

TERMS AND CONDITIONS OF SALE

For the purposes of these Terms and Conditions of Sale, the term "contract" shall mean the agreement between Particle Measuring Systems Inc. ("Supplier" or "PMS") and Buyer arising as a result of Buyer's submission of an order for Supplier's products or services. Such contract shall be deemed to incorporate and be governed by these Terms and Conditions. THESE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN BUYER'S ORDER. No term or condition of Buyer's order additional to or different from these Terms and Conditions shall become part of the contract unless explicitly agreed to in writing by Supplier. Retention by Buyer of any products delivered by Supplier, or payment by Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Terms and Conditions. Supplier's failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Terms and Conditions nor as an acceptance of any such provision.

1. **Quotations:** Prices, specifications and dates for delivery of products or performance of services referenced in Supplier's quotations are for informational purposes only and shall not be binding on Supplier until all technical requirements have been agreed and Supplier has accepted Buyer's order. Quotations terminate if not accepted by Buyer in writing within 60 days or by the date specified in the quotation. For purposes of this contract, "products" means the equipment and parts sold to Buyer and the software licensed to Buyer by Supplier and "services" means any services which the Supplier has agreed to provide to or for the Buyer under any Contract, as more fully described in the relevant quotation.

2. **Orders:** By submitting an order to Supplier, Buyer agrees to be subject to these Terms and Conditions of Sale in their entirety. All orders must be bona fide commitments showing definite prices and quantities and mutually agreed shipping dates. No order, whether or not submitted in response to a quotation by Supplier, shall be binding upon Supplier until accepted in writing by Supplier.

3. **Prices and Taxes:** Prices do not include federal, state or local taxes, including without limitation sales, use or excise taxes now or hereafter enacted, applicable to the products or services sold or provided to Buyer, which taxes may, in Supplier's discretion, be added by Supplier to the sales price or billed separately and which taxes shall be paid by Buyer unless Buyer provides Supplier with any necessary tax exemption certificate.

4. **Shipment and Delivery:** Unless otherwise agreed to in writing, delivery of all products sold by Supplier to Buyer hereunder is F.C.A. Supplier's facility (as defined in the IncoTerms, 2010) may be so shipped in several lots. In the absence of specific instructions from Buyer, Supplier will select the carrier and ship "collect", but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed to be the agent of Supplier. Buyer must provide its own insurance. Title and risk of loss or damage to all products sold hereunder shall pass from Supplier to Buyer upon delivery by Supplier to the possession of the carrier. Any claims for loss, damage or mis-delivery thereafter shall be filed with the carrier. All products shall be deemed finally inspected and accepted within ten days after delivery unless notice of rejection is given in writing to Supplier within such period. Acceptance shall constitute acknowledgement of full performance by Supplier of all obligations under the contract except as stated at Section 12 (*Warranties*).

5. **Terms of Payment:** Each shipment shall be a separate transaction and Buyer will be invoiced on date of dispatch. Unless otherwise stated on Supplier's invoice, terms of payment shall be net thirty (30) days from date of invoice. All amounts due under a Contract shall be paid in full by the Buyer without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach or statutory duty or otherwise, save as may be required by law. Supplier may, in its sole discretion, determine at any time that Buyer's financial condition requires payment in advance, and, if such requirement is not met, may cancel the order or any part thereof and receive reasonable cancellation fees. If Buyer fails to pay any payment due hereunder when due, Supplier may recover, in addition to the payment, interest thereon at the lesser of the rate of 1 1/2% per month or the maximum lawful monthly interest rate, and reasonable attorney's fees.

6. **Compliance with Laws.** Buyer will comply with, and pay all costs associated with, all applicable laws, regulations, treaties, community laws, directives and administrative orders (collectively, "Laws") that relate to or govern the import, export, use, reuse, collection, treatment, recycling and disposal of the products and their components, including but not limited to those Laws pertaining to the proper reuse, collection, treatment, recovery and/or recycling of hazardous or other materials at the end of their useful life and reporting and registration obligations for same. For purposes of illustration only, "Laws" include all of the obligations of the importer of record or manufacturer under the Waste Electrical and Electronic Equipment Directive (as embodied in Directive 2002/96/EC) as it may be defined, transposed and implemented from time to time by applicable national laws of the country to which the products are shipped, or are used or sold (collectively, the "WEEE Directive"). Buyer is responsible for and will ensure that it will be able to fulfill such compliance obligations even if it transfers products covered by the WEEE Directive to another division, affiliate or other entity. At the request of Buyer as needed for reuse centers, treatment and recycling facilities in order to comply with the provisions of the WEEE Directive as implemented in the applicable country, Supplier will provide Buyer with information relating to components and materials contained in products and the location of dangerous substances and preparations in such products, if any.

7. **Security Interest:** Buyer hereby grants to Supplier a security interest in all Supplier products sold to Buyer as security for the due and punctual performance by Buyer of all of its obligations hereunder. Buyer agrees to execute such documents to evidence and perfect said security interest as Supplier may require, including without limitation, financing statements on Form UCC-1.

8. **Contingencies:** Supplier shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control of Supplier, including, by way of illustration but not limitation, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, floods, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Supplier has exercised ordinary care in the prevention thereof. If any such contingency occurs, Supplier may allocate production and deliveries among Supplier's customers.

9. **Equipment:** Supplier may modify specifications provided the modifications do not adversely affect the performance of the equipment to be supplied under the contract (the "equipment"). In addition, Supplier may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or nonavailability of materials from suppliers.

10. **Software:** Supplier shall at all times have and retain title and full ownership of all software, firmware programming routines, and documentation thereof supplied by Supplier for use with the equipment, and

of all copies thereof made by Buyer (collectively "software"). Supplier grants Buyer a non-exclusive and non-transferable license to use such software solely for use with the equipment. Buyer shall take all reasonable steps to protect Supplier's proprietary interest in the software and shall not transfer or otherwise provide the software to any third party. Other than network software (Facility Net Network, Facility-View Network, Pharmaceutical Net Network, and Pharmaceutical-View Network Software), Buyer's license is limited to use of the software only on a single CPU. Copies of the software may be made only as necessary to assure redundancy in case of media failure. Otherwise, Buyer agrees not to copy, sell or otherwise distribute the software without the express written agreement of Supplier. For selected products, Buyer may purchase a License to Copy the software for use on one additional CPU per License to Copy. Facility Net Network, Facility-View Network, Pharmaceutical Net Network, and Pharmaceutical-View Network Software user limits are based on concurrent users not installed users. The Facility Net Network, Facility-View Network, Pharmaceutical Net Network or Pharmaceutical-View Network Software installed base may not exceed the user limits.

11. **Government End-Users:** The software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the software with only those rights set forth therein.

12. **New Equipment Warranty:**

A. **New Equipment Warranty.** Unless otherwise specified, Supplier warrants that all equipment sold to Buyer by Supplier shall be free from defects in material and workmanship under normal use for a period of one year from date of shipment to Buyer except that Supplier does not warrant that operation of the software will be completely uninterrupted or error free or that all program errors will be corrected. Buyer shall be responsible for determining that the equipment is suitable for Buyer's use and that such use complies with any applicable local, state or federal law. Provided that Buyer notifies Supplier in writing of any claimed defect in the equipment immediately upon discovery and any such equipment is returned to the original shipping point, transportation charges prepaid, including applicable duties, taxes, etc., within one year from date of shipment to Buyer and upon examination Supplier determines to its satisfaction that such equipment is defective in material or workmanship, i.e. contains a defect arising out of the manufacture of the equipment and not a defect caused by other circumstances, including, but not limited to accident, misuse, unforeseeable use, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing, Supplier shall, at its option, repair or replace such equipment. Supplier shall have reasonable time to make such repairs or to replace such equipment. Any repair or replacement of equipment shall not extend the period of warranty. If the equipment is modified or in any way altered without the explicit written consent of Supplier, then this warranty is null and void. This warranty is limited to a period of one year unless otherwise specified, without regard to whether any claimed defects were discoverable or latent on the date of shipment. This warranty is valid only for the customer who is specified as the "ship to" address on the Purchase Order.

B. **Termination of Warranty.** If Buyer shall fail to pay when due any portion of the purchase price or any other payment required from Buyer to Supplier under this contract or otherwise, all warranties and remedies granted under this Section 12 may, at Supplier's sole option, be terminated.

13. **Shipment; Risk of Loss; Insurance for Warranty Items:** Buyer is responsible for payment of the shipping costs, including applicable duties, taxes, etc., of any warranty equipment or parts to the service center designated by Supplier. In the absence of Buyer's instructions, Supplier will return repaired or replaced warranty equipment or parts via standard freight and pay such shipping costs (excluding any additional charges such as customs, duties, and taxes). Buyer may select a faster method of shipment at Buyer's expense. Supplier shall not be deemed to assume any liability in connection with the shipment or loss or damage to any warranty equipment or parts nor shall the carrier be construed to be the agent of Supplier. Buyer is solely responsible for arranging insurance for the shipment to and from Supplier's service center. Any claims for loss, damage or mis-delivery thereafter shall be filed with the carrier and Supplier has no liability therefore.

14. **Disclaimer of Warranties:** THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 12, 28 AND 29 OF THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED BY SUPPLIER AND ANY DEFECTS THEREIN OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUPPLIER SHALL NOT BE LIABLE FOR, AND BUYER ASSUMES ALL RISK OF, ANY ADVICE OR FAILURE TO PROVIDE ADVICE BY SUPPLIER TO BUYER REGARDING THE PRODUCTS OR SERVICES OR BUYER'S USE OF THE SAME. UNDER NO CIRCUMSTANCES SHALL SUPPLIER BE LIABLE TO BUYER UNDER ANY TORT, NEGLIGENCE, STRICT LIABILITY, OR PRODUCT LIABILITY CLAIM AND BUYER AGREES TO WAIVE SUCH CLAIMS. SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY NONCONFORMITY OR DEFECT IN THE PRODUCTS OR SERVICES PERFORMED BY SUPPLIER OR ANYTHING DONE IN CONNECTION WITH THIS CONTRACT, IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL BE AS SET FORTH IN SECTIONS 12, 28 AND 29 HEREOF AS LIMITED BY SECTIONS 12, 13, 28 AND 29 HEREOF. THESE EXCLUSIVE REMEDIES SHALL NOT HAVE FAILED OF THEIR ESSENTIAL PURPOSE (AS THAT TERM IS USED IN THE UNIFORM COMMERCIAL CODE) PROVIDED THAT SUPPLIER REMAINS WILLING TO REPAIR OR REPLACE DEFECTIVE PRODUCTS (AS SET FORTH IN THIS CONTRACT) WITHIN A COMMERCIALLY REASONABLE TIME AFTER RECEIVING SUCH DEFECTIVE PRODUCTS.

15. **Patent:** Supplier shall defend any suit or proceeding brought against Buyer to the extent that it is based on a third party claim that any products manufactured by Supplier infringes in construction or design a United States patent, and shall indemnify Buyer against all costs, damages and expenses finally awarded against Buyer provided that Buyer notifies Supplier promptly in writing of any such claim and gives Supplier full and complete authority, information and assistance for the defense of such claim and provided further that Supplier shall have sole control of the defense and of the negotiations for settlement, if any, of such claim. If any such product is held in construction or design directly to infringe any United States patent and the use of said product is enjoined, or in case any product may, in the opinion of Supplier, be held to infringe, Supplier may, at its expense and option, either (a) procure for Buyer the right to continue using said product, (b) replace said product with a suitable noninfringing product, (c) suitably modify said product, or (d) refund the purchase price of said product, less depreciation at twenty percent (20%) per year, and accept its return. Supplier shall not be liable for any cost or expense incurred without

Supplier's written authorization. Supplier shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specification or from a combination with or an addition to products not manufactured or developed by Supplier or a modification of the products after delivery or the use of products beyond that established by Supplier or approved in writing by Supplier. THE FOREGOING STATES THE ENTIRE LIABILITY OF SUPPLIER, AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ALLEGED PATENT INFRINGEMENT BY THE PRODUCTS.

16. *Limitation of Liability and Buyer Indemnity:* IN NO EVENT, REGARDLESS OF THE FORM OF ACTION, SHALL SUPPLIER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF THE SALE OF ITS PRODUCTS TO BUYER OR ARISING OUT OF ANYTHING DONE IN CONNECTION WITH THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF CLAIMS FOR LOSS OF USE, BUSINESS, GOODWILL, OR PROFITS, AND CLAIMS ARISING OUT OF THIRD PARTY ACTIONS, REGARDLESS OF WHETHER SUCH THIRD PARTY ACTIONS, OR ANY OTHER CLAIMS, LOSSES, OR DAMAGES, WERE REASONABLY FORESEEABLE TO BUYER OR SUPPLIER. BUYER'S EXCLUSIVE REMEDY ARISING OUT OF ITS PURCHASE AND USE OF SUPPLIER'S PRODUCTS OR SERVICES, OR ARISING OUT OF ANYTHING DONE IN CONNECTION WITH THE CONTRACT, SHALL BE FOR DAMAGES AND NO CLAIM OR CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WARRANTY AND STRICT LIABILITY), STATUTORY OR REGULATORY PROVISIONS, INDEMNITY, CONTRIBUTION, OR OTHERWISE, SHALL BE GREATER IN AMOUNT IN AGGREGATE THAN THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES IN RESPECT OF WHICH DAMAGES ARE CLAIMED. BUYER SPECIFICALLY ACKNOWLEDGES THAT SUPPLIER'S PRICE FOR THE PRODUCTS IS BASED UPON THE LIMITATIONS OF SUPPLIER'S LIABILITY AS SET FORTH IN THIS CONTRACT.

Buyer shall indemnify and hold harmless Supplier, its officers, directors, shareholders, agents, employees, subsidiaries, parents, affiliates and insurers from and against any and all liabilities, damages, losses, claims, lawsuits, including costs and expenses in connection therewith, for death or injury to any persons or loss of any property whatsoever, caused in any manner by Buyer's possession, use or operation of the products. Further, to the extent permitted by applicable law, Buyer will reimburse, indemnify, defend and hold harmless Supplier, its officers, directors, shareholders, agents, employees, subsidiaries, parents, affiliates and insurers against any penalties, fines, damages and claims due to failure to comply with Buyer's obligations in Section 6 (Compliance with Laws), including but not limited to damages caused by a ban or restrictions on the sale of the products as a result of such noncompliance.

17. *Proprietary Information:* Buyer represents that it has adopted reasonable procedures to protect Proprietary Information, as defined hereafter, including binding agreements with employees and consultants to prevent unauthorized publication, disclosure or use of such during or after the term of their employment by or services for Buyer. Buyer shall not use Proprietary Information except as required for the use of the products, shall not disclose Proprietary Information to any third party, and shall not transmit any documents or copies thereof containing Proprietary Information to any third party, except as may be authorized in writing by Supplier. This Section 17 shall survive termination or cancellation of the contract.

"Proprietary Information" shall mean information or data of Supplier, or a third person to whom Supplier owes obligations of confidentiality, and which is furnished or to be furnished to Buyer in written, graphic or machine-readable form and is marked proprietary or confidential. Where copies or alternative forms of information or data are received from Supplier, such information or data shall be considered Proprietary Information if at least one of said copies or alternative forms is marked proprietary or confidential.

This Section 17 shall not apply to information which Buyer demonstrates was in Buyer's possession prior to receipt from Supplier or information which Buyer demonstrates is or has become available to the public or general knowledge in the industry otherwise than through the fault of Buyer.

18. *Rescheduling and Cancellation:* Orders accepted by Supplier may be cancelled or rescheduled by Buyer only with the written consent of Supplier (which consent Supplier may withhold for any reason) and upon payment of Supplier's cancellation or rescheduling charges. Supplier shall have the right without penalty or payment to cancel any order accepted (i) if Buyer fails to make any payment when due to Supplier under the contract or any other contract (ii) if any act or omission of Buyer delays Supplier's performance, (iii) if Buyer violates any of these Terms and Conditions, or (iv) if Buyer's credit becomes impaired; and in the event of such cancellation Supplier shall be entitled to receive reimbursement for its reasonable and proper cancellation charges.

19. *Returns:* Should Buyer desire to return a product, a Return Merchandise Approval (RMA) Number is required from the PMS Corporate Sales Office in Boulder. Returns will not be accepted without this RMA Number. If the return is approved, a restocking charge of 25% of the total price paid will be assessed. Restocking charges do not apply to the sale of demonstration or Build to Order (BTO) units or units designated as "non-standard" manufacturing specials as such units are not returnable. Buyer is responsible for payment of the shipping costs, including applicable duties, taxes, etc., on return products and is responsible for products lost or damaged in transit.

20. *Non-Waiver; Remedies:* No waiver of any breach of these Terms and Conditions shall constitute a waiver of any prior or subsequent breach of any similar or dissimilar provision or a modification of the contract. All Supplier rights and remedies, whether evidenced hereby or by any other contract or document, shall be cumulative and nonexclusive and may be exercised singularly or concurrently.

21. *Applicable Law and Actions to Recover Damages:* The validity, performance and construction of the contract shall be governed by the laws of the State of Colorado, except for its conflicts of laws principles.

ADDENDUM A – PROJECT SERVICES

If Buyer is purchasing Project Services from Supplier, the following terms and conditions will apply to the performance of the services by Supplier.

1. *Services:* Supplier will provide the services described in the order (the "Services"). The Services may include: (a) preparation of testing protocol, procedures and validation documentation; (b) system design; (c) installation of Supplier's products; (d) project management; (e) testing; (f) IQ/OQ; and (g) training. The Services will be performed by Supplier with the standard of care, skill and diligence as is customary in the industry.

2. *Billing:* Unless otherwise stated in the order or in this contract, Supplier will invoice Buyer for the Services on the completion of work or delivery of products or services or on the completion of milestones specified in the order, but may, in Supplier's sole discretion, invoice Buyer monthly for the Services in the case of Buyer delay, cancellation of the order after Services have commenced or if Supplier determines at any time that Buyer's financial condition requires more frequent billing and payment. Also, Supplier may, in its sole discretion, determine at any time that Buyer's financial condition requires a deposit in advance, and, if such requirement is not met, Supplier may cancel the order or any part thereof and

if any provision of these Terms and Conditions is held to be unenforceable, such holding shall not affect the enforceability of any other provision. Any legal presumption that terms in this contract shall be strictly construed against the party who drafted such terms or who benefits from such terms shall not be employed in construing and interpreting this contract. Prior to commencement of any legal proceedings, Buyer and Supplier shall meet at a senior level to attempt to resolve differences. Notwithstanding any attempts to resolve differences or negotiations regarding such differences, any action brought by Buyer against Supplier arising out of this contract or Buyer's purchase and use of the products must be commenced within one year after such action accrues and in no event later than two years after date of shipment of such products.

22. *Jurisdiction; Venue:* Each of the parties consents and submits to the jurisdiction of the state and federal courts located in Colorado in connection with any suits or other actions arising between the parties to this Agreement, and consents and waives any objections to the venue of such action or proceeding in such courts. The prevailing party in any legal action brought by one party against the other will be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses incurred thereby, including court costs and reasonable legal fees.

23. *Government Contracts:* If the products to be furnished under the contract are to be used in the performance of a U.S. Government contract or subcontract, the Government contract number and a statement to that effect shall appear on Buyer's purchase order. If Buyer's purchase order includes all of said information and if said order is accepted in writing by Supplier, then only those clauses of the applicable Government procurement regulations which are required by Federal statute or regulation to be included in this contract shall be incorporated herein by reference. In all other events, said clauses shall not be incorporated herein by reference.

24. *Export:* Regardless of any disclosure made by Buyer to Supplier of the ultimate destination of Supplier products, Buyer shall not export either directly or indirectly any Supplier product, or any system incorporating said product either in contravention of statute or regulation or without first obtaining all required licenses and permits from the United States Department of Commerce and any other relevant agencies or departments of the United States government.

25. *Assignment:* The contract shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. The contract is personal to Buyer, and Buyer may not assign any of its rights or delegate any of its obligations there under, in whole or in part, without the prior written consent of Supplier which may be withheld for any reason.

26. *Complete Agreement; Modifications:* This contract constitutes the entire agreement between the parties relating to the sale of the products and performance of services (if any) and no addition to or modification of any provision of said agreement shall be binding upon Supplier unless agreed in writing by Supplier.

27. *Notices:* All notices given under the contract shall be in writing, mailed by first class mail, certified or registered, or delivered by hand to the address of the other party set forth in the quotation or to such other address as such party may designate from time to time by such notice, and shall take effect when received.

28. *Repairs on Equipment AFTER Initial Equipment Warranty; Limited Warranty:* Buyer may purchase repair services for the products through a separate Quotation for such services. Unless otherwise indicated, Supplier warrants that all repairs including parts and labor performed by Supplier Field Service or Factory Service personnel after the one-year New Equipment Warranty period described in Section 12A will be free from defects in materials and workmanship and shall conform to Supplier's specifications for six (6) months from date of service ("Service Warranty"). The Service Warranty is valid only for the customer who is specified as the "Ship to" address on the Purchase Order and applies only to those parts repaired or replaced. If the equipment is repaired, modified or altered in any way without the explicit written consent of Supplier or by non-Supplier personnel, then the Service Warranty is null and void. All Service Warranty repairs will be done at Supplier's factory or at a factory authorized field service location; provided however, at Supplier's sole discretion, if Buyer so requests and pays for the added expense, Supplier may perform Service Warranty repairs at Buyer's site. Responsibility for shipment and insurance is set forth in Section 13. If Buyer shall fail to pay when due any portion of the purchase price or any other payment required from Buyer to Supplier under this contract or otherwise, the Service Warranty granted under this Section 28 may, at Supplier's sole option, be terminated.

29. *Spare Parts:* Buyer may purchase spare parts for all Supplier equipment through a separate Quotation. Unless otherwise indicated, Supplier warrants that spare parts purchased from Supplier and installed by Supplier Service Personnel will be free of defects in materials for six (6) months from date of shipment. Spare parts purchased for installation by non-Supplier personnel and spare parts installed by non-Supplier personnel are not warranted by Supplier. Supplier will pay shipping costs (excluding any additional charges such as customs, duties, and taxes) of replacement spare parts under warranty. Responsibility for shipment and insurance is set forth in Section 13. If Buyer shall fail to pay when due any portion of the purchase price or any other payment required from Buyer to Supplier under this contract or otherwise, the warranty granted under this Section 29 may, at Supplier's sole option, be terminated.

30. *Insurance:* Supplier will carry commercial general liability insurance covering product liability, completed operations liability, bodily injury liability, personal injury liability, contractual liability and property damage liability of not less than US\$1,000,000 per occurrence and US\$2,000,000 in the aggregate.

31. *Survival:* Sections 4-8, 10, 12-17, 20-22, 24-26, 28-29 and 31 and any other provision which is intended to survive, will survive the termination or cancellation of the contract.

receive reasonable cancellation fees or the fees specifically provided herein, whichever is greater. Payment is due to Supplier no later than thirty (30) days from date of invoice. If Buyer fails to pay any payment due hereunder when due, Supplier may recover, in addition to the payment due, interest thereon at the lesser of 1 1/2% per month or the maximum lawful monthly interest rate, and reasonable attorney's fees.

3. *Project Contact:* Buyer will identify to Supplier an individual who will be the primary contact for Supplier for the Services. Supplier's primary contact for Buyer will be Supplier's Project Manager identified upon project commencement.

4. Factory Acceptance Testing ("FAT"):

- (a) *Scope of FAT:* only applies to equipment manufactured by PMS.
- (b) *Commencement of FAT; Changes.* Unless otherwise stated in the order, FAT will be conducted at Supplier's site in Boulder, Colorado ("FAT Site"). FAT will commence within three (3) months of the date of the order or as otherwise mutually agreed.
- (c) *FAT Protocol; Approval.* Buyer will approve FAT protocol and procedures ("FAT Documentation") at least ten (10) working days prior to the commencement of FAT, and if not expressly approved, Buyer's arrival at FAT Site will be deemed acceptance of the FAT Documentation. Any Buyer-requested changes to the FAT Documentation made less than 10 working days prior to the commencement of FAT will be billed to Buyer at the current hourly rate charged by Supplier.
- (d) *Single Pass Testing.* Unless otherwise stated in the order, FAT is priced at single pass testing. Additional or repeat testing (other than following a "no-pass" test result), audits or other procedures requested by Buyer in the FAT Documentation or at the FAT Site and not included in the FAT Documentation will be billed to Buyer at the current hourly rate charged by Supplier.
- (e) *Equipment.* Upon the determination of the date of commencement of FAT as provided above, Supplier will order and invoice Buyer all equipment, instrumentation and materials necessary for FAT as described in the order or made necessary by changes to the FAT Documentation (collectively, "Project Equipment"). Until FAT commences, the Project Equipment will be stored at a secure location at Supplier's site, but dedicated for use with the order.
- (f) *Acceptance.* At the completion of FAT, a "pass" result for the test or tests requested by Buyer in the FAT Documentation or otherwise will be considered Buyer's acceptance of the FAT ("FAT Acceptance"). Upon FAT Acceptance, unless notified in writing prior to shipment by Buyer, Supplier is authorized to ship the Project Equipment to Buyer's site specified in the order. If a delay in shipment is requested by Buyer as provided in this section, Supplier will store the Project Equipment at a site selected by Supplier for up to thirty (30) days after Acceptance at no additional charge. After such 30-day period, Buyer will be billed a storage fee of one-half percent (0.5%) of the cost of the Project Equipment per week up to eight (8) weeks after FAT Acceptance. Unless otherwise agreed in writing, after such 8-week period, Buyer must authorize Supplier to ship the Project Equipment or cancel the order. In the event of cancellation after FAT Acceptance, Buyer remains responsible to pay for the Project Equipment and all other charges permitted hereunder.

5. Site Acceptance Testing ("SAT"):

- (a) *Commencement of SAT; Changes; Price Validity.* SAT will be conducted at Buyer's site specified in the order ("SAT Site") on a mutually agreeable date. The quoted price for SAT stated in the order is valid for ninety (90) days after FAT Acceptance. In the event that Buyer delays the commencement of SAT beyond such 90-day period due to the failure of Buyer, the SAT price is subject to increase at Supplier's sole discretion.
- (b) *SAT Protocol; Approval.* Buyer will approve SAT protocol, procedures, validation and other related documents ("SAT Documentation") at least ten (10) working days prior to the scheduled commencement of SAT. The failure of Buyer to notify Supplier in writing of its request to delay the commencement of SAT at least three (3) working days prior to Supplier's scheduled arrival at the SAT Site will be deemed acceptance of SAT Documentation. Any Buyer-requested changes to SAT Documentation made less than 10 working days prior to the commencement of SAT will be billed to Buyer at the current hourly rate charged by Supplier. Any Buyer request to delay the commencement of SAT made less than three (3) working days prior to the scheduled commencement date of SAT will result in additional charges equal to Supplier's personnel's travel costs and any and all other costs incurred by Supplier associated with the cancellation of SAT.
- (c) *Commissioning.* Prior to SAT, Supplier's Installation Manager will review and confirm all aspects of the installation and functionality of the Project Equipment.
- (d) *Single Pass Testing.* Unless otherwise stated in the order, SAT is priced at single pass testing. Additional or repeat testing (other than following a "no-pass" test result), audits or other procedures requested by Buyer in the SAT Documentation or at the SAT Site and not included in the SAT Documentation will be billed to Buyer at the current hourly rate charged by Supplier.
- (e) *Acceptance.* At the completion of SAT, a "pass" result for the test or tests requested by Buyer in the SAT Documentation or otherwise and the delivery by Supplier to Buyer of any Project validation documentation will be considered Buyer's acceptance of the SAT ("SAT Acceptance"). Upon SAT Acceptance, Supplier's responsibility under the order is complete.

6. Conditional Acceptance: Buyer and Supplier may mutually agree to a "Conditional Acceptance" of FAT or SAT under the following circumstances:

- (a) *Additional Testing:* If during FAT or SAT Buyer requests additional or extraordinary testing not included in the FAT Documentation or SAT Documentation (as the case may be), Supplier may require that Buyer "conditionally accept" the FAT or SAT prior to the performance of such testing.

Conditional Acceptance means that upon a "pass" result for the FAT or SAT as stated in the applicable Documentation, Buyer is deemed to have accepted the FAT or SAT, as the case may be, for all purposes even if the additional or extraordinary testing results in a "no pass" result. Unless otherwise agreed in writing, Supplier does not guarantee a "pass" result for any additional or extraordinary testing.

- (b) *Expense:* Buyer may be responsible for the cost to perform such additional or extraordinary testing pursuant to Sections 4(b) and (c) and 5(b) and (d) above with regard to changes to the FAT or SAT Documentation.
- (c) *Satisfaction of Condition:* If Supplier agrees to perform the additional or extraordinary testing and such testing results in a "no-pass" result, Supplier will investigate the cause of the "no-pass" result. Buyer and Supplier will agree on resolution of and responsibility for the cost to correct the problem. In no event will any payment due to Supplier upon FAT Acceptance or SAT Acceptance be delayed due to a "no-pass" result under this Section 6.

7. Buyer Responsibilities:

- (a) *Hazards.* Buyer will provide written notice to Supplier of any hazardous materials or environments at Buyer's site. Buyer will supply, at Buyer's expense, reasonable protection for Supplier's personnel against such hazards and appropriate training of Supplier's personnel for any special procedures and precautions necessary to perform the Services, including but not limited to, gowning procedures and corporate and site safety requirements.
- (b) *Utilities.* Buyer will provide Supplier, at Buyer's expense, all electrical power, water and other utilities necessary to perform the Services at Buyer's facility.
- (c) *Access; Overtime.* Buyer will provide Supplier with access to Buyer's site during normal working hours. Unless otherwise stated in the order, Services performed at Buyer's site after normal working hours will be billed at Supplier's overtime rate. Supplier's normal working hours while at Buyer's site are 8:00 a.m. to 6:00 p.m. (Buyer's time zone) or otherwise as agreed in writing between Supplier and Buyer.
- (d) *Work Space.* Buyer will provide Supplier with the physical space at Buyer's site necessary to reasonably to perform the Services.

8. *Training:* Training of Buyer's personnel is charged to Buyer on "per day," "per trainer" basis and, unless specifically provided in the order, is not included in the quotation for the Services. Buyer may request training services which will be billed separately to Buyer.

9. *Travel:* Reasonable travel expenses for Supplier's personnel to Buyer's site are charged to Buyer. Additional costs may be incurred by Buyer if travel requirements or dates are changed by Buyer.

10. *Project Communication:* Unless otherwise mutually agreed, electronic communications between Supplier and Buyer will be in the following formats: (i) general communications – standard MS-Office package; and (ii) other - .PDF file format. The quote for Services includes delivery of a single hard copy of any documentation (or one CD) required to be provided by Supplier to Buyer. Buyer will be billed for any additional hard copies, CDs or other media requested by Buyer.

11. *Buyer Equipment:* Buyer is responsible for ensuring the performance, integrity and completeness of any Buyer-supplied equipment, instrumentation, software, documentation and other items used by Supplier in connection with its performance of the Services.

12. *Buyer Cooperation:* Buyer and Supplier will use their best efforts to review, approve and exchange documents, data and other information necessary or helpful to Supplier's performance of the Services on a timely basis. Buyer acknowledges that the failure to timely turnaround documents necessary to Supplier's performance of the Services may adversely affect Supplier's ability to perform the Services or perform the Services within the deadlines set forth in the order. As such, Supplier has no liability for delay, or for failure to timely meet any milestones or other deadlines, and all applicable dates and deadlines will automatically be extended by at least the length of the delay should Buyer fail to comply with this Section 12. If Supplier cannot schedule Services within 6 months due to failure of Buyer to comply with this section the uncompleted Services of this Order will be cancelled.

13. *Project Cancellation Fees:* Buyer may terminate the order upon five (5) working days prior written notice to Supplier upon payment of the cancellation fees provided in this contract. In particular, Buyer will be responsible for and pay Supplier for: (i) all labor performed; (ii) the cost of the Project Equipment and any other materials acquired or supplied by Supplier to, or on behalf of, Buyer; (iii) reasonable wind-down costs incurred in reassigning Supplier's personnel to other projects; and (iv) all expenses incurred prior to the effective date of such notice, including but not limited to the cost of permits, project management, documents, and travel and lodging of Supplier's personnel.

ADDENDUM B – CHEMICAL MONITORING POLICY

If Buyer is purchasing goods or Services from Supplier which are used in relation to monitoring or use with chemicals, the following terms and conditions will apply.

CHEMICAL MONITORING POLICY

Because of the variety of chemicals used, the varied conditions under which the chemicals can be used, and the extensive use of proprietary chemicals and gases, it is not possible for PMS to test all of the chemicals, and combinations of chemicals and gases, potentially used in its instruments. PMS has tested its products with many process chemicals and gases used in the semiconductor and related industries, and can assist the Buyer in determining compatibility of the instruments with chemicals which PMS has tested. PMS publishes the materials that come in contact with the process chemicals "wetted surfaces" to aid the user in determining compatibility. However, it is the responsibility of Buyer or any user to determine the compatibility and suitability of PMS instruments in each specific chemical, gas and user application prior to use. Details on wetted surface materials can be found on PMS published product specification sheets. In an effort to provide guidance to our customers the following is a partial list of chemicals that have been tested using PMS sensor and samplers: Acetone Water, Nitric Acid, Xylene, Ammonium Hydroxide, Sulfuric Acid, Potassium Hydroxide, 2-Propanol Hydrochloric Acid, Ammonium Fluoride, Sodium Hydroxide, Phosphoric Acid, Hydrofluoric Acid (HF), Trichlorotrifluoroethane (Freon TF), Trichloroethane, Methyl Ethyl Ketone, Hydrogen Peroxide, Acetic Acid (Concentrated), Toluene, Methanol.

It is important to note that not all PMS sensors are compatible with all chemicals. There are three (3) types of optical materials used in PMS sensors:

Fused Silica: Compatible with most chemicals with the exception of HF.

Sapphire: Compatible with most chemicals normally used in the semiconductor industry.

Magnesium Fluoride/Silicon Dioxide: Compatible with HF and most other chemicals with the exception of Ammonium Fluoride and Hydrogen Peroxide. Magnesium fluoride has been used previously in HSLIS or HVLIS sensors. Silicon Dioxide has been used in HPGP sensors. In both instances, these materials are used in anti-reflective coatings. If you are not sure which window material was used in the sensor in question, contact the PMS factory with the model and serial number of the sensor.

With regard to non-optical wetted materials, PVDF, which is used in some of the sample cells, is not recommended for long term use with Acetone. PFA Teflon is porous to some chemicals. Therefore, when changing chemicals being tested the sensor and/or sampler must be properly flushed with a suitable solvent. Buyer in most cases should be able to provide the relevant information regarding chemical compatibility and suitable solvents in a sensor or sampler. It is necessary to assess the effects of mixing the old chemical, which might have leaked into the Teflon, and the new chemical. In addition to chemical compatibility, Buyer should ensure the chemical temperature and operating environment meets the stated requirements for the product in question.

PMS also manufactures certain products with gas purge if that product may be used with flammable or reactive fluids or gases or operated in a corrosive vapor environment. Buyer should refer to the product specification sheets for those products with gas purge to determine any relevant certifications. In the case of heated chemicals or gasses, Buyer should avoid excessive thermal spikes and ensure the system is properly purged between chemical changes to avoid potential exothermic reactions.

Buyer must provide a suitable installation site and enclosure to meet regulatory and Buyer's internal chemical or gas safe handling requirements. Any enclosure should contain a spill to a safe area or direct it to a suitable drain while communicating a leak event. Such an enclosure should include isolation valves

to support easy isolation and instrument removal for service. Unless otherwise stipulated in the quotation, PMS accepts no responsibility for damages caused by chemical or gas leaks due to inadequate installation or leak containment systems. Buyer should inspect all installations to ensure it meets their local regulatory and internal safety requirements before use.