



**VEECO INSTRUMENTS INC. AND SUBSIDIARIES**  
**TERMS & CONDITIONS OF SALE**  
(revised November 1, 2019)

**1. GENERAL.** These Terms & Conditions of Sale shall apply to all sales of products and services made by Veeco Instruments Inc. and its subsidiaries (collectively, "Seller"), unless otherwise expressly provided in Seller's written quotation or agreed to in writing by an authorized Seller representative. In case of a conflict, inconsistency or addition not expressly accepted in writing by Seller, these Terms & Conditions of Sale shall be considered as superseding the conflicting, inconsistent or additional terms stated in any buyer (hereinafter, "Buyer") purchase order, order form, contract or otherwise. The acceptance of an order will supersede all prior communications and constitute a complete and binding contract between Buyer and Seller, which contract cannot be modified or canceled without the written agreement of both parties.

**2. SHIPMENT.** Seller shall attempt to comply with, but will not guarantee, shipping date and loading and routing instructions. Seller reserves the right to allow or prorate shipments against all orders whenever, in its judgment, an oversold condition exists as to any particular product manufactured or sold by it. In the event of a default by Buyer, Seller may decline to make further shipments without waiving any of its rights under such order. If despite such default Seller elects to continue to make shipment, its action shall not constitute a waiver regarding or otherwise diminish Seller's legal remedies with respect to such default or any future default.

**3. TITLE AND DELIVERY.** Sales are made FCA Seller's factory, Incoterms 2010 and Buyer shall pay all freight, duties, tariffs, cartage and handling. Title and risk of loss or damage shall pass from Seller to Buyer upon the placement of the products purchased hereunder in good condition into the possession of a common carrier, such carrier acting as Buyer's agent. During all phases of shipment to the Buyer site and regardless of the shipping terms selected by Seller and Buyer, insurance shall be arranged by Seller. All claims for damages must be filed with the carrier.

**4. PRICES.** Irrespective of any prices quoted by Seller or listed on Buyer's order, an order is accepted only at the prices shown on the written quotation. Installation of utilities required for equipment is not included in the specified price.

**5. PAYMENT TERMS.** Invoices are payable at the place set forth on the quotation or the invoice. Any exchange charges, any charges for nonpar clearance of checks or collection charges (including reasonable attorney's fees) will be paid by Buyer. Any amounts not paid when due will bear interest at a rate of 18% per annum or, if lower, the maximum rate permissible by law. All payments shall be made by Buyer without set-off or other deduction. Buyer grants to Seller a security interest in the products purchased hereunder to secure payment for those products. If requested by Seller, Buyer agrees to execute financing statements to perfect such security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to such financing statements if necessary or convenient for the perfection of Seller's security interest.

Terms of payment are subject to change by Seller. All orders are subject to credit approval by Seller. The amount of any credit extended by Seller to Buyer may be changed, and such credit may be withdrawn by Seller. With respect to an order on which credit is not extended by Seller or, if extended, is subsequently withdrawn, shipment or delivery shall be made, at Seller's election, Cash with Order (in whole or in part), C.O.D. or Sight Draft attached to Bill of Lading or other shipping documents, with all costs of collection (plus 18% interest on Sight Drafts not paid at maturity) for the account of Buyer. If in the judgment of Seller the financial condition of Buyer does not justify continuation of production or shipment on the terms of payment originally specified, Seller may require full or partial payment in advance. In the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Seller shall be entitled, in addition to any other remedies at law or in equity, to (i) stop or divert any shipment in transit, (ii) cancel any order then outstanding and (iii) receive reimbursement for its cancellation charges.

Each shipment shall be considered a separate independent transaction, and payment therefore shall be made accordingly. If for any reason Buyer is not prepared to accept delivery of goods, Seller may store the goods at Buyer's expense and risk in the name of Buyer, and such storage shall constitute shipment and delivery to Buyer.

**6. TAXES.** Quoted prices do not include federal, state or local excise, sales, use or similar foreign tax equivalents such as VAT, GST or consumption taxes. Accordingly, in addition to the prices specified on the written quotation, the amount of any applicable taxes will appear as a separate item on the invoice and will be paid by Buyer unless prior to shipment Seller receives an appropriate tax exemption certificate from Buyer.

**7. CUSTOMER SITE ACCEPTANCE (CSA).** If Seller's quotation references CSA provisions, then Buyer agrees to accept the purchased equipment in accordance with such CSA provisions. The parties agree to give priority to achieving CSA and Buyer agrees that the purchased equipment shall not be used for material production, for development of new processes or for any purposes other than achieving CSA, prior to successful completion or waiver of the CSA provisions. Any such use of the equipment prior to completion of the CSA provisions shall be deemed to constitute the achievement of CSA. It is the responsibility of Buyer to ensure that all the required facilities are ready for successful commencement of CSA on delivery of the equipment. The parties agree that, if CSA procedures have not been commenced within 30 days after delivery, or if CSA has not been completed within 60 days after delivery (through no fault of Seller), then the equipment shall be deemed finally accepted and to have achieved CSA, and Seller shall be relieved of any remaining installation, demonstration, or other CSA obligations. Upon completion of the requisite installation and demonstration procedures (or, if applicable, upon Buyer's deemed acceptance of the equipment), Seller shall issue to Buyer a final acceptance certificate in a form to be determined by Seller, evidencing Buyer's final acceptance of the equipment and the commencement of the applicable product warranty period (see Section 13 below).

**8. FORCE MAJEURE.** Neither party shall be liable for a failure to perform occasioned by strikes, lockouts, labor difficulties, riots, inability or difficulty in obtaining or procuring supplies, labor or transportation, fires, storms, floods, earthquakes, explosions, accidents, acts of God, interference by civil or military authorities, whether legal or de facto, acts of the public enemy, war, rebellion, insurrection, sabotage, embargoes, orders given priority by any public authority or any other cause beyond the

reasonable control of such party (such occurrences "force majeure events"). The party claiming the force majeure event shall promptly notify the other party in writing of its occurrence and shall undertake appropriate remedial measures to mitigate its impact.

**9. PATENTS.** If a third party claims that the purchased equipment infringes that party's patent or copyright, Seller will defend Buyer against that claim and will pay all costs, damages and attorney's fees that a court finally awards, provided that Buyer: (a) promptly notifies Seller in writing of the claim and (b) allows Seller to control, and cooperates with Seller in, the defense and any related settlement negotiations. If such a claim is made or appears likely, Seller at its option may obtain a license to enable Buyer to continue to use the equipment, may modify the equipment or may replace the equipment with alternative equipment that is functionally equivalent. If Seller determines that none of these alternatives is reasonably available, Buyer agrees to return the equipment to Seller upon Seller's written request, in which case Seller will credit Buyer with an amount equal to the price paid for such equipment less a reasonable amount for depreciation. Seller's liability is limited to repair, replacement or adjustment as determined by Seller. Seller shall not be liable for any claim based on (i) anything Buyer provides which is incorporated into the equipment, (ii) Buyer's modification of the equipment or use thereof other than in its specified operating environment, or (iii) the combination, operation or use of the equipment with products provided by other manufacturers or other products not provided by Seller as a system. In no event will Seller's liability under this section exceed the purchase price of the respective equipment. This is the exclusive warranty of Seller with respect to intellectual property matters and is in lieu of all other warranties, express or implied.

Sale of equipment or parts does not confer on Buyer any license relating to, and Seller shall have no responsibility for (a) the structure of any devices to which the equipment or parts may be applied or (b) a process or machine in connection with which they may be used.

**10. RESCHEDULING.** If one rescheduling of the original shipment date is requested by Buyer, the charges shall be determined as follows and shall be due and payable within ten (10) days of the rescheduling request.

<b>Number of Weeks of Rescheduling Requested</b>	<b>Rescheduling Charge</b>
Up to 4 Weeks	No Charge*
5 to 12 Weeks	15% of Purchase Price
13 to 26 Weeks	35% of Purchase Price
27+ Weeks	Order considered canceled

\*No charge only applies in the event that the rescheduled date falls within the same Seller fiscal quarter. If the rescheduled date falls within the Seller's following fiscal quarter, a rescheduling charge in the amount of 15% of the purchase price shall apply.

More than one rescheduling of a shipment date by Buyer will be considered a cancellation of the order and will be subject to the terms of Section 11 below. Without limitation to Seller's rights to a greater recovery, in the event of a cancelled order, any and all deposits or down payments paid by Buyer with respect to the cancelled products shall be forfeited by Buyer and retained by Seller, without further notice or demand. Sixty-six percent (66%) of the rescheduling charge shall be applied against the cancellation charges below if the order is subsequently canceled. On any order that is rescheduled and subsequently canceled, cancellation charges will be based upon the time between the originally scheduled delivery date and the date of notice of cancellation.

**11. CANCELLATION.** In the event of cancellation by Buyer of any order, Buyer shall pay Seller, promptly upon demand, a cancellation and re-stocking charge based upon the timing of the cancellation notice as follows:

<b>Cancellation Notice Given X Days Before Confirmed Shipment Date</b>	<b>Cancellation Fee Equals the Following Percentage of Purchase Price</b>
More than 90 days	35%
61 – 90 days	50%
31 – 60 days	75%
0 – 30 days (or at any time after the original confirmed shipment date, if rescheduled)	100%

Higher cancellation charges, up to the full value of the order, may apply in the case of special, custom or modified equipment or parts. At Seller's discretion, Seller may accept the return of parts, provided that (i) Buyer first receives Seller's written authorization to return the parts and thereafter follows Seller's shipping instructions, (ii) restocking charges in the amount of twenty percent (20%) of the original purchase price may be imposed by Seller, and (iii) returns are to be in the original packaging and in the original condition when delivered to Buyer.

**12. ASSIGNMENT.** Buyer shall not assign this order or any portion thereof without the prior written consent of Seller.

**13. WARRANTY.** Seller warrants to the original Buyer that new equipment will be free of defects in material and workmanship for a period of one year commencing on the earlier of (i) final acceptance (including deemed acceptance, as applicable), or (ii) 90 days from shipping. This warranty covers the cost of parts and labor (including, where applicable, field service labor and travel required to restore the equipment to normal operation), and includes parts provided after initial shipment, if any, that may be required in order to achieve final acceptance.

Seller warrants to the original Buyer that replacement or repaired parts provided under the original warranty will be new or of equal functional quality and warranted for the remaining portion of the original warranty or 90 days from shipping, whichever is longer.

Seller warrants to the original Buyer that software will perform in substantial compliance with the written materials accompanying the software. Seller does not warrant uninterrupted or error-free operation. Software provided with the equipment remains the property of Seller or Seller's licensors, as the case may be. Unless otherwise provided in a separate written agreement between Buyer and Seller, Seller grants Buyer a non-exclusive, non-transferable right to use such software only in machine

readable form and only in combination with equipment with which such software is provided. Software shall not be decompiled, disassembled or otherwise reverse engineered, or copied in whole or in part by Buyer, and Buyer agrees not to provide, disclose or otherwise transfer any such software, or any portion of such software, to any third party. Any attempt to transfer software without Seller's prior written approval shall automatically terminate Buyer's license to use the software, and any use of such software by Buyer's intended transferee shall be without Seller's authorization. This license shall terminate when Buyer discontinues use of the software or equipment with which such software is provided.

Seller's obligation under these warranties is limited to repairing or replacing, at Seller's option, defective parts or software. These services will be performed, at Seller's option, at either Seller's facility or Buyer's business location. For repairs performed at Seller's facility, Buyer must contact Seller in advance for authorization to return equipment and must follow Seller's shipping instructions. Freight charges and shipments to Seller are Buyer's responsibility. Seller will return the equipment to Buyer at Seller's expense. All parts used in making warranty repairs will be new or of equal functional quality.

The warranty obligation of Seller shall not extend to defects that do not impair service or to provide warranty service beyond normal business hours, Monday through Friday (excluding Seller holidays). No claim will be allowed for any defect unless Seller shall have received notice of the defect within thirty days following its discovery by Buyer. No claim will be allowed for equipment damaged in shipment sold under standard terms of FCA Seller's factory, Incoterms 2010. Within thirty days of Buyer's receipt of equipment, Seller must receive notice of any defect which Buyer could have discovered by prompt inspection. Except where CSA is specified in Seller's quotation (Section 7 above), products shall be considered finally accepted 5 days following (a) installation, if Seller performs installation, or (b) shipment; unless written notice of rejection is provided to Seller within such 5-day period.

Expendable items, including, but not limited to, filters, lamps, wafer carriers, pilot lights, filaments, fuses, mechanical pump belts, V-belts, wafer transport belts, pump fluids, O-rings and seals ARE SPECIFICALLY EXCLUDED FROM THE FOREGOING WARRANTIES. Seller's sole warranty with respect to expendable items is that at the time of delivery, the form, fit and function of the expendable item shall be suitable for use with Seller's equipment. Replacement and repaired parts provided by Seller which are not covered by the original equipment warranty shall be free of defects in materials and workmanship for a period of ninety (90) days from shipping. All used equipment is sold 'AS IS, WHERE IS,' WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, with the exception of Veeco Certified Equipment, which shall be warranted for the period, if any, stated in Seller's written quotation and shall otherwise be subject to the terms of this Section 13. With the exception of manufacturing defects, regular maintenance on pumps or other components is excluded from this warranty.

Specifically excluded from this warranty is all stand-alone computer and data storage equipment not manufactured by Seller (such as computers, monitors, printers and printer buffers). Such equipment will carry only the original manufacturer's warranty, to the extent Seller is expressly permitted to convey this warranty to Buyer.

Seller assumes no liability under the above warranties for equipment or system failures resulting from (1) abuse, misuse, modification or mishandling; (2) damage due to forces external to the machine including, but not limited to, acts of God, flooding, power surges, power failures, defective electrical work, transportation, foreign equipment/attachments, or utilities or services such as gas; (3) the use of parts, expendable items, or labor not provided by Seller or authorized for use by Seller; (4) improper operation or maintenance or (5) failure to perform preventive maintenance in accordance with Seller's recommendations (including keeping an accurate log of preventive maintenance). In addition, this warranty will be voided if (a) any equipment has been relocated or modified without the written permission of Seller, (b) Buyer attempts to reverse engineer any equipment or software (or takes steps to disable any measures implemented by Seller to prevent such reverse engineering), or (c) if any Seller serial number has been removed or defaced. These warranties are for the benefit of the original Buyer only and are not transferable. No one is authorized to extend or alter these warranties on Seller's behalf without the written authorization of Seller.

THE ABOVE WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES (INCLUDING THE WARRANTY OF MERCHANTABILITY), AND OF ANY OTHER OBLIGATION ON THE PART OF SELLER. SELLER DOES NOT WARRANT THAT ANY EQUIPMENT OR SYSTEM CAN BE USED FOR ANY PARTICULAR PURPOSE OR WITH ANY PARTICULAR PROCESS OTHER THAN THAT COVERED BY THE APPLICABLE PUBLISHED SPECIFICATIONS.

**14. NO CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY.** SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL DAMAGES, FOR ANTICIPATED OR LOST PROFITS, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, LOSS OF TIME OR LOSS OF USE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCURRED BY BUYER OR ANY THIRD PARTY IN CONNECTION WITH THE EQUIPMENT OR SERVICES PROVIDED BY SELLER. IN NO EVENT WILL SELLER'S LIABILITY IN CONNECTION WITH AN ITEM OF EQUIPMENT OR A PARTICULAR SERVICE PROVIDED BY SELLER EXCEED THE AMOUNTS PAID TO SELLER BY BUYER FOR SUCH ITEM OF EQUIPMENT OR PARTICULAR SERVICE.

**15. CREDITS.** Training credits and spare parts credits, if any, shall expire one (1) year following the date of issuance. When applying credits to obtain parts, Buyer shall be responsible for all related delivery costs, including without limitation shipping, handling, clearance, tariffs and any VAT expenses. If such expenses are initially incurred by Seller, Seller may, at Seller's discretion, apply remaining credit amounts to offset such expenses.

**16. COMPLIANCE WITH LAWS.** Buyer and Seller agree to comply with applicable laws, ordinances, rules, regulations and the like of all governmental units, agencies or entities affecting the operation of its business. Buyer acknowledges that Seller's products and related technical information are subject to export control regulations of the United States and other foreign governments ("Export Control Laws"). Buyer agrees to take all steps necessary to comply with applicable Export Control Laws, U.S. anti-boycott laws and the related policies and procedures of Seller as in effect from time to time. Buyer also agrees to assist Seller in obtaining export, import and other regulatory approvals that may be necessary or appropriate in connection with the performance of the transactions hereunder.

**17. LAW AND FORUM.** The contract created hereby and any dispute or claim arising herefrom shall be governed by the laws of the State of New York notwithstanding its conflicts of laws provision. Buyer and Seller expressly reject the application of the United Nations Convention on Contracts for the International Sale of Goods. Buyer and Seller agree that the courts of the State of New York will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this contract or its subject matter or formation. Buyer waives any objection to such choice of law, jurisdiction and venue selection. Some jurisdictions do not allow the exclusion or limitation of implied warranties or liability for incidental or consequential damages, so the above limitations or

exclusions may not apply to Buyer. Seller's warranty gives Buyer specific legal rights, and Buyer may have other rights which vary from jurisdiction to jurisdiction.

**18. PRIVACY.** Buyer and Seller agree to process Personal Information it obtains from the other in compliance with the legal requirements and local laws applicable to the Personal Information. Buyer agrees to provide to Seller, or to obtain on Seller's behalf, all necessary consents required in order for Seller to process Personal Information to comply with the terms herein. Such processing may include conducting training sessions, managing orders and accounts, and conducting credit verification related activities. As used herein, "Personal Information" shall mean any information that may identify an individual and is provided to the other party in connection with the purchase and sale of equipment or services.