

## TERMS AND CONDITIONS OF SALE

### 1. GENERAL

Unless the context otherwise requires:

**Agreement** means these Terms and Conditions of Sale which apply to the supply of Goods by Next Instruments to Customer;

**Customer** means the party to whom Next Instruments has agreed to supply Goods pursuant to the Agreement;

**Goods** means the goods and/or services agreed to be supplied by Next Instruments and purchased by Customer pursuant to the Agreement;

**GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;

**Order** means an official company purchase for Next Instruments to supply the Goods;

**Proprietary Information** means any and all information and intellectual property relating to the Goods or the installation or operation of the Goods including but not limited to patents, designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trade secrets, trademarks and copyright in such information and intellectual property;

**Next Instruments** means Stadvis Pty Ltd trading as Next Instruments ACN 142 617 678.

### 2. ORDERS

(a) In order to purchase the Goods, the Customer must place with Next Instruments an official company purchase order including the part number, quantity, description and price of the details required. The Order may be accepted or rejected by Next Instruments at its sole discretion.

(b) A contract shall be formed by and upon Next Instruments accepting from Customer an Order pursuant to clause 2(a) and each contract shall be governed by the Agreement.

(c) The Agreement shall take precedence over any other representations, agreements, arrangements or understandings relating to the Goods and any matters in connection with the Goods.

(e) Any conditions or terms of purchase submitted by Customer deviating from

or inconsistent with the Agreement will not bind Next Instruments, notwithstanding any statement by Customer that its terms and conditions prevail over the Agreement.

### 3. PAYMENT OF PURCHASE PRICE

(a) Unless otherwise agreed in writing, Next Instruments accepts Orders subject to the condition that Customer agrees to pay the purchase price appearing on Next Instruments' price list for those Goods current as at the date that Next Instruments accepts the Order.

(b) On request Next Instruments' will provide a written quote stating the price for the Goods. All prices are specified to be in Australian dollars and are subject to alteration without notice.

(c) The total purchase price, unless otherwise stated in the Order, excludes GST, delivery charges and packaging. The purchase price does not include any freight, assembly costs, installation costs, costs and charges of third party suppliers such as electricians, insurance or any statutory, sales, excise, or other taxes, duties or imposts, all of which will be paid by Customer.

(d) Payment of the purchase price must be made in full by the date stated on the invoice. Unless otherwise stated full payment will be on or before the 30<sup>th</sup> day after shipment of the goods.

(e) Customer must not set off any money owing or alleged to be owing by Next Instruments against money due by Customer to Next Instruments.

(f) Customer agrees that Next Instruments is entitled to exercise a right of set off to the extent Customer is indebted to Next Instruments against any monies due by Next Instruments to Customer or any other account.

(g) If Customer does not pay money by the due date for payment, or a payment made by Customer fails to be honoured, without prejudice to any other rights which it may have against Customer, Next Instruments may require Customer to pay on demand interest at the Westpac Indicator Lending Rate effective from time to time plus 4% per annum calculated from the due date on daily balances of amounts unpaid.

### 4. CANCELLATION OF ORDERS

Customer may not alter or cancel an Order without Next Instruments' prior written consent. If Next Instruments agrees to alter or cancel the Order, Customer will indemnify Next Instruments against

any loss, damage and expense incurred by Next Instruments in relation to the alteration or cancellation of that Order, including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in the Goods and all labour and engineering costs incurred by Next Instruments in the execution or part execution of the Goods and including compensation payable to any of Next Instruments' suppliers and loss of profit.

## 5. RETURN OF GOODS AND CREDITS

(a) Customer is deemed to have accepted the Goods unless it makes a claim in accordance with the clause 5(b).

(b) Customer may reject any Goods that are wrongly supplied or oversupplied by notifying Next Instruments of the claim and providing full particulars of the claim in writing within 7 days of receipt of those Goods. Next Instruments may dispute any such claim.

(c) Goods referred to in clause 5(b) may be returned to Next Instruments for credit if all of the following is complied with:

- (i) the Goods are returned to Next Instruments' premises by prior arrangement and with Next Instruments' written approval within 7 days of delivery, at no cost to Next Instruments, unless delivered as the result of an administrative error by Next Instruments, in which case Next Instruments will bear the cost of return;
- (ii) the Goods are accompanied by a dispatch note stating Next Instruments' original invoice number and reason for return; and
- (iii) the Goods are returned in an unsoiled, undamaged and resaleable condition in their original packing.

(d) Customer must not return any Goods to Next Instruments unless it has complied with the two clauses immediately above and has done all things necessary to permit Next Instruments to examine the Goods to Next Instruments' satisfaction within that period.

(e) A restocking charge of 25% will be charged where the customer has used the goods prior to requesting a return authority. The restocking fee will be deducted from any credit or refund back to the customer.

## 6. DELIVERY AND STORAGE

(a) All quoted delivery or consignment dates are estimates only. Next Instruments is not

obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever.

(b) Next Instruments is deemed to have delivered the Goods when the Goods are actually delivered to the delivery point nominated by Customer, or where delivery to the delivery point is not made due to reasons which are the responsibility of Customer, the date when delivery would have been effected

(c) Next Instruments may deliver the Goods by instalments (where, in Next Instruments' opinion, this is reasonable) and issue interim invoices to Customer.

(d) Without limiting any other provision of the Agreement, failure by Customer to pay any instalment, or any other amount when due, will entitle Next Instruments to withhold or delay delivery of any remaining Goods ordered.

## 7. TITLE AND RISK

(a) Title to the Goods shall remain with Next Instruments until all monies owing by Customer to Next Instruments have been paid in full (whether such monies are payable under a specific contract or on any other account).

(b) Until such time as Customer has paid in full all monies owing to Next Instruments, Customer shall:

- (i) store the Goods separately and mark them so that they are clearly and easily identifiable as Next Instruments' property and, if Supplier requests, inform Next Instruments of the location of the Goods;
- (ii) hold the Goods as bailee for Next Instruments, subject to Customer's right to deal with the Goods in the ordinary course of Customer's business (**Bailment**);
- (iii) indemnify Next Instruments against any claim arising out of the possession, use or disposal of the Goods by Customer or repossession or attempted repossession by Next Instruments.

(c) If:

- (i) a payment is not made in accordance with the Agreement;
- (ii) Customer commits any other breach of the Agreement;
- (iii) Customer becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntarily or otherwise),

or is wound up, dissolved or declared insolvent, then Next Instruments may at any time, without notice to Customer and without prejudice to any other rights that it may have against Customer:

- (i) terminate the Agreement and the Bailment;
- (ii) suspend some or all its obligations to Customer under the Agreement; and/or
- (iii) enter upon any premises owned or occupied by Customer where Next Instruments reasonably believes the Goods may be stored and repossess the Goods without being liable for any damages caused.

(d) If Customer sells the Goods before payment in full to Next Instruments, or uses the Goods in a manufacturing or construction process of its own or some third party, Customer holds the proceeds on trust for Next Instruments in respect of those Goods, and must keep such proceeds in a separate account until the liability to Next Instruments is discharged and must immediately pay that amount to Next Instruments.

(e) The risk in the Goods passes to Customer at the time of Delivery.

## **8. INSURANCE**

Customer must keep the Goods insured against all risks for Goods of that kind from the time the risk in the Goods passes to Customer until the time that title to the Goods passes to Customer. Customer holds the proceeds of that insurance on trust for Next Instruments up to the amount it owes Next Instruments in respect of those Goods, and must keep such proceeds in a separate account until the liability to Next Instruments is discharged and must immediately pay that amount to Next Instruments.

## **9. LIMITATION OF LIABILITY FOR GOODS**

(a) Next Instruments makes no warranties or representations to Customer, and all warranties implied by law are excluded.

(b) Next Instruments warrants the Goods to be free from defects in workmanship and materials under normal use and service for a period of 1 calendar year from the Delivery (**Warranty Period**). This warranty does not cover costs of recovery of the Goods from the site or damage, fault, failure or malfunction due to external causes including accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, incorrect installation, failure to perform required preventative maintenance or normal wear and tear.

(c) During the Warranty Period, to the extent permitted by law, Customer's sole Next Instruments Terms and Conditions of Sale remedy with respect to breach of warranties set out in the clause immediately above will be to repair or replace (as Next Instruments may elect) any such defective Goods at Next Instruments' expense. The replacement or repaired Goods shall be covered by the unexpired portion of the Warranty Period in respect of the original Goods or for a period of 90 days, whichever is the greater.

(d) For equipment forming part of the Goods, which equipment is not manufactured by Next Instruments, the original manufacturer's warranty will apply. Next Instruments' liability for such equipment shall not exceed the liability of the manufacturer.

(e) In respect of Goods that are not ordinarily acquired for personal, domestic or household use or consumption, the liability of Next Instruments for a breach of any condition or warranty implied by law is limited at Next Instruments' option to the repair the Goods or supply replacement Goods.

(f) Next Instruments' liability under the Agreement will be reduced by the amount of any contributory loss or damage to the extent caused by Customer's act or omission.

(g) Customer acknowledges and agrees that, to the extent permitted by law, Next Instruments has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.

(h) Next Instruments' total liability under any contract and the Agreement shall not exceed the total dollar amount of the Goods purchased by Customer under each contract.

## **10. PROPRIETARY INFORMATION**

(a) Customer acknowledges that all Proprietary Information and all right, title and interest therein are the sole property of or licensed by Next Instruments and Customer shall gain no right, title or interest in the Proprietary

Information whatsoever. Customer specifically acknowledges Next Instruments' exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon, whether developed, supplied, installed or paid for by or on behalf of Customer or any buyer of Customer or otherwise.

(b) Customer must not and must not permit any person reasonably within its control nor procure any person to modify, copy, clone or reverse engineer the Goods, or copy, modify or decompile any of Next Instruments' documentation relating to the Goods.

#### **11. EXPORT/RE-EXPORT/RESALE**

(a) The Goods supplied are intended for use only in the country designated on the order, unless Next Instruments otherwise agrees. If Customer exports or re-exports the Goods, it is Customer's responsibility to ensure that the Goods and the use to which they are put comply with the laws of the destination.

(b) Customer acknowledges that the Goods purchased by Customer may not be sold, leased or otherwise transferred to or utilised by a terrorist organisation, a party listed on the (US) Denied Persons List or by an end-user engaged in activities related to weapons of mass destruction, including but not limited to activities related to design, development, production or use of nuclear materials, nuclear facilities or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons.

(c) If the Purchaser resells the Goods, it shall not, in connection with their resale, pay or offer to pay, money or any thing of value to any government official, entity or organization, any political party, any candidate for public office, or their employees or relatives, for the purpose of influencing purchasing decisions or for any other improper purpose.

#### **12. MISCELLANEOUS**

(a) The fact that Next Instruments fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. Next Instruments must agree in writing to any waiver.

(b) If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in

the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.

(c) Next Instruments shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising under the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond Next Instruments' reasonable control and not as a consequence of Next Instruments' negligence.

(d) Any notice to be given to a party under the Agreement must be in writing and must be sent by post, facsimile or email to the address of that party shown in the quotation, Purchase Order or order acknowledgment. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.

(e) The Agreement is governed by and must be interpreted in accordance with the laws of the State or Territory where Next Instruments supplies the Goods and the Goods are delivered. Where there are multiple places of supply and/or delivery, Next Instruments may elect the State or Territory in Australia that shall have jurisdiction over the Agreement. Customer unconditionally submits to the non-exclusive jurisdiction of the courts of the State or Territory determined in accordance with this clause.

(f) Where there is more than one Customer then the liability of each shall be joint and several.

(g) The rights and remedies provided in the Agreement will not affect any other rights or remedies available to Next Instruments.

(h) Customer shall not assign this Agreement without Next Instruments' prior written consent.