

# TESTRESOURCES, Inc. Terms and Conditions of Sale

## 1. DEFINITIONS

As used in these Terms and Conditions, "Seller" means TESTRESOURCES, INC., Buyer means the person, firm, or corporation from whom this order is received.

## 2. ACCEPTANCE AND AGREEMENT

The provisions set forth on this quotation and these Terms and Conditions of Sale constitute the entire agreement between the Seller and Buyer and supersede all other communications between the parties, whether written or oral. ANY PROVISION OR CONDITION OF CUSTOMER'S ORDER WHICH IS IN ANY WAY DIFFERENT FROM OR IN ADDITION TO THESE TERMS AND CONDITIONS (EXCEPT ADDITIONAL PROVISIONS SPECIFYING QUANTITY AND SHIPPING OR BILLING INSTRUCTIONS) SHALL NOT BE APPLICABLE OR BINDING UPON THE SELLER. No modification or waiver of the provisions shall be binding upon Seller for any purpose unless it is contained in writing, signed by an authorized representative of the Seller. Retention by Buyer for over thirty (30) days of any goods delivered by the Seller shall be conclusively deemed acceptance of the products in accordance with these Terms and Conditions of Sale.

## 3. CHANGES

Buyer shall have the right at any time before the completion of the order to make changes in quantities, drawings, specifications, delivery schedules, and in methods of shipment and packaging. If such changes cause an increase or decrease in costs or in the time required for performance, Seller shall notify Buyer, and an equitable adjustment will be made.

## 4. WARRANTY AND REMEDY

Seller's product is warranted to conform to the applicable description on the face of this order and is to be free from defects in material and workmanship for the periods shown below from the date of shipment. The warranty coverage is on a Depot basis. Any alternatives to Depot warranty service shall be at the sole discretion of Seller.

Software and Hardware Products	1 year
In-Warranty Equipment returned for Repair or Replacement. (Items under warranty returned, tested and found without fault will be charged; request price quote)	90 days or end of original warranty period, whichever occurs later.
Out-of-warranty items returned for repair or calibration.	90 days.
Custom Systems - For TESTRESOURCES, Inc. products, warranty periods are as shown above. For Non-TESTRESOURCES products integrated into the system, the manufacturer's warranty period and terms and conditions will apply.	

OTHER THAN THE WARRANTY HEREIN CONTAINED, THERE IS NO OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) THAT SHALL EXIST IN CONNECTION WITH THE SALE OR USE OF ANY SELLER PRODUCT. Seller assumes no liability for faulty or improper application of its products.

All claims under the Seller's warranty must be made in writing to Seller during applicable warranty period and the product claimed defective or non-confirming returned by Buyer to Seller F.O.B. Seller's plant. All parts returned for warranty must be accompanied by a written explanation of failure. Seller will repair, or at its option, replace any defective or non-confirming product and return the repaired or replacement product to Buyer without charge. SUCH REPAIR OR REPLACEMENT IS THE EXCLUSIVE REMEDY AVAILABLE FROM SELLER AND SELLER IS NOT RESPONSIBLE FOR DAMAGES OF ANY KIND, INCLUDING INCIDENTAL AND CONSEQUENTIAL DAMAGES RESULTING FROM A BREACH OF WARRANTY OF THIS CONTRACT. Seller's warranties shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of Seller's rendering of technical advice or in service in connection with Customer's order or the goods furnished. Seller will not issue credit for returned goods regardless of Buyer's policy when returned after 60 days of shipment. Restocking charges for standard goods will be 25% of price. Custom system components and software are not considered restockable and no credit will be issued.

## 5. TITLE AND DELIVERY

Shipment of goods shall be delivered F.O.B. Seller's facility Shakopee, Minnesota, unless otherwise agreed in writing. Title and liability for loss or damage shall pass to Buyer upon Seller's tender of delivery of the goods to a carrier for shipment to Buyer. If loss or damage occurs during shipment, Buyer shall not be relieved of any obligation to pay costs of insurance, transportation, import duties, taxes or any other expenses incurred for licenses or clearances required at port of entry and destination. When Seller is to deliver the goods in installments, shipping dates shall be approximate only, and Seller shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer if Seller fails to meet the specified delivery schedule because of unavoidable production or other delays. A security interest shall be retained by Seller until receipt of payment of Buyer.

## 6. CONTINGENCIES

Seller shall not be liable for any delay in delivery or non-delivery, in whole or part, caused by the occurrence of any contingency beyond the control of either Seller or Seller's suppliers, including but not limited to war (whether an actual declaration is made or not), sabotage, insurrection, riot or act of civil disobedience, act of a subdivision, judicial action, labor dispute, accident, fire, explosion, flood, storm, or other act God. If any such contingency occurs, seller may at its discretion allocate production and deliveries among Seller's customers.

## 7. CANCELLATION

Orders may not be cancelled except upon Seller's written approval which shall be subject to the Buyer's payment of Seller's reasonable cancellation charges. Such charges may include all reasonable costs incurred by Seller in preparing to meet the Buyer's anticipated delivery schedule including, without limitation, commitments by Seller to its suppliers, and the cost of inventory (raw materials, work in progress, and finished goods) allocated to the Buyer order together with a reasonable allowance for prorated expenses and anticipated profits. The minimum order cancellation charge is 25% of purchase price.

## 8. INDEMNIFICATION

Buyer agrees to indemnify and save harmless from any judgements, orders, awards, costs and expenses, including attorney's fees and claims on account of damage to property or bodily injury (including death) which may be sustained by Buyer, Buyer's employees or third persons, arising out

of or in connection with or resulting from use of products manufactured by Seller and purchased hereunder.

## 9. TERMS AND METHOD OF PAYMENT

Standard payment terms depend on the product type and/or the value of the order and are communicated on the quotations.

Example follows: 50% upon order – Net 15, 50% on shipment – Net 30

50% upon order payment shall be due upon receipt of invoice, net 15 days. If payment is not received within 15 days of invoice, Seller reserves right to extend delivery schedule by duration that payment is late.

50% on shipment Net 30 payment shall be due upon invoice. If payment is not received within 30 days, a late payment charge of 1.5% per month on the unpaid balance of items shipped will be paid by Buyer.

Payment shall be without regard to Buyer's completion of inspection of goods. If shipment of a completed product is delayed due to Buyer's request, invoicing will be issued at the same time Seller was prepared to make a shipment. Goods held thereafter in compliance with such request are at Buyer's sole risk and expense.

If in the judgement of the Seller the financial condition of the buyer, at any time, does not justify continuance of production or shipment to terms of payment specified, Seller may require full or partial payment of any completed shipment prior to further shipment.

By issuing of a purchase order to TESTRESOURCES, Inc., the buyer agrees to pay TESTRESOURCES, Inc. the costs to pursue payments more than 60 days overdue.

## 10. TAXES

Responsibility for all USA federal, state, and local taxes imposed on the sale or use of any of the products purchased shall be borne by the buyer.

TESTRESOURCES, Inc. is required to collect taxes in the State of Minnesota due to having physical nexus thereof. Depending on the potential economic nexus in other states at the time of delivery, TESTRESOURCES, Inc. may also be required to collect sales tax on the buyer's behalf for all sales outside of MN. The amount, if any, will be determined at the time of invoicing and calculated based on the shipping address. It is the responsibility of the buyer to provide proper documentation for to TESTRESOURCES, Inc. regarding the Tax-Exempt status for the items being purchased.

Details can be found at: <http://www.taxes.state.mn.us/>

## 11. WAIVERS

Failure by Seller to insist upon performance of any of the Terms of Conditions of Sale shall not be construed as a waiver of such terms and conditions and shall not affect the right of Seller thereafter to enforce each and every term and condition.

## 12. STORAGE

Any detention, demurrage, storage or auxiliary charges assessed by carriers or warehousemen resulting from Buyer's requirement for special service or Buyer's failure to accept delivery in a timely manner shall be paid by Buyer.

## 13. CHOICE OF LAW

The interpretation and performance of all transactions shall be governed by the domestic law of the State of Minnesota.

## 14. AFFIDAVITS AND CERTIFICATES

Certificates of compliance, conformance shall not be provided unless Buyer's detailed requirements are stated on the face of the Buyer's order. Seller reserves the right to charge an additional fee for any such certificates issued.

## 15. ASSIGNMENT

This contract shall be binding upon and inure to the benefit of the parties, and their successors, and assigns. Buyer may not assign this contract without the express written consent of Seller.

## 16. GOVERNMENT CLAUSES AND CONTRACTS

US Government Contracts and clauses and any clause essentially based upon Government Contract Regulations shall apply only to sales subject to a Government Contract, the terms and conditions of this sale shall include those Government Contract Clauses-not inconsistent with terms and conditions herein-where applicable Regulations require to be included in a Contract or Subcontract for the minimum necessary purpose of the clause.

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