

## **NATIONAL INSTRUMENTS TERMS AND CONDITIONS OF SALE**

The terms and conditions detailed herein ("Agreement") apply to your ("Customer") purchase from NI of NI hardware ("Hardware"), licenses to use NI software ("Software"), and Non-NI Branded Products (collectively the "Product(s)"), as well as NI hardware and software services and support ("Services"). NI means the National Instruments affiliate identified on the Quote, order acknowledgement, or invoice, or in the absence of an identified National Instruments affiliate, then National Instruments Corporation. THIS AGREEMENT SHALL APPLY UNLESS CUSTOMER AND NI HAVE ENTERED INTO A SEPARATE SIGNED AGREEMENT APPLICABLE TO THE PURCHASE OF THE PRODUCTS OR SERVICES. By placing an order with NI, Customer agrees to be bound by the terms of this Agreement. NI EXPRESSLY OBJECTS TO AND REJECTS ANY TERMS AND CONDITIONS IN CUSTOMER'S PURCHASE ORDER OR OTHER SIMILAR DOCUMENT. IF YOU DO NOT AGREE WITH THESE TERMS, PROMPTLY NOTIFY NI AND RETURN THE PRODUCT UNUSED IN ITS ORIGINAL PACKAGING TO NI.

**1. PRICES AND ORDERS.** Prices are set forth in the quotation issued to Customer ("Quote"). All Quotes expire thirty (30) days from date of issuance, unless otherwise stated in the Quote. All orders are subject to acceptance at the sole discretion of NI. Orders will be considered accepted once NI books an order and sends Customer a sales order acknowledgement. NI shall not be bound by changes to an order unless agreed by NI in writing. NI reserves the right to cancel any order if any information provided by Customer to NI is inaccurate.

**2. PAYMENT AND INVOICING.** Payment is due at the time the order is placed. If Customer is approved for credit, payment shall be due within thirty (30) days from the date of invoice ("Invoice Date"). Payment shall be in the currency listed on the NI invoice. All sums not paid when due shall accrue interest daily at a monthly rate of the lesser of 1.5% or the highest rate permissible by law. If there are multiple units in an order, each unit will be invoiced when shipped.

**3. DELIVERY, TITLE and RISK OF LOSS.** Title and risk of loss to Products (for Software, the media) shall pass to Customer upon shipment from NI, its warehouses, or its affiliated companies; provided however, NI retains a security interest and right of possession in the Products until Customer makes payment in full. For orders to be delivered within the same country as the NI entity accepting the order, NI will arrange the shipping; however, Customer is responsible for all shipping and handling fees set forth in the invoice. If Customer chooses to arrange for shipping or if the order is placed with an NI entity outside the country of the applicable shipping destination, Customer is responsible for all shipping and handling, including fees, customs, formalities and clearance. Shipment dates provided by NI are estimates only, and NI shall have no liability for losses or claims resulting from late delivery of Products. Claims for shipment shortage shall be deemed waived unless presented to NI in writing within forty-five (45) days of Invoice Date.

**4. TAXES.** Prices exclude, and Customer is responsible for, any sales, use, service, value added, and like taxes ("Taxes") arising from the purchase of the Products and Services. If Customer is exempt from any Taxes, it must provide NI with the appropriate tax exemption documentation at the time the order is placed.

**5. SOFTWARE.** Software is licensed pursuant to the software license agreements provided with the software or, in the absence of such license agreements, the National Instruments Software License Agreement available at [ni.com/legal](http://ni.com/legal) at the time of purchase. All software is licensed, not sold, and title to the software remains with the applicable licensor(s).

**6. NON-NI BRANDED PRODUCTS.** Non-NI Branded Products that NI resells may not be testable or repairable by NI, and it may be necessary for Customer to contact the manufacturer or the publisher for service. NI does not warrant, has no obligation to support, and shall have no liability for Non-NI Branded Products. The Limited Warranty and NI Intellectual Property Liability sections of this Agreement do not apply to the sale and purchase of Non-NI Branded Products. "Non-NI Branded Product(s)" means any third-party hardware, software, or service that NI sells, but does not carry an NI mark.

**7. SERVICES.** Services provided by NI are also subject to any service agreements or statements of work agreed upon in writing by the parties or, as applicable, to the NI service terms and conditions, available at [ni.com/legal/serviceterms/](http://ni.com/legal/serviceterms/).

**8. RETURN POLICY.** Customer may return standard Products within thirty (30) days of the Invoice Date. NI reserves the right to charge Customer a fifteen percent (15%) restocking fee for any Products returned to NI. No returns will be accepted after the thirty (30) day period has expired. A Return Material Authorization (RMA) number is required for Customer to return any Products. Acceptance of returns of customized Products and Non-NI Branded Products is in the sole discretion of NI.

**9. LIMITED WARRANTY.** For a period of one (1) year from the Invoice Date, NI warrants that its Hardware will be free of defects in materials and workmanship that cause the Hardware to fail to substantially conform to the applicable NI published specifications. For a period of ninety (90) days from the Invoice Date, NI warrants that the Software (i) will perform substantially in accordance with the applicable documentation provided with the Software and (ii) the Software media will be free from defects in materials and workmanship. NI warrants that the Services will be performed in a good and workmanlike manner. If NI receives notice of a defect or non-conformance during the applicable warranty period, NI will, in its discretion: (i) repair or replace the affected Hardware or Software, (ii) re-perform the affected Services, or (iii) refund the fees paid for the affected Hardware, Software or Services. Repaired or replaced Hardware or Software will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer. If NI elects to repair or replace Hardware, NI may use new or refurbished parts or products that are equivalent to new in performance and reliability and are at least functionally equivalent to the original part or Hardware. Customer must obtain an RMA number from NI before returning any Hardware under warranty to NI. Customer will pay shipping expenses to send the affected Hardware to NI, and NI will pay shipping expenses to return the Hardware to the Customer. If NI concludes, after examining and testing returned Hardware, that it is not covered by the Limited Warranty, NI will notify Customer and return the Hardware at Customer's expense. NI reserves the right to charge a fee for examining and testing Hardware not covered by the Limited Warranty. This Limited Warranty does not apply if the defect of the Hardware or Software resulted from improper or inadequate maintenance, installation, repair, or calibration (performed by a party other than NI); unauthorized modification; improper environment; use of an improper hardware or software key; improper use or operation outside of the specification for the Hardware or Software; improper voltages; accident, abuse, or neglect; or a hazard such as lightning, flood, or other act of nature. THE REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND THE CUSTOMER'S SOLE REMEDIES, AND SHALL APPLY EVEN IF SUCH REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

**10. NO OTHER WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PRODUCTS AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND NI DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND ANY 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 OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NI DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

**11. WARNING AND CUSTOMER INDEMNITY.** CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT PRODUCTS AND SERVICES ARE NOT DESIGNED, MANUFACTURED, OR TESTED FOR USE IN LIFE OR SAFETY CRITICAL SYSTEMS, HAZARDOUS ENVIRONMENTS OR ANY OTHER ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING IN THE OPERATION OF NUCLEAR FACILITIES; AIRCRAFT NAVIGATION; AIR TRAFFIC CONTROL SYSTEMS; LIFE SAVING OR LIFE SUSTAINING SYSTEMS OR SUCH OTHER MEDICAL DEVICES; OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE PRODUCT OR SERVICE COULD LEAD TO DEATH, PERSONAL INJURY, SEVERE PROPERTY DAMAGE OR ENVIRONMENTAL HARM (COLLECTIVELY, "HIGH-RISK USES"). FURTHER, CUSTOMER MUST TAKE PRUDENT STEPS TO PROTECT AGAINST PRODUCT AND SERVICE FAILURES, INCLUDING PROVIDING BACK-UP AND SHUT-DOWN MECHANISMS. NI EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS OF THE PRODUCTS OR SERVICES FOR HIGH-RISK USES. CUSTOMER SHALL DEFEND, INDEMNIFY, AND HOLD NI HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, INCLUDING LAWSUITS, ARBITRATIONS, AND/OR ADMINISTRATIVE ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF CUSTOMER'S USE OF THE PRODUCTS AND SERVICES FOR ANY HIGH-RISK USES, INCLUDING CLAIMS FOR PRODUCT LIABILITY, PERSONAL INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY, REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF NI.

**12. SYSTEM AND APPLICATION RESPONSIBILITY AND ADDITIONAL INDEMNITY.** CUSTOMER ACKNOWLEDGES THAT IT IS ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY AND RELIABILITY OF THE PRODUCTS OR SERVICES WHENEVER THE PRODUCTS OR SERVICES ARE INCORPORATED IN ITS SYSTEM OR APPLICATION, INCLUDING THE APPROPRIATE DESIGN, PROCESS, AND SAFETY LEVEL OF SUCH SYSTEM OR APPLICATION. FURTHER, CUSTOMER MUST TAKE PRUDENT STEPS TO PROTECT AGAINST PRODUCT AND SERVICE FAILURES WHEN PRODUCTS AND SERVICES ARE INCORPORATED IN A SYSTEM OR APPLICATION, INCLUDING PROVIDING BACK-UP AND SHUT-DOWN MECHANISMS. CUSTOMER SHALL DEFEND, INDEMNIFY, AND HOLD NI HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES,

ACTIONS, INCLUDING LAWSUITS, ARBITRATIONS, AND/OR ADMINISTRATIVE ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF CUSTOMER'S INCORPORATION OF THE PRODUCTS OR SERVICES INTO ITS SYSTEM OR APPLICATION, REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF NI.

**13. INTELLECTUAL PROPERTY LIABILITY.** NI agrees to defend any third-party claim that alleges the Hardware, Software or Services infringe any U.S. patent, copyright, or trademark ("Claim"). Customer shall notify NI immediately upon learning of any Claim, or any allegation that the grounds for a Claim may exist, shall grant NI sole control over the defense and settlement of the Claim, and shall cooperate fully with NI in preparing a defense for any Claim. NI agrees to pay any final judgment or settlement resulting from any Claim, provided that the settlement is entered into in accordance with this Section. NI shall not be liable for a settlement made without its prior written consent. Notwithstanding the foregoing, NI shall have no obligation under this Section for any claim relating to or arising from (a) Customer's modifications of Hardware, Software or Services; (b) failure to use Hardware, Software or Services in accordance with the applicable documentation provided by NI; (c) the combination, operation, or use of Hardware, Software or Services with any hardware, software or service not provided by NI; (d) the compliance of NI with Customer's specifications or directions, including the incorporation of any software or other materials provided by or requested by Customer; or (e) Non-NI Branded Products.

The foregoing states the Customer's sole remedy for, and the entire liability and responsibility of NI for, infringement of any patent, trademark, or copyright or other intellectual property rights. THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT.

In any event, if NI believes in its reasonable opinion the Hardware, Software, or Services may be alleged to be infringing, for the purposes of mitigating any potential damages, NI may, at its option, (i) procure for the Customer the right to continue to use the Hardware, Software, or Services; (ii) replace them with comparable Hardware, Software or Services that are free of such infringement; or (iii) refund the fees paid by Customer, in which case Customer shall promptly return the Hardware to NI and/or terminate the use of the Software or Services.

**14. PROPRIETARY RIGHTS.** NI reserves all right, title, and interest in any intellectual property rights contained or embodied in Products, or resulting from the Services, including any custom developments created or provided by NI under this Agreement. Nothing in this Agreement will be deemed to grant to Customer any ownership rights in such intellectual property.

**15. LIMITATION OF LIABILITY.** NI SHALL NOT BE LIABLE FOR (I) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCTS OR SERVICES; OR (II) ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH: (A) PRODUCTS OR SERVICES NOT BEING AVAILABLE FOR USE, INCLUDING ANY COSTS OF OBTAINING SUBSTITUTE PRODUCTS OR SERVICES; (B) LOSS OF, CORRUPTION OF, OR LOSS OF USE OF ANY PRODUCTS, HARDWARE, SOFTWARE OR DATA; (C) LOSS OF REVENUE, PROFIT, OR BUSINESS OPPORTUNITY; (D) BUSINESS INTERRUPTION OR DOWNTIME; OR (E) INABILITY TO ACHIEVE A PARTICULAR RESULT, EVEN IF IT IS AT SUGGESTION MADE BY NI. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF NI ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCTS OR SERVICES, SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT OR SERVICE GIVING RISE TO SUCH CLAIM. THIS SECTION: (1) APPLIES TO NI AND ITS LICENSORS, DISTRIBUTORS, AND SUPPLIERS (INCLUDING ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS), (2) REFLECTS AN ALLOCATION OF RISK BETWEEN NI AND CUSTOMER IN VIEW OF THE PURCHASE PRICE OF THE PRODUCTS AND SERVICES, (3) APPLIES EVEN IF NI HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES AND REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF NI, AND (4) REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. TO THE EXTENT THE FOREGOING LIMITATION OF LIABILITY IS UNENFORCEABLE OR FAILS OF ITS ESSENTIAL PURPOSE, THE SOLE LIABILITY OF NI TO CUSTOMER SHALL BE LIMITED TO \$50,000 (USD).

**16. FORCE MAJEURE.** NI shall not be responsible for any delay or failure to perform due to any cause beyond its reasonable control, including but not limited to acts of nature or governments; interruptions of telecommunications, power or transportation; failure of contractors or suppliers; or inability to obtain necessary labor or materials ("Force Majeure Event"). In the event of a Force Majeure Event, NI reserves the right to cancel the applicable order without any liability to Customer.

**17. EXPORT AND SANCTIONS LAWS AND COMPLIANCE.** Products (which, for purposes of this Section, shall

include the software and technology incorporated in or supplied with a Product and Service) purchased from NI are subject to control under the U.S. Export Administration Regulations (15 CFR Part 730 et. seq.) administered by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") ([www.bis.doc.gov](http://www.bis.doc.gov)) and other applicable U.S. export control laws and sanctions regulations, including those administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") ([www.treas.gov/ofac](http://www.treas.gov/ofac)). In addition, Products distributed from NI's distribution center in Europe are subject to control under the European Union ("EU") Council Regulation No. 428/2009 and their export or intra-EU transfer may also be subject to additional licensing requirements under European Union Council Regulation No. 428/2009 and its implementing regulations. Products may not be exported or re-exported to any country where sanctions are imposed by the U.S. government (which currently includes Cuba, Iran, North Korea, Republic of Sudan and Syria but which may be modified by the U.S. government from time to time). Customer agrees it will comply with the export laws and trade sanctions of all applicable countries and will not export, re-export or transfer Products purchased from NI without the required license(s), including an export or re-export license issued by the U.S. authorities, or to any prohibited destination or for a prohibited end-use. Products may also require export license(s) issued by the applicable authorities before being returned to NI. The issuance of a Quote, a sales order acknowledgment, or an RMA by NI is not an export license. Customer represents and warrants it is not ineligible or otherwise restricted by U.S. or applicable law to receive Products and it will not export, re-export, or provide Products to any person or entity on OFAC's List of Specially Designated Nationals or on BIS's Denied Persons List, Entity List or Unverified List or any other applicable restricted party list. NI reserves the right to refuse and/or cancel any order if, at any time, NI believes that any export controls or trade sanctions laws may be violated. See [ni.com/legal/export-compliance](http://ni.com/legal/export-compliance) for more information.

**18. GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Texas, U.S.A., without regard to principles of conflicts of laws. The parties submit to the personal jurisdiction of the state and federal courts in Travis County, Texas. The parties expressly agree that the provisions of the United Nations Convention on Contracts for the International Sale of Products will not apply to this Agreement.

**19. LIMITATION PERIOD.** NI SHALL NOT BE LIABLE FOR ANY CLAIM ARISING UNDER THIS AGREEMENT BROUGHT MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

**20. UPDATES.** NI reserves the right to update this Agreement at any time, effective upon posting an updated version at [ni.com/legal/termsofsale](http://ni.com/legal/termsofsale); however, the terms and conditions in effect at the time of purchase shall apply to that purchase of Products or Services.

**21. GENERAL TERMS.** This Agreement, and any terms incorporated herein by reference, constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings or agreements, whether written or oral, with respect to that subject matter. Customer acknowledges reading this Agreement, understands these terms, and agrees to be bound by them. This Agreement may not be altered, supplemented, or amended by the use of any other document unless otherwise agreed in writing by NI. No delay or failure by NI to exercise any right it has under this Agreement shall impair or be construed as a waiver of such right. A waiver of any provision of this Agreement must be in writing and shall not be construed as a waiver or modification of any other term hereof, or as a continuing waiver of any provision. The term 'including' as used in the Agreement should be construed as 'including without limitation'. If any part, term, or provision of this Agreement is held illegal, unenforceable, or in conflict with any applicable and enforceable law, the validity of the remaining portions or provisions of this Agreement shall not be affected. The doctrine that any ambiguity contained in a contract shall be construed against the party whose counsel has drafted the contract is expressly waived by each of the parties with respect to this Agreement.

*November 1, 2012*