

UNIVERSITY PATON INSTRUMENTS PTY LTD (UPI)

TERMS AND CONDITIONS OF SALE

All quotations, offers and contracts are subject to the Terms and Conditions given below unless otherwise agreed by University Paton Instruments Pty. Ltd. (hereinafter referred to as UPI) in writing. Any statement on any form issued by the Customer shall not operate to defeat the intent of these terms and conditions.

1. TERMS OF CONTRACT

Quotations are effective for 30 days unless previously withdrawn, but all orders are subject to final acceptance by UPI in writing. In case of any conflict between these conditions and the terms of the Customer's order or related correspondence, these conditions shall prevail. No person has authority to make any representation on UPI's behalf or agree any term of the contract which is not made or confirmed by UPI in writing and the Customer shall not rely upon any representation unless made or confirmed by UPI in writing. Quotations are subject to correction of omissions and typing errors.

2. PRICES

UPI's quoted prices are based on the acknowledged date of despatch, and apply throughout the period of contract, unless otherwise stated. Packing, carriage, Sales Tax (where applicable) and in the case of export orders any imposts, dues taxes, or other charges are additional to the quoted price and payable by the Customer whether or not in existence at the date of quotation or contract, unless otherwise agreed by UPI in writing. Quotations in currencies other than Australian dollars, or for imported equipment, are subject to variation in price based on difference between the exchange rate applicable at the date of quotation and that applicable at the date of payment. Standard installation and maintenance instructions in English are supplied free of charge. Instruction manuals are additional to the quoted price.

3. TERMS OF PAYMENT

- (a) For Australia contracts on a credit basis, payment shall be made within 30 days from the date of invoice unless otherwise stated. For direct export contracts on a credit basis, payment shall be made with order unless otherwise stated.
- (b) For contracts not expressed to be on a credit bases, equipment will be despatched against cash payment. If payment is not received within 14 days after notification that the equipment is ready for despatch, UPI shall be entitled either to treat the order as cancelled and make a cancellation charge, or to arrange and charge for storage and insurance.
- (c) If any payment is not made when due, UPI shall be entitled to charge interest at the rate of 3% per annum above the base rate from time to time in force of UPI's bank on the daily balance outstanding from the due date until payment is made, in addition to any other right or remedy which UPI may have.

4. PROPERTY AND RISK

- (a) UPI shall:
 - (i) Retain legal title to equipment supplied to the Customer until the price for it has been paid in full.
 - (ii) Be empowered to repossess or seize the equipment. If the equipment is sold by the Customer to a third party, the whole of the proceeds of the sale shall remain the property of UPI until the equipment has been paid for in full by the Customer.
 - (iii) Become, or be deemed to be, the owner in common of any product the result of mixing or incorporating the equipment with the property of a third party or the Customer to the extent of the value of the equipment.
- (b) If delivery in Australia is included in the contract price, risk shall pass to the Customer on delivery to the site, unless otherwise stated.
- (c) If delivery in Australia is not included in the contract price, risk shall pass to the Customer 14 days after notification that the equipment is ready for despatch, or if earlier on actual despatch.
- (d) In the case of export contracts, risk shall pass to the Customer when properly would have passed under the Sale of Goods Act 1979.

5. DELIVERY

- (a) In cases where UPI is responsible for delivery to site, the Customer is responsible for the unloading of the equipment from either our or the carrier's vehicles
- (b) Partial deliveries may be made at UPI's discretion.
- (c) Time for delivery is given as accurately as possible but is not the subject of any condition, warranty or representation. It is subject to extensions for delay due to industrial disputes or any other cause whatever beyond UPI's control. UPI shall not be responsible for any loss caused by any delay in delivery.
- (d) The sellers' liability for non-delivery shall cease if the buyer has not notified the seller of same within 7 days of invoice.
- (e) Method of carriage will be at UPI's discretion unless otherwise agreed.

6. EXPORT CONTRACTS

- (a) If the contract provides for delivery F.O.B., UPI shall deliver the equipment on board a vessel named by the Customer or on the Customer's behalf at the port stated in the contract, and UPI shall not be required to give the Customer the notice relating to insurance mentioned in Section 32(3) of the Sale of Goods Act, 1979.
- (b) If the contract provides for delivery CIF or C. & F, UPI shall deliver the equipment at the port stated in the contract. No lighterage, landing charges, dock, wharf or customs dues are included. Freight and insurance charges (where applicable) are based on the rates obtainable at the date of UPI's quotation. If these rates are increased or decreased from any cause between the date of quotation and the date on which the equipment is shipped, the contract price will be increased or decreased by the net amount of the increase or decrease due to the variation of such rates. In the case of C.I.F. contracts, a document certifying in proper form that insurance has been effected (and whether or not other goods are included in or covered by such insurance) and endorsed by UPI may, at UPI's option, be tendered instead of a policy of insurance in respect of any equipment shipped. The Customer shall accept such documents in lieu of any policy together with invoice or invoices and bill or bills of lading, as complete tender of shipping documents by UPI. In the case of C. & F. Contracts, marine insurance having been omitted, UPI shall, if so required in good time by the Customer, be prepared to give the Customer such notice as will enable the Customer to insure the equipment during sea transit. In the absence of such request UPI shall not be liable for failure to give the Customer such notice under Sections 32(3) of the Sale of Goods Act, 1979.

7. STORAGE

If UPI does not receive forwarding instructions sufficient to enable UPI to despatch the equipment within 14 days after the date of notification that is ready for despatch, the Customer shall take delivery or arrange for storage, if he does not, UPI shall be entitled to arrange for storage and insurance, and the full price of the equipment shall become due at the start of the storage.

8. INSPECTION

Visual inspection by the Customer's representative can be arranged on request and without charge. Functional tests, witnessed by the Customer's representative, can be arranged at extra charge if requested on the order. Seven days notice will be given of such tests and, if the Customer fails to attend, the equipment will be despatched and the tests will be deemed to have been waived.

9. COMMISSIONING

Commissioning is not included in the price unless specifically referred to in the quotation.

10. RETURNS

Goods may not be returned for credit without a Returned Material Authorisation number (RMA) being obtained from UPI. The RMA number shall not be considered to be an acceptance of the goods for credit. Following return notification shall be supplied of any offer to take back the goods and subsequent to agreement a credit shall be issued.

11. DESCRIPTION

All descriptions, drawings, and other particulars furnished in catalogues, price lists and other documents issued by UPI are as accurate as possible but, being given for general information, shall not form part of the contract unless specifically confirmed by UPI in writing.

12. GUARANTEE

UPI will make good by repair or replacement at UPI's option defects which, under proper use, and arising solely from faulty design, materials or workmanship, appear in the equipment within 12 months from the date of despatch, and which are notified to UPI within 7 days of the defects becoming apparent. This guarantee is conditional upon the Customer returning the equipment to UPI's Perth Office, carriage paid and securely packed. The rectified equipment will be returned to the Customer, carriage paid. Any warranties or conditions implied by law as to the quality or fitness for any particular purpose of the equipment, are hereby excluded or limited in so far as their exclusion or limitation is allowed by statute or law and save as provided in this clause, UPI shall not be under any liability, whether in contract, tort, breach of statutory duty or otherwise, in respect of defects in equipment delivered, or for any injury (other than personal injury caused by UPI's negligence as defined in Section 1 of the Unfair Contract Terms Act 1977), damage or loss resulting from such defects or from any work done or advice given in connection therewith.

13. HEALTH AND SAFETY

Whilst UPI take all reasonably practicable steps to design and manufacture UPI products to comply with the requirements of the Health and Safety at Work Act 1974, all products must be properly used, and Customers are reminded that their obligations under the Act are to ensure that the installation of such products at a place of work should be safe and without risk to health.

14. PATENT

UPI will indemnify the Customer against any claim for infringement of letters patent, registered design, trade mark or copyright published at the date of the contract by use or sale of any article or material supplied by us to the Customer, and against all costs and damages which the Customer may incur in any action for such infringement or for which the Customer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to UPI having followed a design or instruction furnished or given by the Customer to the use of such article or material in a manner or for a purpose or in a foreign country not specified by or disclosed to UPI, or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by UPI. And provided also that this indemnity is conditional on the Customer giving UPI the earliest possible notice in writing of any claim being made or action threatened or brought against the Customer and on the Customer permitting UPI at UPI's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. This indemnity is given in addition to any warranty or condition implied by law as to the enjoyment of quiet possession of the equipment. The Customer on its part warrants that any design or instruction furnished or given by the Customer shall not be such as will cause UPI to infringe any letters patent, registered design, trade mark or copyright in execution of the Customer's order.

15. LIABILITY FOR ACCIDENTS AND DAMAGE

If UPI, UPI's agents or sub-contractors are on site for the purpose of the contract then, notwithstanding the provisions of Clause 11; UPI will indemnify the Customer against direct damage or injury to the Customer's property or person or that of others occurring while UPI are working on site, to the extent caused by negligence of UPI, UPI's sub-contractors or agents but otherwise, by making good such damage to the property or compensating personal injury.

- (a) UPI's total liability for damage to the Customer's property (including damaged caused by UPI's breach of contract, tort or breach of statutory duty) shall not exceed \$100,000 or the contract price, whichever is the greater and
- (b) UPI shall not be liable to the Customer for any loss of profit or of contracts or, save as aforesaid, for loss or damage of any kind whatever and whether caused by our breach of contract, tort, breach of statutory duty or otherwise howsoever.

(c) Save as provide in Clause 11, UPI shall not be liable for any damage or injury occurring after UPI's completion of work on site.

16. LAW

The contract shall be in all respects be construed and operate as an Australian (W.A.) contract and in conformity with Australian (W.A.) law.

17. STATUTORY AND OTHER REGULATIONS

If the cost to UPI of performing UPI's obligations under the contract shall be increased or reduced by reason of the making or amendment, after the date of our quotation, of any law or of any order, regulation, or by-law having the force of law that shall effect the performance of UPI's obligations under the contract, the amount of such increase or reduction shall be added or deducted from the contract price as the case may be.