

Leica Microsystems Inc.  
2345 Waukegan Road  
Bannockburn, IL 60015

## SALES TERMS AND CONDITIONS

### 1. Definitions.

As used in this Order, the terms (a)"Seller" shall mean Leica Microsystems, Inc. and (b)"Buyer" shall mean the party executing this Order to purchase the products or services specified on the reverse side hereof and/or the party accepting delivery of Seller's products or services hereunder and (c)"product" or "system" consist of the software program ("software") and equipment provided by Seller under this agreement.

### 2. Acceptance, Merger and Integration.

Seller will be deemed to have accepted this Order when Seller returns an acknowledgement copy of this Order, or, at Seller's option, when Seller begins substantial performance under this Order. Buyer accepts this Order by acknowledging a copy of this Order, by confirming this Order by its purchase order or confirmation, or by acceptance of delivery of the products or services hereunder. Notwithstanding the manner in which Buyer accepts, Buyer's acceptance is limited exclusively to the acceptance of Seller's terms and conditions set forth in this Order only. Seller hereby objects to and rejects any proposal by Buyer for additional or different terms in connection with the products or services provided. Buyer may acknowledge this Order by purchase order, but any and all terms, conditions and provisions contained in said purchase order, acknowledgement form or other communications with respect to the transaction contemplated by this Order, or subsequent to the date hereof, are agreed to be superfluous and with out any force and effect. This Order, which includes all of the terms and conditions of both the face and reverse side hereof, and all riders or limited warranties attached hereto, is intended to be the exclusive and final statement of the terms and understandings relative to the subject matter hereof, merging herein and superseding all negotiations and prior written or oral agreements between the parties as to the subject matter of the purchase of the products or services hereunder. There are no promises, representations or understandings made in connection with this Order or contemporaneous with the execution hereof, except as set forth in this Order.

### 3. Prices and Taxes.

The price of the products or services specified on the face of this Order does not include federal taxes, state or local sales taxes, use taxes or occupational taxes. Unless prohibited by law, Buyer is responsible for and shall pay all applicable sales, use, occupational, excise, value added or other similar taxes applicable to the manufacture, sale, price, delivery or use of the products or services provided by Seller, or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to and considered valid by the applicable taxing authorities.

### 4. Payment.

Terms of payment are thirty (30) days from the invoice date with approved credit, if applicable. Seller reserves the right to determine at its sole discretion the parties and extent of any such credit approval. Failure to make prompt and full payment hereunder constitutes a material breach of this Order.

### 5. Delivery

All sales are FOB Seller's U.S. warehouse or the U.S. port of entry as applicable. Unless otherwise directed Seller terms are prepay and add. Seller will prepay all freight and invoice the Buyer for the amount of freight paid.

### 6. Delivery Delays.

Seller shall use reasonable efforts to make prompt deliveries in a commercially reasonable manner. Delivery dates and estimates are, however, not guaranteed. Seller disclaims any liability or responsibility for the late or non-delivery of goods hereunder. Seller shall additionally not be liable for failure to deliver or delays in delivery of the goods or services covered by this Order if such failure or delay is due, in whole or part, to any cause or conduct beyond the reasonable control of Seller.

### 7. Risk of Loss

Risk of loss, destruction of or damage to the products shall be Seller's until delivery of the products to a carrier at the Seller's warehouse or U.S. port of entry. Thereafter, Buyer shall be fully responsible for and assume all risk of loss, destruction of or damage to the products. Loss or damage to the products after risk of loss has passed to Seller will not release or excuse Buyer from its obligations under this Order to Seller, including the obligation to make full payment.

### 8. Short Shipments/Damage Claims

Seller will endeavor to ship all orders complete or as complete as reasonably possible. Seller will, however, ship incomplete orders upon written authorization by Buyer. In that event, Seller shall have no liability for such short or incomplete order. Also, to preserve any claims against carriers for damages or short shipments, Buyer must report their claim in writing directly to carrier, with a copy of the claim to Seller. This must occur as soon as possible after receipt of the merchandise, but in no case should exceed seven (7) days for air shipments and fourteen (14) days for all other shipments.

### 9. Rejection and Revocation of Acceptance.

Any rejection or revocation of acceptance by Buyer must be made within thirty (30) days of delivery and any attempted rejection or revocation of acceptance made thereafter shall be null and void.

### 10. Canceled Orders

Buyer may cancel this Order only if approval for the cancellation is in writing, signed by the Seller. Canceled orders approved by Seller are subject to a restocking charge of 20% of the purchase price hereunder. Buyer cannot cancel custom orders, special orders or orders for specific equipment requiring a factory order.

### 11. Designs and Specifications.

The design and specifications of Seller 's products are subject to change without notice. Seller reserves the right to ship the latest type and design of equipment at current prices and shall have no liability or obligation for changes in design or specifications. In the event designs or specifications are changed, Buyer may, within fourteen (14) days of receiving notice of any changes in design or specifications, cancel this Order without liability, but only if the changes in design or specifications would have a negative material impact upon the business or operations of Buyer or otherwise render this Order or the delivery or use of the products commercially impracticable.

**12. Governing Law.**

This agreement shall be governed by and subject to the internal laws (exclusive of the conflicts of law provisions) and decisions of the courts of the State of Illinois.

**13. Assignment.**

The rights and obligations of the parties under this agreement shall not be assignable unless consent to the assignment is in writing and signed by the parties.

**14. Modification.**

This Order shall not be modified, altered or amended in any respect except by a writing signed by the parties. Any variation, modification, or addition to the terms set forth in this Order shall be considered a material modification and shall not be considered part of this agreement.

**15. Software License.**

Seller hereby grants a nonexclusive, nontransferable, limited license to use the software only in conjunction with Buyer's internal business use of the products purchased under this agreement. Buyer receives no title or ownership rights to the software. Buyer may not (a) modify, adapt, decompile, disassemble, or reverse engineer the software; (b) create any derivative works based on the software; (c) make any copies of the software, except for one copy solely for backup or archival purpose; (d) allow any third party to use or have access to the software; or (e) sell, transfer, assign or sublicense the software except as provided herein. Any copy of the software made by Buyer is the property of Seller. Buyer must include on each copy all copyright, trademark and other proprietary rights notices included by Seller on the original. Buyer agrees that the software is the proprietary property and a trade secret, of Seller. Buyer agrees to take all necessary security precautions to protect the trade secret nature of the Software and to prevent its disclosure to unauthorized personnel. Buyer will not disclose the software to any third party or allow any third party access to the Software. Buyer may transfer or assign this license only as part of the sale of the products and only to a transferee or assignee who agrees in writing to be bound by the terms and conditions of this section and provided Seller is notified in writing of the transfer.

**16. Limited Warranty and Disclaimer of All Other Warranties.**

EXCEPT FOR THE EXPRESS LIMITED WARRANTY, IF ANY, WHICH IS ATTACHED AS A RIDER TO THE ORDER, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES IN THIS ORDER OR OTHERWISE. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER DISCLAIMS ALL WARRANTIES, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. SELLER EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY TO BUYER FOR ANY CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF USE, LOSS OF PROFITS, INCOME, OR REVENUE, LOSS OF TIME OR INCONVENIENCE, LOSS OR DAMAGE TO ASSOCIATED EQUIPMENT, COST OF SUBSTITUTED OR REPLACEMENT EQUIPMENT, LOSS TO FACILITIES, LOSS OF CAPITAL, LOSS OF SERVICES OR COST OF REPLACEMENT POWER, OR ANY OTHER INCIDENTAL CONSEQUENTIAL OR SPECIAL DAMAGE ARISING OUT OF THIS ORDER OR THE OPERATION, FUNCTION OR CHARACTERISTICS OF THE PRODUCTS OR SERVICES PURCHASED HEREUNDER OR OTHERWISE PROVIDED BY SELLER. IN THE EVENT A LIMITED WARRANTY IS GIVEN BY SELLER, IT IS EXPRESSLY UNDERSTOOD THAT SAID LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE REMEDY OF BUYER.

**17. Limitation of Liability.**

To the fullest extent permitted by law, the parties waive and relinquish any claims, demands, causes of action or recoveries for punitive damages, exemplary damages, or statutory damages. Seller shall not be liable for indirect, special, incidental or consequential damages arising under this agreement or otherwise with respect to the sale of the goods, including any lost revenues or profits, consequential and/or incidental damages, business interruption or damage to business reputation, regardless of the theory upon which any claim may be based, including any statutory causes of action or claims based upon year 2000 computer compliance, non-compliance, capability or non-capability. Notwithstanding the terms of any limited warranty in no event will Seller's entire liability to Buyer exceed the purchase price actually paid by Buyer for the goods hereunder, or any defective portion thereof, whichever is the lesser amount.

**18. Force Majeure.**

Seller shall have no liability or obligation to Buyer of any kind, including but not limited to any obligation to deliver products or provide maintenance or services, arising from any delay or failure to perform all or any part of this Order as a result of causes, conduct or occurrences beyond Seller's reasonable control, including, but not limited to, commercial impracticability, fire, flood, act of war, civil disorder or disobedience, act of public enemies, problems associated with transportation, (including car or truck shortages), acts or failure to act of any state, federal or foreign government or regulatory authorities, labor disputes, strikes, or failure of suppliers to make timely deliveries of materials, goods or services to Seller.

**19. Default.**

The failure of Buyer to perform any obligations hereunder, including without limitation, the payment of the purchase price for products or services and all other amounts due hereunder, the failure to materially perform other agreements between Buyer and Seller, or Buyer's bankruptcy or insolvency, shall constitute a default under this agreement and shall, in addition to any other remedies, afford Seller all of the remedies of a secured party under the Uniform Commercial Code of the State of Illinois. In the event of default, Seller may, in addition to pursuing any of the remedies provided by law, equity or as set forth in this agreement, refuse to provide warranty, repair and/or maintenance service and/or deliver equipment under this or any service or maintenance agreement relating to the goods, and may also cancel this order and any pending orders without liability to Buyer.

**20. Attorneys' Fees.**

In the event it becomes necessary for Seller to enforce the terms conditions of this Order by litigation or otherwise, or to defend itself in any Controversy (as defined herein), litigation, claim, demand or cause of action arising out of or as a result of this Order or the products or services provided hereunder, and if Seller is the substantially prevailing party in said Controversy, litigation, claim, demand or cause of action, then Seller shall be entitled to recover, in addition to any other relief granted or damages assessed, its reasonable attorneys' fees, expert witness fees, cost, and all expenses of litigation.

**21. Waiver.**

No claim or right arising out of a breach of this Order can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

**22. Severability.**

If any term covenant, warranty or condition of this Order, or the application thereof to any person or circumstance shall, to any extent, be held or deemed invalid or unenforceable, the remainder of this Order or the application of such term, covenant or provision, to

persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or provision of this Order shall be deemed valid and enforced to the fullest extent permitted by law.

**23. Indemnification.**

To the fullest extent permitted by law, Buyer shall defend, indemnify and hold Seller harmless from any and all claims, demands, subrogation claims by Buyer's insurers, causes of action, liabilities, fines, regulatory actions, seizures of product, losses, costs, expenses (including, but not limited to attorneys' fees, expert witness expenses and litigation expenses) (hereinafter "Claim"), arising from or in connection with any Claim asserted against Seller for damage, injury, death, loss, property damage, delay or failure in delivery of Seller's products or any other Claim, whether in tort, contract, or otherwise, relating to this Order, the business relationship between the parties or the goods or services provided hereunder. Notwithstanding the foregoing, Buyer has no indemnity obligation to Seller with respect to any Claims that result solely from the negligence of Seller and this indemnity provision does not purport to indemnify Seller solely for its own negligence, but rather for the negligence or conduct, whether sole or concurrent, of Buyer. Whether or not this Order is deemed a construction contract. Buyer, for itself and its insurers, expressly waives any and all limitations or liability caps, if any, on Buyer's contribution liability to Seller, and any and all statutory or common law lien rights or Claims against Seller arising from any applicable workers compensation or disability acts, which Buyer might or could assert against Seller or Seller's insurers in the event of the personal injury or death of Buyer's employees, representatives or servants. Without limiting the foregoing, Buyer, for itself and its insurers, also waives any liens, claims or other rights it may have as a result of being subrogated to any rights of its employees, representatives, or servants.

**24. Forum Selection.**

The parties consent to the exclusive jurisdiction of the federal court in Chicago, Illinois or the state court located in Lake County, Illinois with respect to all litigation, claims, causes of action, demands, Controversies (as defined herein) or disputes among the parties. The only exception to this forum selection provision is a claim by Seller seeking the replevin of the products in the event the courts specified in this provision will not or cannot assert jurisdiction. All counterclaims, if any, in connection with the replevin claim, shall be subject to this forum selection provision.