

B/R Instrument

Terms and Conditions of Sale

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. GENERAL. B/R Instrument Corporation ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any form issued by Buyer shall not operate to vary any of the terms and conditions set forth herein unless expressly agreed to by Seller in writing. If Buyer objects to any term or condition set forth herein, this objection must be in writing and received by Seller at the address stated on the opposite side of this document prior to Seller's delivery of any of the Products. Seller's failure to object to terms contained in any communication from Buyer will not be a waiver of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.
2. PRICE. All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms or conditions that are not part of Seller's original price quotation.
3. TAXES AND OTHER CHARGES. Prices for the Products are exclusive of all excise, sales, use, transfer, VAT, GST and other taxes and duties imposed by any federal, state, municipal or other governmental authority with respect to the sale, purchase, manufacture, delivery, storage, importation, brokerage, processing, use, consumption or transportation of any Products covered hereby, all of which taxes and duties must be paid by Buyer.
4. TERMS OF PAYMENT. Seller may invoice Buyer on shipment for the price and all other charges payable by Buyer with respect to such shipment. Buyer shall make all payments in accordance with the terms on the face hereof. All payments will be made by letter of credit confirmed on Sun Trust.... or prepayment unless otherwise specified in writing. All payments shall be made in U.S. Dollars.
5. DELIVERY OR CHANGES BY BUYER. The Products will be shipped to the destination specified by Buyer, F.O.B. Seller's facility in Easton MD USA. Unless otherwise mutually agreed to by the parties, Seller will select the carrier for shipment of the Products, but in no event will Seller be deemed to assume any liability in connection with such shipment nor will the carrier be deemed to be the agent of Seller. The Products will be insured in transit at the expense of Buyer. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. Credit will not be allowed for Products returned without the prior written consent of Seller.
6. TITLE AND RISK OF LOSS. Subject to the provisions of Section 7 below and to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the

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licensor(s) thereof, as the case may be. Any claims for damage to, or loss or misdelivery of the Products will be filed directly with the carrier by Seller. Buyer must note any visible damage to the shipment on the delivery ticket. Buyer must notify Seller of any damage to Product with 48 hours of delivery.

7. **WARRANTY.** The products listed on this quotation are sold "as is." Seller specifically excludes all warranties of merchantability and fitness. However, if the warranty registration form shipped with the product is completed in its entirety and returned to B/R Instrument Corp. within thirty days (30), the Seller warrants for the period indicated below that the products are free of defects in workmanship and free of defects in such materials as are wholly manufactured by B/R Instrument Corp. Such materials, which are not wholly manufactured by B/R INSTRUMENT CORP., are not covered by this warranty, but may be covered under warranty from the original manufacturer. In the event of a breach of warranty, Buyer shall have the rights set forth in the "remedies" section of this agreement. The warranty, if any, is non-transferable. Service costs incurred during the warranty period cover labor and parts. The customer pays travel expenses and shipping charges.

Any installation, maintenance, repair, service, relocation or alteration to or of, or other tampering with the products performed by any person or entity other than seller without seller's prior written approval, or any use of replacement parts not supplied by seller, shall immediately void and cancel all warranties with respect to the affected products.

Except as expressly provide in this section 8, seller disclaims all warranties, whether expressed or implied, oral or written, with respect to the products, including without limitation all implied warranties of merchantability or fitness for any particular purpose. Seller does not warrant that the products are error-free or will accomplish and particular result.

8. **INDEMNIFICATION.** Buyer indemnifies and holds Seller harmless from any and all claims by Buyer or third parties for damages arising from the use of the products. Damages specifically include, but are not limited to, bodily and economic injuries to people and property damage. Indemnity shall extend to attorney fees, litigation expenses, interest on funds expended and court costs. Indemnity reimbursement to Seller shall occur whether or not suit is actually filed. Buyer understands that use of the products involves some danger of damage to persons and property which is minimized by continuous careful monitoring of the products while in use. Sale to Buyer is with the understanding that Buyer will read and follow all instructions provided with the products.
9. **REMEDIES.** The sole and exclusive remedy which is available in the event of Seller's breach of this agreement, including breach of warranty, is return of the product, at Buyer's cost, and refund of the purchase price by Seller. Seller reserves the right to repair or replace non-conforming goods or parts instead of accepting return of the product and refunding the purchase price. Accordingly, any consequential, incidental, or other damages arising from breach by Seller are expressly, and by agreement, excluded.
10. **SOFTWARE.** With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains ownership of and title to all software products provided hereunder.

Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes

on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. For purposes of Section 117 of the Copyright Act of 1976, as amended, and for all other purposes, Seller will be considered the owner of the software products and related documentation provided hereunder and any copies thereof, and of all copyright, trade secret, patent, trademark and other intellectual property rights therein. Buyer agrees not to sell, transfer, license, loan or otherwise make available to third parties the software products and related documentation provided hereunder. Buyer may not modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. The source code for the software products supplied hereunder will not be disclosed to Buyer, and Buyer may not disassemble, decompile or reverse engineer the software products supplied hereunder. Buyer agrees to hold in confidence the software products and related documentation supplied hereunder and not to disclose or make available in any form the same, except to Seller's and Buyer's employees and agents. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Seller and Buyer intend and agree that software products owned by third parties and provided hereunder are being sublicensed to Buyer, that such third parties retain ownership of and title to such software products, and that such third parties may directly enforce Buyer's obligations hereunder in order to protect their respective interests in such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

11. LIMITATION OF LIABILITY. Notwithstanding anything to the contrary contained herein, the liability of the seller under these terms and conditions (whether by reason of breach of warranty, breach of contract, tort or otherwise, but excluding liability of seller) shall not exceed an amount equal to the total purchase price theretofore paid by buyer to sell with respect to the product(s) giving rise to such liability. Notwithstanding anything to the contrary contained herein, in no event shall seller be liable for any indirect, special, consequential or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenue, loss of profits or loss of goodwill), regardless of whether seller (a) has been informed of the possibility of such damages or (b) is negligent.

12. EXPORT RESTRICTIONS

A. U.S. Export Laws and Regulations. Buyer acknowledges that each Product and any related software and technology, including documents and other material containing technical data and other information (collectively "Items"), may be subject to export controls of the U.S. government. Such export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict the export of Items from the United States and their re-export from other countries. Buyer shall comply with the EAR and all other United States laws, regulations, laws, treaties, and agreements relating to the export or re-export of any Item, and without limiting the foregoing, shall not, without first obtaining permission to do so from the appropriate U.S. government agencies, (i) export or re-export any Item into any of those countries listed from time to time in the EAR as countries subject to general embargoes or to any persons who are specially designated nationals of such countries or (ii) export, re-export, distribute or supply any Item to a person if Buyer knows that such person intends to export or re-export the Item to any such embargoed country or a national thereof or intends to use

or allow others to use the Item for activities related to weapons or their delivery. Buyer shall cooperate fully with B/R Instrument Corp. in any official or unofficial audit or inspection related to the export control laws or regulations of the U.S. government.

B. Non-U.S. Approvals. Buyer shall obtain and maintain, at its own expense, any non-United States governmental consents, authorizations, approvals, filings, permits, or licenses required for it to export or import any Product or other Item and for each of Buyer and B/R Instrument Corp. to exercise its rights and to discharge its obligations under this Agreement including, without limitation, all consents of and filings with any non-United States governmental body.

C. Indemnification. Buyer agrees to indemnify and hold B/R Instrument Corp. harmless from, or in connection with, any violation of the provisions of this Section by Buyer or its employees, consultants, agents, or customers.

13. Force Majeure No Party shall be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity [or telephone service], and no other Party will have a right to terminate this agreement.