

Standard Terms and Conditions of Sale of Hottinger Baldwin Measurements, Inc.
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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. 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, applicable to the products sold in this transaction, which taxes 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.

4. **Shipment and Delivery:** All products will be shipped F.O.B. Supplier's premises and may be so shipped in several lots. In the absence of specific instructions, Supplier will select the carrier and ship "collect", 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, provided that Supplier reserves a purchase money security interest in the products. 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 dispatch. 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 1/2% per month where lawful, otherwise the maximum lawful monthly interest rate, and reasonable 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, labour dispute, accident, fire, explosion, floods, storm or other act of God, shortage of labour, 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 the 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.

9. **Software:** Supplier 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 the equipment, and of all copies thereof made by Buyer (collectively "software"). Supplier grants Buyer a non-exclusive and non-transferable licence to use such software solely for use with the equipment. Buyer shall take all reasonable steps to protect Supplier's proprietary interest in the software and shall not transfer or otherwise provide the software to any third party.

10. **Limitation of Warranties:**

A. Supplier warrants that all equipment shall be free from defects in material and workmanship under normal use for a period of three years (one year for weighing load cells) from date of shipment to Buyer save that Supplier does not warrant that operation of the software will be completely uninterrupted or error free or that all program errors will be corrected. Buyer shall be responsible for determining that the equipment is suitable for Buyer's use and that such use complies with any applicable local, state or federal law. Provided that Buyer notifies Supplier in writing of any claimed defect in the equipment immediately upon discovery and any such equipment is returned to the original shipping point, transportation charges prepaid, within three years (one year for weighing load cells) from date of shipment to Buyer and upon examination Supplier determines to its satisfaction that such equipment is defective in material or workmanship, i.e. contains a defect arising out of the manufacture of the equipment 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 at its option repair or replace the equipment, shipment to Buyer prepaid. Supplier shall have reasonable time to make such repairs or to replace such equipment. Any repair or replacement of equipment shall not extend the period of warranty. This warranty is limited to a period of three years (one year for weighing load cells), without regard to whether any claimed defects were discoverable or latent on the date of shipment.

B. 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.

C. The foregoing warranty is exclusive and in lieu of all other representations, warranties and covenants, express or implied, with respect to the equipment and any defects therein 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 equipment or buyer's use of the same. Under no circumstances shall supplier be liable to buyer under any tort, negligence, strict liability, or product liability claim and buyer agrees to waive such claims. Supplier's sole and exclusive liability, and buyer's sole and exclusive remedy, for any nonconformity or defect in the products or anything done in connection with this contract, in tort (including negligence), contract, or otherwise, shall be as set forth in subsection 10A hereof as limited by subsection 10B hereof. This exclusive remedy shall not have failed of its essential purpose (as that term is used in the uniform commercial code) provided that the seller remains willing to repair or replace defective equipment (as defined in subsection 10A) within a commercially reasonable time after receiving such equipment. Buyer specifically acknowledges that seller's price for the equipment is based upon the limitations of supplier's liability as set forth in this contract.

11. **Patents:** Supplier shall defend any suit or proceeding brought against Buyer to the extent that it is based on a claim that any equipment manufactured by Supplier infringes in construction or design a United States patent, 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 any such equipment is held in construction or design directly to infringe any United States patent and the use of said equipment is enjoined, or in case any equipment 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 said equipment, (b) replace said equipment with a suitable noninfringing product, (c) suitably modify said equipment, or (d) refund the purchase price of said equipment, 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 equipment not manufactured or developed by Supplier or a modification of the equipment after delivery or the use of equipment 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 patent infringement by the said equipment.



12. **Limitation of Liability and Buyer Indemnity:** In no event, regardless of the form of action, shall supplier be liable for any special, indirect, incidental, 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. Buyer's exclusive remedy arising out of its purchase and use of supplier's products, or arising out of anything done in connection with the contract, shall be for damages and no claim or claims of any kind, whether based upon contract, warranty, tort (including, but not limited to, negligence, warranty and strict liability), statutory or regulatory provisions, indemnity, contribution, or otherwise, shall be greater in amount in aggregate than the purchase price of the products in respect of which damages are claimed.

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 equipment.

13. **Proprietary Information:** Buyer represents that it has adopted reasonable procedures to protect Proprietary Information, as defined hereafter, including binding agreements with employees and consultants to prevent unauthorized publication, disclosure or use of such during or after the term of their employment by or services for Buyer. Buyer shall not use Proprietary Information except as required for the use of the equipment, shall not disclose Proprietary Information to any third party, and shall not transmit any documents or copies thereof containing Proprietary Information to any third party, except as may be authorized in writing by Supplier. This Section 13 shall survive termination of the contract.

"Proprietary Information" shall mean information or data of Supplier, or a third person to whom Supplier owes obligations of confidentiality, and which is furnished or to be furnished to Buyer in written, graphic or machine-readable form and is marked proprietary or confidential. Where copies or alternative forms of information or data are received from Supplier, such information or data shall be considered Proprietary Information if at least one of said copies or alternative forms is marked proprietary or confidential.

This Section 13 shall not apply to information which Buyer demonstrates was in Buyer's possession prior to receipt from Supplier or information which Buyer demonstrates is or has become available to the public or general knowledge in the industry otherwise than through the fault of Buyer.

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 will be considered a cancellation. If Buyer cancels order 30 days or fewer from date of acceptance by Supplier, Supplier may recover from Buyer a cancellation charge of 20% of cancelled order. If Buyer cancels order greater than 30 days but fewer than 45 days from date of acceptance by Supplier, Supplier may recover from Buyer a cancellation charge of 50% of cancelled order. If Buyer cancels order greater than 45 days from date of acceptance by Supplier, Supplier may recover from Buyer a cancellation charge of 100% of cancelled order. 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.

15. **Returns, Restocking Charges:** Products accepted by Buyer may be returned to Supplier only with the written consent of Supplier (which consent Supplier may withhold for any reason). For products returned to Supplier for credit, 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. A fee of \$250 will be charged for the evaluation of non-warranty products returned for repair.

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. **Applicable Law and Actions to Recover Damages:** The validity, performance and construction of the contract shall be governed by the laws of the State of Massachusetts. 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. Prior to commencement of any legal proceedings, Buyer and Supplier shall meet at a senior level to attempt to resolve differences. 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 equipment must be commenced within one year after such action accrues and in no event later than two years after date of shipment of such equipment.

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.

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 licences and permits from the United States Department of Commerce and any other relevant agencies or departments of the United States government.

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 no addition to or modification of any provision of said agreement shall be binding upon Supplier unless agreed in writing by Supplier.

22. **Notices:** All notices given under the contract shall be in writing, mailed by first class mail, certified or registered, or delivered by hand 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, and shall take effect when received.