

FOX THERMAL INSTRUMENTS, INC.

Terms and Conditions of Sale

1. **PRICES** - Prices are F.O.B. Fox Thermal Instruments (FOX), Marina, California.
2. **TAXES** - All prices quoted herein are exclusive of any city, state, or federal taxes on manufacturer, including sales, use tax and the like. Whenever applicable, a separate charge will be made for such taxes to be paid by the Buyer, whether noted in the invoice or subsequently.
3. **DELIVERY** - Delivery will be made F.O.B. to the common carrier, Marina, California. Title for the product shall pass to the Buyer upon delivery by FOX to the common carrier. Upon delivery to the common carrier, Buyer shall be responsible for and bear the entire risk of loss or damage to the product.
4. **SHIPPING** - FOX will ship by the method it deems most advantageous. Transportation charges are the responsibility of the buyer.
5. **PACKAGING** - Products will be shipped in commercial packaging. When special packaging is requested, or in the opinion of FOX, required under the circumstances, the cost of the packaging, if not set forth on the invoice, will be separately invoiced.
6. **TERMS** - Unless otherwise indicated or agreed in writing all payments are due within thirty (30) days from the date of shipment. Any unpaid account balance shall bear interest at the rate of 1.5%, or the highest rate permitted by law whichever is less per month from and after the date payment is due. Buyer agrees to pay all costs, expenses and fees, including reasonable attorney fees which may be incurred by FOX in collecting any amounts due and owing from Buyer hereunder. FOX reserves the right to refuse orders or to accept C.O.D. or cash orders only from any customer.
7. **INSPECTION AND ACCEPTANCE** - Shall be at point of destination.
8. **SUBSTITUTIONS AND MODIFICATION** - FOX shall have the right to make substitutions and modifications in the specifications of products sold by FOX, provided that such substitutions or modifications will not materially affect overall product performance. No term or condition purporting to modify the terms and conditions as stated herein shall be binding on FOX unless hereafter agreed to in writing by FOX. Acceptance of the product sold hereunder shall constitute assent to these conditions, and FOX hereby objects to and rejects any and all additional or different terms proposed by Buyer, whether contained in Buyer's purchasing or shipping release forms, or elsewhere. All proposals, negotiations, and representations, if any, made prior and with reference hereto are merged herein.
9. **WARRANTY** -
 - (a) FOX warrants that the products furnished under this Agreement will be free from defects in material and workmanship for a period of one year from the date of shipment. The customer shall provide notice of any defect to FOX, within one week after the Customer's discovery of such defect. The sole obligation and liability of FOX under this warranty shall be to repair or replace, at its option, without cost to the Customer, the defective product or part.
 - (b) Upon request by FOX, the product or part claimed to be defective shall immediately be returned at the Customer's expense to FOX. Replaced or repaired products or parts will be shipped to the Customer at the expense of FOX. FOX shall have the right of final determination as to the existence and cause of defect.
 - (c) There shall be no warranty or liability for any products or parts that have been subject to misuse, accident, negligence, failure of electric power or modification by the Customer without the written approval of FOX. This warranty does not cover damage caused by customer's exposure of the goods to corrosive or abrasive environments. Final determination of warranty eligibility shall be made by FOX. If a warranty claim is considered invalid for any reason, the Customer will be charged for services performed and expenses incurred by FOX in handling and shipping the returned unit.
 - (d) The liability of FOX shall be limited to replacing or repairing, at its option, any defective parts which are returned. Labor and related expenses incurred by the Customer to install replacement parts are not covered by this warranty.
 - (e) As to replacement parts supplied or repairs made during the original warranty period, the warranty period for the replacement or repaired part shall terminate with the termination of the warranty period of the original product or part.
 - (f) The use of FOX products are under exclusive control of the buyer. No warranty, express or implied, is given for the calibration, accuracy or workmanship of end-use product into which Fox products are installed. FOX can only be held responsible for the calibration and accuracy of product supplied by FOX. FOX specifically denies any liability arising from the buyer's application of FOX products including any physical injuries or death arising directly or indirectly out of or in connection with the manufacture, sale, use, or defect of the products sold hereunder.
 - (g) No warranty is made with respect to custom equipment or products produced to Buyer's specifications except as specifically stated in writing by FOX and contained in the agreement.
 - (h) **THE FOREGOING WARRANTY CONSTITUTES THE SOLE LIABILITY OF FOX AND THE CUSTOMER'S SOLE REMEDY WITH RESPECT TO THE PRODUCT AND IS IN-LIEU OF ALL OTHER WARRANTIES. FOX DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
 - (i) In no case are products to be returned without first obtaining permission and a Return Authorization number from FOX.
10. **LIMITATION OF LIABILITY** - In no event shall FOX be liable for any damages, ordinary, incidental, or consequential, including damages for loss of production, loss of anticipated profits or savings, or for any claim asserted against Buyer by a third party arising directly or indirectly out of or in connection with the manufacture, sale, use or defect of the Products and Services sold hereunder. FOX shall in no event be liable for any physical injuries or death arising directly or indirectly out of or in connection with the manufacture, sale, use, or defect of the products sold hereunder. Buyer sole remedy hereunder shall be the terms of the warranty set forth in paragraph 9. Seller's maximum liability shall not exceed the purchase order price. Any damage or injury caused by material used with FOX equipment is the sole responsibility of the user.
11. **EFFECTIVE DATE** - These terms and conditions are in effect as of July 1, 1994 and supersede any and all previous terms and conditions.
12. **DELAY OF DELIVERY** - FOX shall not be liable for any loss, damages or penalty resulting from delay in delivery when such delay is due to causes beyond the reasonable control of FOX, including but not limited to labor disputes, earthquakes, floods, fire, transportation delays, inability to obtain materials, or equipment malfunction. Any delivery date stated to Buyer is only approximate, is done for the convenience of the Buyer, and shall not be binding upon FOX or considered material to the performance of the terms and conditions. In any event, the delivery date shall be deemed extended for a period equal to the delay.
13. **CANCELLATION** - Buyer shall be liable for reasonable cancellation charges based on the price of the products listed on the order and shall include, among other things, expenses already incurred to design and manufacture the product(s).
14. **RETURNS FOR CREDIT** - Any return of product to FOX requires a Return Authorization. In no case are products to be returned without first obtaining permission and a RETURN AUTHORIZATION NUMBER from FOX. Such returned products are subject to a restocking charge plus all transportation charges. Special products built to Buyer's specifications are not subject to return or credit.
15. **ACCEPTANCE BY BUYER** - The terms and conditions as set forth herein shall constitute the entire agreement between FOX and the Buyer. FOX shall not be bound by any terms of Buyer's order which are inconsistent with the terms herein set forth. Acceptance by Buyer of these terms may be made either by written acceptance or by receipt by Buyer of delivery of any products from FOX.
16. **GOVERNING LAW** - Any contract between parties shall be governed by the laws of the State of California.
17. **ERRORS** - Stenographic and clerical errors are subject to corrections.
18. **INSOLVENCY** - If, before the fulfillment of this contract, either party shall suspend payments, commit an act of bankruptcy, notify any of his creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payment of his debts, convene, call, or hold a meeting of creditors, have a petition presented for winding up, or shall have a receiver appointed, the contract shall forthwith be closed, either at the market price then current for similar goods or, at the option of the other party, at a price to be ascertained by a repurchase or resale, and the difference between the contract price and the closing price shall be the amount payable or receivable under this contract.
19. **ACCELERATION** - If the Buyer shall fail to pay any amount due under this or any other sales contract with FOX or any invoice issued by FOX, then, at the option of FOX, the payment of any sums specified hereunder shall be accelerated, and the same shall become due and payable immediately, notwithstanding the delivery of the merchandise has not yet been tendered by FOX.
20. **SEPARABILITY** - Each of the provisions of this contract, and of these terms and conditions, is separable. In the event that any of these said provisions hereof shall, for any reason, be held to be void or unenforceable, the remaining provisions shall remain in full force and effect, and shall control.
21. **ARBITRATION** - Any dispute, controversy, or claim arising out of or related to this contract or the performance hereof of the goods delivered hereunder shall be referred to and determined and settled by arbitration in accordance with the Rules of Practice and Procedure then obtaining of the American Arbitration Association, sitting in the State of California. The Buyer and FOX hereby consent and submit to the jurisdiction of the courts of the State of California and agree that said court may issue such orders of judgment as may be necessary to compel arbitration hereunder, or to enforce any award made by the arbitrators. The Buyer and FOX further agree that any process or notice of application, or motion to such court or a judge thereof may be served outside the State of California by registered mail, or by personal service, or in any other manner permitted by the Rules of Civil Procedure of the State of California. The authority of the arbitrators is expressly subject to the provisions of Paragraph 10.