



TNL USA Inc.
913 N. Market Street,
Suite 200
Wilmington, DE 19801
USA

T +1 (302) 487-0440
E usa@tnl.group

Company no. 7506324

TERMS AND CONDITIONS OF SALE

Thank you for your interest in purchasing our products and/or services. We value your business and our goal is to make your purchasing experience as smooth as possible. If you have any questions about our quotation or ordering process, please refer to the “Support” section of our website. Unless otherwise expressly agreed in writing, your purchase of products is subject to the following terms and conditions:

1. Agreement Terms

- 1.1 **General Terms.** These terms and conditions (“Terms”), our quotation (if any) and Supplementary Terms, if any, comprise the agreement (“Agreement”) between you and TNL. Unless your order is subject to a valid, written, executed agreement between you and TNL or any of the TNL group companies, in which case such agreement applies, you agree to accept and be bound by the Agreement by ordering products on our website or if you receive ordering or sales documents that reference these Terms. This Agreement is the complete and exclusive contract between us with respect to your purchase of the products or work.
- 1.2 **Supplementary Terms.** Some of our products are subject to additional software licenses, limited use label licenses or other written contract terms that you will not find here (“Supplementary Terms”). You will find any Supplementary Terms that apply to your purchase in our quotation to you, on our website, or in literature that accompanies the product.
- 1.3 **Terms Conflict.** If any conditions within the Agreement documents conflict with each other, we will give them the following priority: (a) the quotation; (b) any applicable Supplementary Terms; and (c) finally these Terms. We expressly reject any different terms or provisions contained in any document you provide, and if the terms and conditions in this Agreement differ from the terms of your offer, this Agreement will serve as the governing terms for our contract.
- 1.4 **When Agreement takes Effect.** The Agreement between us is created when you receive email confirmation that we have accepted your order.

2. Definitions

- 2.1 **"Deliverables"** means the deliverables specified in any Statement of Work or Purchase order to be delivered to you.
- 2.2 **"Delivery Date"** means the date or dates in any Statement of Work or Purchase Order when we supply Deliverables to you.



- 2.3 "Documentation" means all designs, specifications, drawings, patterns, schematics, software source code, software documentation, process procedures, tooling lists, materials lists, and parts lists (including lists of suppliers)
- 2.4 "Intellectual Property Rights" means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).
- 2.5 "Products" means any Tangible Product or Software Product specified in any Statement of Work or Purchase Order we deliver to you on or before a Delivery Date.
- 2.6 "Services" means the services specified in any Statement of Work or Purchase Order that we perform for you.
- 2.7 "Software" means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.
- 2.8 "Software Product" means Software specified in any Statement of Work or Purchase Order we deliver to you on or before a Delivery Date.
- 2.9 "Statement of Work" or "SOW" means the document specifying, without limitation, the scope, objective, and time frame of the Work that we perform for you.
- 2.10 "Tangible Products" means tangible goods specified in any Statement of Work or Purchase Order we deliver to you on or before a Delivery Date.
- 2.11 "Third Party Intellectual Property" means the Intellectual Property Rights of a third party which we incorporate into the Work.
- 2.12 "Work" means the Deliverables, Products, and Services specified in the Purchase Order, including any SOW.



3. Price

- 3.1 **Determining Price.** We may change our prices at any time without notice. Prices we quote you are valid for 30 days, unless we state otherwise in writing. If no price has been specified or quoted to you, the price will be the product price on our website in effect at the time we accept your order.
- 3.2 **Taxes and Fees.** Our product prices do not include any taxes (including VAT), duties, levies or other government fees that may apply to your order. If they apply, it will be your responsibility to pay them. If we pay them, we will add them to your invoice. If you claim any exemption, you must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.
- 3.3 **Delivery Fees; Freight Policy.** You are also responsible for standard delivery and handling charges, if applicable, and our product prices do not include such charges unless expressly stated. If we pay such charges, we will also add these to your invoice.

4. Cancellation and Changes

- 4.1 Once you have placed your order, you cannot cancel or change it without our written consent.

5. Payment

- 5.1 **Invoicing.** We will invoice you for Products, Services and Work and all other charges according to the milestones and Delivery Dates in any SOW. In absence of any SOW we will invoice you 50% of the Product price at the time we receive the PO and the remaining is invoiced when we ship you the Products.
- 5.2 **Payment Terms.** Unless we have agreed otherwise in writing, you will pay us within 30 days from your receipt of invoice. Each order is a separate transaction, and you may not off-set payments, including from one order against another. We reserve the right to require you to make full or partial payment in advance, or provide other security to our satisfaction, if we believe in good faith that your financial condition does not justify the payments terms otherwise specified. You will make all payments in the currency specified in our invoice to you.



- 5.3 Late Payment. If you are late in making payment then, without affecting our other rights you will make payment to us, upon our demand, of a late-payment charge. The late payment charge will be calculated as interest on the sums due from the payment due date until you make payment in full, at the rate of 1.5% per month, or, if less, the maximum amount allowed by law and will also include our reasonable costs of collection (including collection agency fees and attorneys' fees). We also reserve the right to cancel or stop delivery of Products in transit and withhold shipments in whole or in part if you do not pay us when due, or if you otherwise do not perform your obligations in this Agreement.

6. Delivery

- 6.1 Delivery. We will ship Products to the destination you specify in your order, FCA Incoterms 2010 our shipping point. By agreeing to these Terms, you (i) give your consent for us to arrange for carriage for all Products supplied hereunder on your behalf; and (ii) waive your right to arrange carriage or to give us any specific instructions regarding carriage. We may, in our discretion, make partial shipments and invoice each shipment separately. Our shipping dates are approximate only, and we will not be liable for any loss or damages resulting from any delay in delivery. You may not refuse delivery or otherwise be relieved of any obligations as the result of such delay. If our delivery of a Product to you is delayed due to any cause within your control, we will place the delayed Products in storage at your risk and expense.

7. Risk of Loss and Title

- 7.1 Excluding Software incorporated within or forming part of a Tangible Product, which we or our licensors continue to own, title to and risk of loss of the Products will pass to you when we load them onto the commercial carrier at our facility.

8. Returns and Shortages

- 8.1 Returns. Customer Services must pre-authorize all Product returns. Customer Services will approve return of any Product that is damaged or defective on receipt, provided you contact Customer Services within five days after receiving the product and provided such damage or defect has not been caused by any failure by you or the carrier to handle or store Products using reasonable care or as otherwise indicated on the label. If you do not contact us within this five day period, we will deem the Product to be accepted, but you will not lose any warranty rights.



- 8.2 Product-Credit Eligibility. If we exercise our discretion to authorize a Product for return then the product must arrive at our facilities in a condition satisfactory for resale. Any return not due to our error is subject to a restocking charge of 25% of the sale price. We do not credit shipping charges. You will not receive credit for any Product returned without our prior consent.

9. Warranties

- 9.1 Limited Warranties for Consumables. Unless a different warranty is included in applicable Supplementary Terms or product literature or on the relevant product pages on our website, we warrant that each consumable will meet its specifications in our published catalogs or associated Supplementary Terms. This warranty lasts from the time we ship the consumable until the earlier of: (a) the consumable's expiry or "use by" date; and (b) its specified number of uses. If we do not specify the expiry date, the number of uses, or a different warranty period, the warranty will last for twelve (12) months from the date we ship the Product.
- 9.2 Limited Warranties for Products. Unless a different warranty is included in applicable Supplementary Terms, or in the applicable quotation, we warrant that Products will be free of defects in materials and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for twelve (12) months from the date we ship the Products to you, or in the case of Products that require installation by our personnel, twelve (12) months from installation, but in no event longer than fifteen (15) months from the date we ship the Product to you.
- 9.3 Limited Warranty for Spare Parts. We also warrant that spare parts you purchase from us and that we install, or are installed by a company we have certified as an authorized installer, will be free of defects in materials and workmanship for three (3) months from the date we deliver them, or, if longer, the original warranty period of the Product in which the part is installed. We do not provide warranties for parts that you do not purchase from us or that we do not install. These parts are provided "as is".



9.4 Exclusions. In addition to our exclusion for third party Products as set out in Section 9.7 of these Terms, our warranties do not apply to (a) normal wear and tear; (b) accident, disaster or event of force majeure; (c) your misuse, fault or negligence; (d) causes external to the products such as, but not limited to, power failure or electrical power surges; (e); instruments sold to you as 'used' Products; (f) installation, removal, use, maintenance, storage, or handling in an improper, inadequate, or unapproved manner by you or any third party (including the carrier), such as, but not limited to, failure to follow our instructions or operating guidelines, or protocols, operation outside of stated environmental or use specifications, or operation or contact with unapproved software, materials, chemicals or other products; or (g) products manufactured in accordance with specifications you gave us. ADDITIONALLY, ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN US WITHOUT OUR PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS WE HAVE NOT SUPPLIED, WILL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

If we determine that Products for which you requested warranty services are not covered by the warranty, or if we provide repair services or replacement parts that are not covered by this warranty, you will pay or reimburse us for all costs of investigating and responding to such request at our then prevailing time and materials rates.

9.5 Limitations

(A) OUR WARRANTIES EXTEND ONLY TO YOU, THE ORIGINAL PURCHASER AND YOU CANNOT TRANSFER THEM. OUR OBLIGATION TO REPAIR OR REPLACE A PRODUCT IS YOUR SOLE REMEDY.

(B) EXCEPT AS OTHERWISE STATED, WE DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES

(a) OF MERCHANTABILITY;

(b) OF FITNESS FOR ANY PARTICULAR PURPOSE; AND/ OR

(c) THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

9.6 Remedies. During the applicable warranty period only, for products not meeting our warranty, we agree, in our sole discretion, to repair or replace the non-conforming product and/or provide additional parts as reasonably necessary to comply with our warranty obligations, but you must first promptly notify us in writing when you discover any defect or non-conformance, and include in the notice clear details of your warranty claim. After our review, assuming we authorize the product return, we will provide you with service data and/or a Return Material Authorization

(“RMA”), which may include biohazard decontamination procedures and other product-specific handling instructions that you must follow. For valid product warranty claims timely made in accordance with this Agreement, you must return the non-conforming Products to us, unless we agree otherwise, and we will prepay the shipping costs. For aggregate Products such as instruments only, we may choose to provide you with new or refurbished replacement parts. All replaced parts will become our property. We will ship your repaired or replacement products according to our Delivery terms in Section 5 of these Terms.

- 9.7 Third Party Products. We do not support or make any warranties about products manufactured or supplied by third parties that you purchase through any of our sales channels. When you buy a third party product, we will let you know that this purchase is governed by the third-party’s own contract terms. You must look directly to the relevant third-party manufacturer for product support, warranties, and to make warranty claims. We agree, however, to assign to you any warranty rights we may receive from the original manufacturer or third party supplier, to the extent the original manufacturer or third party supplier allows.

10. Indemnification

10.1 Our Indemnify

(A) Our Infringement Indemnity. We will defend and indemnify you against infringement damages finally awarded in any legal action brought by a third party against you alleging infringement of any intellectual property rights owned by third parties arising directly and solely from a product, as manufactured and provided by us to you, but always excluding use and/or combination of such product with other products or components. This infringement indemnity does not apply to (a) claims that arose based on your failure to comply with the Agreement; (b) claims that arose based on your failure to acquire any applicable additional intellectual property rights related to your use of the products (“Additional Rights”); (c) products that we made, assembled or labeled in reliance upon your instructions, specifications, or other directions; (d) your use or resale of products; (e) modifications made by you or any third party; or (f) products originating from third parties.

THIS INDEMNITY IS OUR ONLY LIABILITY TO YOU, AND, SUBJECT TO SECTION 11.4 OF THESE TERMS, YOUR ONLY REMEDY, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY OR IN CONNECTION WITH ANY PRODUCT.

(B) Conditions to Our Indemnity. As a condition to our indemnification obligations you must (a) notify us in writing, as soon as you become aware of any claim; (b) not admit any liability or take any other action in connection with the claim that could affect the defense; (c) allow us to solely control the defense or settlement of the claim; (d) give us your reasonable information, co-operation and assistance;



and (e) take all reasonable steps to mitigate losses incurred, including allowing us to exercise any and all of options set out in Section 11.4 of these Terms.

- 10.2 Your Indemnity of Us. If a third party makes a claim against us for infringement of its intellectual property rights based on (a) our manufacture or sale of a product or custom product we make under your instructions, specifications, or other directions, or using materials that you provide to us (b) your failure to comply with the Agreement, (c) your failure to acquire any applicable Additional Rights, or (d) your modification, use or resale of a product, then you will indemnify and hold us harmless from and against any and all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees and other costs of defending and/or settling any action) that we may have to pay as a result of the claim.

11. Software

- 11.1 Definitions. With respect to any Software incorporated in our Deliveries or forming a part of our Tangible Products, you understand and agree that we are licensing such software and not selling this, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "you" is understood and agreed to mean "licensee". We, or our licensor, as applicable, retain all rights and interest in Software we provide to you.
- 11.2 License. We hereby grant to you a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use Software we provide to you under this Agreement solely for your own internal business and to use the related documentation solely for your own internal business purposes. For Software on Tangible Products this license will automatically terminate when your lawful possession of the associated hardware products provided hereunder ceases, unless earlier terminated as provided in this Agreement.
- 11.3 Restrictions. You agree to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the Software and related documentation provided hereunder. You may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software provided hereunder without our prior written consent. We will be entitled to terminate this license if you fail to comply with any term or condition herein.
- 11.4 Return of Software and Documentation. You agree, upon termination of this license, immediately to return to us all Software and related Documentation provided hereunder and all copies and portions thereof.



11.5 Third Party Software. The warranty and indemnification provisions set forth in this Agreement will not apply to third party owned Software we provide you. We agree, however, to assign to you any warranty rights we may receive from the original developer or third party supplier, to the extent the original developer or third party supplier allows.

12. Intellectual Property

12.1 Use Limitations. As between you and us, we exclusively own all intellectual property rights relating to our Products and services. Unless we expressly state otherwise in Supplementary Terms, our sale of Products, Licenses and Services to you grants you only a limited, nontransferable right under our intellectual property to use the quantity of Products, Licenses and Services purchased from us for your internal purposes. No right to transfer, distribute or resell our Products or any of their components is conveyed expressly, by implication, or by estoppel. Unless expressly permitted by us in writing, you will not modify, change, remove, cover or otherwise obscure any of our brands, trade or service marks on the Products. Nothing in the Agreement limits our ability to enforce our intellectual property rights.

12.2 Intellectual Property Ownership. Unless otherwise specified in applicable Supplementary Terms, we exclusively own all intellectual property rights in any inventions (patentable or otherwise), discoveries, improvements, data, know-how, or other results that are conceived, developed, discovered, reduced to practice, or generated by or for us, or jointly by you and us, in relation to processes, designs and methods utilized in manufacture of a custom product. You agree to transfer and assign to us all your right, title, and interest in and to any joint intellectual property. At our request and at our expense, you will help us secure and record our rights in such intellectual property.

12.3 Intellectual Property Infringement. We want to avoid claims of intellectual property infringement. If we believe a Product we have sold to you may be subject to a claim for intellectual property infringement, you must allow us (at our option) to either (a) secure for you the right to continue using the product; (b) substitute the product with another suitable product with similar functionality; or (c) tell you to return the product to us and we will refund to you the price you paid. In the case of instruments, we will take off a reasonable amount for the instrument's use, damage or because it is now out of date or out of use.



13. Custom Products

- 13.1 Declining to Make or Deliver. If you ask us to manufacture a custom Product, we may decline to design or manufacture that Product at any stage of the process if the product is unsuitable or commercially impractical to manufacture as specified. If so, we will notify you, and you will not be obligated to pay any fees for any expenses we incurred in connection with the declined Product. If a custom component or material fails, we may delay or cancel a custom Product's delivery without liability to us.
- 13.2 Your Responsibilities. By submitting an order for a custom Product, you represent and agree that you (a) have given us all information you know of regarding any hazards associated with the handling, transport, exposure to, or other use of the Product to us; and (b) have the requisite rights, including but not limited to any necessary Intellectual Property Rights, to instruct manufacture of such Product.

14. Product-Related Services

- 14.1 When you purchase a Product, we may install it and provide training, maintenance, repairs, or any other services that you and we expressly agree on. We also offer annual and other service plans. All services are subject to our Services Supplementary Terms. For full details please check our website and/or contact Customer Services.



15. Limitations and Exclusions of Liability

(A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE WILL NOT BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO ALL COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOSS OF REVENUE) THAT YOU MIGHT INCUR UNDER THE AGREEMENT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH OUR PRODUCTS OR SERVICES, EVEN IF WE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

(B) IN ADDITION, OUR MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, OR ANY PRODUCT OR SERVICE, IS LIMITED TO 100% OF THE AMOUNT YOU PAID TO US FOR THE PRODUCT PURCHASED.

(C) THE PROVISIONS ABOVE IN THIS SECTION 14 DO NOT LIMIT OUR LIABILITY THAT CANNOT BE LIMITED BY LAW.

16. Export Restrictions

- 16.1 Items. You acknowledge that each Product and any related Software and technology, including technical information we supply you, including those contained in Product documents (collectively "Items"), is subject to U.S., EU and local government export controls.
- 16.2 Export Controls. The export controls may include, among others, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries.
- 16.3 Compliance Requirements. You must comply with the EAR, and all other applicable laws, regulations, treaties, and agreements relating to the export, re-export, and import of any Item. You must not, directly or indirectly, without first obtaining the required license to do so from the appropriate U.S. government agency; (a) export, re-export, distribute or supply any Item to (a) any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government; (b) any person or entity who is involved in improper development or use of nuclear weapons or of chemicals/biological weapons, or missiles, or in terrorist activities. You will, if we request, provide information on the end user and end use of any Item you export or plan to export.



16.4 **Audit Cooperation.** You will cooperate fully with us in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and will indemnify and hold us harmless from, or in connection with, your or your consultants', agents' or employees' violation of this Section 16.

17. Miscellaneous

17.1 **No Assignment.** You may not delegate any duties nor assign any rights or claims hereunder without our prior written consent, and any such attempted delegation or assignment will be void.

17.2 **Governing Law.** The Agreement and performance under it will be governed by the laws of (a) the state of Delaware, if you are located in the USA or Canada; or (b) the laws of the country where the selling entity (as specified on your order confirmation from us) is located. In the event of any legal proceeding between you and us relating to the Agreement, neither party may claim the right to a trial by jury. Any action arising under the Agreement must be brought within one year from the date that the cause of action arose. The U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

17.3 **Regulatory Restrictions.** In addition to the restrictions set out in Section 9 of these Terms: (a) you must use our products in accordance with our instructions; (b) you are solely responsible for making sure that the way you use our products complies with applicable laws, regulations and governmental policies; (c) you must obtain all necessary approvals and permissions you may need; and (d) it is solely your responsibility to make sure the products are suitable for your particular use.

17.4 **Uncontrollable Circumstances.** We will not be responsible or liable for failing to perform our obligations under the Agreement to the extent caused by circumstances beyond our reasonable control. In certain situations, we may use our reasonable judgment and apportion products then available for delivery fairly among our customers.

17.5 **No Waiver; Invalidity.** Our failure to exercise any rights under the Agreement is not a waiver of our rights to damages for your breach of contract and is not a waiver of any subsequent breach. If any provision or part of the Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the Agreement. No person other than you or us will have any rights under the Agreement.

17.6 **Headings.** Headings are for convenience only and shall not be used in the interpretation of these Terms.



- 17.7 Confidentiality. You agree to keep confidential any non-public technical information, commercial information (including prices, without limitation) or instructions received from us as a result of discussions, negotiations and other communications between us in relation to our products or services.
- 17.8 Notices. Any notice or communication required or permitted under these Terms must be in writing and will be deemed received when personally delivered, or 3 business days after being sent by certified mail, postage prepaid, to a party's specified address.
- 17.9 Requirement to Reduce to Writing. No waiver, consent, modification, amendment or changes to the terms of the Agreement will be binding unless in writing and signed by both of us. Our failure to object to terms contained in any subsequent communication from you will not be a waiver or modification of our Agreement.
- 17.10 Severability. Any provision of the Agreement which is prohibited or which is held to be void or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.