

Terms and Conditions of Sale

1. Interpretation

In these terms and conditions the following expressions will have the following meanings:

1.1 "Seller" means National Instruments Corporation (UK) Limited (Company Number 02999356) Registered Office: 42-46 High Street, Esher, Surrey KT10 9QY.

1.2 "Buyer" means the person placing an Order with Seller.

1.3 "Default" means any act, representation or omission by Seller, its officers, employees or agents, or which is done, made or not done (as the case may be) as a result of any act, representation or omission of any of them (whether deliberate or negligent), in connection with or in relation to this agreement as a result of which Seller is legally liable to Buyer or any third party whether in contract, tort or otherwise. A number of Defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such Default.

1.4 "Products" means the hardware or software the subject of the Order placed with Seller.

1.5 "Conditions" means these terms and conditions which will govern the supply of the Products and Services.

1.6 "Order" means the order placed by Buyer with Seller for the supply of the Products or Services.

1.7 "Contract" means the contract for the supply of the Products or Services concluded by the placing of an Order which is accepted in writing by Seller.

1.8 "Services" means any training, consultancy, hardware or software services and support or other service provided by Seller.

2. Personal details and data protection

2.1 The personal details of Buyer including name, address, telephone number, email address and credit card and transaction details and those of its representatives (Personal Data) are held by Seller for account and order administration, marketing, to facilitate better communications, for security purposes and the purposes referred to in paragraph 2.5.

2.2 The Seller undertakes to comply with the provisions of the EC Data Protection Directive (95/46/EC) and any related or implementing legislation that applies to it so far as the same relates to the provisions and obligations of this Contract.

2.3 It is the responsibility of Buyer to ensure that its Personal Data are accurate and up to date and to inform Seller of any changes that need to be made.

2.4 Seller may use the Personal Data for the purposes it has notified to the Information Commissioner's Office or other relevant authority concerned with data protection.

2.5 By becoming a Buyer, accessing the National Instruments web site or requesting information from Seller, Buyer CONSENTS to its Personal Data being processed by Seller and in particular to its transfer to other National Instruments companies outside of the European Economic Area for the purposes referred to in paragraph 2.1.

3. Scope of Contract

3.1 Neither Buyer nor Seller will be bound by any variation or waiver of the Conditions or of the quantity, design, specification, or arrangements for delivery, for any Products specified in any Contract unless and until agreed by both parties in writing.

3.2 Any terms and conditions used by Buyer in the course of its business or contained in Buyer's Order which are at variance with these Conditions will not apply to any Contract.

3.3 Unless otherwise stated all quotes given by Seller are based on price lists in force on the date of issuance and will expire thirty (30) days after the date on which they are given.

3.4 Orders may not be transferred to a third party by Buyer.

3.5 Seller sells Products and provides the Services as principal only, to the intent and with the effect that no other person or persons shall have any rights or obligations or be entitled or liable to sue or be sued, under the contracts it enters into.

3.6 Buyer warrants and agrees that:

3.6.1 it is acting in the normal course of its business or trade and is not a consumer; and

3.6.2 the Electronic Commerce Directive (00/31/EC) and the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002 No. 2013) do not apply to this Contract.

3.7 Each individual executing this Contract on behalf of a party represents and warrants that he is empowered to execute it and that all necessary action to authorise its execution has been taken.

4. Delivery

4.1 Delivery of the Products will be arranged by National Instruments European distribution centre on or as close as possible to Buyer's requested delivery date subject to Seller's existing priorities and schedules. Buyer will be advised of Seller's estimated time or date for delivery which is an estimate only and may be cancelled or revised at Seller's option. The Products comprised in any Order may be delivered and invoiced in instalments, at Seller's discretion.

4.2 Deliveries of Products will be made to the address given on the Order. Any additional costs caused by a change of delivery address will be borne by Buyer.

4.3 Seller will have no liability to Buyer in the event of non-delivery of the whole or any portion of the Products or failure to supply all or part of the Services caused directly or indirectly by a Force Majeure Event.

4.3.2 A Force Majeure Event shall mean any event or circumstances (or a combination of events or circumstances) beyond the reasonable control of the Seller which could not have been prevented by the Seller acting reasonably.

4.3.2 On the happening of a Force Majeure Event the obligations of the Seller shall be suspended for as long as the Force Majeure Event renders performance of the Contract impossible. The Seller shall immediately give the Buyer notice of a happening of a Force Majeure Event and will use its best efforts to resume full performance.

4.4 Unless Buyer informs Seller of a discrepancy between the Products ordered and the Products received by Buyer within three (3) working days of the delivery, the delivery will be

deemed to have been in accordance with the Order and accepted by the Buyer. This will apply notwithstanding any indication that contents are unchecked upon delivery.

4.5 The Services will be provided in accordance with Seller's quotation.

5. Payment and Price

5.1 The price stated in Seller's quotation for Products excludes the cost of delivery (which will be invoiced to Buyer) and any value added or other tax duty or charge which may be imposed upon the production, storage, sale, transportation, import or export of the Products. Any such tax, duty or charge shall be for the account of Buyer. The price quoted will remain applicable until delivery of the Products provided that this is within six (6) months of the date of the Order.

5.2 The price stated in Seller's quotation for the Services excludes Value Added Tax and any other tax which may be imposed on the Services.

5.3 Payment of the price of the Products or Services comprised in each Order will be made:

5.3.1 By Buyers in the UK not ordering through the National Instruments web site, in pounds sterling or Euro;

5.3.2 By Buyers in the Republic of Ireland not ordering through the National Instruments web site, in pounds sterling or Euro;

5.3.3 By Buyers in the UK ordering through the National Instruments web site, in pounds sterling;

5.3.4 By Buyers in the Republic of Ireland ordering through the National Instruments web site, in Euro.

5.4 Unless Seller approves Buyer for credit terms, payment shall be made when the Order is placed by cheque, credit card or direct credit transfer or in cash on delivery.

5.5 If Seller approves Buyer's credit application, payment shall be due no later than thirty (30) days after the date of Seller's invoice. Seller reserves the right to cancel Buyer's credit terms at any time.

5.6 Seller is entitled to interest on any unpaid invoices from the due date until payment at 5% above the base rate of Barclays plc.

5.7 No discounts will be granted for early payment.

5.8 If Buyer does not comply with the payment terms Seller may at its discretion suspend or cancel deliveries of Products and the supply of Services.

6. Risk and Cancellation

6.1 The risk in the Products will pass to Buyer upon delivery to the carrier.

6.2 Buyer shall be entitled to return any unwanted Products (except bespoke Products) to Seller at its cost within thirty (30) days of delivery subject to payment of a restocking charge equivalent to 50 Euros or 15% of the price of the returned Products (whichever is the greater) and to Buyer having obtained a return material authorization number from Seller in advance

of any such returns. No returns will be accepted more than thirty (30) days after the date of delivery nor if they are not in their original packaging.

6.3 If Buyer wishes to cancel an order for bespoke Products or Services it shall remain liable for the costs already incurred by Seller, which Seller will use reasonable endeavours to minimise.

7. Title

7.1 Subject to clause 7.2, until all monies due from Buyer to Seller on any account have been received by Seller, no title to the Products shall pass to Buyer.

7.2 Seller retains title to all software and documentation included in the Products, all media on which such software is delivered to Buyer, and to all material supplied or used as part of the Services.

7.3 If Buyer fails to make any payment to Seller when it is due, Seller shall be entitled to request that Buyer promptly return to Seller any Products title of which has not passed to Buyer so as to discharge any sums owed by Buyer to Seller under any Contract. If Buyer fails to promptly return the Products to Seller, Seller will be entitled to enter Buyer's premises to repossess and dispose of any such Products.

8. Product Warranties and Representations

8.1 The following clause specifies the extent to which Seller will be liable for Default. Its principal terms are a financial limit on Seller's liability (except for death or personal injury), the liability of Seller only for certain defined losses and a time limit applicable to both parties for the enforcement of claims. Seller's entire liability and Buyer's sole remedies, whether in contract, tort or otherwise, shall be as set out in this clause.

8.2 Except as expressly provided in this clause, all conditions, representations and warranties (express or implied, statutory or otherwise) are excluded to the extent permitted by law including without limitation any implied warranties or conditions as to quality fitness for purpose or quality of service.

8.3 Subject to the terms of this clause Seller warrants to Buyer that:

8.3.1 Hardware Products are free of defects in materials and workmanship that materially affect their performance for a period of one (1) year from the Seller ships the Products to the Buyer ("Delivery Date").

8.3.2 Software Products are licensed to Buyer under the terms of the appropriate National Instruments license. Seller warrants to Buyer that, for a period of ninety (90) days from the delivery date, all software Products (when properly installed on National Instruments 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.

8.4 Seller agrees to repair or replace (at Seller's option) all Products which fail to conform to the relevant warranty set out in clause 8.3 provided that:

8.4.1 notification of the defect is received by Seller within the warranty period specified above;

8.4.2 allegedly defective Products are returned to Seller with Seller's prior authorisation within thirty (30) days of the defect becoming apparent; and

8.4.3 the Products have not been altered, modified or subject to misuse, incorrect installation, maintenance, neglect, accident or damage by excessive current or used with incompatible parts.

8.4.4 Replacement Products shall have the benefit of the applicable warranty for the remainder of the applicable warranty period.

8.5 Allegedly defective Products returned to Seller in accordance with 8.4.2 will if found by Seller on examination not to be defective be returned to Buyer and a charge made for examination and testing.

8.6 The above warranty shall not apply to any software if:

8.6.1 the software is not used in accordance with these Conditions or the instructions of Seller or the manufacturer;

8.6.2 the software is altered, modified or converted by Buyer or a third party;

8.6.3 a program error in the Product results from a malfunction of a third party's or Buyer's equipment or software not supplied by Seller.

8.7 Seller does not warrant that any Products will operate in all selected combinations, that the operation of any such production will be uninterrupted or error free or that operation of any such Products will meet Buyer's requirements.

8.8 **WARNING.**

8.8.1 National Instruments 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.

8.8.2 Buyer hereby indemnifies Seller in respect of any loss or damage arising from any claim brought by it or any third party against Seller in respect of the use of any Products for such purpose.

8.8.3 In any application, 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, hardware and software 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").

8.8.4 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.

8.8.5 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 National Instruments' testing platforms and because a user or application designer may use the Products in combination with other products in a manner not evaluated or contemplated by Seller, the user or application designer is ultimately responsible for verifying and validating the suitability of the National Instruments Products whenever National Instruments Products are incorporated in a system or application, including, without limitation, the appropriate design, process and safety level of such system or application.

8.9 Seller shall not be liable for any loss incurred after either the date on which Seller corrects any Default or twelve (12) months after the date of the Default to the extent that Seller affords Buyer a reasonable opportunity to mitigate its losses, damage, liabilities or expenses by providing alternative or additional Products.

8.10 Seller will accept unlimited liability for death or personal injury caused by Seller's Default.

8.11 Seller will accept liability for direct physical damage to tangible property of Buyer resulting from Default, subject to clause 8.12.

8.12 Seller will not be liable for the following loss or damage however caused and even if foreseeable by Seller:

8.12.1 economic loss, which term shall include loss of profits, loss of use of profits, business, revenue, goodwill or anticipated savings;

8.12.2 loss of or damage to Buyer's or a third party's data;

8.12.3 special, indirect or consequential loss (other than direct physical damage to tangible property under clause 8.11);

8.12.4 loss arising from any claim made against Buyer by a third party;

8.12.5 loss or damage arising from Buyer's failure to fulfil its responsibilities or any matter under the control of Buyer or a third party;

8.12.6 loss or damage arising from Seller acting in accordance with the instructions of Buyer, its officers, employees, agents or third parties engaged by Buyer; or

8.12.7 loss or damage arising directly or indirectly from any delay in delivery.

8.13 Seller's entire liability for actual damages in respect of any one Default shall not, in any event, except as provided in clause 8.10, exceed 150% of the total purchase price for the Products which are directly related to the Default.

8.14 Except in respect of payments due under this agreement and claims under clause 8.10 no action may be brought by either party against the other more than one (1) year after the cause of action has accrued.

8.15 Each of the limitations and exclusions set out above is to be construed as a separate limitation or exclusion, applying and surviving even if for any reason one or other of the limitations or exclusions is held inapplicable or unreasonable in any circumstances, and shall remain in force despite termination of this agreement.

9. Services Warranties and Representations

9.1 The Services will be performed using reasonable care and skill in a good and workmanlike manner. Except as expressly stated in the preceding sentence, Seller makes no express or implied warranties with respect to the Services, including but not limited to:

9.1.1 any warranty relating to third-party products; or

9.1.2 any warranty concerning the results to be obtained from the Services or the results of any recommendation Seller 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 Seller may provide.

9.2 In order to receive warranty remedies, deficiencies in the Services must be reported to Seller in writing within 90 days of completion of the Services.

9.3 Limitation of Liability.

9.3.1 Seller is not liable for any incidental, indirect, special, or consequential damages arising out of or in connection with the Services provided by Seller, including without limitation loss of use of the Products or any other software or data, including inability to achieve a particular result, even if Seller 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 Seller.

9.3.2 Except for claims that the Services caused bodily injury (including death), Seller's total liability arising out of or in connection with any event or series of connected events occurring in connection with the Services shall not exceed the amount of fees paid by the Buyer for the Services. Seller's pricing reflects this allocation of risk and the limitation of liability specified herein.

9.4 High Risk Activities.

9.4.1 Buyer understands and agrees that Seller 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.

9.5 Indemnification.

9.5.1 Buyer accepts responsibility for, and agrees to indemnify and hold Seller harmless from, any and all liability, damages, claims, or proceedings arising out of:

9.5.1.1 the failure of Buyer to obtain the appropriate license, intellectual property rights, or any other permissions required to support any Products or Seller's performance of the Services, including but not limited to, the right to make any copies or reproductions of any Customer-provided software; or

9.5.1.2 any inaccurate representations regarding the existence of an export license or the eligibility for export of software or other materials without a license.

10. Infringements

10.1 Seller shall settle and/or defend at its own expense and fully pay any resulting awards and settlements including also Buyer's legal fees arising from any claim, demand, suit or action against Buyer or its affiliated companies to the extent such claim, demand, suit or action alleges that the Products or Services as supplied by Seller, or the use of the Products infringes upon any patent or any trademark or copyright or trade secret of any third party, provided that:

10.1.1 Buyer promptly informs Seller in writing of any such claim, demand, action or suit;

10.1.2 Seller is given control over the defense thereof and Buyer cooperates in the defense at Seller's expense; and

10.1.3 Buyer will not agree to the settlement of any such claim, demand, action or suit prior to a final judgment thereon without the prior written consent of Seller, which consent will not be unreasonably withheld. Buyer shall have the right to select its own counsel to participate in any such defense at Buyer's sole expense.

10.2 The foregoing indemnification shall not apply to any claim of infringement based on Buyer's modification of Products. Notwithstanding the foregoing, Seller shall have no obligation under this Section for any claims of infringement by the Products outside the geographical boundaries of the United States, Canada, Mexico, Japan, Australia, Switzerland, Norway or the European Union.

10.3 Seller's total aggregate liability for infringements according to this Agreement shall not exceed the aggregate of all amounts paid to Seller by Buyer under this Agreement.

11. General

11.1 Seller will not be prejudiced or restricted by any indulgence or forbearance extended to Buyer and no waiver of any breach will operate as a waiver of any subsequent breach.

11.2 Buyer will not assign its rights under the Conditions without the prior written consent of Seller.

11.3 Any notice given under the Conditions will be duly served on Buyer if it is left at or sent by first class post to its address last known to Seller or on Seller if it is left at or sent by first class post to its address last known to Buyer. It will be assumed that any notice sent by post will be delivered on the fifth working day after posting.

11.4 This Contract will be construed in accordance with the laws of England and Seller and Buyer submit to the non-exclusive jurisdiction of the English courts.