

NEWTON SCIENTIFIC, INC.
TERMS AND CONDITIONS OF SALE

1. **PRICES.** All prices quoted are good for 30 days from Quotation date but subject to change, without advance notice, at any time thereafter. If there is a delay in completion of shipment of said order of more than 30 days due to any change requested by Buyer or as a result of any delay on Buyer's part (e.g.in furnishing information required for completion of the order), the price agreed upon at time of acceptance of order is subject to change. Prices are EXW NSI's factory and are exclusive of all taxes (foreign, federal, state or local), shipping costs, and insurance, all of which shall be paid directly by Buyer. There will be added to the quoted price any sales or other tax or duty NSI pays or is required to collect or pay upon the sale of NSI's goods. If such amount is not included in an invoice for the goods, it may be invoiced separately later.
2. **TERMS OF PAYMENT.** For domestic sales, the terms of payment are net 30 days after Invoice Date, unless other conditions are provided on the invoice. Late payment charge of the lesser of 1.5% per month or the maximum legal rate will be added to all invoices not paid by the due date. For international sales, payment is due upon receipt of a Pro Forma Invoice prior to shipment of goods. Payments for international sales must be made by wire transfer or bank check. NSI reserves a right to suspend or cancel international shipment if advance payment is not made.
3. **CREDIT.** All credit sales are subject to the approval of NSI's credit manager. NSI may suspend or cancel a sale if it in good faith revokes Buyer's credit approval.
4. **DELIVERY.** If an estimate of time of shipment or delivery has been made in a proposal, it is approximate only and will begin to run on the date of NSI's acceptance of Buyer's purchase order and receipt of all specifications; except that in the case of special items considered non-standard by NSI, it will begin to run on the date on which NSI received complete information necessary to design and manufacture such items. All estimated shipping dates are subject to delays caused by Buyer (e.g., failure of Buyer-provided testing material); shortages of fuel, energy or materials; the failure of NSI's suppliers or subcontractors to meet scheduled deliveries; or any force majeure (as defined in Section 11); none of which factors or causes shall give rise to any liability on NSI's part whatsoever, including for loss of use or for any indirect or consequential damages. All items shall be packaged, marked and otherwise prepared for shipment in accordance with good commercial practices and in a manner that provides adequate protection; if Buyer has special packaging or shipping requirements, it must obtain NSI's express consent and pay NSI's expenses. An itemized packing list shall be included in each shipment and each packing list shall bear the Buyer's purchase order number and an accurate description of the goods and quantities in the shipment. Unless otherwise specified hereon, NSI will (i) ship using its preferred carrier, unless otherwise requested by the Buyer on a printed purchase order (but shall not have any liability in connection with the shipment, nor shall the carrier be construed to be the agent of NSI), (ii) prepay freight and any other necessary and reasonable transportation charges and invoice them to Buyer, and (iii) arrange and prepay insurance on equipment while in transit and invoice Buyer for such charges.
5. **CANCELTION.** Unless otherwise agreed to in writing, all orders are non-cancelable and non-returnable. In the case of blanket orders with multiple releases, any released units and any finished units in NSI's inventory are non-cancellable and non-returnable. In the event Buyer cancels any unfinished units in its blanket order, or if NSI allows cancelation of any other portion of a blanket order, customer hereby accepts liability for all costs of raw materials and work in process (WIP) associated with the order.
6. **WARRANTIES.** All goods sold by NSI are warranted as set forth below unless otherwise stated in writing by NSI. NSI warrants that the goods will be free of defects in materials and workmanship and will conform to the product specifications provided to Buyer for a period of one year (12 months) from the date of delivery of the goods, but only when used in the manner and for the purpose for which the goods are intended, normal wear and tear excepted. Buyer's exclusive remedy, and NSI's sole liability, for any breach of this warranty is that, provided Buyer complies with Sections 8 and 9, NSI will, in its sole discretion, repair or replace defective parts or components of the goods or, if NSI so chooses, refund the amounts paid by Buyer for the nonconforming goods. The foregoing warranty and remedies shall apply to repaired or replaced parts and components (including labor) for the remainder of the original warranty period for the goods or 90 days, whichever is longer. If the goods (or any part or component thereof) has been disassembled, tampered with, or modified by non-NSI personnel in any way, or has been lost, damaged, destroyed, or subjected to any abuse or misuse (whether or not intentional) following delivery, or has been operated in any manner inconsistent with the applicable NSI product specifications or NSI instructions for use, then no warranty coverage will apply. NSI assumes no responsibility for products, parts, components, materials, services or labor not provided by NSI, and has the right to make the final determination concerning the existence and cause of any nonconformity. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, ALL GOODS SOLD BY NSI ARE PROVIDED "AS-IS." ACCORDINGLY, THE FOREGOING WARRANTY IS IN

LIEU OF AND EXCLUDES, AND NSI HEREBY DISCLAIMS, ALL WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT.

7. LIMITATION OF LIABILITY. NSI shall not be liable for indirect, special, exemplary, punitive, incidental or consequential losses, damages or expenses, directly or indirectly arising from the sale, handling, installation, service, or use of the goods, or from any other cause relating thereto (including negligence). Without limiting the foregoing, NSI shall not be liable for any damages for loss of or damage to Buyer's systems, products or data, or for any damages for loss of business profits or business interruption, or for costs of cover, whether such alleged damages are based on principles of contract, warranty, negligence, strict liability or other tort, breach of any statutory duty, principles of indemnity or contribution, or any other theory of liability. NSI's liability hereunder in any case is expressly limited to repair or replacement (in the form originally shipped) of goods not complying with these Terms and Conditions of Sale or, at NSI's election, to the repayment of, or crediting Buyer with, an amount equal to the purchase price of such goods.

BUYER FURTHER ACKNOWLEDGES THAT THE GOODS MAY INCLUDE RADIATION SOURCES AND ELECTRICAL SOURCES THAT ARE INHERENTLY DANGEROUS AND COULD CAUSE DEATH, PERSONAL INJURY AND PROPERTY DAMAGE, AND THAT THE ENTIRE RISK ARISING OUT OF THE USE AND PERFORMANCE OF THE GOODS REMAINS WITH BUYER. Accordingly, Buyer (i) acknowledges that Buyer is allowed and fully able to inspect and test goods before they are incorporated into its products and, accordingly, assumes full responsibility for assuring they perform according to specifications and meet Buyer's requirements, (ii) assumes full responsibility to ensure that the goods are deployed and used by its personnel (including in the process of testing and manufacture) in a safe and proper manner, and (iii) assumes full responsibility for incorporating appropriate safeguards and protections (including without limitation for radiation and electrical safety) in Buyer's end products that incorporate the goods. Under no circumstances and irrespective of the cause (including negligence) shall NSI be liable for any injury or damage to property resulting from use of the goods by Buyer, Buyer's agents or Buyer's customers; and Buyer hereby agrees to indemnify, defend and hold harmless NSI if it is subject to claims, suits or proceedings arising from such causes.

8. CLAIMS-NOTICE OF DEFECTS. All claims of material defect in the goods, or of goods not in strict conformance with Buyer's order or NSI's specifications, must be reported within 10 days after discovery. Any claims not so reported shall be deemed irrevocably waived. Buyer shall afford NSI prompt and reasonable opportunity to inspect all materials as to which any claim is made. If NSI and Buyer are unable to reach settlement of any claim relating to material covered hereby, Buyer must institute legal action against NSI within one year after such claim arises or such claim shall be barred, notwithstanding any statutory period of limitations.

9. RETURN OF GOODS. To return defective goods or to obtain warranty service, Buyer must first contact NSI during the warranty period to report the defect and receive a return authorization (RMA) number, and must then ship the goods pre-paid by Buyer to NSI. Buyer shall be solely responsible for risk of loss in connection with the return. A written statement from the Buyer must accompany the goods stating the alleged nonconformity or defect. NSI will use commercially reasonable efforts to repair and return the goods within a reasonable time period, and will keep the Buyer informed regarding the progress of repair. Alternatively, NSI may, in its sole discretion, replace the goods (or any part or component thereof) with new or refurbished parts and components.

10. TITLE; RISK OF LOSS. Buyer hereby grants NSI a purchase money security interest in the goods until full payment, and will cooperate with NSI's efforts to perfect this security interest. Delivery shall occur and risk of loss shall pass to Buyer upon delivery of the material to a carrier at the point of shipment. Transportation shall be at Buyer's sole risk and expense, and any claim for loss or damage in transit shall be against the carrier only. NSI shall own all intellectual property rights, title and interest in the goods as shipped to Buyer, including without limitation rights to any customizations or improvements requested by Buyer (unless NSI signs an express written agreement to the contrary).

11. FORCE MAJEURE. Neither party shall be liable to the other for any delay or failure to perform (except failure to pay all amounts when due) which is due to causes beyond the reasonable control of such party.

Performance times shall be considered extended for a period of time equivalent to the time lost because of any delay which is excusable hereunder.

12. GOVERNMENTAL AUTHORIZATIONS. Buyer shall be responsible for timely obtaining and paying for any required authorization, such as an Export License, Import License, Exchange Permit or any other governmental authorization, even though any such authorization may be applied for by NSI. Buyer and NSI shall assist each other in every reasonable manner in securing such authorizations as may be required. NSI shall not be liable if any authorization is delayed, denied, revoked, restricted or not renewed and Buyer shall not be relieved of its obligations to pay NSI for its work.

13. U.S. EXPORT CONTROLS. All sales hereunder shall at all times be subject to the export control laws and regulations of the U.S. Government and any amendments thereof. Buyer agrees that it shall not make any disposition, by way of trans-shipment, re-export, diversion or otherwise, except as said laws and regulations may expressly permit, of U.S. origin goods purchased from NSI, other than to the ultimate country of destination specified on Buyer's order and/or declared as the country of ultimate destination on NSI's invoices.

14. GOVERNMENT CONTRACT CONDITIONS. If Buyer's purchase order contains a U.S. government contract number and orders equipment to be used in the performance of said contract, those clauses of applicable U.S. government procurement regulations mandatorily required by federal statute to be included in U.S. government subcontracts shall be incorporated herein by this reference.

15. DISPUTES. These Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, as they apply to contracts entered into in Massachusetts by residents thereof. NSI and Buyer specifically agree that any legal action brought relating to goods purchased or relating to this contract will be brought and tried in Massachusetts. Buyer hereby waives all objections to venue and consents to service of process by certified mail to the address listed above, or if none, to the same address as that address designated for delivery of the goods purchased hereunder.

16. WAIVER. The waiver by either party hereto of any remedy with respect to a breach of any provision hereof shall not be taken as a waiver of a remedy with respect to any succeeding breach of such provision or any breach of other provision.

17. SEVERABILITY. The parties agree that each provision contained herein shall be treated as a separate and independent clause, and that if one or more of these provisions shall for any reason be held excessively broad or unenforceable, such provision or provisions shall be construed by the appropriate judicial body by limiting and reducing it or them, so as to be enforceable to the extent compatible with the applicable law.

18. MODIFICATION. These Terms and Conditions may be accepted only in the form furnished by NSI and may not be modified except by written agreement signed by a duly authorized representative of NSI. Any provisions of Buyer's purchase order which are inconsistent with the foregoing shall be of no force and effect, unless NSI shall have expressly agreed to a modification in the manner set forth herein.

19. INTEGRATION. IN PURCHASING THE GOODS, BUYER AGREES THAT IT HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY NSI'S TERMS AND CONDITIONS OF SALE AND THAT THESE TERMS AND CONDITIONS, TOGETHER WITH ANY CERTIFICATIONS, AMENDMENTS OR ATTACHMENTS EXPRESSLY MADE A PART HEREOF BY THE WRITTEN AGREEMENT OF THE PARTIES, WILL BE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, SUPERSEDING ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL PURCHASE ORDERS AND OTHER COMMUNICATIONS BETWEEN THE PARTIES, NOTWITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS APPEARING ON ANY SUCH OTHER DOCUMENT.