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## **TERMS AND CONDITIONS OF SALE - IES Technical Sales Corp.**

### **1. GOODS**

IES Technical Sales Corp. (hereafter "Seller") shall sell to the person, entity, or company (hereafter "Buyer") the products, goods and/or services identified on the quotation and/or order acknowledgment related hereto, which shall be of the grade, quality, and specifications set forth in currently published manufacturer's specifications, if applicable, unless specifically modified in writing by the Seller. Seller accepts no responsibility for errors in published specifications or unannounced changes to specifications.

### **2. WARRANTY**

Seller offers no express or implied warranty other than that of the original manufacturer where Seller is acting as a distributor, or one year parts and labor only where Seller is the manufacturer. In any case, Seller expressly excludes any warranty whatsoever concerning goods which have been subject to misuse, negligence, or accident, or altered or repaired by others than the Seller, Seller's duly authorized agent, or the original manufacturer.

### **3. REMEDY**

The exclusive remedy of the Buyer (including any entity or person claiming on behalf of or through the Buyer) in the event of breach of warranty or product defect shall be that the Seller shall repair or replace the unit or units sold, or, at the Seller's sole discretion, the Seller shall refund the purchase price for such unit or units. The Seller shall in no event be liable to the Buyer or any third party for incidental or consequential damages. The Buyer shall indemnify the Seller against any and all claims, losses, damage, or injury arising out of or related to use or misuse of the goods, whether sold separately or incorporated into any of the Buyer's products or services.

### **4. DELIVERY**

The goods described herein shall be shipped F.O.B. Seller's ship dock, unless otherwise expressly provided for and confirmed in writing by the Seller. Transfer of title to the goods shall occur when they are placed in the hands of the carrier. The goods shall be placed in suitably protected containers, the nature of which shall be determined by the Seller. All risk of loss shall borne by the Buyer from the time the goods are placed in the hands of the carrier.

### **5. INSURANCE**

Insurance coverage is not included in any purchase price quoted or invoiced by Seller unless specifically stated in writing. If the method of freight chosen by the Buyer offers insurance, the Seller may at its option procure insurance for the account of the Buyer and the Buyer shall repay to the Seller the cost of such insurance.

## **6. DELAYS**

The Seller shall not be responsible for any delays in delivery caused by strike, flood, fire, act of God, scarcity of the basic elements needed to produce the goods, governmental restrictions, failure of original equipment manufacturer or other Seller source to provide goods to Seller on schedule, or any other cause beyond the reasonable control of the Seller. The Buyer will not hold the Seller liable in any way for any loss or damage caused by the delay of goods procured by Buyer from Seller.

## **7. CANCELLATION**

Cancellation charges will be determined at the sole discretion of the Seller, and can be up to 100% on any order. As a general guideline the following will apply:

Standard catalog items:

- a) Due to ship within thirty (30) calendar days: are subject to a cancellation charge of 100%.
- b) Due to ship in thirty-one to sixty (60) calendar days: are subject to a cancellation charge of between 50% and 75%.
- c) Due to ship in sixty-one (61) days or more: are subject to a cancellation charge of between 25% and 50%.

Non-Standard items:

All non-standard items are subject to a 100% cancellation charge with no stipulation as to ship date. Any and all sales are final.

In all cases, returns will not be accepted without a Return Authorization Number (RMA) issued by IES Technical Sales.

## **8. PAYMENT TERMS**

Terms of payment are Net 30 days from the date of shipment, for each shipment invoiced, unless otherwise expressly provided for and confirmed in writing by the Seller. Notwithstanding any specified payment terms, the Seller may require payment in advance, either at time of order or prior to shipment, if the Buyer's credit shall at any time, in the sole judgment of the Seller, become impaired or unworthy. The contract price shall become immediately due and payable and the Seller may cancel the unperformed portion of the contract upon the Buyer's failure to make any payment when due. Overdue payments

shall be subject to finance charges computed at a periodic rate of the greater of 1.5% per month or the maximum interest amount permitted by Law. The Seller reserves the right to require, at its sole option, a security interest in the goods sold and proceeds thereof to ensure full payment. The Buyer shall provide in a timely manner all documents reasonably required by the Seller to enforce its security interest.

#### **9. APPLICABLE LAW; VENUE; ATTORNEY FEES**

This agreement shall be governed by the laws of Massachusetts. Under no circumstances shall the Seller be liable for Buyer's legal expenses of any kind or amount.

#### **10. TWO-WAY PROPRIETARY AGREEMENT**

It is understood that both the Buyer and the Seller may provide proprietary information to the other in the performance of this contract. Both parties agree that such information shall include all information the Buyer or Seller knows or reasonably may know is provided to the other on a confidential basis. Seller and Buyer acknowledge that such information shall remain the exclusive property of the party which provided the information. Seller and Buyer agree to preserve and protect such information and to take all other acts reasonably requested by the other party with respect to such information. Upon the earlier of the completion of this contract or the request of the Buyer or Seller, the other party agrees to return all documents containing proprietary information and to retain no copies thereof. Buyer and Seller agree the obligation to protect the other's proprietary information shall be ongoing and shall not cease upon completion or termination of this contract.

#### **11. TECHNICAL ADVICE**

Advice of the technical staff of the Seller is available to the Buyer, but the Seller, not controlling the subsequent manufacture, fabrication, or installation of its products or their use after sale, does not warrant or guarantee such advice.

#### **12. SELLER'S AGENTS**

No agent, employee, or representative of the Seller has any authority to bind the Seller to any affirmation, promise, representation, or warranty other than as specifically set forth in this agreement.

#### **13. RETURN POLICY**

The Buyer is responsible for the cost of freight on all goods returned to the Seller. The Seller will pay standard ground freight on goods returned to the Buyer which are covered by warranty. The Buyer will pay all freight costs for non-warranty related shipments. No returns will be accepted by Seller from Buyer without a Return Authorization Number.

**14. INSPECTION**

The Buyer agrees to make any shipping damage claims solely against the carrier.

**15. HOLD HARMLESS**

The Buyer agrees to hold harmless the Seller against any and all suits at law or in equity and from any and all damages, claims, and demands for personal injury or actual or alleged infringement of any United States or foreign patent and to defend any suit or actions which may be brought against the Seller for such injury and/or any alleged infringement because of the manufacture and/or sale of the material covered thereby.

**16. COMPLETE AGREEMENT**

This contract is the complete and final agreement of the parties and an exclusive statement of its Terms and Conditions. Seller makes no representations or warranties concerning this contract or the goods, except as expressly contained herein. This contract may not be changed, altered, or modified, except in writing signed by an Officer of the Seller. No subsequent or competing Terms and/or Conditions presented by Buyer will apply, including Terms and/or Conditions provided by Buyer included with, attached to, or referenced to a purchase order.

**Vacuum      Thin Film & Plasma      Metrology & Analysis      Temperature      Pressure & Flow**

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