

# General Terms and Conditions of Sale

## 1. GENERAL

- A. Compass Instruments, Inc.'s (hereinafter referred to as Compass) prices are based on these sales terms. This document, together with any additional writings signed by Compass, represents a final, complete and exclusive statement of the agreement between the parties and may not be modified, supplemented, explained or waived by parol evidence, Buyer's purchase order, a course of dealing, Compass's performance or delivery, or in any other way except in writing signed by an authorized representative of Compass. These terms are intended to cover all activities of Compass and Buyer hereunder, including sales and use of products, parts and work and all related matters (references to products include parts and references to work include start-up). Any references by Compass to Buyer's specifications and similar requirements are only to describe the products and work covered hereby and no warranties or other terms therein shall have any force or effect. Catalogs, advertisements and other printed literature are issued for general information purposes only and shall not be deemed to modify the provisions hereof including those of Section 5.
- B. The laws of the State of Illinois in the United States of America shall govern this agreement and performance under this agreement. Any dispute under this agreement shall only be brought in the state court of Illinois. The parties hereto agree that the venue shall be in Sugar Grove, Kane County, Illinois, for any and all claims or disputes arising out of all transactions between Compass and Buyer. Buyer voluntarily agrees that Sugar Grove, Kane County, Illinois is the most convenient forum and understands the choice of forum is an integral and vital part of Compass's agreement to sell to Buyer. By agreeing to venue in Sugar Grove, Kane County, Illinois, Buyer fully intends to waive its rights, if any, to venue in any place other than Sugar Grove, Kane County, Illinois. The parties deem that this agreement is performable in Sugar Grove, Kane County, Illinois whether or not any part of the agreement is actually performed in Sugar Grove, Kane County, Illinois. In addition, Buyer agrees that Compass's prices reflect an analysis of the elimination of uncertainty regarding the jurisdiction for any dispute. Buyer expressly waives the application of the United Nations Convention on Contracts and Convention on the Limitation Period for the International Sale of Goods.

## 2. TAXES AND COSTS OF SHIPPING

Any sales, use, excise or other similar type taxes imposed on this sale or on this transaction and/or shipping costs are not included in the price for the product. Compass will accept a valid exemption certificate from Buyer if applicable; however, if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved and Compass is required to pay the tax covered by such exemption certificate, Buyer agrees to reimburse Compass for the taxes paid within ten (10) days of delivery of the products.

## 3. PERFORMANCE, INSPECTION AND ACCEPTANCE

- A. All products shall be finally inspected and accepted within fourteen (14) days after arrival at the point of delivery. All Buyer's claims, including claims for shortages and defects and excepting only those provided for under Compass's Limited Warranty hereof, must be asserted in writing by Buyer within said fourteen (14) day period or they are waived. There shall be no revocation of acceptance. Rejection may be only for defects substantially impairing the value of products or work and Buyer's remedy for lesser defects shall be those provided for under the Compass's Limited Warranty.
- B. Any shipment date given herein is approximate and is estimated from the date of receipt of Buyer's order with complete specifications. Any product offered from stock is subject to prior sale. All shipments are made as items become available. If an order is requested to be "Shipped Complete", or if, at Buyer's request, the delivery of products is delayed then Compass shall invoice Buyer for the price of the products, which invoice shall be due in accordance with the terms of payment provided herein. Buyer will reimburse Compass for the cost of storage if Buyer delays shipment, and Buyer will assume any damages to the materials caused by the deterioration. Compass shall not be liable to Buyer for any direct or any consequential damages of any nature including, but not limited to loss of use to Buyer arising out of delay in carrying out this contract due to fire, strike, act of God, war, insurrection, mob action, act of government, loss, damage or delay of material, floods, storms, inability to obtain materials, or other acts or circumstances. Buyer agrees this limitation of Compass's liability is reasonable. Buyer further agrees that this limitation of Compass's liability is part of the consideration for this agreement and is reflected in the amounts charged by Compass under this agreement. Buyer intends that this limitation on Compass's liability be liberally construed in favor of Compass to eliminate any other liability of Compass other than repair or replacement of defective products.



- C. If Buyer rejects or revokes acceptance of items tendered under this agreement, or fails to make a payment due or before delivery, or repudiates this agreement, Compass shall recover all actual costs and damages incurred by Compass in preparing to perform the terms of the order and in performing the terms of the order prior to the receipt by Compass of such written notice, including but not limited to Compass's expenses of purchases of material, labor, fabrication, overhead and profit.
- D. Compass reserves the right to change or modify the design and construction of its products and to substitute other suitable material.

#### **4. TITLE AND RISK OF LOSS**

- A. Full risk of loss (including transportation delays and losses) shall pass to Buyer upon delivery of products to the F.O.B. point. Buyer has and does by these presents grant to Compass and Compass has and does hereby retain a security interest in all parts and accessories described in and being purchased by Buyer pursuant to this Agreement. The security interest herein granted by Buyer and retained by Compass is to secure payment of the full purchase price and all other charges due and owing to Compass by Buyer under the terms of this sale. This security interest constitutes a "purchase money security interest" pursuant to the Uniform Commercial Code. This instrument is a contract, security agreement and financing statement between the parties hereto.
- B. If any payment is overdue in whole or in part, or in the event of bankruptcy of the customer or the appointment of a trustee in bankruptcy, administrator or receiver and manager over the customer or the customer initiating winding-up proceedings or these proceedings being issued by another, Compass may (without prejudice to any of its other rights) recover and/or resell any Goods supplied by it and may enter upon the customer's premises (whether freehold, leasehold or held under any other tenure) by its servants or agent in order to take possession of and remove any such Goods. Compass shall not be liable for any damage, injury or loss however caused resulting from the said recovery and/or sale.

#### **5. WARRANTY AND LIMITATION OF REMEDY AND LIABILITY**

- A. Compass hereby warrants its products against failure due to defects in material and workmanship for a period of one (1) year from the date of delivery, when the products are used under appropriate conditions and in accordance with the manufacturer's operating instructions. Compass does not warrant products that are not manufactured by Compass except to the extent of the warranty Compass may actually pass through or assign from the manufacturer. Buyer's sole and exclusive remedies shall be limited to the repair and/or replacement of defective parts, at the sole discretion of Compass. All product warranties are F.O.B., Sugar Grove, IL, F.O.B., Allentown, PA for Julabo Products or any other appropriate F.O.B point so designated by Compass.

Warranty covers parts and labor only and does not cover glass components nor does it cover any items considered to be "consumable" parts or accessories. Warranty will not be granted for removal and installation of parts, components or accessories or for normally required maintenance functions, including but not limited to minor repairs, gasket or seal replacements, inspection requirements, adjustments, and etc. With respect to products, parts and work not manufactured or performed by Compass, Compass's only obligation shall be to assign to Buyer, to the extent possible, whatever warranty Compass received from the manufacturer. All claims for defective products, parts or work under this warranty must be made in writing upon discovery and otherwise consistent with the other terms of the applicable warranty described above. Defective items must be held for Compass's inspection and if requested by Compass returned to the original F.O.B. point, transportation prepaid. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED OR IMPLIED IN Compass's LIMITED WARRANTY ARE BUYER'S EXCLUSIVE REMEDIES. It is understood that Compass's warranty shall not apply to products or parts, which in Compass's sole discretion, have been damaged as a result of misuse of any nature including, but not limited to overloading, overspeeding, overheating, use of fire suppression agents, inadequate maintenance, accident, or improper installation or storage.

- B. The obligations of Compass under this warranty are limited to the repair or replacement, at Compass's option, of any part, component or instrument which, in the sole opinion of Compass is defective and which has been returned to the factory or service center as may be designated by Compass during the one (1) year warranty period. Upon Buyer's submission of a claim as provided above and its substantiation Compass shall at its option either (i) repair or replace its product, part or work at the original F.O.B. point delivery or at Buyer's site or return the instrument to the designated service center at Buyer's expense or (ii) refund an equitable portion of the purchase price. In no event shall Compass be liable for the cost of labor or expenses in connection with replacement or repair of defective parts when the engine, power unit, or instrument has been in the possession of the using owner or rental operator for a period of twelve (12) months or longer.



- C. No product shall be returned to Seller without written authorization and shipping instructions having been obtained from Seller. Compass reserves the right to return to the sender, freight collect, any goods returned to Compass, or any Warranty F.O.B. Point, without authorization. If you intend to return goods, please contact us as soon as possible after you receive them. Goods which are not returnable include items not purchased from Compass and, generally, items which have been customized, modified, dated, or mutilated. Products authorized for return are to be shipped freight prepaid to the ex-works manufacture point and are subject to a restocking charge.
- D. Compass Instruments warrants Service Labor and Services rendered for 90 days. Parts that are used in performing Service are warranted for 90 days or to the extent that a warranty on a part passes through as per Paragraph A. Travel expenses associated with a warranty Service Call are not covered by the warranty and shall be Buyer's responsibility as per the then current Service Rate Sheet.
- E. THE FOREGOING SETS FORTH COMPASS'S ONLY OBLIGATIONS AND BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY, WHETHER SUCH CLAIMS ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES, AND THE FOREGOING IS EXPRESSLY IN LIEU OF OTHER WARRANTIES WHATSOEVER EXPRESSED, IMPLIED, AND STATUTORY, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE OF THE PRODUCTS SOLD UNDER THIS AGREEMENT, AND COMPASS'S LIABILITY SHALL BE LIMITED TO THE WRITTEN WARRANTY SPECIFIED HEREIN. FURTHER, COMPASS MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE DESIGN, SALE, INSTALLATION, OR USE OF ITS PRODUCTS. NOT WITHSTANDING THE PRECEDING, IN NO EVENT SHALL COMPASS BE LIABLE FOR ANY DIRECT, SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ATTORNEYS' FEES (WHETHER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHER THEORIES) ARISING OUT OF THIS AGREEMENT OR THE USE OF ANY PRODUCTS PROVIDED UNDER THIS AGREEMENT. ANY ACTION ARISING HEREUNDER OR RELATING HERETO, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES OR IT SHALL BE BARRED.

## 6. TERMS OF PAYMENT

- A. Unless other terms are specified, all payment shall be in United States dollars, net cash thirty (30) days from date of invoice. Interest will be charged on past due accounts at the rate of eighteen percent (18%) per annum. Credit card payments made on term accounts will be charged an additional 5% processing fee. If an invoice becomes past due, is placed in the hands of an attorney for collection, if collected by any legal proceedings, or if this Agreement is relevant to any other dispute between the parties, Buyer agrees to pay Compass its reasonable attorney's fees and costs incurred, which attorney's fees shall not be less than thirty percent (30%) of the total amount payable. "Costs incurred in the collection of sums" as used herein is not to be limited to costs incurred in litigation, but includes, without limitation, copying and mailing expenses, lien fees, lost management time, inspection expenses and expert witnesses' expenses in addition to taxable costs incurred in litigation.
- B. Seller reserves the right to charge up to a 4% credit card surcharge on orders paid by credit card. Buyer acknowledges and agrees to the application of the credit card surcharge by providing a credit card either directly or on file. In the case of a refund or credit, the credit card surcharge is not refundable, and any refund, or credit, amount will be calculated on the original transaction item amount excluding the surcharge.
- C. Seller reserves the right to charge up to a 5% surcharge on term invoices provided with Net Terms.

## 7. EXTENT OF SUPPLY

Only products and parts listed in Compass' proposal are included in this agreement. It must not be assumed that Seller has included anything beyond same. Nothing herein shall obligate Seller to provide "tune-up or calibration service."

## 8. CANCELLATION

- A. No order may be canceled by Buyer except upon written notice to Seller and only upon payment to Seller of all costs incurred by it arising out of, or in connection with, the order except:
- B. For Ametek/Gabner Instruments, Falex Corporation, PILODIST GmbH and XOS Products:
  - 1. Any cancellation within 150 days of scheduled shipment will require a 100% cancellation charge.
  - 2. Orders cancelled with scheduled ship dates beyond 150 days will be subject to charges for unique and non-cancelable materials.



- C. Seller shall have the right to cancel any order or to refuse to ship or delay shipment in the event Buyer fails to submit payments when due or perform any other obligations of Buyer.
- D. In the event a validated Export License is denied by the U.S. government, Buyer's order(s) will be immediately canceled, and Buyer will be liable for the order value or actual costs incurred whichever is greater.

## 9. MISCELLANEOUS

- A. Section Headings. The section headings in these Terms and Conditions are for convenience only and have no legal or contractual effect.
- B. Waiver and Separability of Terms. The failure of Compass to exercise or enforce any right or provision of these Terms and Conditions shall not constitute a waiver of such right or provision. If any provision of these Terms and Conditions is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms and Conditions shall remain in full force and effect.
- C. Special Tooling and Design Changes. Notwithstanding any tool, die or pattern charges or amortization in connection therewith, all special tooling and related items shall be and remain the property of Seller. Special products and parts made to special specifications may not be cancelled or returned without Seller's written consent and upon terms established at Seller's discretion. Seller reserves the right to change or modify the design of any product without obligation to furnish or install such changes or modifications on products previously or subsequently sold. Seller reserves the right to discontinue the manufacture of any product, or to change or modify the design specifications and construction of any of its product at any time without incurring any liability to Buyer.
- D. Protection Devices. It is specifically understood that if Buyer has elected not to purchase the recommended protection devices from Seller for the subject product at the time of sale, Buyer shall have sole responsibility and liability for, and shall hold Seller, its officers, employees, contractors, servants, agents and invitees harmless from any and all loss or damage, fines and/or penalties of any kind, including but not limited to personal injury, death or loss of or damage to property which results from or allegedly results from Buyer's failure to purchase, Seller's failure to provide or the products failure to have safety devices equivalent to or superior to those offered by Seller at the time of sale.
- E. LOSS OF WELL/POLLUTION. BUYER SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS SELLER FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, INJURY, LIABILITY AND COST BROUGHT BY OR ON BEHALF OF ANY PERSON LOSS OF WELL OR FLUIDS ESCAPING THEREFROM, RESERVOIR OR SUBSURFACE DAMAGE, SURFACE DAMAGE RESULTING FROM SUBSURFACE DAMAGE OR BLOWOUT, OR POLLUTION OR CONTAMINATION CONTROL AND REMOVAL THEREOF, OR ANY ENVIRONMENTAL HAZARD OR CONDITION (INCLUDING ANY DAMAGE TO GROUNDWATER, AQUIFERS, SURFACE WATER, SURFACE SOIL, AND SUBSURFACE THE SAME IS CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF, BREACH OF WARRANTY BY, STRICT LIABILITY OF, OR AN OBLIGATION OR INDEMNITY OF SELLER, ITS AGENTS OR EMPLOYEES.

THIS SECTION SHALL SURVIVE TERMINATION, CANCELLATION OR EXPIRATION OF THIS AGREEMENT OR ANY ORDER ISSUED PURSUANT HERETO.