

**1. CONTRACT**

Unless otherwise stated, all sales transactions are expressly subject to and conditioned upon the acceptance of these terms and conditions. Modifications or additions will be recognized only if accepted in writing by a principal officer of Seller or his designated representative. Provisions of Buyers Purchase Order or other documents that add or differ from these Terms and Conditions of Sales are EXPRESSLY rejected. No waiver of these Terms and Conditions or acceptance of others shall be constructed from failure of Seller to raise objections.

**2. QUOTATIONS AND PUBLISHED PRICES**

Quotations automatically expire thirty (30) calendar days from the date issued unless otherwise stated in the quotation and are subject to withdrawal by notice within that period. Prices shown on the published price list and other published literature issued by the Seller are not unconditional offers to sell, and are subject to change without notice. The Seller's price for equipment unless otherwise specified, does not include an allowance for installation and/or final onsite adjustment. Price shall be subject to adjustment to those in effect at time of shipment.

**3. TAXES**

The Seller's prices do not include any applicable sales, use, excise, or similar taxes; and the amount of any such tax which the Seller may be required to pay or collect will be added to each invoice unless the Buyer has furnished the Seller with a valid tax exemption certificate acceptable to the taxing authorities.

**4. TERMS OF PAYMENT**

Except as otherwise provided herein, terms are cash net thirty (30) days from date of invoice. Amounts past due are subject to a service charge of 1.5% per month for fraction thereof or maximum contract rate permitted by law. If the Seller deems that by reason of the financial condition of the Buyer or otherwise, the continuance or production or shipment on the terms specified herein is not justified, the Seller may require full or partial payment in advance.

**5. DELIVERY**

Delivery dates indicated in the contract documents are approximate and are based on prompt receipt of all necessary information regarding the items or equipment covered by the contract. The Seller will use reasonable efforts to meet the indicated delivery dates, but cannot be held responsible for its failure to do so. In the event of any delay in delivery caused by the Buyer, the Seller will store and handle all items ordered at the Buyer's risk and will invoice the Buyer for the unpaid portion of the contract price, plus storage, insurance and handling charges, on or after the date on which the equipment is ready for delivery, payable in full within thirty (30) days from invoice date. Title to the item or equipment and risk of loss shall pass to Buyer upon delivery to a carrier.

**6. SHIPPING CHARGES**

Shipments are F.O.B. point of shipment. When freight is prepaid, it will be billed as a separate item on the invoice.

**7. SUBSTITUTIONS**

Unless specially restricted on a purchase order or a specific Buyer part number applies, the Seller reserves the right to substitute the latest superseding design and manufactured equivalent product where the interchangeability of the product is based on form, fit and function, in place of the product ordered.

**8. CHANGES**

Buyer may with the express written consent of the Seller make changes in the specifications for items, equipment, or work covered by the contract. In such event the contract price and delivery dates shall be equally adjusted. The Seller shall be entitled to payment for reasonable profit plus costs and expenses included by it for work and materials rendered unnecessary as a result of such changes and for work and materials required to effect said changes.

**9. CANCELLATION**

Undelivered parts of any order may be cancelled by the Buyer only with the written approval of the Seller. If the Buyer makes an assignment for the benefit of creditors, or in the event that the Seller for any reason feels insecure about the Buyer's willingness or ability to perform, then Seller shall have the unconditional right to cancel this sales transaction. In the event of any cancellation of this order by either party, the Buyer shall pay to the Seller the reasonable costs and expenses (including engineering expenses and all commitments to its suppliers and subcontractors as well as work in process and finished inventory) incurred by the Seller prior to receipt of notice of such cancellations, plus the Seller's usual rate of profit for similar work.

**10. SECURITY INTEREST**

Buyer agrees to pay for the item or equipment according to the Seller's payment terms and does hereby grant to the Seller, a purchase money security interest in the equipment until such times as it is fully paid. Buyer will assist Seller in taking necessary action to perfect and protect Seller's security interest. In the event of a default by Buyer, the Seller shall be entitled to any of the rights and remedies provided by law.

**11. DEFAULT**

Upon default and placing of the instrument with an attorney for collection of equipment, Buyer agrees to reimburse attorney fees and court costs incurred by the Seller in connection herewith.

**12. WARRANTIES**

SELLER EXPRESSLY WARRANTS THE EQUIPMENT MANUFACTURED BY IT AS SET FORTH HEREIN. SELLER MAKES NO OTHER WARRANTIES EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). IN ADDITION, THE FOLLOWING SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER FOR ANY BREACH BY SELLER OF ITS WARRANTIES HEREUNDER.

**A. WARRANTY**

The Seller warrants that the equipment covered by this warranty will be free from defects in workmanship and materials (if properly installed, operated and maintained in accordance with the Seller's specification) for a period of one year from date of shipment. If within the period the Seller receives from the Buyer written notice of any alleged defects in any such items or equipment not found to be in conformity with this warranty (the Buyer having provided the Seller's reasonable opportunity to perform any appropriate test thereon) the Seller will, at its option, either repair the same or supply a replacement thereof. The Seller under either option shall have the right to require Buyer to deliver the item(s) for this purpose to its designated service center and the Buyer shall pay all charges for inbound and outbound transportation and for services of any kind, diagnostic or otherwise, excepting only the direct and actual costs of apparatus repair or replacement as provided above.

**B. REPAIRED PRODUCTS WARRANTY**

On repaired equipment the warranty shall be that so noted at time of repair as determined by type of repair required however – it shall only apply to parts repaired or replaced by the Seller. No separate warranty shall apply to repaired equipment as a whole or to parts not repaired or replaced by the Seller.

**C. SPECIAL**

The foregoing warranties do not apply to all equipment sold by the Seller. In certain cases the warranty period is less than or more than one year or provides for a payment of money or replacement to the Buyer bases on the age or extent of usage of the equipment in lieu of repair or replacement by the Seller. Such warranties may be obtained from the Seller sales office.

**D. GENERAL**

The foregoing warranties are further subject to the following general condition:

1. If the Buyer requests the performance of warranty work provided for under the foregoing warranties during other than normal Seller work periods the Buyer shall be required to pay for all premium time.
2. If the Buyer requests the performance of warranty work provided for under the foregoing warranties outside of the contiguous United States, the Buyer shall be required to pay for the travel time, living and travel expenses of any Seller personnel required to perform such warranty work.
3. These warranties shall not apply where the equipment has been subjected to accident, alteration, misuse, abuse or failure on the part of the Buyer to ensure proper storage, installation, operation and maintenance of the equipment. Use of equipment in improper or non recommended applications or quality standards which cause damage to the equipment will not be covered by these warranties.

**13. PATENT INFRINGEMENT**

The Seller shall defend any suit or proceeding brought against the Buyer so far as the same is based on a claim that any equipment of the Seller's design furnished hereunder or any part thereof, constitutes an infringement of any United States patents, if notified promptly in writing and given authority, information and assistance (at the Seller's expense) for the defense of the same and if such alleged infringement is not the result of a design or other special requirements specified by Buyer or the result of the application or the use to which such equipment is put by the Buyer or others. The Seller will pay all damages and costs awarded in such suit or proceeding against the Buyer, provided that the Seller shall have the sole and exclusive right to defend, settle or compromise any suit or proceeding and the Buyer takes no action which would materially detract from the Seller's ability to conduct an effective defense, settlement or compromise. In case such equipment or part is in such suit held to infringe any such patent and the use thereof enjoined, the Seller shall at its expense either, at its option (a) obtain for the Buyer the right to continue using such equipment or part, or, (b) replace the same with non infringing equipment, or (c) modify the same so that it becomes non infringing, or (d) removed said equipment and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of the Seller to the Buyer for patent infringement.

**14. REGULATORY LAWS AND/OR STANDARDS**

The performance of the parties hereto is subject to the laws of the United States. The Seller takes reasonable steps to keep its products in conformity with various nationally recognized standards and such regulations which may affect its products; however, the Seller recognizes that its products are utilized in many regulated applications and that from time to time standards and regulations are in conflict with each other. The Seller makes no promise or representation that its product will conform to any federal, state, or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as a part of the contract between Buyer and the Seller. The Seller prices do not include the cost of any related inspections or permits or inspection fees.

**15. EXPORT CONTROL REGULATIONS**

Buyer understands that the Seller and the products are subject to the United States Export Administration Act, the Trading with the Enemy Act, and other laws and regulations of the United States of America (collectively the "Regulations"), which regulations are enforced, inter alia, by the United States Department of Commerce. The Regulations, in part, prohibit export or diversion of the products to certain countries. Buyer agrees to abide by all Regulations, including those concerning the resale and disposition of the products. Buyer warrants that it will not sell, transfer or support, directly or indirectly, or assist in any sale or transfer of any products or product technology in countries or to users concerning which such sale, transfer or support is not permitted under applicable regulations. Buyer shall defend, hold harmless and indemnify Seller for any damages resulting to Seller from a breach of this paragraph by Buyer.

**16. NUCLEAR LIMITATION OF USE**

The equipment is not for use in or with any nuclear facility unless specially so stated in Seller's Quotation. If Seller's Quotation does expressly acknowledge that the Seller's equipment is to be used in or with a nuclear facility. Seller's Special Nuclear Conditions will be attached hereto and shall control. Buyer accepts the responsibility for insuring that the equipment is not used in violation of this limitation and Buyer shall indemnify and hold Seller harmless from any and all liability (including such liability resulting from Seller's negligence) arising out of said improper use.

**17. TOOLING**

Any equipment (including all jigs, dies and tools) which Seller constructs or requires for use in the production of materials for Buyer, shall be and remain Seller's property and in Seller's possession and control and any charges, therefore, shall be for the use of such equipment. Seller will use its best efforts to handle and store carefully while in its possession any materials or equipment owned or furnished by Buyer, but Seller shall not be liable for damage or loss thereof. When for three (3) consecutive years no orders have been received requiring the use of any equipment or materials referred to in this paragraph, Seller may dispose thereof as it sees fit, without liability to the Buyer provided written notice is submitted thirty (30) days in advance. Tooling required for the manufacture of custom designs may be quoted separately as a onetime charge to Buyer. Charges will be invoiced upon completion of manufacturer of the tooling.

**18. DISCLAIMER OF DAMAGES**

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY TYPE OF SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) such damages shall include but not be limited to loss of profits or revenues, loss to use of the equipment or associated equipment, cost of substitute equipment, facilities downtime cost, increased construction costs or claims of Buyer's customers or contractors for such damages. Buyer agrees that in the event of a transfer assignment, or lease of the equipment sold hereunder that Buyer shall secure for the Seller the protection afforded to it in this paragraph.

**19. LIMITATION OF LIABILITY**

The Seller shall not be liable for any loss, claim, expense or damage caused by, contributed to by or arising out of the acts or omissions of Buyer or third parties, whether negligent or otherwise. In no event shall the Seller's liability for any cause of action whatsoever exceed the cost of the item giving rise to the claim. Whether based in contract, warranty, indemnity, or tort (including negligence). Any suit arising hereunder must be commenced within one (1) year from the date the cause of action accrues.

**20. NO RESPONSIBILITY FOR GRATUITOUS INFORMATION OR ASSISTANCE**

If Seller provides Buyer with assistance or advise which concerns any parts/products/service supplies hereunder or any system or equipment in which any such parts/products/service may be installed and which is not required pursuant hereto, the furnishing of such assistance or advise shall not subject Seller to any liability, whether bases in contract, warranty, tort (including negligence) or otherwise.

**21. INTERPRETATION**

Should any term or provision contained in the contract contravene or be invalid under applicable law, the contract shall not fail by reason thereof but shall be construed in the samemanner as if such term or provision had not appeared therein. Where the word "Seller" is used it designates Inertia Dynamics LLC