

## TERMS AND CONDITIONS OF SALE

**General:** These Terms and Conditions of Sale ("Terms") are expressly made part of the quotation and/or acknowledgement of Sinton Consulting, Inc. d/b/a Sinton Instruments, Inc. ("Seller"). These Terms apply to all sales made by Seller except to the extent the Terms conflict with a sales agreement signed by Seller and Purchaser. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms may conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by the Purchaser. In such case, these Terms shall govern, and acceptance of Purchaser's order is conditioned upon Purchaser's acceptance of these Terms, irrespective of whether the Purchaser accepts these conditions by a written acknowledgement, by implication, or by acceptance of and payment for Products ordered from Seller. Seller's failure to object to provisions contained in any communication from Purchaser shall not be deemed a waiver of these Terms. Any changes in these Terms can be agreed to (1) in writing signed by an authorized representative of Seller and of Purchaser; or (2) by e-mail communication reflecting the agreement of Seller and Purchaser to such changes, and shall thereafter be binding on both parties.

**Confidentiality:** If there is an existing Confidentiality Agreement between Seller and Purchaser, Purchaser agrees to (1) keep all Confidential Information of Seller as set forth in the Confidentiality Agreement and (2) abide by all terms of that Confidentiality Agreement.

**Payment:** Terms of payment are net cash in U.S. funds, 30 days from date of invoice (upon approved credit) or prepayment via check, bank wire transfer, or approved letter of credit for orders over \$20,000. Credit card payments also accepted for purchases less than \$2,000.00. In the event that any matter is referred for collection, Purchaser will pay any and all costs of collection, including reasonable attorneys' fees and costs incurred. Seller reserves the right to restrict the terms of payments or to require payment prior to time of shipment, or to cancel or defer any order or any part thereof, whenever, in Seller's sole opinion, Purchaser's financial condition or other circumstances do not warrant shipment on the terms originally specified. All rights of Seller hereunder are cumulative and are in addition to any and all rights and remedies afforded by the Uniform Commercial Code in effect in the State of Colorado.

**U.S. Shipment:** All prices are net F.O.B. Seller's plant or other point of shipment unless otherwise expressly agreed upon by Seller. Method and route of shipment are at Seller's discretion. In all instances where Purchaser specifies the method and/or route of shipment, the Products are shipped at Purchaser's expense, "freight collect."

**International Shipment:** Except as modified, all prices are net CIP, Purchaser's Facility. Method and route of shipment are at Seller's discretion. In all instances where Purchaser specifies the method and/or route of shipment, the Products are shipped at Purchaser's expense, "freight collect."

**Identification, Title, And Risk of Loss:** Except as modified, title and risk of loss shall pass to Purchaser when the Products are placed in the hands of the carrier for shipment.

**Loss, Damage, Or Delay:** Shipping dates are estimated only and are based on conditions at time of quotation. Unless otherwise agreed in writing by Seller, delivery time is not of the essence. Seller does not accept liability for any loss arising from delay in delivery of Products.

**Taxes, Duties and Licenses:** All prices are exclusive of applicable federal, state or local taxes, export duties, or like taxes and duties, unless otherwise expressly provided. Seller shall have no obligation to secure any export license or permit for its Products unless otherwise required to do so under U.S. law.

**Installation and Service:** Sinton products are designed to be installed by the user. Phone and e-mail technical support is available during setup and qualification. Therefore, onsite installation, training and seller final acceptance or service is not included. Such services may be purchased on a separate basis.

**Returns:** All sales are final. No Products may be returned without the prior written consent of the Seller. In the event returns are authorized by the Seller, Seller will issue a Return Material Authorization Number (RMA). Goods returned without such RMA, or with freight due, will be refused.

**Installation and Use:** Purchaser shall install and use the Products in accordance with instructions provided by Seller. Sale is conditional on proof of Purchaser's technical qualification to use the Products and proof that Purchaser's equipment will work with Sinton's Products where Purchaser requires integration of its equipment with Sinton's Products. Seller will not be responsible for any damage arising out of improper or unauthorized installation, negligence, neglect, abuse, misuse, or improper maintenance by Purchaser and any such acts will invalidate the warranty.

**Changes and Revisions:** Seller reserves the right to make revisions and changes in its Products and assumes no obligation to incorporate these changes in earlier models. The prices contained in Seller's price sheets and quotations are subject to change without notice.

**Limited Warranty:** Seller warrants its Products used as recommended without modification or in combination with other equipment will be free from defects in material and workmanship under normal use and service for a period of 12 months from the date of shipment. Seller's sole obligation under this warranty shall be limited either to replace or repair defective or infringing Products or to refund the purchase price, at Seller's option, after inspection at Seller's plant verifies the claim. The limited warranties above do not extend or apply to consumables or accessories (including, but not limited to items shown on Schedule A).

THERE ARE NO OTHER WARRANTIES WHICH EXTEND BEYOND THIS LIMITED WARRANTY, AND TO THE FULL EXTENT PERMITTED BY LAW, ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED, AS WELL AS ANY OTHER OBLIGATIONS OR LIABILITIES OF SELLER.

**Release for Manufacture:** Purchase orders received, processed, and acknowledged requiring approval of engineering drawings, or other form of literature, prior to "release for manufacture," or stipulating a "hold for approval" for any reason, are deemed to be special in their content. Receipt of said approved drawings, or literature, or confirmation of approval of same, is considered release to manufacture. Approval of said drawings, or release to manufacture, by the company issuing said purchase order, or its representative, is considered acceptance of the technical capability of said equipment to meet its needs and acceptance of the responsibility of all cost of processing, engineering and manufacture of said order and entitles Seller to the full selling price of all items included on said purchase order or addendums to same.

**Grant of License:** By the sale of these Products, Seller hereby grants a single perpetual, revocable, non-transferrable license, per instrument, to use the software contained in these Products. Purchaser agrees not to reverse engineer, copy, produce, or manufacture any items containing any software or other intellectual property rights or confidential information of Seller, or to cause or enable others to take such action, and any such action shall cause the foregoing license to be immediately revoked.

**Force Majeure:** Seller is not liable for loss, damage, detention, or delay due to causes beyond its reasonable control such as acts of God, acts of Purchaser, acts of civil or military authority, terrorism, priorities, fires, strikes, floods, epidemics, quarantine restrictions, war, riot, delays in transportation, government restrictions or embargoes, or difficulties in obtaining necessary labor, materials, and manufacturing facilities due to such causes.

**Limitation of Liability:** PURCHASER AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES OR PROFIT, PROPERTY DAMAGE OR LOSS OF GOODWILL, EVEN IF SELLER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE, ARISING OUT OF OR RESULTING FROM THE SALE, INSTALLATION OR USE OF ANY SELLER PRODUCT OR SERVICE OR FOR ANY OTHER REASON. SELLER'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH ANY OCCURRENCE OR SERIES OF OCCURRENCES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE CONTRACTUAL VALUE OF THE PRODUCTS OR SERVICES SOLD TO PURCHASER IN THE APPLICABLE TRANSACTION.

**Governing Law; Venue:** The purchase of Seller's Products shall be governed by the laws of the State of Colorado in effect on the date of shipment. The parties agree and consent that the exclusive jurisdiction and venue for any legal action based on the purchase of Seller's Products shall be in the County of Boulder, State of Colorado. The prevailing party in any such dispute shall be entitled to recover its reasonable attorneys' fees and costs incurred, in addition to any other damages. The parties expressly agree that the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

**Export regulations:** Purchaser agrees to comply fully with all laws and regulations concerning the purchase and sale of Products, including compliance with the Export Administration Regulations of the United States to the extent applicable. The Products are licensed by the United States for delivery to the ultimate destination as shown on the shipment/invoice address and any contrary diversion is prohibited.

## SCHEDULE A

Industrial 400 Joule Power Supply - Warranty 1,000,000 Flashes or one year whichever occurs first

Industrial 2400 Joule Power Supply - Warranty 1,000,000 Flashes or one year whichever occurs first

Industrial Flash Head for 400 Joule – Warranty 1,000,000 Flashes or one year whichever occurs first

Industrial Flash Capacitor Bank – Warranty 1,000,000 Flashes or one year whichever occurs first

### **Consumables:**

Cables – all instruments

Chucks, any type

Connector pin/socket pair

Flash Bulbs, all types

Pogo pins, front and backside

Illumination monitor Cells (Reference Cells)

Remote flash head for X-type flash

Replaceable element for Surface Temperature Probes

Terminal block with connectors

Thermocouple Assembly