

TERMS AND CONDITIONS OF SALE

1. Agreement Terms, General Terms. These Terms and Conditions of Sale (these “Terms”), together with any quotation, specification sheets or sale confirmation to which these Terms are attached or otherwise relate (collectively with these Terms, the “Agreement”), comprise the entire agreement between you and Alpha Measurement Solutions and its group companies, including Analytical Sensors & Instruments, Aurora Scientific Instruments and Van London Co., with respect to the transactions contemplated by [the attached sale confirmation]. The Agreement is the complete and exclusive contract between us with respect to your purchase of the products listed on the attached sale confirmation.

2. Conflicting Terms. We hereby expressly object to and reject all terms and conditions in any purchase order, confirmation or other writing or document, of whatever kind, that you provide that are inconsistent with or in addition to the terms and conditions of the Agreement. Any such inconsistent and additional terms and conditions will not be binding upon us unless we expressly approve them in writing, making specific reference to the inconsistent or additional term or condition.

3. Prices. Prices quoted are subject to change at any time without notice prior to our acceptance of your order. Prices we quote in writing are valid for 30 days unless we state otherwise in writing. If no price has been specified or quoted to you, then the price with respect to any product will be the product price in effect at the time we accept your order.

4. Taxes. Our prices do not include any taxes (including VAT), duties, levies or other government fees that may apply to your order. If any taxes are payable in connection with your order, you will be responsible for paying them. If we pay them on your behalf, we will add them to your invoice. If you claim any exemption, you must provide a valid, signed certificate or letter of exemption for each applicable jurisdiction.

5. Delivery Fees. A \$4.95 handling fee may be added to each invoice. You are also responsible for standard delivery, if applicable, and our product prices do not include such charges unless expressly stated. If we pay such charges on your behalf, we will also add these to your invoice.

6. Cancellation and Changes. Once you have placed your order, you cannot cancel or change it without our written consent. If canceled, a minimum fee of 25% of your original order price will be invoiced.

7. Payment Terms. We will invoice you for the product price and all other charges due when we ship you the products. Unless we have agreed otherwise in writing, all payments are due within 30 days after you receive our invoice. In addition, each order is a separate transaction, and you may not off-set payments, including from one order against another. We reserve the right to require you to make full or partial payment in advance, or provide other security to our satisfaction, if we believe in that your financial condition does not justify the payment terms described in this Section 7. 3.5% fee will be added to the invoice for Credit Card purchases.

8. Late Payments. If you are late in making any payment, then, without affecting our other rights, we reserve the right to charge you a late-payment fee. The late payment fee will be calculated as interest on the amounts due from the payment due date until you make payment in full, at the rate of 1.5% per month, or, if less, the maximum amount allowed by law. We also reserve the right to cancel or stop delivery of products in transit and withhold shipments in whole or in part if you do not pay us when due, or if you otherwise do not perform your obligations in the Agreement.

9. Delivery; Risk of Loss. We will ship products to the destination you specify in your order, Ex Works (Incoterms 2020) our facility. Title to and risk of loss of all products will pass to you when we deliver them to the commercial carrier at our facility. By agreeing to these Terms, you (a) give your consent for us to arrange for carriage for all products supplied hereunder on your behalf, and (b) waive your right to arrange carriage or to give us any specific instructions regarding carriage. We may, in our discretion, make partial shipments and invoice each shipment separately. Our shipping dates are approximate only and are based upon our prompt receipt of all necessary information from you to properly process your order, and we will not be liable for any loss or damage resulting from any delay in delivery. You may not refuse delivery or otherwise be relieved of any obligations as the result of such delay. If our delivery of a product to you is delayed due to any cause within your control, we will place the delayed products in storage at your risk and expense. For drop ship customers, we need the account number for the shipment provided at time of booking. If the goods are not picked up by the customer/forwarder, we will ship them to a 3rd party warehouse. If the goods are at the warehouse longer than 3 days, the cost would be charged directly to the customer.

10. Returns and Credits. Our Quality team must pre-authorize all product returns via the Return Material Authorization (RMA) process. Our Quality department, with the support of the Customer Service department, will approve the return of any product that is damaged or defective on receipt, provided you contact customer service within five days after receiving the product and provided such damage or defect has not been caused by any failure by you or the carrier to handle or store the products using reasonable care or as otherwise indicated on the label or in the product specifications. If you do not contact us within that five-day period, we will deem the product to be accepted, but you will not lose any warranty rights.

11. Product Credits. If we approve your return of any product that is not damaged or defective, then the product must arrive at our facility in condition satisfactory for resale. Any return not due to our error is subject to a minimum restocking charge of 25% of the original sale price. We do not credit shipping charges, and you will not receive credit for any product returned without our prior approval.

12. Limited Warranties. Subject to the limitations contained in the Agreement, with respect to each product that we sell, we warrant that such product conforms to the specifications set forth on the attached sale confirmation or specification sheets, if any and **WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP** for a period of twelve (12) months from the date of shipment from Alpha Measurement Solutions, except for “PVC Membrane ISE products,” which are **WARRANTED TO BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP** for a period of six (6) months from the date of shipment from Alpha Measurement Solutions, in each case, provided that the applicable product is used under normal conditions and in accordance with the operational limitations and is not subjected to accident, alteration, misuse, or neglect. In addition, with respect to each product that we sell, we warrant that, at the time of delivery, (i) we have good and marketable title to, or other right to sell, such product, (ii) such product is free and clear of any liens and encumbrances, and (iii) such product has been produced in compliance with all applicable laws. Notwithstanding the foregoing, any products purchased by us from a third party for resale to you will carry only the warranty extended by the original manufacturer, and you agree that we will have no liability for any such product.

13. Exclusions. Our warranties do not apply to (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) your misuse of any product or your negligence, (iv) causes external to the products, such as power failures or electrical power surges, (v) installation, removal, use, maintenance, storage or handling in an improper, inadequate or unapproved manner by you or any third party, including failure to follow our instructions, operating guidelines or protocols, operation outside of stated environmental or use specifications, or operation or contact with unapproved materials, chemicals or other products, or (vi) products manufactured in accordance with specifications you provided to us. **ADDITIONALLY, ANY INSTALLATION, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN US WITHOUT OUR PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS WE HAVE NOT SUPPLIED, WILL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.**

14. Limitations. OUR WARRANTIES EXTEND ONLY TO YOU, THE ORIGINAL PURCHASER, AND YOU CANNOT TRANSFER THEM. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, WE DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE, AND/OR THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

15. Remedies. During the applicable warranty period only, for any products that do not conform to the specifications set forth on the attached sale confirmation or specification sheets, we agree, in our sole discretion, to either (a) repair or replace the non-conforming product and/or provide additional parts as reasonably necessary to comply with our warranty obligations, or (b) refund the purchase price paid for the non-conforming product, but you must first notify us in writing within five days after you discover any defect or non-conformance, and include in the notice clear details of your warranty claim. OUR OBLIGATION TO REPAIR OR REPLACE A PRODUCT, OR REFUND THE PURCHASE PRICE PAID FOR THE PRODUCT, IS YOUR SOLE REMEDY. After our review, assuming we authorize the product return, we will provide you with a Return Material Authorization (RMA), which may include product-specific handling instructions that you must follow. For valid product warranty claims timely made in accordance with the Agreement, you must return the non-conforming products to us. All returned products will become our property, and if determined to be non-warranty item, we will ship your repaired or replacement products according to our deliver terms in Section 5 of these Terms.

16. Waiver; Indemnification. You hereby release, waive and discharge Alpha Measurement Solutions and its group companies, including Analytical Sensors & Instruments, Aurora Scientific Instruments and Van London Co., and their respective affiliates, and their respective directors, managers, officers, employees, agents and representatives (the “Released Parties”) from any and all loss, liability, claims, demands, actions and causes of action whatsoever arising out of or related to any loss, damage or personal injury, including, but not limited to, illness or death, arising out of or related to any installation, use, storage or handling of any product in an improper, inadequate or unapproved manner by you or any third party, including failure to follow our instructions, operating guidelines or protocols, operation outside of stated environmental or use specifications, or operation or contact with unapproved materials, chemicals or other products.

If a third party makes a claim against us (i) for infringement of its intellectual property based on our manufacture or sale of a product that we make under your instructions, specifications or other directions, or using materials that you provide to us, (ii) arising out of or related to (A) your negligence or your misuse of any product, or (B) any installation, use, storage or handling of any product in an improper, inadequate or unapproved manner by you or any third party, including failure to follow our instructions, operating guidelines or protocols, operation outside of stated environmental or use specifications, or operation or contact with unapproved materials, chemicals or other products, or (iii) arising out of or related to your failure to comply with the terms of the Agreement, then you will indemnify and hold us harmless from and against any and all claims, losses, damages and expenses (including reasonable attorneys’ fees and other costs of defending and/or settling any action) that we may have to pay as a result of the claim.

17. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE WILL NOT BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, ALL COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOSS OF REVENUE) THAT YOU MIGHT INCUR UNDER THE AGREEMENT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH OUR PRODUCTS, EVEN IF WE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

NO ACTION, REGARDLESS OF FORM, ARISING OUT OF TRANSACTIONS UNDER THE AGREEMENT MAY BE BROUGHT BY EITHER YOU OR US MORE THAN TWO YEARS AFTER THE APPLICABLE CAUSE OF ACTION HAS ACCRUED. IN ADDITION, OUR MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, OR ANY PRODUCT UNIT, IS LIMITED TO 100% OF THE AMOUNT YOU PAID TO US FOR THE SPECIFIC PRODUCT PURCHASED THAT GAVE RISE TO THE LIABILITY.

THE FOREGOING PROVISIONS IN THIS SECTION 17 DO NOT LIMIT OUR LIABILITY THAT CANNOT BE LIMITED BY LAW.

18. Breach or Default. In the event of any breach or default by you of your obligations under the Agreement, we may, at our option, (a) terminate the Agreement, (b) suspend performance until the breach or event of default has been cured, and (c) pursue any other right or remedy available at law or in equity. In addition, if we bring a legal action or similar proceeding against you to enforce our rights under the Agreement and we prevail in that action or proceeding, we will be entitled to collect from you all reasonable legal fees, costs and other expenses that we incur in connection with our enforcement of the Agreement.

19. Miscellaneous; Assignment. You may not delegate any duties or assign any rights or claims hereunder without our prior written consent, and any such attempted delegation or assignment will be void.

20. Governing Law; Venue. The Agreement and performance under it will be governed by the laws of the state of Texas. The state and federal courts located in Harris County, Texas will have exclusive jurisdiction over any legal proceeding arising under the Agreement. IN THE EVENT OF ANY LEGAL PROCEEDING BETWEEN YOU AND US RELATING TO THE AGREEMENT, NEITHER PARTY MAY CLAIM THE RIGHT TO A TRIAL BY JURY. Any action arising under the Agreement must be brought within one year from the date that the cause of action arose. The U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

21. Force Majeure. We will not be responsible or liable for failing to perform our obligations under the Agreement to the extent caused by circumstances beyond our reasonable control, including due to any acts of God (including any hurricane, earthquake, or other natural disaster), war, riot, fire, pandemic, epidemic, act of terrorism, unavailability of components or materials, compliance with orders or guidance of any governmental authority or other unforeseen circumstances.

22. Amendment and Waiver. No waiver, consent, modification, amendment, or changes to the terms of the Agreement will be binding unless in writing and signed between you and Alpha Measurement Solutions and its group companies, including Analytical Sensors & Instruments, Aurora Scientific Instruments and Van London Co. Our failure to object to terms contained in any subsequent communication from you will not be a waiver or modification of the Agreement. Our failure to exercise any rights under the Agreement is not a waiver of our rights to damages for your breach of contract and is not a waiver of any subsequent breach.

23. Headings. Headings are for convenience only and shall not be used in the interpretation of these Terms.

24. Confidentiality. You agree to keep confidential any non-public technical information, commercial information (including, without limitation, prices) or instructions received from us as a result of discussions, negotiations and other communications between us in relation to our products. You agree that we will be entitled to specific performance of this Section 24 and injunctive and other equitable relief in our favor as a remedy for any breach by you of this Section 24.

25. Severability. Any provision of the Agreement that is prohibited or that is held to be void or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.