



**TEL-TRU**  
**MANUFACTURING CO.**  
*Temperature + Pressure Instruments*

**TEL-TRU, Inc.**  
**Terms and Conditions of Sale**  
July 21, 2015

1. Terms and Conditions Applicable. Buyer has offered to purchase from Seller ("SELLER") the Products, as defined below, described on the face of the order confirmation.
  - a. "Products" shall mean items offered for sale by SELLER.
  - b. "Seller Stocked Products" are defined as those items offered for sale in one Seller Stocked configuration only (no modifications or optional configurations).
  - c. "Seller Non- Stocked Products" are defined as Products for which Buyer requires modifications or optional configurations.
  - d. "Order" shall mean written purchase order signed by an authorized representative of Buyer, identifying with specificity the Products to be purchased by Buyer, quantity, unit and extended prices, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certificates, if applicable, and any other special instructions. All Orders are subject to acceptance by SELLER and upon acceptance shall be "Firm Orders".

SELLER's acceptance of any Order is expressly conditioned upon Buyer's assent to the terms and conditions set forth herein. These terms and conditions shall apply to the exclusion of all other items and conditions including any terms and conditions which Buyer purports to apply under any purchase order, confirmation, specification or other document. No Order shall be deemed to be accepted by SELLER until a written acknowledgement of the Order is issued by SELLER or SELLER's earlier delivery of Products to Buyer. Buyer's failure to make written objection within five (5) days from receipt hereof, or from its acceptance of the delivery of the Products, whichever happens first, shall constitute its acceptance of these terms and conditions.

Quotations are firm and subject to acceptance within 30 days from the date of quotation unless otherwise noted. However, within the 30-day period, the quotation is subject to change upon notice to Buyer. Quotations are made based on the information presented to SELLER at the time of quotation. At any point in time, if a change is made to the Product, quantities or shipping instructions or the like that deviates from the original request for quotation and/or Order, SELLER will requote based upon the requested changes. The following list depicts examples of such scope of Service changes;

- i. changes in tolerances or dimensions,
    - ii. changes in quantity
    - iii. changes in QC requirements,
    - iv. changes in production runs,
    - v. changes in packaging,
    - vi. changes in schedule
    - vii. changes in shipping methods or shipping destination
2. Minimum Order Value
  - a. Orders not meeting Seller's minimum order value may be subject to a processing fee. Contact Seller for details.
3. TERMS OF PAYMENT
  - a. Buyer shall pay the purchase price set forth on the face of a Firm Order including appropriate nominal handling charges. Prices are F.C.A. SELLER's facility as per INCOTERMS 2010. Risk of loss shall pass to Buyer as soon as the Products have been delivered to the carrier for shipment to Buyer, at SELLER's facility unless otherwise specified at the time of SELLER's acceptance of the Order. Risk of loss

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shall not be affected by delivery terms, shipping instructions, or storage on Buyer's behalf by SELLER at its facilities. SELLER or Buyer may elect to obtain insurance covering the Products during shipping. All requests for shipping insurance must be made in writing at the time of Order or Order acceptance, and Buyer shall bear all costs associated with shipping insurance.

- b. Unless otherwise agreed to by SELLER, any Products ordered shall be paid for within thirty (30) days from the date of invoice (shipment).
- c. All prices and charges shall be paid in the currency denominated on the face of the Seller's invoice, and in the absence of a clear indication, in US Dollars.
- d. Title to Products shall pass to Buyer upon delivery, but SELLER retains a security interest in delivered Products until SELLER has been paid in full for same and may, at SELLER's option and without further agreement or signature by Buyer, file evidence of such security interest pursuant to the Uniform Commercial Code. So long as SELLER has a security interest, Buyer shall keep the Products in good condition and free from any other liens or encumbrances.
- e. SELLER reserves the right to charge interest at the rate of one and one half percent (1-1/2%) per month, compounded monthly, for delinquent payments; and should any such payment remain unpaid for more than ten (10) days, a late payment charge of ten percent (10%) of the total delinquent balance may also be incurred, or such lesser amounts as may be permitted by applicable law.
- f. SELLER reserves the right at any time to alter or suspend credit or to change any credit terms when, in its sole discretion, the financial condition of Buyer so warrants. In any such case, SELLER may require cash payment, irrevocable letter of credit, or additional security from Buyer before further production or shipment, may accelerate the date of any payment, and may suspend production, withhold any shipment, or cancel any further production in addition to any other rights or remedies it may have pursuant to applicable law and these terms and conditions. Buyer shall also be liable to SELLER for all costs of collection, including reasonable attorney's fees and costs, incurred by SELLER upon the default by Buyer.
- g. In the event of the bankruptcy or insolvency of Buyer or in the event any proceeding is brought by or against Buyer under the bankruptcy or insolvency laws, SELLER may be entitled to cancel any Firm Order then outstanding, without liability whatsoever, and shall receive reimbursement for its cancellation charges.

#### 4. TAXES

- a. Buyer shall be liable for the payment of any and all taxes or fees imposed by any federal, state, municipal, or other governmental authority applicable to the Products, together with any freight, insurance, duties, tariffs, and brokerage charges, whether added to the invoice or not. SELLER shall attempt to obtain such charges and add same to the invoice, excepting any taxes as to which Buyer shall have provided a proper certificate of exemption.

#### 5. DELIVERY

- a. Delivery is subject to change in the event of strike, act of God, or any other unforeseen circumstances not within the control of SELLER. SELLER will communicate the anticipated delivery schedule to Buyer after it receives all items and information from Buyer as necessary for the design, manufacture, and testing of the Products. All delivery dates are approximate; SELLER does not guarantee the date of delivery and failure to deliver on such communicated dates shall not constitute a breach by SELLER.

#### 6. ORDER CANCELLATION OR CHANGES

- a. Cancellation of Seller Stocked Products. Once Buyer's Order for Seller Stocked Products is accepted by SELLER, and prior to shipment, any such Order of less than \$100 in value may be cancelled without the incurrence of cancellation fees, provided written notice is received by SELLER prior to the scheduled shipment date. Requests for cancellation of Orders for Seller Stocked Products greater than \$100 in value must be made in writing and received at least five (5) days prior to the scheduled shipment date whereupon SELLER, at its sole discretion, will determine eligibility for cancellation and if applicable, determine a restocking fee.

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- b. Returns for Convenience. Returns of Seller Stocked Products for convenience by the Buyer (non-warranty related) must be made within 30 days of purchase. The Product must be packaged in the original box, be in resale condition, and must be returned to SELLER freight prepaid. Acceptance of the return is at the sole discretion of SELLER and a fifteen per cent (15%) restocking charge will be applied to any approved returns. All shipping charges are non-refundable. Purchases made by a credit card may only be exchanged or have a credit issued to Buyer's account.
  - c. Cancellation of Seller Non- Stocked Products. Written notice of cancellation of a Firm Order for Seller Non- Stocked Products scheduled for shipment must be received by SELLER at least thirty (30) days prior to such scheduled shipment date, and as early as possible for Seller Non- Stocked Products for which a scheduled shipment date has not yet been provided. Cancellation fees shall include one hundred percent (100%) of any non-recurring charges incurred by SELLER from third parties prior to cancellation notice. Buyer must pay SELLER the contracted price for all Seller Non- Stocked Product finished goods inventory completed prior to such cancellation notice. Buyer shall be responsible for all costs and cancellation charges incurred by SELLER for materials, components, and subcontracted items that SELLER purchased or ordered, prior to the cancellation date, that were necessary to complete the cancelled Firm Orders and at SELLER's sole discretion a reasonable quantity of materials overage or yield factor, and the cost of any long lead materials and components that were deemed by SELLER to be necessary to support Buyer's shipment forecasts, plus twenty five percent (25%) of these costs. Blanket Firm Orders terminated prior to fulfillment shall be invoiced at the quantity discount for the actual quantity delivered (bill back). In cases where Buyer received volume discounts, SELLER may also, at its sole discretion, cancel any discounts granted and charge in full for Seller Non- Stocked Products previously shipped to Buyer. Buyer is entitled to receive all finished Seller Non- Stocked Products for which cancellation charges are paid in full.
  - d. Changes. Unless explicitly approved by SELLER, Buyer-requested changes to the delivery schedule of Seller Non- Stocked Products are not permitted for Seller Non- Stocked Products scheduled to be delivered within thirty (30) days of Buyer's written request, though SELLER may, in its sole discretion, agree to accommodate such requests. With respect to Firm Orders that include multiple scheduled delivery dates, the initial thirty-three percent (33%) of the units ordered by the Buyer must be committed to (released) at the time the Order is placed and are not subject to change. Subsequent shipment releases may require minimum release quantities. All changes are subject to acceptance by SELLER and may be subject to purchase price adjustments as determined by SELLER in its sole discretion. Should SELLER incur additional costs because of the inability of Buyer to accept delivery of Products as scheduled, Buyer promptly upon demand shall reimburse such additional costs to SELLER. Unless approved by SELLER in writing, Products scheduled or released for shipment shall not be unscheduled or reclassified as unreleased. All Products must be released by Buyer to allow shipment by the scheduled expiration or fulfillment date, as applicable, of the Firm Order. Those Product units, whether Seller Stocked Products or Seller Non- Stocked Products, not released prior to the expiration or fulfillment date, as applicable, of the Firm Order will be considered cancelled and the terms of Section 6. shall apply.
7. INSPECTION AND REJECTION
- a. Prior to use, Buyer will fully inspect all Products delivered. In the event that such inspection and testing reveals a suspected deficiency, or non-conformity, Buyer shall notify SELLER as per Section 9, Warranty. If Buyer fails to make any claim within such time, or uses the Products, such failure shall constitute irrevocable acceptance of the Products.

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## 8. Warranty

- a. SELLER warrants all products to be free from defects in workmanship or materials under normal use and service for a minimum one (1) year after date of purchase, provided that Buyer notifies SELLER of any such defects within forty-five (45) days of first evidence of such defect. In each case, proof of purchase is required to substantiate a warranty claim.

SELLER provides an extended warranty time for the following products:

- Bimetal thermometer models AA375R, AA475R, AA575R, BC350R, BC450R, BC550R, GT300R, GT400R, and GT500R is eight (8) years after the date of purchase.
  - Digi-Tel™ thermometers is five (5) years after date of purchase.
  - Pressure Transmitter P600 Series is three (3) years after date of purchase
- b. SELLER's sole and exclusive obligation under this limited warranty shall be, at SELLER's option, the repair, exchange or credit of the original purchase price of any Product returned to SELLER's factory with a Returned Material Authorization (RMA; see below), transportation charges prepaid, within the designated warranty period, and which SELLER's examination shall disclose to be defective due to workmanship or material. The determination of whether Products meet SELLER's standard or otherwise agreed upon specifications is at SELLER's sole discretion.
- c. The foregoing warranties are not applicable to Products damaged by, or failures due to: abuse; misuse; alteration; accident; negligence (other than that of SELLER); improper installation; storage or maintenance; pressures in excess of rated limits, use of third party supplied accessories or devices unless pre-approved by SELLER; operation or storage beyond specified ranges including but not limited to temperature, moisture, dirt, shock, vibration, electrostatic discharge or corrosive environments; lack of maintenance as specified in user manuals, or repair or alteration by anyone other than an authorized representative of SELLER. SELLER is not responsible for expenses incurred by Purchaser to correct or repair any alleged defect unless pre-approved by SELLER in writing. This writing does not apply to, and SELLER assumes no liability for, the failure of any Products to meet Buyer-provided specifications where SELLER previously indicated its Products may not meet Buyer's specifications nor does it apply to consumables and wear surfaces.
- d. Buyer must obtain an RMA Number from SELLER prior to returning any Product. All Products returned for warranty service must be returned in the original packaging and protected by an appropriate shipment carton. The RMA must be indicated on the return package as notice to SELLER's Shipping Department to accept shipment. Any package not so marked will be returned at Buyer's expense. Buyer is responsible for risk of loss and all costs associated with the return to SELLER of the Products. Buyer is also responsible, at SELLER'S discretion, for any return shipping charges and for the price of labor associated with the diagnosis and retesting of Products found to be conforming. Products found to be non-conforming (valid warranty claims), if repaired or replaced by Seller, will be returned to Buyer at SELLER's expense.
- e. The above warranties are given in lieu of any other representation or warranty, express or implied, and including but not limited to the implied warranty of merchantability or fitness for a particular purpose. The sole and exclusive remedies of Buyer shall be those specifically set forth herein. SELLER's maximum liability for any and all claims arising directly or indirectly from the performance of its obligations hereunder shall not in the aggregate exceed the purchase price of the Products actually paid to SELLER or the charges paid to SELLER for Services. Under no circumstances shall SELLER be liable to Buyer or any third party for loss of business or profit or any other economic loss or any incidental, indirect, special, or consequential damages as a result of Product performance, delivery performance, or failure to provide notice of delivery delays. The foregoing constitutes the sole liability of SELLER and the exclusive remedy of Buyer whether or not based upon negligence, breach of contract, breach of warranty, strict liability, tort, or any other course of action.

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9. Returned Product Safety
  - a. The following safety-related information relating to any potentially dangerous materials that may have come in contact with any Product to be returned by Buyer must be received by TEL-TRU prior to such return;
    - i. MSDS of the potentially dangerous materials (if appropriate)
    - ii. Certified decontamination documentation for the Product to be returned or group certification in advance of future returns
10. Indemnification
  - a. Buyer acknowledges that SELLER has no control over, and is not responsible for, the manner in which the Products will be used or otherwise dealt with by Buyer. Buyer shall indemnify, hold SELLER harmless from and against, and agree to assume all responsibility for any and all actions, claims, or demands arising out of or in any way connected with, and any and all amounts which SELLER and/or Buyer becomes obligated to pay, caused by or resulting directly or indirectly from the use or operation of the Products.
11. Arbitration
  - a. Any controversy, claim, or dispute arising out of or relating to this order and not resolved by agreement of the parties shall be resolved in Arbitration in Rochester, New York. The decision and award of the arbitrator(s) shall be final and binding and may be entered in any court having jurisdiction thereof. The parties will pay their respective attorneys' fees and equally share all other costs and expenses of the arbitration proceedings.
12. Notices
  - a. Any notices permitted or required to be given hereunder shall be in writing and shall be sent by certified or registered mail, return receipt requested, postage prepaid, email, or by facsimile, to the address on the face hereof, or at such address or addresses as either party shall designate by like notice to the other.
13. Force Majeure
  - a. SELLER shall not be liable for any loss or damage resulting from any delay in or inability to complete the design, manufacture, delivery, or installation of the Products, or performance of the Services by reason of any cause not reasonably within the control of SELLER including, but not limited to, the neglect, act or omission of Buyer or third parties, acts of God, earthquakes, transportation difficulties, riots, war, fire, explosion, epidemics, labor difficulties, material shortages, or governmental act or authority, which prevent SELLER from performing in the normal and usual course of business. In the event of the occurrence of any such contingency, SELLER may, in its discretion, postpone the delivery dates herein for a time equal to the time lost by reason of the delay or such other period of time as is reasonable under all the circumstances, or make partial delivery or cancel all or any portion of this and any previous contracts with Buyer. SELLER reserves the right, in its discretion, to make allocations among its Seller Non- Stocked orders, except as may be prohibited by law.
14. Waiver
  - a. Waiver by SELLER of any breach of these terms and conditions shall not be construed as a waiver of any other breach and the failure of SELLER to exercise any right arising from any default of Buyer hereunder shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time. No waiver by SELLER shall be effective unless in writing and signed by a duly authorized representative of SELLER.
15. Severability
  - a. If any of the provisions or portions hereof is invalid or unenforceable, they are to that extent to be deemed omitted, and the remainder shall continue in full force and effect to the fullest extent permitted by law.
16. Assignment
  - a. Buyer may not assign this Order, in whole or in part, without the prior written consent of SELLER, and any attempted assignment or delegation by Buyer shall be void and ineffective for all purposes.
17. Governing Law

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- a. This order shall be governed by and construed under the laws of the State of New York applicable to contracts to be performed entirely within such state.
18. Amendments
- a. Amendments to these terms and conditions must be in writing and signed by SELLER and Buyer.
19. Entire Order
- a. Buyer acknowledges that it has read these terms and conditions, understands them, and agrees to be bound by them, and further agrees that they are, with the Firm Order of which they are a part, the complete and exclusive statement of the agreement between the parties, which supersede all prior proposals, understandings, and all other agreements, oral and written, between the parties relating to the subject matter of such Firm Order.
20. Export Regulations
- a. Buyer shall obtain all licenses, permits and approvals required by any government. Buyer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Products or any technical data (including processes and services) received from SELLER, without first obtaining any license required by the applicable government, including, without limitation, the United States Government and/or any other applicable competent authority. Buyer also certifies that none of the products or technical data supplied by SELLER under this Agreement will be sold or otherwise transferred to, or made available for use by or for, any entity that is engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology.
21. Foreign Corrupt Practices Act
- a. Buyer agrees to comply with all aspects of the Foreign Corrupt Practices Act.
22. Rights in Intellectual Property
- a. All rights, title and interest in and to any inventions, discoveries, improvements, methods, ideas, and other related documentation, or other forms of intellectual property, which are made, created, developed, written, conceived or first reduced to practice by SELLER solely, jointly or on its behalf, in the course of, arising out of, or as a result of SELLER's work performed under an Order, shall belong to and be the sole and exclusive property of SELLER. Buyer agrees not to reverse engineer all or any portion of any Product or allow or assist others to do so.
23. PATENT INFRINGEMENT
- a. SELLER will not be held liable for any loss by Buyer resulting from the manufacture of Products to Buyer's specifications that may relate to infringement of patents or trademarks, whether or not the claim has been upheld.

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