



TERMS AND CONDITIONS OF SALE

1. GENERAL

These terms and conditions, together with all exhibits, attachments and policies referred to herein and attached hereto ("Terms and Conditions"), constitute an integral part of any offer or quotation made by Seller to sell goods to Purchaser and shall govern the sale of the goods. In the event that a conflict arises between a provision of these terms and conditions and a provision of any exhibit, attachment or policy, the provision in these terms and conditions shall govern. Any additional or different terms or conditions proposed by Purchaser, unless expressly accepted by Seller in writing, are hereby objected to and shall be of no effect.

2. PRICES

All prices quoted by Seller are based on U.S. dollars, F.O.B. Seller's factory, and include domestic packaging. Unless otherwise stated, such prices are effective for 30 calendar days from the date of quotation.

3. TAXES AND FEES

Any sales, use or manufacturer's tax which may be imposed upon the sale or use of goods, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this transaction, shall be in addition to the quoted prices and paid by Purchaser.

4. PURCHASE ORDERS

4.1 Purchase Order Requirements

All goods purchased under these Terms and Conditions may be ordered by Purchaser pursuant to a written purchase order referencing Seller's quotation by number and signed by an authorized representative of Purchaser. Such purchase order must be forwarded to Seller by first-class or certified mail with postage prepaid or by courier, facsimile, or e-mail. All purchase orders submitted by Purchaser are subject to acknowledgment and acceptance by Seller in writing. Seller further reserves the right to reject any order. In the event Seller rejects Purchaser's order, Seller shall promptly return any deposit received from Purchaser for such order. All terms and conditions of any purchase order submitted by Purchaser which are inconsistent with these Terms and Conditions shall be of no force and effect, unless such inconsistent terms and conditions are expressly agreed to by Seller in writing.

5. PAYMENT TERMS

5.1 Due Dates

Unless otherwise stated in Seller's quotation, which shall take precedence, payment terms are net 30 days, pending Seller's credit approval of Purchaser. Purchaser shall pay the purchase price for the goods and services purchased from Seller as follows:

5.1.1 For Standard Systems:

5.1.1.1 30% on the date Seller receives Purchaser's order; and

5.1.1.2 60% on the date of Factory Acceptance; and

5.1.1.3 10% on the date of Purchaser Acceptance or 90 days from shipment from Seller's factory, whichever occurs first.

5.1.2 For System Upgrades

5.1.2.1 20% on the date Seller receives Purchaser's order; and

5.1.2.2 80% on the date of Purchaser Acceptance of the system upgrade at Purchaser's facility or 90 days from shipment from Seller's factory, whichever occurs first.

5.1.3 For Purchaser Specific Specialty Products or Engineering Projects:

5.1.3.1 30% on the date Seller receives Purchaser's order; and

5.1.3.2 10% on the date Purchaser accepts Seller's design, if applicable, (if not applicable, this amount shall be added to Factory Acceptance payments due); and

5.1.3.3 50% on the date of Factory Acceptance; and

5.1.3.4 10% on the date of Purchaser Acceptance at Purchaser's facility or 90 days from shipment from Seller's factory, whichever occurs first.

5.1.4 For Standard Components (e.g. Throttle Valves, Sputter Sources, etc.), Services and Spare Parts
5.1.4.1 100% on the service completion date or product shipment date from Seller's factory, as the case may be.

5.1.5 Notwithstanding the foregoing, the purchase price for products purchased with a Seller accepted credit card (e.g. VISA or MasterCard) shall be charged to said card no later than the due date of said products, services or performance milestones.

5.2 Collection and Late Fees

5.2.1 All expenses, including legal fees, incurred by Seller in the process of collecting outstanding amounts from the Purchaser will be charged to Purchaser for immediate payment.

5.2.2 Seller may charge to Purchaser, and Purchaser agrees to pay, interest on any amounts outstanding past the due dates set forth in Section 5.1 at a rate not exceeding the maximum rate allowed by applicable law.

5.3 Ownership of Goods

Title, ownership and risk of loss of the goods purchased under these Terms and Conditions shall pass to Purchaser upon delivery by Seller to Purchaser, which shall occur F.O.B. Seller's factory, San Jose, California. However, Purchaser grants Seller a purchase money security interest in the products sold, together with all parts, fittings, accessories, special tools and replacements, now or hereafter acquired by Purchaser and to the proceeds thereof until the full purchase price and all other amounts due or to become due to Seller hereunder have been paid.

6. EXPORT PAYMENTS

Unless other arrangements have been approved by Seller, payment on export orders shall be made by wire transfer payable in US Dollars to the benefit of Seller at Seller's specified bank. Such wire transfer shall be in an amount equal to Seller's invoice (or pro forma invoice) and comply with Seller stipulated payment terms for the order in question.

7. CHANGES

Purchaser may request a change or changes in the goods or services specified in Purchaser's accepted purchase order by providing written notice to Seller at least 15 calendar days prior to the scheduled shipment date. Seller shall determine whether such changes can be accommodated and provide Purchaser with a written quotation for any adjustment in the price or other terms affected by said change(s). Purchaser shall have 15 calendar days to accept, in writing, Seller's adjustment(s). Upon Seller's receipt of Purchaser's written acceptance, Seller shall acknowledge and accept Purchaser's request for change(s).

8. RESCHEDULING AND SUSPENSION

Purchaser may delay or suspend delivery of any goods or the provision of any services for a period not to exceed 60 calendar days from the scheduled ship date, by providing written notice to Seller of the requested delay or suspension and specifying a new delivery or service date. Any delay or suspension in excess of 60 calendar days shall be deemed to constitute a cancellation of Purchaser's order, and the provisions of Section 9 shall apply. Any delay or suspension pursuant to this Section 8 shall allow the Seller to postpone the due dates for any uncompleted deliverables associated with the order. Seller shall specify the exact extent of the impact of the delay at the time that work on the order is resumed.

9. CANCELLATION

9.1 Cancellation of Purchase Order

Unless identified in writing by Seller as a non-cancelable order, or part of an order, Purchaser may, prior to the Factory Acceptance date set forth in Seller's quotation and/or Acceptance Policy, cancel a purchase order, by providing written notice to Seller. Such cancellation shall be subject to written acknowledgment by Seller and applicable cancellation charges in accordance with Section 9.3 below. Seller reserves the right to withhold its acknowledgment of any cancellation notice until it has the opportunity to determine applicable cancellation charges and disposition of canceled goods and materials. Upon receipt of Purchaser's notice under this Section 9.1, Seller shall take all such actions as Seller in its own discretion deems to be appropriate to minimize cancellation charges imposed on Purchaser.

9.2 Cancellation Charge Basis

Unless identified in writing by Seller as a non-cancelable order cancellation charges shall include but not be limited to, accumulated labor, materials, overhead, general and administrative cost, restocking charges, surcharges levied on critical material by outside suppliers, sub-vendor cancellation charges, excess inventory charges, inventory tax charges, banking and finance charges, and other charges or costs incurred by Seller as a result of cancellation. Disposition of goods or materials affected by cancellation shall be determined at the time of cancellation by Seller.

9.3 Cancellation Charge Structure

Unless identified in writing by Seller as a non-cancelable order, or part of an order, the following shall apply:

- 9.3.1 For cancellation of an order for Standard Systems and System Upgrades.
 - 9.3.1.1 Within 30 calendar days of the date of Purchaser's order:
 - Forfeiture of up to 100% of deposit, whether paid or due.
 - The final cancellation charge may be adjusted for impact of re-working a system for possible sale to another purchaser.
 - 9.3.1.2 Between 31 and 90 calendar days after the date of Purchaser's order:
 - Forfeiture of all payments made or due concurrent with and subsequent to order placement; and
 - Other charges as computed on the basis of paragraph 9.2 above.
 - The final cancellation charge may be adjusted for impact of re-working a system for possible sale to another purchaser.
 - 9.3.1.3 Between 91 calendar days after the date of Purchaser's order and the originally scheduled shipping date:
 - Forfeiture of all payments made or due concurrent with and subsequent to order placement; and
 - Other charges as computed on the basis of paragraph 9.2 above, up to a maximum of 100% of the agreed price of the system or system upgrade.
 - The final cancellation charge may be adjusted for impact of re-working a system for possible sale to another purchaser.
- 9.3.2 For cancellation of an order for Purchaser Specific Specialty Products or Engineering Project anytime after acknowledgement of an order:
 - 9.3.2.1 Forfeiture of all payment made or due concurrent with and subsequent to order placement.
 - 9.3.2.2 Other charges as computed on the basis of paragraph 9.2, above up to a MAXIMUM of 100% of selling price.
 - 9.3.2.3 Final cancellation charge adjusted for impact of reusing selected components or engineering activity in the manufacture of another systems by Seller. Cancellation charge may be reduced as a result.
- 9.3.3 For cancellation of an order for Standard Components (e.g. Throttle Valves, Sputter Sources, etc.), Spare Parts and/or Services:
 - 9.3.3.1 Small orders (normally quantities ≤ 5) shall be subject to a cancellation charge equal to 20% of the total purchase price of such products or services.
 - 9.3.3.2 Large orders and orders requiring special shop runs shall be subject to cancellation charges based on expended labor and material charges. Actual cancellation charges, however, shall be calculated on the basis of ALL FACTORS AT THE TIME OF ACTUAL CANCELLATION. Seller will use good faith efforts to minimize said charges by pursuing available alternatives.
 - 9.3.3.3 Seller shall determine whether orders of spare parts will be considered "small" or "large" orders, based on the minimum and maximum quantities set for warehouse stocking.

10. WARRANTY

10.1 Warranty Period

Unless otherwise stated in Seller's quotation, which shall take precedence, goods manufactured and sold by Seller are warranted to be free of defects in materials and workmanship under normal operation for the terms specified below:

- 10.1.1 Systems shall be warranted for a period of one year from the date of Purchaser Acceptance or 15 months from date of shipment, whichever ever occurs first.
- 10.1.2 System Upgrades shall be warranted for a period of 100 calendar days after the date of Purchaser's acceptance of an upgrade, as indicated by Purchaser's signature on the Seller's upgrade acceptance document, or from scheduled ship date listed on purchase order acceptance, whichever comes first.
- 10.1.3 Standard Components (e.g. Throttle Valves, Sputter Sources, etc.) shall be warranted for a period of one year from the date of shipment.
- 10.1.4 Spare parts shall be warranted for a period of 30 calendar days from the date of shipment.
- 10.1.5 Purchaser Specified Specialty Products warranty period shall be defined in Seller's quotation.
- 10.1.6 Repairs and rebuilds will be warranted for 90 days from date of repair/rebuild shipment, or remaining life of original warranty period, whichever ever is greater.

10.2 Purchaser's Remedy

Purchaser's exclusive remedy and Seller's sole responsibility under the warranty set forth in Section 10.1 is the repair or replacement of the defective product, at Seller's option. Purchaser shall reimburse Seller for the repair of any return product determined by Seller not to be defective or to have been damaged by misuse, abuse or unauthorized repair.

Within Seller service travel areas (50 miles from service personnel offices), warranty service for system products installed by Seller, and certain other products designated by Seller, will be performed at Purchaser's facility at no charge. Outside Seller's service travel areas, warranty service will be performed at Purchaser's facility only upon Seller's prior agreement. Seller may, at its option, charge Purchaser for travel and expenses associated with such a service call. Alternatively, Seller may designate Purchaser or an authorized Seller representative to remove defective parts and return to Seller for repair. Purchaser shall prepay shipping charges for products returned to Seller, for warranty service and Seller, shall pay for return of the products to Purchaser, best way. For systems installed outside the US, these charges shall include duties, taxes and other associated import/export costs. If failure of the product is the result of improper use, an estimate of repairs required would be submitted in writing to the Purchaser, and upon his written approval, the product will be repaired or replaced at the Purchaser's expense.

10.3 Disclaimer

THE WARRANTIES AND REMEDIES STATED IN THIS SECTION 10 ARE SOLE AND EXCLUSIVE. THERE ARE NO OTHER WARRANTIES EXPRESSED, IMPLIED, OR OTHERWISE. SELLER DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL HAVE NO LIABILITY FOR ANY DAMAGE, CONSEQUENTIAL OR OTHERWISE, RESULTING FROM THE MANUFACTURE, PACKAGING, DELIVERY, STORAGE OR USE OF THE PRODUCT, INCLUDING ANY DELAY IN OR FAILURE TO DELIVER, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO REPRESENTATION OR AFFIRMATION OF FACT, WHICH IS NOT CONTAINED IN THIS SECTION 10, SHALL BE DEEMED TO BE A WARRANTY BY SELLER FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF SELLER WHATSOEVER.

10.4 Limitations

- 10.4.1 The warranties set forth in this Section 10 do not apply to any product that has been subject to improper installation or operation, accident, neglect or that has been repaired or altered by anyone other than a properly authorized representative of Seller. Where a component of another manufacturer has been incorporated into the product by Seller, only the original warranty given to Seller by the manufacturer of that component shall be provided to Purchaser. Consumable items such as, but not limited to, pilot lamps, filaments, fuses, heaters, pump belts, pump oils, gaskets, o-rings, processing materials, etc., are excluded from the foregoing and therefore are not warranted.
- 10.4.2 The Purchaser should inspect the product carefully as soon as it is received and test it in accordance with any instructions that may be provided. If damage is noted, or the product fails to operate properly as the result of transportation damage, a claim should be filed with the common carrier and a copy forwarded to Seller. Seller will not recognize any claim for equipment damaged as a result of transportation damage if the claim is submitted beyond thirty days after Purchaser's receipt of the product.
- 10.4.3 Seller reserves the right to refuse to work on warranty and/or installation issues, if any portion of payment for the goods involved are delinquent by more than 30 calendar days.
- 10.4.4 Without limiting the effect of this Section 10, Seller's maximum liability, if any, for damages (including but not limited to liability arising out of contract, negligence, strict liability, in tort or otherwise) shall not exceed the purchase price paid by Purchaser for the product.

11. PROPRIETARY RIGHTS

11.1 Title

Title to all trademarks, service marks, know-how and all other proprietary rights in any goods purchased by Purchaser from Seller, including without limitation, all patents, patent applications, copyrights, mask work rights and trade secrets, shall at all times be and remain exclusively with Seller. Seller grants no license, by reason of the sale of any good or product under any of Seller's proprietary rights, other than the right to use the good or product for the purpose for which it was sold to Purchaser.

11.2 Intellectual Property Indemnity

Seller shall defend, at its expense, any action brought against Purchaser to the extent that it is based on a claim that a product, when used in accordance with these Terms and Conditions, infringes a United States patent and Seller shall pay any costs, settlements and damages finally awarded, provided that Purchaser: (1) promptly notifies Seller in writing of such claim; (2) gives Seller sole control of the defense and settlement thereof; and (3) provides all reasonable assistance in connection therewith. If any product is finally adjudged to so infringe, or in Seller's opinion is likely to become the subject of such a claim, Seller may, at its sole option, either (i) procure for Purchaser the right to continue using the product; (ii) modify or replace the product to make it non-infringing; or (iii) refund the price paid, less reasonable depreciation, upon return of the product. Seller shall have no liability regarding any claim arising out of (a) compliance with Purchaser's designs, specifications or instructions; (b) use of a product in combination with non-Seller parts, materials, data or equipment if the infringement was caused by such use or combination; (c) any modification or repair of a product not specifically authorized in writing by Seller; or (d) third party parts or materials.

THE FOREGOING STATES THE ENTIRE LIABILITY OF SELLER AND THE EXCLUSIVE REMEDY OF PURCHASER RELATING TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, MASK WORK RIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT BY THE PRODUCTS OR ANY PORTION OR COMPONENT THEREOF. EXCEPT FOR THE FOREGOING CLAIMS OF INFRINGEMENT, PURCHASER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST ALL EXPENSES, DAMAGES AND LOSSES ARISING OUT OF THIRD PARTY CLAIMS AGAINST SELLER AS A RESULT OF PURCHASER'S USE OF THE PRODUCT.

12. RETURNS

12.1 In the event that Purchaser wishes to return any item to Seller for any reason, Purchaser shall contact Seller to describe the reasons for such return and, where applicable, receive quotes and submit necessary Hazardous Material Disclosures. After return is approved, Seller shall issue a Return Material Authorization (RMA). Said RMA must accompany any item being returned.

12.2 Except as specified herein for warranty returns, all freight, duty or other transportation charges (including insurance) associated with any return to Seller and subsequent return to Purchaser shall be the responsibility of the Purchaser.

12.3 Items being returned for paid evaluation and/or repair shall be subject to Seller's minimum evaluation fee. Said fee varies depending on product type and shall be quoted by Seller as part of the RMA process.

12.4 In the event that Purchaser wishes to return an unused item for credit, Seller must approve said return, and shall quote relevant restocking and/or other return charges as part of the RMA process.

13. MISCELLANEOUS

13.1 Governing Law

The rights and obligations of the parties hereunder shall be construed in accordance with, and governed by, the laws of the State of California.

13.2 Force Majeure

Either party shall be excused from any inability to meet its obligations hereunder due to extraordinary circumstances beyond its reasonable control occasioned by war, riot, insurrection, civil commotion, fire, flood, earthquake, extreme weather or other acts of God, acts of government, accident, theft, vandalism, freight embargoes or other delays in transportation, labor strike or other employment disruption, shortages of materials or supplies, acts of the other party, inability to obtain necessary labor, fuel, material, supplies or power at current prices, and any other cause beyond a party's reasonable control.

13.3 Facility Access

Purchaser hereby agrees that Purchaser shall provide Seller with access to Purchaser's facility during normal business hours as Seller may require to provide any service, installation or evaluation under these Terms and Conditions, Seller's quotation and Seller's Acceptance Policy.

13.4 Waiver/Modification/Amendment

No amendment of, supplement to or waiver of any obligations under these Terms and Conditions will be enforceable or admissible unless set forth in a writing signed by the party against which enforcement or admission is sought. No delay or failure to require performance of any provision of these Terms and Conditions shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated.

13.5 Severability

Should all or any portion of any provision of these Terms and Conditions be held unenforceable or invalid for any reason, the remaining portions or provisions shall be unaffected.

13.6 Notices

Any notice required or permitted by these Terms and Conditions must be in writing and must be sent by facsimile, by recognized commercial overnight courier, or by first class or certified mail, addressed to the other party at the address below each party's signature or to such other address for notice (or facsimile number in the case of a notice by facsimile) as such party gives the other party written notice of in accordance with this Section 12.6. Any such notice will be effective as of the date of receipt.

13.7 Independent Contractor

The parties are each independent contractor's and are not joint ventures, agents or representatives of the other. These Terms and Conditions do not create a franchiser-franchisee relationship. Neither party has any authority to act for or to create any obligation on behalf of the other party.