

## TERMS AND CONDITIONS

**1. EFFECT:** These terms and conditions form part of every contract entered into by SCG Flowmetrix Technical Services Inc (the "Company") with a purchaser (the "Purchaser"). If the Purchaser authorizes the Company to supply labour ("Services"), products, parts, materials, or equipment ("Equipment"), then these terms and conditions shall apply, unless an authorized representative of the Company agrees in writing to different terms and conditions. Any variation will affect only those terms and conditions specified, and the remainder will remain in force without amendment.

**2. LAW:** The contract between the Company and the Purchaser shall be construed under and governed by the laws of the Province of Ontario and Canada, regardless of where the contract is made or performed. Subject to paragraph 15, the courts of the Province of Ontario shall have exclusive jurisdiction over any dispute arising from or regarding this Agreement. Compliance with local laws or standards relating to the location, use or operation of the Equipment, by itself or in conjunction with other equipment, and including any fines or penalties, shall be the sole responsibility of the Purchaser.

**3. TITLE AND RISK:** Title and risk of loss of or damage to the Equipment shall pass to the Purchaser when the Equipment is shipped, whether from the manufacturing facility or the Company's premises. The Purchaser agrees to ensure the Equipment with the Company named as loss payee until the Company has been paid in full.

**4. CREDIT AND PAYMENT TERMS:** The Purchaser shall furnish to Company all financial information reasonably requested by Company from time to time for the purpose of establishing or continuing Purchaser's credit limit. The Purchaser agrees that the Company shall have the right to decline to extend credit to Purchaser and to require that the applicable purchase price be paid prior to shipment. The Purchaser shall promptly notify the Company of all changes to the Purchaser's name, address, or the sale of substantially all of its assets. The Company shall have the right from time to time, without notice, to change or revoke the Purchaser's credit limit on the basis of changes in the Company's credit policies or the Purchaser's financial conditions and/or payment record.

Unless the Company has made a contrary agreement in writing, payment for the Services and Equipment is due within 30 days following the earliest of:

- a. Shipment or offer to ship the Equipment to the Purchaser.
- b. Substantial completion of the Services.
- c. The date of the Company's invoice to the Purchaser.

Overdue amounts will bear interest at 2% per month, compounded monthly (26.82% per annum) until paid.

Payment is due without set off or counterclaims for any amounts claimed by the Purchaser or any affiliate of the Purchaser from the Company, whether or not such claim arises out of this agreement.

**5. SECURITY INTEREST:** The Company retains a security interest in the Equipment, and any proceeds derived from the sale or exchange of the Equipment, until the price has been paid in full. The Purchaser agrees to notify the Company immediately of any change in the location of the Equipment, and to take all steps requested by the Company to establish, perfect, continue, and enforce the security interest. The Purchaser waives the right to receive copies of any financing statement, financing change statement, or verification statement.

**6. DELIVERY:** Any delivery date specified is an estimate only, and subject to delay caused by labour disputes, acts of God, shortages of material, transportation or manufacturing delays, or other cause beyond the reasonable control of the Company. The Company will take commercially reasonable steps to meet any delivery date specified but will not be liable for the consequences of delay in delivery.

**7. TAXES AND DUTIES:** The price does not include any present or future federal, provincial, state, or local licenses, permits, sales taxes or assessments which may be applicable to or result from the sale of Equipment or Services. Unless otherwise stated, the price does include customs or import duties. Tax exemptions must be clearly noted on Purchase orders, or the appropriate documentation must be presented to Company.

**8. PRICES:** Unless specified on the Quote, prices are only guaranteed for 30 days from date of Quote.

**9. CANCELLATION POLICY:** Order cancellation requires written consent from Company. Cancellation of standard product normally stocked and without modification will incur a 25% cancellation charge. Non-standard or modified product cannot be cancelled without written consent. The Purchaser will agree to pay for all cancellation costs, expenses, commitments, liabilities, and other costs including overhead incurred with respect to all uncompleted goods.

**10. RETURNS:** The Purchaser shall not return any Equipment to the Company without prior written authorization. Any authorized returns will be subject to a minimum 20% re-stocking charge. Returns must be prepaid, unopened, unused, and ready for resale. Product shall be deemed suitable and not returnable after 60 days from delivery or installation date.

**11. WARRANTY:** The Company warrants that the Equipment and Services will be free of defects in material and workmanship for a period of twelve months from the date the Purchaser begins to operate the Equipment, or eighteen months from the date of shipment to the Purchaser, whichever shall first occur. The Company may, at its option, repair or replace the Equipment and Services. This warranty specifically excludes:

- a. any claim where the Purchaser has not stored, installed, maintained, or operated the Equipment in accordance with good

- industry practices.
- b. the cost of any repairs, replacements, or adjustments (including labour) to the Equipment performed by the Purchaser or others.
- c. the effects of corrosion, erosion, or normal wear and tear.
- d. any claim which the Purchaser has not immediately reported, in writing, to the Company.
- e. any claim where the Purchaser has not complied with specific recommendations of the Company or the manufacturer of the Equipment.
- f. any warranty with respect to the performance of the Equipment, unless given by the Company in writing, and in that event, the Company's sole obligation shall be as specified in this paragraph 11, as limited by paragraph 12.

**12. LIMITATION OF LIABILITY:** The warranty given in paragraph 11 excludes all other warranties, whether express, implied, contractual, statutory or otherwise. All implied warranties, including any warranty of merchantability or fitness for a particular purpose, are hereby disclaimed. The Company makes no other warranty or representation of any kind whatsoever, except as to title to the Equipment.

The maximum liability of the Company with respect to this contract, the Equipment and the Services, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the price of the Equipment or Services upon which such liability is based.

The Company shall in no event be liable to the Purchaser for any consequential, incidental, indirect, special or punitive damages arising out of this contract, any breach thereof, any defect in, failure or malfunction of the Equipment and Services, whether based upon lost goodwill, lost profits or revenue, interest, work stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation of the Equipment, loss of use of electrical systems, cost of purchase of replacement power, claims of the Purchaser or customers of the Purchaser for service interruption, or otherwise, and whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.

**13. NO RELIANCE:** The Company's services, work and reports are provided solely for the exclusive use of the Purchaser, which has retained the services of the Company and to which its reports are addressed. The Company is not responsible for the use of its work or reports by any other party, or for the reliance on, or for any decision which is made by any party using the services or work performed by or a report prepared by the Company without the Company's express written consent. Any party that relies on services or work performed by the Company or a report prepared by the Company without express written consent, does so at its own risk.

**14. CALIBRATION, FUNCTION TESTING & TROUBLE SHOOTING** of an electronic instrument forces the instrument to react to minimum and maximum inputs. This process will intentionally stress the instrument and may cause the instrument to fail the calibration and may also cause the instrument to stop functioning or result in permanent damage to the equipment. The Purchaser accepts all liability and costs as a result of the calibration, function testing, and trouble-shooting processes. The Purchaser should be aware that in the event of a failure, parts availability may be limited or unavailable due to obsolete equipment or other reasons beyond our control. The Company accepts no liability as a result of our calibration, function testing or trouble-shooting work or procedures.

**15. SURVIVAL OF AGREEMENT:** The effect of these terms and conditions shall survive the delivery and completion of the purchase contemplated by this agreement.

**16. SEVERABILITY:** If any provision in these terms and conditions is held by a court of competent jurisdiction to be contrary to law, the remaining provisions will remain in full force and effect.

**17. FORCE MAJEURE:** The Company shall be excused from performance of its obligations under this agreement to the extent and for such period of time as such performance is prevented by an act of God, fire, flood, earthquake, transportation disruption, labour dispute, war, insurrection, failure of computers or manufacturing equipment, or other cause beyond the reasonable control of the company.

**18. NO WAIVER:** Failure of the Company to enforce these terms and conditions, on any occasion, shall not operate as a waiver of such provisions or rights on future occasions.

**19. ARBITRATION:** Any dispute between the Company and the Purchaser concerning the purchase of Services or Equipment, or these terms and conditions, shall be resolved by a single arbitrator appointed and acting under the Ontario Commercial Arbitration Act; the arbitrator's decision shall be final and binding upon the parties. The arbitration shall be held in Toronto, Ontario.

**20. ENTIRE AGREEMENT:** These terms and conditions and the Company's order confirmation contain the entire agreement between the parties and supersede all prior contracts or negotiations. There are no representations, warranties, conditions, collateral agreements, understandings, or inducements which are not contained in these terms and conditions, or the order confirmation.

**21. ASSIGNMENT:** The Purchaser may not assign its interest in this contract without the written consent of the Company.

**22. GENERAL:** These terms and conditions, as published on Company's web site located at [www.flowmetrix.ca](http://www.flowmetrix.ca) at the time of sale, are the official terms and conditions for sale between the Company and Purchaser and may be amended from time to time without notice at Company's sole discretion.