

# TERMS AND CONDITIONS OF SALE

## Ludlum Measurements, Inc.

---

**1. RECITALS** These Terms and Conditions of sale (hereinafter "T&Cs") are considered by all parties to any transaction with Ludlum Measurements, Inc (LMI), or any entity owned by or subsidiary of LMI (hereinafter "Seller"), whether said transaction be for the design, manufacture, production, sale, purchase or delivery of any equipment or product sold by LMI or performance of any service provided by LMI, whether same be on an LMI product or one manufactured or delivered by another entity, (hereinafter collectively "Products"), to be a part of any agreement for purchase of any product or service the same as if it were included in the agreement, whether said agreement be purchaser's (hereinafter "Buyer") purchase order, order, quote, draft, memorandum of sale (or any other document evidencing an agreement of the parties) or any sale, license or actual delivery of products or services by Seller to Buyer. Buyer's submission of a request for quote, purchase order, order, memorandum of sale or other document by which Buyer seeks to purchase products or services or Buyer's receiving or using any product or accepting any service constitutes Buyer's acceptance of these terms and conditions of sale whether or not any other writing exists and Buyer accepts all terms herein as normal and customary course of dealing with Seller. These T&Cs are deemed by the parties as a "writing", executed by the parties the same as if these T&Cs were included in the original purchase order, order, quote, draft, memorandum of sale or upon any sale, license or actual delivery of products or services by Seller to Buyer, any confirmation of receipt by buyer or any partial payment by Buyer is deemed by the parties as a writing intended to comply with Texas Business and Commerce Code, Sect 2.201 (Vernon's 2019) and Sect. 2-201, Uniform Commercial Code (Statute of Frauds) by both Buyer and Seller.

Seller does hereby expressly reject any additional or different term to these T&Cs and does not by its action or inaction, accept any different or additional terms unless same be in writing, signed by an authorized representative of both Buyer and Seller contemporaneously with or subsequent to the date of Buyer's original offer to purchase any product from Seller.

**2. TERMS OF PAYMENT** Unless otherwise agreed in writing, signed by Seller, all amounts due and owing from buyer to seller are due in U.S. Dollars and must be tendered to Seller, as invoiced, prior to Seller making the products available to Buyer at Seller's facility for transport. If Seller has agreed to extend credit to Buyer, in writing, the balance is due and payable in U.S. dollars within thirty (30) days from the date of the invoice. All sums are payable as designated on the invoice. Seller may decline to fulfill any order in the absence of satisfactory credit or other security arrangements by Buyer.

**2.1 Overdue Accounts:** all overdue accounts may bear interest at the rate of 18% per annum or the maximum rate permitted by law and any past due amount entitles Seller to suspend performance and constitutes a breach of this agreement by Buyer.

**2.2 Partial Delivery:** In the event of partial delivery, Buyer will pay for the products delivered as reasonably determined by Seller. Each delivery constitutes a separate transaction hereunder.

**2.3 Security Interest:** Seller retains a security interest in all Products until amounts due are paid in full. Buyer authorizes Seller to file and will execute, upon Seller's request, all documents necessary for seller to perfect its security interest in the Products.

### **3. TAXES, DUTIES, SHIPPING AND OTHER CHARGES**

**3.1 Seller's Exclusions:** Unless otherwise agreed in writing, all amounts quoted or agreed to by Seller may not include sales tax or withholding tax; customs duties, import or export duties, other taxes and charges; transportation, freight insurance or shipping costs or any special packaging requested by Buyer. Any such taxes, costs or charges will be paid by Buyer or reimbursed by Buyer to Seller within thirty (30) days from the date such amounts are expended by Seller and shall be considered an overdue account as defined herein if not paid within thirty (30) days. If withholding taxes apply, Buyer will increase or 'gross up' the invoiced amount to ensure that Seller receives the invoice amount, in U.S. Dollars.

**3.2 Buyers Obligations:** Buyer will pay, in addition to the amounts quoted (for individual Products and the sum of all Products in the order) an amount equivalent to present or future customs duties; sales, use, excise, or similar tax applicable to the sale of Products or performance of services provided by Seller to Buyer. Buyer shall bear all costs of special or export packaging requested by the Buyer. Buyer may provide Seller with a certified tax exemption certificate in satisfaction of tax obligations, provided, however, Buyer remains obligated for such amounts should said certificate be deemed insufficient or inapplicable in the jurisdiction in which the charges are assessed or in the place of performance hereunder.

**4. DELIVERY TERMS** Delivery will be EXW (Ex Works, INCOTERMS 2010) Seller's site; that is, Seller will deliver the Products (without loading) for Buyer's disposal at Seller's facility. Buyer assumes all risk and all costs upon the Products

when Seller has made products available for loading onto whatever mode of transport Buyer selects, whether same has left the Seller's facility or not.

**4.1 Delivery Dates:** Seller will estimate a delivery date or dates and will in no event be in breach of its obligations to Buyer, or be liable to Buyer if delivery, in whole or in part, is made within a reasonable time after the estimated delivery date. Seller shall have the right to amend or modify any delivery date, in whole or in part, at Seller's sole and absolute discretion.

**4.2 Title to Products:** Title passes to Buyer and Buyer becomes solely responsible for and assumes all risk of loss or damage to the Products upon the earliest date when Seller first made the Product available to Buyer at Seller's facility (EXW, Seller's site, as set forth hereinabove).

**4.3 Services, Delivery:** Services are considered "delivered" and charges incurred when Seller's authorized representative presents at Buyer's facility or other designated service location, properly equipped and prepared to perform the agreed upon service. Any interruption of work as a result of any act or omission of Buyer does not mitigate Buyer's obligation to pay for such services.

## **5. ORDER CANCELLATION, RETURNS**

**5.1 Cancellations:** In the event Buyer cancels an order, Buyer shall be obligated to Seller for Seller's reasonable Cancellation Fee, including reasonable profit on the cancelled order, pro-rata completion of the Buyer's order as of cancellation date (provided Seller delivers that part of the order completed prior to cancellation to Buyer in accord with delivery requirements in paragraph 4, above).

**5.2 Returns:** To the extent Buyer wishes to return tangible goods, maintained by Seller in stock or as a product that is standard production of Seller, Buyer may, with the express written consent of Seller, return such items previously delivered provided such goods are in "as new and saleable" condition within thirty (30) calendar days from invoice date. Buyer pays for shipping both ways. Return between 30-90 days of invoice date will be charged a 35% restocking fee. After 90 days, Seller will not accept any returns or issue credit.

## **6. LIMITED WARRANTIES, EXCLUSIONS, OBLIGATIONS OF BUYER, EXCLUSIVITY**

**6.1 Standard Limited Warranty:** Seller warrants that (a) all goods will be free from defect in design, workmanship and materials, and when used in accordance with Seller's instructions and requirements for operation of the goods, will perform in accord with Seller's published technical specifications; and, (b) services will be performed in a professional and workmanlike manner consistent with generally accepted industry standards ("Warranty"). Any warranty claim must be made in writing delivered to Seller. The Warranty for goods is valid for claims received by Seller within twelve (12) months from shipped date of the affected goods. Warranty period may be longer if an Extended Warranty has been purchased or is inherent to a specific product. Provided, however, if the failure of the product or service is in any manner related to the conduct of Buyer, or if Buyer attempts to repair or have the product repaired by anyone other than Seller, without the written authorization of the Seller, this limited warranty is void and Seller has no further obligation to Buyer hereunder. This warranty excludes replacement of photomultiplier tubes, GM tubes, and proportional tubes, and scintillation crystals which are broken due to excessive physical abuse or used for purposes other than intended.

**6.2 Exclusive Remedies:** All warranty claims must be in writing, delivered to Seller and must be made within the Warranty Period and include a specific and detailed description of the basis of the warranty claim. Buyer's sole and exclusive remedy and Seller's sole and exclusive liability and obligation hereunder is for Seller to use commercially reasonable efforts, consistent with industry standards to provide Buyer with replacement or repaired goods, at Seller's sole and absolute discretion, sufficient to conform to Seller's Limited Warranty herein. For service warranty claims during the Warranty Period, Buyer's sole and exclusive remedy and Seller's sole and exclusive liability, consistent with industry standards, is for Seller, in Seller's sole and absolute discretion, to either re-perform services or refund the fees paid to Seller for such services alleged to have been defective. If a part or system replaced by Seller malfunctions, the Seller shall have the right to repair, replace or refund fees relating to the specific replaced part or system. Seller's Warranty for any repair or replacement will continue for the duration of the warranty applicable to the original product or equipment.

**6.3 Exclusions:** Buyer has no Warranty rights for any defect caused by (a) use of the Products with other goods or equipment not expressly specified in writing by Seller as suitable for use with the Products; (b) Buyer's failure to adhere to Seller's operating instructions or to operate the Products within specified operating parameters; (c) acts or omissions of any person other than Seller or its authorized representatives; (d) installation, maintenance or calibration of any product or equipment by someone other than Seller or persons certified by Seller; (e) abuse, use at an unsafe or unsuitable site or use outside the parameters of Seller's operational procedures or limits; (f) conditions outside the control of Seller (e.g. acts of God, Force Majeure conditions); or, (g) normal usage wear and tear.

**6.4 Warranties Enumerated Herein Are Exclusive Remedy:** The warranties contained in these Terms and Conditions of Sale are exclusive and in lieu of any and all other warranties, whether same be express or implied; pursuant to state or federal statutory or rule promulgated by any administrative or regulatory agency; including, but being not limited to, the implied warranties of merchantability and fitness for a particular purpose all of which are particularly and specifically disclaimed hereby by Ludlum Measurements, Inc. its companies, subsidiaries or other business entities owned by Ludlum Measurements, Inc.

**7. BREACH** Any (a) failure to make payment to Seller for any Products when due; (b) failure to accept conforming Products supplied hereunder; (c) return of any Products delivered to Buyer without the prior written consent of Seller; (d) filing of a voluntary or involuntary petition in bankruptcy by any third party against Buyer, the institution of any proceedings in insolvency or bankruptcy (including reorganization) against Buyer, the appointment of a trustee or receiver of Buyer, or an assignment for the benefit of Buyer's creditors; or (e) any other act by Buyer in violation of any of the provisions hereof will constitute a breach by Buyer hereunder. In the event of breach by Buyer, Seller, with written notice to Buyer, may terminate the order in whole or in part, without any liability or penalty whatsoever and Buyer shall remain liable for the products and equipment delivered as set forth herein. Buyer will pay all costs, including reasonable attorneys' fees, incurred by Seller in any action brought by Seller to collect payments owing or to otherwise enforce its rights hereunder.

**8. SOFTWARE LICENSE** When purchasing Products, Buyer has purchased or been given a license to use the associated software, not the software itself. Because title to the software remains with Seller, Buyer may not sell, distribute or otherwise transfer the software. Seller's software is protected by United States Copyright Law and by International Copyright Treaties. Buyer may not copy the software or any part of it for any other purposes, and Buyer may not decompile, reverse engineer, modify, disassemble, or reduce the software. Seller may terminate this license if Buyer fails to comply with these terms and conditions. All software revisions and upgrades are subject to these same license terms and conditions.

**LIMITATION OF LIABILITY: INCIDENTAL OR CONSEQUENTIAL WAIVED; LIABILITY FOR DISCLOSURE OF TRADE SECRET OR PROPRIETARY INFORMATION** In no event will either party be liable for any indirect, incidental, special or consequential damages, even if such party has been advised of the possibility of such damages. Seller's aggregate and cumulative liability for damages hereunder will in no event exceed the amount of fees paid, or payable to seller under the order covered hereby, and if such damages relate to buyer's use of the products or services, then such liability will be limited to fees paid for the relevant product or services giving rise to the liability. Except as provided hereinbelow, these limitations will apply notwithstanding any failure of essential purpose of any limited remedy.

**8.1. Liability for Unauthorized Disclosure of Trade Secrets Retained:** Notwithstanding the foregoing waivers of incidental and consequential damages and any other limitation of liability herein, Buyer will remain liable for and no limitation or exclusion of liability will apply to Buyer's: (a) infringement, misappropriation, unauthorized disclosure or misuse of Seller's proprietary information or intellectual property rights; or (b) breach of compliance obligations in Sections 9 or 12.2.

**9. EXPORT CONTROL LIABILITY** The Parties will observe and adhere to all applicable laws and regulations relating to the export, re-export, diversion or transfer of technical data, and direct products thereof. The foregoing will include without limitation the export control laws of (a) the country in which the Products are manufactured, and (b) to the extent applicable, the United States. Buyer will be responsible for obtaining all re-export licenses of the United States (to the extent applicable) for the export or re-export of the Products. Buyer covenants not to export, supply or otherwise make any of the Products available to any person or entity: (i) located in a country subject to trade or other embargo levied by the U.S. Government; (ii) listed on any U.S., UK, or European Union list of prohibited or restricted parties, including but not limited groups, entities or organizations identified by the U.S. Government as terrorist organizations or any group or entity identified by the U.S. Government as aiding, abetting, conspiring with or funding any terrorist organization; or (iii) that will use those Products in any activities directly or indirectly related to nuclear, chemical or biological weapons or missiles. Seller makes no guarantees or assurances of the re-export licensability of any Products. Buyer agrees to defend, indemnify and hold Seller harmless from any claims, damages, fines, assessments, penalties or other liabilities asserted by any party or any governmental entity resulting from the breach of any part of Section 9.

**10. FORCE MAJEURE** Except for payment obligations, performance will be excused to the extent impossible or delayed by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other cause beyond the reasonable control of a party. Deliveries suspended or not made by reason of this Section 10 will be canceled without liability, but payment obligations for delivered Products will otherwise remain unaffected.

**11. NUCLEAR ENERGY HAZARDS AND NUCLEAR INCIDENTS** Buyer waives any claim it might have against Seller and agrees to indemnify and hold Seller harmless from any claims, including 3<sup>rd</sup> party claims against Seller, because of damage to, loss of, or loss of use of any property or equipment at the site of a nuclear facility resulting from nuclear energy hazards or nuclear incidents. The foregoing waiver and indemnification provisions will apply to the full extent permitted by law, regardless of fault. For purposes of this Section 11, "nuclear energy hazards" will mean the hazardous properties of nuclear materials. Hazardous properties include radioactive, toxic or explosive properties of nuclear material. Nuclear material will include source material, special nuclear material, or by-product material as those defined in the Atomic Energy Act (42 U.S.C. Section 2014). Nuclear incident will have the meaning given that term in the Atomic Energy Act (42 U.S.C. Section 2014 (q)).

## **12. GENERAL PROVISIONS**

**12.1 Proprietary Rights:** Seller retains all proprietary rights in and to all intellectual property, designs, drawings, graphics, engineering details, proprietary information and other data pertaining to any Products sold by Seller to Buyer. The Products sold hereunder are offered for sale and sold subject to the condition that such sale does not convey any license, expressly or by implication under any patent for the design, manufacturing or sale of Seller's proprietary rights and all such proprietary information is hereby expressly retained by Seller.

**12.2 Compliance:** Each party agrees to comply with all applicable laws and regulations.

**12.3 Governing Law, Jurisdiction, Venue:** These Terms and Conditions of Sale shall be governed by the laws of the State of Texas and, as additional consideration for Seller's agreement to sell to Buyer, the parties consent and agree that any action brought asserting any right hereunder shall be brought in the District Court of Nolan County, State of Texas and further waive any rights for removal to Federal Court upon the grounds of diversity or otherwise; provided however, if such removal is sought in contravention of this agreement, the parties further agree and stipulate that any such action shall be brought in or removed to the United States District Court, Northern District of Texas, Abilene Division.

**12.4 Assignment:** Buyer may not assign its rights or obligations under these T&Cs without the prior written consent of Seller. Seller may assign these T&Cs without Buyer's consent.

**12.5 Waiver:** Any waiver by Seller of a specific default by Buyer will not be deemed to be a continuing waiver of such default and Seller may enforce its remedies for Buyer's default at any time. Seller's waiver of a general or specific default by Buyer does not constitute a general waiver of any obligation of Buyer hereunder or waiver of any other term, condition or obligation set forth in these Terms and Conditions of Sale.

**12.6 Amendments to Terms and Conditions of Sale:** These T&Cs may not be superseded, modified or amended except in writing and signed by an authorized representative of each party hereto, provided, however, that Seller may modify the specifications of the Products sold hereunder if such modification does not change the form, fit or function of such Products.

**12.7 Entire Agreement:** These T&Cs, along with the documents incorporated on the face hereof, except to the extent any provision in the incorporated documents conflicts with these Terms and Conditions of Sale, in which case these Terms and Conditions of Sale shall control and constitute the terms of agreement between the parties, expressly excluding the terms and conditions of Buyer's Purchase Order or similar document to the extent that said document conflicts with or has differing terms than this agreement, constitute the entire agreement between Buyer and Seller, and expressly supersede any prior or contemporaneous agreements related to the same subject matter.