
**BRONKHORST USA INC.
TERMS AND CONDITIONS OF SALE**



TERMS AND CONDITIONS - These Terms and Conditions of Sale, comprising 6 pages, are issued and used by Bronkhorst USA Inc., a corporation having its principal place of business in Bethlehem, Commonwealth of Pennsylvania, USA, and apply to any and all sales made to and use by Purchasers and or (end-)Users. Bronkhorst USA Inc. is hereinafter referred to as "Bronkhorst".

DEFINITIONS - For the purposes of these Terms and Conditions of Sale the following expressions shall have the meaning given to them below:

- (a) Services: any and all work, in whatever form and howsoever named (services, maintenance, contracting of work, lending of staff, repairs, etc), carried out by Bronkhorst for or for the benefit of the Purchaser and or (end-)User;
- (b) Documentation: operating instructions developed by Bronkhorst for the Software and/or Products about the features, functions and/or use of the Software and/or Products;
- (c) Purchaser and or (end-)User: each natural person or legal entity on whose instruction Bronkhorst supplies Products and/or renders Services;
- (d) Order: each order from a Purchaser for a Product or Service, in whatever form;
- (e) Products: any and all measuring instruments, Software and/or other items delivered and/or produced by Bronkhorst, including documentation, drawings, testing equipment and any other results from Services rendered by Bronkhorst, which are the subject-matter of an Order; the expression Products is used in the plural in these terms and conditions, but it may also relate to a single Product;
- (f) Software: computer Software in object code, as well as any improved versions and new releases of such Software, including accompanying Documentation and carriers.

ACCEPTANCE OF TERMS AND CONDITIONS - Acceptance of Purchaser's Order is expressly subject to Bronkhorst's terms and conditions of sale, contained herein, which shall take precedence over any other conditions, and no contrary, additional or different provisions or conditions shall be binding on Bronkhorst unless accepted by an officer of Bronkhorst in writing. If the terms and conditions contained herein differ in any way from the terms and conditions of Purchaser's Order, this acknowledgement shall be construed as a counteroffer and shall not be effective as an acceptance of such Order unless Purchaser assents to the terms and conditions contained herein. The failure of Purchaser to object thereto in writing within ten (10) days from the date of receipt hereof shall constitute assent thereto. The terms and conditions contained herein shall constitute the complete and only agreement between Bronkhorst and Purchaser, it being intended by the parties that this document sets forth the entire agreement between the parties hereto as to purchase of the Products described herein.

BUSINESS HOURS - Our main office in Bethlehem (PA) is open 9:00 AM to 5:00 PM, local time, Monday through Friday.

ORDERS - Orders may be emailed to sales@bronkhorstusa.com. Facsimile Orders may be directed to (610) 866-9212. Pickups may be made between the hours of 9:00-12:00 or 1:00-4:00 Monday through Friday. Please call to schedule loading dock time. All Orders shall only become legally binding upon acceptance by Bronkhorst's main office in Bethlehem, Pennsylvania.

TERMS - Unless otherwise agreed upon, new accounts shall be required to pre-pay or receive shipment via COD, "cash only" (a COD fee shall apply). Bronkhorst may require full or partial payment guarantee in advance of shipment if it concludes that the financial condition of the Purchaser so warrants. Please allow adequate time for checks to clear before shipping. US\$25.00 or CAD\$40.00 will be charged for returned checks. Once credit has been established, terms of payment shall be Net 30 calendar days from date of invoice. Interest shall accrue and Purchaser agrees to pay interest at the rate of 1.5% per month on all overdue accounts where the applicable law permits. Title to any Products delivered to the Purchaser (not being Software) shall remain vested in Bronkhorst until any and all amounts due from the Purchaser in respect of the products delivered or to be delivered, or work performed or to be performed, and any other amount due

from the Purchaser on account of failure to fulfil its payment obligation have been paid in full. If the Purchaser should form a new item from, inter alia, Products delivered by Bronkhorst, the Purchaser shall form such new item only for the benefit of Bronkhorst and the Purchaser shall keep such item in custody for Bronkhorst until the Purchaser has paid any amount owed by it; in such case Bronkhorst shall, until the Purchaser has made payment in full, have any and all rights as the owner of the newly formed item. Title or intellectual property rights to Software shall never be transferred to the Purchaser and or (end-)User; a right of use is granted in accordance with these Terms and Conditions of Sale. The Purchaser shall be obliged to keep the Products delivered subject to retention of title carefully and as recognizable property of Bronkhorst, and to insure them against risks such as fire, explosion, damage and theft. At Bronkhorst's first request for this purpose, the Purchaser shall assign to Bronkhorst any right vis-à-vis the relevant insurers in this respect. Bronkhorst shall have the right to suspend the fulfillment of its obligations, without any liability resulting from such suspension, if and for as long as the Purchaser fails to fulfil its payment obligations or fails to fulfil them in full. When Purchaser is still in default after 60 calendar days from date of invoice, Bronkhorst is entitled to retrieve Bronkhorst products from Purchaser's possession, regardless of whether or not the products have become part of an installation and/or are crucial to Purchaser's company. Purchaser shall be responsible for all reasonable costs of collection of payment for Products, including attorney's fees. All Local, State, Provincial and Governmental Taxes are the responsibility of the Purchaser, unless specified otherwise on the Order confirmation or invoice.

SECURITY INTEREST - To secure the prompt payment of any sums which Purchaser is obligated to pay to Bronkhorst hereunder, Purchaser hereby grants to Bronkhorst a first priority continuing security interest in and lien upon (i) all Products owned or under the possession and control of Purchaser, now or hereafter in existence and (ii) all "Products", "Accessions" and "Proceeds" of any of the foregoing (as such terms are defined in the applicable Uniform Commercial Code) (collectively, the "Collateral"). Upon the failure of Purchaser to pay to Bronkhorst any sums owed pursuant to this Agreement or any invoice for Product sold or delivered to Purchaser by Bronkhorst, Bronkhorst shall have all of the rights and remedies available to a secured party under the Uniform Commercial Code of the Commonwealth of Pennsylvania or similar law or statute, including, without limitation, the right to conduct public or private sale(s) of the Collateral and the right of Bronkhorst to purchase any of such Collateral at such sale(s).

DELIVERY, INSTALLATION & SITE PREPARATION - Promises of delivery from stock are subject to prior sale. Delivery dates are not guaranteed but are estimated on the collection of necessary information and the absence of delays, direct or indirect. Bronkhorst will in good faith endeavor to meet estimated delivery dates. In the absence of explicit arrangements in this regard, the Purchaser and or (end-)User shall install, arrange, parameterize, tune and, if required, adapt the equipment and environment used, Purchaser and or (end-)User assumes responsibility for compliance with local laws, electrical codes, etceteras, and obtain any permits required for installation and use.

TRIAL DELIVERY - If the Purchaser and Bronkhorst have agreed that a Product will be delivered on trial, the Products shall fully remain at the Purchaser's risk during the trial period. Bronkhorst shall retain all property rights as described in these Terms and Conditions of Sale. An invoice shall always accompany a Product delivered on trial for the Product, the invoice being due and payable on the trial period expiry date. During the trial period, the Purchaser shall have the right to return the Products to Bronkhorst without being required to purchase any of them; any costs of returning the Products including freight charges shall be for Purchaser's account. The original invoice will be credited upon Bronkhorst's receipt of the returned Product in sound and similar condition, to be determined by Bronkhorst. If and when any service or repair to a returned Product is required, any related expenses will be invoiced to and shall be paid for by the Purchaser. By retaining the Products after termination of the trial period, the Purchaser tacitly agrees to purchase the Product used on trial and, in the case of Software, the accompanying license. The invoice for the Product retained shall then immediately be due and payable. Bronkhorst may set deviating terms in regard to crediting invoices regarding returned Products, should those be custom-made, out of date, unsaleable, etceteras.

CLAIMS – Bronkhorst are not responsible for damaged products after pickup by carrier. All shipments must be thoroughly inspected upon delivery. Any damage or shortage must be noted on the delivery receipt and signed by the delivering driver. Loss or damage claims must be reported immediately to Bronkhorst's main office, provided a Bronkhorst contracted carrier was used for delivery. Any claim for a shipment by a carrier arranged or contracted by the Purchaser must be reported by the Purchaser directly to their carrier.

SPECIFICATIONS & TECHNICAL ADVICE – Bronkhorst has given all specifications with respect to figures, measurements, weights and/or other indications of the Products and/or Services with due care, but Bronkhorst cannot warrant that no differences will occur in respect hereof. Samples, drawings or models shown or provided shall only be indications of the relevant Products and/or Services. The pictures and sketches in any specification sheets are intended to show the general features of the equipment, but Bronkhorst reserves the right to supply state-of-the-art equipment. When the Purchaser proves that the Products and/or Services provided deviate from Bronkhorst's specifications or from the samples, drawings or models to such an extent that the Purchaser cannot reasonably be obliged to take delivery thereof, the Purchaser shall be entitled to cancel the Order, but only if such cancellation shall, within reason, be necessary. Bronkhorst assumes no obligation or liability, express or implied, on account of any recommendations, opinions or advice as to the choice, installation or use of products. Any such recommendations, opinions or advice are given and shall be accepted at Purchaser's own risk and shall not constitute any warranty or guarantee of such products or their performance.

RETURNS - No products may be returned to Bronkhorst without prior authorization from Bronkhorst office or it will be refused. Freight charges and a restocking charge up to 40% are charged on all returns unless products are defective (minimum charge US\$50.00 or CAD\$75.00). Items that are special ordered, made to Purchaser's specifications, non-inventory or non-stock items, cannot be returned for any credit due to their special nature (unless found defective).

LIMITED WARRANTY – IMPORTANT NOTICE TO PURCHASER AND OR (END-)USER: THE FOLLOWING IS MADE IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED. If the Purchaser reports to Bronkhorst in writing within 3 years after delivery that the Product or any part thereof does not function or does not meet the product specification and this has, in Bronkhorst's opinion, been sufficiently substantiated, Bronkhorst shall, at its option, either deliver at no cost new Products for the Products that proved to be defective against the returning of the Products that proved to be defective, properly repair the relevant Products, or grant the Purchaser a discount on the purchase price; such discount to be fixed in mutual consultation. By performing any of the actions set forth above, Bronkhorst shall be fully discharged from its guarantee obligations and Bronkhorst shall not be obliged to make any further payment or to pay damages. In the event of servicing and/or repair work, the guarantee provisions as set forth heretofore shall be applicable, in respect of which the guarantee period for servicing and/or repair work and new parts is limited to 1 year after redelivery, unless the guarantee period for the original delivery covered a longer period. The Products shall remain at the Purchaser and or (end-)User's full risk in the event that Bronkhorst conducts repairs to the Products, unless such repairs are the consequence of a defective performance by Bronkhorst and the Purchaser and or (end-)User cannot reasonably be expected to insure the Products against the risk referred to above. The guarantee shall expire if the Purchaser and or (end-)User itself has repaired the Product or has had repairs carried out by third parties. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, BRONKHORST MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER. IN PARTICULAR, BRONKHORST EXCLUDES ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND SATISFACTORY QUALITY.

MAINTENANCE & MALFUNCTION – Bronkhorst shall exert itself to remedy malfunctions that are properly reported to Bronkhorst by the Purchaser within a reasonable period of time. For the purposes of this section, "malfunction" shall be understood to mean non-compliance or interrupted compliance with the equipment's specifications as explicitly published by Bronkhorst in writing. It shall only be a matter of malfunction if the Purchaser can prove it and if it can be reproduced. Bronkhorst shall, inter alia, reserve the right to suspend its maintenance obligations during the period in which circumstances occur at the location of the Products that, in Bronkhorst's opinion, entail risks for the safety or health of Bronkhorst's staff. Immediately after a malfunction has occurred in the Product, the Purchaser shall notify Bronkhorst hereof by means of a detailed description of the malfunction drawn up by an employee of the Purchaser who is an expert on the matter. At Bronkhorst's option, the Product shall be shipped by the Purchaser to Bronkhorst. Shipping charges shall be payable by the Purchaser; the Purchaser shall also bear the risks of forwarding. The Purchaser shall bear the risk of loss and theft of or damage to the Products during the period that Bronkhorst is in possession of these for the purpose of maintenance. It shall be the Purchaser's choice whether to insure such risks. The price for maintenance and other Services shall be fixed on the basis of actual costs. Any hours spent by Bronkhorst in performing Services (including maintenance), including travel time, may be invoiced, additional to the costs for materials and any other costs reasonably incurred by Bronkhorst in performing the Services.

PERFORMANCE OF SERVICE - Bronkhorst shall make every effort to perform the Services to the best of its abilities, where appropriate in accordance with the arrangements and procedures agreed with the Purchaser in writing. Any and all Services rendered by Bronkhorst shall be performed on the basis of an obligation to perform to the best of Bronkhorst's abilities, unless and insofar as Bronkhorst explicitly promised a result in the written agreement and the result concerned has also been sufficiently clearly stated. Any arrangements relating to a level of service shall only be expressly agreed in writing. Where it has been agreed that the Services are to be performed in phases, Bronkhorst shall have the right to postpone commencement of the Services forming part of a certain phase, until the Purchaser has approved of the results of the previous phase in writing. Only if such obligation was expressly agreed in writing shall Bronkhorst be obliged to follow, during the performance of the Services, the timely and responsible instructions given by the Purchaser. Bronkhorst shall not be obliged to follow instructions that alter or supplement the contents or scope of the agreed Services; if such instructions are, however, followed, the work concerned shall qualify for payment as additional work.

LIMITATION OF LIABILITY - BRONKHORST SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE AND/OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST TURNOVER, PROFIT OR OTHER FINANCIAL LOSS OR LOSS OF GOOD NAME, WHETHER SUCH DAMAGES ARE CLAIMED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER CAUSE OF ACTION, EVEN IF BRONKHORST HAS BEEN INFORMED ABOUT THE POSSIBILITY OF SUCH DAMAGES. In no event shall Bronkhorst's liability exceed the cost to repair or replace the product, as specified under "Limited Warranty".

BUYER AND OR (END-)USER UNDERSTAND AND ACCEPT THIS LIMITATION OF LIABILITY AND SHALL MAKE NO ATTEMPT TO FILE LIABILITY CLAIMS AGAINST BRONKHORST'S SUPPLIERS OR TO FOREIGN COMPANIES IN ANY WAY RELATED TO BRONKHORST. BUYER AND OR (END-)USER SHALL INDEMNIFY AND HOLD BRONKHORST, ITS SUPPLIERS, PARENTS AND/OR AFFILIATES, HARMLESS FROM ANY PRODUCT LIABILITY OR OTHER CLAIMS, WHETHER ASSERTED BY BUYER, (END-)USER AND/OR ANY THIRD PARTIES, TO THE FULLEST EXTENT PERMITTED BY LAW, EVEN IF BASED ON THE OWN OR SOLE NEGLIGENCE OF BRONKHORST, ITS SUPPLIERS, PARENTS AND/OR AFFILIATES, INCLUDING BUT NOT LIMITED TO COSTS AND ATTORNEY FEES INCURRED IN CONNECTION WITH SUCH CLAIMS AND THE ENFORCEMENT OF THESE INDEMNITY AND HOLD HARMLESS PROVISIONS.

BEFORE USING, BUYER AND OR (END-)USER SHALL DETERMINE THE SUITABILITY OF THE PRODUCT FOR ITS INTENDED USE AND BUYER AND OR (END-)USER ASSUME ALL RISK AND LIABILITY WHATSOEVER IN CONNECTION THEREWITH. THE FOREGOING MAY NOT BE CHANGED EXCEPT BY AN AGREEMENT SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF BRONKHORST'S OFFICES.

APPLICABLE LAW – This Agreement is made in and shall be governed by the laws of the Commonwealth of Pennsylvania. Purchaser agrees to be bound by the internal laws of the Commonwealth of Pennsylvania without regard to any applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded.

COMPETENT COURT AND EXCLUSIVE JURISDICTION – Any controversy or claim arising out of or relating to this Agreement, or any breach thereof, including, without limitation, any claim that this Agreement, or any part thereof, is invalid, illegal or otherwise voidable or void, shall be submitted exclusively to a competent court in or nearest to Bethlehem, County of Northampton, Commonwealth of Pennsylvania, or, if the Company has moved its place of business from Bethlehem to another location, in or nearest to that location. Each party will bear its own costs and expenses. Purchaser and or (end-)User agree that they are subject to the personal jurisdiction of the Commonwealth of Pennsylvania, and that, subject to the provisions set forth herein, it will exclusively initiate any legal action against the Company and/or its suppliers, parents and/or affiliates only in the court in or nearest to Bethlehem, County of Northampton, Commonwealth of Pennsylvania, or, if the Company has moved its place of business from Bethlehem to another location, in or nearest to that location.

DRAWINGS, CALCULATIONS ETC. - The Purchaser shall bear the risk for damage caused by errors or defects in relation to drawings, calculations, constructions, work specifications and work instructions which have been supplied by him, or to which he has agreed in writing.

INTELLECTUAL PROPERTY RIGHTS - Copyright as well as all other intellectual and industrial property rights on the products are retained by Bronkhorst or by its original owner. (end-)User is granted a non-exclusive right to use the Software that is contained in the products. This right of use solely encompasses the right to start up the Software, make it visible, and use it for processing the data for which the Software was designed. The Software may only be used by the (end-)User within its own company. The source code of the Software shall not be made available to the Purchaser and or (end-)User. The Purchaser and or (end-)User shall obtain no title, ownership nor any other rights in and to the Software related documentation nor in or to the algorithms, concepts, designs and ideas requested by or incorporated in the Software and related documentation. Bronkhorst reserves the right to insert technical protections in the Software and the hardware to prevent it from illegal use, copying, reverse engineering etc. The Purchaser and or (end-)User are not permitted to remove or evade such protections. The (end-)User has the right to make one single spare copy of the Software. The (end-)User agrees that it shall not, except for a back-up file copy, copy or reproduce, or permit to be copied or reproduced, the Software for any purpose. Purchaser and or (end-)User shall not modify, or attempt to modify, the Software, nor shall Purchaser and or (end-)User allow the Software to be used on any equipment except for Products supplied by Bronkhorst as part of an Order. In case any protection prohibits making a spare copy, Bronkhorst will provide one. Should the Purchaser and or (end-)User discover a defect in the Software, then it shall report this to Bronkhorst without delay. Solely when Bronkhorst remains in default in curing a defect which forms a serious obstacle to the functionality of the Software, after the expiry of a reasonable time period and after a written notice of being in default has been issued, the Purchaser and or (end-)User is entitled to cure the defect itself, expenses - if any - in all reasonableness to be incurred.

SHIPMENTS – Bronkhorst normal shipment condition is (in case of international shipment) Ex Works, factory (EXW – Incoterms 2000) or (in case of national shipment) F.O.B., Bethlehem, PA. Bronkhorst are able to ship out most Orders by the following methods: Motor Truck, United Parcel Service and Air Freight. Normally Bronkhorst route shipments the most economical way unless otherwise instructed. Air Freight is only used at the request of the Purchaser.

MOTOR TRUCK SHIPMENTS - The Bill of Lading indicates that material shipped has become your property and is an acknowledgment by the Transportation Company of the receipt of the material in good condition. Safe delivery is now the responsibility of the carrier.

EXAMINE THE SHIPMENT CAREFULLY BEFORE SIGNING FREIGHT BILLS. If any damage is noted, or if the number of pieces received deviates from the bill of lading, do not accept shipment without shortage or damage noted on the freight bill by the carrier's agent; failure to do so may jeopardize your recovery. If any concealed damage or shortage is discovered when unpacking, leave material and packing as is and notify agent of carrier to inspect and make reference thereto on the freight bill. Consult carrier for disposition of damaged articles. Bronkhorst will be glad to render assistance to trace and recover lost Products. Make your claim promptly. The transportation charges resulting therefore must not be deducted from the invoice, nor payment or invoices withheld awaiting adjustment of such claims, since it is the function of the carrier to guarantee safe delivery. Please check items received to the corresponding invoice, if there is any discrepancy, contact Bronkhorst immediately. Claims for shortage attributed to your count in packing must be made within 10 calendar days from the date shipment is received.

UNITED PARCEL SERVICE DELIVERY - Bronkhorst has found that UPS deliveries are generally the best method for shipping small quantities, providing certain requirements can be met. Bronkhorst cannot ship all material via UPS. There is a maximum weight per package of 70 pounds; the maximum size allowed is 130" length, width, height combined (UPS) specifications may change without notice).

DAMAGED UPS SHIPMENTS – If the package is damaged upon receipt from UPS, the shipment should be refused, and a claim should be filed with UPS by the Purchaser. UPS will return the shipment to Bronkhorst. If, after opening the package, concealed damage is evident, notify Bronkhorst at once and Bronkhorst will

have UPS pick up and return it to Bronkhorst for a claim, and Bronkhorst will reship your Order as soon as practical.

NEXT DAY AIR - Next day air service is available throughout the United States and parts of Canada. Most of these shipments will receive morning or afternoon delivery, whichever you specify. Please call for more information about delivery outside of the United States.

2ND DAY AIR - 2nd day air service is available nationwide and in parts of Canada. Please call for more information about delivery outside of the United States.

NO DELIVERIES WILL BE MADE TO AN ADDRESS WITH A PO BOX NUMBER ONLY. A STREET ADDRESS IS REQUIRED. PLEASE CONTACT BRONKHORST PRIOR TO RETURNING ANY GOODS TO INSURE CORRECT HANDLING.

AUTHORITY OF SELLER'S AGENTS - No agent, employee, or representative of Bronkhorst has any authority to bind Bronkhorst or any affiliated company with any affirmation, representation, or warranty concerning the Products or Services sold under this Agreement, unless such affirmation, representation or warranty made by an agent, employee, or representative of Bronkhorst is specifically included in a written agreement, which is confirmed and accepted in writing by an officer of Bronkhorst.

EXPORT - Purchaser understands that certain Products and technical data are or may be subject to United States export controls. Purchaser shall obtain any documents required by law or regulations of the United States or any other relevant jurisdiction for the export of Bronkhorst's products and technical data. Purchaser shall at all times abide by all United States Export Administration Regulations and Department of State Defense Trade Controls Regulations as they pertain to export and re-export of US origin products and technical data, and any foreign origin products and technical data subject to US jurisdiction. This includes any and all re-exports of US products and technical data from one foreign country to another and release of technical data to a foreign national of another country. **ANY EXPORT OR RE-EXPORT OF BRONKHORST'S PRODUCT OR TECHNICAL DATA CONTRARY TO UNITED STATES LAWS IS STRICTLY PROHIBITED BY THESE TERMS AND CONDITIONS OF SALE.**

YEAR 2000 COMPLIANCE - Bronkhorst warrants that the Products and or Services provided hereunder are "Year 2000 compliant." "Year 2000 compliant" means that any information technology provided in connection with the Products and or Services under this Agreement, will accurately process date/time (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired under these Terms and Conditions of Sale, properly exchanges date/time and is fully compatible and properly and functionally integrated with the Products and Services provided by Bronkhorst.

MISCELLANEOUS - These Terms and Conditions of Sale may change from time to time, without notice. Time is of the essence to these Terms and Conditions of Sale. The waiver by Bronkhorst of any term, provision, or condition hereunder must be in writing and shall not be construed to be a waiver of any other term, condition, or provision hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same condition or provision on this Order or on future Orders.
