



**1. CONTRACT.** The "Contract" is the legally binding agreement for purchase from Schmitt Industries, Inc.; Schmitt Measurement Systems, Inc.; or Acuity Laser Measurement (collectively referred to herein as "Schmitt") of the goods ("Goods") from Seller. These Terms and Conditions, Seller's Quotation (if any) and Schmitt's purchase order, drawings and specifications comprise the Contract. The Contract states the parties' entire agreement, superseding prior discussions, correspondence, negotiations and proposals. Seller's preprinted terms, including those in Seller's Quotation (if any), shall not apply to the Contract to the extent they conflict with these terms and conditions. Upon acceptance of a purchase order from Schmitt, together with any drawings and specifications, or shipment of Goods pursuant to a purchase order from Schmitt, Seller shall be bound by the provisions of this Contract, whether Seller acknowledges or otherwise signs this Contract or the purchase order, unless Seller objects to such terms in writing prior to shipping the Goods. This Contract shall only be modified in writing and signed by the parties.

**2. DELIVERY.** Delivery of Goods shall be made pursuant to the applicable purchase order, including drawings or specifications, if any, submitted by Schmitt. In the event Seller fails to deliver the Goods within the time or by the shipping method or within the delivery date specified, Schmitt may, at its option, decline to accept the Goods and terminate the Contract. Seller shall package all items in suitable containers to permit safe transportation and handling. Schmitt's purchase order number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.

**3. TITLE AND RISK OF LOSS.** Title to the Goods shipped under this Contract shall pass to Schmitt in accordance with the shipping terms specified on the face of the purchase order.

**4. PRICE AND PAYMENT.** Schmitt shall pay Seller the amount agreed upon and specified in the applicable purchase order. Payment shall not constitute acceptance of the Goods. Seller shall invoice Schmitt promptly for all Goods shipped and in no event later than five (5) business days from the date of shipment and such invoice must reference the applicable purchase order and the individual parts shipped. Schmitt reserves the right to return all incorrect invoices. Unless otherwise specified on the face of a purchase order, Schmitt shall pay the invoiced amount within thirty (30) days after receipt of a correct invoice. Schmitt will consider all offers from Seller for discounts from the invoiced amount for expedited payments in cash.

**5. WARRANTIES.** Seller warrants that all Goods provided will be new and will not be used or refurbished. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable Seller specifications and drawings and specifications provided by Schmitt, if any, for a period of fifteen (15) months from the date of delivery to Schmitt or for the period provided in Seller's standard warranty covering the Goods, whichever is longer. All warranties shall be construed as conditions as well as warranties and shall not be exclusive. Seller shall furnish to Schmitt Seller's standard warranty and service guaranty applicable to the Goods. If Schmitt identifies a warranty problem with the Goods during the warranty period, Schmitt will promptly notify Seller of such problems and will return the Goods to Seller, at Seller's expense. Seller shall, at Schmitt's option, either repair or replace such Goods, or credit Schmitt's account for the same. Replacement and repaired Goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer.

**6. INSPECTION.** Schmitt shall have a reasonable time after receipt of the Goods and before payment to inspect them for conformity hereto, and the Goods received prior to inspection shall not be deemed accepted until Schmitt has run an adequate test to determine whether the Goods conform to the applicable specifications. If the Goods tendered do not wholly conform to the provisions hereof, Schmitt shall have the right to reject such Goods. Nonconforming Goods will be returned to Seller, freight collect, and risk of loss will pass to Seller upon Schmitt's delivery to the common carrier.

**7. INDEMNITY.** Seller shall indemnify, hold harmless, and at Schmitt's request, defend Schmitt, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit, arising out of or in any way connected with the Goods provided under this Contract, including, without limitation for Goods that are standard commercial products offered by Seller, any claim by a third party against Schmitt alleging that the Goods infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party.

**8. CONFIDENTIALITY.** Seller will acquire knowledge of Schmitt confidential information in confidence during and following termination or expiration of this Contract. Seller agrees to limit its internal distribution of Schmitt confidential information to Seller's employees, agents or subcontractors who have a need to know, and further agrees not to use such information except in the course of performing hereunder and will not use such information for its own benefit or for the benefit of any third party.

**9. CANCELLATION.** Schmitt shall have the right and at its convenience to terminate an order in whole or in part at any time, and from time to time, by written notice effective upon receipt by Seller, even though Seller is not in breach of any obligation under the contract. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Schmitt's instructions concerning disposition of completed and partially completed items, work in progress and materials acquired pursuant to the order. In the event of such termination, Schmitt shall pay an amount in settlement to be mutually agreed upon by the parties that shall cover Seller's reasonable costs of performance incurred prior to termination in connection with the items for which the order is terminated. However, said payment shall not exceed the price specified herein for such items. In no event shall the Seller be entitled to recover incidental or consequential damages. Seller shall advise Schmitt, in writing, of Seller's claim, if any, for termination costs within ten (10) business days after receipt of the notice of termination.

**10. LIMITATION OF LIABILITY.** IN NO EVENT SHALL SCHMITT BE LIABLE TO SELLER OR SELLER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS, OR ANY THIRD PARTY, FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS CONTRACT, WHETHER OR NOT SCHMITT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**11. SEVERABILITY.** If any provision of this Contract shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby

**12. ASSIGNMENT AND WAIVER.** Seller may not assign its rights or delegate its duties under this Contract without the prior written consent of Schmitt. This Contract shall inure to the benefit of, and be binding upon, the successors and assigns of Schmitt without restriction. A waiver of any default hereunder or of any term or condition of this Contract shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

**13. APPLICABLE LAW.** The Contract shall be governed by the laws of the State of Oregon, exclusive of its conflicts of laws principles or the application of the United Nations Convention on the International Sale of Goods. Any disputes arising out of this Contract that cannot be informally resolved shall be adjudicated exclusively in Multnomah County, Oregon, USA in any court of competent jurisdiction.