

# Vibro-Meter Inc

## Terms and conditions of sale

We acknowledge with thanks the receipt of your order, and this is an exact copy of our entry of said order, which shall further include and be subject to the conditions stated below. If you do not accept our interpretation of this order and said conditions, you must so notify us at once in writing. This acknowledgement constitutes a complete and exclusive statement of the terms of our agreement. In the event of any conflicting terms between your original order, your request for quote or other of your documents and any of our documents preceding the date of this order, the terms of this order shall be deemed to be a rejection of such terms and constitute a counter offer by Vibro-Meter Inc.

- 1 **Scope** – All orders are subject to the following terms and conditions. No salesman or other party is authorized to bind Seller by any agreement, warranty, statement, promise, or understanding not herein expressed, and no modifications shall be binding on Seller unless the same are in writing and signed by an executive officer of Seller or his duly authorized representative. Verbal orders will not be executed until written notification has been received, and properly acknowledged, by Seller.
- 2 **Export Compliance** – Buyer explicitly agrees, by accepting shipment form Vibro-Meter Inc, to comply with all applicable US export control laws and regulations including the International Traffic in Arms Regulations and US Export Administration Regulations, as well as export and destination restrictions issued by US government agencies.
- 3 **Prices** – All prices and terms are subject to change without notice. Prices shall be those in effect at the time of shipment. Orders requiring certified test data in excess of commercial requirements are subject to a special charge.
- 4 **Order acceptance** – All orders are subject to final approval and acceptance by Seller at its home office.
- 5 **Shipping and payment terms** – Unless otherwise agreed, the following are the payment and shipping terms:  
Terms of payment – Seller standard terms of payment: Net 30 days unless otherwise indicated on reverse.  
Transportation – Shipments are EXW - Ex Works place of manufacture.
- 6 **Delivery** – Delivery of goods to common carrier or licensed trucker shall constitute delivery to Buyer, and all risk of loss or damage in transit shall be borne by Buyer. Any claims or losses for damage or destruction after such delivery shall be the responsibility of the Buyer.  
Seller reserves the right to make delivery in installments which shall be separately invoiced and paid for when due, without regard to subsequent delivery. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries.  
Except as otherwise provided, Seller shall not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges. If such charges are by the terms of sale included in the price, any increase in rates becoming effective after the date hereof shall be for the account of the Buyer.
- 7 **Taxes** – All sales, excise and similar taxes which Seller may be required to pay or collect with respect to the goods covered by any order shall be for the account of the Buyer except as otherwise provided by law or unless specifically stated otherwise by Seller in writing.
- 8 **Delay** – Seller shall not be responsible for delays in delivery or any failure to deliver due to causes beyond Seller's control, including but not limited to acts of God, war, mobilization, civil commotion, riots, embargoes, domestic or foreign governmental regulations or orders, acts of the Buyer, its agents or employees, fires, floods, strikes, lockouts and other labor difficulties, or shortages or of inability to obtain shipping space or transportation, or inability to secure fuel supplies or power at current prices or on account of shortages thereof; or due to limitations imposed by the extent or availability of Seller's normal manufacturing facilities.  
Buyer may not in any event cancel this order for any delays in delivery without giving at least ten days prior written notice of intention to do so, and in no event after goods have left point of shipment and subject to the provisions of paragraph 8 hereof.
- 9 **Terminations and hold orders** – No order may be terminated by the Buyer except upon written request by Buyer and approval by Seller and if said request is approved by Seller, under the following conditions:
  - (1) The Buyer agrees to accept delivery of and pay for at the appropriate current prices all of the units completely manufactured by Seller through the workday on which the termination notice is received by Seller.
  - (2) The Buyer agrees to pay the Seller all direct and indirect costs and expenses applicable to the portion of the order that is incomplete.
  - (3) The Buyer acknowledges that hold orders and stop work orders are properly considered at Seller's option.
- 10 **Protection against infringement** – Seller agrees that it will, at its own expense, defend any suits which may be instituted by any party against Buyer for alleged infringement of United States patents relating to the goods of its own manufacture furnished hereunder, as used in the regular course of Buyer's business, provided Buyer shall have made all payments when due hereunder and gives to Seller immediate notice in writing of such suits and permits Seller to defend the same and gives all needed assistance and

authority to enable seller to do so, and thereupon, in case of final award of damages in such suit, Seller will pay such award but Seller shall not be responsible for any compromise made without its written consent, nor shall it be bound to defend any suit or to pay any damages therein when the same shall arise by reason of the use of parts not furnished by Seller hereunder. In the event that the use or sale of said goods is enjoined, Seller, if unable within a reasonable time to secure for Buyer the right to continue using or selling the said goods will, at its own expense, either replace the said goods with non-infringing goods, or modify the said goods, so that the same becomes non-infringing or remove the enjoined goods, and refund the sums paid therefore. The foregoing states the entire liability of Seller for patent infringement by said goods or any part thereof.

Seller assumes no liability whatever for patent infringement of any goods or part thereof manufactured to Buyer's design.

- 11 **Credit** – Seller reserves the right at any time to revoke any credit extended to Buyer or cancel any accepted order or part thereof if Buyer fails to pay for any shipments when due or if, in Seller's opinion, there is a material adverse change in Buyer's financial condition.
- 12 **Warranty**  
**Warranty A** – Seller warrants its component products against defects in the workmanship and materials of the items purchased under this order provided, however, that notice of such defect is received in writing by Seller within 90 days from the date of delivery of the item under this order. Seller's liability under this clause is restricted to replacing, repairing, or issuing credit (at Seller's option) for any returned unit and only under the following conditions:
  - (1) Seller must be promptly notified in writing as soon as possible after the defects have been noted by the customer, but not later than 90 days from date of delivery.
  - (2) The defective merchandise is to be returned to place of manufacture, shipping charges prepaid by the customer.
  - (3) Our inspection of the returned units shall disclose to our satisfaction that the units were defective in workmanship or materials at the time of delivery.**Warranty B** – Seller warrants, for one year from the date of shipment, to repair or replace, at Seller's option, instrument products manufactured by Seller and found by Seller to be defective in workmanship or materials. Seller shall have no obligation hereunder if such instrument is not used in accordance with Seller's ratings and instructions. Seller shall only repair or replace the product if this product is returned to us (properly packed and with all transportation charges prepaid) in Londonderry, New Hampshire, within the applicable warranty period.  
**Limitation of liability** – Seller's liability for any claim of any kind (except "protection against infringement") shall not exceed the purchase price of any goods which give rise to the claim. Seller shall in no event be liable for Buyer's manufacturing costs, lost profits, goodwill or other special or consequential damages.  
**The foregoing obligations are in lieu of all other obligations and liabilities including negligence and in lieu of all warranties of merchantability or fitness for a particular purpose, expressed or implied, in fact or in law, and state Vibro-Meter Inc's entire and exclusive liability and Buyer's exclusive remedy for any claim of damages in connection with the sale or furnishing of the products, their design, suitability for use; installation or operation. Vibro-Meter Inc will in no event be liable for any special, incidental or consequential damages whatsoever.**
- 13 **Returns and adjustments** – No unit may be returned unless authorized in advance and agreed to by Seller and then only upon such conditions as Seller may agree to Buyer shall be responsible for the unit returned until such time as Seller receives the same at its plant and for all charges for packing, inspection, shipping or transportation or insurance associated with returned materials. In the event that credit for returned materials is granted, it shall be at the lower of the price then in effect or the date of original shipment of the unit by Seller.
- 14 **Non-waiver by seller** – Waiver by Seller of a breach of any of these terms and conditions shall not be construed as a waiver of any other breach.
- 15 **Compliance with laws** – Seller intends to comply with all laws applicable to its performance under any order.  
Notwithstanding any clause in your order, Seller will permit examination of records only (a) by the comptroller of the United States or his duly authorized representative per ASPR7-104.15, and (b) pursuant to the requirements of Executive Order No 10925.
- 16 **Errors** – Clerical errors are subject to correction.
- 17 **WEEE** – The buyer accepts responsibility for compliance with any WEEE related requirements within their EU marketplace.
- 18 **Governing law** – All matters relating to the interpretation and effect of these terms and any authorized changes, modifications or amendments thereto shall be governed by the laws of the State of New Hampshire.