

## SHANGHAI NI INSTRUMENTS CO., LTD (“NI”) 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”). 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.

**2. PAYMENT AND INVOICING.** Payment is due at the time the order is placed unless the Customer has been approved for a credit term. For all sums not paid when due, NI reserves the right to impose an interest calculated on daily basis at a monthly rate of one point five percent (1.5%) or the highest rate permissible by applicable law. If there are multiple units in an order, each unit shall be invoiced when shipped. NI would issue an invoice inclusive of Value Added Tax calculated at the rate permissible under the PRC Tax Law or applicable regulations/directives based on the date of invoice. If NI issues a VAT Special Invoice to the Customer, the Customer shall submit it for VAT deduction within the allowable time as provided by PRC Tax Law. The Customer shall be responsible and be liable for any and/or all consequences and/or losses from failure to or delay in submitting the VAT Special Invoice for VAT deduction and NI has NO such obligations to re-issue any new invoice to the Customer save and except for mistakes in disputed invoices are attributable to NI actions or omissions. For non-standard invoice processes requested by Customer, NI reserves the right to impose a five percent (5%) processing fee and/or based on any amounts NI is required to pay to the government authorities on behalf of the Customer (if need be).

**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; 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 seven (7) days upon arrival of the Products to the designated place.

**4. TAXES.** Unless otherwise agreed in the Quote, Prices exclude, and the Customer is responsible for, any sales, use, service, value added, and/or any other applicable taxes (“Taxes”) as provided under the PRC Tax Law (including regulations and directives effective) arising from the purchase of the Products and/or Services (as the case maybe). If the Customer is exempted from any Taxes or qualifies for zero Taxes, it must provide NI with the appropriate tax documentation in writing at the time the order is being 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/license](http://ni.com/legal/license) 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/service/terms/](http://ni.com/legal/service/terms/).

**8. RETURN POLICY.** In case of special circumstances where Customer needs to return Products, Customer returns Products within thirty (30) days of the Invoice Date, provided however that the following conditions are met: (i) Products are new and unopened; (ii) Products are capable of being directly re-sold by NI and (iii) NI reserves the right to charge Customer a fifteen percent (15%) restocking fee for any Products returned to NI and Customer hereby authorizes NI to automatically deduct from any prepayment made by Customer to NI such fifteen percent (15%) restocking fee without any written notice to Customer. Nevertheless, 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. In case the services are related to repair or calibration, Customer shall remove all data, non-NI software, passwords and non-NI equipment from the subject products, and remove the accessories of the product to be repaired, replaced or calibrated prior to sending them to NI. 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, Software or Services; (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 patent, copyright, or trademark of U.S. and/or People’s Republic of China (“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.

**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 People’s Republic of China, without regard to principles of conflicts of laws. The parties submit to the personal jurisdiction of Shanghai International Economic and Trade Arbitration Commission. The arbitration decision is final and shall be binding on both parties. The arbitration shall be carried out in Shanghai and according to valid arbitration rules of Shanghai International Economic and Trade Arbitration Commission at the time of arbitration. 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. UPDATES.** NI reserves the right to update this Agreement at any time, effective upon posting an updated version at [ni.com/pdf/legal/zhs/terms\\_and\\_conditions\\_China\\_EN.pdf](http://ni.com/pdf/legal/zhs/terms_and_conditions_China_EN.pdf); however, the terms and conditions in effect at the time of purchase shall apply to that purchase of Products or Services.

**20. 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.