

# Standard Conditions of Sale of Kurz Products

**ORDERS** All orders are received subject to acceptance by KURZ INSTRUMENTS, INC. at the factory in Monterey, CA, U.S.A., herein referred to as COMPANY, and may be accepted only on Company's printed acknowledgement form. Purchase orders for Company products and services must be made out to the Company and must be received in writing at Monterey, CA before performance is completed unless otherwise approved by the company.

**QUOTATION AND PUBLISHED PRICES** Until acceptance, all written quotations are subject to change upon written notice to the buyer and are void after 30 days unless otherwise specified on quote. Verbal quotations are good only on the day on which they are made by an authorized representative of the Company.

The prices shown on the published price lists and other published literature issued by the Company are not offers to sell and are subject to confirmation by specific quotation and acknowledgement. All published prices and discounts are subject to change without notice.

**SEALED BIDS** are subject to these Standard Conditions of Sale unless specified otherwise in bid and agreed to by the Company.

**TAXES** Prices are exclusive of all foreign, federal, state, municipal or other government excise, sales, use, occupational, duty, or like taxes now in force, or enacted in the future and therefore are subject to an increase equal in amount to any tax the Company may be required to collect or pay upon the sale or delivery of the items purchased.

**TERMS** The terms of sale shown in the published price list shall apply from the date of shipment by the Company. If the Company in its judgment at any time deems that by reason of the financial condition of the Buyer or otherwise the continuance of production or shipment on the terms specified herein is not justified, the Company may require full or partial payment in advance. Certain orders may, in the judgment of the Company, because of their nature or the delivery involved, require progress payments. Pro rate payments shall become due as shipments are made. Terms are cash net 10 days. Amounts past due are subject to a service charge of 1.5% per month (or fraction thereof).

Should the Buyer be in default of the terms stated above, the Company shall add to the Buyer's account, all reasonable costs, including attorneys' fees, filing fees and any other fees or expenses deemed reasonable by the Company in collecting the amounts due.

**PACKING** The Company makes no charge for its standard packing for domestic shipment. The Buyer may be charged for export packing or other special packing required, the cost of which will be quoted upon request. No credit or deduction will be allowed if no packing is required.

**DELIVERY** Shipping dates given by the Company are approximate and are based on prompt receipt of all necessary information regarding the order. The Company will use its best efforts to meet the ARO date provided the Buyer supplies all necessary information and data promptly, but cannot be held responsible for causes beyond its reasonable control. The Company shall in no event be responsible for loss of profits, damages incurred by the buyer to its customers or other consequential damages resulting from Company's failure to deliver within the time specified herein.

In the event of any delay requested by the Buyer or any delay caused by lack of shipping instructions, the Company will store all items ordered at the Buyer's risk and expense, and will invoice the Buyer for the full contract price of the apparatus on or after the date on which the same is ready for delivery. If manufacture is delayed by the Buyer, payment shall be made based on the percent of completion and the contract price.

**SHIPPING COSTS AND INSURANCE** Shipments are f.o.b. factory, Monterey, CA, freight and insurance prepaid and added, or freight collect unless otherwise requested and agreed to by the Company. If insurance is being provided by the Buyer a formal statement of Buyer responsibility must accompany purchase order. Customer is responsible for notification in writing to the Company within 72 hours of any loss or damage of the shipment if the shipment was made f.o.b. destination. In the absence of specific instructions, the Company will select the carrier.

**CHANGES** The Buyer may from time to time, but only with the written consent of the Company, make any change in the order. In the event of any such change, the Buyer shall pay to the Company the reasonable costs and other expenses (including engineering expenses and all commitments to its suppliers and sub-contractors incurred by the Company prior to receipt of notice of such change for all work rendered unnecessary by such change or incurred by the Company thereafter for all work required to effect such change. In either case, an amount determined by the Company in its discretion by applying to the amount such costs and other expenses and the Company's usual rate of profit for similar work. In the event of any such change, the Company shall further be entitled to revise its price and delivery schedules to reflect such change.

**CANCELLATION** In the event of cancellation, the Buyer shall be liable for the payment of reasonable cancellation charges, which shall not exceed the unit retail list price of the items cancelled and shall include among other things expenses already incurred by the Company, actual liabilities against Commitments incident to the order involved, and properly allowable indirect charges as well as a reasonable profit. No delivery delay requested by Buyer on an order placed under this Agreement shall be effective unless covered by an amendment to the order that provides for the payment of any agreed upon costs the delay imposes on the Company and that is accepted on the Company's printed acknowledgement form. Standard products only once delivered may be returned to the Company's discretion and upon approval from the Company in Monterey, CA, at a minimum charge for restocking of 20% of list price. Return shipping charges are at Buyer's expense.

If the Buyer makes an assignment for the benefit of creditors, if a voluntary or involuntary petition or other action in bankruptcy or for reorganization or under any other insolvency law shall be filed by or against the Buyer, if the Buyer shall admit inability to pay its debts, if a trustee, receiver or liquidator is appointed for any part of the assets of the Buyer, or if the Buyer fails to make payments to the Company in accordance with the terms hereof, the Company may at its option cancel all undelivered parts of any order by written notice to the Buyer at no expenses to the Company.

**ACCEPTANCE — PRODUCT** Unless otherwise agreed to by the Company, the criterion for acceptance of the Company's products including options shall be the successful operation of the product and options using the Company's standard test procedures applicable to the product and options involved. All acceptance tests shall be run by Company personnel at the Company's factory, unless otherwise allowed for and agreed to by the Company.

**LIMITED WARRANTY — PRODUCT (LIABILITY FOR REPAIR AND REPLACEMENT ONLY)** The Company's products are warranted to be free from defects in material and workmanship for one year (three years for B Series products)

from date of shipment from the factory. The Company's obligation is limited to repairing, or at their option, replacing products and components which, on verification, prove to be defective, at the factory in Monterey, CA. The customer is responsible for materials of construction selection and for materials suitability for the intended use of Kurz equipment. The Company shall not be liable for installation charges, for expenses of Buyer for repairs or replacement, for damages from delay or loss of use, or other indirect or consequential damages of any kind. The Company extends this warranty only upon proper use and/or installation of the product in the application for which intended and does not cover products which have been modified without the Company's approval or which have been subjected to unusual physical or electrical stress, or upon which the original identification marks have been removed or altered.

Whenever the design of the equipment to be furnished of the system in which it is to be incorporated originate with the buyer, manufacturer's warranty is limited specifically to matters relating to furnishing of equipment free of defects in material and workmanship and assume no responsibility for implied warranties of fitness for purpose or use.

Transportation charges for material shipped to the factory for warranty repair are to be paid by the shipper. The Company will return items repaired or replaced under warranty prepaid. No items shall be returned for warranty repair without prior authorization from the Company.

**PATENT AND TRADEMARK INDEMNITY** The Company will, at its own expense, defend any suit against the Buyer for the infringement of United States patents and trademarks by products purchased from the Company and in any such suit will satisfy any final award for infringement: except that the Company assumes no obligation to defend or assume liability for damages (consequential or otherwise) resulting from infringements (a) of patent claims covering any other products or any contemplated equipment or any assembly, combinations, method or process, in which, or in the manufacture or testing of which any such products purchased from the Company may be used (not withstanding that such products purchased from the Company may have been designed only for use in or may only be useful in such other patented products or such patented equipment, assembly, circuit, combination, method, or process, or in the manufacture or testing thereof and that such products purchased from the Company may have been purchased and sold for such use), or (b) resulting from designs supplied by the purchaser, or for any trademark infringement involving any marketing or branding applied by the Company or involving any marking or branding applied at the request of the buyer.

The indemnity is upon the condition that the Buyer give the Company prompt notice in writing of any such suit for infringement or threat of such suit and full opportunity to conduct the defense thereof. No costs or expenses shall be incurred for the account of the Company without its written consent. At its option, the Company may, at any time, replace or modify any products sold under this contract to avoid patent or trademark infringement provided such replacement or modification does not materially affect performance. The Company's liability under this indemnity shall not exceed the purchase price of the infringing product.

**DOCUMENTATION AND TRAINING** In no event shall orders be accepted where payment is contingent on provision of documentation, unless agreed to in advance. Documentation is generic in nature, no guarantee is made that the documentation conforms to the equipment produced as built. As built documentation entails an additional charge.

The Company will supply reasonable written documentation including operator instructions. Factory and on-site training in use and operation of the Company's products may be made available at Buyer's expense, subject to acceptance by the Company.

**PROPRIETARY RIGHTS** Kurz Instruments, Inc. proprietary rights are included in information disclosed in instruction manuals, user guides, drawings and quotations or any other document or information disclosed. No Kurz document or information disclosed therein shall be reproduced or transferred to other documents or used by others for manufacturing or for any other purpose except as specifically authorized in writing by Kurz Instruments, Inc.

**SUBSTITUTIONS AND MODIFICATIONS** The Company assumes the right to make substitutions and modifications in the specifications of equipment designed by the Company providing that such substitutions or modifications will not materially affect performance in the intended application.

**TOOLS** The Company shall retain title to and possession of any models, patterns, dies, molds, jigs, fixtures and other tools made for or obtained in connection with this contract unless otherwise agreed to by the Company.

**CONSTRUCTION** All quotations are made and all orders are accepted by the Company with reference to the laws of the State of California, the rights and duties of all persons and the construction and effect of all provision thereof shall be governed by and construed according to the laws of the state.

Should any term or provision contained in these conditions contravene or be invalid under applicable law, the contract of which these conditions form a part shall not fail by reason thereof but shall be construed in the same manner as if such terms or provision had not appeared herein.

**REGULATORY LAWS AND / OR STANDARDS** The Company makes no promise or representation that its product will conform to any state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as part of the contract between Buyer and the Company. The Company's prices do not include the cost of any related inspections or permits or inspection fees.

**EXCUSABLE CESSATION OF PERFORMANCE FOR NON-PAYMENT** Whenever Buyer fails to meet the payment requirements set forth in this condition, manufacturer may cease performance and delivery and accelerate payment of any and all unpaid charges, such cessation of performance shall not be construed to be a breach of any contract or agreement and manufacturer will resume production as soon as reasonably possible upon receipt of payment of all balances due.

**NUCLEAR QUALIFICATION** Equipment sold by Kurz Instruments, Inc. is not intended for use in connection with any nuclear facility or activity unless covered by a specific quotation where the conditions of such usage will be detailed. If equipment is used in a nuclear facility or activity without a supporting quotation, Kurz disclaims all liability for any damage injury or contamination, and the buyer shall indemnify and hold Kurz, its officers, agents, employees, successors, assigns and customers, whether direct or indirect, harmless from and against any and all losses, damages or expenses of whatever form or nature (including attorney's fees and other costs of defending any action) which they, or any of them, may sustain or incur, whether as a result of breach of contract, warranty, tort (including negligence), strict liability or other theories in law, by reason of such uses.

The Leader in Mass Flow Technology  
for Process and Environmental Measurements



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