



InstruTech

Terms and Conditions of Sale

1. SELLER

"SELLER" shall refer to InstruTech.

2. CONSTRUCTION AND LEGAL EFFECT

All sales are subject to the terms and conditions herein established unless otherwise authorized by SELLER. Upon sale, the BUYER agrees to be bound solely by SELLER'S terms and conditions herein. To waive any part of this contract, BUYER must submit a typed request to SELLER. No request for a change of SELLER'S terms and conditions is binding until said waiver is agreed to in writing and signed by an authorized officer of the SELLER.

3. ACCEPTANCE

All orders shall be made out to SELLER and subject to acceptance by SELLER.

Upon the terms and conditions stated in SELLER'S Proposal/Acceptance, an offer to BUYER is constituted, and the contract on the terms set forth herein shall become binding, when accepted by BUYER either by acknowledgment or by acceptance of the product. With such acceptance, BUYER concurs that SELLER need not scrutinize any of the terms, conditions and other provisions contained in any acceptance or purchase order other than to determine product and service ordered, quantities and shipping data. It is agreed by BUYER that SELLER may disregard all terms, conditions and provisions of any such acceptance or purchase order not complying with these Terms and Conditions of Sale. Should notice of any conflicting terms and conditions not be delivered to SELLER within five (5) days after delivered products are received by BUYER, acceptance and acknowledgment of the accuracy of SELLER'S invoice are established.

4. DELIVERY

Dates of delivery, shipment and installation are estimates only, and unless otherwise specified, are figured from the date of SELLER'S receipt of complete Purchase Order. SELLER makes no allowances in estimating such dates and SELLER shall not be liable, directly or indirectly, for delays of carriers or delays from strikes, shortages or stoppages of any sort, labor difficulties, failure or

delay in securing materials or manufacturing facilities, accidents, fires, bad weather or any causes designated as Acts of God or force majeure by a court of law, and the estimated delivery date shall be adjusted accordingly. Unless agreed to in writing by SELLER'S authorized officer, SELLER will not be liable for any penalties or damages, whether direct, indirect, special, or consequential resulting from SELLER'S failure to perform or delay in performing.

5. FAIR LABOR STANDARDS ACT

SELLER certifies compliance with all applicable requirements of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders issued under same, in production of its products.

6. CREDIT AND PAYMENT

If approved by SELLER, terms are net 30 days from date of invoice unless noted otherwise on SELLER'S Proposal/Acceptance. For any reason should there be doubt as to BUYER'S financial responsibility, SELLER may refuse to deliver, or stop goods in transit unless paid for by cash. Pro rata payments shall become due with partial deliveries. If delay in shipment is BUYER'S fault, SELLER may treat the completion date of goods as shipment date for the purpose of payment. Completed goods shall be held at BUYER'S cost and risk, and the right to bill BUYER for reasonable storage and insurance expenses shall be SELLER'S.

When an order is accepted for delivery in installments, SELLER may complete the entire quantity of goods at any time, and thereupon SELLER shall have performed all of its obligations subject to delivery as specified in the order; provided that, upon any default by BUYER after such completion, the balance of the entire purchase price remaining unpaid shall forthwith become due. In the event of noncompliance with established payment terms, SELLER may reserve the right, at its discretion, to withhold further shipments and the balance of orders partially shipped, as well as unassociated orders. Should such withholding of shipment be deemed necessary SELLER shall not be liable for liquidated damages or other penalties assessed



due to late delivery. In the event of noncompliance with established payment terms, SELLER may also, at its option require cash in advance on subsequent shipments, even on unassociated orders where other terms have been previously agreed to by SELLER and BUYER.

7. WARRANTY

SELLER warrants that its products, are free of defects in workmanship and material and fit for the uses set forth in SELLER's catalog or in product specifications, under the normal use and service for which they are intended.

The entire warranty obligation of SELLER is for the repair or replacement, at SELLER's option, of products or parts (examination of which shall disclose to SELLER's satisfaction that it is defective) returned to SELLER's plant, properly identified within the warranty period listed in the product user manual after the shipment from the Seller's plant. BUYER must obtain the approval of SELLER and a return authorization number prior to return of product to SELLER. Warranty does not apply to products or parts not manufactured by SELLER, and SELLER shall not be responsible for the expense of removal or installation of any defective, repaired or replaced part. BUYER is obligated to notify SELLER before returning any product of any exposure of product to dangerous or hazardous materials.

Alteration or removal of serial numbers or other identification marks renders this warranty void. The warranty does not apply to products or components which have been abused, altered, operated outside of the environmental specifications of the product, improperly handled or installed, or units which have not been operated in accordance with SELLER's instructions. Furthermore the warranty does not apply to products that have been contaminated or when the product or part is damaged during the warranty

period due to causes other than ordinary wear to the product including, but not limited to accidents, transportation, neglect, misuse, use of

the product for any purpose other than that for which it was designed.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS LIMITED WARRANTY EXTENDS ONLY IN FAVOR OF THE ORIGINAL BUYER. THE BUYER'S SOLE REMEDY SHALL BE THE REPAIR OR REPLACEMENT, AS IS EXPRESSLY PROVIDED HEREIN, OF ANY WARRANTED DEFECTIVE PRODUCT OR PART, AND UNDER NO CIRCUMSTANCE SHALL SELLER BE LIABLE TO BUYER OR ANYONE ELSE FOR ANY CONSEQUENTIAL DAMAGES TO PERSONS OR PROPERTY, EVEN IF SELLER SHALL HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. THIS EXCLUSIVE REMEDY SHALL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SO LONG AS SELLER IS WILLING AND ABLE TO REPAIR OR REPLACE DEFECTIVE PARTS IN THE PRESCRIBED MANNER. THIS LIMITED WARRANTY MAY NOT BE MODIFIED BY SELLER UNLESS SUCH MODIFICATION OR WAIVER IS IN WRITING, EXECUTED BY AN AUTHORIZED OFFICER OF SELLER.

8. SHIPPING

Unless BUYER otherwise specifies in writing, (a) goods will be boxed or crated as SELLER deems proper for protection against normal handling and an extra charge will be asserted for preservation, waterproofing and similar additions to the protection of goods; (b) routing and manner of shipment will be at the discretion of SELLER and goods may be insured at BUYER's expense for the value stated at time of order. On all shipments, FCA Origin (SELLER's plant), delivery of goods to the initial carrier will constitute delivery to BUYER and all goods will be shipped at BUYER's risk. Any claims for loss or damage in transit must be entered with the carrier and prosecuted by BUYER.



9. CHANGES

By written notice at any time prior to an order completion, BUYER may request changes to the purchase order. SELLER may consider such changes provided SELLER and BUYER agree to adjustment in price and time of performance and the magnitude of the change is such that undue hardship and coincidental costs are not incurred by SELLER.

10. PRICES

All prices, unless otherwise stated, are net FCA Origin (SELLER's plant). Service time of service representative, if required, is not included and may be charged additionally. If applicable, the amount of any applicable present or future tax or other government charge upon the production, sale, shipment or use of goods ordered or sold will be added to billing.

11. TAXES, DUTIES, AND PERMITS: SELLER's prices do not include any sale, use, excise, or similar taxes nor any export, import or other duties. The amount of any such taxes or charges applicable to the sale, use, exportation or importation of the product to be sold hereunder shall be paid separately by BUYER, or BUYER shall provide SELLER a proper exemption certificate in respect thereof. All export and import permits required shall be furnished by BUYER.

12. CANCELLATION OF ORDERS

At SELLER's discretion, purchase order cancellations received prior to shipment of the ordered equipment may be accepted if the following conditions are met:

- a. The canceled equipment is standard stock.
- b. The equipment is in a standard configuration and has not been altered or specifically modified to BUYER's requirements.
- c. The magnitude of the cancellation is such that undue hardship and coincidental costs in returning canceled equipment to stock are not incurred by SELLER.

The decision to impose an order cancellation fee and its amount resides solely with the SELLER.

13. RESTOCKING OF RETURNED EQUIPMENT

The SELLER may accept equipment returned for credit and/or exchange under the following conditions:

- a. The returned equipment is unused and is standard stock and is returned with the prior approval of SELLER within six (6) months of purchase.
- b. Returned equipment which has been altered or modified to meet BUYER's special requirements or which is not in the same "new" condition as when shipped may be refused by SELLER.
- c. SELLER reserves the right to refuse the return of equipment which may cause excessively high inventories.
- d. All material returned to SELLER for restocking will be at the BUYER's expense and risk. The decision to impose a restocking fee and its amount resides solely with the SELLER.

14. OUT-OF-WARRANTY CONDITIONS

This policy has been established to cover repair or replacement of equipment sold by SELLER which has exceeded the warranty expiration date. SELLER agrees to repair or replace such equipment at BUYER's expense under the following terms and conditions:

- a. BUYER is obligated to notify SELLER before returning any product of any exposure of product to dangerous or hazardous materials.
- b. All equipment must be returned to SELLER's plant at BUYER's expense and risk.
- c. The warranty set forth in SELLER's warranty policy for its equipment applies to new equipment only. No warranty, express or implied, applies to equipment repaired and returned under provisions of this policy.
- d. BUYER will be notified immediately if SELLER determines the repair cost per item will exceed 50% of the current selling price of a new replacement. BUYER's advise to repair or replace the defective item must be received before any further action is taken.
- e. All export taxes, fees and duties connected with out-of-warranty shipments outside the continental United States will be the responsibility of the BUYER.

15. EXPORT AND REEXPORT: BUYER acknowledges that the equipment supplied herewith may be subject to U.S. Department of Commerce, Office of Export Administration Rules and Regulations. If equipment is intended for



export or reexport, the BUYER agrees to comply with all U.S. Government Rules and Regulations pertaining to export or reexport of said equipment.

16. **ARBITRATION:** Any controversy or claim arising out of or relating to the terms and conditions of the Sales, or the negotiation or breach thereof, shall be settled by arbitration before a panel of three (3) arbitrators (of whom the chairman shall be a licensed attorney) in Longmont, Colorado in accordance with the Commercial Arbitration Rules of the American Arbitration Association, including also the Association's Supplementary Procedures for International Commercial Arbitration, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

17. **APPLICABLE LAW:** This terms and conditions for and any sale hereunder shall be governed by the laws of the State of Colorado in the United States.

Doc: 458 – rev 100
Released: 06/2004