



**Corporate
Headquarters**

8455 East 30th Street
Indianapolis, IN 46219-0426
888.743.1609
www.loy-instrument.com

Loy Instrument, Inc.

Standard Terms and Conditions of Sale

These terms and conditions govern the sale of Products (“Product or Products”) and provisions of services (“Services”) by Loy Instrument, Inc. (LOY) and its affiliates (“Seller”) as well as by third party vendors and/or service providers of Seller. These terms and conditions (“Agreement”) take precedence over Buyer’s supplemental or conflicting terms and conditions to which notice of objection is hereby given. Neither Seller’s commencement of performance or delivery shall be deemed or construed as acceptance of Buyer’s supplemental or conflicting terms and conditions. LOY’s failure to object to conflicting or additional terms will not change or add to the terms of this agreement. Buyer’s acceptance of the Products and/or Services from Seller shall be deemed to constitute acceptance of the terms and conditions contained herein.

1. **Orders:**

All orders placed by Buyer are subject to acceptance by Seller. Orders may not be cancelled or rescheduled without Seller’s written consent. All orders must identify the products, unit quantities, part numbers, applicable prices and requested delivery dates of the Products being purchased. Unless otherwise agreed, all materials will be shipped no later than one year from the date that Seller accepts the purchase order. Seller may in its sole discretion allocate Product among its Customers. Seller may designate certain Products and Services as non-cancelable, non- returnable (“NCNR”) and the sale of such Products shall be subject to any special terms and conditions contained in Seller’s Order Acknowledgement or NCNR Letter, which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere.

2. **Prices:**

The prices of the Products are those prices specified on the front of the invoice. Pricing for undelivered Products may be increased in the event of an increase in Seller’s cost, change in market conditions or any other causes beyond the Seller’s reasonable control. Price quotations shall automatically expire in thirty (30) days from the date issued, or as otherwise stated in the quotation.

3. **Taxes:**

Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including federal, state and local sales, excise and value added, goods and services taxes, and any other taxes. Buyer agrees to indemnify and hold Seller harmless for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on Seller’s invoice.

Process Controls & Combustion Equipment

8455 EAST 30TH STREET, INDPLS., IN 46219 TEL: 317.890.0474 FAX: 317.890.0861
2/11/2022

4. **Payment:**

Payment may be made by cash, check, money order, credit card, PayPal or wire transfer (all fees are borne by the Buyer). A surcharge of 3% for credit card sales will be assessed with the following exceptions; (1) invoices less than \$10,000 paid in full at time of purchase, or (2) invoices less than \$10,000 where the Seller has extended net thirty (30) day payment terms and invoice payment is within said terms. Where Seller has extended credit to Buyer, terms of payment shall be net thirty (30) days from date of invoice, without offset or deduction unless otherwise noted. On any past due invoice, Seller may impose interest at the rate of one and a half percent [1.5%] per month. If Buyer fails to make each payment when it is due, Seller reserves the right to change or withdraw credit and thereby suspend or cancel performance under any or all purchase orders or agreements in which Seller has extended credit to Buyer. In the event of default by Buyer, Seller shall be entitled to costs, fees, and expenses, including but not limited to recovery of attorney fees, court costs and fees, and collections costs. At Seller discretion, extended terms may be offered at the rate of 1% every thirty (30) days up to ninety (90) days maximum. Seller reserves the right to invoice special terms at the time of order for large purchases where progressive payments become necessary.

5. **Delivery and Title:**

All deliveries will be made "EXWORKS" place of shipment. Title and risk of loss pass to the Buyer upon delivery of the Product to the carrier. Seller's delivery dates are estimates only and Seller is not liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of the Seller, nor shall the carrier be deemed an agent of the Seller. A delayed delivery of any part of an Order does not entitle Buyer to cancel other deliveries.

6. **Returns, Refunds and Exchanges:**

Returns: Any returned item must be in new condition and in the original packaging. Returns must be requested within 30 days of ship date. Only products originally shipped from LOY or from an authorized supplier (drop-ship) will be considered for return to LOY. By a Customer requesting return of products to LOY, the Customer certifies that the products were purchased from LOY and there has been no substitution of the product from another supplier, distributor or other source of the product. Any return must be in the original packaging and in unused condition except if approved for failure analysis/warranty evaluation by a LOY sales representative.

Exchanges: Any item for exchange must be in new condition and in the original packaging. Exchanges must be requested within 30 days of ship date. Defective item(s) may be exchanged/returned for the same item. Items purchased from LOY that have been used or altered and any items that have been sold as NC/NR will not be accepted for exchange. All exchanges require a purchase order from the Buyer. Replacement order will be processed and invoiced. Replacement order will be credited after failure analysis / warranty evaluation when applicable.

Non-Cancelable and Non-Returnable Items: Products sold as NC/NR (Non-cancelable and Non-Returnable) are identified on the Sales Order and via Order Acknowledgement.

Return Freight / Restocking Fee: LOY reserves the right to charge cancellation and restocking fees, at a minimum rate of 10% to be deducted from the Customer refund. LOY does not refund the original shipping and handling. Customer is responsible for all return freight charges. LOY does not accept COD shipments.

Refunds: Upon receipt and inspection of returned item(s), LOY will advise of the refund status. In the case of factory warranty or failure analysis, LOY will issue any applicable credit pending manufacturer confirmation of failure. LOY initiates credits via the original method of payment within 48 hours of approval. Refunds via credit card can take up to 10 business days to post to the account.

How to Return an Item:

1. Contact a LOY sales representative within 30 days of ship date of item(s) by calling our toll-free number at **1-888-743-1609** or by emailing **sales@loy-instrument.com**.
2. LOY may issue a Return Material Authorization (RMA) number. Once the RMA number is received, item must be returned within 14 days. LOY will provide the Customer with specific instructions on where to mail / return item(s) with the RMA number. In most cases returned items will be shipped to the LOY warehouse located at:

Loy Instrument, Inc.
8455 East 30th Street
Indianapolis, IN 46219

3. Include the signed RMA in the return package stating the reason for the return and the original receipt. If no RMA is provided, include detailed information with regard to the reason for the return.

7. Limited Warranty:

Seller will transfer to Buyer any Product warranties and indemnities authorized by the manufacturer, including any transferable warranties and indemnities for intellectual property infringement. Seller warrants to Buyer that Products purchased hereunder will conform to the applicable manufacturer's specifications for such products and that any value-added work performed by Seller on such Products will conform to applicable Buyer's specifications. If Seller breaches this warranty, Buyer's remedy is limited to (at Seller's election) (1) refund of Buyer's purchase price for such Products (without interest), (2) repair of such Products, or (3) replacement of such Products; provided that such Products must be returned to Seller, along with acceptable evidence of purchase, within 20 days from date of delivery, transportation charges prepaid. Warranty applies to Product only, no labor or damages will be considered. No warranty will apply if the Product has been subject to misuse, static discharge, neglect, accident or modification, or has been soldered. Product supplied by LOY is warranted as parts only and does not include removal, installation or transportation costs.

LOY warrants that labor supplied is free from defects in workmanship and materials for a period of 90 days. However, for any used equipment, LOY cannot take responsibility for and guarantee the equipment's overall performance. Labor warranty is limited to LOY scope of work.

SAVE AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, ALL IMPLIED WARRANTIES, TERMS AND CONDITIONS (WHETHER STATUTORY OR OTHERWISE) ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. IN PARTICULAR, SELLER MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS.

8. Limitation of Liabilities:

BUYER SHALL NOT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR, LOSS OF PROFITS OR REVENUE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEADS, BUSINESS INTERRUPTION COST, LOSS OF DATA, REMOVAL OR REINSTALLATION COSTS, INJURY TO REPUTATION OR LOSS OF BUYERS, PUNITIVE DAMAGES, IPR INFRINGEMENT, LOSS OF CONTRACTS OR ORDERS OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE. BUYER'S RECOVERY FROM SELLER FOR ANY CLAIM SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE AFFECTED PRODUCTS IRRESPECTIVE OF THE NATURE OF THE CLAIM WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON (a) SELLER'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS, (b) MODIFICATION OF ANY PRODUCTS BY ANYONE OTHER THAN SELLER, or (c) USE IN COMBINATION WITH OTHER PRODUCTS.

9. Use of Products:

Products sold by Seller may be designed, intended or authorized for use in applications which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Products for use in any such applications in any way other than the specified and intended use of the manufacturer: (1) Buyer acknowledges that such use or sale is at Buyer's sole risk; (2) Buyer agrees that Seller and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and (3) Buyer agrees to indemnify, defend and hold Seller and the manufacturer of the Products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.

10. Force Majeure:

Seller is not liable for failure to fulfill its obligations for any accepted Order or for delays in delivery due to causes beyond Seller's reasonable control including, but not limited to, acts of God, natural or artificial disaster, riot, war, strike, delay by carrier, shortage of Product, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, acts of terrorism, delays in transportation or inability to obtain labor, materials or Products through its regular sources, which shall be considered as an event of force majeure excusing Seller from performance and barring remedies for non-performance. In an event of force majeure condition, the Seller's time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure condition without subjecting Seller to any liability or penalty. Seller may, at its option, cancel the remaining performance, without any liability or penalty, by giving notice of such cancellation to the Buyer.

11. Technical Assistance or Advice:

If technical assistance or advice are offered or given to Buyer, such assistance or advice may or may not be given free of charge and only as an accommodation to Buyer. Seller shall not be held liable for the content or Buyer's use of such technical assistance or advice, nor shall any statement made by any of Seller's representatives in connection with the Products or Services constitute a representation or warranty, express or implied.

12. General:

(a) The laws of the State of Indiana will exclusively govern any dispute between Seller and Buyer, (b) Buyer may not assign this Agreement without the prior written consent of Seller. Seller or its affiliates may perform the obligations under this Agreement. This Agreement is binding on successor and assigns, (c) Products, including software or other intellectual property, are subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses.

13. Terms of Engineered Services:

- Pricing & Terms of Payment
 - Unless otherwise specified in a Statement of Work (SOW), price of services shall be at the published rate.
 - Open account terms are net 30 days, unless otherwise specified in a SOW.
- The SOW shall specify whether the contract is based on a fixed price or hourly rate. All reasonable overnight and travel expenses will be billed to the Client unless otherwise specified in SOW or Exhibit. Hourly labor and mileage are charged port to port round trip from the originating office.
- There is a two hour minimum for all service calls. Scheduled calls must be canceled by noon of the previous business day or the minimum charge will be applied.
- Measurement uncertainty has been omitted from the results shown on calibration reports, system accuracy tests and temperature uniformity surveys. The laboratory maintains these results for future reference. It is the responsibility of the customer to evaluate and determine suitability.
- Calibration pass/fail statements are determined using a simple acceptance rule, ie. Acceptance is made when measurement results are within the tolerance interval.
- It is the customer's responsibility to ensure periodic services (including but not limited to calibration, system accuracy tests and temperature uniformity surveys) are scheduled as needed.
- SERVICE PROVIDER WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO, PROPERTY DAMAGE, LOSS OF PROFIT, LOST TIME, LOSS OF DATA, LOSS OF USE OF ANY SUCH EQUIPMENT, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS, TECHNOLOGY OR SERVICES, OR ANY OTHER DAMAGES RESULTING FROM THE BREAKDOWN OR FAILURE OF ANY PRODUCTS OR FROM DELAYS IN SERVICING OR THE INABILITY TO RENDER SERVICE ON ANY PRODUCTS EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SERVICE PROVIDER'S LIABILITY FOR DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO SERVICE PROVIDER'S NEGLIGENCE OR INSTALLATION OF DEFECTIVE PARTS OR COMPONENTS, WHETHER OR NOT SUCH DEFECT WAS KNOWN OR DISCOVERABLE, SHALL NOT EXCEED THE ACTUAL PRICE PAID TO SERVICE PROVIDER BY CLIENT FOR THE PRODUCTS, PARTS OR SERVICE WHICHEVER IS LESS.
- Service Provider shall not be responsible for damages caused by (i) accidents, misuse, misapplication, or neglect of Client or any of its agents or employees or as result of Service by any person other than a Service Provider representative; (ii) placement or operation of computer products in an area that does not comply with manufacturer's published space or environmental requirements; or (iii) improper storage, use, and movement of any products to be serviced.