



## Terms and Conditions of Sales

### FOR GENERAL USER

#### PURCHASE ORDERS

All orders for Sierra products made by Buyer are received subject to acceptance by either Sierra Instruments Inc., 5 Harris Court, Building L, Monterey, California 93940, USA, or Sierra Instruments b.v., Bijlmansweid 2, 1934RE Egmond aan den Hoef, The Netherlands, herein referred to as Sierra, and may be accepted only on Sierra's printed acknowledgment form. All purchase orders for Sierra products and services must be made out to Sierra, in the name of Sierra, and must be received in writing at the factory, Monterey, California or at our office in Egmond aan de Hoef, the Netherlands before performance is completed, unless otherwise approved in writing by Sierra.

#### QUOTATIONS AND PUBLISHED PRICES

Until acceptance, all written quotations are subject to change upon written notice to the Buyer and are void after 30 days unless otherwise specified in the quote. Verbal quotations are valid only on the day on which they are made by an authorized representative of Sierra. The prices shown on the published price lists and other published literature issued by Sierra are not offers to sell and are subject to confirmation by specific quotation and acknowledgment. All published prices and discounts are subject to change without notice. SEALED BIDS are subject to these standard Terms and Conditions of Sale unless otherwise specified in the bid and agreed upon by Sierra.

#### TAXES

Prices are exclusive of all foreign, federal, state, municipal or other government excise, sales, use value-added, occupational, duty, or like taxes now in force, or enacted in the future, and therefore are subject to an increase equal in amount to any tax Sierra may be required to collect or pay upon the sale or delivery of the items purchased.

#### TERMS

The terms of sale shown in the published price list shall apply from the date of shipment by Sierra. If Sierra in its judgment at any time deems that by reason of the financial condition of the Buyer, or otherwise, the continuance of production, or of shipment on the terms specified is not justified, Sierra may require payment in advance. Certain orders may, in the judgment of Sierra, because of their nature or the delivery involved, require progress payments. Pro-rata payment shall become due as shipments are made. Terms are cash net within 30 days. Amounts past due are subject to a service charge of 1.5% per month (or fraction thereof). Should the Buyer be in default of the terms stated above, Sierra shall add to the Buyer's account, all reasonable costs of collection, including attorney's fees, and other collection fees and expenses incurred by Sierra.

#### PACKING

Sierra makes no charge for its standard packing for domestic shipment. The Buyer may be charged for export packing or other special packing requirements, the cost of which will be quoted upon request. No credit or deduction will be allowed if no packing is required.

#### DELIVERY

Shipping dates given by Sierra are approximate and are based on prompt receipt of any approval drawings and all other necessary information pertaining to the order. Sierra will use its best efforts to meet the shipping date quoted provided the Buyer supplies all necessary information and data promptly, but Sierra cannot be held responsible for its failure to do so for cause beyond its reasonable control. Sierra shall in no event be responsible for loss of profits, damages incurred by the Buyer to its customers, or other consequential damages resulting from Sierra's failure to deliver within the time specified. In the event of any delay requested by the Buyer or any delay by lack of shipping instructions, Sierra will store all items ordered at the Buyer's risk and expense, and will invoice the Buyer for the full contract price of the apparatus on the date on which the order is ready for delivery. If manufacture is delayed by the Buyer, payment shall be made based on the percent of completion and the contract price.

#### SHIPPING COSTS AND INSURANCE

Shipments are f.o.b. factory, Monterey, California freight and insurance prepaid, and added, or freight collect, unless otherwise requested and agreed to by Sierra. If insurance is being provided by the Buyer, a formal statement of Buyer's responsibility must accompany purchase order. Customer is responsible for notifying Sierra in writing within 72 hours of any loss or damage to the shipment if the shipment was made f.o.b. destination. In the absence of specific instructions, Sierra will select the carrier.

#### CHANGES

The Buyer may from time to time, but only with the written consent of Sierra, make changes in the order. In the event of any such change, the Buyer shall pay to Sierra the reasonable cost and other expenses (including engineering expenses and all commitments to Sierra's suppliers and sub-contractors) incurred by Sierra prior to receipt of notice of such change for all work rendered unnecessary by such change, or incurred by Sierra thereafter for all work required to effect such change. In the event of any such change, Sierra shall further be entitled to revise its price and delivery schedules to reflect such change.

#### **CANCELLATION**

In the event of cancellation, the Buyer shall be liable for the payment of reasonable cancellation charges, which shall not exceed the unit retail list price of the items canceled and shall include, among other things, expenses already incurred by Sierra, actual liabilities against commitments incident to the order involved, and properly allowable indirect charges as well as a reasonable profit.

No delivery delay requested by Buyer on an order placed under this Agreement shall be effective unless covered by an amendment to the order that provides for the payment of any agreed-upon costs the delay imposes on Sierra and that is accepted on Sierra's printed acknowledgment form. Standard products once delivered may be returned at Sierra's discretion and upon approval by Sierra in writing at a minimum restocking charge of 25% of list price. Return shipping charges are at Buyer's expense.

If Buyer makes an assignment for the benefit of creditors, or if a voluntary or involuntary petition or action in bankruptcy or for reorganization, is filed by or against the Buyer, or if the Buyer admits its inability to pay its debts, or if a trustee, receiver or liquidator is appointed for any part of the assets of the Buyer, or if the Buyer fails to make payments to Sierra in accordance with agreed-upon terms, Sierra may at its option cancel all undelivered portions of any order by written notice to the Buyer at no expense or liability to Sierra. Whenever Buyer fails to meet the payment requirements set forth in the contract, Sierra may cease performance and delivery and accelerate payment of any and all unpaid charges, and such cessation of performance shall not be construed to be a breach of any contract or agreement by Sierra, and Sierra will resume production as soon as reasonably possible upon receipt of payment of all amounts due.

#### **ACCEPTANCE - PRODUCT**

Unless otherwise agreed to by Sierra, the criterion for acceptance of Sierra's products, including options, shall be the successful operation of the product and options using Sierra's standard test procedures applicable to the product and options involved. All acceptance tests shall be made by Sierra personnel at Sierra's factory, unless otherwise allowed and agreed to by Sierra in writing.

#### **LIMITED WARRANTY - PRODUCT - LIABILITY FOR REPAIR AND REPLACEMENT ONLY**

All Sierra products are warranted to be free from defects in material and workmanship and will be repaired or replaced at no charge to Buyer, provided return or rejection of product is made within a reasonable period but no longer than one (1) year for calibration and non-calibration defects, from date of delivery. This warranty does not cover any damage or discoloration caused by corrosion due to gases, liquids, or any other source, nor does it cover normal wear of any seals in its products and with gases other than air, or unless otherwise specified in the contract. Such returns are contingent on Sierra's examination and reasonable satisfaction that any defects are covered by this warranty and that the Buyer has not returned the equipment in a damaged condition, due to any negligence, tampering, misapplication or product modification on the part of the Buyer or his agents. Sierra shall not be liable for installation charges, for expenses of Buyer for repairs or replacement, for damages from delay or loss of use, or other indirect or consequential damages of any kind.

Sierra extends this warranty only to Sierra products properly used and properly installed for the particular application for which intended and quoted, and this warranty does not cover products which have been modified without Sierra's approval or which have been subjected to unusual physical or electrical stress, alteration, or tampering, or upon which the original identification marks have been removed or altered. Whenever the design of the equipment to be furnished or the system in which it is to be incorporated originates with the Buyer, Sierra's warranty is limited specifically to matters relating to furnishing Sierra equipment free of defects in materials and workmanship and Sierra assumes no responsibility for implied warranties of fitness for purpose or use. Any replacement or repair shall be to Sierra's factory, unless otherwise directed. No items shall be returned for warranty repair without prior written authorization from Sierra.

#### **PATENT AND TRADEMARK INDEMNIFICATION**

Sierra will, at its own expense, defend any suit against the Buyer for the infringement of United States patents and trademarks by products purchased from Sierra and in any such suit will satisfy any final award for infringement except that Sierra assumes no obligation to defend or assume liability for damages (consequential or otherwise) resulting from infringements (a) of patent claims covering any other products or any contemplated equipment or any assembly, combination, method or process, in which or in the manufacture or testing of which any such products purchased from Sierra may have been designed only for use in or may only be useful in such other patented products or such patented equipment, assembly, circuit, combination, method or process or in the manufacture or testing thereof and that such products purchased from Sierra may have been purchased and sold for such use: or (b) resulting from designs supplied by the purchaser, or for any trademark infringement involving any marking or branding applied by Sierra at the request of the Buyer.

This indemnification is upon the condition that the Buyer give Sierra prompt notice in writing of any such suit for infringement or threat of such suit and full opportunity to conduct the defense thereof. No costs or expense shall be incurred for the account of Sierra without its written consent. At its option, Sierra may, at any time, replace or modify any products sold under any contract to avoid patent or trademark infringement, provided such replacement or modification do not materially affect performance. Sierra's liability under this indemnification shall not exceed the purchase price of the "infringing" product.

#### **DOCUMENTATION AND TRAINING**

Sierra will supply reasonable written documentation including operating instructions. Documentation is generic in nature. In no event shall orders be accepted where payment is contingent upon providing special documentation, unless agreed in advance. No guarantee is made that the documentation conforms to the particular equipment produced for a particular application, as built documentation entails an additional charge. Factory and on-site training in the use and operation of Sierra's products may be made available at Buyer's expense, subject to agreement by Sierra.

#### **PROPRIETARY RIGHTS**

Sierra Instruments, Inc. proprietary rights are included in the information disclosed in instruction manuals, user guides, drawings and quotations or other documents or information disclosed, in the negotiating and order process. No Sierra document or information disclosed shall be reproduced or transferred to other documents or used by others for manufacturing or for any other purpose except as specifically authorized in writing by Sierra.

#### **SUBSTITUTIONS AND MODIFICATIONS**

Sierra assumes the right to make substitutions and modifications in the specifications of equipment designed by Sierra providing that such substitutions or modifications will not materially affect performance in the intended application.

#### **PROPRIETARY EQUIPMENT**

Sierra shall retain title to and possession of any models, patterns, dies, molds, jigs, fixtures and other tools made for or obtained in connection with this contract or otherwise in the course of business.

#### **APPLICABLE LAW**

All quotations made and all orders accepted by Sierra and all the rights and duties of all parties hereto shall be governed by and construed according to the laws of the State of California. Should any term or provision contained in any document contravene or be invalid under applicable law, the contract shall not fail by reason thereof but shall be interpreted as if such terms or provisions had not appeared herein.

#### **REGULATORY LAWS AND/OR STANDARDS**

Sierra makes no promise or representation that its products conform to any state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing as a part of the contract between Buyer and Sierra. Sierra's prices do not include the cost of any related inspections, permits, or inspection fees.

#### **NUCLEAR QUALIFICATION**

Equipment sold by Sierra Instruments, Inc., is not intended for use in connection with any nuclear facility or activity unless covered by a specific quotation where the conditions of such usage will be detailed. If equipment is used in a nuclear facility or activity without a supporting quotation, Sierra disclaims any and all liability from any damage, injury or contamination, and the Buyer shall indemnify and hold Sierra, its officers, agents, employees, successors, assigns and customers, whether direct or indirect, harmless from and against any and all losses, damages or expenses of whatever form or nature, including attorney's fees and other costs of defending any action, which they, or any of them, may sustain or incur, whether as a result of breach of contract, warranty, tort (including negligence), strict liability or other theories of law, by reason of such use.