



California 501 Park Way Mill Valley, California 94941 Telephone: (415) 781-6080 Facsimile: (415) 358-4340	Kansas 307 Plymate Manhattan, Kansas 66502 Telephone: (785) 539-6305 Facsimile: (415) 358-4340
--	---

SURFACE SYSTEMS & INSTRUMENTS, LLC
Custom Test Equipment • Mobile Technology Solutions

www.smoothroad.com

TERMS AND CONDITIONS OF SALE

1. **Payment Terms.** For test equipment system, unless otherwise agreed by a signed written agreement, Purchaser agrees to pay fifty (50) percent (%) of the total order upon submission of a written or verbal purchase order and the balance prior to or upon delivery by Surface Systems & Instruments, LLC ("SSI" or "Seller") of the products or services ordered by Purchaser. Unless otherwise expressly agreed in writing, SSI's time and materials incurred for shipping, delivery and operator training (if any) will be separately invoiced. For computer or mobile technology products, unless otherwise agreed by a signed written agreement, Purchaser agrees to pay one-hundred (100) percent (%) of the total order upon submission of a written or verbal purchase order prior to SSI's shipment of the products or services ordered by Purchaser. Amounts reflected within any separate SSI Invoices shall be due and payable on the Invoice Date shown on the invoice. If The invoice is not paid by the 30th day of the month following the Invoice Date, Purchaser will be subject to a service charge of one and one-half per cent (1.5 %) for each month or part of each month following the Invoice Date during which the invoice remains unpaid, except in those states where such charge is prohibited by law, in which case, instead of a service charge, interest will be assessed at one per cent (1 %) per month. All payments made on any contract arising hereunder must be made in U.S. dollars and be payable in The United States. If any contract involves payment for goods for an entity organized and existing outside the United States, all payments to be made on that contract shall have been approved by all appropriate government foreign exchange control agencies, and Purchaser shall immediately upon demand provide Seller with evidence of such approval. In the event Seller receives a check in payment of an account and such check is returned unpaid to Seller due to insufficient funds or for any other reason, a two per cent (2%) service charge for each month or part of a month following the Invoice Date during which the check remains unpaid will continue to accrue until cash is finally received in payment of the returned check. Each such returned check will be subject to a separate one time service charge of \$50.00. Additionally, Purchaser may be liable by statute for damages equal to treble the amount of the returned check up to a maximum of Five Hundred Dollars (\$500.00).

2. **Shipment, Risk of Loss and Packing.** Unless otherwise agreed to in writing by Seller, all prices are FOB Seller's place of business. Purchaser shall pay all transportation and insurance charges on time and materials basis. Seller shall ship in accordance with Purchaser's shipping instructions. In The absence of specific instructions or if Purchaser's instructions are deemed unsuitable, Seller reserves the right to ship by the most appropriate method. Unless otherwise agreed to in writing by the Seller, title to the goods and risk of loss shall pass to the Purchaser at the FOB point and all products shall be packed, if appropriate, for shipping and storage in accordance with standard commercial practices. All packing will conform to requirements of carrier's tariffs. All claims for defects, shortages, or delays in delivery shall be deemed waived unless presented in writing within 10 days from the date of receipt of the goods. If delivery of the goods is to be in installments, any delay or default with respect to any installment shall not affect Purchaser's obligation to accept and pay for all remaining installments. Seller shall have no liability for delay in delivery caused by circumstances beyond Seller's control, such as, but not limited to, strikes, lock-outs, fires, delays of carriers, inability to obtain materials or shipping space, government interference, acts of God, acts of war, civil disturbance or terrorism, inclement weather, etc.

3. **Taxes.** Purchaser shall pay any applicable sales, use, excise, transaction privilege, retailers occupational or any similar tax on the purchase of goods purchased hereunder. Liability for any sales, use, excise, transaction privilege, retailers occupational or any similar tax levied in connection with sales arising hereunder or any penalty or interest charge due on these taxes will be the sole responsibility of and be payable by Purchaser even if not collected originally by Seller. In the event Seller pays such amounts, Purchaser will immediately reimburse Seller for such amounts. Any withholding, value added or similar tax of any foreign government levied in connection with any sale arising hereunder and payable before payment can be made to Seller in the United States will be the responsibility of and will be paid by the Purchaser. In the event Seller pays such tax, Purchaser shall immediately reimburse Seller for such amount.

4. **Software License.** Sales of SSI test equipment systems are subject to the terms and conditions of SSI's standard software license agreement, pursuant to which SSI grants Customer a single non-exclusive, non-transferable, limited license to install, execute, display and otherwise use, the SSI system calibration, data collection, and data analysis computer software modules, as modified or configured by SSI for Customer pursuant to this Agreement, together with any accompanying materials, documentation, subsequent error corrections and updates that SSI may supply to you under SSI's License Agreement (collectively the "Product") and only in the Country of Purchaser's domicile, solely to establish, modify and provide access to the Customer's data files. The software provided hereunder may be comprised of object code and/or source code as determined by SSI in its sole discretion. All rights not expressly granted to Customer herein are retained by SSI. All rights, title and interest in and to the Product and any proprietary information contained on the media, are owned by SSI and are protected by copyright, trademark and trade secret law and other intellectual property laws and international treaties. Customer acquires only the right to use the Product during the term of, and subject to, SSI's License Agreement. Customer agrees not to develop separate software applications of any kind derived from the Product or any other proprietary information of SSI. Any rights express or implied, in the Product and any proprietary information contained in the media are reserved by SSI, except as expressly specified in this Agreement. Customer must treat the Product like any other copyrighted material except as otherwise provided under this Agreement. Customer agrees not to remove, deface or obscure SSI's copyright or trademark notices and/or legends or proprietary notices on the Product, and/or contained in or on the media.

5. **Compliance with Laws.** Purchaser hereby represents and warrants to Seller that it has complied with all local, state, federal and foreign laws and regulations applicable to this transaction.

6. **Variation in Goods.** Delivery of goods pursuant hereto shall be subject to normal variations in SSI 's design modifications, weight, color, size, quantities, etc. and such other variations as are standard in the trade.

7. **Warranty.** THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR PURPOSE OR OTHER WARRANTY OF QUALITY, WHETHER EXPRESS OR IMPLIED, WHICH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. Seller warrants only that the Seller's components sold pursuant to a contract arising hereunder will be free of defects in materials and workmanship for a period of one year from the date of delivery to the purchaser. Third-party manufactured components of the goods or integrated system sold under the parties' agreement are covered by, and are the responsibility of the manufacturer of such components, not the Seller. SSI will replace free of charge, but not including transportation costs, installation or any other service charges, components or assemblies that are manufactured by SSI which SSI's inspection and evaluation determines to be defective, providing they are returned to SSI's facility during the effective period of the warranty. The warranty extends only to those machines that have been properly used and maintained by the

end user. SSI's warranty is automatically revoked if a part or assembly has been misused or physically modified in any manner whatsoever by the customer or an agency without SSI's written permission.

8. Limitation of Liability. EXCEPT AS OTHERWISE AGREED IN A SPECIFIC WRITING SIGNED BY SELLER, SELLER SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, DAMAGE FOR LOSS OF OTHER PROPERTY OR EQUIPMENT, PROJECT DELAY OR IMPACT DAMAGES, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL OR CLAIMS OF PURCHASER'S CUSTOMERS. The remedies of Purchaser set forth herein are exclusive, and the liability of Seller with respect to the sale, delivery or resale of any goods pursuant to any contract arising hereunder, whether in contract, in tort, under any warranty, or otherwise, shall not exceed the difference between the price of the goods as specified in that contract and the value of the goods as delivered by Seller.

9. Import/Export License. Unless otherwise arranged in writing, any import or export license or permit required with respect to the goods sold pursuant to a contract arising hereunder shall be Purchaser's responsibility.

10. No waiver. No waiver of a breach of any provision of any contract arising hereunder between Seller and Purchaser shall constitute a waiver of any other breach of such provision.

11. Returned Goods. Due to the custom nature of SSI's products no goods may be returned without SSI's express written consent. Upon such consent by SSI, any returned goods will be subject to a service charge equal to the manufacturer's restocking charge of fifteen (15) percent, plus Seller's estimate of the actual damages which will be incurred by Seller on account of Purchaser's return of the goods, including but not limited to Seller's costs for providing such goods to Purchaser, receiving and restocking such goods, and Seller's lost profit on the sale of such goods.

12. Cancellation and Change Orders. If Purchaser cancels any sales order or any portion of such Sales Order, Purchaser will be subject to a service charge for such cancellation equal to Seller's estimate of the actual damages which will be incurred by Seller on account of Purchaser's cancellation, including but not limited to Seller's lost profit on the sale of such goods. Special orders are non-cancelable and non-returnable. Special orders are orders of goods or equipment, which are not normally stocked at this location of Seller. If, after Purchaser submits a Sales order, Purchaser issues a change order causing a delay in the delivery date, Purchaser shall be subject to a service charge equal to Seller's estimate of the actual damages which will be incurred by Seller on account of Purchaser's change order including, but not limited to, Seller's cost of providing and restocking such goods, if appropriate. In addition, any such change by Purchaser establishing an alternative delivery date greater than thirty (30) days from Purchaser's original delivery date will constitute a new order for purposes of determining the appropriate list price.

13. Provisional Sales/ Purchase Orders. Seller's acceptance of a Provisional Sales/Purchase Order from Purchaser shall not operate to protect the prices stated herein. All prices are subject to change without notice unless otherwise stated herein. If the validity period stated herein has expired, all prices shall become fixed at the price in effect at the time of shipment upon Seller's receipt of an execute order or a written release.

14. Disputed Invoices. In the event Purchaser disputes an invoice, Purchaser must notify Seller within 10 days after receipt of the invoice. Payment of the disputed amount, as well as any finance charges thereon, shall be suspended until resolution of the dispute. If it is established that the disputed amount is due and owing Seller, the full amount shall be immediately due and payable with service charges of two per cent (2%) per month or any part of a month accruing thereon from the original date the disputed amount became due. Payment of any undisputed amount must be timely made. If the disputed amount exceeds fifty per cent (50%) of the total amount invoiced to Purchaser in the immediately preceding six (6) month period or \$10,000, whichever is less, Purchaser agrees to deposit the disputed amount in an interest bearing escrow account with Citibank FSB at its Montgomery Street office in San Francisco, California until resolution of the dispute.

15. Suspension of Seller's Duty to Perform. If Purchaser fails to obtain any necessary import license or permit or fails to make timely payment of any invoice, Seller may, in its sole discretion and without waiving any other rights or remedies which Seller may have, suspend delivery on any unfilled Purchase Orders from Purchaser and unilaterally cancel any obligation of Seller to later perform any unperformed obligations under any contract arising hereunder. PURCHASER HEREBY EXPRESSLY WAIVES ANY RIGHT OR CAUSE OF ACTION AGAINST SELLER IN CONTRACT, IN TORT OR OTHERWISE FOR ANY SPECIAL, DIRECT OR INDIRECT, OR CONSEQUENTIAL DAMAGES INCURRED AS A RESULT OF SELLER'S CANCELLATION OF ITS FURTHER OBLIGATIONS UNDER THE CONTRACT AND REFUSAL TO DELIVER UNDER THIS PROVISION. SUCH CANCELLATION OF SELLER'S OBLIGATIONS UNDER THE CONTRACT SHALL NOT BE CONSIDERED A BREACH OF THE CONTRACT BY SELLER AS THE TIMELY PAYMENT OF ALL INVOICES SHALL BE CONSIDERED A NECESSARY CONDITION PRECEDENT TO THE SELLER'S DUTY TO PERFORM. Failure by the Seller to exercise its rights under this provision shall not constitute waiver of its rights to do so in the future. Cancellation of Seller's duty to perform under this provision shall not negate Purchaser's obligations to perform its duties under the contract.

16. Controlling Terms and Conditions. These terms and conditions of sale of SSI and any attachments hereto take precedence over Purchaser's additional or different terms and conditions, to which notice of objection is hereby given. Acceptance by Purchaser is limited to these terms and conditions. Neither Seller's commencement of performance nor delivery shall be deemed or construed as acceptance of Purchaser's additional or different terms and conditions. These terms and conditions are an integral part of the contract between Seller and Purchaser. Purchaser's acceptance of Seller's products represents acceptance of these terms and conditions of sale together with such additional terms as may be set forth herein and any attachments hereto, all of which together constitute the entire understanding between the parties and supersede any previous communications, representations, or agreements by either party whether verbal or written. No change or modification of any of the terms or conditions herein shall be valid or binding on either party unless in writing and signed by an authorized representative of each party.

17. Liquidated Damages. Purchaser agrees that in the event it fails to pay any invoice as agreed for goods purchased pursuant hereto, a late payment charge shall be assessed to cover Seller's additional expenses in collection and its loss of the use of the money due. As it is extremely difficult to ascertain the actual damages resulting to Seller, Purchaser agrees that a late payment charge of two per cent (2%) will be charged and compounded monthly on all outstanding overdue balances. The parties do not intend that any action taken in connection with any sale of goods arising hereunder shall constitute a loan or forbearance, nor that any amount paid or agreed to be paid pursuant to such sale exceed the maximum permissible under any applicable law. The late charge provided for is a reasonable attempt to estimate the actual damages which will be incurred by Seller if Purchaser fails to pay amounts when due. If, under any circumstances, any charge arising out of Seller's sale of goods to Purchaser is deemed by a court of competent jurisdiction to be interest exceeding the highest amount permitted by law, such amount as is received by Seller and would otherwise be excessive interest, will be applied to the reduction of any amount owed by Purchaser or, if Purchaser does not owe any principal to Seller, such amount will be promptly refunded to Purchaser.

18. Governing Law and Resolution of Disputes. The rights and obligation of the Purchaser and Seller hereunder shall be governed by the laws of the State of California in the event of any dispute or litigation with respect to the goods subject thereto. Any dispute between the parties regarding the negotiation, performance or enforcement of this Agreement shall be referred to the American Arbitration Association for mediation and, if necessary, arbitration pursuant to California law and the Association's rules for the resolution of employment disputes. The arbitrator shall have the ability to give any relief authorized by the laws applicable to the claims made. Any resulting arbitrator's award shall be in writing and contain findings of fact and conclusions of law. The award shall be final, except that should the amount

in dispute exceed \$500,000.00, the award shall be reviewable for substantial evidence and errors of law in a court of competent jurisdiction on petition made, on thirty (30) days notice, pursuant to Code of Civil Procedure Sec. 1285, et seq. In addition, the award shall be reviewable in a United States District Court for a District of competent jurisdiction for substantial evidence and errors of federal law pursuant to Title 9 of the United States Code. The arbitrator's award shall then become binding and enforceable pursuant to applicable California and federal law. The prevailing party shall be entitled to recover its reasonable costs thereof, including attorneys' fees, in addition to any other relief to which it may be entitled. Purchaser and Seller hereby expressly agree that the United Nations convention on contracts for the International Sale of Goods, ("CISG") shall not be a part of the law applicable to any contract arising hereunder.