

LORD MicroStrain[®]

Terms and Conditions of Sale



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REVISED: January 31, 2013

1. **Acceptance of Terms and Conditions of Sale.** By placing an order with LORD Corporation, dba MicroStrain (“LORD”), Buyer agrees to be bound by these Terms and Conditions of Sale. LORD shall not be bound by any other terms and conditions, regardless of whether Buyer tenders terms and conditions with an order or otherwise. These Terms and Conditions of Sale supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter and shall prevail over any conflicting or additional terms of any quote, order, previous agreement, acknowledgment or similar communications between LORD and Buyer. As used in these Terms and Conditions of Sale, (a) “Product” or “Products” includes all physical LORD products, individually and collectively; and (b) “Software” means the software portion of any Product and/or any software embedded in any Product.
2. **Pricing.** All prices are quoted in US dollars unless otherwise expressly stated and are valid for ninety (90) days. Buyer is solely responsible for payment of all shipping charges, freight costs, taxes, import fees and duties, insurance, value added taxes, and any other charge incident to Buyer’s receipt of Products (“Additional Charges”). Our minimum order is one hundred (\$100.00) dollars, excluding Additional Charges.
3. **Payment:** Payment to LORD shall be made in advance, in U.S. dollars, by credit card, bank draft or letter of credit, unless otherwise agreed in writing by LORD. At the sole discretion of LORD, credit terms of net 30 days up to a pre-approved limit may be offered to Buyer. A late payment charge of one and a half (1.5%) percent per month, or the maximum percentage rate permitted by law, if lower, shall be charged on all past due balances. Buyer agrees to pay all costs and expenses incurred by LORD in collecting or attempting to collect past-due balances, including, but not limited to, third party collection fees, reasonable attorneys’ fees, legal expenses and court costs.
4. **Shipping Terms.** All Products delivered to Buyer by LORD, shall be F.O.B. our distribution center, with risk of loss passing to Buyer upon our delivery of the Products to a common carrier. LORD will arrange payment for shipping and insurance with the carrier, but such costs are the responsibility of Buyer. Delivery times quoted are estimates only and LORD shall not be liable for delays in delivery.
5. **Acceptance & Returns.** Shipments shall be deemed to be accepted by Buyer upon receipt of shipment. Any discrepancy in shipment quantity must be reported to LORD within five (5) days of Buyer’s receipt of shipment. Buyer may return individual starter kits (i.e., not products sold in volume as starter kits) or evaluation units for any reason within thirty (30) days of date of shipment by LORD. All other returns are at the sole discretion of LORD and, if accepted, subject to a re-stocking fee of the greater of twenty-five (25%) percent of the invoiced amount or one hundred (US\$100.00) dollars. All returns must comply with paragraph 13 below. Under no circumstances will LORD refund any Additional Charges. Products which are customized, modified or altered for or by Customer are not eligible for return. LORD shall not be obligated to accept for return any Product which is damaged after it leaves LORD’s distribution center.
6. **Compliance with Laws, Rules & Regulations.** Buyer acknowledges and accepts that: i) Products may be exported from the United States only in accordance with US Export Administration Regulations and diversion contrary to US law is prohibited. Accordingly, Buyer warrants and represents that it is eligible to receive Products under US law and the laws of Buyer’s jurisdiction and Buyer agrees to abide by all export, import and re-export restrictions; ii) Buyer shall be solely responsible for compliance with all laws, rules and regulations pertaining to the use of any Product, including without limitation any use that requires approval from any governmental entity or authority with respect to research, testing or use in commerce; iii) Products sold for biomedical purposes shall only be used for research purposes; iv) any approval required by the US Food and Drug Administration, Internal Review Board (IRB), Human or Animal Experimentation Committee or other governmental entity or authority, whether of the US or any other jurisdiction, must be obtained by Buyer at its sole cost and effort; v) LORD expressly disclaims compliance with any and all such laws, rules, and regulations; and vi) Buyer accepts full and complete responsibility for any such compliance.
7. **Software License.** Upon payment to LORD for any Product that includes Software, LORD grants to Buyer a non-exclusive license to use one copy of such Software on one computer, subject to the following provisions: i) Buyer acknowledges and accepts that Software is protected by applicable copyright laws; ii) upon payment to LORD, title to the medium on which the Software is recorded or stored, not title to the Software, is transferred to Buyer; iii) Buyer may use Software on a multi-user or network system only if (A) the particular Software is expressly labeled by LORD for use on multi-user or network systems, or (B) one copy of the Software is purchased for each node or terminal on which

such Software is to be used simultaneously; iv) Buyer shall not use, make, manufacture, or reproduce copies of Software, provided, however, that Buyer may make copies of the Software for backup or archival purposes only; v) Buyer is expressly prohibited from disassembling or reverse engineering any Software; and vi) all copyright notices shall be retained on all authorized copies of Software (including without limitation those for archival purposes).

8. LIMITED WARRANTIES.

a. **PRODUCTS.** LORD WARRANTS AND REPRESENTS THAT i) ALL PRODUCTS (EXCEPT SPARE PARTS, REPLACEMENT PARTS AND SPARE KITS) SHALL BE FREE FROM MATERIAL DEFECTS IN WORKMANSHIP FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF INVOICE ISSUED BY LORD OR ITS AUTHORIZED DISTRIBUTOR, BUT IN NO EVENT MORE THAN EIGHTEEN (18) MONTHS FROM THE DATE SHIPPED FROM LORD'S DISTRIBUTION CENTER; AND ii) ALL SPARE PARTS, REPLACEMENT PARTS AND SPARE KITS SHALL BE FREE FROM MATERIAL DEFECTS IN WORKMANSHIP FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF INVOICE ISSUED BY LORD OR ITS AUTHORIZED DISTRIBUTOR.

b. **SOFTWARE.** LORD WARRANTS AND REPRESENTS THAT ANY SOFTWARE WILL SUBSTANTIALLY CONFORM TO LORD'S THEN-CURRENT FUNCTIONAL SPECIFICATIONS FOR SUCH SOFTWARE (AS SET FORTH IN THE APPLICABLE DOCUMENTATION) FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF INVOICE ISSUED BY LORD OR ITS AUTHORIZED DISTRIBUTOR, BUT IN NO EVENT MORE THAN EIGHTEEN (18) MONTHS FROM THE DATE SHIPPED FROM LORD'S DISTRIBUTION CENTER ("SOFTWARE WARRANTY PERIOD"), PROVIDED, HOWEVER, THAT THE SOFTWARE IS PROPERLY INSTALLED BY BUYER ON APPROVED HARDWARE AND OPERATED AS DESCRIBED IN ITS DOCUMENTATION. LORD FURTHER WARRANTS AND REPRESENTS THAT DURING THE SOFTWARE WARRANTY PERIOD, THE MAGNETIC MEDIA ON WHICH LORD DELIVERS THE SOFTWARE WILL BE FREE OF PHYSICAL DEFECTS. IN THE EVENT OF ANY BREACH BY LORD OF THIS LIMITED SOFTWARE WARRANTY, LORD'S SOLE OBLIGATION SHALL BE TO REPLACE THE DEFECTIVE MEDIA OR NON-CONFORMING SOFTWARE WITH FUNCTIONAL MEDIA OR SOFTWARE THAT SUBSTANTIALLY CONFORMS TO LORD'S THEN-CURRENT FUNCTIONAL SPECIFICATIONS. IN THE CASE OF REPLACEMENT OF MEDIA OR SOFTWARE, THE LICENSE GRANTED BY LORD WITH RESPECT TO SUCH SOFTWARE SHALL CONTINUE IN FULL FORCE AND EFFECT. IN THE CASE OF REFUND, SUCH LICENSE AUTOMATICALLY TERMINATES UPON ISSUANCE OF REFUND.

c. **FIRMWARE AND SOFTWARE UPDATES.** LORD WARRANTS AND REPRESENTS THAT ANY UPDATE FOR SOFTWARE OR FIRMWARE ("UPDATE") WILL SUBSTANTIALLY CONFORM TO LORD'S THEN-CURRENT FUNCTIONAL SPECIFICATIONS FOR THE APPLICABLE SOFTWARE AND FIRMWARE AS LONG AS SUCH UPDATE IS AVAILABLE FOR DOWNLOAD ON LORD'S WEBSITE, PROVIDED, HOWEVER, THAT (1) SUCH UPDATE IS PROPERLY INSTALLED BY BUYER ON APPROVED HARDWARE AND AS DESCRIBED IN ITS DOCUMENTATION; AND (2) THE PRODUCT OR SOFTWARE TO WHICH SUCH UPDATE IS APPLIED CONTINUES TO BE OPERATED AS DESCRIBED IN ITS DOCUMENTATION. IN THE EVENT OF ANY BREACH BY LORD OF THIS LIMITED WARRANTY ON UPDATES, LORD'S SOLE OBLIGATION SHALL BE TO REPLACE THE DEFECTIVE UPDATE WITH AN UPDATE THAT SUBSTANTIALLY CONFORMS TO LORD'S THEN-CURRENT FUNCTIONAL SPECIFICATIONS.

d. **ORIGINAL BUYER.** THE LIMITED WARRANTIES CONTAINED IN PARAGRAPHS 8a, 8b AND 8c ABOVE EXTEND ONLY TO THE ORIGINAL BUYER AND SUCH LIMITED WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED.

9. **WHAT IS NOT COVERED BY THE LIMITED WARRANTIES.** The Limited Warranties contained in paragraph 8 above are void with respect to: i) any Product, Software or Update which, in LORD's sole judgment, has been subjected to abuse, accident, alteration, modification, tampering, negligence, misuse, faulty installation, lack of reasonable care, repair or service by anyone other than LORD that is in any way not contemplated in the documentation for such Product, Software or Update; ii) any Product, the model or serial number of which has been altered, tampered with, defaced or removed; iii) the initial installation, uninstallation or re-installation of any Product; iv) shipping costs; v) operational adjustments covered in the operating manual for such Product, Software or Update; vi) maintenance, calibration or re-calibration of any Product; vii) damage occurring in shipment or due to acts of nature, failures due to power surges or other Force Majeure causes beyond LORD's control; viii) cosmetic damage; ix) any hardware, software, firmware or other product or service provided or furnished by anyone other than LORD; x) any Product, Software or Update that has

been installed or used outside LORD's technical specifications; xi) refurbished Products; xii) the failure to install any required Firmware or Software Update; and xiii) Products and Software that have been purchased through an inventory clearance or liquidation sale or other sale specifying that such Product is being sold "as is." Repair, calibration or re-calibration by anyone other than LORD will also void any applicable warranties.

10. **EXCLUSION OF ALL OTHER WARRANTIES.** EXCEPT FOR THE LIMITED WARRANTIES CONTAINED IN PARAGRAPH 8 ABOVE, LORD EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OF GOODS OR OF FITNESS FOR A PARTICULAR PURPOSE OR ANY PURPOSE. BY ACCEPTING DELIVERY OF ANY PRODUCT AND/OR SOFTWARE AND/OR BY DOWNLOADING ANY UPDATE, BUYER ACKNOWLEDGES AND AGREES THAT: i) THE VALUE AND USE OF SUCH PRODUCT, SOFTWARE OR UPDATE IS UNRELATED TO THE VALUE OR COST OF ANY REAL OR PERSONAL PROPERTY IN CONNECTION WITH WHICH SUCH PRODUCT MAY BE USED OR ANY SERVICES RELATED TO SUCH PRODUCT WHICH ARE FURNISHED BY ANY PERSON; ii) LORD MAKES NO WARRANTY THAT SUCH PRODUCT, SOFTWARE OR UPDATE WILL AVERT, DETECT OR PREVENT OCCURRENCES OR THE CONSEQUENCES THEREOF WHICH SUCH PRODUCTS, SOFTWARE OR UPDATE MAY HAVE BEEN DESIGNED TO DETECT, AVERT OR PREVENT, OR THAT SUCH PRODUCT, SOFTWARE OR UPDATE MAY NOT BE COMPROMISED, DISABLED OR CIRCUMVENTED; iii) LORD HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO OR FOR THE BENEFIT OF BUYER, WHICH CONTRADICT ANY OF THE FOREGOING; AND iv) "FALSE ALARMS" AND "FALSE READINGS" FROM LORD'S PRODUCTS, SOFTWARE AND UPDATES MAY OCCUR FOR ANY NUMBER OF REASONS AND LORD DOES NOT WARRANT AGAINST SUCH FALSE RESULTS.

11. **Limitations on Liability.**

- a. IN NO EVENT SHALL LORD OR ITS PRINCIPALS, DIRECTORS, SHAREHOLDERS, OFFICERS, EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS, DISTRIBUTORS OR PARENT, SUBSIDIARY OR AFFILIATED ENTITIES ("RELATED PERSONS") BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY DAMAGES OF ANY KIND OR NATURE ARISING OUT OF OR RELATED TO, IN WHOLE OR IN PART, THE USE, MISUSE OR NONUSE OF A PRODUCT, INCLUDING WITHOUT LIMITATION DIRECT DAMAGES, INDIRECT DAMAGES, CONSEQUENTIAL DAMAGES SUCH AS LOST PROFITS AND OTHER ECONOMIC LOSSES, DAMAGES ARISING OUT OF OR RELATED TO PERSONAL INJURY OR DEATH, OR SPECIAL, PUNITIVE, INCIDENTAL, REMOTE OR SPECULATIVE DAMAGES SUFFERED BY BUYER OR ANY THIRD PARTY, EVEN IF LORD WAS ADVISED OR AWARE OF THE POSSIBILITY THAT ANY SUCH DAMAGES MIGHT OCCUR.
- b. IN THE EVENT BUYER SUFFERS ANY SUCH DAMAGES, BUYER'S REMEDY SHALL IN NO EVENT EXCEED THE REPAIR, REPLACEMENT OR COST OF THE PRODUCT AND/OR SOFTWARE PURCHASED FROM LORD OR ITS AUTHORIZED DISTRIBUTOR, AS DETERMINED BY LORD IN ITS SOLE DISCRETION; AND THERE SHALL BE NO OTHER REMEDY AVAILABLE TO BUYER FOR SUCH DAMAGES.
- c. THE LIMITATIONS CONTAINED IN THIS PARAGRAPH 11 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW REGARDLESS OF THE THEORY UPON WHICH LIABILITY OF LORD IS BASED AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12. **INDEMNIFICATION.** BUYER HEREBY INDEMNIFIES AND HOLDS HARMLESS LORD AND ITS RELATED PERSONS FROM AND AGAINST ANY AND ALL LOSSES, COSTS, DAMAGES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, COURT COSTS AND LEGAL EXPENSES) ARISING OUT OF OR RELATED TO: (1) ANY USE, MISUSE OR NONUSE OF A PRODUCT BY BUYER, ANY PERSON ACTING UNDER BUYER'S DIRECTION, CONTROL OR AUTHORIZATION, OR ANY THIRD PARTY, WHETHER SUCH PRODUCT IS USED ALONE OR IN CONJUNCTION WITH THE OPERATION, USE, MAINTENANCE OR SERVICE OF ANY OTHER PRODUCT OR GOOD, TANGIBLE OR INTANGIBLE, AND REGARDLESS OF THE PURPOSE OF SUCH USE, MISUSE OR NONUSE, INCLUDING WITHOUT LIMITATION THE COMPLIANCE OF ANY OTHER PRODUCT OR GOOD WITH ANY SAFETY OR TECHNICAL STANDARD OR SPECIFICATION FOR OPERATION, USE OR MAINTENANCE; AND (2) ANY THIRD PARTY CLAIM ARISING OUT OF RELATED IN ANY WAY TO ANY PRODUCT SOLD TO BUYER.

13. **Warranty Repair.** LORD's sole obligation with respect to any Product which is found to contain any material defect in workmanship within the applicable warranty period shall be, at LORD's sole discretion, either to repair or replace such Product at no charge to the original Buyer, or to refund the purchase price upon return of the defective product to

LORD. The replacement Product need not be new (i.e., it may be used or reconditioned) or be of identical make, model or part, so long as LORD has reasonably determined that it is substantially equivalent or superior in all material respects to the Product being replaced. Repaired or replacement Products will be warranted for the remainder of the original applicable warranty period. All Products (including any part thereof) replaced by LORD or for which the purchase price is refunded shall become the property of LORD upon replacement or refund. All Warranty Repair returns shall comply with LORD's return policy provided in paragraph 14 below.

14. RMA and Warranty Repair Return Policy. If the Product is believed to be defective and is still in warranty, or if LORD has otherwise agreed to accept return of a Product, the Buyer shall (unless otherwise instructed in writing by LORD): i) if the Product is alleged to be defective, provide LORD with a written description in sufficient detail to allow LORD to confirm such defect; ii) obtain a Return Merchandise Authorization (RMA) number from LORD; iii) if requested by LORD, provide written proof of purchase of the Product (such as a copy of the dated purchase invoice for the Product); iv) after an RMA number is issued, package the Product securely in the original or other suitable shipping package to ensure that it will not be damaged in transit, with the RMA number prominently marked on the outside of the package; and v) within fifteen (15) days of issuance of the RMA, ship the Product at Buyer's sole expense to LORD or its distribution point, as indicated by LORD. In addition:

- a. If the Product is being returned for maintenance, calibration, re-calibration or repair, Buyer must not include any manuals or accessories in the shipping package. LORD will only replace the defective portion of the Product and will not ship back any accessories.
- b. Buyer is responsible for all shipping charges to LORD. No Cash on Delivery ("COD") is allowed. Products sent COD will either be rejected by LORD or become the property of LORD, at LORD's sole discretion.
- c. Buyer shall fully insure any Product for return to LORD and LORD shall in no event be responsible for any shipment lost in transit.
- d. Repaired or replaced Products will be shipped to Buyer via UPS Ground or any common carrier selected by LORD, with shipping charges prepaid by LORD. Expedited shipping is available if shipping charges are prepaid by Buyer and only upon request.
- e. LORD may reject or return any Product that is not packaged and shipped in strict compliance with the foregoing requirements or for which an RMA number has not been obtained or is not visible from the outside of the package. The Product owner agrees to pay LORD's reasonable handling and return shipping charges for any Product that is not packaged and shipped in accordance with the foregoing requirements or that is determined by LORD not to be defective or non-conforming.

15. Copyright Statement. No publication or documentation regarding, accompanying or contained in any Product may be reproduced, in whole or in part, in any form or by any means, or used to make any derivative work, including without limitation any translation or adaptation, without LORD's prior written consent.

16. Force Majeure. Except for the obligations to make payments, neither party shall be bound to meet any obligation if prevented from doing so as a consequence of force majeure.

17. Notice. All notifications and communications between the parties relating to this Agreement or the subject matter hereof shall be made in writing and signed by a person duly authorized to provide such notice.

18. Entire Agreement. These Terms and Conditions of Sale shall constitute the entire agreement between Buyer and LORD and shall not be modified or amended, except in writing, signed by Buyer and LORD.

19. No Assignment by Buyer. Neither these Terms and Conditions of Sale nor any license related to Software granted herein may be assigned, sublicensed, leased, sold or otherwise transferred by Buyer without prior written consent from LORD, and any transfer made without such prior written consent shall be null and void. These Terms and Conditions of Sale and any rights granted herein by LORD are personal to Buyer and may be used for personal or internal business use only and may not be used on behalf of a client or customer of Buyer except as authorized in writing by LORD.

20. Enforceability/Severability. If any provision of these Terms and Conditions of Sale shall be held void, voidable, invalid or inoperative, no other provision hereof shall be affected as a result, and accordingly, the remaining provisions shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein, provided, however, that if such void, voidable, invalid or inoperative provision is a material term or

condition, the parties shall be compelled to supply a substitute provision, negotiated in good faith, which comes closest to their original intention.

21. **Waiver.** No provision of these Terms and Conditions of Sale shall be deemed to have been waived by any act or acquiescence on the part of either party, it being understood that waiver may only occur by an instrument in writing signed by an authorized officer of the party against whom such waiver is sought to be enforced. In the event of a waiver, whether in writing or by operation of law, such waiver shall not constitute a waiver of any other provision or of the same provision on another occasion.

22. **Cumulative Remedies.** All rights and remedies of the parties, whether at law or in equity, shall be cumulative and none of them shall be in limitation of any other right or remedy.

23. **Rights of Third Parties.** Nothing in these Terms and Conditions of Sale shall be construed so as to give any right or remedy to any third party whatsoever.

24. **Governing Law.** THE SALE OF PRODUCTS BY LORD AND THESE TERMS AND CONDITIONS OF SALE, TOGETHER WITH ALL INVOICES, CORRESPONDENCE AND OTHER DOCUMENTS EXCHANGED BETWEEN LORD AND BUYER, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF VERMONT, USA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW OR TO THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG), WHICH IS HEREBY SPECIFICALLY DISCLAIMED BY THE PARTIES WITH RESPECT TO ALL OF THE FOREGOING. Any action, suit or proceeding arising out of or related to these Terms and Conditions of Sale, the documents heretofore described and the related subject matter of the foregoing shall be brought only in a federal or state court of competent jurisdiction located in the county in which LORD has its principal place of business at the time of filing of such action, suit or proceeding, and the Parties hereby unconditionally and irrevocably consent and submit to such exclusive jurisdiction and waive any objection that either of them may now or hereafter have with respect thereto.

25. **Headings.** The paragraph headings in these Terms and Conditions of Sale are solely for the convenience of the parties and have no legal or contractual significance.

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