DEFINITIONS

In These Terms:

- **Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

- **Buyer** means any person, body corporate or entity which purchases or orders the Goods from the Seller.

- **Goods** means all goods described in any invoice issued by the Seller to the Buyer and supplied, or to be supplied, by the Seller to the Buyer.

- **Seller** means Dwyer Instruments Pty. Ltd. ARBN 062 880 424 of P.O. Box 359 Unit 1, 11 Waverley Drive Unanderra NSW 2526, with telephone number +61 2 4272 2055 and email info@dwyer-inst.com.au.

- **These Terms** means these terms and conditions for the supply of the Goods by the Seller to the Buyer as amended or varied by the Seller.

FORMATION AND SCOPE OF CONTRACT

2.1 Subject to clause 4.3, a contract for the sale of the Goods by the Seller to the Buyer will be formed upon the acceptance by the Seller of an order (which needs to be communicated to the Buyer to be effective) for the Goods by the Buyer (Contract).

2.2 The Buyer acknowledges that it will be bound by These Terms and These Terms form part of the Contract.

2.3 Upon the formation of the Contract, These Terms constitute the entire agreement between the Buyer and the Seller for the supply of the Goods and in the event of any inconsistency between These Terms and any other terms which may have accompanied the Buyer's order for the Goods, These Terms prevail to the extent of such inconsistency except in so far as These Terms are expressly varied by the Seller by notice in writing to the Buyer.

2.4 These Terms and the current price list issued from time to time by the Seller supersede all terms and conditions of sale and price lists previously issued by the Seller.

2.5 Any quotation by the Seller is not and shall not be construed as an offer capable of acceptance by the Buyer.

PRICE AND PAYMENT

3.1 The Seller will invoice the Buyer upon delivery of the Goods.

3.2 The Buyer must pay the purchase price of the Goods stated in the invoice.

3.3 If no time or manner of payment is stipulated in the invoice the Buyer must pay the purchase price for the Goods within 30 days from the date of invoice. If the purchase price for the Goods is not paid in full by the due date, interest will accrue on the purchase price at the rate of 2% above Westpac's advertised Indicator Lending Rate (or any equivalent rate that is substituted for this rate from time to time) calculated daily and is payable upon demand.
3.4 Payment of amounts invoiced by the Seller must be made in Australian currency, without set-off, counterclaim or deduction to the Seller by direct bank transfer or by Credit Card (MasterCard or Visa) as stated in the invoice.

3.5 Any sales excise, value added or other tax, impost or duty must be paid by the Buyer and the Buyer must not deduct any tax, impost or duty from the price payable to the Seller and duty will normally be included in the invoiced prices.

3.6 If the Buyer is entitled to an exception from sales tax the Buyer must quote its sales tax number or execute a conditional certificate of exception and it will not be required to pay an amount equal to the sales tax amount to the Seller. The Seller is not obliged to inquire as to whether the Buyer is entitled to claim such exemption. However, should the relevant commissioner for any applicable sales tax subsequently determine that the Buyer has claimed an exemption from sales tax to which it is not entitled, the Buyer agrees that it will fully indemnify the Seller for any such sales tax and penalties payable in connection with the supply of Goods from the Seller to the Buyer.

4 DELIVERY

4.1 The Goods shall be delivered to the Buyer at the premises of the Seller.

4.2 If the Buyer's order requests delivery of the Goods to a particular destination and the Seller agrees to deliver to that destination the Seller will, as agent for the Buyer, arrange for the delivery of the Goods to the Buyer at that destination at the cost of the Buyer.

4.3 The Seller may, at its option, deliver the Goods by installments in which case each installment will be deemed to be the subject of a separate Contract for which the Buyer must separately pay.

4.4 Any time or date of delivery specified by the Seller is an estimate only as to when the Goods may be available for delivery and is subject to change by notice from the Seller to the Buyer. The Seller will not be liable in any way for failure or delay to deliver any Goods to the Buyer by any specified time or date of delivery or for any loss or damage resulting directly or indirectly from any failure or delay in delivery of the Goods, except where such failure or delay is caused solely by the negligence of the Seller. The Buyer must accept and pay for the Goods if and when tendered, notwithstanding any such failure or delay to deliver within the time specified by the Seller, unless the Seller has given to the Buyer a guarantee in writing providing a stipulated penalty as liquidated damages in favour of the Buyer for such failure to deliver within the time specified by the Seller and the Buyer has suffered loss by the failure to deliver within that time.

4.5 The Buyer agrees to accept delivery of the Goods during normal business hours or at such other times as agreed in writing between the Buyer and Seller.

4.6 The Seller reserves the right to withhold deliveries if:

(a) the Seller considers that the financial condition of the Buyer so warrants and that such action is advisable to protect the Seller's interest; or

(b) the terms of payment for any Goods are not strictly adhered to by the Buyer.
5 TITLE AND RISK

5.1 The Buyer assumes all risk of loss and damage to the Goods upon the earlier of:

(a) delivery of the Goods by the Seller in accordance with clause 4.1; and
(b) delivery of the Goods by the Seller to the carrier for dispatch pursuant to clause 4.2.

5.2 Notwithstanding any other provision of These Terms or that the Buyer has possession of the Goods, title to the Goods remains with the Seller and no legal or equitable interest or property in the Goods whatsoever will pass to the Buyer until the full amount due for the Goods has been paid to the Seller. Until title in the Goods passes to the Buyer it must:

(a) refrain from selling or encumbering the Goods;
(b) hold the Goods as bailee for the Seller;
(c) store, mark and keep appropriate records for the Goods so that they can at all times be identified and distinguished as the property of the Seller and in particular must refrain from mixing the Goods with any Goods owned by the Buyer or any other person;
(d) hold any money received by the Buyer on account of the Goods on trust for the Seller in a separate bank account identified as the Seller's account and will hold that money on trust for the Seller until the full amount due for the Goods has been paid; and
(e) grant to the Seller and its officers and agents an irrevocable right and license to enter with or without force the premises of the Buyer or any other premises where the Buyer has transferred the Goods at any time before title passes to retrieve and take possession of the Goods, including without limitation, if:

(i) the Buyer commits an act of default under These Terms;
(ii) the Buyer becomes insolvent, commits an act of bankruptcy, or being a company, suffers the appointment of a receiver, a receiver and manager or an administrator;
(iii) a mortgagee takes possession of the Buyer’s assets or business;
(iv) an application is made to appoint a liquidator or to have the Buyer wound up; or
(v) the Buyer is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors to repossess and use or sell all or any of the Goods,

and in which case, without prejudice to any other rights of the Seller, the Buyer will have no right to use or sell the Goods.

5.3 The Buyer indemnifies the Seller against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the Seller suffers, incurs or is liable for in respect of the Seller’s exercise of its rights under this clause 5.
6 PERSONAL PROPERTY SECURITIES ACT

6.1 Unless the context requires otherwise, terms and expressions used in this clause have the meanings given to them in, or by virtue of, the Personal Property Securities Act 2009 (Cth) (PPSA).

6.2 The Buyer grants the Seller a security interest in all Goods to which the Seller retains title under these Terms, being a purchase money security interest in those Goods and their proceeds.

6.3 The Buyer must:

(a) promptly sign any documents and provide all information reasonably required by the Seller to register a financing statement or financing change statement on the Personal Property Securities Register (PPS Register) or that the Seller may require in connection with such registrations for any security interests granted under these Term;

(b) notify the Seller in writing of any proposed change to its name, address or any other details that have been, or are required to be, recorded on the PPS Register in connection with any such security interest at least 7 days before the changes take effect;

(c) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the PPS Register, releasing any goods from a security interest perfected by such registration or any other action taken by the Seller to comply with the PPSA (including complying with a demand given under section 178 of the PPSA) or to protect its position under the PPSA; and

(d) not register a financing change statement in respect of any security interest created under these Terms without the prior written consent of the Seller;

6.4 Any time the Buyer makes a payment to the Seller, irrespective of whether the payment is made under or in connection with a particular supply of Goods, the Seller may apply that payment in any manner and order it sees fit.

6.5 The Buyer waives its rights to receive a verification statement in accordance with section 157 of the PPSA.

6.6 To the extent permitted by law (including under the PPSA), the following provisions of the PPSA will not apply to the enforcement of any security interest arising out of these Terms: (a) section 95 (notice of removal of accession), to the extent that it requires the secured party to give notice to the grantor; (b) section 96 (when a person with an interest in the whole may retain an accession); (c) section 121(4) (enforcement of liquid assets - notice to grantor); (d) section 125 (obligation to dispose of or retain collateral); (e) section 130 (notice of disposal), to the extent it requires the secured party to give a notice to the grantor; (f) section 132(3)(d) (contents of statement of account after disposal); (g) section 132(4) (statement of account if no disposal); (h) section 142 (redemption of collateral); (i) section 143 (reinstatement of security agreement); and (j) any other provision of the PPSA notified by the Seller to the Buyer from time to time.

6.7 Where the Seller has rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.
7 BUYER’S REPRESENTATIONS AND ACKNOWLEDGEMENTS

The Buyer acknowledges that:

7.1 Descriptions and specifications set out in the Seller's price list are given for identification purposes only and are not descriptive of the quality of the Goods and to the maximum extent permitted by law the Seller has not given to the Buyer any undertaking (written or oral) or made to the Buyer any statement as to the quality of, or fitness for any purpose, of the Goods.

7.2 It is the Buyer's responsibility to inform the Seller in writing of all requirements the Buyer has, including requirements consequent upon legislation and regulations relating to the end use of the Goods in the country or state of intended use including all statutory or other like requirements relating to the marking, labeling and/or packaging of products. To the maximum extent permitted by law, any failure by the Buyer to inform the Seller in writing of any such requirements will not entitle the Buyer to refuse to accept the Goods or pay the purchase price nor will the Seller be liable in any way whatsoever. If the Goods fail to comply with any such requirements not disclosed in writing by the Buyer to the Seller prior to the formation of the Contract, then the Buyer will indemnify the Seller in full against any loss or damage suffered by the Seller however arising out of any failure of the Goods to comply with such requirements.

7.3 To the maximum extent permitted by law, unless any particular purpose for which the Buyer is acquiring the Goods is stated in writing prior to the formation of the contract governed by These Terms, the Buyer warrants it has not advised the Seller of any particular purpose.

8 LIABILITIES

8.1 To the maximum extent permitted by law, the liability of the Seller pursuant to any provision of relevant legislation of Australia or any State or Territory or pursuant to any other potential liability whether arising from contract, negligence, tort or otherwise, including any consequential loss which the Buyer may sustain or incur will be limited to one of the following at the election of the Seller:

(a) replacement of the Goods or supply of equivalent Goods;

(b) repair of the Goods;

(c) payment of the cost of replacing the Goods or acquiring equivalent Goods;

or

(d) payment of the cost of having the Goods repaired.

8.2 To the maximum extent permitted by law, the Seller will not be liable to the Buyer for any claim whatsoever in respect of the Goods unless made in writing.

8.3 Except as expressly provided in These Terms and to the maximum extent permitted by law, the Seller will not be liable to the Buyer, its employees, agents or contractors for any direct, indirect, incidental or consequential loss or damages of any nature howsoever caused (whether based in tort or contract or otherwise) including any damage to property owned by the Buyer or any other claim whatsoever arising directly or indirectly out of or in any way attributable to the Goods, or their delivery, or the performance of the contract for the sale of Goods upon These Terms.
8.4 Where the Seller elects to replace Goods the Seller will credit the cost of the Goods being replaced and will replace them as soon as possible with others of the same or equivalent kind at the price charged for the original Goods and otherwise upon the same terms and conditions as those to which the original Goods were subject.

9 TERMINATION

Without prejudice to any of the Seller's other rights, powers or remedies, the Seller may cancel any order of the delivery of Goods and terminate any Contract:

(a) any payment due by the Buyer to the Seller is not made within the specified time;

(b) the Buyer defaults under any of its obligations under These Terms; or

(c) the Buyer becomes insolvent, commits an act of bankruptcy, or being a company, a receiver or receiver and manager or administrator is appointed, a mortgagee goes into possession of the Buyer's assets or business, an application is made to appoint a liquidator or to have the company wound up is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors,

in which case, to the maximum extent permitted by law, the Seller will be released from all liability under this Contract.

10 GOVERNING LAW

These Terms shall be governed by and interpreted in accordance with the laws of New South Wales.

11 NOTICES

Any notice from one party to the other will be in writing and delivered personally or sent by pre-paid post or transmitted by facsimile to that party's address or facsimile number as set out in the invoice or order form or otherwise notified by the party. If mailed the notice will be deemed delivered on the expiration of two business days (seven if sent to an address in another country) after posting and if faxed on confirmation of dispatch if transmitted before 4pm on a business day, or if not, then at 9:00 a.m. on the next business day.

12 WAIVER OR ALTERATION

No waiver or alteration of these Terms will be binding upon the Seller unless a duly authorised officer of the Seller agrees in writing.