

**COLE INSTRUMENT CORPORATION
TERMS AND CONDITIONS OF SALE**

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1. PAYMENT

Terms of payment are net thirty (30) days after the date of the Cole invoice. Amounts not paid when due shall bear interest at the lesser of one and one-half (1.5%) percent per month or the highest legal rate, and may result in the imposition by Cole of modified credit terms.

2. PRICES AND TAXES

Prices are exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes or duties now in force or enacted in the future. Any such tax, fee, or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Cole and Customer shall be paid by the Customer in addition to the prices quoted or invoiced. In the event Cole is required to pay any such tax, fee, or a charge, at the time of sale or thereafter, Customer shall reimburse Cole thereof.

3. SHIPMENT AND DELIVERY

All shipments herein shall be F.O.B. Cole facility via a commercial service of our choice, unless otherwise requested by the Customer. The time of delivery is the time the Product to be delivered is picked up by the carrier. All shipping charges shall be the obligation of the Customer and paid freight collect upon receipt by it or, if paid by Cole, set forth as a separate item on the Cole invoice.

4. TITLE AND RISK OF LOSS

Title to the Product shall pass to Customer upon delivery thereof by Cole to carrier (F.O.B. 2650 S. Croddy Way, Santa Ana California) and upon delivery Customer shall be responsible for and bear all risk of loss or damage to the Products. Cole shall retain a purchase money security interest in the Products until payment in full and Customer agrees to execute any documents necessary to perfect such security interest.

5. NON-RECURRING ENGINEERING (NRE) CHARGES

When Cole designs a new Product to a Customer's performance specifications, Cole may require the Customer to pay an NRE charge to cover Cole's costs of design engineering and the subsequent production of any drawings, documents, certifications, tooling, molds, fixtures and any other materials ("materials") that are unique to the new Product and that are required before the new Product can be released for commercial production. All such materials will remain the sole property of Cole. Cole shall not be limited regarding the future use of such materials and Customer shall have no claim on the future use of such materials.

6. CONFIDENTIAL AND PROPRIETARY INFORMATION

Customer shall keep confidential all information provided by Cole in connection with the Purchase Order, including, but not limited to, trade secrets, any technical, process, proprietary or economic information derived from drawings, models, specifications and other data and shall not divulge, directly or indirectly, such information for the benefit of any party other than Cole without Cole's prior written consent. Except as required for the efficient performance of the Purchase Order, Customer shall not use such information or make or permit copies to be made of such drawings, models, proprietary information, specifications or other data without Cole's prior written consent. If any reproduction is made with prior written consent, notice referring to the requirements of this paragraph shall be inscribed thereon. Upon completion or termination of the Purchase Order, Customer shall promptly return to Cole all materials incorporating any such information and any copies thereof. Any knowledge or information which Customer shall have disclosed or may hereafter disclose to Cole, and which in any way relates to the goods or services related to the Purchase Order, shall not, unless otherwise specifically agreed to in writing by Cole, be deemed to be confidential or proprietary, and shall be acquired by Cole free from any restrictions, as part of the consideration for the Purchase Order. Customer shall not make any announcement, take or release any photographs (except for its internal operation purposes for manufacture and assembly of goods), or release any information concerning the Purchase Order or any part thereof or with respect to its business relationship with Cole, to

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any third party, member of the public, press, or any official body except as required by applicable law, without Cole's prior written consent.

7. LIMITED WARRANTY - CUSTOM PRODUCTS

It is mutually understood and agreed that the Products that are the subject this sale are produced pursuant to Customer's own custom performance specifications and Customer's own design specifications. No warranty is made with respect to these custom Products that are manufactured and produced pursuant Customer's own performance specifications and own design specifications.

The liability of Cole hereunder shall be limited to replacing or repairing, at its option, any Products defective for material and workmanship for a period of 12 months from the date shipped which are returned F. O. B., Cole's facility, Santa Ana, California (or at Cole's option, refunding the purchase price of such Products). In no case are Products to be returned, without first obtaining permission and a Return Materials Authorization (RMA) Customer return order number from Cole.

In no event shall Cole be liable for any loss of use, revenue, profit, or for any direct, indirect, incidental, special or consequential damages arising out of, connected with, or resulting from the sale and use of the Products for all causes and events inclusive of but not limited to latent defects, intermittent event defects, or root cause defects. This exclusion also includes any liability that may arise out of third-party claims against Customer.

The warranties set forth in this paragraph are given in lieu of and expressly disclaim any and all other warranties, express, implied or statutory, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose.

This warranty is the only warranty made by Cole with respect to the Products delivered hereunder, and may be modified or amended only by a written instrument signed by a duly authorized Officer of Cole and accepted by Customer.

The Customer understands that Cole is under no obligation to accept liability if the Customer fails to sign the Order Acknowledgment and accept Cole's Terms and Conditions.

8. WARRANTY ADJUSTMENT

No product will be accepted by Cole for repair or replacement without the written authorization of Cole. Upon such authorization, and in accordance with instructions issued by Cole, the product shall be returned to Cole. Shipping charges shall be prepaid by Customer. Upon examination of the product(s), and verification of the claim by Cole, repair or replacement will be carried out in accordance with the above warranty. If the failure is not verified, and the returned product(s) are still within the warranty requirements, Customer shall be subjected to a retest and handling charge of no less than fifty (\$50.00) dollars per unit.

9. INTELLECTUAL PROPERTY

Cole warrants the use of the Products and documentation furnished to Customer that are of Cole' standard manufacture, design, and composition and used as contemplated by Cole shall be free and clear of infringement of any United States patent or registered copyright covering the structure of such articles or documentation. In the event of a claim, suit or action against Customer alleging such infringement, Cole shall defend and save Customer harmless from liability, as finally determined by a court of competent jurisdiction, for such infringement, provided that Customer shall have made timely payment of all amounts due for the article involved in the claim, suit or action, that Customer shall have notified Cole promptly in writing of such claim, suit or action, that Customer shall have given Cole all proper information and assistance requested by Cole and full and exclusive control of the defense thereof, and that Cole shall have the sole right to settle or compromise such claim, suit or action. In the event that a final injunction is obtained in such action against the use of the Products or any part thereof by reason of infringement of a United States patent or otherwise within the scope of this Paragraph, Cole will, at its option either:

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- (a) Procure for Customer, at Cole' expense, the right to continue using the Products;
- (b) Replace or modify the same so that it shall be non-infringing; or
- (c) Direct Customer to return such Products to Cole, and refund to Customer the purchase price originally paid less a use credit equal to the applicable Cole lease charges for the period use.

Cole shall only resort to option (c) after having exerted reasonable effort to remedy the situation by first utilizing option (a) or (b). Cole has no liability for any claim, suit or action pursuant to this Paragraph based upon or arising out of (1) the combination, operation or use of the Products with Products or items not furnished by Cole; (2) a Product provided to comply with designs, requirements, or specifications modified by Customer; (3) Customer's failure to use a Product in accordance with instructions provided by Cole, if the infringement or misappropriation would not have occurred but for such failure; or (4) any modification of a Product not made or authorized in writing by Cole where such infringement or misappropriation would not have occurred absent such modification. The foregoing states Cole's entire liability and obligations and Customer's exclusive remedy with respect to any claim, suit or action alleging infringement of any intellectual property rights.

10. LIMITATION OF LIABILITY

Cole shall not be liable for any loss, damages, or penalty resulting from delay in delivery when such delay is due to causes beyond the reasonable control of Cole, including but not limited to supplier delay, force majeure, act of God, labor unrest, fire, explosion, or earthquake. In any such event, the delivery date shall be deemed extended for a period equal to the delay.

Cole's liability under, for breach of, or arising out of this agreement and/or sale shall be limited to refund of the purchase price. In no event shall Cole be liable for costs of procurement of substitute goods by the Customer. In no event shall Cole be liable for any special, consequential, incidental, or other damages (including without limitation loss of profit) whether or not Cole has been advised of the possibility of such loss, however caused, whether for breach or repudiation of agreement, breach of warranty, negligence, or otherwise. This exclusion also includes any liability that may arise out of third-party claims against Customer. The essential purpose of this provision is to limit the potential liability of Cole arising out of this agreement and/or sale.

11. ACCEPTANCE BY CUSTOMER – ENTIRE AGREEMENT

The terms and conditions as set forth herein shall constitute the entire agreement between Cole and the Customer. Cole shall not be bound by any terms of Customer's order which are inconsistent with the terms herein set forth. Acceptance by Customer of these terms may be made either by written acceptance, or by receipt by Customer of delivery of any products described on the face of this document and failure of such Products as herein provided.

This agreement shall not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealing not made a part of the agreement by its express terms.

The failure by Cole to enforce at any time any of the provisions of this agreement, or to exercise any election or option provided herein, shall in no way be construed as a waiver of such provisions or options, nor in any way to affect the validity of this agreement or any part thereof, or the right of Cole thereafter to enforce each and every such provision.

Customer hereby acknowledges that he has not entered into this agreement in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein.

12. CANCELLATION AFTER ACCEPTANCE

A Purchase Order may be cancelled by Customer only upon the payment of a cancellation charge equal to at least 25% of the original Purchase Order value or expenses already incurred by Cole including, but not limited to, labor and material costs, overhead, commitments made by Cole, and a reasonable profit. Upon cancellation Customer shall have no rights to partially completed products.

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13. SUBSTITUTIONS AND MODIFICATIONS

Cole shall have the right to make substitutions and modifications in the specifications of Products sold by Cole provided that such substitutions or modifications will not materially affect overall Product performance.

14. ASSIGNMENT

Neither Party may assign its right, duties, or obligations under this Agreement without the other Party's prior written consent, which consent will not be unreasonably withheld or delayed, except that Cole may assign this Agreement to an affiliate or a successor (including a successor by way of Change of Control or operation of law), or in connection with the sale of all of the assets or business to which this Agreement relates. A Change of Control shall be deemed to cause an assignment of this Agreement. "Change of Control" means a merger, acquisition, divestiture, sale of assets or equity, or similar transaction.

15. BANKRUPTCY

If Customer shall become bankrupt or insolvent or compounds with its creditors or commences to be wound up or suffers a receiver to be appointed, Cole shall be at liberty by notice in writing to cancel this agreement without judicial intervention or declaration of default of Customer and without prejudice to any remedy which shall have accrued or shall accrue thereafter to Cole.

16. MISCELLANEOUS

Paragraph headings are provided for convenience of reference only and shall not limit or modify any term hereof. Stenographic and clerical errors are subject to corrections.

The agreement between the parties is made, governed by, and shall be construed in accordance with the laws of the State of California.

The California state courts of Orange County, California (or, if there is exclusive federal jurisdiction, the United States District Court for the Southern District of California) shall have exclusive jurisdiction and venue over any dispute arising out of this agreement and sale, and Customer hereby consents to the jurisdiction of such courts.

Reasonable attorney's fees and costs shall be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation of this agreement or any request for shipment release issued and accepted under terms and conditions of this agreement.