

GENERAL TERMS AND CONDITIONS OF SALE These General Terms and Conditions of Sale (“**Terms and Conditions of Sale**”), the Limited Warranty Agreement, and the applicable Quotation, Review Document, Purchase Order, and Sales Order Acknowledgment (collectively, the “**Agreement**”) apply to any sale or license of Montana Instruments Corporation (“**MI**”)s products, software, and/or services purchased by yourself as an individual or on behalf of your employer or another entity which has not previously accepted these Terms (you and such entities, collectively, “**Buyer**”). Buyer represents and warrants that such Buyer has authority to accept, and has read, understood, and agreed to, the Agreement. Notwithstanding anything herein to the contrary, any download, acceptance, or use by Buyer of any MI products, software, and/or services shall constitute an irrevocable acceptance of the Agreement. If Buyer does not agree to be bound by the terms of the Agreement, then Buyer shall promptly return products, delete, or return licensed software and not use any related services.

Please read the following terms carefully, as purchasing, licensing and/or using the related products, software, or services indicates agreement with, and acceptance, of the Agreement.

1. **Scope and Definition.** For the purpose of the Agreement the following definitions apply:
 - a. **“Buyer Specifications”** means any data, designs, specifications, feedback, content, or other information provided by Buyer to MI in connection with MI’s customization, design, development, and build of a Product for Buyer.
 - b. **“Custom Product(s)”** means Products that are customized for Buyer according to Buyer Specifications.
 - c. **“Owner Manual”** means the applicable Product literature provided by MI to Buyer in electronic (USB) and hard copy forms at the time the Product is delivered to Buyer.
 - d. **“Purchase Order”** means that certain purchase order provided by Buyer in response to a Quotation provided by MI that details the agreed-upon Purchase Price and Product description(s).
 - e. **“Product(s)”** means the products, software, and/or services sold or licensed to Buyer by MI hereunder and listed on an applicable Sales Order Acknowledgment. For clarity, Products includes Custom Products and Standard Products.
 - f. **“Quotation”** means the quote that details the estimated Product price and any MI accepted Product specifications and customizations.
 - g. **“Review Document”** means the schematic breakdown of the applicable Product.
 - h. **“RMA Number”** means the return material authorization number provided by MI to facilitate the return of a Product.
 - i. **“Sales Order Acknowledgment”** means that certain acknowledgment provided by MI to Buyer as confirmation of MI’s acceptance of a Purchase Order from Buyer.
 - j. **“Ship Date”** means the date stated in the Sales Order Acknowledgment.
 - k. **“Standard Product(s)”** means Products that have not been customized for Buyer.
2. **Ordering Process.** The prices and payments stated in the Quotation are an estimate and MI reserves the right to amend prices and payments at any time prior to MI’s acceptance of a Purchase Order without advance notice. All Purchase Orders shall be provided by Buyer to MI based on the most recent Quotation provided by MI to Buyer and are subject to written acceptance by MI. MI shall have no obligation to accept any Purchase Order. Upon written acceptance of such Purchase Order by MI, MI shall provide Buyer with a Sales Order Acknowledgment confirming MI’s acceptance of such Purchase Order. Buyer hereby grants MI a perpetual and irrevocable, nonexclusive, transferable, worldwide, fully paid-up and royalty-free license to use and exploit the Buyer Specifications in connection with MI’s customization, design, development, and build of a Product for Buyer.
3. **Payment Terms.** All payments shall be in US Dollars unless expressly stated otherwise in the Sales Order Acknowledgment. All payments shall be due and payable no later than 30 days after the date of the invoice (“**Due Date**”), unless otherwise provided in the Sales Order Acknowledgment. Late payments shall be subject to a late fee of 1.5% of the price stated in the invoice if paid per month and 18% of the price stated in the invoice if paid per year commencing on the Due Date.
4. **Taxes.** Unless expressly stated otherwise in the Sales Order Acknowledgment, Buyer shall be responsible for all sales and use taxes, duties and other government charges arising from the purchase of the Products.
5. **Packing.** All Products shall be prepared and packed for shipment in a manner that will prevent damage in transit. Any nonstandard or special packing or packaging requested by Buyer is subject to MI’s prior written agreement and shall be at Buyer’s sole expense.
6. **Shipping Terms, Title, and Risk of Loss.** Unless otherwise agreed upon by MI in writing, shipping terms shall be as expressly stated in the Sales Order Acknowledgment. If the applicable Sales Order Acknowledgment does not specify shipping terms, all domestic shipments shall be delivered F.O.B. origin at MI’s shipping dock, and all shipments to locations outside the United States shall be delivered FCA (Free Carrier) at MI’s shipping dock in accordance with the version of Incoterms in effect as of the date of the applicable Sales Order Acknowledgment. Risk of loss and title to Products shall pass upon such delivery. If MI prepays shipping, insurance, or other related charges, Buyer agrees to reimburse MI upon demand for such charges. If Buyer fails to arrange for collection of Product, in whole or in part, on the scheduled Ship Date, or fails to provide instructions or documents required for shipment, MI may, upon providing written notice to Buyer, store or arrange for the storage of Product. On MI sending such notice (a) risk of loss of Product shall pass to Buyer; (b) delivery of Product shall be deemed to have taken place and any outstanding payment for the Products will become due immediately; and (c) Buyer shall pay MI all costs and expenses arising from such failure including, but not limited to, storage and insurance charges. Until MI receives payment in full for the Product and all other costs and expenses incurred by MI in connection with Buyer’s failure, MI shall retain a purchase

money security interest in the Product and MI may (and Buyer appoints MI as its attorney-in-fact to) file financing statements or other documents or instruments to perfect such security interest. With respect to the security interest, MI shall have all the rights and remedies of first priority secured party under the Uniform Commercial Code as enacted in Montana and any other applicable law. Buyer and MI agree that 10 days advance notice is sufficient and commercially reasonable for any foreclosure, sale or disposition, or other action with respect to Product.

7. **Ship Dates.** All Ship Dates are approximate estimates only. MI shall not be liable for any non-adherence with such dates. Timely delivery of Products requires Buyer's prompt cooperation and delivery of all MI-requested information, instructions, materials, and equipment, if applicable. Delivery will be deemed to have occurred once the Product has been shipped to Buyer.
8. **Cancellation.** Any mutually executed Sales Order Acknowledgment for Standard Products which does not exceed \$5,000 (it being agreed that a series of similar Sales Order Acknowledgment for Standard Products shall be aggregated and deemed one Sales Order Acknowledgment for the purpose of determining such amount) may be cancelled by Buyer by providing written notice to MI at least thirty (30) days prior to the Ship Date. Any Sales Order Acknowledgment for Custom Products, or any Sales Order Acknowledgment or series of similar Sales Order Acknowledgment for Standard Products which exceeds \$5,000, may be canceled only upon MI's prior written approval, which approval may be granted or withheld in MI's sole discretion. Any Sales Order Acknowledgment cancellation will be subject to the following cancellation charges with respect to all canceled units of Product: (a) the contract price of all Products completed prior to such cancellation; (b) the burdened cost of all raw materials (including long lead time Products) in MI's possession or on order; (c) the burdened cost of all raw materials incorporated into and all labor applied to work in progress, plus profit thereon; and (d) other reasonable cancellation charges including, but not limited to, non-recurring engineering expenses, cancellation costs payable by MI to its suppliers, and any other costs incurred by MI relating to such cancellation. In no event shall Buyer be liable for more than the price listed in the Sales Order Acknowledgment for the applicable canceled Product. MI reserves the right to cancel the Sales Order at any time without penalty.
9. **Return Authorization Process.** Buyer's return of non-conforming or defective Products to MI is subject to MI's then-current return authorization process and procedures ("**Return Authorization Process**") and the Limited Warranty Agreement. Notwithstanding the terms of the Limited Warranty Agreement, within 30 days of receipt of the Product, Buyer shall promptly notify MI of any non-conformance with the Owner Manual or defects in Product and provide MI a reasonable opportunity to inspect such Product, including via remote inspection which may require Buyer to provide MI with information requested by MI for MI's remote inspection (e.g., photographs, system logs, data, etc.), or returning the Product to MI for inspection in accordance with MI's instructions. Product shall not be returned without MI's prior written authorization and issuance of a RMA Number. Once an RMA Number is obtained, Buyer shall ship the Product back to MI, in accordance with MI's instructions, and in its original condition and in the original or equivalent packaging, with the RMA Number clearly marked on both the shipping label and all paperwork associated with the return of the Product. Shipping costs for a returned Product must be prepaid by Buyer. MI shall not be responsible for any damage occurring in transit or obligated to accept Products returned without an RMA Number. Any return shipment received by MI without an RMA Number and/or whose contents are not received in its original condition may be reshipped by MI back to Buyer. Issuance of an RMA Number by MI shall not be construed to mean that MI agrees the returned Product is non-conforming, defective, covered under the Limited Warranty Agreement, or that Product will be repaired or replaced at no cost to Buyer.
10. **Defective or Nonconforming Products.** Products determined by MI to be non-conforming or defective and covered by MI's Limited Warranty Agreement shall be repaired or replaced at MI's option and expense and shall be returned to Buyer at MI's expense. If any Product returned by Buyer is found by MI not to be nonconforming or defective, Buyer shall be so notified, and such Products shall be returned to Buyer at Buyer's expense. For defective Products not covered by the Limited Warranty Agreement, repair or replacement of such Products shall not be performed until and unless Buyer notifies MI authorizing such repair or replacement at MI's then-current repair or replacement price. In addition, MI may charge Buyer for any testing or inspection costs. In no event shall MI be required to retain or store returned Products for more than six (6) months.
11. **Nonreturnable Products.** Custom Products and/or any Standard Products identified in a Sales Order Acknowledgment or series of Sales Order Acknowledgment for Standard Products that exceed \$5,000 in the aggregate, are non-returnable. Any Standard Products that are part of a Sales Order Acknowledgment which does not exceed \$5,000 (it being agreed that any series of similar Sales Order Acknowledgment for Standard Products shall be aggregated and deemed one Sales Order Acknowledgment for the purpose of determining such amount) may be returned to MI for credit within thirty (30) days of the invoice date (60 days outside of the U.S.) and are subject to a 25% restocking charge. Buyer bears all risk of loss or damage to the returned Products until delivered to MI's designated facility.
12. **Software.** Products may contain or be delivered with or in digital form and may contain software that is proprietary to MI or a third party. All Product related software is provided under non-exclusive license only, and not as a sale or other transfer of ownership. Buyer undertakes to accept and be bound by any applicable End User License Agreement or other license agreement imposed by MI or a third party for such software.
13. **Proprietary Rights.** Buyer acknowledges and agrees that MI does and shall solely own or control all copyrights, patents, trade secrets, trademarks and other intellectual property or proprietary rights, title and interest pertaining to all Products delivered to Buyer under the Agreement.
14. **Product Use.** The Owner Manual accompanying Products and notices affixed thereto include vital safety and hazard information. Buyer must comply with all safety and hazard instructions issued by MI. Products can, if operated negligently, present a hazard to health and to life and MI accepts no liability for any death or personal injury that does not result from its own negligence.
15. **Buyer Warranty.** Buyer represents and warrants that (a) Buyer has sufficient right, title, and interest in and to the Buyer Specifications to grant the rights granted herein, free and clear of any liens or encumbrances; (b) the Buyer Specifications do not and will not violate, infringe upon or misappropriate any third party's patent rights, copyright rights, trade secrets rights, or any other intellectual

property or proprietary right.

16. **Limited MI Warranty; Indemnification.** EXCEPT AS SPECIFIED IN THE ATTACHED LIMITED WARRANTY AGREEMENT, THE PRODUCTS ARE PROVIDED TO BUYER AS-IS WITHOUT ANY WARRANTIES OF ANY KIND, AND MI HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, AND STATUTORY, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF NON-INFRINGEMENT AND MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Buyer shall defend, indemnify, and hold MI harmless against any liability (a) for death or personal injury that results from the Buyer's use of the Product(s); and (b) related to or arising from MI's use of Buyer Specifications.
17. **Intellectual Property Infringement.** (a) Buyer shall indemnify, defend and hold MI harmless from all losses or damages arising from Buyer's violation of third-party intellectual property rights, all claims of any kind by Buyer's end users, or any act or omission of Buyer associated with any Service.
- (b) MI agrees to defend at its expense, indemnify, and hold Buyer, and its directors, officers, employees and agents (each an "Indemnified Party"), harmless from and against all monetary losses resulting from any claims, suits, actions or other proceedings made by a third party to the extent that such claims arise from or relate to intellectual property infringement (collectively, "IP Claims"). MI's obligation to the Indemnified Party for IP Claims shall include, without limitation, an obligation to pay any costs including, but not limited to, reasonable attorneys' fees, expert witness fees, expenses, damages and other costs reasonably incurred by one or more Indemnified Party in connection with the IP Claim. Notwithstanding anything in this Agreement to the contrary, MI shall have no liability or responsibility of any kind to the Indemnified Party in connection with a third party claim of infringement to the extent such claim is based in whole or in part, directly or indirectly, upon: (i) modifications by Buyer to the Services claimed to infringe if such modifications are not authorized in writing or provided by MI; or (ii) Buyer's use of the Services claimed to infringe in conjunction with third party products or services not authorized in writing or provided by MI. MI may settle, at its sole expense, any claim, action or liability for which MI is responsible under this Section provided that such settlement shall not impose any additional liability on any Indemnified Party. Indemnified Party reserves the right to employ counsel at its own expense and participate in the defense or settlement of any claim or action hereunder, all at Indemnified Party's sole expense. If a claim for indemnification has been made by one Party against the other under this Section, or if the Indemnified Party's rights under this Agreement are restricted as a result of an IP Claim or a valid court order arising in connection therewith, then MI shall at its sole option and sole expense: (i) procure for Buyer the right to continue using the alleged infringing Service; (ii) replace the infringing Service with non-infringing Service substantially equivalent in features, functionality and quality; (iii) modify the infringing Service to make it non-infringing while retaining all material features, functionality and quality, or (iv) if none of the above is commercially reasonable, terminate the Agreement without liability to MI. This section states the entire liability of MI and the exclusive remedy of an Indemnified Party for claims of intellectual property infringement.
18. **Limitation of Liability.** MI's sole and exclusive liability to Buyer (except for liability for patent defense to the extent provided in Section 17 above) for any matter arising out of or relating to the Products or the transactions subject to the Agreement, whether in contract, tort (including negligence), or otherwise shall be limited to general money damages that, in the aggregate, shall not exceed the amount actually paid by Buyer to MI during the six (6) months directly preceding the claim. IN NO EVENT SHALL MI BE LIABLE TO BUYER FOR ANY CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES OF ANY KIND OR AMOUNT, EVEN IF SELLER WAS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. MI disclaims any and all liability with respect to use of the Buyer Specifications.
19. **Term; Survival.** The terms and conditions of the Agreement are effective until the last to expire (a) Warranty stated in the Limited Warranty Agreement; or (b) if applicable, extended warranty stated in the Sales Order Acknowledgment. Notwithstanding the expiration or other early termination of the Agreement, both MI and Buyer agree that all defined terms and Sections 1, 4, and 9 -24 of the Terms and Conditions of Sale shall survive in accordance with their terms.
20. **Waiver.** The failure of either party to enforce, in one or more instances, any of the terms or conditions of the Agreement shall not be construed as a waiver of the future performance of any such term or condition.
21. **Applicable Law.** The laws of the state of Montana shall govern the Agreement, except for that body of law known as Conflict of Law. The venue for all disputes under this Agreement shall be in the state courts located in Gallatin County, Montana.
22. **Force Majeure.** Any delay or failure of MI to perform its agreed obligations under a Sales Order Acknowledgment shall be excused if such delay or failure is the result of an unforeseeable event or occurrence beyond the reasonable control of MI, and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority, inability to obtain any necessary import or export licenses or other consents, terrorism, fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, supplier delays, labor problems (including lockouts, strikes, and slowdowns), inability to obtain power, utilities, materials, labor, equipment, transportation, or court injunction.
23. **Terms and Conflicting Documents.** The Agreement supersedes any contrary provisions presented in any written form or otherwise by Buyer, including pre-printed terms on the Purchase Order or other Buyer documents, and all such terms presented by Buyer are considered null and void. The Agreement may not be changed or amended in any manner other than by a writing signed by MI. In the event of a conflict between documents that comprise of the Agreement, the order of priority is as follows: these Terms and Conditions of Sale, the Limited Warranty Agreement, the Sales Order Acknowledgment, the Review Document, the Purchase Order, then the Quotation.
24. **Severability.** The sections of the Agreement are severable, and if any section is held to be unenforceable, the remaining provisions will continue in full force and effect.