

General Terms and Conditions of Sale for the Americas

1. **Acceptance:** The terms and conditions ('Terms and Conditions') contained herein are applicable to all sales of 'Products' and/or 'Services', and all quotations, order acknowledgements, and invoices from Instron ('Instron') and to all Purchase Orders (PO) from Instron's Buyers ('Buyers') and are the only terms and conditions applicable to the sale of Instron's Products and/or Services. Buyer's Purchase Order (PO), if accepted by Instron, is subject to the terms and conditions set forth herein or as negotiated and agreed to between the Parties, subject to Buyer's credit approval by Instron. **SALES OF INSTRON PRODUCTS AND SERVICES ARE EXPRESSLY LIMITED TO AND MADE CONDITIONAL ON ACCEPTANCE OF ITS CURRENT TERMS AND CONDITIONS OF SALE AND SERVICE, ATTACHED OR THAT CAN BE FOUND AT [HTTP://WWW.INSTRON.US/EN-US/OUR-COMPANY/ABOUT-US/TERMS-AND-CONDITIONS](http://www.instron.us/en-us/our-company/about-us/terms-and-conditions) ('TERMS'). ANY ADDITIONAL OR DIFFERENT TERMS ARE HEREBY REJECTED. COMMENCEMENT OF WORK BY INSTRON OR ACCEPTANCE OF DELIVERY OF PRODUCTS BY YOU CONSTITUTES YOUR ACCEPTANCE OF THE TERMS.** Buyer's acceptance of Products and/or Services called for in PO shall constitute its acceptance of the terms and conditions contained herein. Any changes to these Terms and Conditions must be in writing clearly identifying the change and signed by both Parties.

2. **Prices:** All prices on the order are exclusive of applicable sales, excise, or similar taxes of federal, state, city, or local governments. All such applicable taxes shall be added to the invoice and paid by the Buyer, unless the Buyer presents a tax-exempt certificate. Prices, with applicable taxes, shown on the Acknowledgement are Instron's effective prices at the time the Order was accepted. Any discounts that appear on Instron quotations are applied only to products; Instron services shall not be discounted, except with the express approval of the General Manager, North American Service.

3. **Custom Items:** Custom items or products shall be defined as non-standard Product sold to Buyers that are typically identified having an item number starting with 'CP' or 'S'.

4. **Cancellations:** Orders may not be cancelled without Instron's consent. For standard product orders, a cancellation fee equal to 10% of the order value will be applied if the order is cancelled prior to the final thirty (30) days of the promised ship date and a 20% charge if cancelled within the final thirty (30) days of the promised ship date. For custom products (including custom items purchased with standard testing system orders), the cancellation fee shall be fifty percent (50%) of the custom product or order value if cancelled prior to thirty (30) days of the promised ship date. If a custom product order is cancelled within the final thirty (30) days of the promised ship date, the cancellation fee shall be the full order value (100%) of the custom product order.

5. **Product Returns:** All returns are subject to the terms and conditions of the original sale. **Custom items are not eligible for return, unless factory authorization is obtained.** Items being returned require a Return Material Authorization (RMA) Number prior to the return. To obtain the RMA Number, please contact Instron's Inside Sales Department at (800) 564-8378. The RMA Number must appear on the outside of the package and all pertinent paperwork must be enclosed; otherwise, Instron will not accept the package and it will be returned at Buyer's expense. If an order is shipped in error by Instron or by its supplier, the item must be returned in new and unused condition in the original packaging. Standard items may be returned within 45 days of receipt. If, after inspection, Instron determines that the items are salable as new and unused products, then full credit will be issued. Otherwise, Instron reserves the right to charge a minimum of 20% of the items' original order value in refurbishment and re-stocking charges and to limit the credit for the return to the fair value of the items being returned. Original Equipment Manufacturer (OEM) computers and printers purchased from Instron are not eligible for return.

6. **Shipments:** All shipments are made Ex-Works (EXW) in accordance with the definitions established by the International Chamber of Commerce (INCOTERMS), unless mutually agreed to otherwise, and shall be made in the best and the most cost-effective way. **ANY CLAIM MADE AGAINST INSTRON FOR THE PAYMENT OF LIQUIDATED DAMAGES FOR LATE DELIVERY SHALL IN NO CASE BECOME DUE BEFORE DELIVERY HAS BEEN COMPLETED.**

7. **Terms of Payment:** All payments are NET 30 Days from Invoice Date, subject to credit approval, unless mutually agreed to otherwise; no discount shall be allowed upon receipt of invoice. Payments on purchases which include the requirements of a Letter of Credit (LC) shall be governed by those purchase contracts' terms and conditions. **INSTALLATION DELAYS INCURRED AS A RESULT OF THE BUYER'S FAILURE TO ADEQUATELY PREPARE BUYER'S FACILITY DOES NOT WARRANT A DELAY IN PAYMENT FOR THE PRODUCT PURCHASED.**

8. **Buyer Responsibilities:** The Buyer is liable and responsible for certain actions and responsibilities in preparing the facility, laboratory, or room to accept the equipment purchased and to be installed by Instron. These actions and responsibilities include, but are not limited to, air supply, electrical supply and regulation, cooling water, safe handling and moving equipment, structural integrity of building and floor where testing system shall be located, etc. Please refer to Instron's Customer Responsibilities document, which shall be considered part of these Terms and Conditions for the Buyer's purchase herein or as modified, and/or the Pre-Installation Manual for the Equipment for more specific information for all new testing system purchases. Instron Customer Service in the USA and Canada may also be contacted at (800) 473-7838 for assistance. For outside the USA, please contact the local Instron office or its local representative; details of such contact can be found on Instron's website (www.instron.com). Buyers purchasing retrofits are responsible for their existing testing instruments. In order for a retrofit to be successful, the existing testing instrument must be in full and good operating condition. All safety features on the existing instrument must function correctly and within the manufacturer's specifications. Should any portion of the Buyer's existing frame not function properly, safely and/or within the original manufacturer's specifications, it is the Buyer's responsibility to correct any and all of these deficiencies to return the existing frame to safe and correct working order before the retrofit installation can proceed.

9. **Warranty:** Instron warrants that all new products manufactured and services supplied under this Order shall conform to the specifications, drawings, samples or other descriptions of the product and services being purchased.

a. All testing equipment and systems manufactured by Instron and installed by Instron Service Personnel or its authorized local representative shall be warranted against defects in material and workmanship for a period of one (1) year from the date of delivery, unless

mutually agreed to otherwise in the purchase documents. For retrofit purchases, this warranty is limited to only those components that are installed as part of the retrofit by Instron Service Personnel or its authorized local representative. No warranty is implied or expressly given for the Buyer's existing testing instrument upon which the retrofit shall be installed. The performance and accuracy of a retrofitted or upgraded system is dependent upon the condition of the system prior to retrofit or upgrade. There shall be no implied or expressed guarantee or warranty on the performance or accuracy of the combination of new and existing system components. Retrofit or upgrade specifications stated convey only achievable results for existing systems that are in good working condition prior to the retrofit or upgrade. Prices do not include modifications or repairs to system components that may be possible or necessary to improve performance or accuracy. The operation, use, calibration, maintenance, and repairs associated with the Buyer's existing testing instrument and any existing testing accessories shall remain the responsibility of the Buyer. The Buyer shall be solely responsible for ensuring the existing testing instrument upon which the retrofit is to be installed is in proper and safe working condition and fully operational prior to the retrofit installation visit by Instron Service Personnel or Instron authorized representative. Unless otherwise provided herein or in the Buyer's purchase and order, any repairs to the Buyer's existing testing instrument shall be the subject of a separate quote, purchase, and/or order.

b. All equipment purchased from Instron but not installed by Instron Service Personnel or Instron authorized representative shall be warranted against defects in material and workmanship for a period of one (1) year from the date of delivery.

c. New equipment warranties are NOT transferable, unless approved by Instron. After transfer of title, Instron shall not be liable for damage to or destruction of equipment that occurs or which persons other than Instron employees or representatives cause. Instron shall have no liability for damages of any kind arising from the installation and/or use of equipment and/or for failure to perform proper maintenance by anyone other than Instron employees. The Buyer, by acceptance of the equipment, assumes all liability for any damages or injuries that may result from its use or misuse by the Buyer, Buyer's employees, or by others. Instron will prepay transportation for all equipment returned to Instron during the warranty period. Unless otherwise noted by Instron, reconditioned systems are provided with a one-year warranty. Instron reserves the right to address reconditioned system warranty via exchange in lieu of performing field repair.

d. The warranty information contained herein shall not apply to parts purchased through the Instron Parts Warehouse. The purchase of these parts shall be governed under the terms and conditions for them at the time of purchase from the Parts Warehouse or from Instron Service Personnel.

THERE SHALL BE NO EXPRESS OR IMPLIED WARRANTY, GUARANTEE, OR LIABILITY EXCEPT AS STATED HEREIN. INSTRON SHALL NOT BE LIABLE TO BUYER FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS PRODUCTS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER EQUIPMENT, PRODUCTS, MATERIALS, OR SUBSTANCES FROM A THIRD PARTY, OR OTHERWISE. IN NO EVENT SHALL INSTRON'S LIABILITY UNDER THESE TERMS AND CONDITIONS OR IN CONNECTION WITH THE SALE OF PRODUCTS BY INSTRON EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES FOR WHICH ANY CLAIM IS MADE.

10. **Software License Agreement:** The Software License Agreement (SLA) that accompanies all software purchases shall pertain and govern the Buyer's use, rights, software warranty, limitations, and restrictions. By purchasing and using Instron software, the Buyer hereby agrees to be bound by the terms of the SLA. Any software updates accessed and downloaded electronically shall be bound by the SLA of the original purchase. Instron's SLA may be viewed at Instron's homepage (www.instron.com) under 'Our Company' and 'About Us'. The transfer of Instron software is prohibited unless authorized by Instron.

11. **Confidential Information:** All information furnished or made available by Instron to Buyer in connection with the subject matter hereof shall be held in confidence by Buyer. Buyer agrees not to use (directly or indirectly), or disclose to others, such information without Instron's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Buyer of any obligation herein; (b) Buyer can show by written records was in Buyer's possession prior to disclosure by Instron; or (c) is legally made available to Buyer by or through a third party having no direct or indirect confidentiality obligation to Instron with respect to such information.

12. **Ownership of Intellectual Property:** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or Intellectual Property disclosed or otherwise provided to Buyer by Instron and all rights therein (collectively, 'Intellectual Property') will remain the property of Instron and will be kept confidential by Buyer in accordance with these Terms and Conditions. Buyer shall have no claim to, nor ownership interest in, any Intellectual Property and such information, in whatever form and any copies thereof, shall be promptly returned to Instron upon written request from Instron. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any Intellectual Property, other than the limited right to use the Instron's proprietary Products purchased from Instron.

13. **Use of Trademarks and Trade Names:** Buyer shall not use, directly or indirectly, in whole or in part, Instron's name, or any other trademark or trade name that is now or may hereafter be owned by Instron (collectively the 'Trademarks'), as part of Buyer's corporate or business name, or in any way in connection with Buyer's business, except in a manner and to the extent authorized herein or otherwise approved by Instron in writing. Buyer hereby acknowledges Instron's ownership of the Trademarks and the goodwill associated therewith. Buyer shall not infringe upon, harm or contest the validity of any Trademarks. Buyer shall be entitled to use the Trademarks only in connection with the promotion or sale of the Products pursuant to the terms of the Agreement. Buyer shall reproduce the Trademarks exactly as specified by Instron. Buyer shall not use the Trademarks in combination with any other trademarks or names. Buyer agrees that it will not

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register or attempt to register any Trademark or any colorable imitation thereof (including any non-English language variation thereof), or use such Trademarks for any products or for any purposes other than those set forth in the Agreement. Buyer shall not at any time during or after termination of the Agreement use in its business any other trademark that is similar to or in any way resembles the Trademarks so as to be likely to cause deception or confusion with the Trademarks. Buyer shall provide reasonable cooperation to Instron with respect to any efforts of Instron to protect, defend, or enforce its rights to the Trademarks. Should Buyer cease being an authorized customer of Instron for any reason, Buyer shall immediately discontinue any formerly permitted use of Instron's name or the Trademarks.

14. Indemnification: For services performed on Buyer's site associated with Products purchased pursuant to these Terms, Instron agrees to indemnify Buyer for sums Buyer becomes legally obligated to pay as damages for bodily injury or property damage caused by 'Instron's fault.' 'Instron's fault' is defined as: (i) a manufacturing defect, design defect (if designed by Instron), or negligent failure to warn with respect to products designed by Instron and supplied to Buyer by Instron; or (ii) the gross negligence or willful misconduct of Instron's employees or agents in connection with the installation or service of Instron's products or equipment. Instron further agrees to indemnify Buyer for reasonable legal expenses it incurs defending itself against any suits seeking such damages. Instron shall have no obligation to indemnify Buyer for any damages caused by Buyer's fault or for any legal expenses incurred by Buyer in defending itself against suits seeking damages caused by Buyer's fault. To the extent any suit involves claims against Buyer based on both Instron's fault and Buyer's fault, Instron's obligation to indemnify Buyer for both damages and legal expenses shall be an allocated share, determined by agreement of the parties, or if the parties fail to agree, final judicial resolution of the proportion of liability imposed on each party. It is a condition of this indemnity that Instron be given prompt written notice of any claims and that Buyer fully cooperates in any defense to such claims. Instron acknowledges to Buyer that it maintains comprehensive general liability insurance, including completed operations, and contractual liability with minimum bodily injury and property damage which will protect and indemnify Buyer against any and all damages as stated above. If requested, Instron shall provide a certificate of insurance to Buyer with Buyer as certificate holder and providing for 30 days' notice of cancellation or non-renewal. **UNDER NO CIRCUMSTANCES SHALL INSTRON BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, CONTINGENT, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS.** The term of this indemnity shall be for one (1) year from the date of delivery or for the term of the warranty of Buyer's purchase herein which includes services performed by Instron on Buyer's site, after which it shall have no further force or effect.

15. Export Sales: Subject to the above conditions, special packing and crating will be added to the invoice, if necessary.

16. Export Control: The Buyer acknowledges that the Goods, Services, and Technology herein are subject to the export control regulations of the United States, as amended, and agrees, as a condition of acceptance of this quotation/contract and issuance of any subsequent order or contract hereto, that the Goods, Services, and Technology will not be used for purposes associated with any chemical, biological, or nuclear weapons or with any missiles or armament capable of delivering such weapons, or in support of any terrorist activity or any other weapons of mass destruction (WMD) end use. Nor, will they be re-sold or transferred if it is known or suspected that they are intended for such purposes. This agreement is subject to acceptance that the export of Goods, Services and Technology hereunder is contingent upon the export controls of the United States, and, in the event that the requisite governmental authorizations cannot be obtained, Instron shall not be liable to the Buyer in respect of any bond or guarantee or for any loss, damage, consequences or other resultant financial penalty.

17. Force Majeure: Delivery dates indicated on quotations or on Order Acknowledgements are estimated and not guaranteed. Instron shall not be liable or responsible for failure to perform or delay in performance or delivery of any Products or Services due to (a) fires, floods, strikes or other labor disputes, accidents, sabotage, terrorism, war, riots, acts of precedence or priorities granted at the request or for the benefit, directly or indirectly, of any federal, state or local government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, restrictions imposed by federal, state or local laws, rules or regulations; or (b) any other cause beyond the control of Instron. In the event of the occurrence of any of the foregoing, the time for performance shall be extended for such time as may be reasonably necessary to enable Instron to perform the terms of the sale.

18. Integration Clause: These Terms and Conditions constitute the terms and conditions to the contract of sale and purchase between Buyer and Instron with respect to the Products or Services covered by these Terms and Conditions, and supersedes any prior agreements, understandings, representations, and quotations with respect thereto. No modification hereof shall have any force or effect unless in writing and signed by the Party claiming to be bound thereby.

19. Waiver: No failure of Instron to insist upon strict compliance by Buyer with these Terms and Conditions or to exercise any right accruing from any default of Buyer shall impair Instron's rights in case Buyer's default continues or in case of any subsequent default by Buyer. Waiver by Instron of any breach by Buyer of these Terms and Conditions shall not be construed as a waiver of any other existing or future breach.

20. Limitation of Actions/Choice of Law/Litigation Costs. Unless agreed to by the Parties, any dispute arising out of or related to these Terms will be governed by and construed according to the laws of the State of Illinois and litigated exclusively in a state or federal court located in Cook County, Illinois. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms or to a purchase using these Terms. If either party commences litigation or mutually agreed upon alternative dispute resolution concerning any provision of the Agreement, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their attorney's fees in such litigation or mutually agreed upon alternative dispute resolution, provided that if each party prevails in part, such fees will be allocated in the manner as the court or arbitrator determines to be equitable in view of the relative merits and amounts of the parties' claims.

21. Survival: Any provisions in these Terms and Conditions herein which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.

22. Severability: If any provision herein shall be held to be unlawful or unenforceable, the remaining provisions herein shall remain in full force and effect.