

General Purchasing Terms and Conditions of Kistler Instrument Corporation USA

GENERAL TERMS AND CONDITIONS OF PURCHASE

1. Applicability. This purchase order is an offer by Kistler Instrument Corporation (“Kistler”) for the purchase of the goods specified on the face of this purchase order (the “Goods”) from the party to whom the purchase order is addressed (“Seller”) in accordance with and subject to (a) these terms and conditions (the “Terms”; together with the terms and conditions on the face of the purchase order and the Quality Requirements, the “Order”), and *[(b) the applicable provisions of Kistler’s Quality Procurement Requirements as in effect from time to time (the “Quality Requirements”).* This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller’s acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller’s general terms and conditions of sale or any other document issued by Seller in connection with this Order. These Terms apply to any repaired or replacement Goods provided by Seller hereunder. Kistler is not obligated to any minimum purchase or future purchase obligations under this Order.

2. Acceptance. This Order is not binding on Kistler until Seller accepts the Order in writing or starts to perform in accordance with the Order. If Seller does not accept the Order in writing or provide written notice that it has commenced performance within 10 days of Seller’s receipt of the Order, this Order will lapse. Kistler may withdraw the Order at any time before it is accepted by Seller.

3. Delivery Date and Delivery Delay. Seller shall deliver the Goods in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the “Delivery Date”). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Kistler may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Kistler against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date. Kistler has the right to return any Goods delivered prior to the Delivery Date at Seller’s

expense and Seller shall redeliver such Goods on the Delivery Date. For each week that the Seller is in default, the Seller shall pay a penalty of 1%, but no more than 10% of the purchase price. The payment of penalty shall not release the Seller from continued compliance with the terms of the order. Kistler reserves the right to claim compensation in excess of the penalty.

4. Quantity. If Seller delivers more or less than the quantity of Goods ordered, Kistler may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller’s risk and expense. If Kistler does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

5. Delivery Location. All Goods shall be delivered to the address specified in this Order during Kistler’s normal business hours or as otherwise instructed by Kistler.

6. Shipping Terms. Delivery shall be made FOB Delivery Location in accordance with the terms on the face of this Order. Seller shall give written notice of shipment to Kistler when the Goods are delivered to a carrier for transportation. Seller shall provide Kistler all shipping documents, including the commercial invoice, packing list, bill of lading and any other documents necessary to release the Goods to Kistler within one business day after Seller delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, invoices, correspondence and any other documents pertaining to the Order.

7. Title and Risk of Loss. Title passes to Kistler upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

8. Packaging. All Goods shall be packed for shipment according to Kistler’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Special handling and precautions are required for electrostatic sensitive devices. [Seller must provide Kistler prior written notice if it requires Kistler to return any packaging material. Any return of such packaging material shall be made at Seller’s expense.]

9. Amendment and Modification. No Changes. No change to this Order (including, without limitation, any change to Price, Delivery Date, Delivery Location, quantity, design, processes, or specifications) is binding upon Kistler unless it is in writing,

specifically states that it amends this Order and is signed by an authorized representative of Kistler.

10. Inspection and Rejection of Nonconforming Goods. Kistler has the right to inspect the Goods on or after the Delivery Date. Kistler, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Kistler rejects any portion of the Goods, Kistler has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Kistler requires replacement of the Goods, Seller shall, at its expense, within 20 days, replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Kistler may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 0. Any inspection or other action by Kistler under this Section shall not reduce or otherwise affect Seller’s obligations under the Order, and Kistler shall have the right to conduct further inspections after Seller has carried out its remedial actions.

11. Price. The price of the Goods is the price stated in the Order (the “Price”). If no price is included in the Order, the Price shall be the price set out in Seller’s published price list in force as of the date of the Order. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs, duties, fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Kistler.

12. Payment Terms. Seller shall issue an invoice to Kistler on or any time after the completion of delivery and only in accordance with the Terms. Kistler shall pay all properly invoiced amounts due to Seller within [45] days after Kistler’s receipt of such invoice, except for any amounts disputed by Kistler in good faith. All payments hereunder must be in US dollars and made by check or wire transfer. In the event of a payment dispute, Kistler shall deliver a written statement to Seller no later than the date payment is due on the disputed invoice listing all disputed items

and providing a reasonably detailed description of each disputed item. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute.

13. Set-off. Without prejudice to any other right or remedy it may have, Kistler reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Kistler to Seller.

14. Warranties. Seller warrants to Kistler that for a period of two years from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Kistler **[including, without limitation, the Quality Requirements]**; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances (other than those created by Kistler); and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Kistler. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Kistler's discovery of the noncompliance of the Goods with the foregoing warranties. If Kistler gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, **[promptly/within [NUMBER] days]** replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Goods to Seller and the delivery of repaired or replacement Goods to Kistler.]

15. General Indemnification. Seller shall defend, indemnify and hold harmless Kistler and Kistler's subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees and Kistler's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the Goods purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Kistler's or Indemnitee's prior written consent. **[Notwithstanding anything to the**

contrary in this Order, Seller is not obligated to indemnify or defend any Indemnitee against any claim under this Section 0 if such claim or corresponding Losses arise out of or result from, such Indemnitee's gross negligence or willful misconduct.]

16. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Kistler and any Indemnitee against any and all Losses arising out of or in connection with any claim that Kistler's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Kistler's or Indemnitee's prior written consent. **[Notwithstanding anything to the contrary in this Order, Seller is not obligated to indemnify or defend Indemnitee against any claim under this Section 0 if such claim or corresponding Losses arise out of or result from (i) such Indemnitee's gross negligence or willful misconduct, or (ii) goods (including Goods), products or assemblies manufactured or designed by Kistler.]**

17. Insurance. During the term of the Order and for a period of two years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2,000,000 with financially sound and reputable insurers. Upon Kistler's request, Seller shall provide Kistler with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order. Seller shall provide Kistler with 30 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy.

18. Compliance with Law. Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances (collectively, "**Laws**"). Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order, including any licenses or permits required for the import of Goods or any raw materials and other manufacturing parts used in the production and manufacture of the Goods, and the shipment of hazardous materials, as applicable. Seller shall comply with all export and import Laws of all countries involved in the sale of Goods under this Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Kistler may terminate this Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods. Without limitation of the foregoing, Seller shall ensure the Goods and any related packaging,

conform fully to, any applicable Law. Without prejudice to Kistler's rights and remedies under this Order, on Kistler's request Seller shall promptly provide all information necessary to export and import Goods under this Order, including, as applicable, the Export Control Classification Numbers (ECCN), and shall notify Kistler of any changes to the information provided by Seller to export and import Goods under this Order.

19. Ingredients and Materials Disclosure. Upon Kistler's written request, Seller shall promptly provide to Kistler, in such form and detail as Kistler requests, a list of all ingredients and materials incorporated in the Goods, the amount of such ingredients and materials, and information concerning any changes in or additions to such ingredients and material. Without limitation of the foregoing, upon Kistler's written request, Seller shall provide to Kistler all information (in sufficient detail), with written certifications thereof, to enable Kistler to timely comply with all of Kistler's and Kistler's customers' due diligence, disclosure and audit requirements under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") and Rule 13p-1 and Form SD under the Securities Exchange Act of 1934, and all similar, applicable statutes and regulations, including due inquiry of Seller's supply chain (and certifications by such suppliers) identifying conflict minerals (as defined in Section 1502(e)(4) of the Dodd-Frank Act) contained in each Product and the country of origin of such conflict minerals (or, following due inquiry, why such country of origin cannot be determined).

20. Code of Conduct. In supplying Goods hereunder, Seller shall conduct its business in a manner consistent with Kistler's Code of conduct, as in effect from time to time (available at www.kistler.com/downloads).

21. Termination. Kistler may terminate this Order, in whole or in part, at any time with or without cause for undelivered Goods on 10 days' prior written notice to Seller. In addition to any remedies that may be provided under these Terms, Kistler may terminate this Order with immediate effect upon written notice to Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then Kistler may terminate this Order upon written notice to Seller. If Kistler terminates the Order for any reason, Seller's sole and exclusive remedy is

payment for the Goods received and accepted by Kistler prior to the termination.

22. Waiver. No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

23. Confidential Information. All non-public, confidential or proprietary information of Kistler, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Kistler to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Kistler in writing. Upon Kistler's request, Seller shall promptly return all documents and other materials received from Kistler. Kistler shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

24. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure

Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than 20 business days, Kistler may terminate this Order immediately by giving written notice to Seller.

25. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Kistler. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations hereunder. Kistler may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Seller's prior written consent.

26. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

27. No Third-Party Beneficiaries. This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and, except for the rights of the Indemnitees provided in Section 0 and Section 0, nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

28. Governing Law. All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of [New York] without giving effect to any choice or conflict of law provision or rule (whether of the State of [New York] or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of [New York].

29. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States of America or the courts of the State of [New York] in each case located in the City of [Buffalo] and County of [Erie], and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

30. Cumulative Remedies. The rights and remedies under this Order are cumulative and are in addition to and not in substitution for

any other rights and remedies available at law or in equity or otherwise.

31. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

32. Equal Employment. Kistler is an equal opportunity employer and federal contractor or subcontractor. Consequently, Seller agrees that, as applicable, it will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. Seller also agrees that, as applicable, it will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

33. Severability. If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Order or invalidate or render unenforceable such term or provision in any other jurisdiction.

34. Survival. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Set-off, Warranties, General Indemnification, Intellectual Property, Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction/Arbitration and Survival.