

# VENTURE MEASUREMENT STANDARD TERMS AND CONDITIONS OF SALE



**1. PAYMENT.** Terms of payment are net thirty (30) days from the date of invoice. If, in the Seller's opinion, the financial condition of the Buyer at any time or any other circumstance does not justify the incurrence of production costs or shipment on the terms specified, the Seller may require partial or full payment in advance.

**2. F.O.B.** Unless otherwise stated in the quotation, transfer of title and risk of loss for shipments to destinations within the United States will transfer F.O.B. at the time of shipment in Spartanburg, South Carolina. Transfer of title and risk of loss for shipments to destinations outside the United States will transfer thirty (30) minutes after the shipment has crossed out of the United States' internationally recognized borders.

**3. QUOTATION AND PRICES.** Quoted prices are firm for thirty (30) days and are subject to change without notice after expiration of this period. Orders calling for future deliveries will be invoiced at the prices in effect at the time of shipment.

**4. TAXES.** The quotation does not include any applicable sales, use, revenue, excise, or other taxes unless they are specifically stated. Seller will collect any such taxes that it is required to collect, unless Buyer provides to Seller a sales and use tax exemption certificate.

**5. LIMITED EQUIPMENT WARRANTY.** Products manufactured by Venture Measurement are warranted for a period of one (1) year from date of shipment against defective materials and workmanship.

No warranty is given if the product has been subject to misuse, accident, negligence, or improper transportation, handling, installation, storage, use, maintenance, or application or if the product has been repaired or altered except by Seller or except with Seller's prior written authorization. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS HEREBY DISCLAIMED AND EXCLUDED.

This limited warranty does not extend to labor charges or other costs related to the removal and/or replacement of defective products. Any technical advice or services furnished by Seller with respect to the products is given without charge, and Seller assumes no obligation or liability for the advice given or results obtained, all such advice being given and accepted at Buyer's risk. If the products are being acquired for resale, Buyer will make, in connection with any such resale, only those warranties contained herein and will indemnify Seller and its officers, directors, agents, employees, affiliates, successors, and assigns against any claims, causes of actions and judgments which arise from any representations, warranties, or agreements made by or entered into by Buyer, other than those contained herein.

**6. LIMITATION OF REMEDIES.** SELLER'S SOLE LIABILITY AND OBLIGATION FOR A BREACH OF THE WARRANTY OR ANY OTHER PROVISIONS OF THESE TERMS AND CONDITIONS SHALL BE TO REPAIR OR REPLACE THE SPECIFIC NONCONFORMING PRODUCTS OR TO CREDIT OR REFUND THE PURCHASE PRICE ACTUALLY PAID FOR SUCH NONCONFORMING PRODUCTS, AS SELLER MAY ELECT. SELLER'S LIABILITY ON ANY CLAIM, WHETHER GROUNDED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), ANY THEORY OF STRICT LIABILITY OR OTHERWISE, OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THESE TERMS AND CONDITIONS OR THE PERFORMANCE OR BREACH HEREOF OR THE PRODUCTS OR THEIR PERFORMANCE OR USE IS LIMITED SOLELY AND EXCLUSIVELY TO THE REMEDIES PROVIDED ABOVE AND NO OTHER RIGHT OR REMEDY WILL BE AVAILABLE TO BUYER OR TO ANY PERSON OR ENTITY. SELLER WILL IN NO EVENT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY INDIRECTS, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ANY PENALTIES OF ANY KIND, ANY LOSS OF PROFITS

OR ANY OTHER ECONOMIC LOSS, WHETHER OR NOT FORESEEABLE, TO ANY PERSON, PROPERTY OR ENTITY, IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE PRODUCTS, WHETHER GROUNDED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), ANY THEORY OF STRICT LIABILITY OR OTHERWISE.

**7. LIMITATION OF CLAIMS.** In addition to Buyer's inspection obligation set forth in Section 12 hereof, and notwithstanding any custom of trade or course dealing between Seller and Buyer, failure of Buyer to give notice of any claim for breach of warranty within ninety (90) days after a product is shipped by Seller (which the parties agree is a reasonable time), or during any applicable warranty period, shall constitute an unqualified waiver by Buyer of all claims with respect thereto, including the right to receive a refund of or credit for the purchase price or repair or replacement of the products.

**8. ASSUMPTION OF RISK.** Buyer assumes all risk and liability whatsoever for any and all injuries (including death), losses or damages to persons or property or otherwise resulting from or arising in connection with Buyer's possession, handling, storage, transportation, use, sale, or other disposition of any products sold hereunder, whether used alone or in conjunction with other products, or incorporated in a finished product, and Buyer agrees to indemnify and hold harmless Seller, its officers, directors, agents, employees, affiliates, successors, and assigns from and against any and all damages (including consequential and incidental damages), costs, claims, suits, judgments, liabilities and expenses (including attorney's fees) arising out of or in connection with any of the foregoing.

**9. SECURITY INTEREST.** Seller reserves and Buyer grants to Seller a security interest in the products sold hereunder and in the proceeds thereof to secure payment of the purchase price for such products. On request by Seller, Buyer will execute a standard form financing statement.

**10. NO SETOFF; NO WITHHOLDING.** No claims for money due or to become due to Seller or its affiliates from Buyer or its affiliates shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller or its affiliates. Buyer shall have no right to withhold any amounts due to Seller for any reason, except with the prior written consent of Seller. Buyer agrees that any amount owed by it to Seller shall be paid in cash to Seller promptly when due.

**11. DELIVERY.** Any delivery date quoted for a shipment is only an estimate. Buyer's sole remedy for any delay from the estimated delivery date for a shipment is to cancel the order for such shipment by written notice to Seller; provided that Buyer shall be obligated to pay for all products completed and in process prior to Seller's receipt of Buyer's notice of cancellation hereunder. In no event will Seller be liable for any premium transportation, procurement or other costs or losses incurred by Buyer as a result of such delay in delivery. Seller shall not be liable for loss or damage of any kind resulting from delay or inability to deliver on account of flood, fire, strike, labor troubles, riot, civil disturbances, accidents, acts or orders or regulations of civil or military authorities, shortages of materials, or any other cause or causes (whether or not similar in nature to any of these enumerated) beyond Seller's control.

**12. INSPECTION.** Buyer shall examine each shipment of products hereunder upon its arrival and shall promptly notify Seller in writing of any shortage, loss, or damage apparent under reasonable examination. Failure by Buyer to send such notification to Seller within ten (10) days after Seller ships products (which the parties agree is a reasonable time) shall constitute an absolute and unconditional waiver of all claims for such shortage, loss, or damage.

**13. PRODUCT CHANGES.** In keeping with Seller's continuing policy of product improvement, Seller reserves the right to make changes in Seller's products at any time, without incurring an obligation to change equipment previously shipped.

**14. RETURN OF GOODS.** In no case may products or parts be returned without Seller's prior written permission. Products or parts returned under the above Limited Equipment Warranty (Section 5) must be shipped with transportation charges prepaid and must be accompanied by an explanation, reasonably satisfactory to Seller, of the nature of the asserted noncompliance. All other returns must be shipped with transportation charges prepaid and will be subject to a restocking charge. Only products of standard Seller manufacture will be accepted for return. Products that are specifically modified or produced to the Buyer's specifications will not be accepted for return.

**15. CONFIDENTIALITY.** Buyer agrees that all information contained in any drawings, blueprints, specifications, samples, and other material furnished by Seller or otherwise furnished, including orally, by Seller to Buyer in connection with these Standard Terms and Conditions of Sale is exclusively proprietary to Seller and is confidential, and Buyer agrees to return such information to Seller promptly upon request by Seller. Buyer shall keep all such information strictly confidential and shall not use such information, in whole or in part, to any other party, unless Buyer obtains prior written permission from Seller to do so. Seller may advertise or publish the fact that Buyer has contracted to buy products from Seller and Seller may disclose any information relating to the order or these terms and conditions without Buyer's name in any publicity, oral or written, and without the prior written consent of Buyer. Unless otherwise agreed in writing, no commercial, financial, technical, or other information disclosed in any manner or at any time by Buyer to Seller shall be deemed secret or confidential.

**16. CONTRACT INFORMATION.** A binding contract shall not be effective until a written purchase order is received at Seller's office in Spartanburg, South Carolina and accepted in writing by an authorized employee of the Seller at its office. THE TERMS AND CONDITIONS IN SELLER'S QUOTATION OR ACKNOWLEDGEMENT AND THESE STANDARD TERMS AND CONDITIONS OF SALE SHALL GOVERN THE CONTRACT AND ANY DIFFERENT OR ADDITIONAL TERMS IN BUYER'S PURCHASE ORDER, UNLESS APPROVED BY SELLER IN WRITING, ARE HEREBY OBJECTED TO AND REJECTED. BUYER WILL BE DEEMED TO HAVE ACCEPTED THESE STANDARD TERMS AND CONDITIONS OF SALE UNLESS WRITTEN NOTICE OF REJECTION IS RECEIVED BY SELLER WITHIN TEN (10) DAYS AFTER BUYER'S RECEIPT OF THESE STANDARD TERMS AND CONDITIONS OF SALE. IN ANY EVENT, BUYER'S ACCEPTANCE OF DELIVERY OF THE PRODUCTS SOLD HEREUNDER SHALL BE DEEMED TO CONSTITUTE BUYER'S ASSENT TO THESE TERMS AND CONDITIONS AND BUYER'S WAIVER OF ALL TERMS AND CONDITIONS PROPOSED BY BUYER IN WRITING OR OTHERWISE THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE SET FORTH IN THESE STANDARD TERMS AND CONDITIONS OF SALE.

**17. CANCELLATION.** Request for cancellation must be in writing and sent to Seller. No orders will be accepted with the understanding that they may later be cancelled. If and when cancellation is approved by Seller, it is with the understanding that Seller will be fully reimbursed by payment of cancellation charges, which are to be determined by Seller.

**18. NO WAIVER.** Failure of Seller to object to any terms that now or in the future appear in any document or form of Buyer shall not be construed as a waiver of the provisions of these terms and conditions nor an acceptance of any such term. Seller's failure or delay in insisting on strict performance of any of these terms or conditions or in exercising any right, power or privilege hereunder, at any time, shall not operate as a waiver of the same, nor shall Seller's waiver of any breach hereunder constitute a waiver of any other terms, conditions, or privileges, whether of the same or similar type.

**19. ASSIGNMENT.** No part of these Standard Terms and Conditions of Sale may be assigned, delegated, or subcontracted by Buyer without prior approval of Seller and any purported assignment, delegation or subcontract hereof by Buyer without such consent shall be void at Seller's election.

**20. AMENDMENT; SEVERABILITY.** No amendment or modification of these Standard Terms and Conditions of Sale shall be effective unless it is in writing and signed by a duly authorized representative of Seller. No finding that a part of these terms and conditions is invalid or unenforceable shall affect the validity of any other part hereof and the remainder of these terms and conditions will remain in full force and effect.

**21. CHOICE OF LAW; JURISDICTION; SERVICE.** These Standard Terms and Conditions of Sale shall be construed and enforced in accordance with the internal laws of the State of South Carolina, without reference to choice of law provisions. Jurisdiction and venue for any lawsuits relating to these terms and conditions and/or sale of products by Seller shall be proper only in the state and federal courts in the State of South Carolina. Buyer hereby consents to service of process by registered or certified mail, return receipt requested, to it at its address set forth in Seller's records.

**22. FOREIGN CORRUPT PRACTICES ACT OF 1977, AS AMENDED.** Buyer warrants that no payment of money or provision of anything of value will be offered, promised or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage or which otherwise constitutes or has the purpose of effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage with any activities related in any way to this purchase, including without limitation any payment of money or provision of anything of value to any employee of any customer in order to secure a sale.

The headings of the various sections of these Standard Terms and Conditions of Sale are inserted only as a matter of convenience and for reference and in no way define, limit, or describe entirely the scope or intent of the particular section to which they refer.

**venture**  
**MEASUREMENT**

150 Venture Boulevard  
Spartanburg, SC 29306

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All data and information subject to change without notice.  
Effective 01/01/2010.