

Sales Terms and Conditions

Acceptance of Order

All orders are accepted by Strain Measurement Devices are subject to these Conditions of Sale. These Conditions of Sale are the only terms or conditions upon which the Strain Measurement Devices sells or supplies the Goods and they shall form part of and given every contract between Strain Measurement Devices and the Customer for the supply of Goods. No terms or conditions referred to or imposed by the Customer and no addition to or variation of these Conditions of Sale shall have effect save to the extent that it was expressly agreed to in writing and signed by a duly authorized representative of Strain Measurement Devices. In particular orders submitted on Customer's own purchase forms will be accepted by Strain Measurement Devices only upon condition and with the express understanding that the liabilities of Strain Measurement Devices shall be determined solely by these Conditions of Sale and in accepting and consummating any such order Strain Measurement Devices shall be deemed not to have in any way changed, enlarged or modified its liabilities or obligations as fixed by these Conditions of Sale.

Strain Measurement Devices has a policy of continuous improvements to its products and in pursuance of this policy reserves the right to alter the specifications, types or models of Goods at any time without notice provided such changes shall not affect the validity of the Contract. Where the Goods are sold packed the extent of packing and/or protection shall be at Strain Measurement Devices discretion unless the Customer stipulates special packing, in which case such packing will be charged extra.

Quotations

Quotations indicate the price at which Strain Measurement Devices will be willing to supply Goods if a firm order is placed within 30 days unless otherwise specified in the quotation. A quotation is not an offer to supply Goods and no contract shall arise between Strain Measurement Devices and the Customer until a firm order by the Customer has been accepted in writing or an electronically regenerated copy by Strain Measurement Devices and the date of such acceptance shall be the contract date. Goods are offered subject to availability and to them being unsold. Quotations cover only the work and/or items specified therein, and all additions, alterations, waiting time and any additional costs due to modified instructions shall be charged to the Customer at ruling prices.

Price

The price of the Goods shall be in accordance with Strain Measurement Devices prices for such Goods ruling at the date of delivery in accordance with the quotation if a firm order is received within the 30 day period following. Unit prices apply only to the specific quantities and delivery schedule provided. Any variation in quantity, specifications and/or rate of delivery may necessitate a revision in unit price.

The price stated in the quotation is subject to variation at the sole discretion of Strain Measurement Devices at any time before delivery, if there is any increase in the cost to Strain Measurement Devices of labor, materials or overheads required for the manufacture of Goods or of the purchase or importation of any part of the Goods or if Strain Measurement Devices would otherwise suffer loss as a result of currency fluctuations, any such variation shall not be made to solely meet increased costs which would not have occurred but for the failure of Strain Measurement Devices to proceed with work within reasonable dispatch. Save where otherwise agreed in writing, any specified price shall be the price of the Goods as quoted and the Customer shall in addition to the price payable for the Goods pay all duties, charges and taxes on the Goods.

Changes

Sales order changes by the Customer, affected subsequent to acknowledgment of Customer's sales order by Strain Measurement Devices, will not be considered effective until mutual agreement has been reached in writing between Customer and Strain Measurement Devices concerning the effect of said changes on price, delivery, or other terms and conditions of sale.

Technical Data, Confidential and Proprietary Information

All designs (whether or not patentable), processes, software, technical information, proprietary information, drawings and/or confidential information, hereinafter “Technical Data”, related to the items or services hereunder and not furnished by Customer or specifically paid for by Customer as a separate line item are the exclusive property of Strain Measurement Devices, and all rights, title and interest in and to such property shall remain exclusively in Strain Measurement Devices, notwithstanding Strain Measurement Devices’ disclosure of any thereof to Customer or Customer’s payment to Strain Measurement Devices for engineering or non-recurring charges. Customer shall not use or disclose such Technical Data to any party without prior written consent of Strain Measurement Devices. Likewise, title to all tools, test equipment and facilities whether or not furnished by Customer or specifically paid for by Customer as a separate line item shall remain the possession of Strain Measurement Devices although, Strain Measurement Devices agrees not to use said tools for work that is not the Customer’s work. Customer may not divulge any technical data and confidential and proprietary information obtained from Strain Measurement Devices to any third party without prior written consent of Strain Measurement Devices.

Customer agrees that Strain Measurement Devices may use nonproprietary information pertaining to the Agreement, and the work performed under the Agreement, for press releases, case studies, data analysis, promotional purposes, and other similar documents or statements to be publicly released.

Payment Terms

Unless otherwise expressly agreed in writing payment for Goods will be due within 30 days of invoice date. Notwithstanding the above Strain Measurement Devices may at any time require the Customer to make payment in advance of delivery or otherwise provide adequate security for the payment of all amounts payable under the Contract. Each shipment shall be considered a separate and independent transaction and payment thereof shall be made accordingly.

In default Strain Measurement Devices may amend the terms of delivery or payment and/or cancel any outstanding balance of order. Strain Measurement Devices reserves the right without prejudice to any other rights it may have, to charge interest at the rate of 3 per cent above the Federal Reserve rate per annum from time to time in force on overdue accounts such interest to run from day to day and to accrue after as well as before any judgment and/or to terminate the supply of Goods and provision of credit to Strain Measurement Devices, where payment of Strain Measurement Devices invoice is overdue. Any query to be raised by the Customer on any invoice issued by Strain Measurement Devices shall be made within 30 days of the date of the invoice or the parties shall be deemed to have accepted the invoices. The Customer shall not withhold any payment for any reason nor may any counterclaim of the Customer be set-off against any payment due under the Contract without the written consent of a duly authorized officer of Strain Measurement Devices.

Delivery

The delivery date is our best estimate of the time at which material will be shipped from our facility, but Strain Measurement Devices assumes no liability for loss, damage, or consequential damages due to delays. Delivery is F.O.B. Wallingford, CT unless otherwise agreed in writing in which case Strain Measurement Devices shall use reasonable commercial endeavors to arrange delivery of the Goods in accordance with the Customer’s instructions and to deliver within any time estimate given. However time for delivery shall not be of the essence of the contract and delay shall not entitle the Customer to repudiate. In any event Strain Measurement Devices shall not be liable to the Customer for any loss or damage whatsoever suffered or sustained by it as a result of any failure by Strain Measurement Devices to adhere to such times or dates or consequent upon any other delay however caused. All costs of delivery, insurance, transportation and storage incurred by Strain Measurement Devices will be prepaid by Strain Measurement Devices and added to the invoice. Strain Measurement Devices shall be entitled to deliver the goods by single delivery or installment at its option. Non-delivery of any installment or delay in delivery shall not affect the balance of the Contract nor entitle the Customer to repudiate the same.

Strain Measurement Devices shall be entitled to levy additional delivery, insurance, transportation, storage and handling charges in the event of the Customer failing or refusing for any reason to take delivery at any time during normal working hours and shall be entitled to determine the Contract if the Customer then fails to take delivery within 14 days of a written request requiring him to do so.

The Customer will be responsible for obtaining any import licenses and complying with all regulations governing admission of Goods into the country of destination and for payment of all duties, port dues and other charges.

Passing of Risk to Customer

Where delivery is F.O.B. Wallingford, CT, from the time the Goods are loaded onto the collecting vehicle the goods shall be at the customer's risk. In the case of export contracts from the time the Goods are loaded onto the collecting vehicle in Wallingford, CT the goods are at the customer's risk. In any other case from the time the Goods are loaded onto the collecting vehicle in Wallingford, CT the goods are at the customer's risk.

Claims and Rejected Material

All products ordered shall be subject to acceptance by Customer within thirty (30) days after delivery to Customer. If the products ordered hereunder do not meet the specifications or otherwise do not conform to the requirements of this purchase order, Customer shall have the right to reject such non-conforming products by providing Strain Measurement Devices written notice of non-conformance within thirty (30) days after delivery. To the extent that any product is not rejected in writing within thirty (30) days after delivery, such product shall be deemed accepted hereunder. Any such acceptance or deemed acceptance resulting from Customer's failure to provide written notice of rejection within thirty (30) days after delivery shall be definitive and final in all cases, absent fraud. No products may be returned without Strain Measurement Devices' permission in writing. After receiving authorization, material requiring rework or replacement should be sent with an authorizing RMA. Debit memoranda will not be honored until after responsibility has been determined.

Specifications

Detailed featured control information is available on request. Strain Measurement Devices reserves the right to make design changes at any time without incurring any obligation to incorporate these changes in units previously purchased or to continue to supply obsolete items. Strain Measurement Devices is not responsible for typographical or clerical errors made in any quotations, orders, webpage or publications. All such errors are subject to correction. Strain Measurement Devices does not guarantee the accuracy of drawings or specifications shown on the web site or on data sheets.

Export Regulations

Customer agrees that it shall not sell, transfer, or deliver, directly or indirectly, any part or portion of the Products or related documentation supplied by Strain Measurement Devices pursuant to or from a purchase order to any person or organization in any country where such sale, transfer, or delivery by Customer would be prohibited by law or regulation now or hereafter in effect which imposes any restrictions on United States trade with foreign countries or persons.

Strain Measurement Devices' obligations hereunder are conditioned upon Strain Measurement Devices (or Customer) obtaining, from the appropriate agencies or departments of the United States Government, all export licenses and other governmental permits that may be required, by law to enable Strain Measurement Devices to export the products, services and related documentation supplied by Strain Measurement Devices pursuant to a purchase order. Strain Measurement Devices agrees to take all reasonable steps to obtain such licenses and permits; provided that Customer shall reimburse Strain Measurement Devices for any costs Strain Measurement Devices expends in connection with obtaining such licenses and permits. In the event that the required approvals are not granted, withdrawn, or not extended, then either party may terminate this purchaser order and such termination for purposes of determination of costs shall be considered caused by Excusable Delay.

Customer shall indemnify and save harmless Strain Measurement Devices from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suit, allegations or charges.

Passing of Property to Customer

The title of the Goods supplied under the Contract shall not pass to the Customer until Strain Measurement Devices has received payment in full of all sums invoiced under each and every current contract between Strain Measurement Devices and the Customer together with any interest accrued thereon and other charges. In the meantime Strain Measurement Devices shall retain the full legal and beneficial title to the Goods and the Customer shall hold such goods in a fiduciary capacity as Strain Measurement Devices bailee free from any charge lien or other encumbrance, shall store the goods separately (in such a way they can clearly be identified as Strain Measurement Devices property) and shall keep them fully insured with a reputable insurer. During this period Strain Measurement Devices shall be entitled to recover possession of the Goods (or any part of them) at any time (and for any reason) (and even by severance from realty or other property) and shall be entitled without restriction to lawfully enter the premises of the Customer for the purpose of removing the Goods. The Customer shall pay all costs and expenses incurred by Strain Measurement Devices in exercising this right. Notwithstanding that title may not have passed to the Customer, the Customer may maintain an action for the price of Goods supplied.

Pending the passing of title in the Goods to the Customer, Strain Measurement Devices shall by concession permit the Customer to sell the Goods or use them.

Warranties

Because the Goods require correct handling, storage and processing and these matters are out of Strain Measurement Devices control once the Goods have left Strain Measurement Devices premises, Strain Measurement Devices liability in respect of the Goods shall be limited as set out in this clause.

Strain Measurement Devices warrants that the Goods meet the agreed specification, will be free from material defect, of merchantable quality and reasonably fit for the purpose of which they were ordered.

Customer will be responsible for inspecting the Goods on arrival notwithstanding deliveries made to an address other than the originator and Strain Measurement Devices shall not be liable for any consequential loss of any kind (including in particular loss of or defects in any product to which the Goods have been introduced or the consequences of any such product being defective).

Strain Measurement Devices shall not be liable for any defect in the Goods unless:

A claim is made by the Customer by facsimile telex or letter to be received by Strain Measurement Devices within thirty days of the Goods arriving at the Customer's premises; and Strain Measurement Devices is given reasonable opportunity to inspect and test the Goods in the condition in which they arrived at the Customer's premises.

In no circumstances except in respect of: death or personal injury arising from the negligence of Strain Measurement Devices or any liability arising under law shall Strain Measurement Devices liability (in contract or in respect of negligence or otherwise) to the Customer arising under or out of or in connection with any contract for Goods supplied hereunder exceed the cost to Strain Measurement Devices of replacing or repairing such Goods. Accordingly, Strain Measurement Devices will repair and/or replace at its own expense any of the goods which prove to be defective or faulty (provided that the goods have not been tampered with or subject to improper treatment by the Customer) within one year of delivery -- after one year of delivery no warranty is stated or implied.

Save as provided herein, Strain Measurement Devices shall not be liable to compensate or indemnify the Customer for any loss or damage whatsoever arising out of any damage to or defect in the Goods or as a result of negligence of Strain Measurement Devices, its agents servants or sub-contractors, and all of the conditions and warranties about the Goods which might otherwise be implied are hereby excluded. For the avoidance of doubt Strain Measurement Devices shall not be liable for any damages to or defects in the Goods caused by Customer's assembly operations, improper storage, transport, neglect or maintenance.

Loss or Damage in Transit

Reasonable care is exercised in packing our products for shipment and we assume no responsibility for delay, breakage or damage after having made delivery in good order to the carrier. Shipments will not be insured unless a specific request is made by Customer, in which case, a charge will be made to pay for the costs of this coverage. In the event that any items are received by Customer in a damaged condition, Customer should cease unpacking such items, request an immediate inspection by the common carrier responsible for delivery, and furnish the carrier's written report to Customer's insurer and to Strain Measurement Devices.

Claims for damage or partial loss of Goods in transit must be made to the carrier immediately on delivery of the Goods and confirmed by facsimile telex or letter to Strain Measurement Devices and to the carrier so as to reach both within three days of arrival of the Goods. Claims for non-delivery of Goods must be made within twenty eight (28) days of the due date of arrival.

Force Majeure

Every effort will be made to perform any Contract between Strain Measurement Devices and the Customer in accordance with its terms but due performance is subject to such variation (including suspension or cancellation) as Strain Measurement Devices may find necessary as a result of inability to secure labor, materials or supplies or as a result of any Act of God, war, strike, lockout or other labor dispute, fire, flood, drought, legislation or order of any public authority or other cause (whether of the foregoing class or not) beyond the control of Strain Measurement Devices or its suppliers and Strain Measurement Devices shall not be liable for any inability to deliver in accordance with the Contract caused by such contingency.

Taxes

Customer agrees to pay any applicable sales or use taxes whether the taxes are separately invoiced or not, unless Customer furnished Strain Measurement Devices with adequate tax exemption certification.

Substitution of Materials

Strain Measurement Devices reserves the right to make substitutions of materials without degrading the quality of product. Customer approval will be solicited when changes affect form, fit, or function.

Over and Under Shipments

We reserve the right to over or under ship by 10% of the ordered quantity per line item not to exceed \$50.00 in value.

Assignment and Termination

The Customer may not assign the benefit or burden of this contract or any of its rights herein without the prior written consent of Strain Measurement Devices.

This contract may be terminated by the Company (without prejudice to any other remedy it may have) forthwith by notice in writing to the Customer if:

- the Customer is in breach of the terms of these conditions; or
- the Customer (being an individual) dies or has a bankruptcy order made in respect of him or if the Customer (being a body corporate) goes or is put into liquidation otherwise than by voluntary liquidation for the purpose only of amalgamation or reconstruction or shall enter into an arrangement or composition with its creditors or if a receiver, administrative receiver or similar officer is appointed in respect of the Customer's assets or undertaking or any part thereof or the Customer is subject to any similar action in any jurisdiction to which it is subject; or the Customer has failed to pay any sum hereunder to Strain Measurement Devices for a period in excess of the 30 day period from the date of invoice.

Upon the lawful determination of the Contract Strain Measurement Devices shall be entitled to immediately recover from the Customer (notwithstanding any period of credit extended to the Customer may not have expired) all sums then due to Strain Measurement Devices under the Contract (including accrued interest and any other charges properly levied) and all losses arising to Strain Measurement Devices as a result of such determination. Strain Measurement Devices may suspend performance of any contract for the sale of Goods incorporated in these terms in the event that the Customer is in breach of any other contract with Strain Measurement Devices until such time as any such breach has been remedied to the reasonable satisfaction of Strain Measurement Devices.

Law

These conditions and all other express terms of the Contract shall be governed and construed in accordance with the laws of Connecticut

Headings

The headings to the clauses of these terms and conditions are inserted for convenience or reference only and shall not affect their interpretation.

Definitions - In these Conditions of Sale:

“The Company” means Strain Measurement Devices Inc. and/or Strain Measurement Devices.

“The Customer” means the person, firm or company purchasing the Goods (Buyer).

“The Goods” means the product, goods or materials to be supplied by the Company to the Customer under this contract.