

# National Instruments Terms and Conditions of Sale

Customer and National Instruments Australia ("NI") agree that the purchase and sales of NI hardware and software products ("the Products") are made under these terms and conditions, and that NI SHALL NOT BE BOUND BY CUSTOMER'S ADDITIONAL OR DIFFERENT TERMS. Customer's order and purchase of the Products shall constitute acceptance of these terms and conditions.

1. **TITLE AND RISK OF LOSS.** Title and risk of loss to the Products shall pass to Customer upon delivery to the carrier at the point of shipment of the goods to Customer from any of the premises or warehouses of NI or its affiliated companies. NI retains a security interest and right of possession in the Products until Customer makes full payment of any sums in any way outstanding from the customer to NI from time to time.
2. **TAXES.** Product prices are exclusive of, and Customer shall pay, applicable sales, use, service, value added or like taxes, unless Customer has provided NI with an appropriate exemption certificate for the delivery destination acceptable to the applicable taxing authorities. The customer shall be liable to pay, or to reimburse National Instruments for payment of any amount on account of Goods and Services Tax or similar tax for any supply made under or in connection with these Terms & Conditions of Sale to which a GST applies.
3. **PRICES AND PAYMENT.** All quotations shall expire thirty (30) days from date of issuance, unless otherwise set forth on the quotation or agreed in writing. Customer shall make payment in full prior to or upon delivery by cashier's check, credit card, or money order, unless NI approves Customer for credit terms. To enable National Instruments to assess the Customer's application for credit, the Customer authorises NI: to obtain from a credit reporting agency a credit report containing personal information about the Customer and its guarantors pursuant to Section 18K(1)(b) of the Privacy Act; and to obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities. The Customer understands the information can be used for the purposes of assessing its credit-worthiness. If NI approves Customer's credit application, payment shall be due no later than 30 days from the date of NI's invoice. All sums not paid when due shall accrue interest daily at the lesser of a monthly rate of 1.5% or the highest rate permissible by law on the unpaid balance until paid in full. Payments for orders accepted in Australia shall be made in Australian Dollar. In the event of any order for several units, each unit(s) will be invoiced when shipped. Exceptions will be made for government purchase orders
4. **ORDERS.** All orders are subject to acceptance by NI. NI's booking of an order shall constitute its acceptance of an order.
5. **DELIVERY.** Customer shall pay all freight charges, applicable import duties, and other necessary fees and shall bear the risks of carrying out customs formalities and clearance.

Orders are entered as close as possible to the Customer's requested shipment date, if any. Shipment dates are scheduled after acceptance of orders and receipt of necessary documents. Claims for shipment shortage shall be deemed waived unless presented to NI in writing within forty-five (45) days of shipment.

6. **LIMITED WARRANTY.** Except where it is unlawful to do so, NI hardware Products are warranted against defects in materials and workmanship for a limited period of time from the date NI ships the Products to Customer ("Delivery Date") as follows: non-IEEE 488 hardware Products (one (1) year); IEEE 488 hardware Products (two (2) years); and cables (ninety (90) days). All software Products are licensed to Customer under the terms of the appropriate National Instruments license. For a period of ninety (90) days from the Delivery Date, NI software Products (when properly installed on NI hardware Products) (a) will perform substantially in accordance with the accompanying written materials, and (b) the medium on which the software product is recorded will be free from defects in materials and workmanship under normal use and service. Any replacement of a licensed software product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Customer must obtain a Return Material Authorization number from NI before returning any Products under warranty to NI. Customer shall pay expenses for shipment of repaired or replacement Products to and from NI. After examining and testing a returned product, if NI concludes that a returned product is not defective, Customer will be notified, the product returned at Customer's expense, and a charge made for examination and testing. This Limited Warranty is void if failure of the Products has resulted from accident, abuse, misapplication, improper calibration by Customer, Customer supplied third party software not intended for use with the applicable NI software, utilization of an improper hardware or software key or unauthorized maintenance or repair.
7. **CUSTOMER REMEDIES.** To the extent permitted by law, NI's sole obligation (and Customer's sole remedy) with respect to the foregoing Limited Warranty shall be to, at its option, return the fees paid or repair/replace any defective Products, provided that NI receives written notice of such defects during the applicable warranty period. Customer may not bring an action to enforce its remedies under the foregoing Limited Warranty more than one (1) year after the accrual of such cause of action.
8. **RETURN/CANCELLATION/CHANGE POLICY.** Customer may return unwanted Products within thirty (30) days of the Delivery Date. Customer shall pay a fifteen percent (15%) restocking charge on any unwanted Products returned to NI. No returns will be accepted after the thirty (30) day period has expired. Where special equipment or services are involved, Customer shall be responsible for all related work in progress; however, NI shall take responsible steps to mitigate damages immediately upon receipt of a written cancellation notice from Customer. A Return Material Authorization number must be obtained from NI for return of any Products. NI may terminate any order if any representations made by Customer to NI are false or misleading. Changes to orders shall not be binding upon nor be put into effect by NI unless confirmed in writing by NI's appropriate representative.

9. NO OTHER WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED ARE MADE WITH RESPECT TO THE PRODUCTS. NI DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULTS OF THE USE OF THE PRODUCTS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE AND DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.
10. NO LIABILITY FOR CONSEQUENTIAL DAMAGES. The entire liability of NI and its licensors, distributors, and suppliers (including its and their directors, officers, employees, and agents) is set forth above. To the maximum extent permitted by applicable law, in no event shall NI and its licensors, distributors, and suppliers (including its and their directors, officers, employees, and agents) be liable for any damages, including, but not limited to, any special, direct, indirect, incidental, or consequential damages, expenses, lost profits, lost savings, business interruption, lost business information, or any other damages arising out of the use or inability to use the Products. Customer acknowledges that the applicable purchase price or license fee for the Products reflects this allocation of risk. If the foregoing limitation of liability is not enforceable because an NI product sold or licensed to Customer is determined by a court of competent jurisdiction in a final, non-appealable judgment to be defective and to have directly caused bodily injury, death, or property damage, in no event shall NI's liability for property damage exceed the greater of AUD 80,000 or fees paid for the specific product that caused such damage.
11. WARNING: NI PRODUCTS ARE NOT DESIGNED WITH COMPONENTS AND TESTING FOR A LEVEL OF RELIABILITY SUITABLE FOR USE IN OR IN CONNECTION WITH SURGICAL IMPLANTS OR AS CRITICAL COMPONENTS IN ANY LIFE SUPPORT SYSTEMS WHOSE FAILURE TO PERFORM CAN REASONABLY BE EXPECTED TO CAUSE SIGNIFICANT INJURY TO A HUMAN. TO AVOID DAMAGE, INJURY, OR DEATH, THE USER OR APPLICATION DESIGNER MUST TAKE REASONABLY PRUDENT STEPS TO PROTECT AGAINST SYSTEM FAILURES, INCLUDING BUT NOT LIMITED TO BACK-UP OR SHUT DOWN MECHANISMS. THE USER OR APPLICATION DESIGNER IS ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY OF NI PRODUCTS WHENEVER NI PRODUCTS ARE INCORPORATED IN A SYSTEM OR APPLICATION, INCLUDING, WITHOUT LIMITATION, THE APPROPRIATE DESIGN, PROCESS AND SAFETY LEVEL OF SUCH SYSTEM OR APPLICATION.
12. FORCE MAJEURE. NI shall be excused for any delay or failure to perform due to any cause beyond its reasonable control, including but not limited to acts of governments, interruptions of transportation or inability to obtain necessary labor or materials. NI's estimated shipping schedule shall be extended by a period of time equal to the time lost because of any excusable delay. In the event NI is unable to perform in whole or in part because of any excusable failure to perform, NI may cancel orders without liability to Customer.

13. **LIMITED INDEMNITY AGAINST INFRINGEMENT.** If the Products are held to be infringing and the use thereof is enjoined, NI shall, at its option, either (i) procure for the Customer the right to use the Products, (ii) replace the Products with others which do not constitute infringement, or (iii) remove the infringing Products and refund the payment(s) made therefor by Customer. The foregoing states the Customer's sole remedy for, and NI's entire liability and responsibility for, infringement of any patent, trademark, or copyright relating to the Products provided hereunder. **THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT.**
14. **EXPORT LAWS.** The Products are subject to control under the U.S. Export Administration Regulations (15 CFR Part 730 et. seq.) and other applicable U.S. export control laws and regulations. Customer agrees that it will not export, re-export or transfer the Products via any means to any prohibited destination, entity or individual without the required export license(s) or authorization(s) from the U.S. Government. NI reserves the right not to ship the Products ordered if, at any time, NI believes that such shipment may violate U.S. export control laws.
15. **ACKNOWLEDGMENT/GOVERNING LAW.** Customer acknowledges reading these Terms and Conditions, understands them and agrees to be bound by them. A waiver of any provision of this agreement shall not be construed as a waiver or modification of any other term hereof. With respect to all orders accepted by NI in Australia, disputes arising in connection with these Terms and Conditions of Sale shall be governed by the laws of the Australia without regard to principles of conflicts of laws.

(Rev. 11/03/11)