

1. **GENERAL:** The price(s) set forth on the face hereof supersede all prior quotations submitted by LUMETRICS®, Inc. and, unless otherwise indicated on the face hereof, shall remain valid for a period of 30 days from the date of submission to Customer. By placing an order, Customer agrees to obtain and utilize the system, Software (as defined below) and any other equipment detailed on the face hereof (collectively the "System"), each exclusively on the terms and conditions stated herein.
2. **SOFTWARE LICENSE:** As a condition to using the System, Customer has agreed to be bound by the terms of and conditions of the Software End User License Agreement ("Software Agreement") accompanying this quotation. The terms and conditions of Software Agreement are hereby incorporated by reference into these Terms and Conditions. **INTEGRATED SOFTWARE:** LUMETRICS® owned software ("Software") is integrated into LUMETRICS® equipment, and LUMETRICS® hereby grants to BUYER a non-exclusive license to use the Software only as part of and in conjunction with the equipment into which the Software is integrated. BUYER acknowledges that it does not acquire any right, title, or interest in Software. Under no circumstances may BUYER copy, modify, decompile, reverse assemble, reverse engineer or make available to any other person or entity any Software without LUMETRICS' written approval. BUYER's use of third-party-owned software delivered by LUMETRICS® shall be subject to the terms and conditions of such third-party's license agreement. LUMETRICS® owned software ("Software") is integrated into LUMETRICS® equipment, and LUMETRICS® hereby grants to BUYER a non-exclusive license to use the Software only as part of and in conjunction with the equipment into which the Software is integrated.
3. **DELIVERY AND SHIPMENT:** Delivery is Ex Works (EXW – INCOTERMS 2000), Rochester, NY. All shipping charges are the responsibility of the BUYER. In the absence of specific shipping instructions from the BUYER, LUMETRICS®, Inc. (LUMETRICS®) will ship by what it deems the most appropriate method.
4. **FORCE MAJEURE:** LUMETRICS® shall not be liable for delays in delivery or failure to manufacture due to causes beyond its reasonable control such as, acts of GOD, acts or omissions of BUYER, acts or omissions of civil or military authority, fires, strikes, floods, epidemics, quarantines, riots, wars, or any other cause beyond its reasonable control. In the event of such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.
5. **PRICING & PAYMENT TERMS:** Unless otherwise stated in LUMETRICS' quote, terms of payment are Net 30 days. All overdue accounts are subject to a charge of One and One-Half Percent (1.5%) per month on overdue balances. All prices are relative to Ex Works (EXW – INCOTERMS 2000), Rochester, NY. Transportation charges are for the account of the BUYER unless otherwise stated. Prices also do not include any Federal, State, or Local taxes or other governmental charges upon or with respect to the sale, purchase, manufacture, delivery, storage, processing, use, or consumption of any of the goods or services covered hereby.
6. **TAXES:** Prices quoted do not include sales, excise, use, use of similar taxes. BUYER is responsible for all such taxes. If product is delivered to California, taxes will be charged by Lumetrics® with the rate based on county of shipment. This amount will be included on the invoice and paid by Lumetrics® to California.

- 7. SERVICE:** Unless specifically listed, no service is included beyond what is specifically set forth in the face hereof. Any services beyond the warranty or services specified herein must be under a separate service contract between the parties, and shall be provided at then-current pricing terms. If extended service is noted in a separate line item on the face hereof, it includes (unless otherwise noted on the face hereof) the following: telephone software support, software upgrades, and labor cost to realign and clean optical and mechanical components not otherwise damaged. Extended Service does not include on-site support unless otherwise noted on the face hereof. Damaged components that are under warranty will be replaced at LUMETRICS' cost. All repair and service will take place at LUMETRICS® in Rochester, NY. Customer will pre-pay shipping to and from the factory. Extended service does not apply to computer components covered by the manufacturer's warranty.
- 8. CHANGES REQUESTED BY CUSTOMER:** The System provided by LUMETRICS® shall be as specified in LUMETRICS' written quotation. In the event that Customer desires to make any changes to the System and should LUMETRICS® agree (in its sole discretion) to any request by Customer which involves extra cost to LUMETRICS®, such extra cost may be charged by LUMETRICS® and shall be paid for by Customer, and the scheduled delivery and/or completion other dates shall be extended appropriately.
- 9. INSTALLATION:** Customer shall be responsible for installing the System at Customer's sole cost and expense unless otherwise noted on the purchase order.
- 10. SYSTEM OPERATION:** Customer shall comply with, and shall cause each user of the System to comply with, all then-current laws, rules and regulations of any governmental authority applicable to use of the System. The System obtained by the Customer is solely for use by the Customer at the Customer's site, and may not be loaned, rented, leased, sold, licensed, sublicensed, assigned or otherwise transferred, and any attempt to do so will constitute a material breach of the Software License, and give LUMETRICS® a right of immediate termination.
- 11. CLERICAL ERRORS:** LUMETRICS® reserves the right to correct clerical, arithmetical, or stenographic errors or omissions in quotations, orders, acknowledgements, invoices, or other documents.
- 12. PARTIAL DELIVERIES:** Unless LUMETRICS® and BUYER agree otherwise in writing, partial deliveries shall be acceptable to BUYER.
- 13. PACKAGING FOR SHIPMENT:** Goods are packed in LUMETRICS's standard packing for shipment in the United States and are not packed for export shipment, unless LUMETRICS® agrees otherwise in writing prior to entry of the order.
- 14. CANCELLATIONS, CHANGES OR DELAYS:** Once accepted by LUMETRICS®, an order is not subject to cancellation or change except on terms acceptable and satisfactory to LUMETRICS®. Direction by the BUYER to cancel may be treated as a repudiation making the BUYER immediately liable for loss, expense, or other damages. It is understood that a cancellation charge will be due from BUYER to LUMETRICS® computed on the basis of costs (direct and indirect) accumulated including without limitation, labor, materials and engineering related to this quotation and the articles described herein, plus 10% of the quoted prices as liquidated damages and not as a penalty for such cancellation and loss of bargain. The cancellation charge shall be payable at the time of receipt of BUYER's written notice of cancellation at LUMETRICS' office. In the event that BUYER causes or requests (i) changes to be made which affect the delivery, installation, specifications, completion dates, or otherwise, or (ii) the work to be delayed, whether directly or by other contractors or because the facilities, including utilities, electrical hookup, site preparation, governmental permits, approvals or licenses, apparatus or other conditions to be provided or arranged by BUYER are lacking or insufficient, BUYER will reimburse

LUMETRICS® for any expense incurred by LUMETRICS® in respect of or resulting from each such change or delay upon presentation by LUMETRICS® of a simple invoice. Any additional services or equipment not specifically set forth herein shall be at BUYER's additional expense.

- 15. STORAGE:** If any shipment of material is postponed by direction of the BUYER, LUMETRICS® may at any time after the original date of shipment, pack, hold, and invoice such material as if it then shipped, same being then held at BUYER's risk and subject to LUMETRICS's storage charges, and upon full payment shall then become the property of the BUYER.
- 16. INSTALLATION, START UP:** BUYER understands that title to and all risks concerning the equipment shall pass to the BUYER at LUMETRICS's plant F.O.B. Installation and startup of the equipment are the obligation of the BUYER. BUYER shall bear all costs and expenses for transportation, rigging, drayage, insurance, site preparation, installation, and start up, including without limitation the providing or arranging for all necessary permits, clearances, licenses, utility hookups, consultants, contractors, labor, supervisory licenses and engineering personnel, tools and equipment, and all other related costs and expenses. In the event that LUMETRICS® contracts to provide personnel to observe, guide, or assist in the installation or start-up of the equipment; this shall in no way limit the BUYER's responsibility as set forth above. The scope of the services rendered by the LUMETRICS's personnel shall be strictly limited to those specified on the face hereof.
- 17. INTEGRATED SOFTWARE:** LUMETRICS® owned software ("Software") is integrated into LUMETRICS® equipment, and LUMETRICS® hereby grants to BUYER a non-exclusive license to use the Software only as part of and in conjunction with the equipment into which the Software is integrated. BUYER acknowledges that it does not acquire any right, title, or interest in Software. Under no circumstances may BUYER copy, modify, decompile, reverse assemble, reverse engineer or make available to any other person or entity any Software without LUMETRICS' written approval. BUYER's use of third-party-owned software delivered by LUMETRICS® shall be subject to the terms and conditions of such third-party's license agreement.
- 18. WARRANTY:** LUMETRICS® warrants that at the time of delivery and for a period of one (1) year thereafter LUMETRICS® equipment sold will be in conformity with its published specifications and free from defects in material and workmanship, and the Software will enable the equipment to perform substantially in compliance with its specifications. LUMETRICS® makes no warranty with respect to commercial items and software produced by other parties and incorporated into LUMETRICS® products. Such third-party commercial items and software are covered only by the warranties given by such third parties. Customer is responsible for any shipping charges for replacement parts except as noted below. The Limited Warranty is applicable only to the original Customer or purchasing organization and is not applicable if Customer is in breach of any of the terms of this Agreement. The sale or transfer of the Equipment System to another individual or organization invalidates this warranty. **IN THE EVENT OF A BREACH OF THE FOREGOING WARRANTIES, LUMETRICS® SOLE LIABILITY AND OBLIGATION WILL BE TO REPAIR OR REPLACE, IN ITS SOLE DISCRETION, DEFECTIVE EQUIPMENT AND/OR SOFTWARE. THE FOREGOING, ARE THE SOLE WARRANTIES MADE BY LUMETRICS® WITH RESPECT TO EQUIPMENT AND SOFTWARE. LUMETRICS® SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR USE. LUMETRICS® DOES NOT WARRANTY THAT OPERATION OF ANY OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.** The foregoing warranties do not apply to any equipment and/or software that has been altered or repaired by other than LUMETRICS® has been subjected to issues, improper maintenance, negligence or accident, has been damaged by excessive current or otherwise, or has had its serial number or any part thereof altered, defaced or removed.

- 19. RETURN OF MATERIAL:** Material may not be returned to LUMETRICS® for (at LUMETRICS' election) repair or replacement or credit or otherwise without its prior authorization, and LUMETRICS® will not accept any responsibility for materials returned without such authorization. All transportation costs incident to the shipment of any material to or from LUMETRICS® under this or the foregoing paragraph shall be charged against the BUYER.
- 20. EXCLUSIONS FROM LIMITED WARRANTY.** This limited warranty specifically excludes the following conditions: (1) Damage to the wavefront sensor caused by excess optical power or any physical electrical or telecommunications infrastructure external to the Hardware. In the event this condition is determined, LUMETRICS® will provide a quotation for the repair or replacement of the damaged component(s); (2) System subjected to misuse, accident, neglect, or improper application, nor repaired or altered by other than LUMETRICS® or those authorized by LUMETRICS® in writing; (3) Any and all damage and/or repair, recovery or installation costs associated with computer viruses, worms, Trojan horses or other malicious computer software whether induced via network, software transfer, file access or other form, (4) Correction of user problems related to environmental conditions beyond the control of LUMETRICS®; (5) Operation outside of the environmental specifications of the Hardware; (6) Use of the Hardware in a manner that contravenes the instructions provided by LUMETRICS®; (7) Use of Hardware in manner for which it was not intended
- 21. LIMITATIONS OF DAMAGES:** Under no circumstances shall LUMETRICS® be liable for incidental, special or consequential damages, including, but not limited to, any claimed loss of profits, even if LUMETRICS® was advised of the possibility of such damages, LUMETRICS' liability shall be exclusively limited to the repair or replacement of any nonconforming items and the BUYER expressly waives any other remedy or measure of damage, statutory or otherwise arising out of, in connection with, or resulting from performance or non-performance under this order, and/or in the event of failure of the limited remedy, shall not exceed the purchase order price.
- 22. CONFIDENTIALITY:** The pricing terms of this Agreement are confidential to LUMETRICS®, and are to remain confidential except to the extent disclosure is required pursuant to judicial or government action, with advance notification to the other party in order to enable it to oppose such disclosure and/or seek a protective order with respect thereto.
- 23. EXPORT:** In accordance with U.S. export control laws and regulations, Customer agrees not to export or re-export, either directly or indirectly, any commodity, software, or technical data, as defined by the U.S. Export Administration Regulations, to any destination to which such export or re-export is restricted or prohibited by U.S. laws or regulations. This includes software, products, processes, and services received from LUMETRICS®. Such items may not be exported unless Customer obtains, at Customer's own expense and to the extent required by these laws and regulations, prior authorization from the U.S. Department of Commerce and/or other competent government regulatory agencies. In the event that export authorization is refused, Customer shall not be entitled to return commodity, software, or technical data or to request compensation. This clause shall remain in place after the contractual relationship between LUMETRICS® and Customer has expired or been terminated.
- 24. MODIFICATIONS:** LUMETRICS® reserves the right to modify or change equipment and software in whole or in part, at any time prior to delivery thereof, in order to include therein improvements deemed appropriate by LUMETRICS® without changing the specifications and without incurring liability to modify or change any items previously delivered, or to supply new equipment and/or software in replacement thereof.

- 25. PATENTS:** LUMETRICS® shall hold harmless and defend BUYER and its customers from all loss, damages or liability for, or by reason of, any actual or alleged infringement of any United States patent or trademark arising out of the use or sale of LUMETRICS® equipment delivered to BUYER hereunder; provide however, that BUYER promptly notifies LUMETRICS® in writing of such suit or threat thereof and cooperates by giving LUMETRICS® any requested authority, information and assistance. The foregoing indemnity shall not apply in instances in which normally non-infringing LUMETRICS® products are rendered infringing by BUYER's alterations, combination with other equipment or use of said equipment, or as the result of LUMETRICS® compliance with BUYER's instructions.
- 26. REJECTION OF BUYER'S TERMS AND CONDITIONS:** These Seller's terms and conditions except as specifically modified by the BUYER's Purchase Order Contract to resolve the specific document conflicts between SELLER's T&C's and BUYER's Purchase Order will be the sole terms and conditions applicable to this order being accepted by LUMETRICS®.
- 27. CHOICE OF FORUM AND GOVERNING LAW:** Disputes between SELLER and BUYER shall be resolved in the courts of the State of New York situated in Monroe County, New York., if not settled by negotiations between the parties. This agreement shall be construed and enforced in accordance with the laws of New York State, without reference to its rules governing the resolution of conflicts of laws. The provisions of the Convention on Contracts for the International Sale of Goods shall not be applicable.

**LICENSOR:**

LUMETRICS®, Inc.

Eagle's Landing Business Park

1565 Jefferson Road, #420

Rochester, NY 14623

- 1. NOTICE TO END USER:** This Software End User License Agreement ("Software Agreement") is a legal document between the end user ("BUYER") and LUMETRICS®, Inc. Before BUYER opens the package containing the media and security key, BUYER should carefully read the terms and conditions of this Software Agreement. By opening the package, you are consenting to be bound by and are becoming a party to this Software Agreement. If BUYER objects to the terms of this Software Agreement, return the unopened package and system within 30 days of purchase. The software enclosed in this package and included on the system hard disk is distributed by LUMETRICS® for use in connection with LUMETRICS®' products, and is protected by copyright.
- 2. LICENSE GRANT:** LUMETRICS® hereby grants to BUYER, a non-exclusive, non-transferable limited license to use its proprietary computer software product ("Software") contained in this package and/or included with the Product, subject to the terms and conditions set forth in this Software Agreement. The term of this license commences upon delivery of the Software to BUYER and is indefinite unless terminated upon default or as otherwise set forth herein. This license is personal to BUYER and may not be transferred or assigned without the prior written consent of LUMETRICS®. BUYER may physically move the Software from one computer to another provided that the Software is used only on one computer at a time. If BUYER has purchased a license, which may be shared among multiple users, the license shall be limited to the number ("Number") of concurrent users specified on BUYER's contract, purchase order, or invoice. If BUYER desires to increase the Number, BUYER may do so by notifying LUMETRICS® and paying LUMETRICS®' then current U.S. list price.
- 3. TITLE:** Title, ownership rights, and intellectual property rights in and to the Software are not transferable by BUYER and shall remain in LUMETRICS®. BUYER may not loan, lease, transfer, assign, or rent the Software. BUYER acknowledges that all Software is licensed and not sold. BUYER acknowledges that the Software in source code form remains a confidential trade secret of LUMETRICS® and, therefore, BUYER agrees not to attempt to decompile, decipher, reverse engineer, create derivative works of, or develop source code for the Software or knowingly allow others to do so. BUYER also agrees not to tamper with, or attempt to defeat the purpose of the hardware lock supplied as part of the Software, or to knowingly allow others to do so. BUYER agrees to notify BUYER's employees and agents who may have access to the Software of the restrictions contained in this Software Agreement and to ensure their compliance with such restrictions.
- 4. UPGRADES:** This Software License shall not impose any obligation, expressly or by implication, for LUMETRICS® to provide or license any software upgrades, software updates, or additional software beyond those expressly set forth herein. In general, the availability of such upgrades, updates, or additional software will be at LUMETRICS®' discretion, and subject to any additional terms or conditions, including additional fees, as LUMETRICS® may establish in its sole discretion. However, LUMETRICS® may, from time to time and in its sole discretion, elect to make software upgrades,

software updates, or additional software available to existing customers at no extra charge (a “**Special Release**”). In the event a Special Release becomes commercially available during the term of this Software License and BUYER’s payments are current and BUYER is not in breach of any agreement between BUYER and LUMETRICS®, LUMETRICS® will make available such Special Release to BUYER, which shall be installed by BUYER.

5. **SOFTWARE LIMITED WARRANTY:** LUMETRICS® warrants that the Software shall perform in accordance with the user manuals delivered by LUMETRICS® to BUYER for a period of ninety (90) days from the date of delivery of the Software by LUMETRICS® to BUYER. The entire and exclusive liability and remedy for breach of this Limited Warranty shall be limited to replacement of the defective Software provided by LUMETRICS®, and shall not include or extend to any claim for or right to recover any other damages, including but not limited to, loss of profit, data or use of the Software, or special, incidental or consequential damages or other similar claims, even if LUMETRICS® has been specifically advised of the possibility of such damages. In no event will LUMETRICS’ liability for any damages to BUYER or any other person ever exceed the actual price paid for the Software, regardless of any form of the claim. LUMETRICS® specifically disclaims all other warranties, express or implied, including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose. LUMETRICS® does not warrant that BUYER use of the Software will be uninterrupted or that the operation, results, or data generated by the Software will be error free. This limited warranty is applicable only to the original purchaser (“BUYER”) or purchasing organization and is not applicable if BUYER is in breach of any of the terms of this Software Agreement.
6. **EXCLUSIONS FROM LIMITED WARRANTY:** The limited warranties set forth above each specifically exclude the following conditions: (1) Software subjected to misuse, accident, neglect, or improper application, nor repaired or altered by other than LUMETRICS® or those authorized by LUMETRICS® in writing; (2) Any and all damage and/or repair, recovery or installation costs associated with computer viruses, worms, Trojan horses or other malicious computer software whether induced via network, software transfer, file access or other form, (4) Correction of user problems related to environmental conditions beyond the control of LUMETRICS; (5) Operation outside of the environmental specifications of the Software; (6) Use of the Software in a manner that contravenes the instructions provided by LUMETRICS®; (7) Use of the Software in manner for which it was not intended; or (8) “Force Majeure” events such as such as acts of God, fire, flood, explosion, earthquake or other natural forces, war, civil unrest, accident, destruction or other casualty, any act, inaction or delay of any government or government agency, any lack or failure of transportation facilities, any lack or failure of supply of raw materials, any strike or labor disturbance, or any other event similar to any of the foregoing.
7. **Disclaimer:** Except as expressly set forth in this agreement, the software is provided “as is” and LUMETRICS® disclaims all other representations, warranties, or guarantees with respect to the software, whether expressed or implied by operation of law or otherwise, including, but not limited to any implied warranties of merchantability, fitness for a particular purpose, non-infringement of third-party rights, or that the operation of the software will be uninterrupted or error free. LUMETRICS® shall not be responsible for any acts of commission or omission of any person other than its own employees. BUYER shall bear all risk relating to quality and performance of the software and equipment.
8. **Limitation of Liability:** Under no circumstances and under no legal theory, tort, warranty, contract, or otherwise, shall LUMETRICS® (or any of its affiliated companies) be liable to BUYER or any other person for any indirect, special, incidental, or consequential damages of any character including, without limitation, damages for loss of goodwill, loss of revenue or profits, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, arising out of or in connection

with the installation, performance, failure, use or interrupted use or unauthorized use of the software or equipment, even if LUMETRICS® shall have been informed of the possibility of such damages. LUMETRICS® (and its affiliated companies) aggregate liability for any loss or damage arising out of or resulting from this agreement or its performance or breach, or otherwise in connection with the use of the software or equipment, will in no case exceed the price paid by BUYER to license the software and price paid for the equipment which give rise to the claim.

- 9. TERMINATION:** Either party may terminate this Software Agreement immediately in the event of breach of the terms of this Software Agreement. Upon termination of this Software Agreement, you shall immediately discontinue your use of the Software and shall within 10 days return to LUMETRICS® all copies of the Software. BUYER obligations to pay accrued charges and fees and "Limitation of Liability" section above shall each survive any termination of this Software Agreement. This Software Agreement shall terminate immediately upon BUYER's receipt of a new version of the Software.
- 10. CHOICE OF LAW:** This Software Agreement shall be construed and enforced in accordance with the laws of the State of New York without regard to any principles regarding choice or conflict of laws.
- 11. MISCELLANEOUS:** The acceptance of any purchase order placed by BUYER (no matter when received) for the Software and/or Equipment System is expressly made conditional on BUYER's assent to the terms and conditions set forth herein, and LUMETRICS® agrees to furnish the Software and Equipment System only upon the terms and conditions set forth in this Software Agreement and Sales Agreement and not those contained in BUYER purchase order. As such, LUMETRICS® specifically disclaims any terms and conditions appearing on a purchase order or similar document issued by BUYER, which shall not be binding on LUMETRICS® (regardless of when received by LUMETRICS), unless agreed to in writing by LUMETRICS. If there is any conflict between this Software Agreement or any purchase order, this Software Agreement shall control even if (i) such purchase order provides that the terms and conditions therein shall supersede any other agreement between LUMETRICS® and BUYER, or (ii) your purchase order incorporates any implied Uniform Commercial Code terms. If any provision of this Agreement is held to be ineffective, unenforceable, or illegal under certain circumstances for any reason, such decision shall not affect the validity or enforceability (i) of such provision under other circumstances, or (ii) of the remaining provisions hereof under all circumstances and such provision shall reformed to and only to the extent necessary to make it effective, enforceable, and legal under such circumstances. No failure or delay by the parties in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other further exercise thereof or the exercise of any right, power or privilege hereunder.