

**1. CONTRACT.** The "Contract" is the legally binding agreement for Buyer's purchase of the goods and services ("Goods" and "Services") that Schmitt Industries, Inc., Schmitt Measurement Systems, Inc. or Acuity Laser Measurement (each referred to herein as "Schmitt") will provide Buyer in response to Buyer's Purchase Order (the "Purchase Order"). These Terms and Conditions, Schmitt's Quotation (if any) and Buyer's Purchase Order comprise the Contract. The Contract constitutes the parties' entire agreement, superseding all prior discussions, correspondence, negotiations and proposals. Buyer's reprinted terms, including those in Buyer's Purchase Order, shall not apply to the Contract to the extent they add to, negate or conflict with these terms and conditions. This Contract may only be modified by a writing signed by both parties. Unless expressly stated otherwise, all terms of this Contract apply equally to the sale of Goods and Services.

**2. ACCEPTANCE OF CONTRACT.** The Contract shall become binding when Schmitt's authorized representative issues a written or electronic confirmation of acceptance (acknowledgment) of the Purchase Order.

**3. PRICE AND PAYMENT.** Buyer shall pay Schmitt the purchase price in accordance with Schmitt's proposal, quotation and/or order acknowledgment in U.S. funds within 30 days, conditioned on approved credit, after the date of issuance of Schmitt's invoice. Unless expressly stated otherwise in writing by Schmitt, the purchase price excludes all charges and expenses connected to shipment of the Goods to Buyer, and all taxes and customs duties of any kind that either party is required to pay with respect to the sale of Goods and Services covered by this Contract, but includes packing costs. Schmitt may issue its invoice for the purchase price for the Goods, upon shipment, and for Services, upon completion. Schmitt may invoice for progress payments in accordance with the terms of its proposal or order acknowledgement. If partial shipments are made, Schmitt may invoice upon each shipment for the portion of the Purchase Price allocated to that shipment. If Buyer is not located in the United States, Buyer shall, upon written request by Schmitt, provide Schmitt with an acceptable letter of credit in the form requested by Schmitt. If Buyer does not pay Schmitt on the required payment dates, Buyer shall pay interest to Schmitt on overdue amounts at the rate of 1% of the unpaid balance monthly. Schmitt may cancel or reschedule delivery of Goods or Services if Buyer is in default of payments or any other material term of this Contract. Schmitt also reserves the right to require payment in advance or COD, or otherwise modify credit terms, in the event of payment default.

**4. TITLE AND RISK OF LOSS.** Delivery shall be FCA Schmitt's plant (free carrier, Incoterms 2000). Title to and full risk of loss for Goods (including transportation delays and losses) passes to Buyer upon delivery, as defined in Incoterms 2000, regardless of whether title has passed to Buyer, transport is arranged or supervised by Schmitt, or start-up is carried out under the direction or supervision of Schmitt. Loss or destruction of the Goods or injury or damage to the Goods that occurs while the risk of such loss or damage is borne by Buyer does not relieve Buyer of its obligation to pay Schmitt for the Goods.

**5. DELIVERY AND DELAYS.** Schmitt shall make commercially reasonable efforts to meet quoted delivery dates, which are estimated based on conditions known at the time of quotation. Schmitt shall not be liable for any nonperformance, loss, damage, or delay due to war, acts of terrorism, riots, fire, flood, strikes or other labor difficulty, governmental actions, acts of God, acts of the Buyer or its customer, transportation delays, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of Schmitt. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended at least by the length of time lost due to such delay. Schmitt shall not be liable for any damages resulting from any delay in delivery.

**6. INSPECTION.** Promptly after receipt of the Goods, Buyer will inspect the Goods for conformity to this Contract. If the Goods do not conform to this Contract in all material respects, Buyer will promptly provide a written notice of rejection to Schmitt specifying in reasonable detail the reason for rejection. Schmitt will take necessary measures to repair or replace the rejected Goods at its own cost.

**7. LIMITED WARRANTY.** Schmitt warrants as follows: (i) the Goods will be free from defect in material and workmanship for 365 days from the date of delivery to the Buyer; (ii) repairs and spare or replacement parts manufactured by Schmitt will be free from defect in material and workmanship for 90 days from the date of delivery or through the expiration of the initial 365 day warranty period, if applicable, whichever is longer; and (iii) the Services will be performed in a good and workmanlike manner, with such warranty to expire 365 days after completion of the Services. Buyer must report any claimed defect in Goods or Services in writing to Schmitt immediately upon discovery and in any event, within the warranty period. Schmitt, at its sole option, will repair the Goods or the Service defects (as the case may be), or furnish replacement equipment, or parts thereof, at the appropriate Schmitt service center nearest to Buyer.

**8. WARRANTY EXCLUSIONS/LIMITATIONS.** The above warranty does not extend to installation of the Goods or to other services provided by third parties, including satellite transmission services for Xact® tank monitoring products. Schmitt is not liable under the warranties set forth above to the extent a defect or failure is caused by: (i) repair, alteration or modification of Goods by persons other than Schmitt or its designee without Schmitt's prior written approval; (ii) normal wear and tear; or (iii) Buyer's failure to properly store, install, operate or maintain the Goods in accordance with good industry practices or recommendations or instructions of Schmitt. The repair or replacement of the Goods or Services by Schmitt under this Section shall constitute Schmitt's sole obligation and Buyer's sole and exclusive remedy for all claims of defects. If that remedy is adjudicated to be insufficient, Schmitt shall refund Buyer's paid purchase price and have no other liability to Buyer under the Contract. All warranty repairs must be performed at an authorized Schmitt service center using recommended replacement spare parts. Buyer is responsible for obtaining Schmitt's advance authorization to return Goods and for the cost of shipping and any other charges incurred in sending the Goods to the authorized service center specified by Schmitt. If Schmitt determines that the problem with the Goods or Services is not covered by the above warranty, Buyer shall reimburse Schmitt for time and materials at Schmitt's standard commercial rates and Buyer shall pay the cost of returning the Goods to Buyer. Schmitt shall make any necessary repairs in a timely manner but accepts no liability for the actual time taken for repair.

**SCHMITT MAKES NO OTHER WARRANTY OF ANY KIND WITH RESPECT TO THE GOODS OR SERVICES. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AGAINST INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.**

**9. CONDITIONS TO SCHMITT'S OBLIGATIONS TO XACT® CUSTOMERS.** Buyer acknowledges and understands that due to the method used for transmitting data to Buyer, there may be times when the transmission method is unable to transmit signals and that neither Schmitt nor Buyer will receive them. Buyer agrees that Schmitt's obligations to provide the Goods and Services shall be expressly subject to each of the following conditions: (a) the ability of Schmitt or the third-party satellite system to obtain and maintain all necessary governmental licenses and permits, (b) the proper functioning of the third-party satellite system, including available capacity, and (c) the proper functioning of any third-party carrier system relied upon to complete data transmission (such as internet service, long-distance, roaming, exchange or interconnection providers), including available capacity.

**10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY.** All technical and commercial information Schmitt discloses to Buyer, excluding public domain information or information in Buyer's possession in written or tangible form before receiving such information from Schmitt ("Confidential Information"), is proprietary to Schmitt and disclosed to Buyer in confidence for the limited purpose of performance of the Services and/or assisting Buyer in the evaluation and use of the Goods ("Purposes"). Unless otherwise authorized in writing by an authorized representative of Schmitt, Buyer shall not disclose Confidential Information, directly or indirectly, to any other person or use such Confidential Information, except for the Purposes. Buyer shall return all Confidential Information to Schmitt on demand, and, in any event, when no longer needed by Buyer in connection with the Purposes. Except as set forth in Section 12, sale of the Goods and/or Services to Buyer does not convey a license, implied or otherwise, under any patent, copyright, trademarks or trade secret in which Schmitt has an interest, nor does it convey rights to any descriptive data, including but not limited to Schmitt's drawings, schematics, software, secrets, processes or tooling.

**11. LIMITATION OF LIABILITY.** Schmitt shall in no event be liable for any consequential, incidental, indirect, special or punitive damages arising out of the Contract, or out of any breach of its obligations hereunder, or out of any defect in, or failure of, or malfunction of the Goods or Services, including but not limited to, claims based upon loss of use, lost profits or revenue, interest, lost goodwill, work stoppage, impairment of other equipment, environmental damage, loss by reasons of shutdown or non-operation, increased expenses of operations, cost of purchase of replacement equipment or claims of Buyer or its customer or any other party for service interruption whether or not such loss or damage is based on contract, tort (including negligence and strict liability) or otherwise and whether or not Schmitt was advised of the possibility of such damage. For Xact® products, Schmitt is not liable for losses that may occur in providing the equipment and services, including cases of malfunction or non-function of any equipment or service provided by Schmitt, even if due to Schmitt's negligence or failure of performance. Schmitt's maximum liability under or in any way relating to this Contract shall not exceed the Purchase Order price for the Goods or Services upon which such liability is based. Some jurisdictions do not allow the limitations or exclusion of liability for incidental or consequential damages so the above limitation or exclusion may not apply in certain cases. Any claim or action by Buyer under this Contract must be brought within one year after the date of delivery of the Goods or performance of the Services (as the case may be); provided, however, that this limitation will not apply to warranty claims made prior to expiration of the one-year period.

**12. DISPUTE RESOLUTION.** The Contract shall be governed by the laws of the State of Oregon, USA, exclusive of its conflicts of laws principles. Any disputes arising out of this Contract that cannot be informally resolved shall be adjudicated exclusively in Multnomah County, Oregon, USA, in any court of competent jurisdiction. This Contract is expressly conditioned on the exclusion of the application

of the United Nations Convention on the International Sale of Goods. In the event of any litigation or other dispute arising as a result of or by reason of this Contract, the prevailing party in any such litigation or other dispute shall be entitled to, in addition to any other damages assessed, its attorneys' fees and all other costs incurred in connection with settling or resolving such dispute.

**13. CANCELLATION.** Buyer may cancel an order at any time prior to the scheduled shipping date as specified on the purchase order or purchase order acknowledgment by giving written notice of cancellation to Schmitt and paying the following cancellation charges (when applicable). For Schmitt's standard commercial products, cancellations received within ten (10) business days prior to the scheduled shipping date are subject to a restocking charge equal to ten percent (10%) of the value of the purchase order. For Schmitt's customized products based in whole or in part on specifications or drawings provided by Buyer, or for Services rendered by Schmitt, all cancellations are subject to a charge equal to Schmitt's cost of performance up to the date of receipt of the cancellation notice, including labor, overhead and materials.

**14. SOFTWARE LICENSE.** Schmitt may provide restricted software and related documentation with the Goods ("Software"). Such Software is proprietary to Schmitt or its suppliers, as the case may be. Schmitt grants Buyer a non-exclusive, perpetual license to use the Software only on and in conjunction with the Goods. Buyer agrees the Software title remains with Schmitt (or its suppliers, as the case may be) at all times. Buyer shall not disassemble, decode or translate, or copy or modify the Software, except only that a copy may be made for archival or back-up purposes as necessary for use with the Goods. Buyer will maintain all proprietary notices and marks on the Software. Buyer may transfer this license if also transferring the Goods and if the transferee agrees to comply with all terms and conditions of this license. Upon such transfer, Buyer's license terminates and it shall destroy all copies of the Software in its possession.

**15. ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Contract without the prior written consent of the other, such consent not to be unreasonably withheld.

**16. TRADEMARKS.** Buyer agrees that it will not use any name or trademark of Schmitt Industries, Inc. or its subsidiaries for commercial purposes, without Schmitt's prior express written permission.

**17. TAXES.** The prices stated are exclusive of any federal, state, municipal, or other governmental tax that may be imposed upon the production, storage, sale, transportation or use of the Goods and Services. Buyer shall present Schmitt with a valid and correct tax exemption or direct payment certificate applicable to Goods and Services purchased and the ship-to destination at the time of order placement as applicable. The tax exempt certificate and the company ship-to address must correspond. If a valid and correct tax exempt or direct payment certificate is not provided at the time of order placement, Buyer will pay sales and/or use tax when shipment is made to any jurisdiction imposing such a tax. Buyer shall be responsible for remitting applicable sales and/or use tax directly, if any such tax is not paid at the time of sale.

**18. SEVERABILITY.** If any provision of this Contract is deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.