

## General Terms and Conditions of Sale for the Americas

**1. Acceptance:** Instron, a division of Illinois Tool Works Inc., is herein referred to as “Instron” and the customer purchasing products (“Products”) or services purchased with and incidental to the Products, such as installation, initial calibration and/or training services (“Services”) is herein referred to as “Buyer.” These terms and conditions of sale (“Terms”), any Instron quotation, acknowledgment or invoice, any applicable Instron Software License Agreement (SLA) and all documents incorporated by specific reference herein or therein (“Instron Documents” and together with these Terms, the “Agreement”), constitute the complete terms governing the sale of Products and Services. INSTRON HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY BUYER, WHETHER OR NOT CONTAINED IN ANY OF BUYER’S BUSINESS FORMS OR ON BUYER’S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. No site usage agreement or any other click through agreement on a website will have any binding effect whether or not Instron clicks on an “ok,” “I accept,” or similar acknowledgment. Commencement of any work by Instron or Buyer’s acceptance of delivery of the Products or Services will manifest Buyer’s assent to the Agreement. Additional or different terms applicable to a particular sale may be specified in the body of an Instron Document or agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorized officer of Instron; (b) Instron Document terms; (c) these Terms.

**2. Service Terms:** These Terms only apply to the Services defined in Section 1. All other services provided by Instron will be governed by Instron’s General Terms and Conditions of Service.

**3. Prices:** All prices on the order are exclusive of applicable sales, excise, or similar taxes of federal, state, city, or local governments. All such applicable taxes shall be added to the invoice and paid by the Buyer, unless the Buyer presents a tax-exempt certificate. Prices, with applicable taxes, shown on Instron’s order acknowledgement are Instron’s effective prices at the time the order was accepted. Any discounts that appear on Instron quotations are applied only to Products; Services shall not be discounted except with the express approval of the General Manager, North American Service. Prices for retrofit purchases do not include modifications or repairs to existing system components that may be possible or necessary to improve performance or accuracy. Unless otherwise provided in an Instron Document, any repairs to the Buyer’s existing testing instrument shall be the subject of a separate quote and/or order.

**4. Custom Products:** Custom Products are non-standard Products sold to Buyers that typically have an item number starting with ‘CP’ or ‘S’. Custom Products include standard systems with custom items.

**5. Cancellations:** Orders may not be cancelled or modified without Instron’s written consent. For standard Product orders, a cancellation fee equal to 25% of the order value shall be paid by Buyer if the order is cancelled more than sixty (60) days prior to the ship date and a cancellation fee equal to 50% of the order value shall be paid by Buyer if cancelled within sixty (60) days prior of the ship date. For custom Products, Buyer shall pay a cancellation fee equal to 50% of the custom Product or order value if cancelled more than sixty (60) days prior to the ship date and shall pay a cancellation fee equal to

the full order value if cancelled within sixty (60) days prior to the ship date. All cancellation requests from Buyer must be definitive and in writing. In the event Buyer requests Instron to store any product for a period longer than the order-to-ship-date period set forth in the applicable purchase order, Instron may store such product, at its sole discretion. In such an event, Buyer shall pay a storage fee equal to 1% of the order value for each week the product is stored. Such storage fee shall be in addition to the order purchase price and shall not be deemed a credit or deposit for any reason. Any request to postpone or delay shipment shall be deemed a request by Buyer to store such product and will be subject to the storage fee set forth in this Section 5. Instron reserves the right to repurpose the order to another customer if storage extends more than 90 days past the original ship date. Instron will fulfill the existing order but reserves the right to quote a new lead time and ship date. At Instron’s sole discretion, any cancellation fees payable by Buyer pursuant to this Section 5 may be deducted and/or set off from any refunds, credits, or other amounts due to Buyer.

**6. Product Returns:** All returns are subject to the terms and conditions of the original sale. ***Custom items are not eligible for return unless factory authorization is obtained.*** All returns are subject to a restocking fee equal to [15%] of the order value. Items being returned require a Return Material Authorization (RMA) Number prior to the return. To obtain the RMA Number, please contact Instron’s Inside Sales Department at (800) 564-8378. The RMA Number must appear on the outside of the package and all pertinent paperwork must be enclosed; otherwise, Instron will not accept the package and it will be returned at Buyer’s expense. If an order is shipped in error by Instron or by its supplier, the item must be returned in new and unused condition in the original packaging. Standard items may be returned within 45 days of receipt. If, after inspection, Instron determines that the items are salable as new and unused products, then full credit will be issued minus the 15% restocking fee. Otherwise, Instron reserves the right to charge a minimum of 50% of the items’ original order value in refurbishment and re-stocking charges and to limit the credit for the return to the fair value of the items being returned. Original Equipment Manufacturer (OEM) touch panels, computers, and printers purchased from Instron are not eligible for return.

**7. Shipments:** All shipments are made Ex-Works (EXW) in accordance with the definitions established by the International Chamber of Commerce (INCOTERMS 2020), unless mutually agreed to otherwise, and shall be made in the best and the most cost-effective way. Title to the Products and risk of loss shall pass to Buyer upon delivery in accordance with the applicable shipping term. Buyer may not delay shipments without agreement by Instron and payment of storage fees. In such an event, Buyer shall pay a storage fee equal to [1%] of the order value for each week the product is stored. Such storage fee shall be in addition to the order purchase price and shall not be deemed a credit or deposit for any reason. Any request to postpone or delay shipment shall be deemed a request by Buyer to store such product and will be subject to the storage fee set forth herein. Instron reserves the right to repurpose the order to another customer if storage extends more than 90 days past the original ship date. Instron will fulfill the existing order but reserves the right to quote a new lead time and ship date. Delivery dates indicated on

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quotations or on order acknowledgements are not guaranteed and may be modified at Instron's sole discretion. **INSTRON WILL NOT BE LIABLE FOR ANY FEES OR LIQUIDATED DAMAGES FOR LATE DELIVERY UNLESS SPECIFICALLY AGREED UPON IN WRITING AND ANY CLAIM MADE AGAINST INSTRON FOR THE PAYMENT OF SUCH FEES OR LIQUIDATED DAMAGES SHALL IN NO CASE BECOME DUE BEFORE DELIVERY HAS BEEN COMPLETED.**

**8. Terms of Payment:** All payments are NET 30 days from invoice date, subject to credit approval, unless mutually agreed to otherwise; no prompt payment discount shall be allowed unless specifically agreed upon in writing by Instron. Payments on purchases which include the requirements of a Letter of Credit (LC) shall be governed by the LC terms agreed upon by the parties. **INSTALLATION OR DELIVERY DELAYS INCURRED AS A RESULT OF THE BUYER'S FAILURE TO ADEQUATELY PREPARE ITS FACILITY OR OTHERWISE DUE TO DELAYS ON THE PART OF BUYER DO NOT WARRANT A DELAY IN PAYMENT FOR THE PRODUCT AND/OR SERVICES PURCHASED.**

**9. Buyer Responsibilities:** The Buyer is liable and responsible for certain actions and responsibilities in preparing the facility, laboratory, or room to accept the Products purchased and to be installed by Instron and for the proper and safe protection of the Products until installed and commissioned by Instron or its authorized representative ("Instron Service Personnel"). These actions and responsibilities include, but are not limited to, air supply, electrical supply and regulation, cooling water, safe handling and moving equipment, structural integrity of building and floor where testing system shall be located, etc. Please refer to Instron's Customer Responsibilities document, which shall be considered part of these Terms, and/or the Pre-Installation Manual for the Products for more specific information for all new testing system purchases. Instron Customer Service in the USA and Canada may also be contacted at (800) 473-7838 for assistance. For outside the USA, please contact the local Instron office or its local representative; details of such contact can be found on Instron's website ([www.instron.com](http://www.instron.com)). The operation, use, calibration, maintenance, and repairs associated with the Buyer's existing testing instrument and any existing testing accessories shall remain the responsibility of the Buyer. In order for a retrofit to be successful, the existing testing instrument must be in full and good operating condition. All safety features on the existing instrument must function correctly and within the manufacturer's specifications. THE BUYER SHALL BE SOLELY RESPONSIBLE FOR ENSURING THE EXISTING TESTING INSTRUMENT UPON WHICH THE RETROFIT IS TO BE INSTALLED IS IN PROPER AND SAFE WORKING CONDITION AND FULLY OPERATIONAL PRIOR TO THE RETROFIT INSTALLATION INSTRON SERVICE PERSONNEL. Should any portion of the Buyer's existing frame not function properly, safely and/or within the original manufacturer's specifications, it is the Buyer's responsibility to correct any and all of these deficiencies to return the existing frame to safe and correct working order before the retrofit installation can proceed.

**10. Warranty:** Instron warrants that for a period of one year from the date of delivery (the "Warranty Period") all new Products manufactured by Instron and Services supplied under this Order shall conform to the specifications, drawings, samples or other descriptions of the Product and Services being purchased that are

provided by Instron in writing or otherwise agreed upon by Instron in writing. If Instron breaches the above warranty, Instron will, at Instron's option and as its sole liability and Buyer's sole remedy with respect to Products, repair, replace or credit Buyer's account for any nonconforming Product and, with respect to Services, repair or replace the service part or reperform the Service or credit Buyer's account for the nonconforming Service or part, provided that (a) during the Warranty Period Instron is promptly notified in writing upon discovery of such breach with a detailed explanation thereof; (b) Instron is given a reasonable opportunity to investigate all claims; and (c) Instron confirms the alleged deficiencies and that the deficiencies were not caused by accident, misuse, neglect, normal wear and tear, improper installation, unauthorized alteration or improper maintenance, repair or testing. No Products may be returned to Instron until approved by Instron. Instron will prepay transportation for all Products returned to Instron during the Warranty Period and covered by the above Warranty. Specific warranty information, limitations, and exclusions are described below:

*a. **Retrofit Purchases:*** For retrofit purchases, the warranty is limited to only those components that are purchased and installed as part of the retrofit by Instron Service Personnel. No warranty is implied or expressly given for the Buyer's existing testing instrument upon which the retrofit shall be installed nor on the performance or accuracy of the combination of new and existing system components. The performance and accuracy of a retrofitted or upgraded system is dependent upon the condition of the system prior to retrofit or upgrade. Retrofit or upgrade specifications stated convey only achievable results for existing systems that are in good working condition prior to the retrofit or upgrade.

*b. **Installation.*** Due to the complexity of Instron equipment and certain accessories, installation by Instron Service Personnel is required to ensure proper installation and, as applicable, to validate combined operations with the base testing services. **INSTRON SHALL NOT BE LIABLE FOR ANY EQUIPMENT OR COMPLEX ACCESSORIES PURCHASED FROM INSTRON BUT NOT INSTALLED BY INSTRON SERVICE PERSONNEL. IN THE EVENT INSTRON INSTALLATION SERVICES ARE NOT PURCHASED OR UTILIZED FOR EQUIPMENT AND/OR ACCESSORIES NORMALLY INSTALLED BY INSTRON SERVICE PERSONNEL, INSTRON'S WARRANTY SHALL BE NULL AND VOID FOR ANY SUCH EQUIPMENT AND/OR ACCESSORIES. FURTHERMORE, IF IT IS FOUND THAT SOMEONE OTHER THAN AN INSTRON SERVICE PERSONNEL IMPROPERLY SERVICED THE PRODUCT, THE WARRANTY WILL BE VOIDED.**

*d. **Transferability and Exclusion of Warranties:*** Instron's warranties are NOT transferable, unless approved by Instron. The above warranty does not apply to parts purchased through the Instron Parts Warehouse. **EXCEPT AS SET FORTH HEREIN, INSTRON MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE).**

**11. Limitation of Liability:** After transfer of title, Instron shall not be liable for damage to or destruction of Products that occurs or

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which persons other than Instron employees or representatives cause. Instron shall have no liability for damages of any kind arising from the installation and/or use of Products and/or for failure to perform proper maintenance by anyone other than Instron employees. The Buyer, by acceptance of the equipment, assumes all liability for any damages or injuries that may result from its use or misuse by the Buyer, Buyer's employees, or by others. **INSTRON SHALL NOT BE LIABLE TO BUYER, AND BUYER WAIVES ALL CLAIMS AGAINST INSTRON, FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS PRODUCTS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER EQUIPMENT, PRODUCTS, MATERIALS, OR SUBSTANCES FROM A THIRD PARTY, OR OTHERWISE. INSTRON WILL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, OR DAMAGES FOR DOWNTIME OR LOST GOODWILL, PROFITS, OR SAVINGS. IN NO EVENT SHALL INSTRON'S LIABILITY IN CONNECTION WITH THE AGREEMENT (INCLUDING, WITHOUT LIMITATION, SECTION 16 OF THESE TERMS) OR THE SALE OF PRODUCTS OR SERVICES BY INSTRON EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS AND/OR SERVICES FOR WHICH ANY CLAIM IS MADE.**

**12. Software License Agreement:** The Software License Agreement (SLA) that accompanies all software purchases shall pertain and govern the Buyer's use, rights, software warranty, limitations, and restrictions. By purchasing and using Instron software, the Buyer hereby agrees to be bound by the terms of the SLA. Any software updates accessed and downloaded electronically shall be bound by the SLA of the original purchase. Instron's SLA may be viewed at Instron's homepage ([www.instron.com](http://www.instron.com)) under 'Our Company' and 'About Us'. The transfer of Instron software is prohibited unless authorized by Instron.

**13. Confidential Information:** All information furnished or made available by Instron to Buyer in connection with the subject matter hereof shall be held in confidence by Buyer. Buyer agrees not to use (directly or indirectly), or disclose to others, such information without Instron's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Buyer of any obligation herein; (b) Buyer can show by written records was in Buyer's possession prior to disclosure by Instron; or (c) is legally made available to Buyer by or through a third party having no direct or indirect confidentiality obligation to Instron with respect to such information.

**14. Ownership of Intellectual Property:** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, software, manuals, copyrighted materials and other information or intellectual property disclosed or otherwise provided to Buyer by Instron or Instron's agents, as well as the Products and Services and Instron's trademarks, and all rights therein (collectively, 'Intellectual Property') will remain the property of Instron and any Instron confidential information relating thereto will be kept confidential by Buyer in accordance with these Terms. Buyer shall have no claim to, nor ownership interest in, any Intellectual Property and such confidential information, in whatever form and any copies

thereof, shall be promptly returned to Instron upon written request from Instron. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any Intellectual Property, other than the limited right to use the Products and Services purchased from Instron.

**15. Use of Trademarks and Trade Names:** Buyer shall not use, directly or indirectly, in whole or in part, Instron's name, or any other trademark or trade name that is now or may hereafter be owned by Instron (collectively the 'Trademarks'), as part of Buyer's corporate or business name, or in any way in connection with Buyer's business, except in a manner and to the extent authorized herein or otherwise approved by Instron in writing. Buyer hereby acknowledges Instron's ownership of the Trademarks and the goodwill associated therewith. Buyer shall not infringe upon, harm or contest the validity of any Trademarks. Buyer shall be entitled to use the Trademarks only in connection with the promotion or sale of the Products pursuant to the terms of the Agreement. Buyer shall reproduce the Trademarks exactly as specified by Instron. Buyer shall not use the Trademarks in combination with any other trademarks or names. Buyer agrees that it will not register or attempt to register any Trademark or any colorable imitation thereof (including any non-English language variation thereof), or use such Trademarks for any products or for any purposes other than those set forth in the Agreement. Buyer shall not at any time during or after termination of the Agreement use in its business any other trademark that is similar to or in any way resembles the Trademarks so as to be likely to cause deception or confusion with the Trademarks. Buyer shall provide reasonable cooperation to Instron with respect to any efforts of Instron to protect, defend, or enforce its rights to the Trademarks. Should Buyer cease being an authorized customer of Instron for any reason, Buyer shall immediately discontinue any formerly permitted use of Instron's name or the Trademarks.

**16. Indemnification:** For Services performed on Buyer's site, Instron agrees to indemnify Buyer for sums Buyer becomes legally obligated to pay as damages for bodily injury or property damage caused by 'Instron's fault.' 'Instron's fault' is defined as: (i) a manufacturing defect, design defect (if designed by Instron), or negligent failure to warn with respect to Products designed by Instron and supplied to Buyer by Instron; or (ii) the gross negligence or willful misconduct of Instron's employees or agents in connection with the performance of Services. Instron further agrees to indemnify Buyer for reasonable legal expenses it incurs defending itself against any suits seeking such damages. Instron shall have no obligation to indemnify Buyer for any damages caused by Buyer's fault or for any legal expenses incurred by Buyer in defending itself against suits seeking damages caused by Buyer's fault. To the extent any suit involves claims against Buyer based on both Instron's fault and Buyer's fault, Instron's obligation to indemnify Buyer for both damages and legal expenses shall be an allocated share, determined by agreement of the parties, or if the parties fail to agree, final judicial resolution of the proportion of liability imposed on each party. It is a condition of this indemnity that Instron be given prompt written notice of any claims and that Buyer fully cooperates in any defense to such claims. The term of this indemnity shall be the longer of one (1) year from the date of delivery and the term of the warranty of Buyer's purchase that

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includes Services performed by Instron on Buyer's site, after which it shall have no further force or effect.

**17. Export Sales:** Subject to the above conditions, special packing and crating will be added to the invoice, if necessary.

**18. Instron Employees:** Instron sales and service employees do not have the training or authority to make legal representations or enter into any agreements or execute any Buyer documents affecting legal responsibilities or waiving legal rights, including those regarding the transfer of intellectual property rights or related to privacy laws. Any such representations, agreements or documents will not be binding on Instron or such Instron employees.

**19. Export Control:** Buyer shall comply with all applicable U.S. and Non-U.S. sanctions and export control laws, rules and regulations, including any restrictions on the export, re-export, or transfer outside of the U.S. or to non-U.S. persons, specifically including but not limited to, the International Traffic in Arms Regulation ("ITAR"), 22 C.F.R. 120 et seq., the Export Administration Regulations ("EAR"), 15 C.F.R. 730-774, and the Foreign Assets Control Regulations, 21 C.F.R. 500-598. Without limiting the foregoing, Buyer shall not transfer any export controlled item, data or services, including transfers to dual/third country nationals employed by or associated with, or under contract to Buyer or Buyer's suppliers, unless authorized in advance by an export license, agreement (e.g., Technical Assistance Agreement ("TAA") or Manufacturing License Agreement ("MLA")), or applicable export license exemption or exception. Buyer hereby warrants that neither Buyer nor any parent, subsidiary or affiliate of Buyer is included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security ("BIS") or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls ("DDTC"). Buyer warrants that it will immediately notify Instron if it becomes subject to any of the foregoing lists or sanctions. Failure of Buyer to comply with any of the above requirements or warranty and/or failure of Buyer to obtain any necessary licenses shall relieve Instron of its obligations under Buyer's PO, and Buyer shall indemnify and hold Instron harmless from any fines, penalties, or other liability imposed by any government entity related to such failure.

**20. Force Majeure:** Instron shall not be liable or responsible for failure to perform or delay in performance or delivery of any Products or Services due to (a) fires, floods, strikes or other labor disputes, accidents, epidemics, sabotage, terrorism, war, riots, acts of precedence or priorities granted at the request or for the benefit, directly or indirectly, of any federal, state or local government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, quarantine, travel or other restrictions imposed by federal, state or local laws, rules or regulations; or (b) any other cause beyond the control of Instron. In the event of the occurrence of any of the foregoing, the time for performance shall be extended for such time as may be reasonably necessary to enable Instron to perform the terms of the sale. **DELAYS INCURRED AS A RESULT OF A FORCE MAJEURE EVENT SHALL NOT BE CAUSE FOR OR GRANT TO BUYER THE AUTHORITY TO WAIVE ITS PAYMENT**

### RESPONSIBILITIES THAT MAY COME DUE DURING THE PERIOD OF A FORCE MAJEURE EVENT.

**21. Assignment; Binding Effect:** No assignment of any rights or interest or delegation of any obligation of Buyer under the Agreement or Buyer's purchase order may be made without Instron's prior written consent. Any attempted assignment will be void. Instron may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns.

**22. Integration Clause:** The Agreement constitutes the entire agreement terms and conditions to the contract of sale and purchase between Buyer and Instron with respect to the Products or Services covered by the Agreement, and supersedes any prior agreements, understandings, representations, and quotations with respect thereto. No modification of the Agreement shall have any force or effect unless in writing and signed by the Party claiming to be bound thereby.

**23. Waiver:** No failure of Instron to insist upon strict compliance by Buyer with the Agreement or to exercise any right accruing from any default of Buyer shall impair Instron's rights in case Buyer's default continues or in case of any subsequent default by Buyer. Waiver by Instron of any breach by Buyer of the Agreement shall not be construed as a waiver of any other existing or future breach.

**24. Limitation of Actions/Choice of Law/Litigation Costs.** Unless agreed to by the Parties, any dispute arising out of or related to these Terms will be governed by and construed according to the laws of the State of Illinois and litigated exclusively in a state or federal court located in Cook County, Illinois. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms or to a purchase using these Terms.

**25. Survival:** Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.

**26. Severability:** If any provision herein shall be held to be unlawful or unenforceable, the remaining provisions herein shall remain in full force and effect.