

**United Testing Systems Inc., a California corporation and division of  
Industrial Physics, LLC; 1375 S. Acacia, Suite A, Fullerton, CA 92831**

**TERMS AND CONDITIONS OF SALE**

THE FOLLOWING TERMS AND CONDITIONS, TOGETHER WITH ANY OTHER TERMS/CONDITIONS SPECIFICALLY AGREED TO IN WRITING BY SELLER, SHALL APPLY TO ALL ORDERS ("Order(s)") FROM, AND SALES OF PRODUCTS ("Products") OR SERVICES ("Services") TO BUYER. ANY ACCEPTANCE OF ANY ORDER OF BUYER IS CONDITIONAL UPON THESE TERMS/CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS/CONDITIONS PROPOSED BY BUYER IN ANY DOCUMENT ARE OBJECTED TO AND SHALL NOT BE BINDING UPON SELLER. No salesperson is authorized to bind Seller to any promise or understanding that modifies this Agreement.

**I. PRICES** All prices are subject to change without notice in the event of any changes in cost of materials or labor, specifications, quantities, delivery schedules, customs duties, other factors beyond Seller's control, or in the event of delays caused by instructions of the Buyer, or failure of the Buyer to give Seller adequate information. Prices do not include taxes, including but not limited to Value Added Tax (VAT), or governmental changes.

**II. DELIVERY** Delivery dates are approximate and are dependent on prompt receipt by Seller of all necessary information. Seller may deliver all or any part of Products/Services as early as 30 days in advance of agreed schedule. The point of delivery shall be "Ex-works" Seller's premises, unless otherwise specified by Seller. Upon delivery, title to Products and all risk of loss or damage thereto shall pass to Buyer. Where Buyer notifies Seller that it cannot take timely delivery of the Products, Seller may place such Products in storage, at the risk of Buyer, and Buyer shall reimburse Seller for all expenses incurred in connection with such storage. Buyer shall dispose of the packing materials for products at its own expense, and shall defend, indemnify and hold harmless Seller from any legal obligations in connection with such packing waste and all costs and expenses related thereto incurred by Seller or owing from Seller (including but not limited to interest, penalties, costs of preparation and investigation, and the fees, disbursements and expenses of attorneys, accountants and other professional advisers). Seller shall have the right to direct the defense and/or settlement of such claims and causes of action.

**III. PAYMENT** A. The term of payment shall be net 30 days from date of Seller's invoice, unless otherwise specified. Payments shall be made by Buyer without any deduction or set-off. Unless otherwise agreed, payment shall be made in U.S. dollars. Seller may charge late payment fees at the rate of 1.5% per month, or the highest rate permitted by law, whichever is less, accruing daily.  
B. Should Buyer cancel order prior to acceptance of Delivery, within twenty (20) days of cancellation of any order, Buyer agrees to pay a cancellation fee equal to twenty percent (20%) of the price to be charged by Seller for all Products and Services that Buyer ordered and subsequently cancelled with Seller. Once the order is

accepted by the Buyer, the delivered the order is non-refundable.

C. If the financial condition of Buyer is unsatisfactory to Seller, Seller may require full or partial payment in advance, or satisfactory security, in the form of a letter of credit or otherwise. In the event of bankruptcy or insolvency of Buyer, Seller may, in Seller's sole discretion, immediately cancel any Order then outstanding or demand adequate assurance prior to delivery.

**IV. VARIATIONS; CHANGES** Seller reserves the option to make changes to Products or Services which do not affect form, fit, or function, and shall deliver Products to the latest configuration part number at the time of delivery. Seller reserves the right to adjust prices for Product or Services in the event Buyer requests and Seller accepts any changes to the Products or Services ordered, however, nothing in this Agreement shall require Seller to make any such changes to Products or Services requested by Buyer after an order has been placed with Seller.

**V. EXPORT CONTROLS; FCPA; ANTI-BOYCOTT**

A. Buyer shall not make any disposition of the Products, by way of transshipment, re-export, diversion or otherwise, except as applicable U.S. export laws and regulations may expressly permit, and other than in and to the ultimate country of destination specified on Order(s) or declared as the country of ultimate destination on Seller's invoices or in the End Use Statement that Buyer supplies Seller. Seller shall not be named as shipper or exporter of record or U.S. principal party-in-interest (USPPI) unless specifically agreed to in writing by Seller in which case, Buyer shall provide Seller with a copy of the documents filed by Buyer for Export clearance purposes. At Seller's request, Buyer shall supply end-use and end-user information to determine export license applicability. Failure of Buyer to comply with this section shall constitute a material default allowing Seller to cancel related Order(s) without liability.  
B. Buyer warrants that it shall not violate or cause the Seller to violate the U.S. Foreign Corrupt Practices Act of 1977 (FCPA), as amended, the United Kingdom Bribery Act (UKBA) of 2010, as amended, or their respective implementing regulations in connection with Buyer's sale

or distribution of the Products and/or Services, and that Buyer does not know or have reason to believe that any consultant, agent, representative or other person retained by Buyer in connection with the sale and/or distribution of Products/Services has violated, nor caused Seller to violate the FPCA and/or the UKBA. Where Buyer learns of or has reason to know of any violation of FCPA and/or or UKBA in connection with the sale or distribution of Products/Services, Buyer shall immediately advise Seller.

C. Buyer further warrants that Buyer shall not violate or cause Seller to violate the U.S. Antiboycott Provisions of the U.S. Export Administration Regulations issued pursuant to the U.S. Export Administration Act of 1979, as amended, in connection with Buyer's purchase of Products/Services and that Buyer shall not request or require Seller to make statements or certifications against countries that are not subject to boycott by the U.S.

**VI. WARRANTIES** A. Seller warrants that Products manufactured by Seller, when delivered, shall be free from defects in material/workmanship. Seller's obligations under this warranty shall be limited exclusively to repairing or replacing, at Seller's option, any part of Products which, if properly installed, used and maintained, proved to have been defective in material or workmanship within either 1 year or 2 years from the date of shipment (depending on product – see specifications for product ranges). Seller warrants that Services shall be performed in accordance with generally accepted industry practice. Seller warrants for a period of 1 year (or 2 years per product line) from the date of shipment that software or firmware, when used with Products, shall perform in accordance with Seller's published specifications. Seller makes no warranty, express or implied, that the operations of the software or firmware shall be uninterrupted or error-free, or that functions contained therein shall meet or satisfy the Buyer's intended use/requirements. Buyer shall notify Seller of any defect in the quality or condition of Products (including software/firmware) or Services within 7 days of the date of delivery or performance, unless the defect was not apparent on reasonable inspection, in which case, within 7 days after discovery of the defect. If Buyer does not provide such timely notification, it shall not be entitled to reject Products (including software/firmware) or Services, and Seller shall have no liability for such defect.

B. Seller's warranty obligations shall not apply to Products which (1) have been altered, repaired or serviced by someone other than Seller, or (2) have been subjected to misuse, neglect, or improper use or application, or (3) are normally consumed in operation, or (4) have a normal life inherently shorter than the warranty period stated therein.

C. No Products may be returned unless authorized in advance by Seller, and then only upon such conditions to which Seller may agree. Buyer must obtain a Return Material Authorization (RMA) number from Seller prior to any return shipment, and such RMA number must appear on the shipping label and packing slip. Buyer shall be responsible for returned Products until such time as Seller receives the same at its facility, and for all

charges for packing, inspection, shipping, transportation or insurance associated with returned Products.

D. This section VI sets forth the exclusive remedies and obligations for claims based upon defects in or nonconformity of Products/Services, whether the claim is in contract, warranty, tort (including negligence of any degree or strict liability) or otherwise.

**THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY. NO IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES EXCEPT AS EXPRESSLY SET FORTH HEREIN.**

**VII. PATENTS/INDEMNITY** If Buyer receives a claim that Products, or part thereof manufactured by Seller infringes a patent, Buyer shall notify Seller promptly in writing and give Seller information, assistance and exclusive authority to evaluate, defend and settle such claim. Where Buyer has furnished specifications/designs for the manufacture of the allegedly- infringing Products, Buyer shall defend, indemnify and hold harmless Seller against any and all third-party claims, losses, liabilities, causes of action and all costs and expenses related thereto incurred by Seller or owing from Seller (including but not limited to interest, penalties, costs of preparation and investigation, and the fees, disbursements and expenses of attorneys, accountants and other professional advisers) (collectively "Losses") for infringement arising out of Seller's use of such specifications/designs. Seller shall have the right to direct the defense and/or settlement of such claims and causes of action.

**VIII. LIMITATION OF LIABILITY** The total liability of Seller on any claim, whether in contract, tort (including negligence of any degree and strict liability) or otherwise arising out of, connected with, or resulting from the manufacture, sale, delivery, resale, repair, replacement or use of any Products/Services, shall not exceed the price allocable to the Products/Services or part thereof which gives rise to the claim. **IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT, (INCLUDING NEGLIGENCE OF ANY DEGREE, STRICT LIABILITY OR PATENT INFRINGEMENT) OR OTHERWISE, SHALL SELLER, ITS AFFILIATES, SUBCONTRACTORS, OR SUPPLIERS BE LIABLE FOR ANY LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCTS OR SERVICES, OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS OR CLAIMS OF BUYER'S CUSTOMERS FOR DAMAGES OR FOR ANY SPECIAL, PROXIMATE, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES.** If Buyer transfers title to, or leases Products sold hereunder to, or otherwise permits or suffers use by, any third party, Buyer shall obtain from such third party a provision affording Seller and its

subcontractors/suppliers the protection of the preceding sentence. Any action against Seller must be brought within 18 months after cause of action accrues.

**IX. EXCUSABLE DELAYS** A. Seller shall not be liable for delays in delivery or failure to perform due directly or indirectly to causes beyond Seller's reasonable control including but not limited to: acts of God; war; terrorism; civil commotion; riots; embargoes; government regulations, orders, instructions or priorities; port congestion; acts of or failure to act on the part of Buyer or its agents/employees; fires; floods; sabotage; nuclear incidents; earthquakes; storms; epidemics; strikes; lockouts or other labor difficulties; shortages of or inability to timely obtain proper labor, materials, components, shipping space or transportation, fuel, supplies or power at current prices; or due to limitations imposed by the extent of availability of Seller's normal manufacturing facilities.

B. If a delay excused per the above extends for more than 90 days and the parties have not agreed upon a revised basis for continuing providing Products/Services at the end of the delay, including adjustment of the price, then either party (except where delay is caused by Buyer, in which event only Seller) upon thirty (30) days' notice may terminate the Order with respect to the unexecuted portion of the Products/Services, whereupon Buyer shall promptly pay Seller its reasonable termination charges upon submission of Seller's invoices thereof.

**X. SOFTWARE/TECHNICAL/PROPRIETARY INFORMATION** A. Buyer shall not acquire any rights to any software which may be delivered with Products, except as granted in Seller's standard software license. Any software license granted in connection with Products shall be an interim license, which may be withdrawn, pending payment for Products in full.

B. The purchase of Products shall not include any right to supply of technical information such as drawings or specifications.

C. Proprietary information, including drawings, works of authorship, deliverables, writings, proposals, documents, technical data, reports, software, designs, inventions, work products, systems, intellectual property, information, inventions, data, methodologies, services, improvements, processes and other technical information supplied by Seller in connection herewith (hereinafter called "Data"), shall remain Seller's sole property and shall be held in confidence by Buyer. Data shall not be reproduced, used or disclosed to others by Buyer without Seller's prior written consent. Buyer shall not reverse engineer, disassemble, or decompile any Data without Seller's express written consent. Buyer shall use the same degree of care to prevent disclosure of Data that Buyer uses to protect its own confidential information which shall not in any case be less than the care a reasonable business person would use under similar circumstances. If Buyer is required by law to disclose any Data, Buyer shall promptly give written notice of such requirement to Seller prior to Buyer disclosing any Data so that Seller may seek a protective order or other remedy and Buyer shall assist, at Buyer's

sole cost, in protecting the Data from public disclosure. Upon completion of Order, Buyer shall promptly return all Data to Seller together with all copies or reprints thereof then in Buyer's possession or control, and Buyer shall thereafter make no future use, either directly or indirectly, of any Data or any information derived therefrom without Seller's prior written consent. The foregoing shall in no way obligate Seller to provide or supply Data.

**XI. DIES, TOOLS, PATTERNS** Seller's charges for dies, molds, patterns and the like, excluding sample preparation dies, represent the Buyer's proportionate cost thereof, it being expressly understood that they remain the property of Seller. Modifications made to dies, molds, patterns and the like in order to manufacture Products shall be at the discretion of Seller. Sample preparation dies are custom orders and are made to order per the customer's specifications and cannot be returned for credit for any reason.

**XII. GENERAL** A. The rights and obligations of the Buyer and Seller hereunder shall be governed in all respects by the law of the State of Delaware, U.S.A. without regard to any choice of law or conflicts of law provisions or rule that would cause the application of the laws of any other jurisdiction. The exclusive forum for adjudication of any disputes shall be the federal or state courts of the State of California and Buyer/Seller hereby consent to personal jurisdiction and venue in such courts in any proceeding. The United Nations Convention on the International Sale of Goods shall not apply.

B. These Terms and Conditions of Sale together with any other terms specifically agreed to in a signed writing by Seller's authorized officer constitute the entire agreement between Buyer and Seller and supersede any prior or contemporaneous representations, agreements, proposals, warranties, or understandings, oral or written, express or implied. No waiver, modification, amendment, rescission or other change to these Terms and Conditions of Sale shall be binding unless specifically agreed to in writing by an authorized representative of Seller.

C. The invalidity, of any part hereof shall not affect the validity of the remainder. The failure of Seller to assert any right at any time hereunder shall not prevent Seller's subsequent assertion of the same or different rights.

D. Buyer may not assign this contract without the prior written approval of the Seller.

E. The indemnification rights and obligations contained in sections III, VII, and IX of this Agreement and Buyer's obligations and representations in section X of this Agreement shall survive any cancellation or termination of the parties' relationship or this Agreement

F. All notices to Seller shall be directed in writing as follows:

United Testing  
Systems, Inc  
1375 S. Acacia Ave. Suite A  
Attn: General Legal Counsel  
Fullerton, CA 92831

or to such other address that Seller may designate in writing to Buyer from time to time.

G. The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretations of this Agreement.

### **XIII. PROHIBITION FOR HAZARDOUS USE**

Products sold hereunder are not intended for application in, and shall not be used by Buyer in construction or application of a nuclear installation or in connection with use or handling of nuclear material or for any hazardous activity or critical application, where failure of a single component could cause substantial harm to persons or property, unless Products have been specifically approved for such activity or application. Seller disclaims all liability for loss or damage resulting from such unauthorized use and Buyer shall defend, hold harmless and indemnify Seller against any and all Losses, whether arising under breach of contract, warranty, tort (regardless of the degree of fault or negligence), strict liability or otherwise. Seller shall have the right to direct the defense and/or settlement of any such claims and causes of action. Buyer shall promptly notify Seller in writing of any Losses claimed by a third party for which Seller may be entitled to indemnification pursuant to sections VII or IX of this Agreement.

Where Seller approves the application of the Products in a nuclear facility, the Buyer shall, before such use or provision, arrange for insurance with coverage in an amount acceptable to Seller but in no event less than any legally required minimum, including but not limited to any coverage required by the Price-Anderson Act, and/or governmental indemnity protecting the Seller against all liability related thereto, and hereby releases and agrees to indemnify the Seller and its suppliers for any nuclear damage, including loss of use, in any manner arising out of a nuclear incident, whether alleged to be due, in whole or in part to the negligence or otherwise of the Seller or its suppliers.

### **XIV. STATUTORY REQUIREMENTS**

Seller reserves the right to make any changes in the general specifications of the Products which are required for the Products to conform to any statutory requirement.

### **XV. GOVERNMENT CONTRACTS**

Only Federal Acquisition Regulation ("FAR") supplement clauses expressly accepted in writing by Seller shall be included or incorporated by reference herein. Seller shall not be bound by and makes no representation of compliance with any FAR or FAR supplement clauses that Seller shall not have expressly accepted in writing.