



**TERMS AND CONDITIONS OF EQUIPMENT SALE (the "Sale Conditions")**

**1. SCOPE**

- 1.1 In these Sale Conditions "**Equipment**" means hardware, equipment, other tangible items, machinery and parts (or any of them) and consists of Standard Equipment and Non-standard Equipment, "**Standard Equipment**" means Equipment described in the Seller's published catalogue, "**Non-standard Equipment**" means other Equipment adapted or made to Buyer's requirement, references to "**Buyer**" shall mean the party buying Equipment and shall include, if the context so permits, its agents or sub-contractors and references to "**Seller**" shall mean Edwards Vacuum, Inc., a Delaware corporation, acting through its Precision Plus business unit.
- 1.2 These Sale Conditions apply to and are deemed to be incorporated in all contracts for Equipment and shall apply to and prevail over all conditions (if any) in purchase orders from Buyer ("**Purchase Orders**"). Seller's Terms and Conditions of Equipment Services apply to all contracts for services.
- 1.3 No modification to these Sale Conditions shall be valid unless in writing and duly signed by a person authorized by Seller.
- 1.4 These Sale Conditions shall not be supplemented by any trade usage or any course of prior dealings or acquiescence in any course of performance.

**2. OFFER AND ACCEPTANCE**

- 2.1 All Purchase Orders are subject to acceptance by Seller. Seller reserves the right to accept or reject any Purchase Order in whole or in part and to submit counter-offers consisting of such additional or different terms and conditions, including those contained in these Sale Conditions, ("**Counter-offer**") to Buyer.
- 2.2 Acceptance of a Purchase Order will normally be advised by Seller within thirty (30) days of receipt. No obligation shall be binding on Seller unless and until the Purchase Order is accepted by Seller in writing or, if earlier, Equipment is supplied to Buyer.
- 2.3 Any acceptance by Seller of a Purchase Order is made conditional upon the Buyer's acceptance of any Counter-offer. Buyer may accept a Counter-offer by written acknowledgement, acceptance of, or payment for, Equipment or in any other fashion. Buyer shall be deemed to have accepted any Counter-offer unless Buyer rejects such in writing within ten (10) days of the Buyer's receipt of the Counter-offer.
- 2.4 The acceptance by Buyer of a Counter-offer shall revoke any provision in the Purchase Order or other Buyer documentation that purported to limit or restrict any such acceptance. Buyer agrees that Seller's failure to object specifically to any such terms or conditions shall not constitute an acceptance by Seller thereof nor shall it constitute an acceptance by Seller of any waiver of, or modification to, these Sale Conditions.
- 2.5 Once accepted the Purchase Order or the Counter-offer and, in either case, these Sale Conditions shall constitute the contract ("**Contract**") between Buyer and Seller for Equipment.

**3. PRICE QUOTATIONS**

- 3.1 Prices quoted for (a) Standard Equipment remain valid for thirty (30) days unless otherwise specified; and (b) Non-standard Equipment are estimates and may be increased without notice in the event of increases in the Seller's costs of: (i) transport, labor and materials; (ii) handling of, and compliance with laws and regulations concerning, hazardous materials; (iii) handling, delivery and shipping; or (iv) energy or fuel; or any other costs of supply or of Seller's performance arising between the time of quotation and the time of supply.
- 3.2 Prices quoted are exclusive of all applicable taxes, including but not limited to, any value added tax, Federal, state and/or municipal excise, sales and/or use taxes, levies and duties of any nature whatsoever ("**Taxes**") applicable to the Equipment.
- 3.3 All Taxes shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the relevant taxing authority.

**4. INSPECTION AND TESTING**

- 4.1 All Equipment is inspected by Seller before supply to Buyer and tested where appropriate.
- 4.2 An additional charge will be made for tests or trial runs carried out at Buyer's request. In the event that Buyer does not attend such tests, after fourteen (14) days' notice, Seller will perform the tests and the Equipment will be deemed accepted in Buyer's absence.

**5. SUPPLY**

- 5.1 Seller will use reasonable efforts to supply Equipment within the time requested in the Purchase Order and in any event within a reasonable period, but in no event shall Seller guarantee shipment according to such time or be liable for damages due to delays in delivery.



- 5.2 Unless otherwise agreed in writing, all shipments shall be made FCA (as defined in Incoterms 2000) Seller's production and/or distribution facilities as may be specified by Seller from time to time. If other delivery arrangements are agreed, Seller may, at Buyer's request and expense, arrange carriage and insure Equipment against normal transit risks to the value of the purchase price. Risk of damage to or loss of Equipment shall pass to Buyer on Seller's delivery of the Equipment to the carrier and until full payment of the purchase price by Buyer, Buyer shall indemnify and hold Seller harmless against all loss of, or damage to, Equipment from whatsoever cause occurring.
- 5.3 If Seller arranges transportation of Equipment for Buyer, in the event of loss of, or damage to, Equipment, whether or not caused by Seller's or its chosen carrier's negligence or that of any other person, Seller's liability shall be limited to passing on to Buyer the benefit of insurance.
- 5.4 Buyer will supply Seller with delivery instructions promptly on notification to Buyer that Equipment is ready for shipment. If delivery instructions are not received or if Buyer requests for a shipment to be postponed for more than ten (10) days after the date Buyer is notified that the Equipment is ready for shipment, Seller shall be entitled to make arrangements for storage of the Equipment at Buyer's risk and expense and to charge Buyer accordingly. In such case, Seller's obligation to deliver the Equipment will be deemed satisfied and Buyer will become responsible for the risk of loss of or damage to the Equipment and for paying the purchase price.
- 5.5 Buyer agrees to comply with all applicable laws, rules and regulations and obtain all permits, licenses and authorizations or certificates that may be required in connection with its purchase or licensing of Equipment. This includes any laws, regulations, orders or other restrictions on the export of Equipment from the United States, which may be imposed from time to time by the US Government. Buyer shall not export or re-export, directly or indirectly, Equipment or information pertaining thereto to any country for which either such government or any agency thereof requires an export license or governmental approval at the time of export or re-export without first obtaining such license or approval and Seller's performance of the Contract will be conditional upon Buyer procuring, at Buyer's expense, such license or approval. If Equipment is to be exported, Buyer must obtain at Buyer's expense any import license required for the country into which the Equipment is to be imported. Buyer shall attach to all Purchase Orders the necessary information to permit Seller to commence its work, together with any import license and/or permits and related certificates, which may be necessary.
- 5.6 Equipment will be supplied as available, unless Buyer specifically requests "one consignment". Each shipment shall be considered a separate and independent transaction. These Sale Conditions shall apply separately for each shipment and Seller shall have the right to separately invoice Buyer after each such partial shipment without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries.
- 5.7 Seller may suspend shipment of any unfulfilled Contract in the event of any act or omission on the part of the Buyer or if Buyer is in material breach of Buyer's obligations under the Contract.
- 5.8 All Equipment supplied to the destination notified by Buyer will be deemed accepted unless Buyer promptly notifies Seller in writing that it is not in compliance with the Contract or specification. Failure to make such notification shall constitute unqualified acceptance and a waiver of all claims by Buyer. Damaged Equipment and packaging must be kept for inspection by Seller and/or the carrier.
- 5.9 Seller may modify the specification of Equipment without notice provided that the modification will not materially affect the performance, form or fit of the affected Equipment.
- 5.10 Unless otherwise agreed in writing, installation and commissioning is not included in the purchase price for the Equipment.
- 6. PAYMENT**
- 6.1 All amounts are stated and payments are to be made in US Dollars unless otherwise agreed in writing.
- 6.2 If Buyer specifies a currency other than US Dollars, Seller reserves the right to amend the quoted price by any amount to cover movements in the exchange rate between the currency of the quotation and US Dollars arising between the time of quotation and acceptance of the Purchase Order.
- 6.3 Full payment must be made to Seller within thirty (30) days of the date of invoice, unless otherwise agreed in writing. Invoices will normally be dispatched on the date of delivery of the Equipment FCA or on the date on which Buyer becomes responsible for the risk of loss of, or damage to, uncollected Equipment.
- 6.4 All Purchase Orders are subject to credit approval before shipment. If, in Seller's judgement, Buyer's financial condition does not, at any time, justify payment terms as previously specified, Seller may cancel or suspend any unfulfilled Contract. In such circumstances Seller may permit Buyer, upon written notice, immediately to pay for any Equipment to be shipped.



- 6.5 Seller may require Equipment to be delivered to a location outside the country in which Seller is incorporated to be covered by a confirmed irrevocable letter of credit drawn on a bank acceptable to Seller.
- 6.6 If any payment is overdue Seller shall be entitled, without prejudice to any other right or remedy, to suspend all further deliveries to Buyer without notice and/or to charge interest on any amount overdue at the applicable statutory default interest rate or if none at the rate of ten percent (10%) per annum compounding daily.
- 6.7 If, despite any default by Buyer, Seller elects to continue to make shipments of Equipment, Seller's action in so doing shall not constitute Seller's waiver of any default by Buyer or in any way prejudice Seller's legal remedies for such default.

**7. RETENTION OF TITLE**

- 7.1 Equipment shall remain Seller's property until Buyer has made full and unconditional payment to Seller of all sums due.
- 7.2 Until payment in full by Buyer, Equipment shall be held by Buyer as bailee for Seller and will be kept readily identifiable as Seller's property.
- 7.3 If payment becomes overdue, or on the occurrence of any termination event referred to in Condition 13 below, Seller may, where permitted by law and after giving notice to Buyer, enter upon any premises in Buyer's control where Seller reasonably believes Equipment to be, or otherwise take action, to recover Equipment.
- 7.4 Prior to full payment of the purchase price, Buyer shall keep insured Equipment shipped to Buyer by Seller under policies with such provisions, for such amounts and with such insurers as shall be satisfactory to Seller.

**8. INTELLECTUAL PROPERTY**

- 8.1 Seller shall retain all right, title and interest in and to, and possession of, any know-how, technical information, drawings, specifications or documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of Seller and supplied by Seller under any Contract. All such information shall be kept confidential by Buyer and shall not be disclosed to any third party unless and until the same is or becomes public knowledge nor shall any such information be used by Buyer for any purpose other than for the purpose of using the Equipment without Seller's prior written consent.
- 8.2 Ownership is retained by Seller of any patent, copyright, trade secret, design right or other intellectual property right, including but not limited to, any technical information, know-how, drawings and specifications supplied by Seller or relating to Equipment.
- 8.3 Seller's trademarks and names and those of its associated companies shall not be used otherwise than as applied by Seller to Equipment.

**9. WARRANTY**

- 9.1 Seller hereby undertakes to repair or replace at Seller's option, or to arrange repair or replacement by Seller's representative, of any Equipment supplied to Buyer if a defect in materials or workmanship arises under conditions of normal and proper use and maintenance (fair wear and tear excepted) provided that:
  - a) the Equipment was purchased and used for a purpose for which it was suitable, was operated and maintained in accordance with the operating instructions, and was not used in a way which was unsuitable;
  - b) the claim is first notified promptly in writing to Seller;
  - c) unless otherwise agreed, or specified by the Seller, in writing, the defect occurs within twelve months from the date of supply of the Equipment;
  - d) the Equipment has not been repaired or modified by anyone other than Seller or at Seller's direction;
  - e) in the case of Equipment or parts not of Seller's own manufacture, unless otherwise required by law, Seller's responsibility shall be limited to passing on to Buyer the benefit of any guarantee or warranty given to Seller by the manufacturer of such Equipment or part;
  - f) the defect does not arise from Buyer's specification or instructions; and
  - g) Buyer has paid the purchase price for the Equipment in full.
- 9.2 Any repaired or replaced Equipment will continue to be warranted for the unexpired period of the warranty referred to in Condition 9.1 above.
- 9.3 Seller may charge Buyer for the costs of shipping Equipment to and from an Edwards Vacuum, Inc. Service Center if the Equipment to be repaired or replaced is located in a country in which Edwards Vacuum, Inc. does not have a Service Center.
- 9.4 Failing satisfactory repair or replacement, Seller may satisfy Seller's liability under this Condition 9 by reducing the purchase price or refunding the purchase price and retaking the Equipment.



9.5 EXCEPT AS EXPRESSLY WARRANTED ABOVE, EQUIPMENT IS PROVIDED WITHOUT OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EXCEPT FOR THE LIMITED REMEDIES PROVIDED ABOVE, BUYER ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF EQUIPMENT. NOTHING STATED IN THESE SALE CONDITIONS WILL IMPLY THAT THE OPERATION OF ANY EQUIPMENT WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ERRORS WILL BE CORRECTED. OTHER WRITTEN OR ORAL STATEMENTS BY SELLER, ITS REPRESENTATIVES, OR OTHERS DO NOT CONSTITUTE WARRANTIES OF SELLER.

**10. LIABILITY AND INDEMNIFICATION**

10.1 SAVE AS SET OUT IN CONDITION 9 ABOVE AND CONDITION 10.2 BELOW, SELLER SHALL HAVE NO LIABILITY (WHETHER IN CONTRACT, TORT, MISREPRESENTATION OR OTHERWISE) FOR ANY LOSS OR DAMAGE INCLUDING (WITHOUT LIMITATION) LOSS OF OR DAMAGE TO REVENUE, PROFITS, SAVINGS, USE, CONTRACTS, GOODWILL OR BUSINESS AND ANY CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE.

10.2 SELLER ACCEPTS:

- a) LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT THAT IT RESULTS FROM SELLER'S NEGLIGENCE AND TO THE EXTENT REQUIRED BY APPLICABLE LAW; AND
- b) LIABILITY FOR PHYSICAL DAMAGE TO PROPERTY TO THE EXTENT THAT IT RESULTS FROM BREACH OF CONTRACT OR SELLER'S NEGLIGENCE IN CONNECTION WITH THE PERFORMANCE OF THE CONTRACT, SUBJECT TO AN OVERALL LIMIT OF THE AMOUNT RECEIVED BY SELLER FROM BUYER UNDER THE CONTRACT.

10.3 BUYER WILL INDEMNIFY AND HOLD SELLER HARMLESS AGAINST ANY LOSS, CLAIM OR DAMAGE SUFFERED BY SELLER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS:

- a) CAUSED BY THIRD-PARTY CLAIMS WHICH EXCEED THE LIMIT OF SELLER'S LIABILITY AS SET OUT IN THESE SALE CONDITIONS, EXCEPT TO THE EXTENT CAUSED BY SELLER'S NEGLIGENCE;
- b) CAUSED BY BUYER SUPPLYING EQUIPMENT TO ANY PERSON WHO IS NOT A PARTY TO THE CONTRACT; OR
- c) SUFFERED ON BUYER'S SITE, EXCEPT TO THE EXTENT CAUSED BY SELLER'S NEGLIGENCE.

**11. FORCE MAJEURE**

11.1 Neither Buyer nor Seller shall be liable for failures in performance, including delay or non-shipment, resulting from acts or events beyond its reasonable control.

11.2 Such acts or events shall include, but shall not be limited to, acts of God, civil or military authority, civil disturbance, fire, strikes, lockouts or slowdowns, factory or labor conditions, inability to obtain necessary labor, materials or manufacturing facilities, delayed issuance of export control licenses, or other "force majeure" events beyond the reasonable control of the non-performing party.

11.3 In the event of such delay, the date of shipment shall, at the request of Seller, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time.

**12. CANCELLATION**

12.1 No Contract may be cancelled or altered by Buyer except upon terms and conditions acceptable to Seller.

12.2 Unless otherwise agreed in writing, should Buyer cancel any Contract, Buyer shall be liable for the costs of all work done and materials purchased or provided up to the time of cancellation plus a charge for overheads and loss of profit. If Equipment has been shipped to Buyer, Buyer shall return the Equipment, at Buyer's expense, to Seller in the same condition as shipped.

**13. TERMINATION**

13.1 If Buyer commits any act of bankruptcy or, being a company, has a receiver appointed or an administration order made against it or goes into liquidation or if a similar event occurs under applicable insolvency laws (except for the purpose of reconstruction or amalgamation) then all sums due to Seller under the Contract shall immediately become due and payable and Seller may, notwithstanding any previous waiver, terminate the Contract forthwith by written notice.

13.2 Seller may terminate the Contract on seven (7) days' prior written notice to Buyer in the event of a failure by Buyer to comply with any material provision of these Sale Conditions, if the failure continues for more than fourteen (14) days after Buyer has been given written notice of such failure.



13.3 If Buyer fails to pay the purchase price within thirty (30) days of invoice or Buyer fails to collect Equipment within thirty (30) days of Seller's notice, Seller shall be entitled, without prejudice to its other rights, to terminate the Contract and to dispose of the Equipment.

13.4 Termination shall be without prejudice to any prior right of either party.

#### **14. MISCELLANEOUS**

14.1 Buyer may neither assign nor transfer its rights under the Contract, by operation of law or otherwise, without the prior written consent of Seller. Seller's affiliated companies may participate in Seller's performance under these Sale Conditions. Save as expressly provided, no term or provision of these Sale Conditions shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

14.2 In the event that any term or provision of these Sale Conditions is declared null and void or unenforceable by any court of competent jurisdiction, the remainder of the provisions of these Sale Conditions shall remain in full force and effect to the fullest extent permitted by applicable law.

14.3 No action or suit shall be brought by Buyer against Seller for damages arising out of the purchase, manufacture, use, delivery (including late delivery), or transportation of Equipment, whether such suit or action is for breach of contract, breach of warranty, tort or otherwise, unless such action is commenced within one (1) year after the cause of action has accrued. No suit, action or claim shall be made or filed against Seller by Buyer unless Buyer has paid at the time the claim is made, or the suit or action is filed, the entire purchase price or all installments thereon, in strict accordance with the terms of the Contract, and failure to make such payments shall be an absolute defense to any such suit, action or claim. If Buyer fails to perform any of its obligations pursuant to a Contract, Buyer shall pay Seller all costs and expenses incurred by Seller, including all attorney's fees, in enforcing Seller's rights relating to such Contract, whether by formal proceedings or otherwise, in addition to any other remedy available to Seller.

14.4 The Contract and these Sale Conditions constitute the entire agreement between Seller and Buyer relating to the purchase and sale of Equipment. These Sale Conditions shall inure to the benefit of and shall be binding upon Seller and Buyer and their respective successors and assigns, including any entity with which either party may merge or consolidate or to whom either party may transfer assets comprising the Equipment.

14.5 Seller and Buyer each acknowledge that they have read and understand the terms and provisions of these Sale Conditions and have had an opportunity to have the same reviewed by an attorney of their choice.

14.6 Buyer represents that the person placing the Purchase Order and accepting any Counter-offer on Buyer's behalf has the full authority to do so.

14.7 No waiver by either party of any breach of any of these Sale Conditions by the other party shall be deemed to constitute a waiver of any other breach nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver given by a party hereunder shall be binding upon such party only if in writing and signed by such party.

14.8 Nothing contained in these Sale Conditions shall be deemed to require Seller to take any action that would constitute, directly or indirectly, a violation of any laws of any applicable jurisdiction, and Seller's failure to take any such action shall not be deemed a breach hereunder.

14.9 All drawings, descriptive matter, technical specifications, capacities, performance rates, descriptions and other particulars given in respect of any Equipment (whether in catalogues or advertisements or accompanying or referred to in the Contract) are stated by Seller in good faith based on Seller's experience as being correct within acceptable tolerances but are not binding in detail and do not form part of the Contract unless specifically stated to do so. In the absence of any special arrangements to the contrary, it is Buyer's responsibility to ensure that Equipment ordered is sufficient and suitable for Buyer's purposes.

14.10 Buyer must ensure that persons who use, maintain or otherwise handle Equipment receive adequate training and safety literature. Copies of Safety literature are available upon request from Seller free of charge, and may be photocopied by Buyer as required.

#### **15. GOVERNING LAW AND DISPUTE RESOLUTION**

15.1 The Contract shall be governed by and construed in accordance with the laws of the State of Delaware.

15.2 Buyer and Seller agree that the courts of the State of Delaware shall have the exclusive jurisdiction to settle any disputes, which may arise in connection with the Contract.