



**VEECO INSTRUMENTS INC. AND SUBSIDIARIES**  
**TERMS & CONDITIONS OF PURCHASE**  
(revised June 1, 2021)

**1. GENERAL.** The terms and conditions of Veeco Instruments Inc. and its subsidiaries (collectively, "Buyer") stated on this order shall govern in the event of any conflicting or additional terms proposed by Seller, and are not subject to change by reason of any written or oral statements by Buyer or by any terms stated in Seller's quotation, acknowledgment of this order, or otherwise, unless such conflicting or additional terms are accepted in a writing making reference to this order and signed by an authorized representative of Buyer. Buyer's purchase order, when accepted by Seller, will supersede all prior communications and constitute a complete and binding contract between Buyer and Seller. Shipment of goods or materials pursuant to this order shall be deemed to be an unqualified acceptance of the terms and conditions contained herein.

**2. SPECIFICATIONS.** Any specification, drawing, note, instruction, engineering notice or technical data referred to in this order shall be deemed to be incorporated herein by reference as if fully set forth herein. In case of any discrepancies or questions, Seller shall consult with Buyer for instructions and interpretations.

**3. PAYMENT TERMS.** Payment terms are net sixty (60) days from receipt of a properly documented and undisputed invoice.

**4. PRICES.** The price for the goods or materials sold hereunder shall not be higher than that appearing on the face of this purchase order, or if no price appears thereon, then no higher than the last price quoted or charged by Seller. Proposed price increases for the future sale of goods and materials must be submitted to Buyer at least ninety (90) days in advance of effective date. Seller covenants that if it should at any time prior to the delivery of the last goods covered hereby sell like articles in similar quantities to any third party at lower prices, it will notify Buyer in writing of such lower prices and Buyer will receive the full benefit of such lower prices from the date of such sale to such third party.

**5. TAXES.** Unless otherwise indicated in this order, the prices herein include all applicable federal, state and local taxes. Unless otherwise noted, any good covered hereby will become a component part of a product manufactured by Buyer and is bought for resale; as such, no retail sales or use tax is applicable. Seller agrees to accept appropriate tax exemption certificates when supplied by Buyer. If any tax included in the price hereunder is not required to be paid by Seller, Seller agrees to notify Buyer and refund the same to Buyer.

**6. INVOICES.** Seller shall issue separate invoices for each shipment against this order which shall show the quantity of goods shipped. Buyer's purchase order number, part numbers, and the U.S. government contract number, if applicable, shall appear on all invoices, packages, crates or boxes, packing slips, correspondence and other documents in connection with this order. Each container shall also indicate the quantity contained.

**7. SHIPMENT, TITLE AND DELIVERY.** Time shall be of the essence. Seller shall notify Buyer immediately of any delay or potential delay in the timely performance of this order. In the event of delay, in addition to any other rights or remedies available to Buyer, Seller shall ship products not delivered on time through expedited channels necessary to recover the maximum possible time lost, with Seller paying any extra cost. Unless otherwise agreed in writing, Seller shall not make any shipment or delivery in advance of the time specified by Buyer therefor. Shipments are required to be zero (0) days late, and no more than four (4) days early, unless otherwise approved in writing by Buyer. Receipt of goods more than four (4) days early may be subject to return to Seller, at Seller expense. Any such advance shipments shall be at Seller's risk and any resulting storage and handling costs shall be Seller's sole responsibility. All items shall be suitably packed, marked and shipped to prevent damage in accordance with good commercial practice and the requirements of the particular carrier. Seller shall be responsible for all packing or boxing charges. Unless otherwise agreed in writing by the parties, the applicable shipping terms for this order shall be FCA Seller's dock (Incoterms 2020), with title and risk of loss to the goods passing from Seller to Buyer upon placement of the goods with the Buyer-designated carrier for delivery to Buyer.

**8. ACCEPTANCE.** Final inspection and acceptance shall be made at the Buyer-designated delivery point. Goods furnished in lots are subject to rejection on the basis of sample inspection. If preliminary inspection or tests are to be made at Seller's factory, Seller shall provide Buyer with a reasonable opportunity, and requisite facilities and assistance, for the safe and convenient inspection and testing required by Buyer. Any such inspections by Buyer shall not relieve Seller of the obligation to deliver conforming goods to Buyer. Notwithstanding any prior payment by Buyer, goods failing to meet the requirements of this order may be returned by Buyer to Seller at Seller's risk and expense. In the event that nonconforming goods are delivered to Buyer, Seller shall, at Buyer's option and without limitation to Buyer's other rights and remedies, either (i) refund to Buyer all amounts paid for returned goods hereunder (plus related transportation and handling expenses), or (ii) promptly replace the nonconforming goods with fully conforming goods. If this order includes goods made to Buyer's specifications, Seller authorizes Buyer, at Buyer's discretion, to make a first piece inspection of related operations at Seller's premises. All such goods shall nevertheless be subject to final inspection and acceptance at Buyer's premises.

**9. CHANGE ORDERS.** Buyer shall have the right to make modifications to this order including, without limitation, changes to specifications, designs, delivery schedule, destination, testing or packing, without notice to any sureties or assignees of Seller. Seller shall promptly notify Buyer of anticipated changes in cost or delivery schedule,

if any, to be caused by such changes and an equitable adjustment in price or other terms hereof shall be agreed upon in a written amendment to this order to be signed by both parties.

**10. BUYER FURNISHED PROPERTY.**

(a) Any property (including without limitation tools, materials and equipment) acquired by Seller at Buyer's expense or furnished by Buyer for the performance of this order shall become and/or remain the property of Buyer. Title to such property shall not be affected by incorporation in or attachment to other property. Seller shall bear the risk of loss, destruction and damage to such property. Upon completion or termination of this order (or earlier if so requested by Buyer), Seller shall deliver such property to Buyer or follow Buyer's disposition instructions. Seller shall keep all such property free and clear of liens and other encumbrances.

(b) The purchase price of this order shall include Seller's cost of any required tools and materials. Unless otherwise agreed in writing, Buyer will not be responsible for the cost of manufacturing or procuring any tools or materials necessary for Seller's performance of this order. In the event that Buyer issues to Seller a written purchase order authorizing the manufacture or purchase of any such tools or materials (or if the purchase price of this order expressly identifies and includes such matters or items), the resulting tools or materials shall become the sole property of Buyer. Seller shall maintain a current list of such tools and materials (together with a list of any tools and materials provided by Buyer to Seller) for review by Buyer upon Buyer's request. Seller's obligations under Section 10(a) above with respect to Buyer-furnished property shall apply with equal force to tools and materials manufactured or purchased by Seller on Buyer's behalf under this Section 10(b).

**11. CANCELLATION FOR CAUSE.** Buyer's production schedules are based upon timely delivery of the goods purchased hereunder. Buyer may cancel this order, in whole or in part and without limitation to Buyer's other rights and remedies, (a) if Seller fails to provide adequate assurance of its ability or willingness to perform its obligations under this order (as provided in UCC Section 2-609) within five (5) business days after Buyer's request therefor, (b) if Seller fails to comply with any of the terms of this order, (c) if Seller fails to make deliveries as required herein, (d) if the goods delivered hereunder do not conform with the applicable specifications, (e) if Seller assigns or subcontracts all or any material part of this order without Buyer's prior written consent, or (f) if Seller suspends business or becomes insolvent or if bankruptcy, reorganization, arrangement or liquidation proceedings are commenced by or against Seller, or if a trustee or receiver for Seller's property or business is appointed, or if there is an assignment for the benefit of Seller's creditors; and, in the case of clauses (b), (c) and (d), such failure continues for five (5) business days after notice thereof to Seller. In the event of a cancellation for one of the foregoing reasons, no termination or cancellation fee shall apply, and Buyer's maximum potential liability shall be limited to the purchase price of goods delivered and accepted prior to such cancellation.

**12. CANCELLATION FOR BUYER'S CONVENIENCE.** Buyer may cancel this order, in whole or in part, any time for its convenience upon written notice to Seller. In the event of a cancellation for Buyer's convenience, Buyer shall pay to Seller, as Buyer's sole obligation and as Seller's exclusive remedy, (a) the purchase price of goods delivered and accepted prior to such cancellation (for which payment was not previously made by Buyer), and (b) Seller's actual costs of materials and direct labor reasonably and necessarily incurred by Seller in anticipation of its fulfillment of this order, which are not recoverable and are properly documented by Seller, provided that no allowance shall be made to Seller for any overhead or anticipated profit associated with undelivered goods.

**13. ASSIGNMENT.** This order may not be assigned or subcontracted in whole or in part by Seller without Buyer's prior written consent. If Buyer shall consent to such assignment or subcontracting, all claims for monies due from Buyer shall nevertheless be subject to deduction by Buyer for any offset or counterclaim arising out of this order or any other of Buyer's contracts with Seller, whether such offset or counterclaim arose before or after any such assignment or subcontracting by Seller.

**14. WARRANTY.** All goods sold and delivered by Seller to Buyer shall be in full conformity with Buyer's specifications set forth or referred to on the face of this order (including any related blueprints, drawings, samples or other descriptions furnished by Buyer) or which have otherwise been agreed upon in writing by the parties. If no specifications have been identified or agreed upon, the goods shall be in full conformity with Seller's published specifications and samples provided to Buyer. In addition, all goods shall be new, merchantable, fit and sufficient for the use intended by Buyer (if known to Seller) and will be of good quality and workmanship and free from defects. These warranties shall survive acceptance and payment and shall run to Buyer, its successors, assigns and affiliates and the customers, users and purchasers of the goods ordered herein, and shall not be deemed to be exclusive. These warranties shall continue for a period of no less than eighteen (18) months following acceptance of the goods by Buyer. Seller will, at Buyer's option and without limitation to Buyer's other rights and remedies, promptly (in particular, within five (5) business days unless otherwise agreed by Buyer) repair, replace or provide a refund with respect to any nonconforming goods. This warranty includes parts, labor and, where applicable, travel time and expenses to repair or replace nonconforming goods at Buyer's facility. Seller will pay freight and handling charges on any goods returned to Seller due to nonconformity.

**15. INTELLECTUAL PROPERTY RIGHTS & INFRINGEMENT.**

(a) Seller acknowledges and agrees that any and all intellectual property rights newly developed or otherwise created in connection with the performance of this order shall fully and exclusively vest in Buyer upon the creation of the same. Seller assigns and transfers to Buyer, and shall ensure that its employees assign and transfer to Buyer, all rights, title and interests in and to any such intellectual property rights. Without prejudice to the generality of the foregoing, all copyright and patent rights in and to or otherwise associated with the intellectual property rights (including but not limited to the rights of transfer, sale, modification, sub-leasing and licensing) shall automatically vest in, and be assigned and transferred to, Buyer.

(b) Seller represents and warrants to Buyer that it has all necessary rights, licenses and other authorizations necessary to fully perform this order and to convey the goods to Buyer. If a third party claims that any purchased good infringes a third party patent, copyright or other intellectual property rights, Seller will defend Buyer, its successors, assigns, affiliates and customers, against that claim and will pay all costs, damages, awards, attorney fees and other liabilities which may be incurred as a result of any claim involving infringement of any U.S. or foreign intellectual property right in the design, manufacture, use or sale of any good or material supplied hereunder, provided that Buyer: (a) 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 will (i) obtain a license to enable Buyer to continue to use the good without restriction or limitation, (ii) modify the good so that it becomes non-infringing in a manner acceptable to Buyer, or (iii) replace the good with a non-infringing product that is functionally equivalent and acceptable to Buyer. Seller shall not be liable with respect to custom goods manufactured to Buyer's detailed design where such design is the sole cause and basis of the infringement claim.

**16. INDEMNITY; INSURANCE.** Seller shall indemnify Buyer, its successors, assigns, affiliates and customers, against any and all claims, liabilities, losses, and expenses, including attorneys' fees and court costs, arising from any breach by Seller of its obligations under this order, or resulting from Seller's provision of defective goods hereunder. Seller shall maintain appropriate insurance coverages in reasonable amounts to protect Buyer, its successors, assigns, affiliates and customers, from such risks, proof of which shall be made available to Buyer upon Buyer's request. The foregoing indemnity shall not be limited in any way by any amount or type of damages, compensation or benefits payable under any applicable insurance policy or workers' compensation, disability benefits or other similar employee benefits act.

**17. CONFIDENTIALITY.** Seller agrees to treat as confidential all specifications, drawings, blueprints, nomenclature, samples and models and other non-public information supplied by Buyer or learned about Buyer or its business in the course of negotiation and performance of this order (collectively, "Buyer Confidential Information"). Seller shall not advertise, publish or disclose any statement mentioning Buyer or the fact that Seller furnished or contracted to furnish Buyer goods addressed in this order, without Buyer's prior written consent. Seller shall not disclose any Buyer Confidential Information to any person other than Seller's employees who have a need to know and who shall be bound by confidentiality obligations no less restrictive than those set forth herein (and with the understanding that Seller shall be responsible for any breach of these confidentiality obligations by its employees). Buyer Confidential Information shall be used exclusively in the production of goods required by this order for Buyer, and shall not be used for the manufacture, production or design of any item for any third party. In the event Seller is in receipt of a subpoena or is otherwise required by law to divulge Buyer Confidential Information, Seller shall immediately notify Buyer in writing and shall cooperate in efforts by Buyer to limit the resulting disclosure. Seller shall return to Buyer any and all documents containing and any physical embodiments of Buyer Confidential Information promptly following completion of this order or any request by Buyer therefor. These confidentiality provisions shall apply at all times during the performance of this order and shall survive for an indefinite period thereafter, until the Buyer Confidential Information is no longer non-public (through no fault of Seller or its employees, agents or representatives). In the event that Buyer and Seller have entered a separate non-disclosure (or similar) agreement addressing the parties' respective confidentiality obligations, the more restrictive provisions shall govern and apply.

**18. FORCE MAJEURE.** Neither party shall be responsible for a failure to timely perform its obligations hereunder where such failure is due to an act of God, war, compliance with laws, governmental acts or regulations, fire, flood, quarantine, embargo, epidemic, unusually severe weather or other causes similar to the foregoing which are beyond their reasonable control, but with the understanding that (i) the party seeking to avail itself of any of the foregoing excuses shall promptly notify the other party in writing and shall exert its best efforts to avoid further delay, and (ii) Buyer may cancel this order at its discretion and without liability if such conditions prevent performance by Seller for a period greater than 30 days.

**19. COMPLIANCE WITH LAWS AND STANDARDS.**

(a) Seller agrees to comply with all applicable laws and regulations. Seller agrees to hold Buyer, its successors, assigns, affiliates and customers, harmless from, and to indemnify these parties with respect to, any and all liability resulting from Seller's failure to satisfy these compliance requirements. Without limitation, Seller warrants that the goods will be produced in compliance with applicable requirements of the Fair Labor Standards Act of 1938, as amended, and regulations and orders of the U.S. Department of Labor. Seller agrees and warrants that it shall comply with all applicable export control laws and regulations and it will not export or re-export, directly or indirectly, any information, goods, software and/or technology to any country for which the United States or any other country, at the time of export or re-export, requires an export license or other governmental approval, without first obtaining such license or approval. Seller agrees to inform Buyer in writing whether the supplied information, goods, software and/or technology is U.S. controlled and/or controlled under the export control laws of its own country, and if so, Seller will inform Buyer regarding the extent of the restrictions (including without limitation export control legal jurisdiction, export control classification numbers, export control licenses and/or CCATS as applicable). Seller shall obtain all export licenses and similar permits required under applicable export control laws and regulations and shall provide Buyer with all information required to enable Buyer and its customers to comply with such laws and regulations. Seller represents and warrants that Seller is not designated on, or associated with any party designated on, any U.S. government restricted parties list, including without limitation the U.S. Commerce Department Bureau of Industry and Security Denied Persons List. Seller agrees to notify Buyer promptly of Seller's receipt of any notice of violation of any export control related law, rule or regulation, which may affect Buyer.

(b) Seller agrees, on behalf of itself, its employees, its suppliers, its permitted subcontractors, and its other agents and representatives, to fully comply with the terms and requirements of Buyer's Supplier Code of Conduct, a current version of which is located on Buyer's corporate website, [www.veeco.com](http://www.veeco.com).

**20. APPLICABLE LAW AND FORUM.** This order shall be governed by and construed in accordance with the substantive laws of the State of New York (USA) without regard to the choice of law provisions thereof. Exclusive jurisdiction and venue for adjudication of any dispute relating to or arising from this order or the relationship of the parties created hereby shall lie in the courts located Nassau County, State of New York. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this order.

**21. INDEPENDENT CONTRACTOR.** Nothing in this order shall be considered to create the relationship of employer and employee between Buyer and Seller (or between Buyer and any employee of Seller) and Seller shall be deemed at all times to be an independent contractor. Neither party is authorized to act for or on the behalf of the other party under this order and no principal/agent relationship shall be created by virtue of this order.

**22. GOVERNMENT CONTRACTS.** Buyer is a prime or subcontractor on various United States Government contracts and is required to flow down to its subcontractors certain government requirements. Accordingly, if this is a subcontract for the United States Government, applicable clauses found in the Federal Acquisition Regulation ("FAR") and the Department of Defense FAR Supplement ("DFARS"), as may be revised from time to time, are incorporated herein by reference with the same force and effect as if fully stated herein. To the extent required by the applicable FAR and DFARS clauses, Seller agrees to flow down to its lower-tier subcontractors the requirements set forth in these clauses. Where necessary to flow-down Buyer's requirements to Seller in applicable FAR and DFARS clauses, the term "Contractor" or "Prime Contractor" shall mean "Seller"; the term "Government" shall mean "Buyer"; the term "Contracting Officer" shall mean Buyer's purchasing representative; and the term "Contract" or "Schedule" shall mean this order.

**23. MISCELLANEOUS.** Seller shall not use Buyer's name, trademarks, logos or other identifiers without Buyer's prior written permission. The failure in a particular instance of either party to insist upon the performance of any of the provisions of this order shall not be construed as a waiver or relinquishment of the future performance of such provision and shall not prejudice the right of such party to enforce such provision at a later time. The invalidity in whole or in part of any provision of this order shall not affect the validity of any other parts hereof. Except where otherwise expressly provided in this order, the remedies expressed herein shall be cumulative and in addition to other remedies at law or in equity. In no event shall Buyer be liable for any consequential, exemplary, punitive, special, or incidental damages, even if Buyer has been advised of the possibility of such damages.