



LEYBOLD USA INC. TERMS AND CONDITIONS OF SALE

1. **GENERAL.** As used herein, "Seller" means Leybold USA Inc. "Buyer" means the entity purchasing the Products or Services from Seller. "Products" as used herein includes any equipment, machine, part, accessory, system, item and/or service sold by Seller to Buyer. "Services" as used herein includes any and all repairs, installations, start up, preventive maintenance, performance verification, calibration, training and/or other service performed offered or performed by Seller for Buyer. Seller' sale of any Products/Services is expressly conditioned on Buyer's assent to these Terms and Conditions of Sale. Any acceptance of Seller' offer is expressly limited to acceptance of these Terms and Conditions of Sale. Any terms or conditions provided by Buyer which add to, vary from, or conflict with these Terms and Conditions of Sale are hereby expressly objected to and rejected. Where terms and conditions of sale between Buyer and Seller are conflicting or inconsistent, Seller's Terms and Conditions shall prevail.

2. **PRICE.** The price is payable in full within thirty (30) days of receipt of invoice unless otherwise stated on the face of this document. The price does not include any sales, use or excise taxes and such taxes shall be paid by the Buyer or added to the sale price. The Buyer may submit to the Seller a tax exemption certificate to which the Seller shall give effect if acceptable to the taxing authorities. The price shall bear interest at six (6) per cent per annum from the date due until the date paid. If, in the judgment of Seller, the financial condition of the Buyer, at any time during the manufacturing period or at the time the product is ready for shipment, does not justify the terms of payment specified, Seller may require full or partial payment in advance.

3. **DELIVERY.** Unless otherwise agreed in writing, Products manufactured, assembled or warehoused in the continental United States are delivered F.O.B. shipping point, and Products shipped from outside the continental United States are delivered FOB point of entry. Shipment dates are approximate and are subject to current availability, priority and scheduling requirements, changes in production schedules, export or other license requirements and governmental orders or directives. Seller shall not be liable for unavoidable delays in delivery caused indirectly or directly or in any manner by fires, flood, accidents, riots, acts of God, war, governmental interference, embargoes, strikes, labor difficulties, shortage of labor, fuel power, materials or supplies, transportation delays, or any other cause or causes either beyond its control or which it cannot remedy without economic hardship.

4. **CONDITIONS OF SELLER'S PLANT APPROVAL.** This contract of sale shall not be effective unless accepted and acknowledged by the Seller at Seller's office in Export, Pennsylvania, within ten (10) days after the date of receipt of such contract by the Seller.

5. **ACCEPTANCE.** The Products shall be considered to have been finally accepted by Buyer ten (10) days after receipt of the shipment unless notice of rejection or notice of any claims has been given in writing to the Seller within such ten (10) day period. Without limiting the foregoing, the Buyer shall have been deemed to have accepted any shipment of an amount more or less than the amount ordered unless notice of claim or rejection is given within the ten (10) day period.

6. **RISK OF LOSS.** If the Products are shipped FOB Seller's loading dock, the risk of loss shall transfer to the Buyer and delivery deemed to be complete upon delivery to a private or common carrier and the Buyer shall make all claims for loss or damage in transit directly to the carrier. The parties shall provide reasonable assistance to each other in filing claims against carriers.

7. **EXPORT/RE-EXPORT.** Buyer agrees and acknowledges that the equipment, service, or technology are sold in accordance with U.S. Export Administration Regulations. Buyer agrees to ascertain and comply with all applicable export and re-export obligations and restrictions, including without limitation, U.S. export and re-export controls and economic sanctions regulations. Diversion of the Products -contrary to U.S. law is strictly prohibited. In addition, Buyer will review and comply with any applicable national export compliance laws and regulations in Buyer's home country that may impact the export or re-export of Products.

8. **CHANGES AND CANCELLATION.** All order-related changes requested by Buyer (whether with respect to changes in drawings, designs, specifications, material, packing, time and place of delivery, mode of transportation, or otherwise) are subject to Seller's approval in writing. If any change causes an increase in the cost of, or the time required for, the performance of any part of the order, an equitable adjustment shall be made to the price and/or delivery schedule. Unless agreed otherwise by the parties in writing, pricing for work arising from such changes shall be at Seller's then-current applicable rates/prices. Seller reserved the right to cancel any order at any time, without penalty, upon written notice to Buyer.

9. **LIMITED WARRANTY.**

A. Seller warrants to the original purchaser that the equipment to be delivered pursuant to this Contract will be free from defects in material or workmanship for a period of twelve (12) months from the initial date of shipment. If Products do not meet the above-stated warranty, Buyer shall promptly within the applicable above-stated warranty period notify Seller in writing of the alleged failure and substantiate that the Product has been operated and maintained in accordance with Seller's recommendations and standard industry practices. Seller shall at its option (i) replace the defective Product; (ii) repair the defective Product; or (iii) take back the defective Product and refund (or credit) monies paid by Buyer to Seller for the defective Product less a reasonable allowance for use.

B. Seller's liability under this warranty shall cease if any major repairs to or any replacement or modification of the equipment is made by any person other than Seller's personnel or persons working under the supervision of Seller's personnel. Further, the warranty shall cease unless the Buyer has operated and maintained the equipment in strict compliance with the operating instructions and manuals, if any, provided with the equipment.

C. If the equipment contains components from another manufacturer and are subject to the manufacturer's warranty, then Seller's liability shall be limited to the extent of the warranty which Seller received from the manufacturer or supplier of the equipment component parts. Seller's liability shall be no greater than the liability of the manufacturer or supplier as determined by a final judgment by the Buyer against the manufacturer or supplier of such components. Seller will cooperate with Buyer in such legal action but at Buyer's expense.

D. THIS LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTY OF QUALITY. CORRECTION OF NONCONFORMITIES IN THE MANNER AND WITHIN THE APPLICABLE WARRANTY PERIOD SET FORTH ABOVE PROVIDES THE EXCLUSIVE REMEDIES WITH RESPECT TO THE QUALITY OF, OR ANY DEFECT IN, PRODUCTS OR SERVICES DELIVERED OR PERFORMED HEREUNDER.

10. **RETURNS.** With the exception of warranty returns, all units or parts must be returned within ninety (90) days of shipment. Returns are not authorized without written instructions from the Seller. All returned material must be complete including all cables, accessories, etc. and must be returned in original packaging. Accepted material must be in new condition and will be subject to inspection by the Seller. Incomplete returns or returns not made in original packaging are subject to additional charges. All returns will be subject to a restocking charge of up to 25% of the net price paid by the Buyer. Return transportation charges must be prepaid by Buyer. Material of a special nature cannot always be accepted for return.

11. **LIMITATION OF LIABILITY.**

A. NOTWITHSTANDING ANYTHING ELSE, THE TOTAL LIABILITY, IN THE AGGREGATE, OF SELLER ARISING OUT OF OR RELATED TO THIS CONTRACT (OR THE PERFORMANCE OR BREACH THEREOF) OR ANY PRODUCT OR SERVICE, SHALL BE LIMITED TO THE ACTUAL PURCHASE PRICE AMOUNT PAID BY BUYER TO SELLER FOR THE SPECIFIC PRODUCT OR SERVICE GIVING RISE TO THE CLAIM (REGARDLESS OF WHETHER DAMAGES ARE CHARACTERIZED AS ARISING OUT OF BREACH OF WARRANTY, TORT, CONTRACT, OR OTHERWISE). For purposes of this paragraph, the term "Seller" means Seller, its affiliates, suppliers, and subcontractors, and their respective employees/agents.

B. NOTWITHSTANDING ANYTHING ELSE, UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF TOTAL OR PARTIAL USE OF PRODUCTS, GOODS OR SERVICES, DOWNTIME COSTS, AND DELAY COSTS), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE AND EVEN IF THE LIMITED REMEDIES SET FORTH HEREIN FAIL OF THEIR ESSENTIAL PURPOSE (REGARDLESS OF WHETHER SUCH DAMAGES ARE CHARACTERIZED AS ARISING OUT OF BREACH OF WARRANTY, TORT, CONTRACT, OR OTHERWISE). For purposes of this paragraph, the term "Seller" means Seller, its affiliates, suppliers, and subcontractors, and their respective employees/agents.

12. **INTELLECTUAL PROPERTY.** Seller retains ownership of any patent, copyright, trademark, trade secret, design right or other intellectual property right in or relating to the Products/Services. Buyer shall acquire no rights in or over such intellectual property including, but not limited to, any technical information, know-how, drawings and specifications supplied by Seller or relating to the Products/Services. Notwithstanding the foregoing, Seller hereby grants to the Buyer a royalty free, perpetual, world-wide, non-exclusive, non-assignable, non-sublicensable license to use the intellectual property incorporated in the Products/Services solely for the purpose of installing, operating and maintaining the Products/Services.

13. **PATENT INDEMNITY.** Seller shall defend, indemnify and hold harmless Buyer for a claim alleging that any Product constitutes an infringement of any United States patent or copyright. In case the Product, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Seller will, at Seller's option and expense, either: (i) procure for Buyer the right to continue using said Product; (ii) replace it with substantially equivalent non-infringing Product; (iii) modify the Product so it becomes non-infringing; or (iii) take back the non-conforming Product and refund or credit monies paid by Buyer to Seller for such infringing Product less a reasonable allowance for use. Seller will have no duty or obligation to Buyer under this paragraph to the extent that the Product is (i) supplied according to Buyer's design or instructions wherein compliance therewith has caused Seller to deviate from Seller's normal designs or specifications, (ii) modified, (iii) combined with items, systems, methods, or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a claim is brought against Buyer. If by reason of such design, instruction, modification or combination, a claim is brought against Seller, Buyer shall protect Seller in the same manner and to the same extent that Seller has agreed to protect Buyer under the provisions above in this paragraph. This paragraph states Seller's exclusive liability for infringement of any third party's patent and/or copyright.

14. **APPLICABLE LAW.** This Contract and any claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws principles. Buyer and Seller agree that the state and federal courts residing in the State of Pennsylvania shall have the exclusive jurisdiction to settle any disputes, which may arise in connection with the Contract.

15. **MISCELLANEOUS.**

- A. If any portion or clause of this Contract is held invalid or unenforceable as to any person or under any circumstances, the invalidity or lack of application shall not impair or affect the other provisions and the application of those provisions which can be given effect without the invalid or unenforceable provision or application. With this intention, the provisions of this Contract are declared to be severable.
- B. Any assignment of this Contract or any rights hereunder, without prior written consent of Seller by a duly authorized representative thereof shall be void.
- C. Waiver by Seller of a breach by Buyer of any of the terms and conditions of this -Contract shall not constitute a waiver of any other breach of the same or any other term.
- D. This Contract constitutes the entire agreement between the parties with respect to its subject matter. No modification of this Contract shall be binding unless in writing and signed by both parties.