

## **Weight & Test Solutions, Inc. Standard Terms and Conditions of Sale for Products**

**p1. CONTRACT** – Unless otherwise stated, all sales transactions are expressly subject to these terms and conditions. Modification or additions will be recognized only if accepted in writing by an officer of Weight & Test Solutions, Inc. (hereinafter referred to as WTS or the Company"), or an officially designated representative. Provisions of Buyer's Purchase Order or other documents that add to or differ from these Terms and Conditions are EXPRESSLY rejected. No waiver of these Terms and Conditions or acceptance of others shall be construed as failure of the Company to raise objections.

**2. QUOTATIONS AND PUBLISHED PRICES** – Quotations automatically expire 30 calendar days from the date issued unless otherwise stated in the quotation and are subject to withdrawal by notice within that period. The Company reserves the right to extend such quotation up to 6 months from the date of issuance. Prices shown on the published price lists and other published literature issued by the Company are not unconditional offers to sell, and are subject to change without notice. The Company's prices for equipment, unless otherwise specified, do not include an allowance for installation and or final on site adjustment. Prices shall be subject to adjustment to those in effect at time of shipment.

**3. TAXES** – The Company's prices do not include any applicable sales, goods and services, use, excise or similar taxes and the amount of any such tax which the Company may be required to pay or collect will be added to each invoice and paid by the buyer unless the Buyer has furnished the Company with a valid tax exemption certificate acceptable to the taxing authorities prior to shipment. If, upon subsequent sales, use, excise, or similar tax audit, an exemption certificate provided to the Company by Buyer is, through no fault of the Company, determined to be invalid, the Company will attempt to acquire a valid exemption certificate, notarized affidavit of exempt use or other necessary documentation from Buyer. If Buyer fails to furnish a valid exemption certificate, notarized affidavit or other necessary documentation, in a timely manner the previously unpaid sales, use or similar excise tax will be billed to and paid by the Buyer.

**4. TERMS OF PAYMENT** – Unless explicitly agreed to elsewhere in writing, terms are cash net 30 days from date of shipment. Amounts past due are subject to a service charge of 1.5% per month (or fraction thereof) or maximum contract rate permitted by law. If the Company deems that by reason of the financial condition of the Buyer or otherwise, the continuance or production or shipment on the terms specified is not justified, the Company may require full or partial payment in advance. On orders of \$10,000 or more and having delivery schedule 3 months or longer from date of order, the standard terms will be Progressive Payments as specified in contract.

**5. DELIVERY** – Delivery dates indicated in the contract documents are approximate and are based on prompt receipt of all necessary information regarding the equipment covered by the contract. The Company will use reasonable efforts to meet the indicated delivery dates, but cannot be held responsible for its failure to do so. Title to the equipment and risk of loss shall pass to Buyer upon delivery to a carrier. In the event of any delay in delivery caused by the Buyer, the Company will store and handle all items ordered at the Buyer's risk and will invoice the Buyer for the unpaid portion of the contract price, plus storage, insurance, and handling charges on or after the date which the equipment is ready for delivery. The invoice will be payable in full within 30 days from the invoice date. The Company has the right to make partial shipments and bill for those shipments; the buyer will make payment in accordance with terms referenced in 4" above.

**6. SHIPPING AND HANDLING CHARGES** – Shipments are F.O.B. point of shipment. Unless the Buyer elects a freight collect shipment, shipping charges plus the applicable company handling charge will be prepaid and billed as a separate item on the equipment invoice.

**7. CHANGES** – Buyer may with the express written consent of the Company make changes in the specifications for equipment or work covered by the contract. In such event the contract price and delivery dates shall be equitably adjusted. The Company shall be entitled to payment for reasonable profit plus costs and expenses incurred by it for work and materials rendered unnecessary as a result of such changes and for work and materials required to effect said changes.

**8. CANCELLATION** – Undelivered parts of any order may be canceled by the Buyer only with the written approval of the Company. If the Buyer makes an assignment for the benefit of creditors, or in the event that the Company for any reason feels insecure about the Buyer's willingness or ability to perform, the Company shall have the unconditional right to cancel this sales transaction. In the event of any cancellation of this order by either party, the Buyer shall pay to the Company the reasonable costs and expenses (including engineering expenses and all commitments to its suppliers and subcontractors) incurred by the Company prior to receipt of notice of such cancellations, plus the Company's usual rate of profit for similar work. The minimum cancellation charge shall be 15% of the contract price.

**9. SECURITY INTEREST** – Buyer agrees to pay for the equipment according to the Company's payment terms and does hereby grant to the Company a purchase money security interest in the equipment until such time as it is fully paid. Buyer will assist the Company in taking the necessary action to perfect and protect the Company's security interest. In the event of a default by Buyer, the Company shall be entitled to any of the rights and remedies provided by law, including but not limited to repossession of the equipment.

**10. DEFAULT** – Upon default and placing of the buyer's account for collection or repossession of equipment, the Buyer agrees to reimburse collection cost, legal fees, and court cost incurred by the Company in connection therewith.

**11. WARRANTIES: COMPANY EXPRESSLY WARRANTS THE EQUIPMENT DELIVERED BY IT AS SET FORTH HEREIN. COMPANY MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION WARRANTIES AS TO MERCHANTABILITY OR**

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**FITNESS FOR A PARTICULAR PURPOSE). IN ADDITION, THE FOLLOWING SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER FOR ANY BREACH BY COMPANY OF ITS WARRANTY HEREUNDER.**

**A. INDUSTRIAL & SYSTEMS PRODUCT** – The Company warrants that the equipment covered by this warranty will be free from defects in workmanship and materials for a period of 1 year from date of original installation, or 18 months from the date of shipment to the original Buyer, whichever occurs first. Should any such defects be found and reported during the first 30 days after installation (if installation occurs during the warranty period) the Company will, at its option, refund the purchase price or correct such defects, furnishing replacement parts, freight (non-expedited), labor, and travel free of charge during normal business hours to the Buyer. For the remainder of the warranty period, the Company will furnish necessary replacements parts and technician's on site labor free of charge, provided the Buyer agrees to pay reasonable technician's travel time and expenses to and from a service location authorized by the Company. The Company does not warrant that the equipment covered by this warranty will perform in accordance with specifications to the extent that equipment forming a part of the System is not supplied by or approved for incorporation into a system by the Company. Products of other manufacturers sold by the Company as such, are warranted by the Company only to the extent of any warranty provided by the original manufacturer.

**B. RETAIL PRODUCT** – The Company warrants that the equipment covered by this warranty will be free from defects in workmanship and materials for a period of one (1) year from date of original installation or eighteen (18) months from date of shipment to the original Buyer, whichever occurs first. Should any such defects be found and reported during the first 30 days after installation (if installation occurs during the warranty period), the Company will, at its option, refund the purchase price or correct such defects, furnishing replacement parts, labor, and travel free of charge to the Buyer. For the remainder of the warranty period, the Company will correct such deficiencies, furnishing replacement parts, technician's on site labor and travel within a 50 mile radius of service location authorized by the Company. Beyond the 50 mile radius, the Company will furnish such service provided the Buyer agrees to pay all technician's travel time and expenses to and from a service location authorized by the Company.

**C. SOFTWARE** – The Company warrants that software developed by the Company will be free from errors in program logic, clerical program preparation and transcription and will execute accordingly when properly installed. The warranty period shall be the same as the warranty period for the Company equipment with which the software is supplied. If the software does not meet the above warranty, and if the Buyer promptly notifies the Company and provides the description of the error and complete information about the manner of its discovery, the Company shall thereupon correct any defect or error (at its option): (a) by modifying or making available to the Buyer instructions for modifying any erroneous program, or (b) by making available at the Company's Plant necessary corrected or replacement programs. Certain programs supplied by Company are copyrighted, and if so, are marked with the copyright notice. Buyer is granted license to make copies of such programs for use only with the equipment for which such programs were acquired. Other programs supplied by Company are trade secrets, and if so, are marked confidential. Buyer agrees to use its reasonable efforts to keep such programs confidential and to not disclose such programs to third parties for a period of five years after receipt unless such programs enter the public domain through no fault of Buyer. Buyer agrees to use those programs marked confidential only with the original equipment for which they were acquired. The foregoing warranty shall not apply to defects resulting from: 1. Unauthorized modification. 2. Buyer supplied software or interfacing.

**D. EXPORT PRODUCT** – The Company warrants equipment destined for export or sold for export to be free from defects in workmanship and material for a period of 1 year from date of installation or 18 months from date of shipment to the Buyer, whichever occurs first. 1. Should any such defect be found within that period, parts will be furnished free of charge (ex works) point of origin or final distribution center. 2. If the Buyer requests the performance of warranty work provided for under the foregoing warranty outside of the contiguous United States or Mexico, the Buyer shall be required to pay for labor, travel time, living, and travel expenses of any personnel required to perform such warranty work.

**E. REPAIRED PRODUCTS WARRANTY** – Warranty coverage on repaired equipment shall be so noted at time of repair as determined by type of repair required however, it shall only apply to parts repaired or replaced by the Company. No separate warranty shall apply to repaired equipment as a whole or to parts not repaired or replaced by the Company.

**F. SPECIAL** – The foregoing warranties do not apply to all equipment sold by the Company. In certain cases the warranty period is less than or more than one year or provides for a payment of money or replacement to the Buyer based on the age or extent of usage of the equipment in lieu of repair or replacement by the Company. In instances where other warranties apply, the warranty will be stated at time of sale.

**G. GENERAL** – The foregoing warranties are further subject to the following general conditions: 1. If the Buyer requests the performance of warranty work provided for under the foregoing warranties during other than normal Company work periods, the Buyer shall be required to pay for all premium time. 2. These warranties shall not apply where the equipment has been subjected to accident, alteration, misuse, abuse, or failure on the part of the Buyer to ensure proper storage, operation and maintenance or in the case that installation or servicing of such equipment is made by other than Company authorized personnel. 3. Company does not warrant the calibration of any scale. Company does

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however, warrant the scales manufactured by it to be capable of being adjusted to meet Company's printed specifications, if any, for weighing accuracy as to the particular model/type scale for the period of warranty above stated.

**12. INDEMNITY** – The Buyer agrees to indemnify the Company and hold it harmless from and against any direct loss suffered and any liability to third parties whenever such loss or liability is directly due to bodily injury (including death) to any person or direct damage to any property occurring in the course of and caused by the negligent act or omission of the Buyer in the performance of any work on the premises of Buyer. This indemnity shall include legal fees and settlements of claim or suit reasonable under the circumstances.

**13. REGULATORY LAWS AND OR STANDARDS** – The performance of the parties hereto is subject to the applicable laws of the United States or Mexico, depending on the location of delivery of the product or service. The Company takes reasonable steps to keep its products in conformity with various nationally recognized standards and such regulations, which may affect its products. However, the Company recognizes that its products are utilized in many regulated applications and that from time to time standards and regulations are in conflict with each other. The Company makes no promise or representation that its product will conform to any federal, provincial, state or local laws, ordinances, regulations, codes or standards except as particularly specified and agreed upon for compliance in writing as a part of the contract between Buyer and the Company. The Company prices do not include the cost of any related inspections or permits or inspection fees.

**15. LIMITATION OF NUCLEAR USE** – The equipment is not for use in or with any nuclear facility unless expressly stated in the Company's Quotation. Buyer accepts the responsibility for insuring that the equipment is not used in violation of this limitation and Buyer shall indemnify and hold Company harmless from any and all liability (including such liability resulting from Company's negligence) arising out of said improper use.

**16. DISCLAIMER OF DAMAGES** – IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY TYPE OF SPECIAL CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. Such damages shall include but not be limited to loss of profits or revenues, loss of use of the equipment or associated equipment, cost of substitute equipment, facilities, down time costs, increased construction costs or claims of Buyer's customers or contractors for such damages. Buyer agrees that in the event of a transfer, assignment, or lease of the equipment sold hereunder Buyer shall secure for the Company the protection afforded to it in this paragraph.

**17. LIMITATION OF LIABILITY** – The Company shall not be liable for any loss, claim, expense or damage caused by, contributed to or arising out of the acts or omissions of Buyer or third parties, whether negligent or otherwise. In no event shall the Company's liability for any cause of action whatsoever exceed the cost of the item giving rise to the claim, whether based in contract, warranty, indemnity, or tort (including negligence). Any suit arising hereunder must be commenced within one (1) year from the date in which the cause of action accrues. Except as provided in Article 12, the Company shall not indemnify any party.

**18. NO RESPONSIBILITY FOR GRATUITOUS INFORMATION OR ASSISTANCE** – If Company provides Buyer with assistance or advice which concerns any parts, products, service supplied hereunder or any system or equipment in which any such part product service may be installed and which is not required pursuant hereto, the furnishing of such assistance or advice shall not subject Company to any liability, whether based in contract warranty, tort (including negligence) or otherwise.

**19. INTERPRETATION** – Should any term or provision contained in the contract contravene or be invalid under applicable law, the contract shall not fail by reason thereof but shall be construed in the same manner as if such term or provision had not appeared therein.