



TERMS AND CONDITIONS

These Terms and Conditions, along with any attached term sheet, quote, invoice, and/or purchase order (“**Term Sheet**”) (collectively, the “**Agreement**”) govern in all respects all sales and prospective sales of any products (“**Products**”) and services detailed in the Term Sheet and any additional services that Buyer may request of Seller in connection with the Term Sheet (the “**Services**”) from LUDECA, Inc. (“**Seller**”) to the purchaser named on the Term Sheet and/or the Agreement, or if not so named, the purchaser which is actually purchasing the Products or Services (“**Buyer**”) to the exclusion of all other terms and conditions (including any terms and conditions that the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). BUYER ACCEPTS AND IS BOUND BY THESE TERMS AND CONDITIONS FOR ANY PURCHASE OF SELLER’S PRODUCTS OR SERVICES.

1. Prices and Taxes. Prices are those in effect when Seller accepts a purchase order, or a Term Sheet is signed or accepted. Where no price is stated, any Services will be provided on a time and materials basis. Seller may accept or reject purchase orders in its sole discretion. No order shall be deemed accepted (and accordingly the Seller shall not be placed under any obligations or liability under any Agreement) until the Seller issues a written acknowledgement to the Buyer, the Term Sheet is signed or accepted by both parties, or the Seller delivers Products or Services to the Buyer (whichever occurs earlier). Unless otherwise stated in writing, each order when accepted constitutes a separate Agreement. Unless stated otherwise in the Term Sheet, all prices are expressed exclusive of any sales tax and all costs or charges in relation to loading, unloading, carriage and insurance. All prices, models and material specifications are subject to change or withdrawal by Seller at any time prior to an order being accepted or in accordance with Section 3. Prices may only be varied after an order is accepted (and prior to delivery or performance) on written notice to the Buyer, by reason of an increase in the cost of raw materials or labor or by reason of fluctuation in exchange rates, and the Buyer shall be entitled to cancel the order without incurring liability, provided such cancellation is received by the Seller in writing at least twenty-eight days prior to the notified delivery or performance date or, if Seller’s notice is delivered after such time, within fourteen days of the date of Seller’s notice.

2. Payment. Terms of payment are 30 days after the earlier of the date of invoice or after Seller provides notice of completion of all of Seller’s obligations under any applicable purchase order, unless stated otherwise on the Term Sheet. Buyer must pay all amounts by bank transfer to the account designated by Seller, without any deduction by way of set-off, counterclaim, discount, abatement or otherwise. All prices are quoted, and must be paid, in U.S. Dollars, or as otherwise specified in the Term Sheet. If Buyer fails to make any payment or pay any invoice according to its terms, or upon such credit terms as expressly agreed to in writing by Seller, then, in addition to all other rights and remedies available to Seller: (a) Buyer is responsible for any and all commercially reasonable charges, expenses or commissions incurred by Seller in stopping delivery, transportation and storage of Products, and in connection with the return or resale of Products; (b) Seller has the right to terminate the Agreement or suspend further performance under the Agreement and other agreements with Buyer; (c) Buyer shall be liable to Seller for all reasonable costs of recovering the monies owed, including reasonable attorneys’ fees; (d) Seller shall be under no obligation to make any future deliveries or perform any Services in the future; and (e) Buyer shall not be entitled to any return of payment or partial payment, if any. The Seller may, at its option, charge the Buyer interest (calculated on a daily basis) on any overdue payment from the date when such payment was due to the date of actual payment in accordance with reasonable market interest rates.

3. Changes. Seller may revise prices, dates of delivery, and warranties upon acceptance of requests by Buyer for modifications to Products or Services. If Buyer rejects proposed changes to made-to-order Products deemed necessary by Seller to conform to the applicable specification, Seller is relieved of its obligation to conform to such specification to the extent that conformance may be affected by such objection in the reasonable opinion of Seller.

4. Shipment and Delivery. Risk of loss passes to Buyer upon delivery unless stated otherwise in the Term Sheet. The Buyer shall provide, at its expense at the point of delivery, adequate and appropriate equipment and manual labor for loading



the Products. Buyer is responsible for all demurrage or detention charges. Any claims for shortages or damages must be notified to the Seller within three days of delivery and any shortages or damages suffered in transit must also be submitted directly to the carrier and will be subject to the relevant conditions of carriage. All shipping dates are approximate and not guaranteed and time of delivery shall not be of the essence. Seller reserves the right to make partial shipments or deliver in instalments and to invoice the Buyer for each instalment dispatched. Seller is not bound to tender delivery of any Products for which Buyer has provided incomplete or inaccurate shipping instructions. If the Buyer fails to accept or take delivery of the Products within five business days of the Seller notifying the Buyer that the Products have shipped, or if shipment of Products is postponed or delayed by Buyer for any reason, including a *Force Majeure* Event (defined in Section 10), Seller may move Products to storage for the account of and at the risk of Buyer and the Products will be deemed delivered. Products may not be returned except with the prior written consent of Seller, which may include additional terms. The Seller shall not be liable for any non-delivery of Products (even if caused by the Seller's negligence) unless written notice is given by the Buyer to the Seller within five business days of the date when the Products would in the ordinary course of events have been received. Carrier's tracking information or Buyer's signature on shipping documents shall be proof of proper delivery. Any liability for non-delivery shall be limited to, at the Seller's discretion: (i) replacing the Products within a reasonable time; (ii) issuing a credit note at the pro-rata purchase price contract rate against any invoice raised for such Products; or (iii) a refund of the purchase price paid.

5. Inspection. Unless agreed otherwise in the Term Sheet, Buyer shall inspect Products upon receipt at the destination. Buyer's failure to inspect Products and give written notice to Seller of any alleged defects or non-conformity within ten days after receipt at destination shall constitute Buyer's irrevocable acceptance of Products delivered.

6. Limited Warranty for Products. Buyer acknowledges that Products and all components of Products are manufactured by parties other than Seller. Notwithstanding any provision of this Agreement or any related agreement to the contrary, Seller will have no liability for and makes no warranties regarding third-party Products, Product components, and related software or hardware provided by Seller; provided, however, that to the extent allowed by third-party providers of software or hardware and to the extent permitted by law, Seller will pass through to Buyer any express warranties provided by such third parties.

7. Services. No Services shall be performed except as determined and documented between Buyer and Seller. Buyer agrees to furnish all necessary parts, labor, supervision, and supplies required to perform any desired work while the field service engineer is on site. Buyer agrees to provide machinery lock out facilities and acquaint the field service engineer with the related safety procedures for any equipment to which measuring devices must be attached or on which work must be performed. Travel expenses and consultation fees commence with the first day of travel and end on the last day of travel. Services do not include rental charges for equipment required to perform the Services. Rental charges begin from arrival to jobsite until departure from jobsite. Standby/Holdover time (i.e. waiting on call and retention of a man in the jobsite area is considered service time and is rendered at the corresponding rate). Overtime (beyond 8 hours per day), weekend hours and holiday hours will be charged at the corresponding rate. Together with its invoice, Seller will submit to customer a signed time sheet. Minimum charge: One 8-hour working day plus travel days. The customer must provide a contact person during site visits that can obtain and provide any required information, equipment specifications and location information as may be required.

If database creation is included in the Services, prior to such database creation, Buyer must complete the "vibration surveillance information form" for each monitored asset. Buyer agrees to collect and transmit vibration data to Seller's designated point of contact utilizing Seller's FTP file transfer site (Hightail) or such other method approved by Seller. Once the first set of data is analyzed and the first report is provided, Buyer must collect and submit the second set of data to be analyzed within ninety (90) days.



Additional time may be required to generate a summary report for the work performed. This report will be provided to Buyer in a timely fashion once the on-site service work has been completed by Seller's field service personnel. The time required to generate the report will be billed to Buyer at the standard daily rates.

8. Limitation of Remedy and Liability and Indemnification. *LUDECA, INC., its affiliates, related corporations, partnerships, limited liability companies, subsidiaries, parents, divisions, successors, assigns, past and present owners, directors, officers, members, contractors, employees, shareholders, and/or agents (collectively referred to in this provision as "LUDECA") shall not be liable for any and all financial or other losses, injuries, damages of any kind, or fatalities related to or arising from the provision of Products and/or Services by LUDECA to the Buyer. LUDECA's aggregate liability for service claims during an annual period hereunder shall not, in any event, exceed the amount paid by Buyer pursuant to this Agreement for that period, nor shall LUDECA be liable for delays in replacement or repair of equipment hereunder caused by matters beyond its reasonable control. Buyer hereby expressly agrees to fully indemnify and defend LUDECA and hold LUDECA harmless for any losses, injuries, damages of any kind, any waiver of warranties, or fatalities related to or arising from the provision of Products and/or Services by LUDECA to the Buyer. Such indemnification shall include reimbursement for costs and attorneys' fees, or judgments that may result from any such actions against LUDECA.*

IN NO EVENT SHALL LUDECA BE LIABLE TO BUYER FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR LOSS OF PROFITS, USE, OR REVENUE OR DIMINUTION IN GOODWILL IN CONNECTION WITH ANY CLAIM RELATED TO OR ARISING FROM THE PROVISION OF PRODUCTS AND/OR SERVICES BY LUDECA TO THE BUYER.

LUDECA shall not be held responsible or liable for any actions, adjustments, or corrections made with respect to any data, data analysis, data collection, recommendations, reports, products leased or sold, or information provided by LUDECA, whether such actions, adjustments, or corrections are at the discretion of Buyer, its employees, or any third party. Buyer expressly acknowledges that it understands the effects of this provision and agrees to the terms outlined herein.

9. Termination. Seller shall have the right to suspend its services hereunder or terminate this Agreement in the event of any default by Buyer in any payment required to be made hereunder. Buyer shall not be entitled to any refund or credit in either such event. Buyer shall have the right to terminate this Agreement only in the event of any material default by Seller (for which Seller has been given a reasonable time to cure), in which event, Seller's sole liability to Buyer shall be to refund to Buyer a pro rata portion of the amount paid by Buyer for the unexpired then applicable term of this Agreement.

10. Excuse of Performance. Neither party shall be considered in default of its performance of any obligation under the Agreement (other than an obligation to make any payment due under the Agreement) to the extent that performance of such obligation is prevented or delayed by acts of God; war (declared or undeclared); terrorism or other criminal conduct; fire; flood; weather; health pandemic; sabotage; strikes, or labor or civil disturbances; governmental requests, restrictions, laws, regulations, orders, omissions or actions; unavailability of, or delays in, utilities or transportation; default of suppliers or other inability to obtain necessary materials; embargoes or any other events or causes beyond that party's reasonable control, (each, a "**Force Majeure Event**"). In the event of a Force Majeure Event, the date of delivery will be extended by a period equal to the delay plus a reasonable time to train and resume production, and the price will be equitably adjusted to compensate Seller for such delay and related costs and expenses.

11. Laws and Regulations. Compliance with any applicable laws, regulations and codes of practice relating to the installation, operation or use of Products or Services is the sole responsibility of Buyer. This Agreement, its interpretation and any disputes arising from or in connection with it (including non-contractual disputes) shall be governed by the laws of the State of Florida and both parties hereby agree to submit to the exclusive jurisdiction of the Circuit Court of Miami-Dade



County and/or the Southern District of Florida. The prevailing party in any such litigation shall be awarded its reasonable costs and attorneys' fees.

12. Buyer's Obligations. The Buyer shall (i) ensure that the terms of any purchase order and any product specification (if issued by Buyer) are complete and accurate; (ii) cooperate with the Seller in all matters relating to the Services; and (iii) provide the Seller and its employees or agents with access to the Seller's premises and other facilities, and provide all information and materials, as reasonably required in order to provide any Services, and ensure that such information is accurate in all material respects. Any failure to do so shall be considered a *Force Majeure* Event for the Seller pursuant to Section 10. Certain Products may be subject to export controls under applicable law. Buyer warrants that it shall comply with all such laws and not export, re-export or transfer, directly or indirectly, any such Product except in compliance with such laws and it shall obtain any necessary license, permit or authority that may be required in connection with the supply of Products or Services to be carried under the Agreement.

13. Additional Services. Buyer agrees that any additional services that Buyer requests of Seller in connection with the Product and services detailed in the Term Sheet shall be deemed "Services" and such Services shall be subject to these Terms and Conditions.

14. Sophisticated Buyer. Buyer hereby acknowledges that it is a sophisticated buyer, knowledgeable in its industry, and aware of and understands the risks involved with the use of the Products and Services in its industry. Buyer understands that by buying any Products or Services from Seller, that Buyer may be exposed to risks and liabilities generally associated with those purchases, or with risks and liabilities relating to Buyer's industry as a whole. By reason of this knowledge and experience, the Buyer will evaluate the merits and risks, including any and all possible liabilities, of the Products and Services being purchased from Seller and will form an opinion to make said purchases based solely upon Seller's knowledge and experience and not upon any opinion, representation, or predictions by Seller, its employees, agents or representatives.

15. Confidentiality. Each party shall hold the other's Confidential Information, as defined below, in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than as expressly permitted under this Agreement. Seller shall not transmit to Buyer, share with Buyer, or provide Buyer with access to any Confidential Information, of its own or that of a third party, except as expressly provided under this Agreement and Seller represents and warrants it is authorized to share any Confidential Information shared with Buyer. For these purposes "Confidential Information" means information (whether in oral, written or electronic form) belonging or relating to that party, its business affairs or activities which is not in the public domain and which: (i) the disclosing party has marked as confidential or proprietary, (ii) the disclosing party, orally or in writing, has advised the receiving party is of a confidential nature, or (iii) due to its character or nature, a reasonable person in a like position and under like circumstances would treat as confidential; but shall not include information that (i) is or becomes publicly known through no act or omission of the receiving party, (ii) was in the receiving party's lawful possession prior to the disclosure, (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure, or (iv) is independently developed by the receiving party, which independent development can be shown by written evidence. If the receiving party is required in any civil or criminal legal proceeding, regulatory proceeding or any similar process to disclose any part of the Confidential Information, the receiving party shall, to the extent possible, give prompt notice of such request to the disclosing party so that the disclosing party may seek an appropriate protective order or waive the receiving party's compliance with the provisions of this Agreement. Each party agrees to take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

16. Modification; Acceptance of Terms. Any terms or conditions previously submitted to Seller in connection with the transaction(s) contemplated by this Agreement are expressly rejected by Seller and these Terms and Conditions shall control. By submitting a purchase order to Seller following the receipt of these Terms and Conditions, Buyer expressly agrees (i) to be bound and comply with these Terms and Conditions and (ii) any terms and conditions attached to such purchase order



shall be deemed ineffective unless specifically and expressly agreed to in writing by Seller. Reference in this Agreement to any requests to sell, quotations or proposals shall in no way constitute a modification of any of the terms of this Order, which shall always prevail over any such requests, quotations or proposals. Buyer understands and expressly agrees that the terms of these Terms and Conditions shall apply to the Agreement even if the Agreement or any purchase order provided in connection therewith is provided under Buyer's contradictory terms. ANY ACCEPTANCE OR ACKNOWLEDGMENT OF THIS AGREEMENT BY BUYER (INCLUDING WITHOUT LIMITATION BY PROVIDING A PURCHASE ORDER OF ANY OF THE PRODUCTS OR SERVICES CALLED FOR IN THIS AGREEMENT), EVEN IF CONTAINING OR REFERENCING TERMS INCONSISTENT WITH OR IN ADDITION TO THE TERMS OF THIS ORDER SHALL BE DEEMED AS A FULL ACCEPTANCE BY BUYER OF THIS ORDER, AND THE INCONSISTENT OR ADDITIONAL TERMS SHALL BE DEEMED INEFFECTIVE, UNLESS THEY WERE SPECIFICALLY AND EXPRESSLY ACCEPTED BY SELLER IN WRITING.

17. General Provisions. The Agreement, together with any previous confidentiality agreement entered into between the parties, constitutes the entire agreement between the parties in respect of its subject matter and supersedes any previous agreement or other communications between the parties relating to such subject matter. Each party acknowledges that, in entering into the Agreement, it has not relied on, and shall have no right or remedy in respect of, any representation or warranty (whether made negligently or innocently) that is not set out in this Agreement. Each party agrees that its only liability in respect of such representations and warranties (whether made innocently or negligently) shall be for breach of contract. Nothing in this Section 17 limits or excludes any liability for fraud. No variation of this Agreement shall be binding unless made in writing and signed by both parties. No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver is expressed in writing signed by both parties. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. The Buyer shall, at the request and cost of the Seller, do or procure the doing of all such further acts, and execute or procure the valid execution of all such document, as may from time to time be necessary in the Seller's reasonable opinion to give full effect to this Agreement. The Seller shall be entitled to sub-contract any of its obligations under this Agreement but shall be responsible for the action or omissions of any sub-contractor used by it. The Seller shall, without notice to the Buyer, be entitled to assign or encumber or grant security over this Agreement or any of its rights hereunder. The Buyer shall not assign its interest in this Agreement without the prior written consent of the Seller. A change of control of the Buyer shall be deemed an assignment subject to consent as set forth in the prior sentence. The invalidity or unenforceability of any clause or part of any clause of this Agreement shall not affect the validity or enforceability of the remaining clauses or parts of that clause. Any clause or part of a clause that is held by a court of competent jurisdiction to be invalid or unenforceable shall be deemed deleted from this Agreement and, without prejudice to the foregoing, on such deletion, the parties shall agree in writing such amendments to this Agreement as may be necessary for the continued validity and enforceability of the remaining clauses. All notices, requests, consents and other communications required or permitted to be delivered hereunder must be made in writing and delivered by facsimile or by hand, via overnight delivery service or by registered or certified mail, postage prepaid, to the address or facsimile number of the other party in the Term Sheet (or such other address or facsimile number as may be notified in writing by that party for these purposes). Notices shall be deemed to be received at the time at which it would have been delivered in the normal course of post, or in the case of facsimile, on the date on which the facsimile is transmitted by the sender according to the facsimile confirmation report.