 DYNAMIC INSTRUMENTS <small>instrumentation & electrical contractors</small> <small>Reg. No. 2012/048136/07</small> <small>Vat No. 4180280859</small>	DYNAMIC INSTRUMENTS (PTY) LTD QMS FORM	Document No.	DYN/H0/001/FIN/009
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1. Definitions

- 1.1 "Agreement" shall mean the Standard Trading Terms and Conditions set out in this document.
- 1.2 "Buyer" means Dynamic Instruments (Pty) Ltd. registration number 2012/048136/07.
- 1.3 "Buyer's Plant" means the plant or other location of Buyer to which goods are to be delivered, the address of which appears on the face of the Purchase Order.
- 1.4 "Days" means all days exclusive of Saturdays, Sundays and RSA Public Holidays.
- 1.5 "Products" means the goods and/or services covered by the Purchase Order, which term includes any goods and services unless the context clearly indicates otherwise, and as to goods, includes all parts, portions, items, attachments, repairs, replacements and substitutions thereof.
- 1.6 "Purchase Order" means and includes the face of the Purchase Order document, subsequent releases, call-offs, requisitions, work orders, delivery instructions and other documents provided by Buyer related to the Products (including documents provided by electronic data interchange such as e-mail and telefax), any agreements related to the Products signed by Buyer and Seller, these Standard Trading Terms and Conditions and all other documents specifically made a part of the Purchase Order by Buyer.
- 1.7 "Seller" means the party with which the Purchase Order is placed.
- 1.8 "Seller Document" means any quotation, acknowledgement, delivery note, invoices or other documents issued by Seller, whether in electronic or printed form.

2. Entire Agreement


The Purchase Order is the entire agreement between Buyer and Seller with respect to the Products and no modification of or addition to the Purchase Order shall be effective unless in writing and signed by a duly authorized officer of Buyer. Any agreements, negotiations or understandings of Buyer and Seller prior to the date of the Purchase Order, whether written or oral, are merged in and superseded by the Purchase order.

3. Acceptance of Purchase Order

- 3.1 The Seller shall be obliged to provide the Buyer with an order confirmation not later 4 (four) days from the date of the placement of the Purchase Order. The Seller must accept the Purchase Order in its entirety without modification or addition, notwithstanding any prior dealings or usage of trade. The Buyer may cancel any Purchase Order at any time prior to acceptance by Seller.
- 3.2 Any Seller Document, including any Seller Document referenced in the Purchase Order, to the extent containing any terms in addition that may be inconsistent with or rejecting any of the terms of the Purchase Order, shall be deemed to be a counter offer to Buyer. Such a counter offer is rejected by and shall not be binding upon Buyer unless specifically accepted in writing by a duly authorized officer of Buyer. In the absence of written acceptance of such a counter offer by Buyer, commencement of performance by Seller shall be deemed to be Seller's acceptance of the Purchase Order and an agreement by Seller to perform in accordance with the terms of the Purchase Order. The terms of the Purchase Order shall apply without modification even if Buyer accepts and pays for any Products from Seller with knowledge of any conflicting or different terms and conditions of Seller.

4. Delivery

- 4.1 Deliveries are to be made in the manner, the quantities and at the times specified on the face of the Purchase Order or delivery instructions or other documents forwarded to Seller by Buyer, which shall become binding on Seller unless Seller objects within 5 (five) days of receipt thereof. Time and quantities are of the essence with respect

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to all delivery schedules established by Buyer, and Seller shall at all times achieve 100 % (one hundred percent) on-time delivery. Seller shall be liable for all direct, incidental, consequential and other damages, losses, costs, charges and expenses incurred by Buyer resulting from the failure of Seller to timely deliver conforming Products.

4.2 Products shall be delivered at Buyer's Plant and Seller shall be responsible for all costs of packaging, handling, sorting, storage, insurance, and other transportation charges.

5. Inspection, Acceptance of Products and Access to Premises

5.1 At all reasonable times, Buyer and its customers may, but shall be under no obligation to, inspect and/or test the Products to be furnished under the Purchase Order at the locations where the Products are being manufactured or work is being performed, including those of Seller's suppliers.

5.2 Notwithstanding payment, passage of title to Buyer or any prior inspection or testing, all Products are subject to final inspection and acceptance or rejection at Buyer's Plant. Title to and risk of loss of all Products subject to the Purchase Order shall remain with Seller until delivery and final acceptance of the Products at Buyer's Plant.

6. Nonconforming Products

Buyer and Seller agree that if any Products delivered pursuant to the Purchase Order are nonconforming in any manner. Buyer may, at its option and without limiting its other remedies for a default under the Purchase order:

- a) reduce the quantities of Products ordered under the Purchase Order by any amount;
- b) require Seller to replace nonconforming Products;
- c) return to Seller, or dispose of without any liability to Seller, any nonconforming Products and receive full credit for the price of such Products and any costs associated with inspecting, sorting, containing, storing and returning such Products;
- d) either itself or through others, rework, correct or otherwise alter any such Products for the purpose of making them conforming or less nonconforming; or
- e) exercise any other remedies available to it under the Purchase Order or applicable law.


All direct, incidental, consequential and other damages, losses, costs, charges and expenses associated with any of the foregoing remedies shall be the responsibility of Seller and may be deducted by Buyer from any amount due to Seller.

7. Price and Terms

7.1 The price shall be Value Added Tax included or excluded as per the Purchase Order.

7.2 Payment terms and any discounts for early payment shall be as set forth in the Purchase Order. The payment dates for the Purchase Order shall be calculated from the date acceptable invoices are received or the date conforming Products are received, whichever last occurs. Invoices shall conform to any requirements provided to Seller in writing and Buyer may reject any invoices that do not conform to such requirements.

7.3 Any cash discount or settlement discount period offered by Seller shall be calculated from the date acceptable invoices are received or the date conforming Products are received, whichever last occurs. Unless freight, taxes and other charges are itemized, any discount shall be taken on the full amount of the invoice. All payments are subject to adjustment for shortage or rejection.

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7.4 Prices may not be increased unless authorized by an amended Purchase Order issued and signed by a duly authorized officer of Buyer. Seller represents that the prices and terms for the Products covered by the Purchase Order are no less favourable to Buyer than Seller currently offers to any other customer for the same or similar products or services in similar quantities. Seller agrees that should more favourable prices or terms be provided to any other customer for the same or similar products or services in similar quantities, Buyer shall be provided the same price and terms as of the time they were first offered to another customer. Seller agrees that any price reduction made in goods or services of the type covered by the Purchase Order subsequent to the placement of the Purchase Order shall be applicable to Products purchased under the Purchase Order, and Buyer shall be entitled to an appropriate credit for the amount of such reduction. Seller's price shall not exceed the lowest prevailing market price, and in no event is the Purchase Order to be filled at prices higher than the last prices.

8. Quality Assurance


- 8.1 Seller shall provide and maintain a quality assurance system which shall assure that all Products delivered to Buyer conform to the requirements of the Purchase Order, whether manufactured or processed by Seller or by Seller's suppliers.
- 8.2 Seller shall maintain adequate records of all manufacturing processes, all inspections, tests and the corrective action taken by Seller with respect to nonconforming Products. Such records shall include such information and meet such other requirements as may be required by applicable standards or as otherwise required by Buyer. Such records shall be retained by Seller for a period of 5 (five) years and shall be subject to Buyer's audit at any time.

9. Changes to Purchase Orders

- 9.1 Buyer reserves the right, for any reason, to make changes in the Purchase Order, including without limitation, changes to anyone or more of the following:
- a) the drawings, designs or specifications of the Products;
 - b) the quantities, method of shipment or packaging of the Products;
 - c) the place or time of inspection, delivery or acceptance of the Products.
- 9.2 If such change causes an increase or decrease in the cost of or time required for performance of the Purchase Order, an equitable adjustment, as determined by Buyer, shall be made in the price or delivery schedule or both. No claim by Seller for adjustment hereunder shall be considered unless made in writing within 10 (ten) days from the date notice of any such change is given by Buyer.
- 9.3 Nothing in this section shall excuse Seller from proceeding with performance of the Purchase Order as changed. No price increases, costs, charges or other amounts, extensions of time for delivery or other changes shall be binding on Buyer unless evidenced by an amended Purchase Order issued by Buyer in accordance with Section 3.

10. Intellectual Property Rights

Seller warrants that the Products and the purchase, incorporation into Buyer's products, marketing and sale do not and will not infringe any patent, trademark, copyright, trade secret, industrial design right or other intellectual property right of any third party.

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11. Proprietary Information

- 11.1 Any information or knowledge which Buyer may have disclosed or may hereafter disclose to Seller in connection with the Products or the Purchase Order shall be deemed confidential and proprietary information of Buyer and shall not be disclosed by Seller to any third party without the prior written consent of an officer of Buyer. Buyer retains ownership of all proprietary rights in any information disclosed to Seller in connection with the Products or the Purchase Order.
- 11.2 Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Products or the Purchase Order shall not, unless otherwise specifically agreed upon in writing by an officer of Buyer, be deemed to be confidential or proprietary information, and accordingly shall be acquired free from any restriction. Notwithstanding anything to the contrary herein contained, no employee of Buyer has authority to make any agreement, express or implied, limiting the use or publication of, or providing for confidential treatment of information of whatever kind, unless such agreement is made in writing and signed by an officer of Buyer.

12. Product Warranties


- 12.1 In addition to any other express or implied warranties provided by applicable law or otherwise, Seller warrants and guarantees to Buyer, its successors, assigns and customers that each Product shall:
- a) be new and conform to the Purchase Order in all respects;
 - b) conform to all specifications, drawings, samples, brochures, manuals and other descriptions furnished by, or accepted in writing by a duly authorized officer of Buyer;
 - c) comply with applicable standards in the industry and standards issued under all laws applicable to Buyer, Seller and the Products;
 - d) be merchantable and fit for the purpose for which intended, Seller acknowledging that it knows of Buyer's intended use;
 - e) be of the highest quality, and free from all or any defects in design, materials and workmanship; and
 - f) be free and clear of any and all liens and encumbrances of whatsoever nature and kind.

Seller also warrants that it is and shall at all times remain competitive in terms of price, quality, delivery, technology and service with respect to the supply of the Products.

- 12.2 The warranty period shall be the longest of:
- a) 5 (five) years;
 - b) the period provided by applicable law; or
 - c) the warranty period Buyer provides its customers for goods that include the Products.

All warranties of Seller, express or implied, and all remedies of Buyer, in this Section or elsewhere, shall survive indefinitely any delivery, inspection, tests, acceptance, payment or processing.

- 12.3 The Seller shall insure that it can supply spare parts for the Product for a period of at least 10 (ten) years after the date of delivery. The Seller shall, upon Buyer's request send Buyer a complete and detailed offer for spare parts including prices for each separate item within 30 (thirty) days from the date of Buyer's request. The Seller shall, upon Buyer's request, send an offer for individual spare parts within 3 (three) days from the date of Buyer's request. The Seller shall maintain above stock of parts

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adequate to manufacture and deliver spare parts not later than 3 (three) days following a Purchase Order from Buyer.

13. Default and Remedies

13.1 Seller shall be in default under the Purchase Order if:

- a) Seller does not comply with the Purchase Order in all respects;
- b) any Products provided by Seller do not conform to the warranties or other requirements of the Purchase Order, whether such non-conformity is discovered before or after acceptance by Buyer.

13.2 Upon any default hereunder, in addition to all other remedies hereunder or under applicable law or in equity, Buyer may exercise any one or more of the following remedies:

- a) cancel or delay delivery of all or any portion of the Purchase Order without liability, except the obligation to pay the purchase price for conforming Products received by Buyer prior to cancellation and accepted in accordance with the Purchase Order;
- b) require Seller to repair or replace any or all Products determined by Buyer to be nonconforming, at Buyer's option and at Seller's sole expense, either at Buyer's Plant or at any other location designated by Buyer;
- c) require Seller to pay all transportation and other charges arising from delivery, storage and return of Products;
- d) purchase replacement Products from a third party and recover from Seller any excess in the price of the same over the price agreed with Seller;
- e) recover from the Seller any and all direct, incidental, consequential or other damages, losses, costs, charges and expenses relating to such default and any debits or set-offs made by Buyer's customer as a result of such default;
- f) recover attorneys' fees and costs of suit, plus interest on all of the foregoing at the highest rate permitted by applicable law.

13.3 No delay by Buyer in the enforcement of any provision of the Purchase Order shall constitute a waiver thereof, and no waiver given on one occasion shall constitute a waiver on any other occasion or of any other provision.

14. Indemnification


The Seller shall indemnify the Buyer from and against any and all losses arising out of or relating to:

- a) any actual or alleged breach of warranty or other failure of any Products to conform with the requirements of the Purchase Order;
- b) Seller's breach of the Purchase Order or any other agreement between Buyer and Seller to the extent that it is related to any of the Products or is the fault of the Seller;
- c) any action alleged to have resulted, in whole or in part, from any manufacturing, design or other defect, failure to warn, improper handling, improper operating or installation instructions with respect to any of the Products.

15. Governing Law and Dispute Procedure

15.1 The Standard Trading Terms and Conditions is in all respects governed and construed in accordance with the laws of the Republic of South Africa and the proper language of the contract is the English language.

15.2 If any dispute arises between the Buyer and the Seller relating to or connected with this contract, the interpretation thereof, the performance of any of its terms or the termination thereof, either party may notify the other party in writing of the nature of such dispute and both parties shall forthwith attempt to settle the matter amicably.

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15.3 Any dispute which cannot be settled amicably shall be referred at the option of the Buyer to be exercised in writing to arbitration or court proceedings.

15.4 If the Buyer elects to refer the matter for arbitration, the Buyer and the Seller shall mutually agree a single arbitrator and, failing such agreement, the dispute shall be referred to 2 (two) arbitrators, one appointed by the Buyer and one appointed by the Seller. The 2 (two) arbitrators shall appoint an umpire to be referred to in case of need only. Arbitration proceedings shall be conducted in accordance with the Arbitration Act No. 42 of 1965 or any amendment or re-enactment thereof. The place of arbitration shall be in or adjacent to Johannesburg, Republic of South Africa and shall be conducted in English. The award rendered shall be final and binding upon the parties.

15.5 If the Buyer exercises its option to refer the matter to litigation the parties hereby consent and submit the jurisdiction of the South Gauteng High Court, Johannesburg, Republic of South Africa which, for the purpose of this contract, shall have exclusive jurisdiction.

15.6 No dispute, reference to arbitration or litigation shall entitle the Seller to discontinue or suspend the execution of any work under the contract.

16. Domicilium

16.1 The domicilium address of the Buyer is:

12 Richard Road	/	P.O. Box 1720
Industria North		FLORIDA
JOHANNESBURG		1710
1709		
Fax: 011-477-7689		
E-Mail: head.office@dyninst.co.za		

16.2 The Seller at the address set out in the quotation upon which the Purchase Order was placed.

16.3 Any notice of any change of address must be given in writing by either the Buyer or the Seller and delivered by hand or sent by registered mail to the other party.

16.4 In the event of either party indicating a telefax number or an e-mail address the Buyer and the Seller agree that unless the contrary is proved any notice sent by telefax or by e-mail is deemed to have been received on the day following the day of dispatch thereof.

17. Force Majeure

Neither of the parties will be liable for any delays or failures to perform due to *force majeure*.

18. General

No indulgence which either party (the Grantor) may grant to the other party constitute a waiver of any of the rights of the Grantor who shall not thereby be precluded from exercising any right against the Grantee which may have arisen in the past or which might arise in the future.