

**MARSH INSTRUMENTATION LTD.**  
**STANDARD TERMS AND CONDITIONS**

1. **SCOPE** - The Standard Terms and Conditions of Sale of equipment or services (Seller's product) herein apply to any purchase order(s) placed on or proposals submitted by Marsh Instrumentation Ltd. (the Seller). Any additions to or modifications of these Terms and Conditions, or Terms and Conditions in Purchaser's order(s) inconsistent herewith, shall not bind Seller unless accepted in writing by an authorized representative of the Seller. After acceptance by Seller, orders shall then form a contract. Seller, however, reserves the right to correct typographical or clerical errors.
2. **PRICE AND PAYMENT** - Unless otherwise specified, prices cited are (a) subject to change without notice, (b) subject to price adjustment for cost escalation for deliveries beyond standard delivery schedules, (c) subject to price adjustments if effected by foreign currency exchange fluctuations and (d) F.O.B. Seller's or its supplier's plant. If Purchaser defaults in any payment when due, Seller, without incurring any liability to Purchaser or any other party, may, at its option and in addition to other remedies available, declare all work complete with payment immediately due and payable with interest charges of 1% per month on all outstanding amounts due therein; stop all further work and shipments until all past due payments have been made and/or require that any further deliveries be paid for prior to shipment. If requested by Seller, Purchaser shall obtain a bond or irrevocable Letter of Credit to provide guarantees of payment to the Seller.
3. **CREDIT** - All orders are subject to Seller's acceptance with credit terms net 30 days from invoice date unless otherwise agreed by Seller. Seller reserves the right to stop all work and refuse delivery of goods if, in its opinion, doubt exists as to Purchaser's payment capability. Seller shall not be liable in such event for non-delivery in whole or part.
4. **ITEMS INCLUDED** - Contract includes only the equipment or service specified therein and, unless otherwise specified, does not include installation, start up assistance, accessory or associate materials not specifically listed. Seller assumes no liability or responsibility for proper operation of equipment if not installed and operated in accordance with Seller's and/or Original Equipment Manufacturer's (OEM's) instructions.
5. **TAXES, DUTIES AND LICENCES** - Any federal, provincial or local sales tax or other tax(es) applicable to this transaction and imposed on or required to be collected by Seller, if not stated as included in Seller's price, shall be added to the sale price and charged to Purchaser's account. Unless otherwise stated, Purchaser shall pay all duties, tolls and import taxes and provide any necessary import licences and extensions thereof applicable to this transaction.
6. **SECURITY INTEREST** - Seller shall retain ownership of any item sold until payment in full of the purchase price. Purchaser shall protect Seller's title and right of possession to the equipment specified in this or any change order until the full purchase price has been paid, and will not permit the encumbrance of the equipment by any liens or security interest. Purchaser acknowledges that as security for payment of the purchase price, Purchaser grants, and Seller shall retain, a security interest in all equipment sold by Seller to Purchaser and agrees to co-operate in any registration of that interest. Seller shall also retain all of its rights and remedies as a Seller and a secured party under the law. No waiver by Seller of any default shall constitute a waiver of any subsequent default. Seller may retain as liquidated damages any partial payments made and may peaceably repossess the equipment from the Purchaser's premises without prejudice to any further claims. In the event legal action is necessary to enforce these provisions, Seller shall be entitled to recover its court costs and reasonable attorney's fees, if it prevails.
7. **INSURANCE** - From date of shipment until the invoice is paid in full, Purchaser agrees to provide and maintain at its expense for Seller's benefit, insurance adequate to fully protect Seller's interest in the equipment against any loss of any nature whatsoever.
8. **SHIPMENTS AND DELIVERY** - Seller shall use reasonable effort to meet all shipment or delivery dates stated herein or stated in Purchaser's order but any such dates are estimates only and are not guarantees. Seller shall have no liability to Purchaser for damages or penalties, direct or indirect, of any delay in shipment or delivery, whether such delay is minor or substantial, nor shall Purchaser have the right to declare a breach of contract because of any such delay. Unless otherwise agreed Seller shall have the right to make partial shipments. Invoices covering the same shall be due and payable by Purchaser in accordance with the payment terms herein. Unless otherwise specified, all shipments are F.O.B. point of shipment and risk of loss or damage is the responsibility of Purchaser upon delivery to carrier. All claims for damages, delay or shortage arising from any shipment shall be made directly against the carrier by Purchaser. When shipments are specified F.O.B. destination, Purchaser shall inspect the equipment shipped and notify Seller of any damage or shortage within 24 hours of receipt. Failure to notify Seller as stated, shall constitute acceptance by Purchaser relieving Seller of any liability. If delivery is specified F.O.B. destination and is postponed by Purchaser's delay or request, Seller may tender delivery F.O.B. point of shipment and store the equipment at Purchaser's expense and risk. Such tender shall constitute delivery and the full purchase price for the equipment tendered shall be immediately due and payable.
9. **CANCELLATION, SUSPENSION, DELAY** - In the event Purchaser requests or causes a cancellation, suspension or delay in any of Seller's work under this proposal or order based therein, Purchaser shall pay the Seller all appropriate charges, including but not limited to any cost, expenses and commitments incurred by Seller up to the date of receipt of notice of such cancellation, suspension or delay, plus Seller's overhead and reasonable profit. If shipment is delayed on account of Purchaser, the purchase price shall be due and payable as if delivery had been made. Additionally all charges related to storage, disposition and/or resumption of work, at Seller's plant or elsewhere, shall be for Purchaser's sole account and all risks incidental thereto shall be assumed by Purchaser.
10. **RETURNED GOODS** - Goods or products can be returned only with the agreement of the Seller and only if such goods or products were purchased directly from the Seller or its authorized agents. Goods made to order or for unusual applications will be accepted for return only if defective. All goods accepted back will be subject to restocking/handling charges in place at that time. The Purchaser is responsible for all costs associated with returning such goods, if so agreed, and for any costs to restore damaged goods received to a saleable state.
11. **FORCE MAJEURE** - If foreign or Canadian wars or embargoes, labour strikes or interruption of essential transportation services cause serious shortages, unavailability or significant increases in the price of commodities, materials or components used by Seller in the provision of its goods or services, the delivery period shall be extended and the price adjusted to compensate for the changes in these conditions.
12. **LIMITATION OF LIABILITY** - Seller shall not be liable to Purchaser for any direct, indirect, incidental or consequential damages for any reason whatsoever including, but without limitation, damages in the character of (a) loss of profits or revenue resulting from the failure of the equipment, (b) damages suffered by Purchaser as a result of loss of production facilities or equipment, (c) cost of replacement equipment, (d) damages suffered by customers of Purchaser, or (e) any fines or penalties assessed for failure to comply with any law or governmental regulations. In all instances, Seller's total liability shall not exceed the value of the item or contract.
13. **INDEMNIFICATION** - Purchaser hereby indemnifies and shall defend and hold harmless, Seller, its employees, subsidiaries, affiliates, and authorized representatives from and against all suits, actions, legal or administration proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatever kind or nature including injury to or death of Purchaser's employees rising from or due to Purchaser's negligence or out of any negligent act or operation of Seller's product including the failure to follow proper operating instructions and/or warnings relating to Seller's product.
14. **CHANGES** - Any extra costs associated with changes in or additions to the scope of work which are initiated by Purchaser or by circumstances beyond Seller's control shall be borne by Purchaser.
15. **PROPRIETARY INFORMATION** - All information forwarded by Seller is submitted solely for Purchaser's consideration and shall not be disclosed to any third party without Seller's prior written consent.
16. **CHANGES IN DESIGN** - Seller reserves the right to change or modify the design and construction of any equipment in order to incorporate improvements or to substitute material equal or superior to that originally specified.
17. **REMEDIES OF SELLER** - In addition to any other remedies of Seller provided herein or by law, in the event Purchaser becomes bankrupt or insolvent, or assigns assets for the benefit of creditors or undergoes a substantial deterioration of its financial condition, Seller may at its sole option, declare a breach of contract, stop all work hereunder or demand payments in advance as security for its performance hereunder.
18. **ASSIGNMENT** - Purchaser shall not assign this contract, nor any interest herein or rights hereunder, without the prior written consent of Seller.
19. **WARRANTY** - Seller warrants all new equipment or product supplied by Seller to be free from defects in material and workmanship and will replace or repair, F.O.B. its factories or other designated location, items that fail due to defects in material or workmanship under normal use and intended service within one year following initial commissioning or 18 months after shipment, whichever event comes first. Such repair or replacement shall be free of charge for all items except for those that are worn or consumed through normal use and/or maintenance with respect to which repair or replacement shall be subject to pro-rata charge based upon Seller's estimate of the percentage of normal service life realized. Seller will not approve or accept returns or back charges for labour, material, transportation, in and out, or other costs incurred by Purchaser, or others, in modification, adjustment, service or repair of equipment furnished by Seller unless such returns or costs have been previously agreed to by the Seller. In no event shall the remedy for alleged costs or replacement of item(s) irrespective of whether such defects are discoverable or latent, exceed the purchase price of the particular item(s). This warranty is expressly made by Seller and accepted by Purchaser in lieu of all other warranties, including warranties of merchantability and fitness for particular purpose, whether written, oral, expressed, implied, or statutory. Seller neither assumes nor authorizes any other person to assume any other liabilities with respect to its equipment on its behalf. This warranty shall not apply to equipment or parts which have been altered or repaired outside of Seller's authorized facility, installed or operated other than in accordance with Seller's instructions, or subjected to misuse, abuse, neglect or accident. Seller makes no warranty with respect to parts, accessories, or components manufactured by others. Any warranty applicable to such is that offered by its respective manufacturer. Subject to the above provisions as applicable, the warranty on work performed by Seller's service centres shall be against defects arising from workmanship and/or materials provided by Seller for a period of 90 days from the date of shipment.
20. **ADDITIONAL TERMS & CONDITIONS** - Please note that where the Original Equipment Manufacturer's (OEM's) Terms & Conditions, (in the event product is not manufactured by Seller), differ from those of Seller, the OEM's Terms & Conditions will take precedent, particularly in reference to extended warranty, software limitations, license agreements and all other intellectual properties. Where Marsh Instrumentation operates as a Manufacturer's Representative the Terms & Conditions of the OEM/seller will fully apply.