

TERMS AND CONDITIONS

DICKEY-john SHALL HEREINAFTER BE REFERRED TO AS "SELLER"

1. **PAYMENT; DELIVERY.** Unless otherwise agreed, payment is due in U.S. Dollars within 30 days of the date of shipment. Charges for services are due upon receipt of invoice. Interest in the maximum amount permitted by law may be charged on past due invoices. Buyer shall reimburse Seller for all costs and expenses incurred in the collection of amounts past due, including attorneys' fees. All quoted delivery dates are approximate and shall commence when Seller has acknowledged receipt of documents required to effect shipment. Seller may require payment in advance if it believes the financial condition of Buyer does not justify shipment, or subsequent deliveries, on the payment terms originally specified. If the Buyer becomes bankrupt or insolvent, or a proceeding is brought by or against Buyer under such laws, Seller may cancel any outstanding order, and Buyer shall reimburse Seller for its cancellation charges. Seller reserves the right to ship and to make collection by sight draft.

2. **RISK OF LOSS; TITLE.** Unless otherwise agreed, the risk of loss passes to Buyer when the goods are delivered to the carrier. Where the risk of loss has passed to Buyer, or where Buyer has selected the method of shipment or delivery, Buyer must obtain redress for freight losses, shortages or damages from the carrier or its insurer. Seller is not responsible for any such losses. Notwithstanding any provision of INCOTERMS or contained herein, equitable title and accession to the goods shall, where permitted by law, remain with Seller until Buyer is paid in full. This shall be the case even if legal title to the goods shall be deemed by law to have passed to Buyer at the time of delivery and prior to performance of all of Buyer's obligations. Buyer shall grant, and by acceptance of the goods is deemed to have granted, to Seller a first security interest in all goods to secure payment of amounts owed by Buyer. Buyer agrees to execute a financing statement at Seller's request. Seller may reclaim any goods delivered or in transit if Buyer fails to make payment when due.

3. **SHIPMENT.** Unless otherwise agreed, prices are ExWorks Seller's factory (Reference INCOTERMS 2010) and any charges Seller may be required to pay or collect on the sale, purchase, delivery, storage, use or transportation of the goods shall be paid by Buyer. Method of shipment or delivery will be at Seller's discretion unless otherwise agreed.

4. **TAXES; RE-EXPORT.** Any government tax, fee, duty or charge on the sale, purchase, delivery or use of the goods and/or services sold hereunder shall be paid by Buyer, in addition to the purchase price, unless otherwise agreed. Certain goods are subject to international export control regulations. Buyer shall be responsible for compliance with all regulations related to the export of goods to end-users.

5. **LIMITATION OF WARRANTY AND LIABILITY.** Seller warrants the goods, excluding software, sold hereunder, under normal use and service as described in the operator's manual, to be free from defects in workmanship and material for **12 months**, or if less, the length of time specified in the operator's manual, from the date of shipment to the customer. This warranty period is inclusive of any statutory warranty. **This limited warranty is subject to the following exclusions and exceptions:**

a. Hot-wire or hot-film sensors used with research anemometers, and certain other components when indicated in specifications, are warranted for 90 days from the date of shipment; b. Pumps are warranted for hours of operation as set forth in product or operator's manuals; c. Parts repaired or replaced as a result of repair services are warranted to be free from defects in workmanship and material, under normal use, for 90 days from the date of shipment; d. Seller does not provide any warranty on finished goods manufactured by others or on any fuses, batteries or other consumable materials. Only the original manufacturer's warranty applies; e. This warranty does not cover calibration requirements, and seller warrants only that the instrument or product is properly calibrated at the time of its manufacture. Instruments returned for calibration are not covered by this warranty; f. This warranty is **VOID** if the instrument is opened by anyone other than a factory authorized service center with the one exception where requirements set forth in the manual allow an operator to replace consumables or perform recommended cleaning; g. This warranty is **VOID** if the product has been misused, neglected, subjected to accidental or intentional damage, or is not properly installed, maintained, or cleaned according to the requirements of the manual. Unless specifically authorized in a separate writing by Seller, Seller makes no warranty with respect to, and shall have no liability in connection with, goods which are incorporated into other products or equipment, or which are modified by any person other than Seller. The foregoing is **IN LIEU OF** all other warranties and is subject to the **LIMITATIONS** stated herein. **NO OTHER EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. WITH RESPECT TO SELLER'S BREACH OF THE IMPLIED WARRANTY AGAINST INFRINGEMENT, SAID WARRANTY IS LIMITED TO CLAIMS OF DIRECT INFRINGEMENT AND EXCLUDES CLAIMS OF CONTRIBUTORY OR INDUCED INFRINGEMENTS. BUYER'S EXCLUSIVE REMEDY SHALL BE THE RETURN OF THE PURCHASE PRICE DISCOUNTED FOR REASONABLE WEAR AND TEAR OR AT SELLER'S OPTION REPLACEMENT OF THE GOODS WITH NON-INFRINGEMENT GOODS.**

TO THE EXTENT PERMITTED BY LAW, THE EXCLUSIVE REMEDY OF THE USER OR BUYER, AND THE LIMIT OF SELLER'S LIABILITY FOR ANY AND ALL LOSSES, INJURIES, OR DAMAGES CONCERNING THE GOODS (INCLUDING CLAIMS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE) SHALL BE THE RETURN OF GOODS TO SELLER AND THE REFUND OF THE PURCHASE PRICE, OR, AT THE OPTION OF SELLER, THE REPAIR OR REPLACEMENT OF THE GOODS. IN THE CASE OF SOFTWARE, SELLER WILL REPAIR OR REPLACE DEFECTIVE SOFTWARE OR IF UNABLE TO DO SO, WILL REFUND THE PURCHASE PRICE OF THE SOFTWARE. **IN NO EVENT SHALL SELLER BE LIABLE FOR LOST PROFITS, BUSINESS INTERRUPTION, OR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES.** SELLER SHALL NOT BE RESPONSIBLE FOR INSTALLATION, DISMANTLING OR REINSTALLATION COSTS OR CHARGES. No Action, regardless of form, may be brought against Seller more than 12 months after a cause of action has accrued. The goods returned under warranty to Seller's factory shall be at Buyer's risk of loss, and will be returned, if at all, at Seller's risk of loss.

Buyer and all users are deemed to have accepted this LIMITATION OF WARRANTY AND LIABILITY, which contains the complete and exclusive limited warranty of Seller. This LIMITATION OF WARRANTY AND LIABILITY may not be amended, modified or its terms waived, except by writing signed by an Officer of Seller.

6. **INSPECTION; ACCEPTANCE.** Buyer shall inspect goods delivered or repairs performed within 15 business days from the date of receipt of the goods or completion of the repairs. Within that time Buyer shall send Seller a written notice specifying any respects in which the goods or repairs are nonconforming. Failure to send a written notice shall constitute a waiver of Buyer's claims for any nonconformity that an inspection, whether or not in fact carried out, should have discovered. Buyer is deemed to have accepted delivered goods on terms set forth herein, unless within 15 business days of receipt of the goods Buyer sends a written notice of rejection that provides detailed grounds for rejection. No order may be canceled or altered by Buyer except on terms and conditions accepted in writing by the Seller. Seller may impose reasonable cancellation charges. Goods may not be returned for credit unless pre-approved in writing by Seller. A restocking charge will be applied.

7. **CAUSES BEYOND SELLER'S CONTROL.** Seller shall not be liable for any damage, loss or expense suffered by Buyer as a result of any delay or nonperformance, when the delay or nonperformance is, directly or indirectly, caused by or arises from fires, floods, accidents, riots, acts of God, war, governmental interference, embargoes, strikes, labor difficulties, shortage of labor or materials, transportation delays, acts by third parties, acts by Buyer, delay by Seller's suppliers or contractors or any other causes beyond the reasonable control of the Seller.

8. **BUYER'S SPECIFICATIONS AND USE OF GOODS.** If the goods sold are manufactured to Buyer's specifications, or if the goods are used in conjunction with products not supplied by Seller, then Buyer shall indemnify and hold Seller harmless from and against any suits, claims, losses, expenses, and other liabilities including costs and attorneys' fees, whether for loss, personal injury, infringement or otherwise, which result from Buyer's specifications or use of product not furnished by Seller. Product or equipment furnished to Seller by Buyer shall be at Buyer's sole risk and expense. Unless agreed in writing by Seller, any tools, dies, or materials used in producing goods to Buyer's specifications shall remain Seller's property.

9. **EXPRESS INDEMNIFICATION.** During the life of goods sold, Buyer agrees to use its best efforts to ensure that all safety and product information provided by Seller is provided to all users (customers, employees, and independent contractors.) This may include warning labels, instruction manuals, and training users in the safe installation, use and maintenance of the goods. Buyer agrees to defend, protect, indemnify and hold Seller harmless from and against all claims, losses, expenses, damages and liabilities to the extent caused by Buyer's negligence, including Buyer's failure to comply with the aforementioned safety obligations.

10. **DESIGN OR MANUFACTURE CHANGES.** Seller in its sole discretion may change the design or manufacture of any of its goods without incurring any obligation to incorporate such changes into goods manufactured for or delivered to Buyer prior to such changes.

11. **SOFTWARE.** If the goods sold incorporate software or firmware containing software, Buyer is granted only a nonexclusive and nontransferable license to use one copy of the software originally installed in or supplied with the goods. Buyer acknowledges and agrees that the software is proprietary and constitutes a trade secret, copyright or patent of the Seller. The Buyer shall acquire no title or rights of ownership in the software nor have the right to copy (except for backup), modify, reverse engineer or compile, license others, transfer or disclose to any third party, all or part of the software. Software is provided and sold "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING, BUT NOT LIMITED TO WARRANTIES OF INSTALLATION, USE OR PERFORMANCE, AND IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Notwithstanding the foregoing, Seller will replace any defective disc within 90 days from the date of original shipment.

12. **SOLE AND EXCLUSIVE TERMS OF SALE.** Except as otherwise agreed to in writing by Seller as to each paragraph herein, Buyer agrees that this document contains the sole and exclusive terms and conditions which shall apply to the sale of the goods and/or services sold hereunder. Any additional or different terms in documents provided by Buyer in any transaction paperwork or otherwise shall not apply and are hereby expressly objected to by Seller.

13. **ARBITRATION.** Seller may bring an action for nonpayment, infringement, or equitable relief before any judicial court of competent jurisdiction without need for arbitration. Any other claim or dispute arising out of or concerning the transaction evidenced hereby shall be settled by binding arbitration in Minneapolis, MN, under the Commercial Rules and procedures of the American Arbitration Association in effect at the time of the dispute. The arbitration panel shall be comprised of one person. The language of the arbitration shall be English. The award shall be enforceable in any court having jurisdiction.

14. **GOVERNING LAW.** This document, the transactions evidenced hereby and any dispute that arises shall be governed by the laws of the State of Minnesota, U.S.A., without regard to principles of conflicts of laws. The rights and obligations of the parties hereunder shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Buyer irrevocably consents to the jurisdiction of the State and Federal Courts in Minnesota.

15. **MISCELLANEOUS.** This document is not an acceptance of any offer. All orders are subject to acceptance by Seller. Any action arising hereunder, or concerning the transactions evidenced hereby, in contract, in tort, or otherwise, other than an action for failure to pay, must be commenced within 12 months of the date the cause of action accrues. Seller may correct any errors in the typed portion of this document at any time.