
- e. Shipper number and date of shipment, including the bill of lading number and weight of shipment if shipped on a Government bill of lading;
- f. Terms of any discount for prompt payment offered;
- g. Name and address of official to whom payment is to be sent;
- h. Name, title, and phone number of person to notify in event of defective invoice; and
- i. Taxpayer Identification Number (TIN). The Seller will include its TIN on the invoice only if required elsewhere in the Contract.

The Seller will include Electronic Funds Transfer (EFT) banking information on the invoice only if required elsewhere in the Contract. If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Seller will have submitted correct EFT banking information in accordance with the applicable Contract clause (e.g., FAR [52.232-33](#), 'Payment by Electronic Funds Transfer—Central Contractor Registration', or FAR [52.232-34](#), 'Payment by Electronic Funds Transfer—Other Than Central Contractor Registration'), or applicable Buyer procedures. EFT banking information is not required if the Buyer waives the requirement to pay by EFT.

**7. PAYMENT**

Payment will be made for items accepted by the Buyer that have been delivered to the delivery destinations set forth in the Contract. The Buyer will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315. In connection with any discount offered for early payment, time will be computed from the date of the invoice. For the purpose of computing the discount earned, payment will be considered to have been made on the date which appears on the payment check or the specified payment date if an EFT payment is made. If the Seller becomes aware of a duplicate contract financing or invoice payment or that the Buyer has otherwise overpaid on a contract financing or invoice payment, the Seller will immediately notify the Buyer and request instructions for disposition of the overpayment.

**8. FOB POINT**

Unless specified otherwise, all Goods will be shipped f.o.b. origin (Seller's shipping dock). Buyer is responsible for all transportation costs.

**9. RISK OF LOSS**

Unless the Contract specifically provides otherwise, risk of loss or damage to the Goods provided under this Contract will transfer to the Buyer upon delivery of the Goods to common carrier.

## **10. TITLE**

Unless the Contract specifically provides otherwise, title to the Goods provided under this Contract will pass to the Buyer upon Buyer's acceptance of Goods at: Seller's facility.

## **11. PACKING AND PACKAGING**

Seller's prices for Goods include Seller's standard commercial packing and packaging. Any non-standard or special packing or packaging requirements requested by Buyer will be provided by Seller at additional cost to Buyer.

## **12. EXCUSABLE DELAYS**

Seller will be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller will notify the Buyer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, will remedy such occurrence with all reasonable dispatch, and will promptly give written notice to the Buyer of the cessation of such occurrence.

## **13. TERMINATION FOR CONVENIENCE**

Buyer has the right to terminate this Contract, or any part hereof, for its sole convenience. In the event of such termination, the Seller will immediately stop all work hereunder and will immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Contract, the Seller will be paid a percentage of the Contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the reasonable satisfaction of the Buyer using its standard record keeping system, have resulted from the termination. The Seller will not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Buyer any right to audit the Seller's records. The Seller will not be paid for any work performed or costs incurred which reasonably could have been avoided.

## **14. TERMINATION FOR CAUSE**

The Buyer may terminate this Contract, or any part hereof, for cause in the event of any default by the Seller, or if the Seller fails to comply with any Contract terms and conditions, or fails to provide the Buyer, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government will not be liable to the Seller for any amount for Goods or services not accepted, and the Seller will be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this Contract for default, such termination will be deemed a termination for convenience.

## **15. CHANGES**

Changes in the terms and conditions of this Contract may be made only by written agreement of the parties.

## **16. LIMITED WARRANTY**

Seller warrants that the Goods delivered under Buyer's Contract will be free from defects in material and workmanship for a period of twelve (12) months from the date of original shipment, except for components and consumables that have

shorter third party manufacturer's warranty periods. Components and consumables manufactured by third parties bear the warranty of their manufacturer.

The specific warranty for a given product is the one in effect on date of shipment. In the event that Buyer identifies any defects in material or workmanship, Buyer will promptly notify Seller of the defective Goods and the specific nature of the defect in accordance with Article 15, Return Authorizations.

Seller, at its sole discretion, will either repair or replace any such Goods found by Seller to be defective. Seller's warranty does not apply to any Goods that have been subjected to improper installation, misuse, alteration, repair, neglect, accident, inundation, fire, or the like.

THESE EXPRESS WARRANTIES, INCLUDING REMEDIES, ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS INTENDED OR GIVEN. IN THE CASE OF GOODS OTHER THAN THOSE OF SELLER'S OWN MANUFACTURE, SELLER MAKES NO WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED

## **17. RETURN AUTHORIZATIONS**

Buyer will promptly notify Seller of any nonconformance(s) in the Goods and afford Seller a reasonable opportunity to inspect the Goods. No Goods may be returned without Seller's prior authorization, as evidenced by a return authorization. Once a return authorization number is obtained, Buyer will return defective Goods transportation and insurance prepaid in accordance with instructions issued by Seller. Failure to follow Seller's return procedures may result in lost Goods, delays, additional service, restocking charges, warranty denial, or refusal of a shipment. The return authorization number must appear on the shipping label along with all paperwork associated with the return. Seller has the right to reject Goods returned without the correct return authorization number clearly marked on the outside of the shipping container. Granting a return authorization number does not necessarily mean that a credit will be approved or that the evaluation or repair will take place without a fee.

## **18. INDEMNIFICATION**

Each Party (the "Indemnifying Party") will hold harmless and indemnify the other Party (the "Indemnitee") against all claims, judgments, costs, and fees, including attorney fees, relating to infringement of U.S. patents, designs, copyrights, or trademarks to the extent that the infringing Goods are manufactured, sold, or used in whole or in part to the Indemnifying Party's specifications, designs, drawings, or other technical data.

To the extent that one Party's employees or agents enter on the property owned or controlled by the other Party, the first Party will indemnify and hold harmless the other Party, its officers, directors, and employees for any property damage or bodily injury or death caused by the first Party's employees or agents.

## **19. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES IS EITHER PARTY LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, MULTIPLE, ADMINISTRATIVE, OR PUNITIVE DAMAGES, OR ANY DAMAGE OF AN INDIRECT OR CONSEQUENTIAL NATURE ARISING OUT OF OR RELATED TO ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED UPON BREACH OF THIS AGREEMENT, WARRANTY, OR NEGLIGENCE AND WHETHER GROUNDED IN TORT, CONTRACT, CIVIL LAW, OR OTHER THEORIES OF LIABILITY, INCLUDING STRICT LIABILITY, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

SELLER'S TOTAL LIABILITY INCLUDING, BUT NOT LIMITED TO, LIABILITY FOR INDEMNITY, DEFENSE, AND HOLD HARMLESS OBLIGATIONS IS LIMITED TO NO MORE THAN THE AMOUNT PAID TO SELLER UNDER BUYER'S CONTRACT AND BUYER AGREES TO INDEMNIFY SELLER FOR ANY EXCESS AMOUNTS. TO THE EXTENT THAT THIS LIMITATION OF LIABILITY CONFLICTS WITH ANY OTHER PROVISION(S) OF THIS AGREEMENT, SUCH PROVISION(S) WILL BE REGARDED AS AMENDED TO WHATEVER EXTENT REQUIRED TO MAKE SUCH PROVISION(S) CONSISTENT WITH THIS PROVISION.

**20. ASSIGNMENT**

Seller or its assignee may assign its rights to receive payment due as a result of performance of this Contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Government wide commercial purchase card), the Seller may not assign its rights to receive payment under this Contract.

**21. UNENFORCEABLE PROVISIONS**

In the event that one or more provisions of this Contract is held to be unenforceable, the remaining provisions apply in full and the invalid or unenforceable provision will be replaced by a provision that lawfully enforces the Parties' intention underlying the invalid or unenforceable provision.

**22. ETHICS AND VALUES**

Seller is committed to uncompromising ethical standards, strict adherence to law, and customer satisfaction. Buyer is encouraged to communicate any concerns or questions regarding the ethics and value to the Teledyne Corporate Ethics Help Line, "Take the Right Action", at 1-877-666-6968.

**23. SURVIVAL**

The following Article will survive the termination or expiration of this Agreement or any Contract: 1: Definitions; 3: Order of Precedence; 5: Taxes; 7: Payment; 9: Risk of Loss; 10: Title; 12: Excusable Delays; 13: Termination for Convenience; 14: Termination for Cause; 15: Changes; 16: Limited Warranty; 17: Return Authorizations; 18: Indemnification; 19: Limitation of Liability; 20: Assignment; 21: Unenforceable Provisions; and 24: Survival.

**24. WHOLE AGREEMENT; AMENDMENT**

This document is the entire understanding between the Parties, and it supersedes all previous or additional agreements, arrangements, and drafts. This document may be amended or modified only by written agreement of duly authorized representatives of both Parties.

**25. FAR CLAUSES**

In addition to the terms and conditions contained in this Terms and Conditions of Sale document, the following Federal Acquisition Regulations (FAR) clauses are incorporated by reference to the extent they are applicable as indicated:

FAR Clause    Title

- 52.203-6 Alt. I            Restrictions on Subcontractor Sales to the Government (applicable only to Contracts exceeding \$100,000)
- 52.204-4                Printed or Copied Double-Sided on Recycled Paper
- 52.204-7                Central Contract Registration (when applicable per FAR 4.1102)
- 52.204-9                Personal Identity Verification of Contractor Personnel

- 52.212-4                Contract Terms and Conditions-Commercial Items (subject to modifications delineated herein)
- 52.212-4 Alt. I            Contract Terms and Conditions-Commercial Items (subject to modifications delineated herein)
- 52.212-5                Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items
- 52.212-5 Alt. I            Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (applicable only to Contracts for Commercial Services)
- 52.216-23                Execution of and Commencement of Work
- 52.216-25                Contract Definitization
- 52.216-25 Alt. I            Contract Definitization
- 52.219-3                Notice of Total HUBZone Set-Aside
- 52.219-4                Notice of Price Evaluation Preferences for HUBZone Small Business Concerns
- 52.219-6                Notice of Total Small Business Set-Aside
- 52.219-6 Alt. I            Notice of Total Small Business Set-Aside
- 52.219-6 Alt. II            Notice of Total Small Business Set-Aside
- 52.219-7                Notice of Partial Small Business Set-Aside
- 52.219-7 Alt. I            Notice of Partial Small Business Set-Aside
- 52.219-7 Alt. II            Notice of Partial Small Business Set-Aside
- 52.219-8                Utilization of Small Business Concerns
- 52.219-9                Small Business Subcontracting Plan (applicable only to Contracts with subcontracting opportunities in excess of \$550,000)
- 52.219-9 Alt. I            Small Business Subcontracting Plan (applicable only to Contracts with subcontracting opportunities in excess of \$550,000)
- 52.219-9 Alt. II            Small Business Subcontracting Plan (applicable only to Contracts with subcontracting opportunities in excess of \$550,000)
- 52.219-14                Limitations of Subcontracting
- 52.219-16                Liquidated Damages-Subcontracting Plan
- 52.219-22                Small Disadvantaged Business Status
- 52.219-23                Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns
- 52.219-23 Alt. I            Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns
- 52.219-23 Alt. II            Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns
- 52.219-25                Small Disadvantaged Participation Program-Disadvantaged Status and Reporting
- 52.219-26                Small Disadvantaged Business Participation Program-Incentive Contracting
- 52.219-27                Notice of Total Service-Disabled Veteran-Owned Small Business Set Aside
- 52.219-28                Post-Award Small Business Program representation
- 52.222-3                Convict Labor
- 52.222-19                Child Labor-Cooperation with Authorities and Remedies
- 52.222-21                Prohibition of Segregated Facilities
- 52.222-26                Equal Opportunity
- 52.222-35                Equal Opportunity for Special Disabled Veterans
- 52.222-36                Affirmative Action for Workers with Disabilities
- 52.222-37                Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

FAR Clause    Title

- 52.222-39                Notification of Employee Rights Concerning Payment of Union Dues
- 52.223-9                Estimated percentage of Recovered Material Content from EPA Designated Products

- 52.223-9 Alt. I Estimated percentage of Recovered Material Content from EPA Designated Products
- 52.225-1 Buy American Act-Supplies (applicable only to Contracts exceeding \$25,000)
- 52.225-3 Buy American Act-Free Trade Agreements-Israeli Trade Act Agreement (applicable if Contract exceeds \$25,000 but is less than \$193,000, only to the extent expressly indicated by Buyer)
- 52.225-3 Alt. I Buy American Act-Free Trade Agreements-Israeli Trade Act Agreement (applicable only if Contract exceeds \$25,000 but is less than \$50,000, and only to the extent expressly indicated by Buyer)
- 52.225-3 Alt. II Buy American Act-Free Trade Agreements-Israeli Trade Act Agreement (applicable only if Contract exceeds \$25,000 but is less than \$64,786, and only to the extent expressly indicated by Buyer)
- 52.225-5 Trade Agreements (applicable only if the Contract exceeds \$193,000 and the acquisition is covered by the WTO GPA)
- 52.225-8 Duty-Free Entry (applicable only to Contracts exceeding \$100,000)
- 52.225-13 Restrictions on Certain Foreign Purchases
- 52.225-14 Inconsistency Between English Version and Translation of Contract
- 52.226-4 Notice of Disaster or Emergency Area Set-Aside
- 52.226-5 Restriction on Subcontracting Outside Disaster or Emergency Area
- 52.232-29 Terms for Financing of Purchases of Commercial Items (applicable to the extent expressly authorized by Buyer)
- 52.232-30 Installment Payments for Commercial Items (applicable to the extent expressly authorized by Buyer)
- 52.232-33 Payment by Electronic Funds Transfer (applicable to the extent expressly authorized by Buyer)
- 52.232-34 Payment by Electronic Funds Transfer-Other Than Central Contractor Registration (applicable to the extent expressly authorized by Buyer)
- 52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Information
- 52.232-36 Payment by a Third Party (applicable to the extent expressly authorized by Buyer)
- 52.233-1 Disputes
- 52.233-3 Protest after Award
- 52.233-4 Applicable Law for Breach of Contract Claim
- 52.239-1 Privacy or Security Safeguards
- 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels
- 52.247-64 Alt. I Preference for Privately Owned U.S.-Flag Commercial Vessels

- End of Clauses -