



SANITARY BY DESIGN

ANDERSON-NEGELE

SENSORS FOR FOOD AND LIFE SCIENCES.

**ANDERSON INSTRUMENT COMPANY, INC.
STANDARD TERMS AND CONDITIONS OF SALE**

1. ACCEPTANCE: THESE TERMS AND CONDITIONS OF SALE APPLY TO ALL PROPOSALS MADE AND ORDERS ACCEPTED BY ANDERSON INSTRUMENT COMPANY, INC. ("ANDERSON"). NO ORDER FOR ANDERSON'S PRODUCT OR SERVICES SHALL BE BINDING UPON ANDERSON UNTIL ACCEPTED IN WRITING BY AN AUTHORIZED OFFICIAL OF ANDERSON OR BY SHIPMENT OR OTHER PERFORMANCE OF SUCH ORDER. ANY ORDER SHALL BE SUBJECT TO THESE TERMS AND CONDITIONS, WHICH SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND ACCEPTANCE SHALL BE EXPRESSLY CONDITIONED ON ASSENT TO SUCH TERMS AND CONDITIONS BY BUYER, WHICH ASSENT SHALL BE DEEMED GIVEN UNLESS BUYER SHALL EXPRESSLY NOTIFY ANDERSON TO THE CONTRARY WITHIN FIVE (5) DAYS AFTER RECEIPT OF ANY ACKNOWLEDGMENT OF ORDER. NO UNDERSTANDINGS OR AGREEMENTS WHICH DIFFER FROM, MODIFY OR ADD TO THESE TERMS AND CONDITIONS AND NO ADDITIONS, DELETIONS OR MODIFICATIONS PROPOSED BY BUYER IN ITS PRINTED FORMS OR OTHERWISE SHALL BIND ANDERSON REGARDLESS OF WHETHER OR NOT SUCH UNDERSTANDINGS, AGREEMENTS, ADDITIONS, DELETIONS OR MODIFICATIONS WOULD MATERIALLY ALTER THE TERMS HEREOF. NO ADDITIONS TO OR MODIFICATIONS OF ANY OF THE TERMS AND CONDITIONS HEREOF SHALL BE EFFECTIVE UNLESS MADE IN WRITING AND SIGNED BY BOTH PARTIES.

All purchase orders or contracts must be approved and accepted by Anderson. Stenographic and clerical errors are subject to correction.

2. PRICES: All prices are EXW, Anderson facility. Prices are subject to change without notice at any time prior to acceptance of Buyer's order by Anderson. Prices are firm upon acceptance of Buyer's order and issuance of Anderson's acknowledgment form. Prices are exclusive of any expenses related to special packing or procedures to cover unique circumstances of shipment or storage unless specifically noted in Anderson's proposal. Prices shall be adjusted upward one-half percent (½%) of the total contract price for each month the scheduled shipment date is delayed at Buyer's request. Prices are USD.

3. PAYMENT TERMS: Unless otherwise specified herein, payment terms are cash net 30 days. Amounts past due are subject to a service charge of the lower of 1.5% per month or the maximum contract rate permitted by law on the unpaid balance. Past due payments shall also affect discounts for distributors in accordance with the terms of the Anderson distributor agreements. If, in the sole judgment of Anderson, the financial conditions of Buyer at the time after Anderson is in receipt of Buyer's order and commences manufacturing the subject matter hereunder does not justify the terms of payment specified or whenever any other reasonable ground for insecurity occurs with respect to due performance by Buyer, then Anderson may require, upon due written notice to Buyer, full or partial payment in advance. If within the period of such notice, Buyer fails or refuses to agree to such accelerated terms of payment, Anderson may, at its option, without prejudice to other lawful remedies, treat such failure or refusal as a repudiation of that portion of the order which has not been fully performed or may declare the whole contract price due and payable, or may defer delivery or cancel the order. Any pro-rata payments required hereunder shall be made as shipments are made.

4. DELIVERY: Unless otherwise agreed to by Seller, all shipments are made EXW Anderson's factory. Delivery to a common carrier or licensed trucker shall constitute tender of delivery to Buyer, Title shall pass at that point and all risk of loss or damage in transit shall be borne by Buyer. Shipping dates given by Anderson are approximate and are based on prompt receipt of all necessary information regarding the order and Buyer's specified requirements at the time of order acceptance. Anderson will endeavor to meet the scheduled date(s) shown on this acknowledgment, but cannot be held responsible for its failure to do so for causes beyond its reasonable control and in no event shall it be liable for any loss or damage resulting from its failure to deliver within the time specified herein. In the event of any delay requested by Buyer and agreed to by Anderson or any delay caused by delay or failure of Buyer to provide necessary information or shipping instructions, Anderson will store all items ordered at Buyer's risk and expense, and will invoice Buyer for the full contract price of the Product on or after the date on which the same are ready for delivery plus one-half percent (½%) of the total contract price for each month the scheduled shipment date is delayed at Buyer's request and a fee of One Hundred Dollars (\$100.00) per day for storage and maintenance. If



manufacture is delayed by Buyer, payment shall be made based on the percentage of completion and the contract price.

Method and route of shipment will be at the discretion of Anderson unless Buyer shall specify otherwise, and any additional expense of the method or route of shipment specified by Buyer shall be borne by Buyer. Delivery of Product to a carrier at Anderson's facility or other shipping point shall constitute delivery to Buyer and, regardless of freight payment, title and all risk of loss or damage in transit shall pass to Buyer at that time.

Great care is taken in packing Anderson's Product. Unless otherwise specified, packing is for normal domestic shipment in enclosed vehicle and/or storage site. Anderson cannot be held responsible for damage after having received "in good order" receipts from the transportation company. All claims for loss and damage must be made by Buyer to the carrier.

Claims for shortages or other errors must be made in writing to Anderson within thirty (30) days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

The Buyer is responsible for providing a "SHIP TO" address at least 40 hours prior to shipment. Delay in providing this information may cause a delay in delivery.

5. **TAXES:** Prices do not include state or local sales, use, or excise taxes, or any import or export duty unless otherwise stated on the face of this form. The Buyer is responsible to pay and/or report all of the above referenced taxes.

6. **BUYER RESPONSIBILITY:** Buyer solely will determine the suitability of the Product for Buyer's process application and will define and specify the hardware configuration to meet its process requirements. Buyer shall be responsible for any influencing deficiencies at Buyer's site, including, but not limited to, input signals of poor quality, different environmental conditions and improper application engineering. Buyer's responsibilities generally include, but are not limited to, receiving (including removal from carrier at job site), storing, installing, commissioning, starting up, and maintaining the Product.

7. **ORDER CHANGES:** Buyer may, within a reasonable time after placing the order and prior to shipment thereof, direct, in writing, changes within the general scope of the order. Anderson will accept a change to an order by telephone, provided a written confirmation of the change is sent to Anderson within twenty-four (24) hours thereafter. If an order is changed after the order has been released to manufacturing, a supplemental charge may be applied. If any such change causes an increase or decrease in the cost of, or the time required for the performance of, any part of the order, an equitable adjustment shall be made and the order modified in writing accordingly.

Anderson reserves the right at any time to make changes in design or additions or improvements in its Product without liability or obligation to install such change, addition, or improvement in any Product manufactured prior thereto.

8. **LIMITED WARRANTY:** Anderson agrees, subject to the terms of this limited warranty, to correct any defects in materials or workmanship in any Product covered by this limited warranty which occurs during normal use and is reported to Anderson in writing during the limited warranty period specified in each Product's specification sheet. Each limited warranty period commences on the date of shipment of such Product from Anderson.

Anderson's obligation hereunder shall be to correct or provide, on an exchange basis, the part or parts necessary to correct any defect covered by this warranty. If Anderson decides not to repair or replace an alleged defective Product, it may in its sole discretion provide a credit equal to the purchase price of the Product. Anderson will pay normal surface transportation charges for delivery of replacement parts to the Product location, but shall not be liable for any other expenses, including the cost of returning any part to be replaced to Anderson for exchange. Parts and components which are repaired or replaced during the warranty period are warranted for the remainder of the original warranty period.

If, upon the inspection of any Product to which this warranty applies, Anderson determines that a claimed defect resulted from (i) normal wear and tear, (ii) installation and/or maintenance by Buyer or a third party, (iii) misuse or



abuse of Product, (iv) modifications or alterations made by Buyer or a third party without Anderson's written consent, (v) failure of Buyer to maintain environmental conditions in accordance with Anderson's instructions including, but not limited to, adequate electrical power, temperature and humidity control, (vi) customized equipment manufactured by third parties for incorporation into Product and for resale to Buyer to the extent the scope and/or time period of such manufacturer's warranty is less than Anderson's warranty, (vii) causes beyond Anderson's reasonable control, or (viii) was not due to its workmanship or materials, Anderson will repair and service the Product at Buyer's expense and approval. This warranty shall be null and void upon service, repair or replacement of any Product or any modification performed by anyone other than an authorized Anderson service representative. Buyer's remedies under this limited warranty are exclusive of all others available under applicable law.

Anderson's warranty obligation, with respect to all components, equipment and accessories which are integrated into an Anderson Product, shall be limited to those express written warranties made to Anderson by the manufacturer, which Anderson hereby assigns and transfers to Buyer.

THE FOREGOING WARRANTY IS MADE IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER WITH RESPECT TO PRODUCT OR SERVICES SOLD HEREUNDER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. LIMITATION OF LIABILITY: IN NO EVENT SHALL ANDERSON BE LIABLE AND BUYER WAIVES ALL CLAIMS AGAINST ANDERSON FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, WHETHER OR NOT BASED UPON ANDERSON'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION ARISING, DIRECTLY OR INDIRECTLY, IN RESPECT TO THE PRODUCT OR SERVICES COVERED HEREUNDER, OR THE USE OR FAILURE THEREOF, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PRODUCTION OR INJURY TO PERSONS OR PROPERTY. IN ANY EVENT, ANDERSON'S MAXIMUM LIABILITY SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT FURNISHED BY ANDERSON HEREUNDER THAT GAVE RISE TO ANY LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT. THIS DISCLAIMER SHALL REMAIN IN FULL FORCE AND EFFECT EVEN IN THE EVENT THAT BUYER'S SOLE AND EXCLUSIVE REMEDY SHALL FAIL OF ITS ESSENTIAL PURPOSE.

10. PATENT INDEMNIFICATION: Anderson shall defend any suit or proceeding brought against Buyer so far as the same is based on a claim that any Product or Anderson's design furnished hereunder or any part thereof, constitutes an infringement of any United States patents, if Anderson is notified promptly in writing and given authority, information and assistance (at Anderson's expense) for the sole defense and settlement of the same and if such alleged infringement is not the result of a design or other special requirement specified by Buyer or the result of the application or use to which such Product is put by Buyer or others. Anderson will pay all damages and costs awarded in such suit or proceeding against Buyer. If the Product sold hereunder is delivered to or for the use or benefit of the United States Government under a government contract or subcontract, nothing herein stated shall obligate Anderson to indemnify the Buyer or the Government in any amount or to any extent in excess of that expressly provided for in such Government contract or subcontract. If such Product or part thereof in such suit is held to infringe any such patent and the use thereof is enjoined, Anderson shall, at its expense and option, either (a) obtain for Buyer the right to continue using such Product or part thereof, (b) replace the same with non-infringing Product, or (c) modify the same so that it becomes non-infringing, or (d) remove said Product and refund the purchase price, less applicable depreciation, and the transportation and installation cost thereof. The foregoing states the entire liability of Anderson to Buyer for patent infringement. If a claim is based on information provided by Buyer or if the design for an Item is specified in whole or in part by Buyer, Buyer shall defend and indemnify Anderson for all costs, expenses or judgments resulting from any claim that such Item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right.

11. CANCELLATION: Any purchase order or contract may be canceled by the Buyer only upon written notice to Anderson. Notification of cancellation to the Anderson may result in cancellation charges. Receipt of a cancellation notice will also result in the immediate stoppage of all work associated with the order so that calculation of charges due may be determined. The order will be deleted from the manufacturing schedule promptly. The cancellation



charges due are based on the percentage of work completed, non-manufacturing charges, order specification, engineering, purchasing fees for all non-standard Products, all other overhead expenses applicable to the order and a reasonable profit thereon.

Anderson may cancel an order if Buyer becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Buyer under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors.

Neither the rights nor the obligations of Buyer under an order or contract are assignable or transferable in whole or in part without the prior written consent of Anderson.

12. **PROPRIETARY INFORMATION.** Buyer shall keep confidential and disclose to no one without the consent of Anderson, any information, whether in written, graphic, visual or oral form, or materials furnished to Buyer hereunder in connection with any order and the Product supplied thereunder. The foregoing obligations shall not apply to information which is described in any printed publications or patent, or is publicly known, or which was disclosed to Buyer by a third party under no obligation of confidentiality. Confidentiality obligations shall continue for a period of five (5) years from the date of shipment of Product under the applicable order.

13. **INDEMNIFICATION.** Buyer shall indemnify and hold Anderson harmless from any cost, loss, damage or expense, including reasonable attorney's fees, arising out of or resulting from Buyer's (i) use of the Product or any part thereof for any purpose or in any manner other than that for which the Product was intended and delivered, including modifications for use thereof in connection with items supplied by others, (ii) misapplications of Product, and (iii) any acts or omissions of Buyer.

14. **REWORK CHARGES AND BACK CHARGES.** No allowances shall be made to Buyer nor shall Buyer be allowed to take an offset against any amount owed to Anderson for any transportation, labor charges or parts, adjustments or repairs, or any other work performed by Buyer, unless such charges are authorized in advance by Anderson.

15. **FORCE MAJEURE:** Anderson shall not be liable for delay in any performance or for failure to render any performance, and any such delay or failure shall for all purposes be excused, when such delay or failure is caused by governmental regulation, fire, flood, wind, strike, labor disputes, accident, embargo, riot, act of God, or any other cause or causes, whether of like or different nature, beyond the reasonable control of Anderson. In the event of such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay. Buyer shall bear any costs incidental to Buyer's delay or failure in acceptance of Product or any other performance.

16. **ARBITRATION:** Any controversy or claim arising out of or relating to this contract/order or breach thereof will be finally settled by arbitration in accordance with the Rules of Commercial Arbitration of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction over the controversy or claim in the State of New York. Arbitration proceedings shall occur in the county of residence of Anderson in the State of New York.

17. **GOVERNING LAW:** The parties hereto agree that this agreement shall be governed by and construed in accordance with applicable substantive and internal laws of the State of New York, U.S.A, without regard to that state's conflict of law principle. Any action resulting from the breach on the part of Anderson as to Product or services manufactured and/or delivered hereunder must be commenced within one year after the cause of action has accrued.

Equal employment Opportunity/Affirmative Action Employer M/F/H/V