



Terms and Conditions of Sale

- 1. Acceptance of MicroStrain Inc's. Terms and Conditions.** By placing an order with MicroStrain, Inc. ("MicroStrain"), Buyer agrees to be bound by these Terms and Conditions of Sale and Software License, if applicable. MicroStrain will not be bound by any of other terms and conditions, regardless of whether Buyer tenders terms and conditions with an order or otherwise and these terms and condition of sale prevail over any conflicting or additional terms of any quote, order, previous agreement, acknowledgment or similar communications between the parties. These Terms and Conditions supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter. The terms "Product" and "Products" includes collectively all physical products, Software and Embedded Software (as defined herein).
- 2. Pricing.** All prices are quoted in US dollars, unless otherwise explicitly stated and are valid for ninety (90) days. Buyer shall be responsible for the payment of all shipping charges, costs of freight, taxes, import fees, insurance, duties, value added taxes, and the like. Our minimum order is one hundred (\$100.00) dollars, excluding all additional charges, including shipping, taxes and the like.
- 3. Payment:** Payment shall be made in advance, in U.S. dollars, by credit card, bank draft or letter of credit, unless otherwise agreed in writing by MicroStrain. At the sole discretion of MicroStrain, credit terms of net 30 days up to a pre-approved limit may be offered to buyer. A late payment charge of one and a half (1.5%) percent per month, or the maximum percentage rate permitted by law, if lower, shall be charged on all past due balances. Buyer agrees to pay all costs incurred by MicroStrain including, but not limited to, collection fees, court costs and attorney fees, associated with collection of past-due balances.
- 4. Shipping Terms.** All Products delivered to Buyer by MicroStrain, shall be F.O.B. our distribution center, with risk of loss passing to Buyer upon our delivery of the Products to a common carrier. MicroStrain will arrange payment for shipping and insurance with the carrier, but such costs are the responsibility of Buyer. Delivery times quoted are estimates only and MicroStrain shall not be liable for delays in delivery.
- 5. Acceptance & Returns.** Shipments shall be deemed to have been accepted by the buyer upon receipt of shipment. Any discrepancy in shipment quantity must be reported within five (5) days of receipt of shipment. Buyer may return starter kits or evaluation units for any reason within thirty (30) days of the date of shipping from MicroStrain. All other returns shall be subject to a restocking fee of the greater of twenty-five (25%) percent of the invoiced amount of the returned Products or one hundred (\$100.00) dollars. To qualify for a credit or refund (excluding shipping, duties or taxes), Buyer must contact MicroStrain in writing for a Return Merchandise Authorization (RMA). All Product returns shall comply with MicroStrain's Return Merchandise Authorization (RMA) policies. Custom Products, Customized Products, modifications of standard Products, Products altered by Customer are not eligible for return. All returns must be shipped by Buyer to MicroStrain C.I.F. our distribution center as provided in the RMA policies provided by MicroStrain.
- 6. Compliance with Laws, Rules & Regulations.** i.) Products sold may be exported from the United States of America only in accordance with US Export Administration Regulations and diversion contrary to US law is prohibited. Buyer acknowledges that it is eligible to receive Products under US law and agrees to abide by all export or re-export restrictions. ii.) Buyer acknowledges and recognizes that Buyer shall be wholly responsible for compliance with any laws, rules and regulations pertaining to the use of any Product(s) which is incorporated into a Buyer product or is used in such a manner requiring such governmental approval be required for research, testing or commercial use. Buyer acknowledges and recognizes that Products manufactured and sold by MicroStrain which may be used for biomedical purposes are only to be used for research purposes, and that any approvals required by the United States Food and Drug Administration, Internal Review Board (IRB), Human or Animal Experimentation Committee, or similar agencies in the United States, and in foreign countries, must be obtained by Buyer, and further, MicroStrain expressly disclaims compliance with any and all such laws, rules, and regulations, and Buyer accepts full and complete responsibility for any such compliance, and hereby indemnifies MicroStrain from and against any and all liability arising out of the use of a Product.
- 7. Software License.** The following terms and conditions are applicable to either MicroStrain software delivered with a Product, the software portion of the Product ("Software") or software which is embedded in a Product ("Embedded Software"). MicroStrain grants to Buyer a non-exclusive paid-up license to use one copy of the Software on one computer, subject to the following provisions: Except as otherwise provided in this Software License, applicable copyright laws shall apply to the Software and Embedded Software. Title to the medium on which the Software is recorded or stored is transferred to Buyer, but not title to the Software or the Embedded Software. Buyer may use Software on a multi-user or network system only if either, the Software is expressly labeled to be for use on a multi-user or network system, or one copy of the Software is purchased for each node or terminal on which Software is to be used simultaneously. Buyer shall not use, make, manufacture, or reproduce copies of Software or Embedded Software. Buyer may use a copy of the Software on one computer, and is permitted to make additional copies of the Software only for backup or archival purposes. Customer is expressly prohibited from disassembling or reverse engineering the Software or Embedded Software. All copyright notices shall be retained on all authorized copies of the Software and Embedded Software.
- 8. Limited Warranty.** MICROSTRAIN WARRANTS: i) ALL PRODUCTS (EXCEPT SPARE PARTS OR REPLACEMENT PARTS AND SPARE KITS) FOR A PERIOD OF ONE (1) YEAR FROM THE INVOICE DATE FROM MICROSTRAIN, OR MICROSTRAIN'S AUTHORIZED DISTRIBUTOR, AND IN NO EVENT SHALL BE MORE THAN EIGHTEEN (18) MONTHS FROM THE DATE SHIPPED FROM MICROSTRAIN'S DISTRIBUTION CENTER; AND, ii) ALL SPARE PARTS OR REPLACEMENT PARTS AND SPARE KITS FOR A PERIOD OF NINETY (90) DAYS. THE FOREGOING WARRANTY APPLIES TO ALL PRODUCTS MANUFACTURED BY MICROSTRAIN WHICH SHALL BE FREE FROM MATERIAL DEFECTS IN WORKMANSHIP. THIS WARRANTY EXTENDS ONLY TO THE ORIGINAL CUSTOMER OF MICROSTRAIN, OR MICROSTRAIN'S AUTHORIZED DISTRIBUTOR, AND IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, AND OF ALL OTHER OBLIGATIONS AND LIABILITIES OF ANY KIND OR CHARACTER WHICH MAY OTHERWISE APPLY. EXCEPT FOR THE SPECIFIC WARRANTY DESCRIBED HEREIN, MICROSTRAIN EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OF THE GOODS OR OF FITNESS FOR ANY PURPOSE OR FOR A PARTICULAR PURPOSE. THERE ARE NO OTHER WARRANTIES EXPRESS OR IMPLIED EXCEPT THOSE SPECIFICALLY PROVIDED FOR HEREIN. BY ACCEPTING THE PRODUCTS FROM MICROSTRAIN, OR MICROSTRAIN'S AUTHORIZED DISTRIBUTOR, THE BUYER ACKNOWLEDGES AND AGREES: i) THAT THE INHERENT VALUE OF THE PRODUCTS ARE UNRELATED TO THE VALUE OR COST OF ANY PROPERTY IN CONNECTION WITH WHICH THE PRODUCTS MAY BE USED AND THAT MICROSTRAIN MAKES NO WARRANTY THAT THE PRODUCTS WILL AVERT, DETECT OR PREVENT OCCURRENCES OR THE CONSEQUENCES THEREFROM WHICH THE PRODUCTS MAY BE DESIGNED TO DETECT OR AVERT, OR THAT THE PRODUCTS MAY NOT BE COMPROMISED, DISABLED OR CIRCUMVENTED; ii) THAT MICROSTRAIN HAS MADE NO CONTRARY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, TO OR FOR THE BENEFIT OF CUSTOMER; and, iii) THAT ANY NUMBER OF CAUSES MAY CAUSE A "FALSE ALARM" OR "FALSE READING" FROM MICROSTRAIN'S PRODUCTS, AND THAT MICROSTRAIN DOES NOT WARRANT AGAINST SUCH FALSE RESULTS. BUYER REPRESENTS, WARRANTS AND INDEMNIFIES MICROSTRAIN FOR ANY AND ALL LIABILITY PERTAINING TO THE USE OF PRODUCTS, PRODUCTS INCORPORATED INTO OR PRODUCTS USED IN OR WITH A BUYER PRODUCT.
- 9. Limited Software Warranty.** MicroStrain warrants that, the software portion of the Product ("Software"), where applicable, will substantially conform to MicroStrain's then current functional specifications for the Software, as set forth in the applicable documentation, from the date of original retail purchase of the Software for a period of ninety (90) days ("Software Warranty Period"), provided that the Software is properly installed on approved hardware and operated as contemplated in its documentation. MicroStrain further warrants that, during the Software Warranty Period, the magnetic media on which MicroStrain delivers the Software will be free of physical defects. MicroStrain's sole obligation shall be to replace the non-conforming Software (or defective media) with software that substantially conforms to MicroStrain's functional specifications for the Software or to a refund at MicroStrain's sole discretion. Except as otherwise agreed by MicroStrain in writing, the replacement Software is provided only to the original licensee, and is subject to the terms and conditions of the license granted by MicroStrain for the Software. Software will be warranted for the remainder of the original Software Warranty Period from the date of original purchase. If a material non-conformance is incapable of correction, or if MicroStrain determines in its sole discretion that it is not practical to replace the non-conforming Software, the price paid by the original licensee for the non-conforming Software will be refunded by MicroStrain; provided that the non-conforming Software (and all authorized copies thereof) is first returned to MicroStrain. The license granted respecting any Software for which a refund is given automatically terminates.

10. **Limitation of Liability.** IN NO EVENT SHALL MICROSTRAIN BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR OPPORTUNITY, OR SIMILAR DAMAGES WHICH MAY ARISE IN CONNECTION WITH ANY OF MICROSTRAIN'S PRODUCTS. BUYER'S SOLE AND EXCLUSIVE REMEDY SHALL IN NO EVENT EXCEED THE REPAIR, REPLACEMENT OR COST OF THE SPECIFIC PRODUCT PURCHASED FROM MICROSTRAIN.

11. **Warranty Repair.** MicroStrain's sole obligation shall be to repair or replace the defective Product during the applicable Warranty Period at no charge to the original Buyer or to refund the purchase price at MicroStrain's sole discretion. Such repair or replacement will be rendered by MicroStrain. The replacement Product need not be new or have an identical make, model or part. MicroStrain may in its sole discretion replace the defective Product (or any part thereof) with any reconditioned Product, or similar Product, that MicroStrain reasonably determines is substantially equivalent (or superior) in all material respects to the defective Product. Repaired or replacement Products will be warranted for the remainder of the original applicable Warranty Period from the date of original purchase. If a material defect is incapable of correction, or if MicroStrain determines in its sole discretion that it is not practical to repair or replace the defective Product, the price paid by the original Buyer for the defective Product will be refunded by MicroStrain upon return to MicroStrain of the defective Product. All Products (or parts thereof) that are replaced by MicroStrain, or for which the purchase price is refunded, shall become the property of MicroStrain upon replacement or refund.

12. **Non-Applicability of Warranty.** The Limited Warranty provided hereunder for Products will not be applied to and does not cover any refurbished product and any Product purchased through an inventory clearance or liquidation sale or other sales in which MicroStrain, the sellers, or the liquidators expressly disclaim their warranty obligation pertaining to the Product and in that case, the Product is being sold "As-Is" without any warranty whatsoever including, without limitation, the Limited Warranty as described herein, notwithstanding anything stated herein to the contrary.

13. **Submitting A Claim.** The Buyer shall return the Product to the original purchase point. In case the return policy period has expired and the Product is within warranty, the Buyer shall submit a claim to MicroStrain as follows: i) The customer must submit with the Product as part of the claim a written description of the Product defect or Software nonconformance in sufficient detail to allow MicroStrain to confirm the same; ii) The original Product Buyer must obtain a Return Material Authorization ("RMA") number from MicroStrain and, if requested by MicroStrain, provide written proof of purchase of the Product (such as a copy of the dated purchase invoice for the Product) before the warranty service is provided; iii) After an RMA number is issued, the defective Product must be packaged securely in the original or other suitable shipping package to ensure that it will not be damaged in transit, and the RMA number must be prominently marked on the outside of the package. Do not include any manuals or accessories in the shipping package. MicroStrain will only replace the defective portion of the Product and will not ship back any accessories; iv) The customer is responsible for all in-bound shipping charges to MicroStrain. No Cash on Delivery ("COD") is allowed. Products sent COD will either be rejected by MicroStrain or become the property of MicroStrain. Products shall be fully insured by the customer. MicroStrain will not be held responsible for any packages that are lost in transit to MicroStrain. The repaired or replaced packages will be shipped to the customer via UPS Ground or any common carrier selected by MicroStrain, with shipping charges prepaid. Expedited shipping is available if shipping charges are prepaid by the Buyer and only upon request; v) Return Merchandise is to be shipped to MicroStrain, Inc. at the address indicated below or such other address as provide with the RMA; vi) MicroStrain may reject or return any Product that is not packaged and shipped in strict compliance with the foregoing requirements, or for which an RMA number has not been obtained or is not visible from the outside of the package. The Product owner agrees to pay MicroStrain's reasonable handling and return shipping charges for any Product that is not packaged and shipped in accordance with the foregoing requirements, or that is determined by MicroStrain not to be defective or non-conforming.

14. **What Is Not Covered.** This Limited Warranty provided by MicroStrain does not cover: Products, if in MicroStrain's sole and exclusive judgment, have been subjected to abuse, accident, alteration, modification, tampering, negligence, misuse, faulty installation, lack of reasonable care, repair or service in any way that is not contemplated in the documentation for the Product, or if the model or serial number has been altered, tampered with, defaced or removed; Initial installation, installation and removal of the Product for repair, and shipping costs; Operational adjustments covered in the operating manual for the Product, and normal maintenance; Damage that occurs in shipment, due to acts of God, failures due to power surge, and cosmetic damage; Any hardware, software, firmware or other products or services provided by anyone other than MicroStrain; Products that have been used outside the technical specifications of MicroStrain for the specific Product; or, Products that have been purchased from inventory clearance or liquidation sales or other sales in which MicroStrain, the sellers, or the liquidators expressly disclaim their warranty obligation pertaining to the Product. Repair by anyone other than MicroStrain will void this Warranty.

15. **Copyright Statement.** No part of any publication or documentation with respect to or accompanying any Product may be reproduced in any form or by any means or used to make any derivative such as translation, transformation, or adaptation without permission from MicroStrain as stipulated by the United States Copyright Act of 1976, as amended. Contents are subject to change without prior notice. Copyright© 2009 by MicroStrain, Inc. All rights reserved.

16. **Choice of Law.** These terms and any agreement between MicroStrain and Buyer shall be interpreted in accordance with the substantive laws of the State of Vermont, USA, and without regard to its choice of law provisions. Any action to enforce any such terms shall be exclusively brought in the courts of competent jurisdiction in Chittenden County, Vermont. Any legal action between MicroStrain and Buyer shall be decided by a court, acting without a jury.

17. **Disclaimer of U.N. Sale of Goods.** The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed.

18. **Force Majeure.** Except for the obligations to make payments, neither party shall be bound to meet any obligation if prevented from doing so as a consequence of force majeure. If a situation of force majeure lasts for more than ninety (90) days, the Parties shall be entitled to terminate this Agreement by canceling it in writing, without any rights to compensation of damages or refunds.

19. **No Assignment.** This Agreement, and any Licenses or the Software may not be assigned, sublicensed, leased, sold or otherwise transferred without prior written consent from MicroStrain, and any unauthorized transfer is null and void. This agreement and any licenses granted is personal to Buyer and can be used for personal or internal business use only and may not be used on behalf of a client or customer.

20. **Notice.** All notifications and communications relating to this Agreement shall be made by the parties to the other party, in writing and shall be signed by a person duly authorized to provide such notice.

21. **Entire Agreement.** This Agreement shall constitute the entire Agreement between Buyer and MicroStrain and shall not be modified or rescinded, except in writing, signed by Buyer and MicroStrain. The provisions of this Agreement supersede and precede all prior oral and written quotations, communications, agreements and understandings of the parties. Products and services rendered by MicroStrain are done so only in accordance with these Terms and Conditions of Sale. Any statements or additional terms and conditions provided in any Buyer communications and/or purchase orders shall have no effect. If any provisions in these terms and conditions are found to be invalid by a court having competent jurisdiction, the invalidity of such provisions shall not affect the validity of the remaining provisions of these terms and conditions, which shall remain in full force and effect.

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