

# PCS Instruments, Inc.

## Terms and Conditions of Sale (the “Terms”)

### 1. GENERAL

Orders are accepted by PCS Instruments, Inc., a Delaware corporation with its registered office located at 251 Little Falls Drive, Wilmington, DE 19808 (“Seller”) subject to these terms and conditions. Any purchase order submitted by the party (“Buyer”) purchasing instruments, consumables and spares (“Equipment”) is deemed an offer, and Seller reserves the right to accept or reject it in whole or in part. No contract shall be deemed binding on Seller until confirmed in writing by Seller. The acceptance of an order by Seller will supersede all prior communications and constitute a complete and binding contract between the parties hereunder. In case of a conflict, inconsistency or addition not expressly accepted in writing by Seller, the terms and conditions of sale provided herein shall prevail and be binding, superseding any conflicting, inconsistent or additional terms stated in or attached to any purchase order or otherwise. The contract between the parties cannot be modified or terminated without the written agreement of Seller, and Seller may impose additional conditions on any modification or termination. Notably, Seller will be entitled to adjust agreed prices at any time on the basis of the average change in the cost price of the Equipment or services to be delivered or performed by Seller. The adjustment of agreed prices and rates will apply after Buyer has been notified in writing by Seller of the adjustment.

### 2. QUOTATION; EQUIPMENT INFORMATION

Unless otherwise stated by Seller in writing, the quotations issued by Seller are noncommittal and non-binding in nature. The weights, dimensions, capacities, performance ratings, characteristics and other data on Seller’s catalogues, prospectuses, circulars, advertisements, price lists, documentation, instructions sheets and website are mentioned only as general information. They are only approximate and shall not bind Seller.

### 3. SHIPMENT

Equipment will be delivered in accordance with Seller’s timelines, subject to availability of ordered Equipment, and in no event shall delivery dates be construed as falling within the meaning of “time is of the essence”. Seller shall not be responsible for any delays in filling orders, nor shall it be liable for any loss or damages resulting from such delays regardless of whether such delays are due to force majeure or otherwise. Under no circumstances shall Buyer or Buyer’s customers be entitled to any damages for Seller’s failure to ship on time, and Buyer agrees to indemnify, defend and hold Seller harmless against any costs and expenses related to any claims for lost profits or other consequential damages based on Seller’s failure to deliver timely. Additionally, Seller shall not be liable for any loss or damage in transit. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Equipment to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the Equipment shipped, subject to the terms hereof, whether such shipment is in whole or partial fulfilment of Buyer’s order. In the event of a default by Buyer, Seller may decline to make further shipments and/or cancel any outstanding order(s), without waiving any of its rights under such order(s). If, despite such default, Seller elects to continue to make shipment, its action shall not constitute a waiver regarding, or otherwise diminish, Seller’s legal remedies with respect to such default or any future default.

#### 4. FAILURE TO PICK UP EQUIPMENT

If Buyer does not accept or pick up the Equipment when available, the delivery of the Equipment shall nevertheless be deemed accepted by Buyer who shall therefore pay for the Equipment delivered. The storage of the Equipment arranged by Seller will be at the risk and expense of Buyer. At its sole discretion, Seller may decide to suspend in whole or in part the performance of the contract, or to terminate the contract upon written notice to Buyer and Seller shall be entitled, to the exclusion of any other remedy for Buyer's failure to take the Equipment, to compensation for the loss it suffered as a result of Buyer's delay, including any consequential and indirect loss, as well as any expenses properly incurred in performing the contract and not covered by payments received for the Equipment delivered. Seller may also demand immediate payment of the contract price, and the reimbursement of all costs incurred to mitigate the effects of Buyer's default.

#### 5. TITLE AND DELIVERY

Unless otherwise specified by Seller in writing, the Equipment is to be delivered under Incoterms® 2020 DAP ("delivered at place"). Transport of hazardous materials and/or the use of additional packaging may incur additional costs. Buyer is responsible for obtaining all necessary licenses for importing the goods and paying all relevant import clearance, taxes, duties, inspection costs and unloading. Title and risk of loss or damage shall pass from Seller to Buyer upon arrival at the Buyer's nominated delivery address.

#### 6. PRICES

Unless otherwise specified by Seller in writing, prices do not include any present or future federal, state or local property, tariffs, sales, use, excise, license, gross receipts or other taxes or assessments which may be applicable to, imposed upon or result from the contract or any services performed in connection with these Terms and/or the Equipment. The Equipment is packed for shipping as appropriate.

#### 7. PAYMENT TERMS

- (a) The date of invoicing is the date when the Equipment leaves Seller's factory.
- (b) Payment shall be received on Seller's account by wire transfer no later than thirty (30) calendar days after the date of the invoice. Any exchange charges, any charges for clearance of cheques or collection charges will be paid by Buyer. Any amounts not paid when due will bear interest at a rate of 18% per annum or, if lower, the maximum rate permissible by applicable law. Buyer shall pay all of Seller's costs of collection of any amounts past due, including, but not limited to attorneys' fees, court costs, witness fees, travel and lodging.
- (c) All orders are subject to the sole and absolute discretion of Seller with respect to credit approval by Seller. The amount of any credit extended by Seller to Buyer may be changed at any time, and such credit may be withdrawn by Seller at Seller's sole discretion. With respect to an order on which credit is not extended by Seller or, if extended, is subsequently withdrawn, shipment or delivery shall be made, at Seller's election, cash with order (in whole or in part), C.O.D., by Sight Draft attached to Bill of Lading or other shipping documents, or by irrevocable and unconditional letter of credit issued by a first-class international bank acceptable to Seller and confirmed by a bank acceptable to Seller, payable at sight, with all costs of collection (plus 18% interest, or the maximum rate permitted by applicable law, whichever is lower) for the account of Buyer. If, in the judgment of Seller, the financial condition of Buyer does not justify continuation of production or shipment on the terms of payment originally specified, Seller may require full or partial payment in advance. In the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Seller shall be entitled, in addition to any other

remedies at law or in equity, to (i) stop or divert any shipment in transit, (ii) cancel any order then outstanding, (iii) declare all outstanding amounts immediately due and payable, and/or (iv) receive reimbursement for all cost incurred as of the day of cancellation.

- (d) Each shipment shall be considered a separate independent transaction, and payment therefore shall be made accordingly.

## 8. SECURITY INTEREST

In order to protect and secure payment of all debts due and owing from Buyer and until Seller has been paid in full, Buyer hereby grants to Seller a security interest in the Equipment, and all proceeds and all accounts receivables resulting from the sale of the Equipment. In connection therewith, Buyer hereby authorizes Seller to take all necessary steps to file such financing statements and exhibits with the proper authorities, including the filing of a UCC-1 financing statement. Until Buyer has paid for the Equipment in full, Buyer shall not pledge, mortgage, encumber, or create or suffer to exist a security interest in the Equipment in favor of any person other than Seller unless written approval of such other security interest is given by Seller. Additionally, Buyer agrees to keep the Equipment insured to its full value until payment is received by Seller. In the event Buyer sells the Equipment to a third party before payment in full is received by Seller, Buyer agrees to secure its security interest in the Equipment at the time of sale to its customer in order to protect Seller's interests to the greatest extent possible..

## 9. CUSTOMER SPECIFIC ACCEPTANCE ("CSA")

Except as provided in writing by Seller, Seller's standard commercial factory acceptance test(s) performed at Seller's factory will comprise acceptance for the Equipment sold by Seller. If Seller references CSA provisions, then Buyer will accept the purchased Equipment in accordance with such CSA provisions. Buyer and Seller will give priority to achieving CSA and the purchased Equipment shall not be used by Buyer for material production, for development of new processes or for any purposes other than achieving CSA, prior to successful completion or waiver of the CSA provisions. Any such use of the Equipment prior to successful completion of the CSA provisions shall be deemed to constitute CSA passage. It is the responsibility of Buyer to ensure that all the required facilities are ready and site preparation is completed for successful commencement of CSA on delivery of the Equipment. If CSA has not been commenced within thirty (30) calendar days after delivery and completed within sixty (60) calendar days after delivery (through no fault of Seller), the Equipment shall be deemed accepted and as having achieved CSA.

## 10. INSTALLATION

If the contract includes installation of the Equipment by Seller at Buyer's business location, then Seller shall be responsible for all unpacking, set up and commissioning of the Equipment strictly in accordance with the agreed scope of services. Buyer must not unpack any shipment or commence set up prior to the arrival of Seller's installation personnel, and any such unauthorized action shall void any applicable warranty and release Seller from any resulting liability. Buyer shall ensure that the installation site is fully prepared, accessible, compliant with all applicable laws and safety regulations, and suitable for installation prior to Seller's arrival. Seller shall not be responsible for any delays, additional costs, or damages arising from site conditions, utilities, structural issues, or Buyer's failure to meet these obligations. Any additional work required due to site deficiencies shall be charged separately at Seller's then-applicable rates. Risk of loss shall remain allocated in accordance with the agreed delivery terms and shall not be affected by Seller's provision of installation services.

## 11. FORCE MAJEURE

Seller shall not be in breach of the contract nor shall it be liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from events, circumstances or causes beyond its reasonable control including but not limited to, Acts of God, flood, drought, earthquake or other natural disaster; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations; nuclear, chemical, biological contamination or sonic boom, epidemic or pandemic; any law or any action taken by a Government or a public authority including without limitation imposing an export or import restriction, quota or prohibition, and the collapse of buildings, fire, explosion or accident (a "Force Majeure Event"). If a Force Majeure Event prevents, hinders or delays Seller's performance of its obligations for a continuous period of more than three (3) months, Seller may terminate the contract immediately by giving written notice to Buyer.

## 12. INTELLECTUAL PROPERTY

All intellectual property rights to, ownership of, and interest in all Equipment, goods, trademarks, trade names, logos, distinctive marks, designs, and other materials created and/or made available by Seller hereunder or within the framework of the relationship between Buyer and Seller (the "Intellectual Property") are exclusively vested in Seller. Buyer shall not reproduce, modify, transfer, grant, assign, license or use the Intellectual Property, except in accordance with these Terms. Buyer shall not remove or alter indications concerning Intellectual Property rights and concerning the confidential nature of information from Equipment, goods, services, programs, works, distinctive marks, inventions, designs, models and other materials created and/or made available by Seller and the Equipment delivered. Seller makes no warranty concerning the appropriateness of the Equipment or services to the purposes for which Buyer or its customer are acquiring same. Moreover, Seller makes no warranty that the Equipment or services or other Intellectual Property of Seller do not infringe the rights of third parties. That said, if a third party claims that the purchased Equipment infringes that party's intellectual property, Seller will defend Buyer against that claim and will pay all costs, damages and attorneys' fees that a court finally awards, provided that Buyer: (a) promptly notifies Seller in writing of the claim, and (b) allows Seller to control, and cooperates with Seller in, the defence and any related settlement negotiations. If such a claim is made or appears likely, Seller, at its option, may obtain a license to enable Buyer to continue to use the Equipment, may modify the Equipment or may replace it with one that is functionally equivalent. If Seller determines that none of these alternatives is reasonably available, Buyer will return the Equipment to Seller upon Seller's written request, in which case Seller will credit Buyer with an amount equal to the price paid for such Equipment less a reasonable amount for depreciation. Seller shall not be liable for any claim based on (i) anything Buyer provides which is incorporated into the Equipment, (ii) Buyer's modification of the Equipment or use thereof other than in its specified operating environment, or (iii) the combination, operation or use of the Equipment with products provided by other manufacturers or other products not provided by Seller as a system. This is the exclusive warranty and liability of Seller with respect to intellectual property matters and is in lieu of all other warranties and remedies, express or implied. Sale of Equipment or parts thereof does not confer on Buyer any license relating to (a) the structure of any devices to which the Equipment or parts may be applied or (b) a process or machine in connection with which they may be used.

### 13. INDEMNIFICATION

Except as otherwise provided for herein, Buyer, on its own behalf, and behalf of its parent, subsidiary(ies), affiliated and related companies, and their respective predecessors, past and present officers, directors, shareholders, agents, employees, legal representatives, successors and assigns (the "Indemnifying Parties") assumes liability for, and shall pay when due, and shall indemnify, reimburse and hold Seller, and its parent, subsidiary, affiliated and related companies, and their respective predecessors, past and present officers, directors, shareholders, agents, employees, legal representatives, successors and assigns (the "Indemnified Parties") harmless from and against any and all Claims (defined below), directly or indirectly relating to or arising out of the acquisition, use, purchase, shipment, transportation, delivery, ownership, operation, possession, control, storage, return or condition of the Equipment (regardless of whether the Equipment is at the time in the possession of the Indemnifying Parties), the falsity of any representation or warranty of Buyer, or Buyer's failure to comply with these Terms. The foregoing indemnity shall cover, without limitation, any claim for negligence, gross negligence, or liability in tort. "Claims" means any and all liabilities, losses, damages, actions, suits, demands, claims of any kind and nature and all costs and expenses whatsoever to the extent they may be incurred or suffered by the Indemnified Parties in connection with the Equipment (including, without limitation, reasonable attorneys' fees and expenses), fines, penalties (and other charges of applicable governmental authorities), damage to or loss of use of property (including, without limitation, consequential or special damages to third parties or damages to Buyer's property), or bodily injury to or death of any person(s) (including, without limitation, any agent or employee of Buyer, user of the Equipment, or any other person).

### 14. LIMITED WARRANTY

- (a) Seller warrants to Buyer that new Equipment will materially conform to Seller's published specifications in effect as of the date of manufacture, if any, and will be free of defects in material and workmanship for a period of one (1) year commencing on final acceptance or ninety (90) calendar days from shipping, whichever occurs first. This warranty covers the cost of parts and labor (including, where applicable, field service labor and travel) reasonably determined by Seller to be necessary to restore the Equipment to normal operation.
- (b) Seller warrants to Buyer that replacement parts will be new or of equal functional quality and warranted for the remaining portion of the original warranty or ninety (90) calendar days, whichever is longer.
- (c) Seller warrants to Buyer that software will perform in substantial compliance with the written materials accompanying the software when properly installed and used in accordance with Seller's instructions. Seller does not warrant uninterrupted or error-free operation, nor does Seller warrant compatibility with third-party software or hardware not supplied or approved by Seller.
- (d) Seller's obligation under these warranties is limited to repairing or replacing, at Seller's option, defective non-expendable parts or software. Refunds or credits shall not be available unless Seller, in its sole discretion, determines repair or replacement is not commercially reasonable. These services will be performed, at Seller's option, at either Seller's facility or Buyer's business location. For repairs performed at Seller's facility, Buyer must contact Seller in advance for authorization to return Equipment and must follow Seller's shipping instructions. Freight charges and shipments to Seller are Buyer's responsibility. Risk of loss during return shipment shall remain with Buyer. Seller will return the Equipment to Buyer at Seller's risk and expense. All parts used in making warranty repairs will be new or of equal functional quality.
- (e) The warranty obligation of Seller shall not extend to defects that do not impair service or to provide warranty service beyond normal business hours, Monday through Friday (excluding

Seller holidays). No claim will be allowed for any defect unless Seller shall have received notice of the defect within fifteen (15) calendar days following its discovery by Buyer within the warranty period. Also, no claim will be allowed for Equipment damaged in shipment. Within fifteen (15) calendar days of Buyer's receipt of Equipment, Seller must receive notice of any defect which Buyer could have discovered by prompt inspection, failing which the Equipment shall be deemed accepted and free from defects.

- (f) Expendable items, including, but not limited to, filters, lamps, fuses, drive belts, probes, fluids, O-rings and seals ARE SPECIFICALLY EXCLUDED FROM THE FOREGOING WARRANTIES AND ARE NOT WARRANTED.
- (g) All used Equipment, including ex-demonstration Equipment, is sold AS IS, WHERE IS, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. Regular maintenance is excluded from this warranty.
- (h) Specifically excluded from this warranty is all standalone computer and data storage hardware not manufactured by Seller (including, but not limited to, computers, monitors, printers and peripherals). Such hardware will carry only the original manufacturer warranty, and Seller shall have no responsibility for performance, service, or support of such third-party items.
- (i) Seller assumes no liability under the above warranties for Equipment or system failures resulting from (i) abuse, misuse, modification or mishandling; (ii) damage due to forces external to the machine including, but not limited to, acts of God, flooding, power surges, power failures, defective electrical work, transportation, foreign Equipment/attachments or Buyer-supplied replacement parts or utilities or services such as gas; (iii) improper operation or maintenance; or (iv) failure to perform preventive maintenance in accordance with Seller's recommendations (including keeping an accurate log of preventive maintenance).
- (j) This warranty does not apply if any Equipment or part has been modified, altered, repaired, or serviced by anyone other than Seller or its authorized representatives, without the written permission of Seller, or if any Seller serial number has been removed or defaced.
- (k) No one is authorized to extend or alter these warranties on Seller's behalf without the written authorization of Seller.
- (l) THE ABOVE WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES (INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), AND OF ANY OTHER OBLIGATION ON THE PART OF SELLER. SELLER DOES NOT WARRANT THAT ANY EQUIPMENT OR SYSTEM CAN BE USED FOR ANY PARTICULAR PURPOSE OR WITH ANY PARTICULAR PROCESS OTHER THAN THAT COVERED BY THE APPLICABLE PUBLISHED SPECIFICATIONS.

#### 15. NO CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY

- (a) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS OPPORTUNITY, LOSS OF GOODWILL, LOSS OF DATA, OR BUSINESS INTERRUPTION, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S TOTAL LIABILITY FOR DAMAGES HEREUNDER EXCEED THE AMOUNTS ACTUALLY PAID BY BUYER UNDER ANY APPLICABLE ORDER, STATEMENT OF WORK OR OTHER CONTRACT. ALL CLAIMS MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OR THEY SHALL BE TIME-BARRERED. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION LEVIED IN CONNECTION WITH THESE TERMS AND CONDITIONS OF SALE, AND BUYER FURTHER ACKNOWLEDGES THAT

SELLER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

- (b) Nothing in these Terms shall limit or exclude Seller's liability to the extent such limitation or exclusion is not permitted under applicable law. However, Seller shall not be liable for any damages except to the extent directly caused by Seller's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

## 16. INSURANCE

During the term of the contract and especially the duration of the installation work by Seller on any relevant site at the case may be, Buyer shall maintain in force, with an insurance company that is rated A++ by AM Best professional indemnity insurance, general liability insurance to cover the liabilities that may arise under or in connection with the contract and include Seller's personnel as an additional party insured in the amount of \$2,000,000 per event and \$2,000,000 in aggregate. At Seller's request, Buyer shall produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of the required insurance coverage.

## 17. TERMINATION

Seller will be entitled to suspend or terminate the contract unilaterally upon written notice to Buyer, with immediate effect, fully or in part if:

- (a) Buyer has failed, or it is the Seller's belief that Buyer will fail, to fulfill one or more of its obligations under these Terms or any other contracts;
- (b) Buyer has suspended payments or has sought the protection of the Bankruptcy Courts;
- (c) a petition for the involuntary bankruptcy of Buyer has been filed;
- (d) Buyer's property on Seller's premises has been attached in execution;
- (e) a resolution for the dissolution and/or winding up of Buyer has been adopted;
- (f) the enterprise operated by Buyer has been fully or partly transferred to a third party without consent of Seller;
- (g) Buyer has disregarded any applicable statute, law, ordinance, code, order, rule, regulation, proclamation or other governmental requirement.

If the contract is suspended or terminated, performance of the contract already received by Buyer and the payment obligations of Buyer in connection with it will remain. The amounts invoiced by Seller for work actually performed prior to or upon termination of the contract will be immediately due and payable after termination. Buyer agrees to pay any of Seller's costs, damages, attorneys' fees and other expenses associated with Seller's termination of any contract with Buyer pursuant to the terms of this section. Seller's right of termination shall be without prejudice to any claims or other rights or remedies which Seller may have against Buyer by operation of law or otherwise.

## 18. APPLICABLE LAW AND JURISDICTION

These Terms and all transactions between Seller and Buyer are governed by the laws of the State of Delaware in the United States of America, without reference to conflict of laws principles. The application of the United Nations Convention on the International Sale of Goods is expressly excluded. In the event of a dispute arising from or relating to these Terms, which is not resolved by negotiation between the parties, the parties hereby agree to exclusive personal jurisdiction in the state and federal courts located in Delaware.

## 19. SEVERABILITY

If any provision of these Terms shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

## 20. ASSIGNMENT

Buyer shall not assign or transfer these Terms or any related contract without the prior written consent of Seller. Seller shall expressly be permitted to assign or transfer, without the prior written consent of Buyer, Seller's right to receive any or all of the payment due from Buyer under these Terms.