



## **HDI INSTRUMENTS TERMS AND CONDITIONS**

### **1. ACCEPTANCE OF TERMS**

Any written or oral purchase order received from Buyer by HDI INSTRUMENTS, LLC, (referred to herein as “Seller” or “HDI”) shall be construed as a written acceptance of Seller’s offer to sell Seller’s products and services (referred to collectively as “Product or Products”) and shall be filled in accordance with the terms and conditions of sale set forth herein (the “Terms”). Seller’s acceptance of an order is expressly conditioned on Buyer’s agreeing to the Terms. The Seller’s proposal (if any) and acknowledgment shall prevail over any conflicting or different terms in Buyer’s order and supersedes all prior and contemporaneous understandings, dealings and negotiations between Buyer and Seller. Any terms and conditions that are different or inconsistent with these Terms are rejected unless expressly agreed to by an officer of the Seller in writing. The failure of Seller to object to any provision in conflict herewith, whether contained on Buyer’s purchase order or otherwise, shall not be construed as a waiver of the provisions hereof nor as an acceptance thereof.

### **2. QUOTATIONS AND PRICES**

Prices quoted are valid for thirty (30) days unless specifically stated otherwise on the quotation and are subject to change without notice. Any transportation charges shall be paid by Buyer in addition to the prices herein quoted. If the product or services prices are increased, the prices in effect immediately prior to the increase will apply to the unshipped portion of all firm orders for a period of sixty (60) days following the effective date of the increase. If published prices are reduced, the prices in effect at time of shipment will apply. All shipments are Ex Works Prepay and Add at Seller’s factory, Houston, TX On sales to points outside the United States, all export duties and fees related to insurance, dockage fees and other foreign charges to which Seller is required to pay, shall be paid by Buyer in addition to the prices quoted herein. Items will be packaged to conform to standard commercial practices of HDI. Seller endeavors to pack or prepare all shipments so that they will not break or deteriorate in transit, but does not guarantee against such damage.

### **3. TAXES**

Any tax or other charge imposed by law on the sale or production of goods or the performance of services shall be paid by the Buyer, unless the law specifically provides that such payment must be paid by the Seller, in which case Buyer shall reimburse Seller for such payment as part of the purchase price. All sales, use, local, state or other governmental levied tax, custom duties, consular fees, import/export duties, or taxes, and other comparable tax charges will be borne by the Buyer. Buyer may provide HDI with a tax exemption certificate acceptable to the taxing authorities.

### **4. SHIPPING SCHEDULES, DELIVERY, EXCUSABLE DELAYS**

Shipment schedules are given as accurately as conditions permit and every effort will be made to make shipments as scheduled. Seller will not be responsible for deviations in meeting shipping schedules nor for any losses or damages to Buyer (or any third party) ) if such failure or delay is caused by, or results from, acts beyond Seller’s reasonable control, including fire, flood, shortages or failure of raw materials, supplies fuel, power or transportation, breakdown of equipment,

drought, acts of nature, war, hostilities, terrorist threats or acts, riot or other civil unrest, strikes, lockouts, slowdowns or other labor unrest, delay in transportation, shortage of power, unavailability of raw materials, embargo, government action, earthquake, explosion, national or regional emergency, or by acts or omissions of Buyer, including Buyer's failure to promptly comply with the terms of payment. Seller shall have additional time within which to perform as may be necessary under the circumstances and shall have the right to apportion its production among its customers in such a manner as it may consider to be equitable.

#### **5. FINAL INSPECTION AND ACCEPTANCE**

Buyer shall perform final inspection and acceptance at Buyer's facility within thirty (30) days of receipt of equipment. Unless HDI is notified to the contrary, in writing, during said period, items delivered shall be presumed to be accepted by Buyer.

#### **6. PAYMENT TERMS**

Terms of payment are 30 days from date of invoice unless otherwise stated in the quotation or Seller's acknowledgment. Buyer hereby agrees to submit reasonable financial information from time to time as required by HDI. In the event Buyer fails to make payments when due, or otherwise defaults hereunder, HDI may at its sole discretion: (i) suspend credit and delay shipment until such terms are met; and /or (ii) alter the terms of payment; and/or (iii) cancel any order then outstanding and receive reimbursement for cancellation and/or restocking charges as applicable; and /or (iv) pursue any other remedies available at law or equity. A charge of 1-1/2% interest on the unpaid amount per month, or the maximum rate allowed at law, whichever is less, will be charged on past due accounts. Buyer shall be responsible for and pay reasonable attorney's fees and other collection costs incurred to collect any past due account. Seller reserves the right to sell on a cash basis at any time.

#### **7. LIMITED WARRANTY**

HDI warrants to Buyer (and not to any third party) each item of its manufacture to be free from significant material defects and workmanship for a period of one year from original purchase. This one year warranty does not apply to any product made by Seller that is a special order or custom product. Custom work will have no warranty.

**THE SELLER WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, THE PRODUCTS ARE PROVIDED ON AN "AS-IS" BASIS AND SELLER EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, COVENANTS, GUARANTEES AND/OR ASSURANCES, EXPRESS OR IMPLIED, RELATING TO OR ARISING OUT OF THE PRODUCTS, ANY ORDER, AND/OR THESE TERMS AND CONDITIONS, INCLUDING ANY REPRESENTATIONS, WARRANTIES, COVENANTS AND/OR GUARANTEES AS TO ACCURACY, UNINTERRUPTED OR ERROR-FREE OPERATION, ACCESSIBILITY, SECURITY, MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUE OR OTHERWISE, OR FROM A COURSE OF DEALING OR USAGE OR TRADE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SELLER OR ANY AUTHORIZED REPRESENTATIVE OF SELLER SHALL CREATE A REPRESENTATION, WARRANTY,**

**COVENANT, GUARANTEE AND/OR ASSURANCE. ANY SUCH INFORMATION OR ADVICE IS GIVEN AND ACCEPTED AT BUYER'S OWN RISK.**

**Products under the warranty and within the warranty period, will be shipped replacement parts free of charge and returned to the point of original sale provided that: (i) prior approval is obtained from the Seller; (ii) the defective unit is returned freight prepaid by the Buyer to the Seller; and (iii) the unit has not been damaged by misuse, neglect, improper operation, accident or alteration, as determined by HDI. Cost of labor for installing a repaired or replacement part shall be borne by Buyer. Equipment beyond the warranty period will be repaired only after Buyer has authorized quoted repair charge.**

**8. LIMITATION OF LIABILITY**

**THE SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR CONSEQUENTIAL DAMAGES, COLLATERAL, INDIRECT, EXEMPLARY OR INCIDENTAL DAMAGES (COLLECTIVELY CALLED "OTHER DAMAGES") ARISING OUT OF OR IN CONNECTION WITH ANY ORDER OR THE INSTALLATION, USE, OPERATION, REPAIR, REPLACEMENT OR SERVICE OF ANY PRODUCTS FURNISHED, INCLUDING WITHOUT LIMITATION, BREACH OF ANY OBLIGATION IMPOSED ON THE SELLER UNDER, OR IN CONNECTION WITH, ANY ORDER. OTHER DAMAGES FOR PURPOSES OF THIS PARAGRAPH SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON, OR LOSS OF, OR DAMAGE TO, PROPERTY (INCLUDING WITHOUT LIMITATION PROPERTY HANDLED OR PROCESSED BY THE USE OF THE PRODUCT.)**

Seller hereby notifies the Buyer that Seller assumes no liability or responsibility resulting from failure or success of its Products, as Seller is not responsible or asked to approve the Buyer's final assembly. Therefore, written approval of final user's design and quality control testing must be obtained by Buyer from Seller in order to activate any warranty.

**9. CANCELLATION/RESCHEDULING**

All purchase orders will be considered to be final and binding if not cancelled or modified within 72 hours of its receipt by Seller. Cancellations thereafter may be subject to a cancellation charge (minimum 10% of the price of the order). All returns will be accepted at the discretion of Seller and merchandise credits will be issued for acceptable items. Returns will be subject to a restocking charge of at least 20% of the actual purchase price after product(s) have been returned to Seller. All special or custom orders, will be considered non-returnable and non-cancellable. Custom orders will have a down payment requirement of 50% of the cost of the custom parts before the custom order will be processed. No goods may be returned for credit or adjustment without written permission from an officer of the Seller.

Rescheduling an order may result in a rescheduling fee if parts or labor have been expended or committed by Seller prior to the rescheduling, or if the revised delivery date falls beyond the original delivery date, or if a price increase will be in effect at time of revised shipping date. Any rescheduling of an order must be agreed upon, in writing, by Seller in advance of such rescheduling.

## **10. CHANGES**

HDI reserves the right to modify or change the Product, in whole or in part, at any time prior to delivery in order to include improvements deemed appropriate by HDI but without incurring any liability to modify or change any equipment previously delivered.

## **11. ENTIRE AGREEMENT**

The Terms herein may not be modified or rescinded nor any of its provisions waived, unless such modification, recession or waiver is in writing and signed by an authorized officer of Seller at its office in Houston, Texas. Failure of Seller to insist in any one or more instance upon the performance of any of the terms and conditions of the contract or the failure of the Seller to exercise its rights hereunder shall not be construed as a waiver or relinquishment of any such term, condition, or right hereunder and shall not effect Seller's right to insist upon strict performance and compliance with regard to any portions of this contract or future performance of these terms and conditions.

## **12. SEVERABILITY**

In the event that any court of competent jurisdiction holds any provision contained herein to be invalid or unenforceable, the remaining provisions will not be affected thereby and shall remain in full force and effect. The failure of HDI to insist upon strict performances of any of the provisions contained herein shall in no way constitute a waiver by HDI or any of the other provisions or subsequent default by Buyer in the performance of or compliance with any of the terms and conditions set forth herein.

## **13. CHOICE OF LAW AND FORUM**

**THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF TEXAS AND WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. BUYER AGREES TO INITIATE ANY DISPUTE PROCEEDING IN TEXAS AND IRREVOCABLY CONSENTS TO EXCLUSIVE JURISDICTION OF THE COURTS LOCATED IN HARRIS COUNTY, TEXAS. EACH PARTY CONSENTS TO THE PERSONAL JURISDICTION OF THE STATE OF TEXAS AND WAIVES ANY OBJECTION THAT SUCH COURTS ARE AN INCONVENIENT FORUM. ANY CLAIM AGAINST THE SELLER SHALL BE INITIATED BY BUYER WITHIN ONE YEAR AFTER THE CLAIM ARISES, OR BE BARRED. THE U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO GOODS SUPPLIED BY SELLER TO BUYER.**

## **14. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

A. Buyer agrees to hold in confidence and not to disclose, or use for any purpose other than the sale of products and services by Seller to Buyer hereunder, all confidential or proprietary information, technical data, know-how, business related information including but not limited to pricing, manufacturing or marketing, research, designs, samples, methods, processes, specifications, drawings, results, models, or any work product which is: received or ascertained by Buyer, directly or indirectly, from Seller; or was originated or otherwise acquired by Buyer in connection with, as a result of, or incident to the sale of products or services by Seller to Buyer hereunder. Nothing herein shall preclude a party from providing

such information to any court of competent jurisdiction, or any federal, state, or local agency. This Section shall not apply to any information lawfully acquired by a third party not under an obligation of confidentiality and who possesses the legal right to disclose such information.

B. Upon termination of these Terms and Conditions, Buyer may request that Seller return or destroy Buyer's confidential information, and Seller may request that Buyer return or destroy Seller's confidential information. Notwithstanding the foregoing, the parties may retain one copy of all such documents and information as necessary to comply with the requirements of these Terms and Conditions, or any law, rule, or regulation.

## **15. NON-DISCLOSURE**

Buyer acknowledges that all non-public-domain aspects of the design and construction of HDI's products are protected intellectual property (**IP**) rights belonging to HDI. Seller will retain all rights, title and interests in and to any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how, or other intellectual property embodied, used in or otherwise related to the Products. Buyer will not cause or permit: (a) the reverse engineering, decompilation or reverse assembly of all or any portion of the Products; or (b) modify, enhance or create derivative works of the Products, except as may be expressly permitted herein or in a separate agreement. Buyer will respect and protect HDI's IP rights. Buyer will not directly or indirectly (e.g. through an affiliated person/company) copy or imitate any of HDI's protected products without first obtaining HDI's written authorization and consent thereto. If Seller discloses or grants Buyer access to any research, development, technical, economic or other business information or "know-how," then Buyer will not use or disclose any such information to any other person at any time, except as may be necessary in the performance of this order, without Seller's written consent. Buyer shall use such information only to perform this contract.