



SMALL, PRECISE, SMART ... IN MOTION

## New Scale Technologies Terms and Conditions

Revision 041817

1. **ACCEPTANCE:** THE SALES TERMS AND CONDITIONS OF SALE CONTAINED HEREIN APPLY TO ALL QUOTATIONS MADE AND PURCHASE ORDERS ACCEPTED BY NEW SCALE TECHNOLOGIES FOR THE PURCHASE AND SALE OF PRODUCTS. SOME OF THE SALES TERMS AND CONDITIONS SET OUT HERE MAY DIFFER FROM THOSE IN CUSTOMER'S PURCHASE ORDER AND SOME MAY BE NEW. THIS ACCEPTANCE IS CONDITIONAL ON CUSTOMER'S ASSENT TO THE SALES TERMS SET OUT HERE IN LIEU OF THOSE IN CUSTOMER'S PURCHASE ORDER. NEW SCALE TECHNOLOGIES FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM CUSTOMER SHALL NOT BE DEEMED A WAIVER OF THE PROVISIONS OF THIS ACCEPTANCE. ANY CHANGES IN THE SALES TERMS CONTAINED HEREIN MUST SPECIFICALLY BE AGREED TO IN WRITING BY AN AUTHORIZED OFFICIAL OF NEW SCALE TECHNOLOGIES BEFORE BECOMING BINDING ON EITHER NEW SCALE TECHNOLOGIES OR CUSTOMER. ALL ORDERS MUST BE APPROVED AND ACCEPTED BY NEW SCALE TECHNOLOGIES.

2. **SPECIFICATIONS:** Unless different specifications are established and agreed to in writing, the specifications for the Products are the written specifications issued by New Scale Technologies for the part number assigned by New Scale Technologies to the Products. Customer's part numbers are used for reference only. New Scale Technologies may, without affecting the obligations of Customer, make insignificant changes to the specifications of the Products from time to time.

3. **PRICES:** Prices are shown on the sales order acknowledgement based on written quotes. If Customer does not purchase the entire quantity upon which these prices were based, Customer will pay the higher price specified by New Scale Technologies for the quantity actually purchased. Prices do not include taxes and any tax New Scale Technologies may be required to collect or pay upon the sale, use or delivery of the Products will be paid by Customer upon invoice.

4. **PAYMENT:** Unless otherwise agreed by the parties and upon credit approval, Sales Terms are net 30 days from date of invoice with interest on all unpaid amounts at the rate of 1.5% per month or the highest lawful rate, whichever is less. New Scale Technologies reserves a purchase money security interest in the Products delivered until all of New Scale Technologies' claims have been paid. New Scale Technologies may change these credit Sales Terms if Customer's financial condition changes. Each shipment shall be considered a separate and independent transaction.

5. **DELIVERY:** Delivery will be F.O.B. New Scale Technologies location for all domestic U.S. deliveries and EXW New Scale Technologies location for international deliveries and will occur when the products are ready for pickup by the carrier. In the absence of specific instructions, New Scale Technologies will select a carrier. New Scale Technologies does not assume any liability for the shipment. Customer will be responsible for all transportation and insurance charges, including those associated with warranty repairs. Delivery dates agreed upon by the parties are estimates only. New Scale Technologies will use its best efforts to deliver in accordance with these dates but will not be responsible for failure to deliver as estimated.

6. **EXPORT CONTROLS:** New Scale Technologies products and services, including user manuals and software, are subject to all U.S. export control laws, regulations and administrative policies. **Diversion contrary to U.S. law is prohibited.** Purchaser understands that a license, written approval or other authorization may be required from the Bureau of Industry and Security of the U.S. Department of Commerce, the Directorate of Defense Trade Controls of the U.S. Department of State or other U.S. government agency prior to the export or re-export of these items from the U.S. Guidance may be found at <http://www.bis.doc.gov/> and <http://www.pmddtc.state.gov/>. Purchaser further understands that it is unlawful to export, re-export or transfer, or to attempt to export, re-export or transfer these items to individuals or entities on the List of Debarred Parties, Denied Persons list, Specially Designated Nationals List, Entity List, Unverified List or Nonproliferation Sanctions list, as well as sales or transfers to Embargoed Countries. It is the purchaser's responsibility to be aware of these Lists. These Lists may be accessed at: [http://www.cbp.gov/xp/cgov/trade/trade\\_outreach/blocked\\_denied\\_debarred.xml](http://www.cbp.gov/xp/cgov/trade/trade_outreach/blocked_denied_debarred.xml). An End Use Statement is required for all exports.

7. **INSPECTION:** Within 30 days after delivery Customer will inspect the Products and give written notice of rejection to New Scale Technologies detailing the manner in which any Products do not conform to the specifications. Upon receiving authorization and shipping instructions from New Scale Technologies, Customer may return rejected Products. If Customer retains the Products after their delivery without giving New Scale Technologies such notice within the designated period, Customer will be deemed to have irrevocably accepted the Products. Customer's inspection and acceptance tests shall not exceed the inspection and test procedures

customary in the industry for the Products and shall be at Customer's expense. New Scale Technologies may charge to Customer any costs resulting from the testing, handling, and disposition of any Products returned by Customer which are not found by New Scale Technologies to be non-conforming.

**8. WARRANTY:** New Scale Technologies warrants to Customer that the Products will be free from defects in material and workmanship under normal use and service for a period of one year from the date of invoice. Customer's exclusive remedy for breach of this warranty is that New Scale Technologies will either (i) repair or replace, at its option, any Product which fails during the warranty period because of such defect (if Customer promptly reported the failure to New Scale Technologies in writing) or, (ii) if New Scale Technologies is unable to repair or replace, New Scale Technologies will refund the purchase price of the Product upon its return to New Scale Technologies. This warranty does not apply to any Product which has been subjected to misuse, abnormal service or handling, or which has been altered or modified in design or construction, or which has been serviced or repaired by anyone other than New Scale Technologies. The warranties set forth herein are in lieu of, and exclusive of, all other warranties, express or implied. ALL EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED.

**9. PATENTS AND COPYRIGHTS:** If notified promptly in writing of any action (and all prior related claims) brought against Customer alleging that Customer's use of the Products infringes a United States patent or copyright, New Scale Technologies will defend that action at its expense and will pay the costs and damages awarded against Customer in the action, provided that New Scale Technologies shall have sole control of the defense and all negotiations for settlement or compromise. If a final injunction is obtained in such action against Customer's use of the Products or if in New Scale Technologies opinion the Products are likely to become the subject of a claim of infringement, New Scale Technologies will at its option and expense either procure for Customer the right to continue using the Products, replace or modify the Products so that they become non-infringing or grant Customer a credit for the infringing Products and accept their return. New Scale Technologies will not have any liability to Customer if the alleged infringement is based upon use or sale of the Products in combination with other products or devices which are not made by New Scale Technologies or use of the Products for other than their intended purpose. Customer will defend and hold New Scale Technologies harmless against any expense, judgment or loss for alleged infringement of any patents, copyrights or trademarks which result from compliance with Customer's designs, specifications or instructions. No costs or expenses shall be incurred for the account of New Scale Technologies without its prior written consent. New Scale Technologies total liability to Customer as a result of compliance with this provision will not exceed the sum paid to New Scale Technologies by Customer for the allegedly infringing Products. The foregoing states the entire liability of New Scale Technologies for alleged infringement of patents and copyrights by the Products, any part of them or by their operation.

**10. CANCELLATION AND RESCHEDULING:** PRODUCTS – Customer may by written notice to New Scale Technologies cancel or reschedule any shipment of Products that is scheduled for delivery at least 90 days (unless otherwise agreed to by the parties) from the time New Scale Technologies receives Customer's notice. All quantities must be released and shipments scheduled no more than 12 months from the date hereof. New Scale Technologies may cancel this order or any portion in the event of Customer's default or a material adverse change in Customer's financial condition without affecting New Scale Technologies' right and remedies. Except as otherwise provided herein; orders accepted by New Scale Technologies are firm and non-cancellable.

DEVELOPMENT PROJECTS – Customer may, by written notice to New Scale Technologies, cancel or reschedule a development project with 60 days' notice. Planned project milestones completed within the 60-day notice period will be invoiced per agreement. If the project is cancelled, or has a delay of more than 90 days, all labor, overhead, materials, fees and other supplies incurred or purchased to support the project will be billed at cost plus 10% handling charge. New Scale may cancel this order or any portion in the event of Customer's default or a material adverse change in Customer's financial condition without affecting New Scale Technologies' right and remedies. Except as otherwise provided herein; orders accepted by New Scale Technologies are firm and non-cancellable.

**11. CONTINGENCIES:** New Scale Technologies shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond New Scale Technologies' reasonable control. Examples of such causes are acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials. New Scale Technologies may defer delivery for a period equal to the delay caused by such contingency in the event of shortages for any reason whatsoever. New Scale Technologies may allocate production among its customers.

12. **LIMITATION OF LIABILITY:** Liability of New Scale Technologies to Customer, if any, under this agreement for breach of contract or warranty, negligence or otherwise shall in no event exceed the total agreed price specified on the sales order acknowledgment less the purchase price of any items delivered and accepted hereunder. In no event shall New Scale Technologies be liable to Customer or others for special, incidental or consequential damages for breach of any of the provisions of this agreement, including without limitation, provisions regarding warranties, guaranties, indemnities, and patent infringement, or based upon any claims, demands, settlements, or lawsuits arising from or in connection with, the Products sold hereunder, such damages including, but not limited to, costs of removal and reinstallation of items, loss of good will, loss of profits, or loss of use. Customer assumes all liability for any and all damages arising from or in connection with, the use or misuse of the Products by Customer, its employees, or others.

13. **GENERAL:** These Terms and Conditions are complete and exclusive statement of the agreement between the parties and supersedes all prior agreements and communications about the subject matter. Neither this agreement nor individual transactions under it may be assigned by Customer without the prior written consent of New Scale Technologies. Regardless of any disclosure made by Customer to New Scale Technologies of an ultimate destination of the Products, Customer will not export, directly or indirectly, any Product without first obtaining all required licenses from the appropriate government agencies. These Terms and Conditions and all the transactions thereunder shall be governed by the laws of the State of New York without regard to its principles of conflict of laws.