

Bruker Scientific LLC Terms and Conditions of Sale & Service (Canada)

1. GENERAL. Orders are accepted by Bruker Ltd ("Seller") subject to these terms and conditions. In case of a conflict, inconsistency or addition not expressly accepted in writing by Seller, the terms and conditions of sale provided herein shall be considered as superseding the conflicting, inconsistent or additional terms stated in the purchase order, order form, contract or other document issued by the purchasing party ("Buyer"). The acceptance of an order will supersede all prior communications and constitute a complete and binding contract between Buyer and Seller regarding all equipment, software, parts and products (collectively "Products") and Services purchased hereunder, which contract cannot be modified or canceled without the written agreement of both parties.

2. SHIPMENT. Seller shall attempt to comply with, but will not guarantee, shipping date and loading and routing instructions. Seller reserves the right to allow or prorate shipments against all orders whenever, in its judgment, an oversold condition exists as to any particular Product manufactured or sold by it. In the event of a default by Buyer, Seller may decline to make further shipments without waiving any of its rights. If, despite such default, Seller elects to continue to make shipment, such action shall not constitute a waiver regarding, or otherwise diminish, Seller's legal remedies with respect to Buyer default or any future default. No special terms regarding rescheduling or cancellation of orders shall apply unless set forth in an Exhibit to these Terms and Conditions.

3. TITLE AND DELIVERY. Unless otherwise set forth in Seller's Quotation, all Products will be EXW factory (Incoterms 2020), and Buyer shall pay all freight, duties, cartage and handling. Except for software whether sold as a standalone item or as part of equipment, title and risk of loss or damage shall pass from Seller to Buyer in accordance with such shipping terms. All claims by Buyer for damages to Products must be filed with the carrier.

4. SOFTWARE. Buyer agrees that software provided to Seller under, and order is licensed, not sold, by Seller to Buyer. Seller retains all right, title, and interest in the software. Seller grants to Buyer a paid-up, non-exclusive, non-transferable license to use the software in combination with the equipment or products purchased hereunder, or on a standalone basis if so, permitted in Seller's Quotation. Buyer agrees to maintain confidentiality of such software and shall not transfer, assign, sublicense, license, or otherwise make such software available to any third party, copy, modify, reverse-engineer, decompile, or create derivative works of such software. The software license shall terminate when the license term as set forth in the Seller's Quotation terms or when Buyer's ownership of the equipment on which the software is installed, as applicable unless earlier terminated as set forth below. Upon termination of the software license, Buyer shall destroy, or return to Seller, all software and related documentation.

5. SERVICES. The Order may include a purchase of consulting, maintenance, implementation, training or support services ("Services"), all of which are governed by these Terms and Conditions, subject to any additional terms contained in Seller's Quotation. Any delivery times or dates which Seller has indicated for the Services are only approximate. Compliance with all agreed service dates requires the timely receipt of all documents and materials that are to be provided by Buyer, as well as the timely provision of all necessary information and the fulfillment of all other obligations by Buyer, including without limitation access to personnel and facilities as required for the particular order.

Buyer shall ensure that the Services can be started immediately upon arrival of Seller and can be performed without delay. Buyer shall assist Seller's service staff and provide technical assistance at its expense. In particular, Buyer shall provide required qualified personnel who shall follow the instructions of Seller's service staff. Seller shall not assume any liability for Buyer's assistance personnel. Buyer shall provide any required equipment and tools (e.g. lifting appliances) and required commodities and substances (e.g. water, gas) and other materials under its control needed for proper execution of the Services, as well as heating, electric power, air conditioning, operating power, and required connections. Buyer will perform data backup prior to the start of the performance of Service. Buyer shall dispose of all materials (e.g., packaging) and waste resulting from the provision of the Services at its own expense. If Buyer fails to fulfill its obligations, Seller shall be entitled to set an appropriate grace period, after which it can undertake Buyer's obligations at Buyer's expense. However, Seller shall not be obligated to do so.

Buyer shall inform Seller of any special safety risks or safety regulations applicable to Buyer's site where the Services will be performed. Buyer shall comply with all applicable laws, legislation, regulations and ordinances in connection with the use and handling of the Services, including, but not limited to, pharmaceutical, cosmetic and food preparation, electrical or electronic waste and introduction or production and use of chemical substances. Buyer shall maintain in effect all required licenses, permissions, authorizations, consents and permits.

Seller shall not be liable for any delays in the provision of Services in the event and to the extent such delay results from acts or omissions of Buyer; an unusually long processing time for any necessary permit, license or other authorization required to be obtained from a governmental authority; or factors beyond Seller's reasonable control. To the extent the Seller's Quotation requires Seller to obtain applicable licenses and permits, Seller is only responsible for ensuring that the relevant applications for the applicable authority are submitted in a timely manner and that Seller is properly cooperating during the administrative process.

6. INTELLECTUAL PROPERTY; CONFIDENTIAL INFORMATION. Nothing in these Terms and Conditions shall be deemed to transfer any intellectual property rights from Buyer to Seller and vice versa. Each party shall retain all rights, title and interest in its own intellectual property and all modifications, updates, upgrades, enhancements and derivatives thereof. Seller will not develop any intellectual property or create works for hire for Buyer. Seller retains ownership of all rights, interest and title to intellectual property in all manuals, illustrations, drawings, designs, specifications, and other documentation provided by Seller to Buyer. All of such information and materials, as well as Seller's pricing, quotes and proposals, are the confidential information of Seller and shall not be disclosed by Buyer to any third party or used by Buyer for any purpose other than in connection with operation of the applicable Products and Services.

7. PRICES. Irrespective of any prices quoted by Seller or listed on Buyer's order, an order is accepted only at the prices shown on Seller's written quotation (the "Quotation"). Installation of utilities required for equipment is not included in the specified price. Seller is entitled to change the prices stated in its price list at any time at Seller's own discretion.

8. PAYMENT TERMS.

(a) Unless otherwise set forth in a Quotation, payment terms are net thirty (30) days after the date of the invoice. Payments shall be made in U.S. Dollars unless the Quotation states otherwise. Any exchange charges, any charges for nonpar clearance of checks or collection charges (including reasonable attorneys' fees) will be paid by Buyer. Any amounts not paid when due will bear interest at a rate of 18% per annum or, if lower, the maximum rate permissible by law. Buyer shall be responsible for and reimburse Seller for any costs and expenses incurred by Seller to collect past due amounts owed by Buyer.

(b) All orders are subject to credit approval by Seller. The amount of any credit extended by Seller to Buyer may be changed at any time by Seller, and such

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credit may be withdrawn by Seller. With respect to an order on which credit is not extended by Seller or, if extended, is subsequently withdrawn, shipment or delivery shall be made, at Seller's election, cash with order (in whole or in part), C.O.D., letter of credit or Sight Draft attached to Bill of Lading or other shipping documents, with all costs of collection (plus 18% interest on Sight Drafts not paid at maturity) for the account of Buyer. If, in the judgment of Seller, the financial condition of Buyer does not justify continuation of production or shipment on the terms of payment originally specified, Seller may require full or partial payment in advance. In the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Seller shall be entitled, in addition to any other remedies at law or in equity, to (i) stop or divert any shipment in transit, (ii) cancel any order then outstanding and/or (iii) receive reimbursement for its cancellation charges.

(c) Each shipment shall be considered a separate independent transaction, and payment therefore shall be made accordingly. If for any reason Buyer is not prepared to accept delivery of goods, Seller may store the goods at Buyer's expense and risk in the name of Buyer, and such storage shall constitute shipment and delivery to Buyer.

9. TAXES. Quoted prices do not include federal, state or local excise, sales, use or similar taxes. Accordingly, in addition to the prices specified on the Quotation, the amount of any applicable taxes will appear as separate items on the invoice and will be paid by Buyer unless prior to shipment Seller receives an appropriate tax exemption certificate from Buyer.

10. ACCEPTANCE. Except as provided in the Quotation, Seller's standard commercial factory acceptance test(s) performed at Seller's factory will comprise acceptance for any equipment sold by Seller, and no other acceptance procedures or criteria will apply. If the Quotation references customer specific acceptance ("CSA") provisions, then Buyer will accept the purchased equipment in accordance with such CSA provisions. The parties will give priority to achieving CSA and the purchased equipment shall not be used by Buyer for material production, for development of new processes or for any purposes other than achieving CSA, prior to successful completion or waiver of the CSA provisions. Any such use of the equipment prior to successful completion of the CSA provisions shall be deemed to constitute CSA by Buyer. It is the responsibility of the Buyer to ensure that all the required facilities are ready and site preparation is completed for successful commencement of CSA on delivery of the equipment. If CSA has not been commenced within 30 days after delivery of the equipment and completed within 60 days after delivery (through no fault of Seller), the equipment shall be deemed accepted as having achieved CSA. Services shall be deemed accepted when completed, which in the case of some Services will be reflected in the execution of a Service report by Buyer.

11. FORCE MAJEURE. Seller shall not be liable for failure to perform occasioned by strikes, lockouts, labor difficulties, riots, inability or difficulty in obtaining or procuring supplies, labor or transportation, fires, storms, floods, epidemics, pandemics, earthquakes, explosions, accidents, acts of God, interference by civil or military authorities, whether legal or de facto, acts of the public enemy, war, rebellion, insurrection, sabotage, embargoes, orders given priority by any public authority or any other cause beyond the reasonable control of Seller.

12. INDEMNIFICATION. In the event of any action (and all prior related claims) brought against Buyer by a third party based on a claim that any Products or Services provided by Seller to Buyer under the order infringe any valid U.S. patent, copyright or trade secret, Seller shall defend such action at Seller's expense and pay all costs and damages finally awarded in such action or settlement which are attributable to such claim. Notwithstanding anything to the contrary contained herein, Seller shall not have any liability to Buyer to the extent that any infringement or claim thereof is based upon (i) use of a Product or Services in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (ii) compliance with Buyer's designs, specifications or instructions, (iii) use of a Product or Services in an application or environment for which they were not designed or (iv) modifications of a Product or Services by anyone other than Seller without Seller's prior written approval. Notwithstanding the above, in the event of actual or potential infringement by the Products or Services, Seller may, at its discretion and its own expense, (x) procure for Buyer the right, at no additional expense to Buyer, to continue using the Product or Services; (y) replace or modify the Product or Services so that they become non-infringing, provided the modification or replacement does not adversely affect the specifications of the a Product or Services; or (z) in the event (x) and (y) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY AND BUYER'S SOLE REMEDY WITH RESPECT TO INTELLECTUAL PROPERTY CLAIMS. (c) With respect to the claims described in (a) and (b) above, Buyer shall provide prompt written notice to Seller of any such claims. Seller shall have the right to assume sole control of the defense of any such claims and all negotiations for their settlement or compromise and. Buyer shall cooperate fully with Seller in the defense, settlement or compromise of same.

13. ASSIGNMENT. Buyer shall not assign this order or any portion thereof without the prior written consent of Seller.

14. LIMITED WARRANTY AND DISCLAIMER. In lieu of any other warranty, Seller warrants that (i) the Products will operate substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the product documentation, published specifications or package inserts and (ii) Seller shall retain qualified personnel to perform the Services in a professional and workmanlike manner. If a period of time is not specified in Seller's equipment documentation, published specifications or package inserts, the warranty period shall be one (1) year from the date of shipment to Buyer for equipment; ninety (90) days from the date of shipment for spare parts and software; and ninety (90) days from the date of delivery for Services (the "Warranty Period"). Seller agrees during the Warranty Period, to (i) repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications and/or (ii) re-perform Services such that they comply with the limited warranty set forth herein. THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT AND/OR REPERFORM SERVICES SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF DEFECTIVE PRODUCTS OR SERVICES THAT FAIL TO COMPLY WITH THE LIMITED WARRANTY SET FORTH HEREIN. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS AND SERVICES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE AND NON-INFRINGEMENT. WARRANTIES EXTEND ONLY TO THE ORIGINAL PURCHASER AND ARE NOT ASSIGNABLE OR OTHERWISE TRANSFERABLE. ANY ASSIGNMENT OR TRANSFER BY BUYER SHALL BE VOID. In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of Products in combination with equipment or software not supplied by Seller. 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. In addition, the following items are excluded from the above warranty, are not warranted, and are provided as is, where is, without any warranty, express and implied: expendable items, including, but not limited to, filters, lamps, pilot lights, filaments, fuses, mechanical pump belts, probes, V-belts, wafer transport belts, pump fluids, O-rings and seals; used equipment, including demo equipment regular maintenance; and standalone computer and data storage equipment not manufactured by Seller (such as computers, monitors, printers and printer buffers)

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and any other third party products (which will carry only the original manufacturer warranty).

These warranties may not be extended or altered on Seller's behalf without the written authorization of Seller.

15. NO CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY. IN LIEU OF ANY OTHER PROVISION TO THE CONTRARY, THE PARTIES AGREE THAT (i) THE TOTAL LIABILITY OF SELLER UNDER OR IN RELATION TO THE ORDER SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL PURCHASE PRICE PAID BY BUYER TO SELLER FOR THE PRODUCTS OR SERVICES GIVING RISE TO SUCH LIABILITY, AND (ii) SELLER WILL NOT 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 DATA, LOSS OF PROFITS, OR LOSS OF GOODWILL), REGARDLESS WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

16. NONSOLICITATION. During the term of performance of Services and for a period of one (1) year thereafter, Buyer will not solicit, engage or hire, directly or indirectly, any employee of Seller who provides Services to Buyer. The foregoing restriction does not prevent Buyer from hiring an employee of Seller who has responded to a general advertisement for employment issued by Buyer.

17. COMPLIANCE WITH LAWS; EXPORT CONTROL.

Buyer and Seller will comply with all applicable export control laws, regulations, and ordinances in their performance of this Agreement.

Export Control. Buyer understands that exports and re-exports of Products and any related software, service, technical assistance, training and related technical data, and any media in which any of the foregoing is contained (the "Items") are subject to U.S. and foreign trade controls, customs, anti-boycott and economic sanctions laws, regulations, rules and orders (the "Export Laws"). In addition to any other remedy it may have, Seller may suspend or cancel the export, delivery, installation, or any maintenance or repair service of any Item if (a) Seller has not received all export-related documentation requested by Seller, including end-user certificates, (b) Seller has not received the governmental approvals that Seller deems to be required, or (c) Seller believes that such activity may violate any Export Laws or Seller's own compliance policies. Buyer shall not export, re-export or otherwise transfer or provide any Item in contravention of any Export Laws or any end-user certificate provided by Buyer, including to an embargoed or otherwise sanctioned country, to anyone listed on any prohibited persons list published by the U.S., the UN, the EU or the OSCE, or for a prohibited end-use (such as research on or development of chemical, biological, or nuclear weapons, unmanned air vehicles or missiles, or nuclear explosive or fuel cycle activities). Buyer must notify Seller before providing any technical data to Seller that is controlled under any Export Laws. Seller will not be liable to Buyer for any loss or expense if Buyer fails to comply with any Export Laws. Buyer will indemnify, defend and hold harmless Seller from all claims, damages, fines, penalties, liability losses, costs and expenses made against or incurred by Seller arising from Buyer's breach of Export Laws.

Imports. Buyer will comply with all applicable import laws, regulations, ordinances or other restrictions or conditions respecting the import of Items that are now in effect or are hereafter imposed by any government or other applicable jurisdiction. Buyer shall be responsible for obtaining any necessary import permit, license or authorization at its sole cost and expense. Buyer shall immediately notify Seller if an import permit, license or other authorization is required in connection with any such import.

Compliance in Relation to Spare Parts. Buyer understands, acknowledges, and agrees that, notwithstanding any provision in this Agreement or in related sales or service documentation to the contrary, (i) Buyer may only order spare parts at the Seller's commercial entity in Canada at orders.ca@bruker.com

, (ii) this Agreement does not obligate Seller to deliver any spare part to Buyer, (iii) the provision of any spare part requires a new, separate order between Seller and Buyer, (iv) Seller may, in its sole discretion, reject entering into such order or delivering any spare part, without any liability whatsoever to Seller and its affiliates, if Seller determines, in its sole discretion, that the export, re-export, in-country transfer, delivery, or provision of such spare part to Seller or its designees could potentially violate any applicable Trade Control Law or a Trade Control Restriction. Buyer will comply with all applicable import laws, regulations, ordinances or other restrictions or conditions respecting the import of Items that are now in effect or are hereafter imposed by any government or other applicable jurisdiction. Buyer shall be responsible for obtaining any necessary import permit, license or authorization at its sole cost and expense. Buyer shall immediately notify Seller, in writing, if an import permit, license or other authorization is required in connection with any such import.

DISCLAIMER AND INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER HEREBY DISCLAIMS AND BUYER HEREBY UNCONDITIONALLY WAIVES AND RELEASES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS BUYER MIGHT HAVE AGAINST SELLER OR ANY PERSON DIRECTLY OR INDIRECTLY CONTROLLING SELLER REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR TYPE, IN THE EVENT OF, OR ARISING FROM, ANY TRADE CONTROL IMPEDIMENT OR ANY RELATED DETERMINATION, ACTION, OR OMISSION OF SELLER DESCRIBED ABOVE. Buyer shall indemnify, defend, and hold harmless Seller against any and all liability, losses, costs, claims, damages, and expenses, including attorneys' fees and expenses, arising or resulting from Buyer's violation or alleged violation of this section or of any Trade Control Law. If Items are resold or transferred in violation of any Trade Control Law or the provisions of this Agreement, Seller shall not be obligated to provide any service or anything else for such Items.

18. GOVERNING LAW AND JURISDICTION. The order and any dispute arising in relation thereto shall be interpreted and construed under the laws of the State of Delaware, without regard to the choice of law provisions thereof. The U.N. Convention on Contracts for the International Sale of Goods is hereby excluded and not applicable. The exclusive venue for any disputes arising out of or in connection with the order shall be in the state and federal courts located in **Canada**.