

# Terms and Conditions of Sale

Customer and Virtual Instruments SDN BHD ("NI") agree that the purchase and sales of NI hardware and software products ("the Products") and NI hardware and software services and support (the "Services") 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 and Services 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.
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.
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. 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.
4. **DELIVERY.** NI shall deliver the Products to a carrier at NI's plant. Customer shall pay all applicable freight charges. NI will invoice the customer for applicable charges as shipping and handling fees. 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.
5. **LIMITED WARRANTY.** NI hardware Products are warranted against defects in materials and workmanship for one (1) year from the date NI ships the Products to Customer ("Delivery Date"). 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, modification, 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.

6. **CUSTOMER REMEDIES.** 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.
7. **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.
8. **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, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY OTHER WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING. 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. NI EXPRESSLY DISCLAIMS ANY WARRANTIES NOT STATED HEREIN.
9. **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, exemplary, 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, even if NI or its licensors, distributors, and suppliers has been advised of the possibility of such damages. Customer acknowledges that the applicable purchase price or license fee for the Products reflects this allocation of risk. In no event shall NI's

liability for bodily injury, death, or property damage exceed the greater of RM 50,000 or fees paid for the specific product that caused such damage.

10. **WARNING:** (1) 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. (2) IN ANY APPLICATION, INCLUDING THE ABOVE, RELIABILITY OF OPERATION OF THE SOFTWARE PRODUCTS CAN BE IMPAIRED BY ADVERSE FACTORS, INCLUDING BUT NOT LIMITED TO FLUCTUATIONS IN ELECTRICAL POWER SUPPLY, COMPUTER HARDWARE MALFUNCTIONS, COMPUTER OPERATING SYSTEM SOFTWARE FITNESS, FITNESS OF COMPILERS AND DEVELOPMENT SOFTWARE USED TO DEVELOP AN APPLICATION, INSTALLATION ERRORS, SOFTWARE AND HARDWARE COMPATIBILITY PROBLEMS, MALFUNCTIONS OR FAILURES OF ELECTRONIC MONITORING OR CONTROL DEVICES, TRANSIENT FAILURES OF ELECTRONIC SYSTEMS (HARDWARE AND/OR SOFTWARE), UNANTICIPATED USES OR MISUSES, OR ERRORS ON THE PART OF THE USER OR APPLICATIONS DESIGNER (ADVERSE FACTORS SUCH AS THESE ARE HEREAFTER COLLECTIVELY TERMED "SYSTEM FAILURES"). ANY APPLICATION WHERE A SYSTEM FAILURE WOULD CREATE A RISK OF HARM TO PROPERTY OR PERSONS (INCLUDING THE RISK OF BODILY INJURY AND DEATH) SHOULD NOT BE RELIANT SOLELY UPON ONE FORM OF ELECTRONIC SYSTEM DUE TO THE RISK OF SYSTEM FAILURE. 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. BECAUSE EACH END-USER SYSTEM IS CUSTOMIZED AND DIFFERS FROM NI'S TESTING PLATFORMS AND BECAUSE A USER OR APPLICATION DESIGNER MAY USE NI PRODUCTS IN COMBINATION WITH OTHER PRODUCTS IN A MANNER NOT EVALUATED OR CONTEMPLATED BY NI, 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.
11. **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, natural catastrophes, acts of Customer, 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.
12. **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. Disputes arising in connection with these Terms and Conditions of Sale shall be governed by the laws of Malaysia and Customer hereby subjects to the exclusive jurisdiction of the courts of Malaysia.

13. **SERVICES. Limited Warranty.** NI makes no express or implied warranties with respect to the Services, including but not limited to (a) any warranty relating to third-party products or (b) any warranty concerning the results to be obtained from the Services or the results of any recommendation NI may make, including without limitation any implied warranties concerning the performance, merchantability, suitability, non-infringement or fitness for a particular purpose of any of the deliverables or of any system that may result from the implementation of any recommendation NI may provide. In order to receive warranty remedies, deficiencies in the Services must be reported to NI in writing within 90 days of completion of the Services. **Limitation of Liability.** NI is not liable for any incidental, indirect, special, or consequential damages arising out of or in connection with the Services provided by NI, including without limitation loss of use of the Products or any other software or data, including inability to achieve a particular result, even if NI has been advised of the possibility of such damages or even if the damage is the direct result of an instruction or suggestion made by NI. NI's total liability arising out of any event including bodily injury or death occurring in connection with the Services shall not exceed RM 50,000. **High Risk Activities.** Customer understands and agrees that NI has not tested or certified its Services for use in high risk applications including medical life support, nuclear power, mass and air transportation control, or any other potentially life critical uses and makes no assurances that the Services are suitable for any high risk uses. **Indemnification.** Customer accepts responsibility for, and agrees to indemnify and hold NI harmless from, any and all liability, damages, claims, or proceedings arising out of (a) the failure of Customer to obtain the appropriate license, intellectual property rights, or any other permissions required to support any Products or NI's performance of the Services, including but not limited to, the right to make any copies or reproductions of any Customer-provided software or (b) any inaccurate representations regarding the existence of an export license or the eligibility for export of software or other materials without a US export license.