

# ACA TMetrix<sup>INC.</sup>

**Quote valid for 30 days**

1. **AGREEMENT.** ACA TMetrix Inc Quote Form contain all of the terms and conditions with respect to the sale and purchase of the goods specified herein, except that if this order is also covered by another written contract signed by both ACA TMetrix and Buyer, then terms and conditions set forth in this invoice apply to the extent that they are not in conflict with such other written contract. No modifications of the terms and conditions set forth in this invoice shall be of any force unless such modification shall be signed by the party claimed to be bound thereby.
2. **DELIVERY AND RISK OF LOSS.** Delivery shall be F.O.B. point of origin unless otherwise agreed to in writing by ACA TMetrix upon request by the buyer, ACA TMetrix shall prepay insurance and freight and invoice buyer for such costs. The buyer will inspect the product delivered to it by ACA TMetrix and shall advise ACA TMetrix of any damage or defect in material or workmanship within 5 days of receipt of product.
3. **PAYMENT.** ACA TMetrix payment terms, conditioned on approved credit are NET 30 days from date of invoice unless otherwise stated in writing by ACA TMetrix . ACA TMetrix specifically reserves the right to modify the payment terms provided herein if, in TMetrix's opinion, the payment record or financial condition of the Buyer so warrants. Late payments shall be subject to a charge of 1% interest per month on the unpaid balance. ACA TMetrix shall retain title to and ownership of the product until payment in full in accordance with Paragraph 3 hereof has been made. In the event payment is not so made ACA TMetrix shall be entitled in its discretion to dissolve the sale and retake possession of the product and retain all monies received on account from purchaser in part payment as liquidated damages.
4. **ORDERS.** ACA TMetrix reserves the right to request minimum orders of \$300.00
5. **TAXES**
  - a. Unless shown as a separate line item, taxes or duties imposed upon the production, storage, sale, transportation or use of the products are not included.
  - b. If included on the reverse side hereof, "import duties, sales taxes and currency exchange" have been calculated at rates prevailing on the date of the Quotation. In accepting the Quotation the buyer agrees that if prior to delivery such duty, tax or currency exchange rates have change substantially or other charges are imposed by any governmental authority, ACA TMetrix may requote the buyer and include the then prevailing rates and at the buyer's option enter the order at the revised prices. Buyer must accept or reject the new Quotation within 5 days of its date.

6. **CANCELLATION.** It is understood that orders placed pursuant to this agreement may not be cancelled or rescheduled without TMetrix written consent and shall be subject to cancellation charges determined by ACA TMetrix . The products shall not be returnable to ACA TMetrix except with prior authorization of ACA TMetrix , which authorization shall specify the terms upon which the products are to be returned. ACA TMetrix agrees to grant such authorization in respect of products which have a defect in material or workmanship or have been damaged in transit before delivery where the buyer has complied with the inspection required by paragraph 2 and has notified the carrier.
7. **EXCUSABLE DELAYS.** Time of delivery is based upon a corresponding promise of delivery by TMetrix's suppliers and ACA TMetrix shall not be responsible in case of delays or failure to deliver on the part of TMetrix suppliers. ACA TMetrix shall not be liable for nondelivery or delay in performance of this order when such delay is directly or indirectly caused by or in any manner arises from fires, floods, accidents, riots, war, governmental interference or embargoes, strikes or shortage of labour, or other difficulties (whether or not similar in nature to any of those specified) beyond its control. Delivery on this order shall be deemed to be suspended so long as any such causes delay performance. ACA TMetrix agrees to make, and the Buyer to accept, deliveries whenever such causes have been remedied. All orders shown as being "stock" are subject to prior sale.
8. **INDEMNITY.** At its expense, ACA TMetrix will settle or defend and pay all damages and costs finally awarded in any action brought against Buyer to the extent that it is based on a claim that the ACA TMetrix product infringes any patent or copyright provided Buyer promptly gives ACA TMetrix the notice, authority and assistance necessary to defend or settle the claim and the infringement does not arise out of compliance with Buyer's specifications, or a combination with or an addition to products not supplied by ACA TMetrix , or from a modification after shipment. If any product is in TMetrix's opinion likely to cause a claim of infringement, ACA TMetrix at its option and expense may procure for Buyer the right to continue using the Product, or modify it to make it noninfringing, or may grant Buyer a credit for the depreciated value of the product after it is returned to ACA TMetrix .
9. **ACA TMetrix** will acknowledge the receipt of an order in writing if the request is included on the Purchase Order at the time the order is placed. Prices quoted are applicable only to those quantities shown. Orders for other than quoted quantities or conditions of purchase may be subject to price changes and should be confirmed with us prior to placing an order. Quote is valid for 30 day
10. **WARRANTY AND LIMITATION OF LIABILITY.** ACA TMetrix warrants each product to be free from defects in material and workmanship under normal use and service. Software is warranted to operate in accordance with its programmed instructions. It is not warranted to be error free. Warranty terms are as per the terms set out by the manufacturer of the product. Warranty shall commence on the date of the shipment. Product repairs are warranted for sixty days. This warranty extends only to the original purchaser and shall not apply to fuses, disposable batteries, computer media, or any

product or parts which have been subject to misuse, neglect, accident or abnormal conditions of operation. TMetrix's obligation under this warranty is limited to repairing or replacing a product which is returned to an authorized Service Centre within the applicable warranty period and which upon examination, ACA TMetrix determines to be defective. If ACA TMetrix determines the failure has been caused by misuse, neglect, accident or abnormal condition of operation, repairs will be made and Buyer shall be billed for the reasonable costs of repair. If a failure occurs, ship the product, transportation prepaid, to the nearest ACA TMetrix Service Centre. After repairs are made, the product will be returned, transportation prepaid. ACA TMetrix assumes no risk for in transit damage. *THE FOREGOING WARRANTY AND INDEMNITY ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHERS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. ACA TMETRIX or MANUFACTURER, SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE.*

11. **COMPLIANCE WITH CANADIAN EXPORT LAW.** If the ultimate destination of the goods is outside Canada, purchaser states that it has a valid export permit from the Department of Regional and Industrial Expansion permitting its export, that the permit is in full force and effect, and that purchaser shall comply in all respects with the Export and Import Permits Act (Canada). Purchaser states that it knows of nothing which may result in the permit's revocation. Purchaser further states that it has made due inquiry and believes that the goods will not be shipped, transshipped or diverted from the ultimate destination, whether as noted on the reverse side and designated in purchaser's export permit, or within Canada.
12. **GENERAL.** This agreement is not assignable without prior written approval of ACA TMetrix. If any of the terms or provisions of this agreement shall be declared in violation of law, the remaining terms and provisions shall remain in full force and effect. This agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.
13. ACA TMetrix Inc. does not publish a price list. Any discounts quoted are at the sole discretion of ACA TMetrix Inc.
14. We reserve the right to revise a quotation within the 30-day validity period, or to not accept an order that is based on a quoted price, due to fluctuations in currency value.