



For the purposes of these Terms and Conditions of Sale, the term "contract" shall mean the agreement between Hottinger Baldwin Measurements, Inc. ("Supplier") and Buyer arising as a result of Buyer's submission of an order for Supplier's products. Such contract shall be deemed to incorporate and be governed by these Terms and Conditions. **These terms and conditions shall take precedence over any terms and conditions which appear in Buyer's order or in any documents incorporated by reference in Buyer's order. Supplier's acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions set forth herein.** No term or condition of Buyer's order additional to or different from these Terms and Conditions shall become part of the contract unless explicitly agreed to in writing by Supplier. Retention by Buyer of any products delivered by Supplier, or payment by Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Terms and Conditions. Supplier's failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Terms and Conditions nor as an acceptance of any such provision.

1. **Quotations:** Prices, specifications and dates for delivery referenced in Supplier's quotations are for information purposes only and shall not be binding on Supplier until all technical requirements have been agreed and Supplier has accepted Buyer's order. Quotations terminate if not accepted by Buyer within 30 days.
2. **Orders:** By submitting an order to Supplier, Buyer agrees to be subject to these Terms and Conditions of Sale in their entirety. All orders must be bona fide commitments showing definite prices and quantities and mutually agreed shipping dates. No order, whether or not submitted in response to a quotation by Supplier, shall be binding upon Supplier until accepted in writing by Supplier.
3. **Prices and Taxes:** Prices do not include federal, state or local taxes, including without limitation sales, use or excise taxes now or hereafter enacted, or export or import charges or duties, applicable to the products sold in this transaction. Such taxes that Supplier is obligated under law to collect or pay may, in Supplier's discretion, be added by Supplier to the sales price or billed separately and which taxes shall be paid by Buyer unless Buyer provides Supplier with any necessary tax exemption certificate. For purposes of clarity, Buyer shall be responsible for paying directly to the appropriate taxing authority any taxes that Supplier is not obligated to collect and that Buyer is obligated to pay directly (such as use taxes). Unless otherwise agreed, Buyer shall be liable to pay Supplier's charges for transport, packaging, insurance and export and/or import clearance.
4. **Shipment and Delivery:** All products will be shipped *Ex Works* (Incoterms 2000) Supplier's premises in the U.S. (or such other Supplier location agreed in writing between the parties) and may be so shipped in several lots. In the absence of specific instructions, Supplier will select the carrier and ship prepaid (with Buyer invoiced for the shipping cost), but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed to be the agent of Supplier. Buyer must provide its own insurance. Title and risk of loss or damage to all products sold hereunder shall pass from Supplier to Buyer upon delivery by Supplier to the possession of the carrier. Any claims for loss, damage or misdelivery thereafter shall be filed with the carrier. All products shall be deemed finally inspected and accepted within ten days after delivery unless notice of rejection is given in writing to Supplier within such period. Acceptance shall constitute acknowledgement of full performance by Supplier of all obligations under the contract except as stated at Section 10 (Warranties).
5. **Terms of Payment:** Each shipment shall be a separate transaction and Buyer will be invoiced on date of shipment. Unless otherwise stated on Supplier's invoice, terms of payment shall be net thirty (30) days from date of invoice. Supplier may, in its sole discretion, determine at any time that Buyer's financial condition requires payment in advance, and, if such requirement is not met, may cancel the order or any part thereof and receive reasonable cancellation charges. If Buyer fails to pay any payment due hereunder when due, Supplier may recover, in addition to the payment, interest thereon at the rate of 1.5% per month where lawful, otherwise the maximum lawful monthly interest rate, and reasonable collection expenses, including attorney's fees.
6. **Security Interest:** Buyer hereby grants to Supplier a security interest in all Supplier products sold to Buyer as security for the due and punctual performance by Buyer of all of its obligations hereunder. Buyer agrees to execute such documents to evidence and perfect said security interest as Supplier may require, including without limitation financing statements on Form UCC-1.
7. **Contingencies:** Supplier shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control of Supplier, including, by way of illustration but not limitation, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, floods, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Supplier has exercised ordinary care in the prevention thereof. If any such contingency occurs, Supplier may allocate production and deliveries among Supplier's customers.



8. Equipment: Supplier may modify specifications provided the modifications do not adversely affect the performance of equipment to be supplied under the contract (the "equipment"). In addition, Supplier may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or nonavailability of materials from suppliers. To the extent an order consists of third party equipment not sold directly by Supplier (as opposed to Supplier's and its affiliates' Products that are listed on Supplier's product lists) ("Third Party Equipment"), then Supplier shall purchase such Third Party Equipment on Buyer's behalf, passing title and any warranties and any other rights to such Third Party Equipment received by Supplier to Buyer, and Buyer shall pay Supplier the amount specified in the applicable order for such Third Party Equipment. **Buyer's sole rights and remedies with respect to Third Party Equipment shall be governed by the applicable manufacturer's terms and conditions and Buyer shall have no liability under this or any agreement with respect to such Third Party Equipment (other than to deliver the Third Party Equipment identified in the applicable order).** For purposes of clarity, such Third Party Equipment shall not be deemed "Equipment" or "Product" hereunder.

9. Software: Supplier and its licensors and suppliers shall at all times have and retain title and full ownership of all software, firmware programming routines, and documentation thereof supplied by Supplier for use with equipment, and of all copies thereof made by Buyer (collectively "software"). If software is owned by a third party and a license from such third party is being provided to Buyer, then (i) the scope of the rights and entitlements granted to the Buyer shall be determined in accordance with the third party's license terms, which Supplier will include in the delivery and which Supplier will send in advance upon request by Buyer and (ii) Supplier will provide suitable advance notice to the Buyer in the event that software from third parties will be included in the delivery (e.g., by naming the third party manufacturer in the order documentation). The foregoing applies specifically to software such as operating systems and comparable components of the delivered systems. For all other software delivered to Buyer by Supplier for installation and use by Buyer on computers (i.e., software not embedded in equipment), Supplier grants Buyer a non-exclusive and non-transferable license to use such software solely for use in conjunction with the equipment and solely on a single computer system for each copy (other than update or replacement copies) delivered to Buyer. Buyer shall not transfer or otherwise provide such software to any third party except to transfer such software with the applicable equipment to a third party, in which case the software must be completely deleted from the Buyer's system and the media on which it was delivered, including all documentation related thereto, must be transferred to the purchaser of the equipment, such that the Buyer does not keep a copy of the software and that the Buyer no longer uses the software. Buyer shall not, and shall not permit any third party, to: (a) modify or create any derivative work of any part of the software; (b) rent, lease, or loan the software; (c) permit any third parties to use the software; (d) disassemble, decompile or reverse engineer the software or otherwise attempt to gain access to the source code of the software; (e) sell, license, sublicense, publish, display, distribute, assign or otherwise transfer to a third party the software, any copy thereof, or any rights thereto, in whole or in part, except to the extent expressly permitted herein; (f) copy the software except for installing and loading the software into computer memory for the purpose of executing the program and except to make a reasonable number of copies solely for back-up and testing purposes; and/or (g) use the software in a service bureau or software as a service capacity.

10. Limited Warranty; Disclaimer of Warranties:

(a) Supplier warrants that all equipment (and the media on which any software is delivered) shall be free from defects in material and workmanship under normal use for a period of one year from date of shipment to Buyer. Except as expressly set forth in the preceding sentence, Supplier makes no warranty regarding the software, all software is delivered "as is", and Supplier disclaims any warranty that the operation of the software will be uninterrupted or error free. Buyer shall be responsible for determining that the product is suitable for Buyer's use and that such use complies with any applicable local, state or federal law. **Buyer's sole remedy for a breach of the limited warranty contained in this Section 10(a) shall be for Supplier to either, in Supplier's discretion, (i) repair or replace the defective equipment or media, shipment to Buyer prepaid, or (ii) refund Buyer the purchase price paid by Buyer to Supplier for the defective product with Buyer with title to and possession of the defective product reverting to Buyer.** Notwithstanding the foregoing, Supplier shall only have an obligation or liability under this limited warranty if (1) Buyer notifies Supplier in writing of any claimed defect in the product immediately upon discovery, (2) such product is returned to the original shipping point, transportation charges prepaid, within one year from date of shipment to Buyer, (3) the product was not modified, altered or repaired by a party other than Supplier after delivery to Buyer, and (4) upon examination Supplier determines to its satisfaction that such product is defective in material or workmanship, i.e. contains a defect arising out of the manufacture of the product and not a defect caused by other circumstances, including, but not limited to accident, misuse, unforeseeable use, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing. Supplier shall have reasonable time to make such repairs or to replace such product. Any repair or replacement of product shall not extend the period of warranty. This warranty is limited to a period of one year, without regard to whether any claimed defects were discoverable or latent on the date of shipment. If Buyer shall fail to pay when due any portion of



the purchase price or any other payment required from Buyer to Supplier under this contract or otherwise, all warranties and remedies granted under this Section 10 may, at Supplier's option, be terminated.

(b) **Except for the express warranty in Section 10(a), which is in lieu of all other warranties, Supplier disclaims all other representations or warranties, express or implied, with respect to the products, any defects therein, or the delivery thereof of any nature whatever, including without limitation warranties of merchantability or fitness for a particular purpose. Supplier shall not be liable for, and Buyer assumes all risk of, any advice or failure to provide advice by Supplier to Buyer regarding the product or Buyer's use of the same.**

11. Intellectual Property Indemnification: Supplier shall defend any suit or proceeding brought against Buyer to the extent that it is based on a claim that the manufacture or delivery of any product by Supplier infringes a copyright or a United States patent of a third party, and shall indemnify Buyer against all costs, damages and expenses finally awarded against Buyer provided that Buyer notifies Supplier promptly in writing of any such claim and gives Supplier full and complete authority, information and assistance for the defense of such claim and provided further that Supplier shall have sole control of the defense and of the negotiations for settlement, if any, of such claim. If the manufacture or delivery of any product by Supplier is held directly to infringe any United States patent and the use of such product is enjoined, or in case any product may, in the opinion of Supplier, be held to infringe, Supplier may, at its expense and option, either (a) procure for Buyer the right to continue using such product, (b) replace such product with a suitable non-infringing product, (c) suitably modify such product so that it is not infringing, or (d) refund the purchase price of such product, less depreciation at twenty percent (20%) per year, and accept its return. Supplier shall not be liable for any cost or expense incurred without Supplier's written authorization. Supplier shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specification or from a combination with or an addition to the product not manufactured or developed by Supplier or a modification of the product after delivery or the use of product beyond that established by Supplier or approved in writing by Supplier. The foregoing states the entire liability of Supplier, and the exclusive remedy of Buyer, with respect to any alleged intellectual property infringement with respect to products.

12. Limitation of Liability and Buyer Indemnity:

(a) **In no event, regardless of the form of action, shall Supplier be liable for any special, indirect, incidental, punitive, or consequential losses or damages arising out of the sale of its products to Buyer or arising out of anything done in connection with the contract, including, but not limited to, losses or damages arising out of claims for loss of use, business, goodwill, or profits, and claims arising out of third party actions, regardless of whether such third party actions, or any other claims, losses, or damages, were reasonably foreseeable to Buyer or Supplier. The parties agree that, with respect to all claims and damages arising under the contract or otherwise involving the products or Buyer's obligations under the contract, whether based upon contract, warranty, tort (including, but not limited to, negligence, warranty and strict liability), the aggregate liability of Supplier shall not exceed the aggregate purchase price paid to Supplier by Buyer of the products in respect to which damages are claimed.**

(b) Buyer shall indemnify and hold harmless Supplier, its officers, agents, employees, subsidiaries, parents, affiliates and insurers from and against any and all liabilities, damages, losses, claims, lawsuits, including costs and expenses in connection therewith, for death or injury to any persons or loss of any property whatsoever, caused in any manner by Buyer's possession, use or operation of products purchased under the contract, except to the extent due to Supplier's gross negligence or willful misconduct.

13. Intellectual Property: As between Supplier and Buyer, Supplier and its licensors and suppliers own and shall retain all proprietary rights, including any and all patent, copyright, trade secret, trademark and other intellectual property rights, in and to the products delivered to Buyer. Buyer shall not reverse engineer any product. Buyer shall not remove, erase, or modify any copyright, trademark, patent, confidentiality, and/or other notices, marks or legends affixed by Supplier or its suppliers to the products.

14. Rescheduling and Cancellation: Orders accepted by Supplier may be cancelled or rescheduled by Buyer only with the written consent of Supplier (which consent Supplier may withhold for any reason) and upon payment of Supplier's cancellation or rescheduling charges. Buyer must request rescheduling at least 30 days prior to the initial mutually agreed shipping date and the rescheduled delivery date must be less than 30 days from the initial mutually agreed shipping date, otherwise rescheduling may at Supplier's option be considered a cancellation by Buyer. If Buyer cancels order 30 days or fewer from date of acceptance of the order by Supplier, Supplier may recover from Buyer a cancellation charge of 20% of cancelled order purchase price. If Buyer cancels order greater than 30 days from date of acceptance of the order by Supplier, Supplier may recover from Buyer a cancellation charge of 50% of cancelled order purchase price. Supplier shall have the right without penalty or payment to cancel any order accepted (i) if Buyer fails to make any payment when due to Supplier under the contract or any other contract (ii) if any act or



omission of Buyer delays Supplier's performance, (iii) if Buyer violates any of these Terms and Conditions, or (iv) if Buyer's credit becomes impaired; and in the event of such cancellation Supplier shall be entitled to receive reimbursement for its reasonable and proper cancellation charges. Notwithstanding the foregoing, orders for Products with a Product number beginning with the letter "K" are custom built or configured products ("K Products") which may not be cancelled without Supplier's written consent. Supplier may, in its sole discretion, withhold consent for cancellation of an order for K Products or may require payment of cancellation charges in excess of its standard cancellation charges set forth above for non-K Products.

15. Returns; Restocking and Repair Charges: Products accepted by Buyer may only be returned to Supplier (i) as expressly permitted under Sections 10(a) and 11 or (ii) with the written consent of Supplier (which consent Supplier may withhold for any reason), and in each case any products returned must include in the shipping bill the return to manufacture authorization code (RMA Code) provided by Supplier to Buyer for such purpose (and which Supplier shall not unreasonably withhold). If Buyer requests to return products that are not in breach of Supplier's warranty for credit and if Supplier, in its sole discretion, agrees to allow such a return (which consent Supplier may withhold for any or no reason), then the credit amount will be the original purchase price minus a restocking charge of 20% of original purchase price. In addition to the restocking charge, the credit amount will be further reduced by the replacement cost of any missing components and the cost of recalibration and any repair. A fee of \$250 will be charged for the evaluation of non-warranty products returned for repair in addition to payment of Supplier's time to repair such products (at its then current rates) and the cost of any materials, parts or components consumed or incorporated as part of such repair. All return of Products shall be shipped by Buyer at Buyer's expense with risk of loss shifting to Supplier upon delivery at Supplier's facility. Costs for the removal of products returned to Supplier by Buyer and for their re-installation upon return to Buyer after their repair or replacement shall be Buyer's responsibility (regardless why returned).

16. Non-Waiver; Remedies: No waiver of any breach of these Terms and Conditions shall constitute a waiver of any prior or subsequent breach of any similar or dissimilar provision or a modification of the contract. All Supplier rights and remedies, whether evidenced hereby or by any other contract or document, shall be cumulative and nonexclusive and may be exercised singularly or concurrently.

17. Governing Law and Venue; Severability; Interpretation: All questions concerning the validity, operation, interpretation, and construction of the contract will be governed by and determined in accordance with the substantive laws of the Commonwealth of Massachusetts of the United States of America and with United States of America federal law without regard to conflicts of law provisions. Both parties acknowledge and agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to the contract. Other than as necessary to enforce any final judgment, award or determination, any action brought pursuant to or in connection with this Agreement shall be brought only in the state or federal courts within the Commonwealth of Massachusetts and in any such action, both parties submit to the personal jurisdiction of such state and federal courts situated in the Commonwealth of Massachusetts and waive any objections to venue of such courts. If any provision of these Terms and Conditions is held to be unenforceable, such holding shall not affect the enforceability of any other provision. Any legal presumption that terms in this contract shall be strictly construed against the party who drafted such terms or who benefits from such terms shall not be employed in construing and interpreting this contract. Notwithstanding any attempts to resolve differences or negotiations regarding such differences, any action brought by Buyer against Supplier arising out of this contract or Buyer's purchase and use of the products must be commenced within one year after such action accrues and in no event later than two years after date of shipment of such products.

18. Government Contracts: If the products to be furnished under the contract are to be used in the performance of a U.S. Government contract or subcontract, the Government contract number and a statement to that effect shall appear on Buyer's purchase order. If Buyer's purchase order includes all of said information and if said order is accepted in writing by Supplier, then those clauses of the applicable Government procurement regulations which are mandatorily required by Federal statute or regulation to be included in this contract shall be incorporated herein by reference. In all other events, said clauses shall not be incorporated herein by reference. If any software delivered as a product or component of a product is licensed to the U.S. government or for use in the performance of a U.S. government prime contract or subcontract, Buyer agrees that the software is delivered as "Commercial computer software" as defined in DFARS 252.227-7014 (Jun 1995), or as a "commercial item" as defined in FAR 2.101(a), or as "Restricted computer software" as defined in FAR 52.227-19 (Jun 1987) (or any equivalent agency regulation or contract clause), whichever is applicable. Buyer further agrees and acknowledges that such software has been developed entirely at private expense by Supplier and or its licensees and suppliers.



19. **Export:** Regardless of any disclosure made by Buyer to Supplier of the ultimate destination of Supplier products, Buyer shall not export either directly or indirectly any Supplier product, or any system incorporating said product either in contravention of statute or regulation or without first obtaining all required licenses and permits from the United States Department of Commerce and any other relevant agencies or departments of the United States government (or, if being exported from a country other than the United States, in compliance with the applicable laws of such country).

20. **Assignment:** The contract shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. The contract is personal to Buyer, and Buyer may not assign any of its rights or delegate any of its obligations thereunder, in whole or in part, without the prior written consent of Supplier which may be withheld for any reason.

21. **Complete Agreement; Modifications:** This contract constitutes the entire agreement between the parties relating to the sale of the equipment and license of software, supersedes all prior written or oral agreements between the parties with respect to the matters addressed herein, and no addition to or modification of any provision of the contract shall be binding upon Supplier unless agreed in writing by Supplier.

22. **Notices:** Any notice or demand required or permitted to be given by a party under the contract shall be in writing and shall be deemed given (a) when delivered personally, (b) on the next business day after timely delivery to an overnight courier, or (c) on the third business day after deposit in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid), in each case if addressed to the address of the other party set forth in the quotation or to such other address as such party may designate from time to time by such notice.