



# RTI GROUP NORTH AMERICA GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY

These Terms and Conditions, as defined below, shall apply to all RTI Group North America, Inc. ("RTI") business relationships with Customers and shall constitute an integral part of all RTI Agreements.

## 1 Modification of Terms; Express Rejection of Other Terms

- 1.1 These Terms and Conditions shall be exclusive of any other terms or conditions and thus supersede and replace any prior contrary conditions, oral or written, between the Supplier and the Customer. Contrary conditions of the Customer or conditions of the Customer which deviate from these Terms and Conditions shall not be enforceable, unless RTI has given explicit consent, in writing, to their applicability.
- 1.2 Unless explicitly otherwise agreed upon, the Terms and Conditions in their version valid at the time of the Customer's order or in any case in the 20 most recently notified to the Customer in text format shall apply as the Terms and Conditions to future contracts of the same type without any requirement on RTI's part to refer to them in each individual case. Individual agreements made with the Customer in specific cases (including side agreements, amendments and modifications) after February 1, 2020 shall have priority over these Terms and Conditions.

## 2 Definitions

In these general terms and conditions, the terms set forth below shall have the following meanings:

**"Agreement"** means a written agreement between the Supplier and the Customer for the purchase of Products sold by the Supplier, of which a Purchase Order and these Terms and Conditions constitute an integral part;

**"Customer"** means the company which places a Purchase Order;



**“Party”** means the Customer and the Supplier, individually;

**“Parties”** means the Customer and the Supplier jointly;

**“Purchase Order”** means a written order for the Products in accordance with an Agreement or in a separate purchase order (as applicable);

**“Products”** means the products which are covered by an Agreement or a Purchase Order;

**“Product Support”** means service activities in connection with the Products, including, but not limited to, calibration and repair services.

**“Supplier”** means RTI Group North America, Inc.;

**“Software”** means any software, library, utility, tool or other computer or program code or application provided by the Supplier to the Customer, whether installed locally on the Product hardware or otherwise accessed by the Customer through the internet or other remote means (such as websites, portals and cloud-based solutions), including any related documentation; and

**“Terms and Conditions”** means these general terms and conditions, which constitute an integral part of any Agreement.

**“Unauthorized Purpose”** means: (i) use with intent to avoid payment of charges due under these Terms and Conditions; (ii) access to, use of, alteration of, or destruction of RTI data files, programs, procedures; (iii) use with the intent to modify, decompile, or reverse engineer or clone the Products, Software, Product Support, or any component thereof; (iv) use for any illegal, unlawful or fraudulent purpose, or for any other objectionable purpose as determined by Supplier; (v) resell, rent, lease, lend or encumber any Products, Software, Product Support or any component thereof; (vi) remove, modify or take any other action which would obscure the patent, copyright or trademark notices contained in or on the Products, Software, Product Support or any component thereof; (vii) adopt, use, register, or apply for registration of, whether as a corporate name, trademark, service mark or other indication of origin, any Supplier trademark, service mark or trade name, or any word or mark confusingly similar to them in any jurisdiction; or (viii) contest, in any court or other jurisdiction, the validity of any of the Supplier’s property.



### **3 Purchase Orders and Supply**

- 3.1 Purchase Orders must be placed by the Customer in writing. No Purchase Order is binding until the Supplier has provided a written confirmation of acceptance ("Confirmation"). The estimated delivery time will be set forth in such Confirmation, and in most cases will not exceed twelve (12) weeks, not including any delay as set forth in Section 4.2. Notwithstanding the Customer's Purchase Order, each sale shall be subject to these Terms and Conditions, unless alternative terms and conditions are agreed to in a writing signed by Supplier.
- 3.2 All Purchase Orders and additional orders, including, but not limited to, service and repair orders, shall include end customer information.

### **4 Delivery and Packaging**

- 4.1 The Supplier shall use its reasonable best efforts to deliver the Products in accordance with the Confirmation. The expected lead-time from the Supplier shall, if not separately agreed between the Parties, be stated in the Confirmation of the Purchase Order for each order.
- 4.2 The Customer is aware and acknowledges that the Supplier's delivery capacity varies depending on, *inter alia*, general market conditions. When the Supplier has reason to believe that a delay in the agreed delivery date as set forth in the Confirmation may occur, the Supplier shall notify the Customer thereof. Supplier shall be entitled to prolongation of the delivery date of up to twenty (20) business days. Notwithstanding the foregoing, the Supplier shall use its reasonable best efforts to maintain a delivery capacity that enables the Supplier to deliver the Products in accordance with the Confirmation.
- 4.3 The Products shall be delivered from Supplier to the Customer under the following delivery terms:
- (i) regarding new Products or Products returned after upgrading or repair - CPT - Carriage Paid To (Incoterms 2020);
  - (ii) regarding Products returned after warranty actions - DAP - Delivered At Place (Incoterms 2020).
- 4.4 Any delivery from Customer to the Supplier, e.g. of Products returned for repair or calibration (whether under warranty terms or not), shall be delivered DAP - Delivered At Place (Incoterms 2020).



- 4.5 The Supplier shall deliver the Products using the Supplier's standard packaging.
- 4.6 The Supplier reserves the rights to sell and deliver its Products and services from any RTI Group subsidiaries or partners.

## **5 Acceptance and Use**

- 5.1 The Customer shall inspect the Product in order to identify any external damage and to ensure that the delivery is in accordance with the Confirmation immediately following each delivery. Any defects or deficiencies which are detected in conjunction with delivery shall immediately be reported in writing to the Supplier.
- 5.2 When a Product is unpacked, and in any event before the Product has been used or sold by the Customer, the Customer shall perform a full inspection of the Product where such inspection was not possible on receipt of the Product in question. The obligation to report any defects to the Supplier as set out in section 5.1 above shall apply in such context.
- 5.3 At the request of the Supplier, the Customer shall make defective goods available to the Supplier for inspection and control.
- 5.4 If the Customer does not report defects or deficiencies in Products delivered within the periods set forth above in this section 5, the Customer shall have no right to make any claims against the Supplier with regard to the default or defect.
- 5.5 Customer will not use the Products, Software, or Product Support for an Unauthorized Purpose.

## **6 Prices and Payment**

- 6.1 The prices for the Products, if not stated in the Purchase Order, shall be the prices set out in the Supplier's price list applicable at the time when the Supplier received the order. The Supplier shall have the right to change the price list at any time during the continuance of the Agreement by giving the Customer thirty (30) days prior notice, in writing.
- 6.2 Unless agreed to in writing, the Customer shall pay for all Products not later than thirty (30) days from the date on the Supplier's invoice.
- 6.3 If the Customer fails to pay on time, the Supplier shall be entitled to:



- (a) the maximum interest allowed by law or one and a half percent (1.5%) per month compounded monthly (whichever is the lower), calculated from the date of delinquency; and
- (b) suspend performance of the Supplier's contractual obligations in accordance with these Terms and Conditions until payment is made or sufficient securities are given.

6.4 The Products shall remain the property of the Supplier until paid for in full by the Customer in accordance with this section 6, to the extent that such retention of title is valid under the relevant law.

## **7 Delay**

7.1 A delay exists when delivery of the Products has not taken place on the agreed delivery date.

7.2 If the Supplier finds that it will not be able to deliver the Products at the agreed time or if delay on Supplier's part seems likely, it shall notify the Customer thereof in accordance with section 4.2.

7.3 In addition to prolongation in accordance with section 4.2, the time for delivery shall be extended by a period up to twenty (20) business days if the delay in delivery is caused by one of the following reasons:

- (a) an act, omission or other circumstance for which the Customer is responsible;
- (b) suspension by the Supplier under Section 6.3(c) (failure by the Customer to pay in due time); or
- (c) a circumstance under Section 13 (Force Majeure).

The time for delivery shall be extended even if the reason for delay occurs after the originally agreed time for delivery.

7.4 If the Supplier fails to deliver the Products on time, the Customer is entitled to liquidated damages from the date on which delivery should have taken place. The liquidated damages shall be payable at a rate of one percent (1%) of the agreed price for each full week of delay. If the delay concerns only a part of the Products, the liquidated damages shall be calculated on the part of the price which is properly attributable to the part of the Products which cannot be taken in use due to the delay. The liquidated damages shall not exceed ten percent (10%) of the price of that part which is the basis of the calculation. The



Customer waives and loses its right to claim liquidated damages if it has not lodged a written claim for such damages within six (6) months after the time when delivery should have taken place. For the avoidance of doubt, all liquidated damages under this Section 7 shall be calculated only on the value of the Products, or part of the Products, included in the delayed Purchase Order.

- 7.5 If the delay is such that the Customer has become entitled to maximum liquidated damages under Section 7.4 and the Products are still not delivered, the Customer may in writing demand delivery within a final reasonable period which shall not be less than one (1) week. If the Supplier fails to deliver within such final period, at no fault of Customer, the Customer may, by notice, in writing, to the Supplier:
- (a) terminate the Purchase Order in respect of that part of the Products which cannot be taken in use due to the delay; and
  - (b) in case of such termination, be entitled to compensation for the loss it suffers due to the Supplier's delay to the extent that the loss exceeds the maximum of liquidated damages which the Customer may claim under Section 7.3. This compensation shall not exceed ten percent (10%) of that part of the price which is properly attributable to the part of the Products in respect of which the Purchase Order is terminated.
- 7.6 Except for liquidated damages under Section 7.4 and termination of the relevant Purchase Order, including limited compensation under Section 7.5(b), all claims in respect of the Supplier's delay shall be excluded. This limitation of the Supplier's liability shall not apply where the Supplier has been guilty of gross negligence.
- 7.7 If the Customer finds that it will be unable to accept delivery of the Products on the agreed date, or if delay on its part seems likely, it shall without undue delay notify the Supplier thereof in writing stating the reason for the delay and, if possible, the time when it will be able to accept delivery. If the Customer fails to accept delivery on the agreed date, it shall nevertheless fulfil its payment obligations in regard to these Products.
- 7.8 Unless the Customer's failure to accept delivery as referred to in Section 7.7 is due to any such circumstance as described under Section 13 (Force Majeure), the Supplier may by written notice require the Customer to accept delivery within a reasonable period. If, for any reason for which the Supplier is not responsible, the Customer fails to accept delivery within such period, the



Supplier may, by written notice to the Customer, terminate the Purchase Order in respect of the Products which is ready for delivery but has not been delivered due to the Customer's default. The Supplier shall then be entitled to compensation for the loss it has suffered due to the Customer's default. The compensation shall not exceed that part of the price which is attributable to the part of the Product in respect of which the Purchase Order is terminated.

## **8 Liability for Defects**

- 8.1 The Supplier shall remedy any defect in Products delivered, resulting from faulty design, specification, materials or workmanship attributable to the Supplier in accordance with the provisions of this section 8.
- 8.2 The Supplier is only liable for defects that appear under the intended and proper use and maintenance of the Products, including regular service and calibration of the Products at an authorized RTI service center. Thus, the liability does not cover defects caused by faulty or delayed maintenance, unauthorized repairs, handling or incorrect storage or installation by the Customer or its customer, alterations of the Products carried out without the Supplier's prior written consent or normal wear and tear and deterioration.
- 8.3 The Supplier's liability is limited to defects which appear within the periods specified for the relevant Product, as set out in Appendix 1. In addition, Customer may purchase a 10-year warranty program for certain product lines. To qualify for the foregoing program, the Products must be calibrated by an authorized RTI service center, within twenty-five (25) months from delivery and thereafter once for each succeeding twenty-four (24) month cycle.
- 8.4 The Customer shall notify the Supplier in writing of a defect without undue delay after the defect has been discovered, and in no case later than two (2) weeks after the expiration of the liability periods as set out in Appendix 1. The notice shall contain a description of how the defect manifests itself. If the Customer fails to notify the Supplier in writing within the foregoing time limits, the Customer forfeits its right to make any claim with respect to the defect. If there is reason to believe that the defect may cause damage, notice shall be given immediately and the Product suspended from use. If notice is not given immediately, the Customer forfeits the right to make any claim based on damage which occurs, and which could have been avoided, if such notice had been given.
- 8.5 After receipt of notice in writing under section 8.4, the Supplier shall, at the Supplier's option: (a) repair the Product; (b) replace the Product; or (c) make a



reasonable reduction of the purchase price for the Products without undue delay.

- 8.6 If the Customer gives such notice as referred to in section 8.4, and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the work and costs which it has incurred as a result of the notice.
- 8.7 All shipments in connection with replacement shall be at the Customer's risk of loss, but at the Supplier's expense if the defect is Supplier's responsibility and Customer's expense if the defect is not Supplier's responsibility. The Customer shall follow the Supplier's instructions regarding how such transport shall be carried out.
- 8.8 If the Supplier fails to fulfil its obligations under section 8.5 within a reasonable time, the Customer may by notice, in writing, require the Supplier to do so within a thirty (30) day final time period. If the Supplier fails to fulfil its obligations within that (30) day final time period, the Customer may terminate the purchase of the defective Products in question by notice in writing.
- 8.9 The Supplier shall have no liability for defects except as set forth above. This applies to any loss the defect may cause, such as loss of production, loss of profit and other consequential economic loss. The limitation of the Supplier's liability under this section 8 shall, however, does not apply where the Supplier has been guilty of gross negligence. In addition, the Supplier shall have no liability for loss of data in meter hardware or tablet during calibration of the Product.

## **9 Limitation of Liability**

- 9.1 EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, IN NO EVENT WILL SUPPLIER, THEIR PROVIDERS, OR THEIR LICENSORS OR SUPPLIERS, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, COMPENSATORY, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, LOSS OF DATA OR BUSINESS OPPORTUNITY OR OTHER INCIDENTAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS, SOFTWARE OR PRODUCT SUPPORT PROVIDED UNDER THESE TERMS AND CONDITIONS, EVEN IF SUPPLIER, THEIR PROVIDERS, OR THEIR LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A LIMITED REMEDY SET FORTH IN THESE TERMS AND CONDITIONS FAILS OF ITS ESSENTIAL PURPOSE.



- 9.2 Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES SPECIFICALLY SET FORTH IN THESE TERMS AND CONDITIONS, ALL PRODUCTS, SOFTWARE, DELIVERABLES, PROFESSIONAL SERVICES AND TECHNICAL SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND THERE ARE NO OTHER WARRANTIES MADE BY RTI, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO NON-INFRINGEMENT OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING OUT OF A COURSE OF DEALING, USAGE OF TRADE OR TRADE PRACTICE.
- 9.3 If a claim for product liability damage is lodged by a third party against one of the Parties, the latter Party shall immediately, and in no event more than thirty (30) days after first learning of such a claim, inform the other Party thereof in writing.
- 9.4 A precondition for the Supplier's liability set forth in this section is that the Supplier has been notified in writing of such claim in accordance with this section and given authority to settle the claim or control the defense of any suit and proceeding.
- 9.5 In the event that a Product or parts thereof becomes subject to a recall decided by the Supplier, the Customer shall participate and assist in such a process in accordance with the Supplier's instructions. The Customer is entitled to compensation for its reasonable direct and documented costs occurred in relation to the provision of such assistance.
- 9.6 The limitation of the Supplier's liability set forth in this section shall not apply where the Supplier has been guilty of gross negligence or intentional conduct.
- 9.7 Except for section 9.5 above, the Supplier's aggregate liability in relation to any claim of any kind, including negligence, for any loss or damage arising out of, connected with, or resulting from these Terms and Conditions or from the design, manufacture, sale, delivery, resale or use of the Products or any part thereof, as the case may be, shall be limited to the refund of the purchase price of the Products with respect to which the loss, damage or breach occurred.
- 9.8 Indemnification. Customer will defend and indemnify Supplier, their successors and assigns and each of their respective directors, officers, employees and agents against any and all losses, claims, damages or expenses (including attorneys' fees) alleged by a third party that arise or result from: (i) any an act, omission or other circumstance for which the Customer is responsible; (ii) any personal injury to or death of any person or persons, any loss or damage of any property or any interruption of services which are caused or claimed to have



been caused directly or indirectly from Customers (including Customer's employees' or independent contractors') misuse of, or improper installation of, the Products, Software or the Product Support; (iii) any use of the Products, Software or the Product Support by Customer for an Unauthorized Purpose; (iv) use of any equipment not provided or approved by Supplier; or (v) data or other information transmitted by Customer, Customer's employees or Customer's independent contractors, excluding any database provided by Supplier (collectively a "Claim").

- 9.9 Indemnification Procedures. In the event of any Claim giving rise to an indemnification obligation hereunder: (i) Supplier will promptly notify Customer of any such Claim or potential Claim of which Supplier has knowledge, provided, however, that any failure to provide such notification will not relieve Customer from Customer's indemnification obligation except to the extent that Customer was prejudiced by such failure to provide notice; (ii) Supplier will tender to Customer sole control of the defense of the Claim and any related settlement negotiations, provided, however, that Customer will not enter into any settlement that imposes any duties or obligations on Supplier, monetary or otherwise, or requires Supplier to make any admissions, without Supplier's express prior consent, in writing; and (iii) Supplier will provide reasonable assistance to Customer, upon the reasonable request of Customer and at Customer's cost and expense, in defending and settling such Claim.
- 9.10 Each Party shall obtain and maintain, at its own cost and expense from an insurance company having an AM Best rating of not less than A-, product liability insurance providing protection against any and all claims, demands, and causes of action that are indemnifiable in accordance with these Terms and Conditions. The amount of coverage shall be a minimum of \$1 000 000 combined single limit coverage for each occurrence for bodily injury and/or for property damage. Each Party agrees, upon the other Party's request in writing, to furnish the other Party with a certificate of insurance evidencing such insurance coverage.

## 10 Intellectual Property Rights

- 10.1 All intellectual property rights and other rights, including without limitation patents, design rights, trademarks, copyrights trade secrets and know how, relating to the Products and any and all documentation related thereto shall be the exclusive property of the Supplier.



- 10.2 Nothing in these Terms and Conditions shall constitute or be construed as a transfer of ownership of any of the Supplier's intellectual property rights or other rights or to otherwise give the Customer any proprietary rights to the Supplier's intellectual property rights.
- 10.3 The Customer shall not remove or change any trademark, trade name, sign or other mark on any Products or its packing, or make any alterations in the construction or design of any Product.
- 10.4 The Customer shall promptly notify the Supplier of any actual, threatened or suspected infringement of the Supplier's patents, trademarks or other intellectual property rights or if any allegation is made that the corresponding rights of others are being infringed due to the sale of the Products.
- 10.5 The Supplier is not obliged to defend its intellectual property rights. If the Supplier nevertheless chooses to defend its rights, the Customer shall reasonably assist the Supplier in connection therewith.
- 10.6 In addition, in the event that any proceedings for infringement or challenge of the Supplier's intellectual property rights are instituted by a third party, the Supplier may, at its option, modify the Products to render them non-infringing, replace them with non-infringing products or obtain a suitable license from a third party.

## **11 Software and License**

- 11.1 The Customer has, at its purchase of the Products, received a copy of the Software to be installed by the Customer (as applicable) in accordance with the instructions provided by the Supplier. The use of Software is subject to and governed by the separate license agreement(s) accompanying the Software, along with any product guides, operating manuals or other documentation included with the software media packaging or presented to the Customer during the installation or use of the Software, such as any click-thru, EULAs or other acceptance methods, and the Customer agrees to be bound by such license agreements.

## **12 Product Support**

- 12.1 The Supplier shall, at the expense of the Customer, provide Product Support, including but not limited to, calibration services and installation of new firmware. The price for such Product Support services, if not stated in a Purchase Order or in an additional order for Product Support, shall be the prices



set out in the Supplier's then current price list, which price list is subject to change.

- 12.2 As previously stipulated under section 8.9, the Supplier shall have no liability for loss of data in meter hardware or tablet during calibration of the Products.

## 13 Force Majeure

- 13.1 The Parties shall be relieved from liability for a failure to perform any obligation under these Terms and Conditions during such period, and to the extent that the due performance thereof by either of the Parties is prevented by reason of any circumstance beyond the control of the Parties ("**Discharging Circumstance**"). If not otherwise shown, war, warlike hostilities, mobilization, or general military call-up, civil war, fire, flood, or other circumstances of similar importance, shall be considered as Discharging Circumstances.
- 13.2 If a Party wishes to invoke a Discharging Circumstance, it shall give immediate notice to the other Party of the commencement and the cessation of such Discharging Circumstance, failing which, the Party shall not be discharged from liability for any non-performance caused by such Discharging Circumstance.
- 13.3 The time for performance of the relevant obligations of a Party shall be appropriately extended by the period during which a Discharging Circumstance continues, provided, however, that if performance of a contractual obligation is prevented by a Discharging Circumstance for a period of six (6) months or more, each Party shall be entitled to terminate these Terms and Conditions.

## 14 Confidentiality

- 14.1 The Parties hereby undertake to hold in confidence and absolute secrecy any and all Confidential Information (as defined below), disclosed by the other Party ("Disclosing Party") pursuant to these Terms and Conditions and not to disclose to third parties any Confidential Information received. Furthermore, the Parties shall take reasonable steps to prevent an unauthorized disclosure or use of such Confidential Information by employees, subagents or other intermediaries.
- 14.2 For the purpose of these Terms and Conditions, "**Confidential Information**" means any and all information (whether in written or oral form), including but not limited to technical, practical, commercial information and the contents of these Terms and Conditions, except for as provided under (a) – (d) below:
- (a) information which is known or which becomes known in full detail to the public otherwise than by breach of the obligations herein contained;



- (b) information which the disclosing Party can show was in its possession before receiving it from the other Party;
- (c) information which a Party has received or receives from a third party without restraints as to the disclosure thereof; and
- (d) information which a Party is legally obliged to disclose by compulsory law, court order or by order of another authority of competent jurisdiction.

14.3 Provided, however, a receiving Party shall not be relieved of its obligations as to any Confidential Information by operation of the foregoing paragraphs until receiving Party has shown, to Supplier's reasonable satisfaction, that such Confidential Information is within the provisions of one of the foregoing exceptions. Similarly, a receiving Party shall not be relieved of its obligations as to Confidential Information which are specific by operation of the foregoing paragraphs, merely because such Confidential Information and Trade Secrets are embraced by a general disclosure falling within the provisions of the foregoing paragraphs, nor shall any combination of specific disclosures be deemed to be within the foregoing exceptions merely because individual features are in the public domain, but only if the combination itself is known to the public in a single disclosure falling within the provisions of the foregoing paragraphs. In no event shall the receiving Party be relieved of its obligations with respect to information or material whose public disclosure, unauthorized use, modification and/or destruction is restricted by law.

14.4 Mandatory/Permitted Disclosures. In the event a receiving Party is requested or required by applicable law, regulation, governmental, regulatory or self-regulatory body or legal process to disclose Confidential Information of a Disclosing Party, receiving Party will, to the extent permitted to do so by law, regulation or such body and as reasonably practicable under the circumstances, notify Disclosing Party promptly so that Disclosing Party may seek an appropriate protective order or other appropriate remedy, or waive compliance with the terms of these Terms and Conditions relating thereto. If receiving Party is legally compelled to disclose such Confidential Information, it shall undertake reasonable effort to furnish only that portion of the Confidential Information required and reasonable efforts to obtain confidential treatment for the disclosed Confidential Information. Nothing in these Terms and Conditions shall prohibit the Parties from: (a) disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; (b) disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; or (c) disclosure of a trade secret when reporting a suspected violation of law may to the attorney of the individual and/or using that trade secret information in the court proceeding if such trade secret information is filed under seal.



- 14.5 This section shall survive any termination of these Terms and Conditions.

## 15 Governing Law and Dispute Resolution

- 15.1 These Terms and Conditions shall be governed by and interpreted in accordance with the laws of New Jersey. Litigation of disputes arising under these Terms and Conditions shall be brought only in the state or federal courts of the State of New Jersey. Customer expressly agrees that Supplier shall be entitled to its reasonable costs and attorney fees incurred enforcing these Terms and Conditions in the event Customer breaches any obligations herein.
- 15.2 UN Convention. The United Nations Convention respecting Contracts for the International Sale of Goods shall not apply to these Terms and Conditions.
- 15.3 Any and all dispute, controversy or claim arising out of or in connection with these Terms and Conditions or the breach, termination or invalidity of these Terms and Conditions, shall be settled exclusively by arbitration in accordance with the arbitration rules of American Arbitration Association for commercial disputes in New Jersey. The place of arbitration shall be New Jersey. The language to be used in the arbitral proceedings shall be English.
- 15.4 The Parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration section will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not, in any form, be disclosed to a third party without the written consent of the other Party. This notwithstanding, a Party shall not be prevented from disclosing such information in order to safeguard in the best possible way its rights *vis-à-vis* the other Party in connection with the dispute, or if such a right exists pursuant to statute, regulation, a decision by an authority, a stock exchange contract or similar.
- 15.5 In case these Terms and Conditions or any part of it is assigned or transferred to a third party, such third party shall automatically be bound by the provisions of this arbitration section.



## Appendix 1

### Warranty Periods

- |                                                      |                                               |
|------------------------------------------------------|-----------------------------------------------|
| • Cobia                                              | 24 months from date of delivery from Supplier |
| • Piranha                                            | 24 months from date of delivery from Supplier |
| • Mako                                               | 24 months from date of delivery from Supplier |
| • Other products (probes, accessories, holders etc.) | 24 months from date of delivery from Supplier |
| • Upgrades from Red to Black Piranha                 | 24 months from date of delivery from Supplier |
| • All other upgrades                                 | 3 months from delivery from Supplier          |
| • Repair                                             | 3 months from delivery from Supplier          |
| • Re-calibration                                     | 3 months from delivery from Supplier          |
| • Software                                           | 3 months from delivery from Supplier          |