

"TERMS AND CONDITIONS OF SALE"

Polyphase Instrument Company

- 1.) **ACCEPTANCE.** With the exception of any other written agreement between the Buyer and Seller in effect that specifically refers to these Terms and Conditions of Sale, this document sets forth the entire understanding between the parties relating to its subject matter and merges all prior discussions, understandings and documents between them. Any amendment to this document or waiver of any provision of it must be in writing, refer to this document and be executed by a duly authorized officer of the party(ies) to be bound thereby.
- 2.) **DELIVERY.** The delivery dates indicated herein are accurately estimated but are not guaranteed. In any event, Buyer shall hold Seller harmless for any delay in performance caused by acts of God, accident or casualty, war or warlike activities, insurrection or civil commotion, supply, labor, engineering or transportation difficulties, acts of any government (with or without valid jurisdiction), or any other causes, whether or not similar in nature to those specified, beyond Seller's control.
- 3.) **F.O.B. POINT and SHIPMENT.** Unless otherwise expressly specified on the face of this document, shipments shall be by carrier selected by Seller. All sales and shipments of goods to destinations within the continental United States and Canada shall be F.O.B. Seller's Plant, unless otherwise specified on the face hereof. Title and risk of loss to all goods furnished hereunder shall pass to Buyer upon Seller's delivery to carrier at shipping point.
- 4.) **SHORTAGES.** Claims for shortages shall be presented in writing to Seller within ten (10) days after receipt of goods by Buyer. Failure to give notice of any claim within said time period shall constitute an unqualified acceptance of the goods and a waiver by Buyer of all claims with respect thereto.
- 5.) **CREDIT TERMS.** If credit terms are shown on the face hereof, and if in Seller's judgement reasonable doubt arises at any time as to the ability of Buyer to pay or Buyer is past due in payment of any amount owing to Seller, Seller may (without liability and without prejudice to any other remedies) postpone any shipment or stop any goods in transit until Seller receives payment of all amounts, including amounts payable under this contract, whether or not then due, which are owing to it by Buyer. For the purposes of this paragraph, separate shipments under this contract will be treated as separate sales.
- 6.) **WARRANTY.** Unless otherwise agreed to in writing, Seller warrants that the goods supplied hereunder shall conform to the description stated herein, that it will convey good title thereto and that the goods will be delivered free from any security interest or other lien or encumbrance at which the Buyer at the time of mailing of this document has no knowledge.

THERE ARE NO WARRANTIES OF MERCHANTABILITY NOR OF FITNESS OF SAID GOODS FOR ANY PARTICULAR PURPOSE NOR IS THERE ANY OTHER WARRANTY EXPRESS OR IMPLIED EXCEPT AS HEREIN ABOVE SET FORTH.
- 7.) **LIABILITY.** Seller's liability and Buyer's exclusive remedy for any cause of action arising out of this contract is expressly limited to replacement by Seller of non-conforming goods F.O.B. Seller's Plant. Seller shall not be liable for any incidental or consequential damages.

In the event Buyer or any purchaser from Buyer shall alter or modify the goods without Seller's prior written consent and any claims are asserted against Seller by reason of such alteration or modification, Buyer shall defend, indemnify, and hold Seller harmless against any and all damages, liabilities, expenses, and costs in connection therewith or resulting therefrom.

In no case shall liability of Seller exceed the sale price of any goods, merchandise or services ordered herein.
- 8.) **INSPECTION AND ACCEPTANCE.** Buyer shall inspect the goods furnished hereunder immediately after delivery and, with regard to standard items listed in Seller's catalog, must make written claim for any errors, deficiencies or imperfections within thirty (30) days of delivery. On special goods made to order, all claims must be made within fifteen (15) days of delivery. Failure to give notice of any claim within said time periods shall constitute an unqualified acceptance of the goods and a waiver by Buyer of all claims with respect thereto.
- 9.) **RETURNS.** Goods may not be returned for credit without written permission of Seller. Goods other than Seller's standard stock product cannot be returned for credit.
- 10.) **TOOLING.** Any special tools, dies, or fixtures which are necessary for completion of orders shall become and remain Seller's property regardless of whether Buyer paid for them.
- 11.) **INFRINGEMENT.** All goods manufactured by POLYPHASE INSTRUMENT COMPANY contain certain trade secrets which constitute the confidential and proprietary information of POLYPHASE INSTRUMENT COMPANY and which are registrable with the United States Copyright Office as unpublished works pursuant to 17 U.S.C. § 408. Unauthorized use, publication, divulgence, copying, adaptation, distribution, and/or display are absolutely prohibited.

Furthermore, goods manufactured, in whole or in part, to Buyer's designs and/or specifications will be manufactured only with the understanding that Buyer will defend, protect, and save Seller harmless against all actions or suits at law or in equity and from all damages, claims, and demands for actual or alleged infringement or contributory infringements of the United States or foreign letters patent by reason of manufacture, sale and/or use of goods to be manufactured.
- 12.) **TERMINATION.** In the event Buyer terminates this contract in whole or in part by written notice to Seller, Buyer shall be liable for termination charges, payable NET CASH, including but not limited to work-in-process, and all costs, direct or indirect, incurred and committed for this contract together with a reasonable allowance for prorated expenses and profits.
- 13.) **PLACE OF BUSINESS.** Seller's only office for the transaction of business is located as indicated on the face of this document, and only duly authorized officials of Seller at that location shall have the power to alter or amend the terms of any contract binding upon seller.
- 14.) **HOLD ORDERS.** All orders not scheduled at time of placement shall be released for delivery no later than one (1) year from the date that this contract was originally ordered, unless otherwise agreed to in writing by a duly authorized officer of Seller.
- 15.) **JURISDICTION.** This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.
- 16.) **ERRORS.** Stenographic and/or clerical errors are subject to correction.
- 17.) **EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER.** POLYPHASE INSTRUMENT COMPANY is an equal employment opportunity employer. Seller agrees to comply with the provisions of executive order 11246, 11375 and any amendment thereto (Non-Discrimination in Employment), and the Fair Labor Standards Act of 1938 as amended provided Seller is not exempted from compliance by reason of the provisions thereof.
- 18.) **TAXES.** Unless otherwise stated, all prices are exclusive of state and local use, sales and similar taxes. Such taxes when applicable will appear as separate additional items on our invoices.