



## TERMS AND CONDITIONS OF SALE

### **A. GENERAL -**

These Terms and Conditions of Sale (the "Terms") shall apply to all quotations, proposals ("Proposal") and sales ("Order") made by OPTI MANUFACTURING CORPORATION ("OPTI") for the sale of goods and performance of services to the customer ("Buyer"). No variation of the Terms will be binding upon seller unless agreed to in writing and signed by an officer or other authorized representative of seller.

### **B. ORDER –**

Any order placed by the Customer with OPTI or the acceptance of, or the payment for any product or service shall be deemed as Customer's unconditional acceptance of these Terms. Notwithstanding the foregoing, (i) should the Terms conflict with the conditions contained in a specific agreement entered into between OPTI and Customer, the conditions of such specific agreement shall govern, and (ii) the specific conditions of the Order (as defined herein) having a technical, commercial or administrative purpose prevail over the Terms. The Terms shall prevail over any general purchase conditions related to or contained in a purchase order or other document submitted by Customer, notwithstanding any provisions contained therein.

Any Proposal issued by OPTI constitutes a firm and valid offer for the duration specified in such Proposal, or (if not specified) for duration of thirty (30) calendar days from the date of the Proposal issuance. Any supply of products and/or performance of service shall be subject to due ordering by Customer in writing and acceptance or confirmation of the Order by OPTI. An order issued by Customer is only binding (i) upon acceptance or confirmation by OPTI of the order, or (ii) if OPTI starts performing the services or delivering the goods (the "Order").

### **C. CANCELLATION –**

An Order placed by Customer and confirmed by OPTI cannot be cancelled by CUSTOMER without OPTI's written consent. Customer is fully liable and shall indemnify OPTI for any applicable cancellation charges, including but not limited to, restocking fee, not to exceed the full sales price of the services and/or goods ordered and in any event shall not be less than 20% of the order amount. Modification or reduction to any Order may result in an additional charge to Customer and/or an additional lead-time.

### **D. PRICES –**

The prices are in U.S. dollars (US\$) and do not include any duties, taxes, freight or other charges, except when otherwise expressly agreed in writing between the parties. Charges are subject to currency exchange rate evolution between repair estimate and invoice date. All taxes, duties, fees or other assessments, including interests and penalties in connections therewith are for Customer's account, with the exception of those imposed on corporate income and net profit of OPTI.

### **E. INVOICE AND PAYMENT –**

All domestic orders payment terms will be determined by OPTI Sales & Credit department and be notified to buyer for approval before the buyer order be accepted and places for shipment. International orders shall be PREPAID via electronic transfer or company check in US dollars funds only. Any deduction due to wire transfer fees or currency exchange or any other related banking fees is buyer responsibility. The orders must be received on the same amount of

amount billed in the sales invoice. Any remaining amount due by buyer to OPTI is payable upon delivery of the goods or performance of work and/or service, unless otherwise determined by OPTI and agreed between the parties. If any payment due to OPTI is not received on the due date, a demand to pay shall be deemed given as of that date and OPTI shall have the right, without prior written notice, to claim interest from buyer at the rate of one percent (1%) of the invoice price per month calculated prorata as from the due date until the day when full payment is received. Such right shall be without prejudice to OPTI other rights including but not limited to the right to suspend deliveries to buyer until such due payment is received or to claim for the immediate payment of any outstanding amount. Buyer shall not be entitled to withhold any payment of any part of an invoice, nor shall Buyer set off any amount against invoices. Any invoice not disputed in writing with detailed indication of the reason thereof within fifteen (15) calendar days from the invoice issuance date will be deemed irrevocably accepted by Buyer. Buyer agrees that a mechanic's or material man's lien exists on equipment or property (including cable-tensiometers) which is in the custody of OPTI or present in OPTI premises, to the extent of Buyer's debts. OPTI shall retain title to goods sold or exchanged to Buyer until full payment of the entire price thereof by Buyer.

**ALL GOODS OR PRODUCTS IN THE CARE OR CUSTODY OF OPTI ON WHICH SERVICES (QUOTATION, REPAIR, STORAGE...) HAVE BEEN PERFORMED AND REMAIN UNPAID FOR A PERIOD OF TWO (2) MONTHS AS FROM DUE DATE OR WHEN BUYER FAILS TO TAKE DELIVERY OF THOSE PARTS WITHIN A PERIOD OF SIX (6) MONTHS AS FROM AGREED DATE, AT THE EXPIRATION OF THOSE TIME LIMIT, WHICHEVER OCCURS FIRST, BUYER AGREES TO IRREVOCABLY TRANSFER ITS TITLE OF OWNERSHIP IN THOSE GOODS, PRODUCTS TO OPTI UPON WRITTEN NOTICE BY OPTI ADDRESSED TO THE BUYER AT THE ADDRESS STATED IN THE OPTI INVOICE WITHOUT FURTHER LEGAL PROCESS OR DEMAND AND BUYER HEREBY APPOINTS OPTI, THROUGH ITS OFFICERS, AS BUYER'S TRUE AND LAWFUL ATTORNEY IN FACT TO EFFECT THE SALE, TRANSFER AND DISPOSITION OF TITLE TO THE PROPERTY TO OPTI FREE AND CLEAR OF ANY LIEN OR ENCUMBRANCE.**

#### **F. DELIVERY AND TRANSPORTATION –**

While OPTI will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by OPTI, all shipping dates are not guaranteed. OPTI, at its options, shall not be bound to tender delivery of any goods for which Buyer has not provided shipping instructions and other required information. If the shipment of the goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse OPTI for any and all storage costs and other additional expenses resulting therefrom. All shipments, risk of loss for damage and responsibility and legal title of the goods shall pass from OPTI to Buyer upon delivery to and receipt by carrier at OPTI's shipping point. All shipments are F.O.B. OPTI's shipping point. Any claims for shortage or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

Shipment of goods or products to OPTI on which work and/or services are to be performed shall be sent DELIVERED DUTY PAID to OPTI facilities, except if otherwise agreed or specified herein. Neither party shall bear any risk associated with transportation in the event of faulty or unsecured packing under the other party's responsibility and not in accordance with the above. Buyer acknowledges that the services or goods (including without limitation data, commodities, technology or software) supplied by OPTI under the Terms may be subject to export control laws and regulations, and diversion contrary to such laws and regulations is prohibited. Buyer shall indemnify and hold OPTI harmless against any damages, losses or fees of any kind imposed as a result of Buyer failure to comply with any applicable export control law or regulation.

OPTI RESERVES THE RIGHT TO APPLY STORAGE FEES TO ANY GOODS SOLD OR PRODUCTS ON WHICH WORK AND/OR SERVICES HAVE BEEN PERFORMED AND HAVE NOT BEEN COLLECTED BY BUYER TO A FLAT RATE EQUAL TO US\$ SEVENTY FIVE (US\$75) PER WEEK STARTING THIRTY (30) CALENDAR DAYS AS FROM AGREED DELIVERY DATE. AT THE EXPIRATION OF A PERIOD OF SIX (6) MONTHS, OPTI MAY EXERCISE RIGHT TO DISPOSE OF THE GOODS AS MENTIONED UNDER ARTICLE 5 HEREIN.

## **G. FORCE MAJEURE -**

OPTI shall not be liable nor deemed to be in default for any failure to perform its obligations due to *force majeure* or any other cause beyond its reasonable control and which prevent OPTI from performing its obligations, in total or in part, such as but not limited to: (i) act of God or public enemy, act of civil or military authorities, any law, decision, regulation, directive or other act of any government, or of any department, commission, board, bureau, agency, or court, war or civil war, armed hostilities, insurrection, riot, acts of nature, fire, flood, explosion, earthquakes, natural disaster, accident, total or constructive total loss, epidemic, quarantine restrictions, labor dispute in particular external strike, lockout or serious accidents (resulting in the cessation, slowdown or stoppage of work), embargoes; (ii) delay or failure of Customer to deliver as agreed the relevant item or supplies, the required documentation or information; (iii) delay or failure on the part of a third party supplier or vendor to procure materials, accessories, equipment, parts, tools and/or documentation, after due and timely diligence; (iv) campaign changes or manufacturer's design failure; (v) unforeseen major defect on the item to which the performance of services are related; or (vi) additional services or changes requested by Buyer and not agreed at the time of the Order. When OPTI demonstrates that one of the above mentioned events has caused damage or delay, the *force majeure* is presumed.

## **H. ACCEPTANCE –**

Goods supplies to Buyer shall be deemed accepted upon delivery, unless the Buyer notifies in writing to OPTI of its rejection, within ten (10) days after the goods have been received, of any non-conformities and/or apparent defects on the accompanying transport document. Any rejection shall specify the nature and scope of the deficiencies. If no rejection is reported in writing within the term of ten (10) days, the goods will be deemed definitively accepted by Buyer. Notwithstanding anything to the contrary within the Terms, Buyer will bear all risk of loss of or damage to or caused by such goods from the time that they are delivered to Buyer in accordance with the above.

## **I. WARRANTY AND RETURNS -**

All Cable-Tensiometers have a warranty to the original Buyer of one (1) year on new units and six (6) months for repaired units from the invoice date. This warranty is to ensure the Cable-Tensiometers are free of defects in material and workmanship under correct and normal use. This warranty can be void if OPTI has determined, in its sole discretion, that unit has been tampered, altered, dropped, damaged by accident or by misused in any manner and/or has not been used in accordance with instructions furnished by seller and made available at the OPTI website.

OPTI's sole and exclusive liability and buyer's exclusive remedy with respect to products proved to OPTI's satisfaction to be defective or nonconforming shall be replacement of such products without charge, in OPTI's sole discretion, upon the return of such products in accordance with OPTI instructions. OPTI shall not in any event be liable for incidental, consequential or special damages of any kind resulting from any use or failure of the products, even if OPTI has been advised of the possibility of such damaged including, without limitation, liability for loss of use, loss of work in progress, down time, loss of revenues or profits, failure to realize savings, loss of products of Buyer or other use or any liability of Buyer to a third party on account of such loss, or for any labor or any other expense, damage or loss occasioned by such product including personal injury or property damage unless such personal injury or property damage is caused by OPTI's gross negligence. All claims must be brought within one (1) year of shipment, regardless of their nature.

For any unit returns a Return Material Authorization number (RMA) is required prior to return of any goods. Request for RMA numbers should be addresses to OPTI Quality Department and may be by telephone, e-mail or fax. The RMA number should be included on packing list and purchase orders. Products returned for warranty consideration should be marked ATTENTION: WARRANTY ADMINISTRATION, with the packing list and rejection notice containing the RMA number. Restocking charges may apply. Returns cannot be accepted without a pre-issued RMA number and, **OPTI**

***reserves the right to accept the return of goods not related to quality concerns. SHIPPING COSTS TO AND FROM OPTI ARE NOT INCLUDED IN OUR WARRANTY COVERAGE.***

**J. TECHNICAL ASSISTANCE –**

At Buyer request, OPTI may, at OPTI's discretion, furnish technical assistance and information with respect to OPTI's products. OPTI makes no warranties of any kind or nature, express or implied, including any implied warranty of merchantability or fitness for any particular purpose, with respect to technical assistance or information provided by OPTI or OPTI's personnel. Any suggestions by OPTI regarding use, selection, application or suitability of the products shall not be construed as an express warranty unless specifically designated as such in a writing signed by an officer or other authorized representative of OPTI.

**K. BUYER'S REPRESENTATION AND INDEMNITY –**

Buyer represents and warrants that it shall use all products ordered herein in accordance with its applicable "Operation and Service Manual" included with the product and/or made available at the OPTI website. Buyer agrees to indemnify and hold harmless OPTI, its employees, agents, successors, officers, and assigns, from and against any suits, losses, claims, demands, liabilities, costs and expenses (including attorney and accounting fees) that OPTI may sustain or incur as a result of any claim against OPTI based upon negligence, breach of warranty, strict liability in tort, contract, or any other theory of law brought by Buyer, its officer, agents, employees, successors or assigns, by Buyer's customers, by end users or by other third parties, arising out of, directly or indirectly, the use of OPTI's products, or by reason of Buyer's failure to perform its obligation contained herein.

**L. CONFIDENTIALITY AND PROPRIETARY INFORMATION –**

Any information, document or data of whatever nature and support, commercial or otherwise, transmitted by OPTI to Buyer in connection with the Order and/or the supply of services or goods shall be deemed confidential information and, Buyer undertakes not to disclose any such information, document or data to any third party for any reason whatsoever, and not to copy or reproduce any such information, document or data, without OPTI's prior written consent, except (i) as may be required by law, (ii) for information in the public domain and/or accessible to the general public, (iii) for the internal use of Buyer's representatives or agents only on a need-to-know basis. Should the performance of the services by OPTI result in the creation and development of any intellectual or industrial property right, OPTI shall have full title and interest in such right.

**J. MISCELLANEOUS –**

OPTI shall, without prejudice to OPTI's other rights, be entitled to suspend the performance of its obligation and/or terminate the Order (in whole or in part) by written notice and without need of judicial recourse, should Buyer fail to remedy any breach of its obligations. Buyer shall not assign an order or any interest therein or any rights hereunder (including the right to receive delivery) without the prior written consent of OPTI. In the event that any provision of the Terms should for any reason be held ineffective, the remainder of the Terms shall remain in full force and effect. Provisions contained or referred to in Buyer's order neither cancel nor modify nor add to the present Terms, unless otherwise agreed in writing between the Parties. The failure to enforce at any time any of the Terms or to require performance of same shall in no way be deemed to be a present or future waiver of the relevant Terms.

**K. EQUAL OPPORTUNITY EMPLOYER –**

OPTI adheres to a policy of providing equal employment opportunity for all qualified employees and applicants without regard to race, gender, color, religion, national origin, age, disability, or veteran status, and take affirmative action to insure compliance with such policy. OPTI certifies that it is in compliance with the requirements of all applicable federal, state and local laws and regulations prohibiting discrimination on the basis of a protected status.

**L. CHANGES –**

Any change to these Terms must be in writing and issued/published by OPTI. Buyer should consult OPTI's web site to submitting any order to check if these Terms have been modified or updated.

**M. GOVERNING LAW AND JURISDICTION –**

All disputes as to the legality, interpretation, application, or performance of this terms and conditions shall be governed by the laws of the Commonwealth of Puerto Rico, USA, including its conflict of laws principle. Each party to this terms and conditions agrees that any dispute arising between them which results in either party instituting court proceedings shall be litigated in the Puerto Rico Government States Court and or in the Federal District Court of San Juan, Puerto Rico.