1. Terms and Conditions of Sale and Supply

1.1 Interrogation: For the purposes of these Terms and Conditions of Sale and Supply ("Conditions"): “Buyer” means the person, firm or company which places an order for purchase of Products and/or Services as identified by any such order; “Seller” means the company named on the invoice or stated in the Contract and "Supplier" shall mean the Seller. “Conditions” means these terms and conditions of sale and supply as from time to time varied by the Supplier. “Contract” means the agreement between the Supplier and the Buyer arising as a result of the Buyer’s submission of an offer for the Supplier’s Products and Supplier’s written acceptance thereof, and in the case of Services, an agreement between such parties for the provision of Services by Supplier, as constituted by a Proposal. Such Contract shall be deemed to incorporate and be governed by these Conditions. “Deliver,” “Delivery” and “Delivered” means the point at which Products are handed over to the first carrier in the country of export. “Product” means goods supplied as agreed to be supplied by the Supplier to the Buyer under any Contract including, where applicable, any Software. “Proposal” means a proposal document signed by the Supplier and the Buyer describing Services to be provided to or for the Buyer, subject to these Conditions. "Services" means any services which the Supplier has agreed to provide to or for the Buyer under any Contract, as more fully described in the Proposal. “Supplier” means Malvern Instruments Canada or any of its affiliates as named in any question or Proposal. 2. Basis of Sale

2.1 These Terms and Conditions of Sale and Supply are incorporated by reference into any offer made by the Buyer of any Products and/or Services. The Terms and Conditions of Sale and Supply shall remain in effect unless and until amended in writing. The Supplier reserves the right to alter or add to the Terms and Conditions of Sale and Supply without notice. The Supplier will promptly provide the Buyer with a copy of the Terms and Conditions of Sale and Supply on request. 2.2 If the Buyer makes further use of such Products after giving the notice required in Section 12.3, (ii) the defect or failure arises out of misuse by the Buyer’s own negligence or carelessness, or (iii) the failure or defect arises out of other than normal maintenance including without limitation, circumstances of accident, misuse, unforeseeable use, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing. 2.3 In the case of any breach or failure, the Buyer shall be entitled to the following remedies: (i) such Party will supply new goods, repair the defect or failure or replace any goods or services in question at no cost to the Buyer; (ii) if it is reasonably practicable to do so, the Seller will repair or replace the Products or Services or undertake any other work it considers necessary to put the Goods or Services into a good working order in accordance with the Contract; (iii) the Buyer may recover damages for any loss or damage resulting from the Seller’s breach of Contract; 2.4 The Buyer shall have a reasonable amount of time to make such repairs or to replace such Product. Any repair or replacement of Products shall not extend the period of warranty. This warranty is limited to a period of one year, without regard to whether any claimed defects were discoverable or latent on delivery. 2.5 Services which do not conform with the warranty under Section 12.2 and which are notified to the Supplier within 10 days of the Buyer becoming aware of the same, and in any event no later than 2 months after the date on which the Services were performed, shall, if the Supplier agrees they were non-conforming, be re-performed as soon as reasonably practicable. This Warranty does not apply if the Buyer fails to notify the Supplier of any defect or failure within a reasonable period of time. The Buyer shall, at its option, be entitled: (i) to treat the Contract as repudiated by the Seller; (ii) to terminate the Contract; (iii) to receive a refund of the price; or (iv) to continue with the Contract in accordance with the same terms.
property of the Supplier and the Buyer shall acquire no right, title or interest in or to the same except as expressly stated in these Conditions.

15. The Supplier grants to the Buyer a revocable, non-transferable, non-licensing licence to use such of the Works as are necessary, and to the extent necessary, for the Buyer to obtain and utilise the intended benefit of the Supplier.

15.4 If any claim is made against the Buyer that the Products or Services infringe the patent, copyright or any other intellectual property rights subsisting in Canada of any third party, the Supplier shall indemnify the Buyer against all losses, damages, costs and expenses incurred, including interest, costs incurred by, the Buyer in connection with the claim or past, or agreed to be paid, by the Buyer in settlement of the claim provided that: (i) the Supplier is given full control of any proceedings or negotiations in connection with any such claim; (ii) the Supplier shall give the Supplier's reasonable assistance for the purposes of any such proceedings or negotiations; (iii) except pursuant to a final award, the Buyer shall pay or accept any such claim, or compromise any such proceedings without the prior written consent of the Supplier; (iv) the Buyer shall not do anything which would or might enable any insurance policy or cover which the Buyer may have in relation to such infringement and shall use its best endeavours to recover any sums due from the third party and this indemnity shall extend to the extent that the Buyer recovers any sums under any such policy or cover; (v) the Supplier shall be entitled to the benefit of, and the Buyer shall accordingly account to the Supplier for, all damages and costs and (if any) reasonable accounting of the Buyer which are payable by, or agreed to be paid, with the consent of the Buyer which is consistent with the Supplier's reasonable assistance, but shall not unreasonably withheld or delayed to be paid, by any other party in respect of any such claim; and (vi) without prejudice to any duty of the Buyer at common law, the Supplier shall be entitled to require the Buyer to take such steps as the Supplier may reasonably require to mitigate or reduce any such losses, damages, costs or expenses for which the Supplier is liable to indemnify the Buyer under this section 15.4, which steps may include (at the Supplier's option) accepting from the Supplier fair-willed, modified or replacement Products or Services.

15.5 The Supplier shall have no obligation or liability under Section 15.4 arising from: (i) any additions or modifications made to the Products or Services in question, otherwise than by the Supplier or with its prior written consent; (ii) any information provided by the Buyer to the Supplier including without limitation any specification; (iii) performance by the Supplier of any work required to any Products, or performance of any Services, in compliance with the Buyer's requirements or specification; (iv) a combination with or in addition to equipment not manufactured or developed by the Supplier; or (v) the use of Products beyond that scope established by the Supplier or approved in writing by the Supplier.

15.6 Without prejudice to Section 13.1, the Supplier shall indemnify the Buyer and the exclusive remedies of the Buyer with respect to any alleged infringement of intellectual property rights belonging to a third party arising or resulting from the performance of any Contract. This Section 15.3 shall be subject to the limits of liability in Sections 13.2, 13.3 and 13.4.

15.7 Force Majeure. Notwithstanding anything to the contrary in these Conditions, the Supplier shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of Products or Services being prevented, delayed or rendered uneconomical by reason of circumstances beyond the control of the Supplier or events beyond the Supplier's reasonable control. If due to such circumstances or events the Supplier has insufficient stocks to meet all its commitments the Supplier may apportion available stocks between its customers at its sole discretion.

17. Confidential Information. Each party undertakes to keep confidential, not use for its own purposes and not without the prior written consent of the other party disclose to any third party, any information of a confidential nature belonging or relating to the other party which may become known to or unless such information is as becomes public knowledge (other than by breach of this Section) or is required to be disclosed by order of a competent authority.

18. Cancellation, Rescheduling and Termination.

18.1 Orders for Products accepted by the Supplier may be cancelled or rescheduled by the Buyer only with the prior written consent of the Supplier which consent the Supplier may withhold for any reason and the Supplier shall indemnify the Supplier against all costs and damages, including interest, damages, costs, charges and expenses suffered or incurred by the Supplier as a result of that cancellation or variation.

18.2 Contracts for Services commence on the commencement date identified in the relevant Proposal and, subject to earlier termination in accordance with Section 18.3 or 18.4, shall continue in force for the initial term as prescribed in such Proposal and thereafter for any renewal period (if any) set out in the Proposal and thereafter without limitation of period unless or until terminated by either party in accordance with Section 18.3 or 18.4.

18.3 Without prejudice to Section 18.4, either party may terminate a Contract for Services by giving ninety (90) days' written notice to the other party.

18.4 Either party may terminate a Contract for Services immediately at any time by written notice to the other party if the other party commits a material breach of the Contract for Services which is incapable of remedy or which, if not redeemed within thirty (30) days of receiving written notice requiring it to be remedied, is in breach of any of Sections 18.1 or 18.4.

18.5 Upon termination or expiry of any Contract for Services, each party shall, except to the extent permitted or necessary under Sections 18.4 and 18.5, return to the other party all property of the other party then in its possession, custody or control and shall not retain any copies of the same.

18.6 Termination of any Contract in accordance with these Conditions shall not affect the accrued rights or liabilities of the parties at the date of termination.

19. Insolvency of the Buyer. If the Buyer becomes insolvent, has a receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or comes out or undertakes any voluntary or compulsory insolvency act or order or resigns, becomes bankrupt or is imprisoned, or threatens to carry on business then, without prejudice to any other right or remedy available to the Supplier, the Supplier may treat any Contract as suspended and/or withdraw any further supply of Products and/or Services without any liability to the Buyer and, if any Products and/or Services have been supplied but not paid for, the price or fees shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

20. General.

20.1 These Conditions and any Contract shall be governed by the laws of the Province of Quebec, without regard to its conflict of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Conditions. Where any claim arising out of or in connection with these Conditions or any Contract is not settled by negotiation, the parties will consider using mediation, in accordance with the Canadian Commercial Arbitration Centre mediation rules and procedures then in force, before resorting to arbitration. If any party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, any party may refer the claim or dispute to arbitration, in accordance with the then applicable General Commercial Arbitration Rules of the Canadian Commercial Arbitration Centre. The arbitration process will be commenced by service of a written notice which the dispute is to be referred to arbitration. The parties will then participate in good faith in the arbitration. Unless otherwise agreed between the parties, the arbitrator will be nominated by the Canadian Commercial Arbitration Centre. Arbitration proceedings shall be held in Montreal, Province of Quebec, in the English language. Under no circumstances are the arbitrators entitled to any award without the agreement of the parties and subject to earlier termination in accordance with Sections 18.3 or 13 of these Conditions. The expenses and fees of any such arbitration proceedings shall be borne equally by the Supplier and the Buyer.

20.2 Any other right or remedy available to the Buyer in the event of a failure by the Supplier to exercise of perform its continuing rights, or obligations hereunder, all property then in its possession, custody or control and shall not retain any copies of the same.

20.3 Any provision or part of a provision of these Conditions is or is held by any court of competent jurisdiction to be unenforceable or invalid, such unenforceability or invalidity shall not affect the enforceability of any other provision.

20.4 The Buyer may not assign, transfer, novate or otherwise dispose of all or any of its rights or delegate any of its obligations hereunder in, whole or in part, without the prior written consent of the Supplier.

20.5 These Conditions and the relevant Contract constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of any Contract except as expressly stated in that Contract. The Buyer shall not have any remedy in respect of any untrue statement made by the Supplier upon which the Buyer relied in entering into a Contract unless such untrue statement was made fraudulently or was as to a fundamental matter including a matter fundamental to the Supplier's ability to perform its obligations under the Contract and the Buyer's only remedies shall be for breach of contract as provided for in these Conditions. Misrepresentations as to fundamental matters shall be subject to the terms of Section 13.

20.6 Any modification or amendment to any Contract must be in writing and signed by the authorised representatives of the parties.

20.7 All notices given under these Conditions shall be sent to the address of the other party set forth in the quotation or to such other address as such party may designate from time to time by such notice. Notice shall be regarded as properly given if sent in writing and shall be deemed to have been served on delivery if sent by hand, two days after despatch if sent by mail, and on confirmation of transmission, if sent by facsimile.

20.8 The parties hereto confirm that it is their wish that these Conditions as well as all other documents relating hereto be drawn in English. Les parties aux présentes ont demandé expressément que les présentes Conditions ainsi que tous les documents s’y rattachant soient rédigés en langue anglaise. 08/2009