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## 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: Elder House, St Georges Business Park, 207 Brooklands Road, Weybridge, Surrey KT13 0TS, a subsidiary of National Instruments Corporation (a Delaware Corporation with headquarters at 11500 North Mopac Expressway, Austin, Texas 78759, USA) unless another National Instruments affiliate is identified on the quote or order. Reference to the Seller will include National Instruments Corporation.
- 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 or any Non Branded Products being 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, services and support or other service related to Hardware and Software provided by Seller.
- 1.9. "Non Branded Product(s)" means any third-party hardware, software or service that is resold by the Seller, but does not carry any intellectual property belonging to the Seller.
- 1.10. "Hardware" means the Seller's hardware products.
- 1.11. "Software" means the Seller's software products.

### 2. Scope of Contract

- 2.1. The Seller offers commercially available standard, off-the shelf products and services sold to a diverse customer base from many industries. The Buyer accepts that the Products and Services are not designed, tested or customised for the Buyer's specific end-purposes.
- 2.2. 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.
- 2.3. The Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document), except for any terms and conditions expressly referenced in these Conditions. By placing an Order the Buyer agrees to be bound by these Conditions.
- 2.4. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such a document being referred to in the Contract.
- 2.5. Subject to any variation agreed by the Seller, these Conditions are the only conditions upon which the Seller will deal with the Buyer and they will govern the Contract to the entire exclusion of all other terms or conditions, except for any terms and conditions expressly referenced in these Conditions.
- 2.6. 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. All Orders are subject to acceptance at the sole discretion of Seller. Orders will be considered accepted once Seller books an order and sends Buyer a sales order acknowledgement.
- 2.7. Orders may not be transferred to a third party by Buyer.
- 2.8. 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.

2.9. Seller reserves the right to cancel any order without any liability to Buyer if any information provided by Buyer to Seller is inaccurate. Seller reserves the right to suspend or cancel any order without any liability to Buyer if Buyer has any outstanding payments due to Seller or is not in good standing.

2.10. In addition to these Conditions, Seller provides the Services subject to any service agreements or statements of work agreed upon in writing by the parties or, as applicable, to the Buyer. Service terms and conditions which will apply to all such Services are available at [ni.com/legal/serviceterms](https://ni.com/legal/serviceterms).

2.11. Buyer warrants and agrees that:

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

2.11.2. the Electronic Commerce Directive (00/31/EC), the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002 No. 2133), and the Consumer Protection (Distance Selling) Regulations 2000 (SI 2002/2334) do not apply to this Contract.

2.12. 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 has been taken.

### **3. Delivery**

3.1. 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 by Seller's based on reasonable commercial grounds. The Products comprised in any Order may be delivered and invoiced in instalments, at Seller's discretion.

3.2. 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.

3.3. Seller will have no liability to Buyer in the event of late or 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 (as defined in clause 14.1).

3.4. Unless Buyer informs Seller of a discrepancy between the number Products ordered and the Products received by Buyer within three (3) working days of the date of the Seller's invoice, 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.

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

### **4. Payment and Price**

4.1. The price stated in Seller's quotation for Products excludes all value added or other tax duty or charge which may be imposed upon the production, storage, sale, transportation, import or export of the Products. All such tax, duty or charge shall be for the account of Buyer. For orders to be delivered within the same country as Seller, Seller will arrange the shipping; however, Buyer shall be responsible for all shipping and handling fees set forth in the invoice, unless otherwise indicated by NI. Upon written confirmation from NI, Buyer may choose to arrange for shipping with a carrier previously approved by NI, but in this case or if the order is placed with a National Instruments entity outside the country of the applicable shipping destination, Buyer shall be responsible for arranging and paying for all shipping and handling, including fees, customs, formalities and clearance, except that NI is responsible for the Export Declaration. Customer shall provide NI with the necessary information for the Export Declaration, in a timely manner. 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.

4.2. 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.

4.3. If Buyer is not liable to pay any tax duty for the Products and/or Services, the Buyer will provide the Seller with appropriate tax exemption documentation at the time of the Order.

4.4. Payment of the price of the Products or Services comprised in each Order will be made by Buyer in the following currencies:

4.4.1. in pounds sterling or Euro where Orders are not made through the National Instruments web site;

4.4.2. in pounds sterling where Orders are made by any Buyer located in the UK through the National Instruments web site;

4.4.3. in Euros where Orders are made by any Buyer located in the Republic of Ireland through the National Instruments web site.

4.5. 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.

4.6. 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.

4.7. Seller is entitled to interest on any unpaid invoices from the due date until payment at 5% above the base rate of Barclays plc. Invoice processes requested by Buyer that are non-standard for NI will be subject to the payment by the Buyer of a five percent (5%) processing fee and any amounts Seller is required to pay to government authorities on behalf of Buyer (if applicable).

4.8. No discounts will be granted for early payment.

4.9. 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 without any liability to Buyer.

4.10. Both parties agree that in the event that:

4.10.1. the Euro ceases to be the primary official currency of the Republic of Ireland, the provisions of clause 4.4 shall, to the extent applicable, continue to apply.

4.10.2. the Euro ceases to be the primary official currency of the Euro zone, all payments under any Contract expressed in Euros shall be made in USD. The applicable conversion rate shall be determined by the Seller, in its sole discretion, using the official EUR/USD exchange rate published by the European Central Bank on:

(i) the date that the relevant Contract has been concluded by the Seller; or

(ii) the date that the European Central Bank makes a public announcement and/or releases an official public statement that the Euro would cease to exist as an official currency of the Euro zone, whichever is the earlier.

4.11. In the event that the Euro ceases to be the primary official currency of the Republic of Ireland, credit terms of Buyers who are in the Republic of Ireland will automatically be cancelled and all payments from such Buyers to Seller will be immediately payable in the currency determined in accordance with clause 4.10. In such cases, Seller may in its discretion suspend or cancel deliveries of Products and the supply of Services until all monies due from Buyer to Seller on any account have been received by Seller in the currency determined in accordance with clause 4.10.

4.12. Buyer and Seller hereby specifically agree that the provisions in clauses 4.10 and 4.11 shall apply regardless of any currency redenomination provision or conversion calculation method or similar provision that may be introduced in any law or by any legislative instrument or other legal ruling of the United Kingdom, the Republic of Ireland or the European Union.

4.13. Notwithstanding any other provision of this agreement, Buyer shall defend, indemnify release and hold Seller harmless against any reasonable loss, costs and expenses arising out of or related to the cessation of the Euro, the introduction of a new currency in the Republic of Ireland or any statutory provisions (mandatory or not) applicable to such currency change, redenomination or conversion.

## **5. Risk and Cancellation**

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

5.2. Subject to the requirements of these Conditions, Buyer shall be entitled to return any unwanted, standard Products (except bespoke Products) to Seller at its cost within thirty (30) days of the date of the Seller's invoice. The Seller will be entitled to charge the Buyer an additional restocking charge equivalent to 15% of the price of the returned Products. Buyer must obtain a Return Material Authorization number ("RMA") 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.

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

5.4. Acceptance of returns of any unwanted bespoke Products or Non Branded Products is in Seller's sole discretion.

## **6. Title**

6.1. Subject to clause 6.2, no title to the Products shall pass to Buyer until all monies due from Buyer to Seller on any account have been received by Seller and either of the following has occurred: a) the shipment of Products from NI's affiliated companies and the completion by NI of the customs import clearance at the customs having jurisdiction over the imports of the Products; or b) the shipment of Products from a local warehouse used by NI.

6.2. 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.

6.3. 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.

## 7. Software

7.1. All Software is licensed to the Buyer pursuant to the applicable software licence agreements provided with the Software or, in the absence of any such licence agreements, the Seller's Software Licence Agreement available at [ni.com/legal/license](https://ni.com/legal/license), as at the date of the Contract ("SLA"). By placing an Order, Buyer represents that it has become familiar with and agrees to the SLA.

7.2. The Software is not sold to the Buyer and title in the software is determined in accordance with clause 6.2.

## 8. Warranties and Representations

8.1. This clause together with clauses 9 and 10 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 caused by negligence, and the other potential causes of liability listed in clause 10.7), 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 and clauses 9 and 10.

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 cause the Hardware to fail to substantially conform to the Seller's published specifications (as applicable) and Technical Support will be provided in accordance with the Support Services Terms and Conditions available at [ni.com/legal/serviceterms/](https://ni.com/legal/serviceterms/) for a period of one (1) year from the shipping date.

8.3.2. Software products are licensed to Buyer under the terms of the appropriate SLA. Seller warrants to Buyer that, for a period of ninety (90) days from the Invoice Date, all Software (when properly installed on National Instruments Hardware) (a) will perform substantially in accordance with the accompanying written materials and (b) the medium on which the Software is recorded will, in the form received from Seller, be free from defects in materials and workmanship under normal use and service.

8.3.3. the Services will be performed in a good and workmanlike manner.

8.4. Where notification of the defect or non-conformance is received by the Seller within the warranty period specified, Seller will in its sole discretion:

8.4.1. repair or replace the affected Hardware or Software in accordance with clause 8.5;

8.4.2. re-perform the affected Services; or

8.4.3. refund the fees paid for the affected Hardware, Software or Services (subject to any deductions Seller is reasonably entitled to make).

8.5. Seller agrees to repair or replace (at Seller's option) the affected Hardware or Software which fail to conform to the relevant warranty set out in clause 8.3 provided that:

8.5.1. notification of the defect or non-conformance is received by Seller within the warranty period specified above

8.5.2. allegedly defective Products are returned to Seller together with the appropriate RMA within thirty (30) days of the defect becoming apparent;

8.5.3. the affected 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; and

8.5.4. replacement Hardware or Software shall have the benefit of the applicable warranty for the remainder of the applicable warranty period or 90 days, whichever is the longer.

8.6. In the event that the Seller agrees to repair or replace Hardware:

8.6.1. Seller may use new or refurbished parts or products that are equivalent to or at least functionally equivalent to the original part or the Hardware;

8.6.2. Buyer shall be responsible for the cost of returning the Hardware to the Seller; and,

8.6.3. subject to clause 8.8, Seller will be responsible for the cost of returning the Hardware to the Buyer.

8.7. If the Seller complies with clause 8.4.1 it will have no further liability for a breach of the relevant warranty set out in clause 8.3.

8.8. Allegedly defective Products returned to Seller in accordance with 8.5.2 will if found by Seller on examination not to be defective be returned to Buyer and a charge may be made for examination and testing. Seller reserves the right to charge a reasonable fee where the examination is not covered by the relevant warranty set out in clause 8.3.

8.9. The warranty in clause 8.3 shall not apply to any Hardware or Software if:

8.9.1. the Hardware or Software is not used in accordance with these Conditions or the product specification or the instructions of Seller or the manufacturer including any improper or inadequate maintenance, installation, repair or calibration (where not performed by the Seller);

8.9.2. the Software is altered, modified or converted by Buyer or a third party;

8.9.3. 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; or

8.9.4. the defect resulted from improper voltages, accident, abuse, neglect, or a hazard such as lightning, flood or other act of nature.

8.10. 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.

8.11. 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:

8.11.1. any warranty relating to third-party products including to any Non Branded Products; or

8.11.2. 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.

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

8.13. 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.

8.14. Except in respect of payments due under this agreement and claims under clause 8.7 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. On termination of the Contract, howsoever caused, the provisions of this clause 8 will remain in effect.

## **9. Non Branded Products**

9.1. The Seller's warranty under clause 8.3 will not apply in the case of Non Branded Products.

9.2. Buyer will be entitled to rely on any of the manufacturer's and/ or supplier's guarantees that may be included with the Non Branded Products. The Buyer should refer to such guarantee provided with the Non Branded Products.

9.3. The obligations of the Seller under clause 8.5 will not apply in the case of Non Branded Products and it may be necessary for the Buyer to directly contact the manufacturer or the publisher for further service or any warranty claims.

## **10. Limitation on Seller's liability WARNING: THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 10**

10.1. The Seller's Products are not designed, manufactured or tested with components and testing for a level of reliability suitable for use in or in connection with life support or critical systems or systems using nuclear power whose failure to perform can reasonably be expected to cause significant injury to a human. Buyer also 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 systems or aircraft navigation, or any other hazardous environments or any other environments requiring fail safe performance potentially life saving or life sustaining systems or such other medical devices and makes no assurances that the Products or Services are suitable for use as critical components or in any high-risk uses or do not lead to severe property damage or environmental harm (collectively "High-Risk Uses").

10.2. 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").

10.3. 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.

10.4. To avoid damage, injury or death, the Buyer 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 and reliability of the National Instruments Products and Services 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.

10.5. The limitations of liability set out in these Conditions reflect the availability of insurance cover to the Seller on normal commercial terms. The Buyer acknowledges the reasonableness of these provisions and that it will be responsible for making its own arrangements for the insurance of any excess loss.

10.6. Subject to clause 4, the following provisions of this clause 10 set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

10.6.1. any breach of these Conditions (including any Default);

10.6.2. any use made or resale by the Buyer of any of the Products, or of any product incorporating any of the Products; and

10.6.3. any representation, statement or tortious acts or omission including negligence arising under or in connection with the contract.

10.7. Nothing in these conditions excludes or limits the liability of the Seller:

10.7.1. for death or personal injury caused by the Seller's negligence; or

10.7.2. defective products under the Consumer Protection Act 1987; or

10.7.3. for any matter for which it would be illegal for the Seller to exclude or attempt to exclude its liability; or

10.7.4. for fraud or fraudulent misrepresentation.

10.8. Subject to clause 10.7:

10.8.1. Seller is not liable for any incidental, indirect, special, or consequential damages arising out of or in connection with the Products or 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;

10.8.2. the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract (whether in relation to the Products and/or the Services) is limited to the greater of €50,000 (fifty thousand Euros) or the total purchase price for the Products or Services which are the direct cause of the claim in question; and

10.8.3. the Seller will not be liable to Buyer for the following loss or damage, howsoever caused, and even if foreseeable by Seller:

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

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

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

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

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

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

10.8.3.7. loss or damage arising directly or indirectly from the Non Branded Products.

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

10.9.1. (save to the extent clause 11 applies) any claim brought by any third party against Seller in respect of the use, possession or disposal of any Products by the Buyer;

10.9.2. 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;

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

10.9.4. the Buyer's use of the Products and Services for any High-Risk Uses to the extent that the relevant liability, damages claim or proceedings were attributable to or increased because of such High-Risk Use.

10.10. On termination of the Contract, howsoever caused, the provisions of this clause

10. will remain in effect.

## **11. Infringements**

11.1. 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 ("**Infringement**"), provided that:

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

11.1.2. Seller is given control over the defence thereof and Buyer co-operates in the defence at Seller's expense; and

11.1.3. 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 defence at Buyer's sole expense.

11.2. The foregoing commitment 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 or Services outside the geographical boundaries of the United States, Canada, Mexico, Japan, Australia, Switzerland, Norway, the United Kingdom or the European Union.

11.3. Seller shall have no obligation for any claim under this clause 11 relating to or arising from:

11.3.1. Buyer's modifications of Hardware, Software or Services;

11.3.2. failure to use Hardware, Software or Services in accordance with the applicable documentation provided by Seller;

11.3.3. the combination, operation, or use of Hardware, Software or Services with any hardware, software or service not provided by Seller; or

11.3.4. the compliance of Seller with Buyer's specifications or directions, including the incorporation of any software or other materials provided by or requested by Buyer.

11.4. Seller shall have no obligation for any claim under this clause 11 relating to or arising from Non Branded Products where no reciprocal obligation exists under any corresponding manufacturer's and/or supplier's guarantee.

11.5. In any event, if Seller believes in its reasonable opinion the Hardware, Software or Services may be alleged to be infringing, for the purposes of mitigating any potential damages, Seller may, at its sole discretion:

11.5.1. procure for the Buyer the right to continue to use the Hardware, Software or Services;

11.5.2. replace the them with comparable Hardware, Software or Services that are free of such infringement; or

11.5.3. refund the fees paid by Buyer, and in the event of either 11.5.2. or 11.5.3. Buyer shall promptly return the Hardware to Seller and/or terminate the use of the Software or Services.

## **12. Compliance with Laws**

12.1. Export compliance

12.1.1. Products (which, for purposes of this section, shall include the software and technology incorporated in or supplied with a Product and Service) purchased from the Seller 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)).

12.1.2. In addition, Products distributed from the Seller's distribution centre in Europe are subject to control under the Regulation(EU) 2021/821 of the European Parliament and of the Council and their export or intra-EU transfer may also be subject to additional licensing requirements under the Regulation(EU) 2021/821 of the European Parliament and of the Council and its implementing regulations.

12.1.3. 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).

12.1.4. The Buyer 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 the Seller without the required authorization, 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 the Seller.

12.1.5. The issuance of an Order, Contract, or a Return Material Authorization ("RMA") by the Seller does not constitute export authorization. The Buyer 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.

12.1.6. The Seller reserves the right to refuse and/or cancel any order without any liability to Buyer if, at any time, Seller 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 and to request relevant import classification codes (e.g. HTS), export classification codes (e.g. ECCN), and other import/export data.

## 12.2. Data protection

12.2.1. The Buyer represents and agrees that any data (including personal data of Buyer, its representatives, employees or agents) that is gathered by Seller in the context of commercial transactions with Buyer (including name, contact details, title, professional background, field of expertise, product interests, etc.; hereinafter: "Personal Data") is data which is generally available to businesses in the normal course of Buyer's business operations and is regarded as data related to, and provided in the context of, the professional activity of such representatives, employees, agents, and of Buyer. Buyer hereby agrees on its own behalf and on behalf of its representatives, employees and agents that Seller may, in accordance with Seller's privacy statement and applicable laws and regulations:

12.2.1.1. use such Personal Data for the purpose of account and contract administration, for security purposes, and for the development of the business relationship (including marketing communication about products and services relevant to Buyer), and

12.2.1.2. transfer such Personal Data to other National Instruments companies including those located outside the European Economic Area for the purposes specified in 12.2.1.1.

12.2.2. The Seller undertakes to comply with the provisions of applicable data protection laws and regulations that apply to it so far as the same relates to the provisions and obligations of this Contract.

## 12.3. Consumer protection

12.3.1. In case the Buyer is (either as a business reseller or educational institution) authorised by Seller to distribute (whether in return for payment or free of charge) or otherwise make available (whether at the premises of the Buyer or otherwise) the Products to end-users who are students (or hobbyists or other private individuals), the Buyer shall comply with all applicable laws and regulations that apply to the distribution of the Products to end-users, including all applicable data protection laws, as well as any laws and regulations applicable to transactions with consumers (including, but not limited to providing sufficient pre-contractual information and usage instructions to consumers, complying with regulations for general terms and conditions for consumer transactions, granting consumers with statutory warranty and withdrawal rights, etc.), to the extent applicable.

12.3.2. The Buyer shall defend, indemnify, release and hold Seller harmless against any and all liabilities, claims, including but not limited to third-party claims, costs and expenses (including reasonable legal fees) arising out of any failure of the Buyer to comply with such laws and regulations.

## 13. Proprietary rights

Seller 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 Seller under these Conditions. Nothing in these Conditions will be deemed to grant to the Buyer any ownership rights in or license rights to such intellectual property.

## 14. Force Majeure

14.1. A "Force Majeure Event" shall mean any event or circumstances (or a combination of events or circumstances) including but



not limited to acts of terrorism, nature or governments; interruptions of telecommunications, power or transportation; failure of contractors or suppliers; or inability to obtain necessary labour or materials beyond the reasonable control of the Seller which could not have been prevented by the Seller acting reasonably.

14.2. 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.

## **15. General**

15.1. These Conditions and any other terms or documents incorporated into the Conditions together constitute the entire agreement between the parties in the subject matter hereof and supersedes and cancels all prior understandings, arrangement or agreements, whether written or oral between the parties.

15.2. No delay or failure by the Seller to exercise any right under these Conditions shall impact or be construed as a waiver or modification of any other term hereof, or as a continuing waiver of any provision. No waiver of any breach will operate as a waiver of any subsequent breach.

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

15.4. No variation of these Conditions or of any of the documents referred to in them will be valid unless it is agreed in writing by the Seller.

15.5. 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.

15.6. If any provision of these Conditions (or part of any provision) including the limitations and exclusions set out in clauses 8- 11, is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, or in conflict with any applicable and enforceable law, that provision or part-provision will, to the extent required, be deemed modified or deemed not to form part of these Conditions and the validity and enforceability of the other provisions of these Conditions will not be affected.

15.7. 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.

15.8. The Seller reserves the right to update these Conditions at any time, effective upon posting an updated version at <http://www.ni.com/legal/termsofsale/>; however the Conditions in effect at the time of purchase shall apply to that purchase of Products or Services.

October 2023  
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