

## TERMS OF SALE

### LIQUIDYNAMICS, INC.

1. Controlling Provisions. This document, together with the purchase order with respect to which this document governs (collectively, this "Contract") constitutes an offer by Liquidynamics, Inc. ("Company") to provide the goods described in the purchase order (collectively, the "Products") to the party to whom the purchase order is addressed ("Buyer"). If this Contract is deemed an acceptance of a prior offer by Buyer, such acceptance is limited to the express terms contained herein. Buyer's acceptance of this Contract is limited to the terms, covenants and conditions contained in this Contract, and Company hereby objects to and rejects any additional, different or varying terms proposed by Buyer, unless Company expressly assents to such terms in writing. Such proposal of additional, different or varying terms by Buyer will not operate as a rejection of Company's offer, and Company's offer will be deemed accepted without such additional, different or varying terms. This Contract constitutes the final expression of the terms between Company and Buyer regarding the Products and is the complete statement of those terms. Any terms, conditions, negotiations or understandings not contained in this Contract will have no force or effect unless made in writing and signed by Company and Buyer.

2. Acceptance. Buyer will be deemed to have accepted this Contract upon the earliest of the following to occur: (a) Company's receipt of a copy of this Contract signed by Buyer; (b) Buyer's payment of any amounts due under this Contract; (c) Company's delivery of the Products; (d) failure by Buyer to notify Company otherwise within 10 days of its receipt of this Contract; or (e) any other event constituting acceptance under applicable law.

3. Orders. Buyer's order of any Products from Company shall be subject to the provisions of this Contract. Buyer's order must be made in a form acceptable to Company. Company reserves the right to reject any orders for any reason in its sole discretion. Company reserves the right to correct clerical or similar errors relating to price or any other term shown on any invoice.

4. Changes, Cancellations and Returns. Buyer may not change or cancel an order that has been accepted by Company, unless Company agrees in writing. Company reserves the right to change the price, terms of payment and shipment dates for any Products affected by any changes to any order which are requested by Buyer and approved by Company in writing. When Company consents to the cancellation of any order, Buyer shall be responsible for all expenses incurred by Company related to such cancelled order. Buyer may not return any Products to Company unless Company agrees in writing.

5. Delivery. Unless otherwise stated in this Contract, Company shall deliver the Products F.O.B. the loading dock at Company's Wichita, KS facility (the "Delivery Point"). The Buyer shall place a minimum order of \$100.00 (exclusive of applicable taxes and transportation). Company pays freight on orders of \$1,600.00 net or greater, shipped to one location, within the contiguous 48 states (excluding Alaska and Hawaii) and to the border of Canada, except where indicated with an "\*". If additional products are ordered at the time an excluded "\*" item(s) is ordered, all additional items must equal \$1,600.00 or greater to qualify for freight allowance. For orders of \$3,500.00 or greater, Company will pay freight to a Canadian destination up to a maximum of \$350.00 dollars (excluding duty and tax) except where indicated with an "\*". Company reserves the right to specify the mode of and the carrier when paying freight. All risk of loss, damage or delay, and title to the Products shall pass from Company to Buyer upon delivery to the carrier at the Delivery Point. All quoted shipment and/or delivery dates and/or periods are approximate. Time for delivery shall not be of the essence. Delivery dates given by Company are based on prompt receipt of all necessary information regarding the order. Company's failure to meet any shipment or delivery date does not constitute a cause for cancellation and/or for damages of any kind. Claims for shortages or other errors must be made in writing to Company within thirty (30) days after Buyer's receipt of the shipment, and failure to give such notice will constitute unqualified acceptance of such shipment and a waiver of all such claims by Buyer.

6. Delivery Delays. Any delay in delivery due to causes beyond Company's reasonable control including those events listed in Section 12 below, due to any priorities or allocations necessitated by governmental orders or regulations, or due to any causes specified in the following sentence, shall extend the term of delivery by a

period equal to the length of such delay. In the event of delay in delivery requested by Buyer or caused by Buyer's: (a) failure to supply adequate instructions; (b) failure to arrange for pickup; (c) failure to supply or approve necessary data in a timely manner; (d) requested and approved changes; or (e) failure to provide documents required for Company to effect delivery, Company will store all Products at Buyer's risk and expense. Buyer shall pay all storage costs and expenses upon Company's demand.

7. Prices; Taxes; Permits. Prices for the Products shall be as stated in the purchase order. All prices are stated, and shall be payable, in U.S. dollars. All prices are subject to change without notice. Buyer shall pay or reimburse Company, on demand, for all taxes, fees and costs including any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, value added tax, duty, broker fees, inspection or testing fee, freight costs, insurance, consular fees or any other tax, fee or charge of any nature whatsoever, including interest, imposed on, in connection with or measured by any transaction between Company and Buyer, in addition to the prices quoted or invoiced.

8. Terms of Payment. Terms of payment are as follows: 1% 10, net 30 days from the invoice date. Discount is not allowed on freight. A 3% service charge will be applied to past due amounts. Notwithstanding the foregoing, terms of payment on all orders are subject to the prior written approval of Company's credit department. If Buyer does not pay Company any amount due under this Contract or any other agreement when such amount is due or if Buyer defaults in the performance of this Contract, Company may, without liability to Buyer and without prejudice to Company's other lawful remedies: (a) terminate Company's obligations under this Contract; (b) declare immediately due and payable all of Buyer's obligations to Company; (c) change credit terms with respect to any other orders of Products; (d) suspend or discontinue any further orders; and/or (e) enter Buyer's premises and repossess any Products for which Company has not received payment. Buyer agrees to reimburse Company for all costs and fees including attorneys' fees and repossession fees, incurred by Company in collecting any sums owed by Buyer to Company. When an account is placed with a Collection Agency, the debtor is responsible for added collection fees.

9. Limited Warranty; Damages Limitations.

a) Company warrants to Buyer that Products will be free from defects in material and workmanship for a period of two years, following date of delivery to Delivery Point. Notwithstanding the foregoing, the warranty period shall be for one year on hand operated equipment. This LIMITED WARRANTY SHALL NOT EXTEND to (i) defects caused by any specifications or designs supplied by Buyer; or (ii) parts or other materials provided by Buyer. There is NO WARRANTY for: repairs or alterations of Products not authorized by Company in writing, damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, abrasion, corrosion, tampering, damage due to environmental and natural elements, substitution of non-Company parts, failure to follow Company's instructions or improper installation, storage or maintenance. Company's SOLE AND EXCLUSIVE obligation under this limited warranty (and Buyer's sole and exclusive remedy) will be, upon prompt written notice by Buyer during the Warranty Period of any breach, to either, at Company's option: (i) repair or replace without charge any defective Product; or (ii) credit to Buyer or refund the purchase price for such defective Product. This limited warranty covers only the replacement or repair of defective Products at Company's facility and does not include the cost of transportation of the Products to Company's facility. All returned goods or shipments must have a return goods authorization number issued from Company and will be shipped freight prepaid. A 20% restocking charge will be assessed for all approved returns. COMPANY MAKES NO WARRANTIES ON PRODUCTS THAT ARE NOT MANUFACTURED BY COMPANY. To the extent permissible, Company will assign to Buyer any warranty that the manufacturer may offer for such third party Products or parts, but Company does not guarantee that the manufacturer will comply with any of the terms of its warranty. Prior to using or permitting use of the Products, Buyer shall determine the suitability of the Products for the intended use and cause the Products to be installed correctly, if not installed by Company. Buyer assumes all risk and liability whatsoever in connection therewith. Buyer agrees that Company has no post-sale duty to warn Buyer or any other party about any matter.

b) THE EXPRESS WARRANTIES IN SECTION 9(a) ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER EXPRESS AND IMPLIED WARRANTIES ARE HEREBY DISCLAIMED. Any oral or written description of the Products is for the sole purpose of identifying the Products and will not be construed as an express warranty. COMPANY SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, WHETHER FOR BREACH OF WARRANTY, FOR

BREACH OR REPUDIATION OF ANY OTHER TERM OF THIS CONTRACT, OR FOR LIABILITY BASED ON NEGLIGENCE OR ANY OTHER THEORY. COMPANY'S AGGREGATE LIABILITY WITH RESPECT TO THIS CONTRACT SHALL BE LIMITED TO THE AMOUNT OF MONEY PAID TO COMPANY BY BUYER FOR THE PRODUCTS. Any assistance Company provides to or procures for Buyer outside the limitations of this Section will not constitute a waiver of the limitations of this Section.

10. Indemnification. Buyer shall indemnify, defend and hold Company harmless from and against any and all liabilities, losses, fines, penalties, damages and expenses, including, without limitation, attorneys' fees ("Damages") incurred by or against Company which arise out of or result from any of the following: (a) any claim that any specifications furnished by Buyer infringe or constitute a misappropriation of any third party intellectual property rights; and/or (b) any claim for bodily injury, including death or disease, or for loss of damage to property which results from or is caused by the use of any device or other good which is manufactured or sold by Buyer and which incorporates or otherwise utilizes any Product sold hereunder.

11. Intellectual Property. Nothing in this Contract will be construed to give Buyer any rights in any trademarks or other intellectual property of Company.

12. Force Majeure. Except with respect to payment obligations under this Contract, neither party will be responsible for any other default or damage where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding available supply or any other cause beyond the party's control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, Company may, at its option and without liability, prorate its deliveries, cancel all or any portion of this Contract to the extent affected by the event of force majeure and/or extend any date upon which performance is due hereunder.

13. California Proposition 65. Buyer acknowledges that all Products manufactured, distributed and/or provided by Company to Buyer, whether for distribution, resale, use or otherwise, must be labeled in compliance with California Health and Safety Code Section 25249.5 *et seq.*, commonly referred to as Proposition 65, and implementing regulations ("Prop 65"). Upon request from time to time by Company, Buyer shall provide Company with a written certification confirming Buyer's compliance with any and all Prop 65-related instructions provided by Company. Buyer shall defend, indemnify and hold Company harmless from and against any and all losses, damages (including, without limitation, special, incidental and consequential damages), liabilities, fees, costs and/or expenses, including reasonable legal fees, arising out of or resulting from any Prop 65 violation(s) relating in any way to any Product provided by Company to Buyer.

14. Miscellaneous Provisions.

Entire Agreement. This Contract, and any other separate written agreement, statement of work, amendment or addendum (each or collectively referred to hereinafter as the "Other Agreement"), constitutes the entire agreement between the parties with respect to Buyer's purchase of the Products and supersedes all other agreements or communications, written or oral, which may be deemed to be inconsistent with it. This Contract may not be amended or altered except by a writing signed by Company. Should Company and Buyer enter into any Other Agreement regulating or amending their mutual rights and obligations in this Contract, the provisions of such Other Agreement shall be in addition to this Contract except for those provisions that conflict in which case the terms of the Other Agreement shall prevail.

Governing Law. This Contract will be governed by and construed according to the laws of the State of Kansas, USA, including, without limitation, the Uniform Commercial Code as adopted in Kansas (except to the extent modified by this Contract). Neither this Contract nor sales hereunder will be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be brought in a court situated in the State of Kansas. Buyer irrevocably admits itself to and consents to the exclusive jurisdiction and venue of said court and agrees that process may be served upon it in any manner authorized by the laws of the State of Kansas for such person and waives and covenants not to assert or plead any objection which it might otherwise have to such jurisdiction, venue or process.

Severability; Waiver. If any provision of this Contract is held to be invalid or unenforceable for any reason, the parties acknowledge and agree that such invalidity or unenforceability (a) will not affect any other provision of this Contract, (b) the remaining terms, covenants and conditions hereof will remain in full force and effect, and (c) any court of competent jurisdiction may so modify the objectionable provision as to make it valid and enforceable. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract will not be construed as a waiver or relinquishment of any right granted hereunder or the future performance of such term, covenant or condition.

Company's Remedies Cumulative. All of Company's remedies herein are cumulative and not exclusive of any other remedies available to Company at law, by contract or in equity.

Independent Contractor. Buyer is and shall remain an independent contractor and neither Buyer nor any of its employees or agents shall be or be considered an employee of Company. Neither Buyer nor any of its employees or agents are authorized to incur any obligations or make any promises or representations on Company's behalf.

Survival. Any provisions of this Contract, the performance or effectiveness of which naturally survives, shall survive expiration or termination of this Contract for any reason including, without limitation, Buyer's indemnity obligations.