

VIRTUAL INSTRUMENTS PURCHASE TERMS AND CONDITIONS

1. Recital.

A purchase order ("Order") from Virtual Instruments or one of its subsidiaries constitutes that Virtual Instruments entity's offer to purchase the products, deliverables, and/or services described or referenced thereon from the seller of such products or services in accordance with the following terms and conditions and any additional terms and conditions printed on the face of the Order that do not conflict with such following terms. These Purchase Terms and Conditions ("Agreement") shall apply to Virtual Instruments' purchase of any products or services offered by Seller and listed in the Virtual Instruments Order, except to the extent any product ("Product"), support service or professional service ("Service") is the subject of a binding separate agreement between the parties, in which case the terms of such separate agreement shall govern over any conflict with the terms of this Agreement.

2. Definitions.

"Virtual Instruments" means Virtual Instruments Corporation, and any entity that owns or is owned or controlled directly or indirectly by Virtual Instruments.

"Seller" shall refer to that entity which is selling certain goods or services to Virtual Instruments under this Agreement and listed in the Order.

3. Entire Agreement.

This Order is governed by and incorporates by reference the terms of this Agreement and subject to the terms in this document, and the Purchase Terms and Conditions shall be deemed accepted by Seller's commencement of performance, provision of Services, shipment of Products, or other indication of agreement to these terms, whichever occurs first, and shall constitute acceptance of this Order and all of its terms and conditions. This Order constitutes the entire agreement between Virtual Instruments and Seller and, except where provided in section 1 above, it specifically supersedes all prior or contemporaneous agreements, arrangements, representations and communications whether oral or written regarding its subject matter, including, without limitation, quotations, proposals, or bids. Virtual Instruments hereby objects to any terms proposed by Seller in Seller's quotation, acceptance or acknowledgment of Virtual Instruments offer which add to, vary from, or conflict with the terms of this Order. Any such proposed terms shall not operate as a rejection of this offer but are deemed a material alteration, and this offer shall be deemed accepted by the Seller without said additional, different or conflicting terms. If this Order is deemed under applicable law to be an acceptance of a prior offer by Seller, such acceptance is limited to and expressly conditioned on Seller's assent to the terms contained within this Order.

4. Price.

The price of the Products shipped or Services performed against this Order shall be as indicated on the face of this Order, which is expressed in US dollars if not otherwise indicated (the "Price"). The Price is inclusive of all of Seller's cost (including labeling, packaging, taxes, duties, insurance and handling).

5. Invoicing and Payment.

Payment is due in US Dollars, per the terms stated on Virtual Instruments' Order. Unless otherwise instructed by Virtual Instruments in writing or in the Order, Seller will invoice Virtual Instruments upon Virtual Instruments' acceptance of the Products or Services or completion of Seller's performance, whichever occurs later. Virtual Instruments objects to any terms or conditions referred to or attached to Seller's invoices. Such terms and conditions shall be of no force or effect, and Virtual Instruments' payment of the invoice shall be made only in accordance with the terms of this Order and shall not be deemed an acceptance of any such terms and conditions. Unless a different period is indicated by Virtual Instruments on the face of this Order, payment is due net thirty (30) calendar days from the date of Virtual Instruments' acceptance of the applicable Products or Services, or from the date Virtual Instruments receives an invoice, whichever occurs later. If there is a dispute that is not resolved within that period, payment will be due ten (10) calendar days after the dispute is resolved and a corrected invoice is received from Seller. Virtual Instruments shall have the right to apply any amounts owed by Seller to Virtual Instruments under this or any other order or obligation to reduce any amounts payable by Virtual Instruments to Seller under this or any other order or obligation.

6. Taxes.

All taxes, assessments, fees, and charges applied by any Government to the Products, and Services or their sale, delivery, shipment or use (collectively, "Taxes") will be added to the purchase price of the Products and Services and will be paid by Virtual Instruments. Seller shall not charge tax if Virtual Instruments is exempt from such taxes and furnishes Seller with a certificate of exemption. Virtual Instruments will be responsible for any sales, use, VAT, or similar taxes, customer duties or any other such assessment however designated. All payments due under this Order will be made without deduction or withholding, unless such deduction or withholding is required by any applicable law of any relevant governmental revenue authority then in effect. If Virtual Instruments is required to so deduct or withhold income or profits tax, Virtual Instruments will pay the required amount to the relevant governmental authority; furnish Seller with evidence of all withholding tax payments paid by it on behalf of Seller which, to the extent permitted by law, will be in the name of Seller. Virtual Instruments shall deliver to Seller all original tax receipts or certified copies or other documentation with respect to the payment of such taxes as Seller may reasonably request promptly after receipt from the relevant tax authority. Seller's invoice shall then be paid net of said withholding tax.

7. Inspection of Order by Virtual Instruments.

Virtual Instruments will check any Order and promptly inform Seller in writing of any error or anomaly within a reasonable period of time from delivery of the Product or Services at Virtual Instruments facility. Virtual Instruments may reject Products or Services that are non-conforming. Seller shall promptly resolve any such notices from Virtual Instruments. Seller will promptly issue a return material authorization ("RMA") to Virtual Instruments for non-conforming Products. Neither Seller's failure to issue an RMA nor Virtual Instruments return of nonconforming Products will affect Virtual Instruments other rights and remedies under this Order or applicable law, including, without limitation, the right to reject or revoke acceptance of non-conforming Products and Services.

8. Deliveries and Shipment.

All Products shall be packed and shipped in accordance with instructions or specifications contained in this Order or provided by Virtual Instruments. In the absence of any such instructions, Seller shall comply with best commercial practices to ensure safe arrival at destination at the lowest transportation cost. Seller's obligation with respect to each item and delivery date shall be separate and distinct. With respect to each delivery obligation contained in this Agreement, unless otherwise stated in this Order, delivery terms shall be FOB destination, or DDP VI's facility per INCOTERMS 2010, for international shipments. Seller shall use its commercially reasonable efforts to deliver in accord with the schedule specified in the Order, however Virtual Instruments reserves the right to withhold payment for items not delivered as scheduled. At the written request of Virtual Instruments, Seller will insure the delivery at Virtual Instruments' expense. Unless specifically instructed by Virtual Instruments, Seller will select an appropriate method of forwarding and routing the Product.

9. Title, Risk of Loss.

Unless otherwise agreed by the parties in writing, title to, and all risk of loss or damage to the Product shall pass to Virtual Instruments upon delivery to Virtual Instruments' facility. After Seller's delivery of the Products to the Virtual Instruments' facility, all charges for unloading of the goods are the responsibility of the Virtual Instruments.

10. Inspection of Product, Claims for Defects.

Virtual Instruments reserves the right to inspect the Product or Services within a reasonable period after delivery or within the period required by applicable law, whichever is longer. Unless otherwise indicated on the face of the Order, Products and Services shall only be deemed accepted when they have actually been counted, inspected, and tested by Virtual Instruments and found to be in conformance with this Order. Seller must be notified promptly in writing of any non-conformance. In the event of any claim by Virtual Instruments regarding the quality of the Product or Services delivered, information on such Product or Services must be promptly offered to Seller for examination. Virtual Instruments' right to reject a Product or Service shall at all times be limited to that portion of the Product or Service actually defective. No Product may be returned without Seller's prior written authorization and return material authorization number. All Products for return must be freight prepaid by Virtual Instruments. Title to Products designated for return by Virtual Instruments and issued an RMA by Seller will immediately revert to Seller. Inspection and acceptance do not relieve Seller of liability for latent defects.

11. Software License.

Software License. Upon shipment to Virtual Instruments, Seller grants to Virtual Instruments a nonexclusive, nontransferable, perpetual, license to use the object code version of the software delivered with the hardware Products or as a standalone Product, and any accompanying documentation ("Documentation"), for Virtual Instruments' business use.

Firmware License. Hardware Products may include pre-installed or embedded software programming and/or microcode (collectively "Firmware"). Seller licenses the use of Firmware at no separate charge, and Virtual Instruments may only use Firmware together with any hardware or device(s) or Product with which the Firmware was licensed and provided.

12. Ownership of Property, Work Product.

Seller shall provide all labor, materials, tools, equipment, personnel, supervision, and facilities necessary to provide the Products or perform the Services described in this Order. All tools, equipment, dies, gauges, models, drawings, or other materials paid for or furnished by Virtual Instruments to Seller ("Property") are, and will remain, the sole property of Virtual Instruments. Property furnished by Virtual Instruments is provided strictly "AS IS" with no warranty whatsoever. Seller bears all responsibility for loss, damage or destruction while Property is within its possession or control. Virtual Instruments will retain ownership of all specifications for the Products and Services provided by Virtual Instruments to Seller under this Order, including all modifications or enhancements made by Seller. Virtual Instruments shall: (i) have title to, and all ownership interest in the Products and any reports or other deliverables provided by Seller in connection with the Order; and (ii) title and all intellectual property rights in any software, specifications, inventions (whether patentable or not) and processes created for Virtual Instruments under the Order, including the copyright in any original works fixed in any tangible medium of expression which were created shall vest in Virtual Instruments upon creation. For Seller-owned or licensed intellectual property in any deliverables provided hereunder, Seller hereby grants to Virtual Instruments a worldwide, non-exclusive, fully paid-up, perpetual, irrevocable, royalty-free, sub-licensable, transferable license to such intellectual property and to use, make, have made, sell, import, modify, reproduce, translate, and distribute such deliverables, in whole or in part, internally and/or to any third party. In respect of any intellectual property vested in a third party, Seller shall obtain from such third party (at no cost to Virtual Instruments or its customers) such permission, waiver or license as necessary for Virtual Instruments to use the deliverables as licensed in this section. Seller shall furnish and execute any additional documents as Virtual Instruments may require establishing ownership by Virtual Instruments of the copyright, patent or any other rights or interests resulting from performance of the Order.

13. Warranty.

Seller warrants the Products and Services sold hereunder shall be (i) new, (ii) free from defects in materials and workmanship and shall conform to Seller's specifications, and, if applicable, acceptance criteria to which Seller has agreed in writing, (iii) do not infringe or misappropriate any copyright, patent, trademark, or service mark, trade name, trade secret or intellectual property right whether conferred by contract, statute, common law or any other law, (iv) and that Seller has not acted unethically, or offered or given, any employee, agent or representative of Virtual Instruments or any government, any gift or gratuity with the intent of securing business from, or favorable treatment by Virtual Instruments. If Products or Services provided by Seller contain third party warranties, Seller hereby assigns such warranties to Virtual Instruments and its customers and upon request shall provide details of such to Virtual Instruments. Virtual Instruments retains sole responsibility for determining whether the Products are fit for the intended use, and for suitability of qualification and acceptance criteria. Claims for defects must be received by Seller in writing within one (1) year from Seller's acceptance of Product or Services on which the claim is based or such longer period as required by applicable law. Seller shall promptly and at its sole expense, and at Virtual Instruments' option: re-perform, repair (at Virtual Instruments facilities), or replace the affected Products or Services or at Virtual Instruments option, provide a refund for the affected Products or Services.

14. Additional Warranties for Software.

For purposes of this Order, the term "Software" means: (i) software or firmware embedded in Products; (ii) free-standing software, provided by Seller to Virtual Instruments in either object code or source code, that works with, or runs on, Products; and (iii) documentation relating to the software or firmware provided by Seller to Virtual Instruments. In addition to the above warranties, to the extent Software is contained in or associated with the Products, Seller represents and warrants that: (A) it shall use industry standard means to detect computer viruses; the Software does not contain: (i) any software virus, malware or computer software code, routines designed to disable, damage, impair, erase, deactivate, or electronically repossess the Software or other software or data; (ii) any copy protection scheme that

interferes with Virtual Instruments' ability to exercise its rights under this Order; (B) the Software will not include any open source software distributed under a license that would subject the Software in whole or in part to any of the terms of any license that requires as a condition of use, modification or distribution of software that such open source software or other software combined or distributed with such open source software be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge, and (C) the Software and its use will comply with applicable law. Seller shall promptly and at its sole expense, and at Virtual Instruments' option: re-perform, repair (at Virtual Instruments facilities), or replace the affected Software or at Virtual Instruments option, provide a refund for the affected Software.

15. Remedies.

Remedies provided herein are cumulative and in addition to those available at law or in equity. If Seller defaults on or breaches its obligations under any provision of this Order or delivers Products or Services that are late, defective, non-conforming, or fail to comply with the warranties in this Order, whether or not apparent upon receipt, Seller shall promptly and at its sole expense, and at Virtual Instruments' option: (i) re-perform, repair, or replace the affected Products or Services, or provide a refund for the affected Products or Services; (ii) expedite late deliveries and performance; (iii) pay for all related costs, including, without limitation, inspection, sorting inventories to isolate affected Products, reworking, retesting, storage, shipping, repackaging, removal, re-installation, expediting, and replacing the affected Products or Services; (iv) pay to Virtual Instruments all costs of investigating, recovering, recalling, repairing or replacing products that incorporate or are otherwise potentially impacted by the affected Products or Services; and (v) pay all other costs, charges, fines, penalties, or damages incurred by Virtual Instruments or its customers related to the affected Products or Services. Seller agrees to immediately re-perform, at Seller's cost and expense, any Services that fail to meet Virtual Instruments' requirements or are not in compliance with the warranties in this Order. Virtual Instruments shall have the right to seek and Seller agrees that Virtual Instruments is entitled to receive specific performance by Seller of its obligations under this Article 15.

16. Indemnity.

Indemnification. Seller shall indemnify, defend and hold Virtual Instruments harmless against any claim that: (i) a Product or Service infringes any third party intellectual property rights, and (ii) death, injury, or property damage caused by the acts or omissions of Seller, its officers, directors, employees, contractors, or agents ("Indemnifying Parties") arising from or connected with the performance of this Order, and pay the resulting costs and damages. Should any such Product or Service become, or in Seller's opinion be likely to become, the subject of such a claim, Seller shall, at its option and expense, (a) procure for Virtual Instruments the right to make continued use thereof, (b) replace or modify such so that it becomes non-infringing, (c) request return of the Product and, upon receipt thereof, refund the price paid by Virtual Instruments, or (d) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation.

17. Limitation of Liability.

EXCEPT FOR CLAIMS UNDER SECTION 13 ("WARRANTY"), 14 ("ADDITIONAL WARRANTIES FOR SOFTWARE") OR 16 ("INDEMNITY") AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NO CLAIM BY VIRTUAL INSTRUMENTS OF ANY KIND FOR DAMAGES SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE PRODUCT IN RESPECT OF WHICH SUCH DAMAGES ARE CLAIMED. VIRTUAL INSTRUMENTS SHALL, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS OR PROFIT, BASED ON ANY ALLEGED BREACH OF WARRANTY, OR ANY OTHER REASON OR LEGAL THEORY ARISING OUT OF THE USE OR HANDLING OF THE PRODUCT OR ITS PERFORMANCE HEREUNDER, TO THE EXTENT THAT SUCH LIABILITY EXTENDS SELLER'S OBLIGATIONS BEYOND THE PRICE PAID TO SELLER FOR THE PRODUCT ON WHICH SUCH CLAIM IS BASED.

18. Legal Compliance.

Seller, and the Products and Services, shall comply with all laws, rules and regulations, ordinances, orders, including without limitation all rules, regulations and provisions relevant to health, safety, human rights, labor, ethics, and the environment (including the bans on materials set forth in the EU Council Directives 2002/95/EC (RoHS) and 2002/96/EC (WEEE)). Seller shall provide Virtual Instruments with a written declaration of compliance upon Virtual Instruments' request. Any service required to achieve compliance hereunder shall be included in the price of the Products and Services. Seller will electronically provide material safety data sheets, chemical safety data sheets, or equivalent documentation for all chemicals sold to Virtual Instruments under this Order. For all chemicals supplied or imported into the

United States, Seller will certify that the chemicals are listed on the Toxic Substances Control Act, 15 USCS §2601, et. seq., chemical inventory, or are subject to an exemption specified in the material safety data sheets.

19. Cancellation, Termination.

Virtual Instruments may terminate all or any part of this Order immediately at any time for its convenience, without liability to Seller, by delivering written notice to Seller. If quantities ordered are reduced or cancelled, Virtual Instruments agrees to pay for all conforming Products shipped not yet paid for, and all finished goods in transit. Failure to comply with the provisions of this Order, deliveries of Products which are defective or which do not conform to this Order, appointment of a receiver, or an assignee for the benefit of creditors, insolvency or inability to pay debts as they become due, except as prohibited by applicable bankruptcy laws, shall entitle Virtual Instruments to terminate this Order without liability. In such event, Virtual Instruments shall be entitled to seek any or all remedies provided in this Order and those provided at law or in equity. Virtual Instruments shall also have the right to seek and Seller agrees that Virtual Instruments is entitled to receive specific performance by Seller of its obligations under this Order. The representations, warranties, indemnities and other obligations that explicitly survive, or by their nature or context are intended to survive, termination of this Order shall survive. Seller may terminate this Order only based on Virtual Instruments' material breach of an obligation under this Order and only after providing Virtual Instruments with thirty (30) days advance written notice and a reasonable opportunity to cure any such breach.

20. Export.

Prior to export, Seller agrees to obtain any licenses required under the applicable export laws of all U.S. Government and foreign agencies including but not limited to the Bureau of Industry & Security, (BIS), governed by the Export Administration Regulations (EAR) and Directorate of Defense Trade Controls (DDTC) governed by the International Traffic & Arms Regulations (ITAR). Seller shall at its own expense obtain and arrange, and maintain in full force and effect all governmental approvals, consents, licenses, authorizations, declarations, filings, and registrations necessary or advisable for any and all uses of the Products by Customer. Seller agrees to hold harmless and indemnify Virtual Instruments, its directors, officers and employees against all losses, claims, penalties, judgments, liabilities and expenses which any of them may pay or incur arising out of this Order, including but not limited to all representations made by the Seller with respect to documentation or other customs or governmental requirements.

21. Force Majeure.

Neither party shall be liable for any nonperformance or delay in performance due to force majeure event or contingencies or causes beyond the reasonable control of such party, including war, sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, fire, accident, explosion, epidemic, quarantine restrictions, storm, flood, earthquake, shortage of labor, fuel, raw material or machinery or technical failure.

22. Applicable Law, Collection, Jurisdiction and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws rule. The parties disclaim application of the United Nations Convention on Contracts for the International Sale of Goods. The parties agree that sole and exclusive venue for any disputes, claims, or causes of action, shall be in the state or federal courts of the State of California, County of Santa Clara. The prevailing party in any litigation hereunder shall be entitled to recover attorney's fees.

23. Miscellaneous.

This Agreement, including all quotes, invoices, and any terms incorporated by reference herein, constitute the sole, exclusive, and fully integrated agreement between the parties relating to the supply of Products, and Services, and supersede all prior or contemporaneous communications, representations or agreements either oral or written, with respect to the subject matter hereof. No addition to or modification of any provisions of this Agreement shall be binding upon Virtual Instruments unless made in writing and signed by a duly authorized representative of Virtual Instruments. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. No course of dealing or usage of trade or course of performance shall be relevant to explain or supplement any term expressed in this Agreement. All notices provided pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of



personal delivery if addressed to the recipient at the addresses set forth in any order or agreement in which this Agreement is invoked.