

Terms and Conditions of Sale

WIKA Instrument, LP



I. GENERAL

These terms and conditions apply to purchases from WIKA Instrument, LP ("Seller") on all orders for products and/or services.

- A. Buyer purchase orders are not binding until confirmed by written acceptance by Seller. Oral orders are not accepted.
- B. Prices are based on these terms and conditions of sales and are effective from date of publication, and subject to change without notice.
- C. Seller reserves the right, without prior notice, to:
 - 1. Change and/or revoke any price.
 - 2. Change and/or evoke any provisions contained herein.
 - 3. Discontinue shipments to buyer.
 - 4. Resolve any inconsistencies, conflicts or ambiguities.
- D. Special production runs or product orders are subject to Seller requirements such as, but not limited to, minimum quantities and extended delivery times. On special production run products, Seller reserves the right to over ship 10% or under ship 5% of the purchase order quantity and invoice accordingly. Special orders are subject to reasonable cancellation charges.

II. PAYMENT TERMS AND SALES TAX

- A. If Buyer has previously established credit terms: Net 30 days from shipment date.
- B. If credit is not established, payment plus estimated (by Seller) freight charges shall accompany purchase order.
- C. Cash or anticipation discounts are not permitted.
- D. Seller reserves the right to revoke any credit extended to Buyer if Buyer fails to pay for any shipments when due. If, in Seller's opinion, there is any adverse change in Buyer's financial condition, Seller shall have the right to suspend further shipments until receipt of adequate assurance of Buyer's ability to pay therefore.
- E. Payment terms are specified on the invoice. Any invoice not paid when due is subject to a late payment charge of 1.5% per month, or if such rate is greater than the maximum rate permitted by applicable law, then at the highest rate allowed by applicable law. In the event the Buyer fails to make full payment when due and Seller employs an attorney or collection agency to assist in collection of the account, Buyer agrees to pay all of Seller's reasonable cost of collection, including collection agency fees and court costs.
- F. Unless otherwise stated, prices do not include sales, use, excise, and similar taxes applicable to either the products or the materials used in the manufacture of products or services. All such taxes and charges shall be shown separately on Seller's invoices.

III. TRANSPORTATION

- A. All shipments are Ex Works, (Incoterms 2010), Seller's loading dock, except as expressly provided below.
- B. Each shipment is deemed accepted in good condition by the common carrier and title and all risk of loss or damage pass to Buyer upon that acceptance by the carrier. Buyer is responsible for inspecting the merchandise upon receipt. Buyer shall insist that visible damage be noted on its copy of the freight bill. If the product has been lost or damaged in transit, Buyer must file the claim with the carrier, as Seller bears no responsibility for any such loss or damage.
- C. Freight, handling and insurance charges:
 - 1. Prepaid Shipments: All freight, handling and insurance charges shall be invoiced to Buyer.
 - 2. Collect Shipments via UPS or FedEx: All freight and handling charges shall be billed to the collect account number provided. Collect shipments are NOT insured. Buyer must request coverage if required and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of Buyer. Seller assumes no responsibility for any such loss or damage.
 - 3. Truck Shipments: All freight, handling and insurance charges shall be billed to the account number provided. Truck shipments are NOT insured. Buyer must request insurance coverage, if required, and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of the Buyer. Seller assumes no responsibility for any such loss or damage.
- D. All shipments are made by carriers of Seller's choice. Any special arrangements requested by Buyer shall be at Buyer's additional expense.
- E. Buyer shall report any quantity shortages, incorrect items, or billing errors in writing to the Seller within fifteen (15) days of delivery. Sales order and invoice numbers are to be furnished on all claims.
- F. Seller reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of Buyer's obligation to accept remaining deliveries.
- G. Seller shall not be liable for failure to deliver or delay in delivery occasioned by causes beyond Seller's control, including without limitation, strikes, lockouts, fires, embargoes, terrorist attacks, war or other breakouts of hostilities, acts of God, inability to obtain shipping, space, machinery breakdowns, delays of carriers or suppliers, and domestic or foreign governmental acts or regulations. In the event of any delay in delivery due to such causes, unless otherwise agreed, the time for delivery shall be deemed extended for a period of sixty (60) days, and Buyer shall extend the letter of credit if payment is to be made by letter of credit. If delivery is not made within such extended sixty-day period, the contract shall be deemed cancelled without liability to either party. In no event shall Buyer be entitled to incidental or consequential damages for late performance or a failure to perform.

IV. RETURNS

No return shall be accepted without a Seller-furnished Return Material Authorization number (RMA#). Please reference the Seller Return Material Authorization (RMA) Policy for Seller Products.

V. LIMITED WARRANTIES

- A. Seller warrants that Seller's products, when shipped, will meet Seller's published specifications and that Seller's work (including services and installation) will be performed in a workmanlike manner. All claims under this warranty must be made in writing immediately upon discovery and except as noted below, within one (1) year from invoice date. All claims for services and/or installation must be made in writing immediately upon discovery and within eighteen (18)

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months after completion of applicable work by Seller. Any product which is determined by Seller to be defective and returned to Seller freight collect at Seller's expense shall be, as Buyer's sole and exclusive remedy, repaired, replaced or credited, at Seller's option.

- B. Seller warrants certain designated bimetal thermometers (Models 30, 31, 32, 50, 51, and 52) and differential pressure gauges (700.04, 700.05, 732.25, and 732.26) manufactured and sold by Seller to be free from defects in material and workmanship under normal use and service for a period of seven (7) years from invoice date.
- C. Seller warrants all XSEL™ Process Gauges (Models 2XX.34) against defects in material and workmanship under normal use and service for five (5) years after date of invoice from Seller unless otherwise stated. XSEL™ Process Gauges (Models 2XX.34) are further warranted against pressure system leakage due to defects in workmanship or materials, for a period of ten (10) years after date of invoice from Seller unless otherwise stated, provided use is in accordance with the guidelines prescribed in pressure gauge standard ASME B40.100-2013.
- D. Seller warrants all electronic pressure products (TRONIC) against defects in workmanship or materials under normal use for two (2) years after date of invoice from Seller, unless otherwise stated.
- E. Seller warrants all flow products manufactured and sold by Seller to be free from defects for a period of one (1) year from the date of installation (but in no event longer than eighteen (18) months after date of notification of readiness for shipment. Seller will either repair or replace, at its option, such defective products. Normal erosion, corrosion due to use, or any damage caused by improper handling during transit, storage, or installation, are not covered by this warranty. In order to make a claim under this warranty, the Buyer shall, at its own cost and expense, return the defective products to Seller.
- F. THE FOREGOING LIMITED WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER, AND SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT, ANY OTHER LIABILITY IN CONNECTION WITH THE SALE HEREUNDER. SELLER DISCLAIMS ANY LIABILITY FOR PRODUCT DEFECTS THAT ARE DUE TO PRODUCT MISUSE, IMPROPER USE, DAMAGE, IMPROPER PRODUCT SELECTION OR MISAPPLICATION.

VI. INTELLECTUAL PROPERTY LIABILITY

Seller reserves all rights in all Seller intellectual property, including without limitation offer documents, in particular illustrations, drawings, calculations, brochures, catalogs, models, samples, and tools. Such documents must not be made available to third parties without written consent from Seller. Buyer, upon Seller's request, will return all offer documents that are no longer necessary in the ordinary course of business. For orders according to Buyer specifications, Buyer is liable for third-party rights or property rights and indemnifies Seller against such claims.

Seller agrees to indemnify, defend and hold harmless Buyer against any claims, suits, actions or proceedings claiming the infringement of intellectual property rights by any Seller designed product. Seller agrees to either pay for costs of such defense, including legal fees, provide a non-infringing replacement, or refund to Buyer the amount that Buyer paid Seller for the infringing product. .

VII. LIMITATION OF LIABILITY

UNLESS APPLICABLE LAW OTHERWISE REQUIRES, SELLER'S AND ANY OF IT'S VENDOR'S TOTAL LIABILITY TO BUYER, BUYER'S CUSTOMERS OR TO ANY OTHER PERSON, RELATING TO ANY PURCHASES GOVERNED BY THESE TERMS & CONDITIONS, FROM THE USE OF THE PRODUCTS FURNISHED OR SERVICES RENDERED OR FROM ANY ADVICE, INFORMATION OR ASSISTANCE PROVIDED BY SELLER (BY ANY METHOD, INCLUDING A WEBSITE), IS LIMITED TO THE PRICE OF THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM, WHICH AMOUNT SHALL BE FIXED AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, AND SHALL BE THE COMPLETE AND EXCLUSIVE REMEDY AGAINST THE SELLER. BUYER'S FAILURE TO TIMELY SUBMIT A CLAIM HEREUNDER SHALL WAIVE ALL CLAIMS FOR DAMAGES OR OTHER RELIEF INCLUDING BUT NOT LIMITED TO CLAIMS BASED ON LATENT DEFECTS. NEITHER SELLER NOR ITS VENDORS SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, CONSEQUENTIAL OR PENAL DAMAGES (INCLUDING, BUT NOT LIMITED TO BACK-CHARGES, LABOR COSTS, COSTS OF REMOVAL, REPLACEMENT, TESTING OR INSTALLATION, LOSS OF EFFICIENCY, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED PRODUCTS, DAMAGE TO ASSOCIATED PRODUCTS, LATENESS OR DELAYS IN DELIVERY, UNAVAILABILITY OF PRODUCTS, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME, OR CLAIMS FROM BUYER'S CUSTOMERS OR OTHER PARTIES). IF SELLER FURNISHES BUYER WITH ADVICE OR OTHER ASSISTANCE WHICH CONCERNS ANY PRODUCTS SUPPLIED HEREUNDER, OR ANY SYSTEM OR EQUIPMENT IN WHICH ANY SUCH PRODUCTS MAY BE INSTALLED, , THE FURNISHING OF SUCH ADVICE OR ASSISTANCE IS GRATUITIOUS AND WILL NOT SUBJECT SELLER TO ANY LIABILITY, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHER GROUNDS.

VIII. CANCELLATION CHARGES

Seller may impose cancellation charges equal to the cost of raw materials purchased by Seller and labor and materials costs incurred (and not otherwise mitigated), dedicated to manufacturing Products prior to the date of Buyer's cancellation notice. A 25% cancellation fee will be assessed if engineering calculations and drawings (if needed) are completed prior to the date of Buyer's cancellation notice.

IX. ARBITRATION; CONTROLLING LAW; JURISDICTION AND VENUE

- A. Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in Atlanta, Georgia, USA. The arbitrator shall apply the laws of the State of Georgia, to all issues in dispute. The controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- B. This Agreement shall be governed, controlled, interpreted and defined by and under the laws of the State of Georgia without regard to conflicts of law provisions thereof.

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- C. The parties agree that the courts of Fulton County in the State of Georgia, and the U.S. District Court for the Northern District of Georgia, Atlanta Division shall be the exclusive jurisdiction and venue for all legal proceedings that are not arbitrated under these Terms and Conditions and RMA Policy.

X. ASSIGNMENT

An order shall not be assigned by either party without the express written consent of the other. Consent will not be required, however, for internal transfers and assignments as between either party and its affiliates under common ownership, and nothing herein shall limit either party's right to factor or sell receivables.

XI. TERMINATION

Either party may terminate the whole or any part of the other party's performance under a purchase order if there is a material breach of these Terms & Conditions and RMA Policy. In the event of any such breach, the non-breaching party will provide the breaching party with written notice of the nature of the breach and the non-breaching party's intention to terminate for default. In the event the breaching party does not cure such failure within ten (10) days of such notice, the non-breaching party may, by written notice, terminate the order; provided, that the breaching party shall continue its performance to the extent not terminated.

XII. EXPORT COMPLIANCE

Buyer acknowledges that the Product is subject to U.S. export control laws, rules and regulations including, but not limited to: The Export Administration Act of 1979 (50 U.S.C. § 2401 et seq., as extended by Executive Order 13222); The Arms Export Control Act of 1976 (22 U.S.C. § 2751 et seq.); The Export Administration Regulations (15 C.F.R. § 730 et seq.); The International Traffic in Arms Regulations (22 C.F.R. § 120 et seq.); and The International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.). Buyer shall comply with all applicable export control and trade embargo laws, rules and regulations and shall not resell, export, re-export, distribute, transfer or dispose of the Product, directly or indirectly, without first obtaining all necessary written consents, permits and authorizations and completing such formalities as may be required by any such laws, rules and regulations. Buyer acknowledges that any diversion of these commodities contrary to the aforementioned laws, rules and regulations is prohibited. Failure by Buyer to comply with all applicable export control and trade embargo laws, rules and regulations shall constitute a material breach of these Terms and Conditions of Sale. Seller assumes no responsibility or liability for Buyer's failure to obtain required authorizations. Buyer agrees to impose this same compliance requirement in its contracts with third parties pertaining to the Product.

XIII. MISCELLANEOUS

These Terms and Conditions and RMA Policy constitute the entire understanding of the parties with respect to the subject matter of this agreement and merges all prior communications, understandings, and agreements. These Terms and Conditions and RMA Policy may be modified only by a written agreement signed by the parties. Seller objects to and rejects any terms between Buyer and any other party, and no such terms, including but not limited to any government regulations or "flow-down" terms, shall be a part of or incorporated into any order from Buyer to Seller, unless agreed to in writing by an authorized representative of Seller.

The failure of either party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party thereafter to enforce any provision hereof. If any provision of These Terms and Conditions and RMA Policy are declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of these Terms and Conditions and RMA Policy, and these terms shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

WARNING: Seller's Products may contain chemicals known to the State of California to cause cancer and/or reproductive harm.

Return Material Authorization (RMA) Policy

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IF YOU HAVE A REQUEST FOR A MERCHANDISE RETURN, PLEASE CALL 1-888-WIKAUSA OR YOUR ACCOUNT MANAGER TO EXPEDITE YOUR RMA CREDIT OR RETURN.

For products purchased at WIKA Instrument, LP ("Seller") Lawrenceville facility, Seller will issue a credit and/or initiate a product replacement resolution within 24 hours.

Seller may require a product be returned for evaluation to make improvements in design and manufacturing processes. If a return is necessary, a shipping label and decontamination certificate will be emailed within 24 hours.

As part of the evaluation, the product may be disassembled and not re-assembled to the condition in which it was sent to Seller, rendering the product unusable. If the root cause is due to Seller, the product will be replaced.

An RMA number is valid for forty-five (45) days from issuance.

Merchandise returned to Seller for any reason must have a Seller supplied Return Material Authorization (RMA) number. Warranty returns should contain a proof of purchase (invoice number and date). All returns require the original purchase order number. If the original purchase order number is not available, a new purchase order number is acceptable for credit and rebilling.

Please use the RMA number and shipping label provided and insure the RMA number is clearly visible on the outside of the package to improve processing time. A packing list should be included referencing the RMA number, quantity, product description and reason for return.

If a failure analysis is required, a Corrective Action Report (CAR) must be requested when the RMA is issued and detailed information must be provided about the application including the type of media, and operating conditions.

I. WARRANTY RETURNS

(See Limited Warranty Policy in Terms and Conditions.) Seller's shipping account information will be on the RMA. Upon receipt and inspection of the material, if the merchandise is determined to be covered under warranty, the merchandise will be, replaced or credited at Seller's option under Seller's warranty terms. The merchandise will be returned to the Buyer freight PPD at Seller's expense. If the merchandise is determined not to be covered under warranty, the merchandise will, at Buyer's discretion be:

- A. Returned to Buyer and freight charges will be responsibility of Buyer; or
- B. Discarded; or
- C. Replaced and Buyer must place a new purchase order for replacement product. Freight charges will be the responsibility of Buyer.

Restocking fees may apply. Custom product is not returnable.

II. Credit Memos

Seller will issue a credit memo for the returned merchandise. Buyer should not make deductions from payments until a credit memo from seller has been received.

III. SAFETY AND HANDLING REQUIREMENTS

For the safety of our employees, as well as to meet government regulations, Seller requires the following information to accompany returned product. All items must be packaged properly for shipping.

- A. SDS are required for all returned products which have been in service, tested or installed.
- B. Signed decontamination certification for each return.

If these items do not accompany the return, the product will not be inspected and the RMA will not be processed. Seller cannot be held responsible for any returned merchandise that has not been decontaminated by Buyer. Any such items may be refused or returned at Buyer's expense.