

# TERMS and CONDITIONS

## 1. FORMATION OF CONTRACT

By placing an order, accepting or paying for the goods specified on the face of this order or quotation, Purchaser agrees to the terms and conditions of sale contained herein. If Purchaser objects to any of these terms, such objection shall be in writing and received by SETRA at the address stated on the front hereof prior to commencement of performance by SETRA. Additional or different terms in Purchaser's purchase order or other forms shall not be deemed objections hereto, unless specifically and conspicuously labelled "objections". Any additional or different terms contained in Purchaser's form are objected to by SETRA without need of further notice, and shall not be binding on SETRA unless expressly accepted in writing by an officer of SETRA. SETRA's written confirmation of the order shall not constitute an acceptance by SETRA in writing of any additional or different terms contained in purchaser's form.

## 2. TERMS OF PAYMENT

If SETRA extends credit to Purchaser, terms of payment shall be net 30 days from invoice date unless otherwise specifically agreed by SETRA in writing. Interest shall be assessed on any amounts outstanding after 30 days in the amount of the lesser of 1 1/2% per month of the unpaid balance (annual rate of 18%) or the maximum interest rate allowed by law. If purchase is being made from outside the United States of America, payment shall be made in lawful, unblocked, free United States of America dollar exchange. SETRA reserves the right to withdraw any offer to sell or to cancel any agreement prior to shipment of goods if, in SETRA's sole judgment, Purchaser's credit record is inadequate. SETRA also reserves the right to change the credit terms, or to withdraw credit.

## 3. SHIPMENTS

Unless otherwise indicated on the face of this order or quotation: (a) shipments shall be F.O.B. SETRA's plant in Boxborough, Massachusetts; (b) SETRA, at its option, may hold all goods for shipment at one time, or may make partial shipment provided any agreed delivery schedule is met subject to item 4 of these terms; and (c) each shipment shall be treated as a separate contract for the purposes of these Terms of Sale, and SETRA may refuse to make additional shipments if Purchaser is in breach with respect to any prior shipment. In the event of shipments arranged by SETRA, Purchaser may request that a shipment be insured at net value or minimum coverage provided by carrier, whichever is greater. In the event of damage or loss in shipment, Purchaser should file a timely claim with the carrier and also notify SETRA.

## 4. DELIVERY

The scheduled shipping date, if any, upon the face of this document is SETRA's best estimate at the time the order is entered, but SETRA shall not be liable for any failure or delay in making delivery of the product by the due date, unless such failure is reckless or willful. The existence of delay, other than delay from SETRA's recklessness or willfulness, shall automatically extend the time of performance and delivery by SETRA to the extent necessary to enable it to make delivery with reasonable diligence after the causes of the delay have been removed. Unless otherwise specifically agreed in a writing signed by a SETRA officer, SETRA will not accept purchase orders or make offers to sell products on terms which provide that "time is of the essence".

### a) CHANGE OF DELIVERY DATE

Any order, entered and confirmed with a delivery date, shall be subject to the following limitations in regards to change of delivery: If the order is within zero to 2 weeks of scheduled delivery, no change of delivery date shall be allowed. If the order delivery date is greater than 2 weeks, but less than 4 weeks away, the order shipment date may be moved out a maximum of 4 weeks from the original scheduled delivery date. If the delivery date is greater than 4 weeks away, the delivery date may be changed to an unlimited amount. Changes outside of these limitations shall result in a negotiated cost implication and shall be based on order size and amount of time requested for change of scheduled delivery date.

## 5. ACCEPTANCE

Purchaser will be deemed to have accepted the goods described on the face hereof if SETRA does not receive written notice of rejection within 10 days of receipt by Purchaser. In any event, payment shall constitute acceptance.

## 6. DESIGN

Unless otherwise specifically agreed in writing, SETRA reserves the right to adopt any changes in the design or manufacture of its products, the utility of which shall be in SETRA's sole discretion. In the event that this order or quotation is supplied in compliance with Purchaser's plans, drawings or specifications, Purchaser shall indemnify and hold SETRA harmless from and against all damages, liabilities, losses and expenses (including without limitation, damages for infringements on the patents of others).

## 7. LIMITED WARRANTY AND LIMITATION OF LIABILITY

SETRA warrants its products to be free from defects in materials and workmanship, subject to the following terms and conditions: Without charge, SETRA will repair or replace products found to be defective in materials or workmanship within the warranty period; provided that:

- a) the product has not been subjected to abuse, neglect, accident, incorrect wiring not our own, improper installation or servicing, or use in violation of instructions furnished by SETRA;
- b) the product has not been repaired or altered by anyone except SETRA or its authorized service agencies,
- c) the serial number or date code has not been removed, defaced, or otherwise changed; and
- d) examination discloses, in the judgment of SETRA, the defect in materials or workmanship developed under normal installation, use and service;
- e) SETRA is notified in advance of and the product is returned to SETRA transportation prepaid.

Unless otherwise specified in a manual or warranty card, or agreed to in a writing signed by a SETRA officer, SETRA scales shall be warranted for two years from date of sale; SETRA pressure, acceleration and load cell products shall be warranted for one year from date of sale.

**THE FOREGOING WARRANTY IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR MERCHANTABILITY FOR A PARTICULAR PURPOSE.**

**SETRA'S LIABILITY FOR BREACH OF WARRANTY IS LIMITED TO REPAIR OR REPLACEMENT, OR IF THE GOODS CANNOT BE REPAIRED OR REPLACED, TO A REFUND OF THE PURCHASE PRICE. SETRA'S LIABILITY FOR ALL OTHER BREACHES IS LIMITED TO A REFUND OF THE PURCHASE PRICE. IN NO INSTANCE SHALL SETRA BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF WARRANTY, OR FROM THE USE OR INSTALLATION OF ITS PRODUCTS. No representative or person is authorized to give any warranty other than as set out above or to assume for SETRA any other liability in connection with the sale of its products.**

## 8. CANCELLATION

Orders cancelled by Purchaser prior to shipment shall be subject to appropriate cancellation charges by SETRA.

## 9. TAXES

All sales, use, or similar excise taxes or governmental charges imposed upon the sale or shipment of the product shall be paid for by the Purchaser and shall be added to and become part of the purchase price of the product. It is the policy of SETRA to collect such taxes if in its judgment it is required to do so, unless Purchaser provides the appropriate tax exemption information to SETRA prior to its invoicing the order.

## 10. CONFIDENTIAL INFORMATION

Unless specifically otherwise agreed, SETRA will not accept any disclosure to it by Purchaser of any information claimed to be confidential (including plans, drawings or specifications relating to Purchaser's proposed use of the product).

## 11. INTERNATIONAL DELIVERY

If the purchase calls for shipment to a point outside the United States of America, acceptance by SETRA is expressly subject to its ability to obtain, on appropriate terms, any export license or permit required by applicable governmental law or regulation.

## 12. PRICE CHANGES

SETRA reserves the right to change prices set forth in price lists, quotations and acknowledgments issued by SETRA, for products ordered by Purchaser which at Purchaser's request are rescheduled for a new shipment date.

## 13. GOVERNING LAW

The validity, construction and performance of this contract and the transactions to which it relates shall be governed by the laws of Massachusetts. All actions, claims or legal proceedings in any way pertaining to this contract or related transactions shall be commenced and maintained in Massachusetts state courts or in federal court for the District of Massachusetts. Both parties acknowledge that, in pursuing this transaction, each has had minimum contacts with Massachusetts and the parties hereto agree to submit themselves to the jurisdiction of such court.

## 14. GOVERNMENTAL CONTRACTS

In the event the goods specified on this form are sold to the United States Government, a state government, or any agency, instrumentality or subdivision of a Federal or state government, the terms and conditions of this form shall be modified and amended only to the extent necessary to incorporate all applicable provisions of Federal, state or local procurement law. Likewise, if such governmental Buyer has previously entered into a separate agreement with SETRA, such terms shall supersede the terms hereof. Federal or state entities authorized to buy under SETRA's schedules shall not be bound by the terms and conditions stated herein and should instead refer to SETRA's applicable schedule.

## 15. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION COMPLIANCE

SETRA agrees to abide by the requirements imposed by Executive Order 11246, as amended, and the rules and regulations of the Secretary of Labor as set forth in Title 41 CFR, Chapter 60.

## 16. OTHER TERMS AND CONDITIONS OF SALE

Any terms and conditions of sale proposed by Purchaser shall not be deemed to constitute terms and conditions of sale applicable to this order unless such terms are consistent herewith, and no prior course of dealings between SETRA and Purchaser, nor common usage of trade shall operate to modify any of these general terms and conditions of sale.