

Terms and conditions of sale



These Terms and Conditions apply to any (verbal or written) agreement entered into by Van Putten Instruments B.V. ("**VPI**") and you, the customer ("**Customer**"), including (without limitation) any agreement relating to the purchase and sales of VPI services, hardware, firmware and/or software products (the "**Products**"). Customer's order and purchase of the Products shall constitute acceptance of these terms and conditions. Customer accepts that (1) any countervailing terms (such as: its procurement terms) do not apply, and (2) all contractual dealings that ensue between Parties will be governed by these Terms and Conditions.

These Terms and Conditions are available at VPI's website (www.vpinstruments.com) and are deposited with the Dutch Chambers of Commerce under number 27171587. A copy of these terms and conditions will be sent to you on request (by e-mail to info@vpinstruments.com)

1. **LIMITED WARRANTY.** VPI makes the following limited warranty in respect of "Hardware Products", "Cable Products" and "Software Products":
 - a. Hardware Products are warranted against defects in materials and workmanship for two (2) years from the date of shipment from the factory. Cable Products are warranted against defects in materials and workmanship for ninety (90) days from the date of shipment from the factory. VPI's obligation is limited to repair, or at its sole option, replacement of products and components which, upon verification by VPI at the VPI manufacturing headquarters in prove to be defective. VPI shall not be liable for installation charges, for expenses of Customer for repairs or replacement, for damages from delay or loss of use, or other direct or indirect or consequential damages of any kind.
 - b. Software Products that are licensed to Customer under the terms of the appropriate VPI license and will, for a period of ninety (90) days following shipment by VPI (a) perform substantially in accordance with the accompanying written materials, and (b) the medium on which the software product is recorded will be free from defects in materials and workmanship under normal use and service. Any replacement of a licensed Software Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.
 - c. VPI will not replace or repair Products ordered by **Customer** that has any defect in any other circumstance than described in these Terms and Conditions.

This warranty is extended only to Products properly used and properly installed for the specific application for which intended and quoted. This warranty is void if failure of the Products has resulted from accident, abuse, misapplication, improper calibration, third party software not intended for use with the applicable VPI software, utilization of an improper hardware or software key or unauthorized maintenance or repair.

2. **TRANSPORTATION.** Transportation charges for materials shipped to the factory for warranty repair are to be paid by the Customer. VPI will return items repaired or replaced under warranty to a location indicated by the Customer, provided (and to the extent) shipping costs have been prepaid by the Customer. For international returns, any special payment arrangements for the shipment must be approved in writing by the VPI.
3. **LIMITATIONS ON WARRANTY.** If after inspection of the returned equipment VPI determines that the defect is a result of damage, misuse, mishandling, installation, abnormal conditions of storage or operation, unauthorized repair or modification, or due to the Customer's failure to install, maintain or operate the equipment in compliance with the written instructions, all expenses incurred by VPI in connection with the replacement or repair of the equipment shall be for the account of the Customer. There will be a minimum service charge for inspecting the product and determining the defect. Any additional charges necessary to repair the product will be quoted to Customer, and must be authorized by Customer before VPI will proceed with repair. Once an evaluation is completed and a quote has been issued, Customer can choose to proceed with the work or have the unit returned with only the evaluation and freight fee billed to the Customer.

- 4. NO LIABILITY FOR CONSEQUENTIAL DAMAGES.** VPI and its licensors, distributors, and suppliers (including their respective directors, officers, employees, and agents) shall not be liable for any damages, including, but not limited to, any special, direct, indirect, incidental, exemplary, punitive, or consequential damages, expenses, lost profits, lost savings, business interruption, lost business information, or any other damages arising out of the use or inability to use the Products, except to the extent such damage arises from wilful misconduct (*opzet*) or gross negligence (*grove schuld*). If the foregoing limitation of liability is not enforceable because an VPI product sold or licensed to Customer is determined by a court of competent jurisdiction in a final, non-appealable judgment to be defective and to have directly caused bodily injury, death, or property damage, VPI's liability will not exceed the amount (if any) paid out under VPI's applicable product liability insurance policy. If, for whatever reason, VPI's insurance policy provides no coverage, then VPI shall be liable for the lesser of \$50,000 or fees paid for the specific product that caused such damage
- 5. ACCEPTANCE STATES THE ENTIRE CONTRACT.** Subject to these Terms and Conditions, the acknowledgment by VPI of the Customer's order to purchase is an acceptance of the Customer's order and intended to embody the complete and exclusive contract of sale in relation to the subject matter hereof, and no understandings or agreements, verbal or otherwise, in relation thereto except as herein expressly set forth or incorporated herein by reference shall be binding on either party. The acknowledgment by VPI of the Customer's order(s) is accepted on the condition that the terms and conditions set forth herein shall apply and shall constitute complete agreement between the parties. Any provisions or conditions of the Customer's order forms or any verbal or other understandings or agreements, which are in any way in conflict with or in addition to these terms and conditions shall not be binding on VPI and shall not be applicable, unless expressly agreed to in writing by VPI. Customer shall be deemed to have consented to the exclusive terms and conditions hereof unless objection by the Customer hereto in writing has been received by VPI at its headquarters in Delft, the Netherlands (by regular mail, or by e-mail to sales@vpinstruments.com) within five (5) working days after receipt of the acknowledgment by the Customer, and in the event of such objection and at VPI's option, the acknowledgment shall thereupon be revoked and the sale contract terminated.
- 6. ACCEPTANCE OF ORDERS.** Orders and offers to purchase received by or on behalf of VPI are subject to acceptance only at its headquarters. No VPI distributor, sales representative, or field agent has authority to accept orders or make contracts of sale on behalf of VPI.
- 7. PRICES, TAXES AND TRANSPORTATION CHARGES.** The sales price stipulated in this contract is exclusive of all customs duties, charges or surcharges, consular fees, sale, use, excise, turnover, occupational or transportation taxes, or any other taxes imposed by any country or political subdivision thereof. If any such tax or charge is imposed by law on the Customer on account of this sale and VPI is obligated to pay such tax or charge, the amount of such disbursement shall be reimbursed to VPI by the Customer forthwith in addition to the purchase price. Freight and insurance quotations are merely estimates based upon currently prevailing rates and, because VPI has no control over such quotations, any variations in the actual rates at the time of shipment shall be for the Customer's account. VPI may add a charge for export packing to the price, and VPI reserves the right to impose an additional reasonable charge for packing and/or packaging to comply with Customer's specifications or instructions.
- 8. TERMS AND PAYMENT; INSTALLATION CHARGES AND FINANCE CHARGES.** Unless agreed otherwise, the terms of payment are payment prior to shipment by Wire Transfer. VPI's prices prevailing at time of each shipment shall apply. Prices are subject to correction for error. All costs of installation shall be borne by Customer.
- 9. RETENTION OF OWNERSHIP.** VPI retains full ownership (*eigendomsvoorbehoud*) of the Products until Customer has paid all amounts due under these Terms and Conditions in full.
- 10. PRODUCTS AND SERVICES.** VPI warrants that all its services in relation to the Products (the "Services") will be performed in a good and workmanlike manner as set forth in Article 7:402 Dutch Civil Code (*goed opdrachtnemer*) best effort undertaking.
High Risk Activities: Customer understands and agrees that VPI has not tested or certified its

Services for use in high risk applications including medical life support, nuclear power, mass and air transportation control, or any other potentially life critical uses. VPI makes no assurances that the Services are suitable for any high risk uses.

- 11. DELIVERY.** Unless agreed otherwise, delivery of equipment shall be Free Carrier (FCA) from the VPI warehouse in Delft, The Netherlands (Incoterms 2015). Title and risk in relation to the Products will pass to the Customer as set out in Clause 13.

Shipping dates are approximate and are based upon current and anticipated manufacturing capabilities and upon receipt of all necessary information from the Customer. VPI reserves the right to make delivery in installments and the contract shall be severable as to each such installment.

Delay in delivery or other default in any installment shall not relieve the Customer of its obligation to accept and pay for remaining deliveries. If delivery of goods is delayed due to default in payment of the purchase price or to delay in receipt of shipping instructions, documents for payment, required inspection, export license or authorization or other cause for which VPI is not responsible, charges for demurrage and storage, including storage at VPI facilities, shall be paid by the Customer. All claims for a delay in delivery shall be deemed waived unless presented to VPI in writing thirty (30) days after the delivery of each shipment.

Unless otherwise indicated on the front side of the order confirmation and invoice, all shipping and insurance charges, any duty and all taxes related to the Customer's order shall be paid by the Customer. Claims for damages in transit must be asserted against the Carrier. Within (7) days after receipt of shipment, the Customer must report to VPI any shortage or damage not due to the carrier, otherwise claims for such shortage or damage will be deemed waived.

- 12. FORCE MAJEURE.** Fulfillment of this order is contingent upon the availability of materials. VPI shall not be liable for any delays in delivery, or for non-delivery or nonperformance, in whole or in part, caused by the occurrence of any contingency beyond the control of either VPI or suppliers of VPI, including but not limited to one or more of the following causes: fires, destruction of plant; strike; lockout; dispute with workmen; epidemic; flood; accident; delay in transportation; war (whether declared or undeclared); insurrection; riot; blockage; embargo; acts, demands or requirements of any government of any thereof; restraining orders for decrees of any court or judge; or any other cause whatsoever, whether similar or dissimilar to those herein before enumerated. The existence of any such cause or causes of delay shall extend the time of performance by the time or times measured by any such cause or causes of delay. If delivery is not completed within sixty (60) days after the date stipulated in the acceptance of the order due to any said causes, either VPI or the Customer may cancel this contract on ten (10) working days' notice to the other. If any contingency occurs, VPI reserves the right to allocate production and deliveries among its customers.
- 13. TITLE AND RISK OF LOSS.** Title and Risk of Loss shall pass to the Customer upon delivery to the carrier as set out in Clause 11 unless specified otherwise. If, however, payment of the purchase price is not contemporaneous with, or does not precede delivery of the merchandise to the carrier or the Customer, the Customer agrees at VPI's request, and hereby appoints VPI as its attorney-in-fact, to execute, acknowledge and record appropriate financing statements so as to perfect a security interest in the products in favor of VPI. Customer also agrees to execute a contract of conditional sale containing the provisions as VPI shall deem proper Loss or damage that occurs during shipping is the Customer's responsibility, unless an Incoterm was agreed to prior to the Sale that has contrary provisions.
- 14. CANCELLATIONS AND RETURN POLICY.** Orders accepted by VPI cannot be cancelled or countermanded, or shipments deferred or equipment returned except with the prior written consent from VPI, and upon terms that will indemnify VPI against any losses that may result, including the profit on any part of the order that is cancelled. When VPI authorizes the return of equipment, the Customer shall prepay the shipping charges on such returned equipment unless otherwise expressly stated by VPI in its written return authorization. VPI will charge 20% cancellation fee of the cancelled order value or returned materials.

15. PATENTS. Customer shall indemnify and hold VPI harmless from any claim of patent infringement if such patent infringement or claim involves a product produced by VPI at Customer's direction or is based upon the use of the product in combination with other items where such infringement or claim thereof would not have occurred from the normal use for which the product was designed.

16. GENERAL PROVISIONS. VPI reserves the right to correct any stenographical or clerical errors in any of the writings issued by it. Except as otherwise set forth herein, the terms and conditions of sale and any description on the face of this acknowledgement constitute a complete and exclusive statement of the terms and conditions of the sale of the products by VPI to the Customer. There are no other promises, conditions, understandings, representations or warranties. This Agreement may be modified only in a writing signed by an authorized VPI representative. No waiver of any right will be effective against VPI unless supported by consideration and expressly stated in the writing signed by VPI, and the failure of VPI to enforce any right will not be construed as a waiver of VPI's right to performance in the future. The Customer may not assign any rights to, or delegate any performance owed under this Agreement without the written consent of VPI. VPI shall have the right to credit toward the payment of any monies that may become due VPI hereunder and any sums, which may now or hereafter be owed to the Customer by VPI. The validity and performance in all matters relating to the interpretation and effect of this Agreement and any amendment hereto shall be governed by and construed in accordance with the laws of the Netherlands, and the Vienna Convention on the International Sale of Goods is excluded. The Customer shall pay VPI all fees, costs and expenses of VPI reasonably incurred in the enforcement of VPI's rights under or with respect to this Agreement, including, without limitation, reasonable attorneys' fees.

17. LICENSES AND PERMITS. Where Customer has provided a duly executed power of attorney to its agent, Customer shall be solely responsible for obtaining all import licenses or governmental permits necessary to import the products to the country of destination. At Customer's request, VPI will endeavor to assist Customer in obtaining such licenses and permits.

18. NON-DISCLOSURE OF CONFIDENTIAL AND/OR PROPRIETARY TECHNICAL INFORMATION. The Customer shall not disclose any technical/proprietary information furnished by VPI or acquired by Customer or by virtue of or as a result of the implementation of this order to any person, firm or body or corporate authority and shall make all endeavors to ensure such technical/proprietary information is kept Confidential. Title to such technical/proprietary information imparted/supplied by VPI to Customer shall at all times remain the absolute property of VPI.

19. SOFTWARE LICENSE. All software programs which are embodied in a human readable media or machine readable media and which include, but are not limited to, programs having a series of instructions, statements and data, and are related materials furnished by VPI, are trade secrets and proprietary to VPI. VPI provides such programs under a non-transferable and non-exclusive license to use them on the system for which VPI provided it; the Customer may not assign, sublicense or otherwise transfer said license and programs or materials without the prior written consent of VPI. In the event information/data is exchanged between VPI and the Customer, both parties mutually agree not to expose said programs to any claim, lien, conversion or any other encumbrance. VPI and the Customer further agree to exercise due care and employ reasonable efforts to prevent disclosure of said technical information/data program(s) unless it was or is:

- a. Known to the receiving party without restriction when received or thereafter developed independently by the receiving party, or
- b. Obtained from a source other than the originating party, or
- c. In the public domain when received or thereafter enters the public domain through no fault of the receiving party, or
- d. Disclosed by the originating party to a third (3rd) party without restriction.

20. ACKNOWLEDGMENT/GOVERNING LAW.

These Terms and Conditions are governed by the laws of the Netherlands. The competent court in Rotterdam, the Netherlands, shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with these Terms and Conditions.