

1. GENERAL

1.1 **Contract Terms.** These terms and conditions constitute an integral part of any offer made by inTEST EMS ("Seller") to sell goods to any third party (such party, a "Purchaser") and shall govern the sale of the goods. Any additional or different terms or conditions proposed by Purchaser are hereby rejected and shall be of no effect.

1.2 **Acceptance.** No order by Purchaser, regardless of whether a deposit has been accepted, shall be binding upon Seller until a credit review has been completed and the order has been accepted by Seller in writing signed by its authorized representative.

2. PRICES

2.1 **Quotations.** Unless otherwise agreed to in writing, all prices quoted by Seller are based on U.S. dollars, F.O.B. shipping point, and include packaging. Unless otherwise stated, such prices are effective for thirty (30) days from the date of quotation.

2.2 **Transportation.** Transportation shall be by common carrier, at Purchaser's risk and expense, with the charges therefore added to the quoted prices.

3. TAXES

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. TERMS OF PAYMENT

4.1 **Due Date.** Unless otherwise agreed, payment shall be due thirty (30) days from the date of the applicable invoice, provided Seller's credit review or Purchaser is acceptable to Seller. All charges are payable in U.S. dollars.

4.2 **Late Payment.** A service charge of 1 1/2% per month, not to exceed the maximum rate allowed by law, shall be made on any portion of Purchaser's outstanding balance which is not paid within thirty (30) days after the applicable invoice date (the "Late Payment Fee").

4.3 **Where Payment Upon Installation or Completion.** Should any special terms of payment provide for either partial or full payment upon installation or completion of installation or thereafter, and the installation or completion is delayed for any reason for which Seller is not responsible, the equipment shall be deemed installed upon delivery unless otherwise agreed by the parties in writing.

4.4 **No Withholding of Payment.** The Purchaser shall not be entitled to withhold the whole or any part of the payment due for goods sold or services performed on the grounds of any alleged defect or any other claim whatsoever against Seller unless the defect or other claim is recognized by Seller and Seller agrees in writing to such retention.

4.5 **Suspension of Performance.** Nonpayment on the due date shall entitle Seller without prejudice to any other rights which it may have to suspend performance of any and all its outstanding obligations to the Purchaser until payment is made in full, including any Late Payment Fee that has accrued.

4.6 **Financial Condition of Purchaser.** If Seller, in its sole discretion, shall in good faith and reasonably determine that the financial condition of the Purchaser at any time does not justify continuation of production or delivery or the terms of payment originally agreed, Seller may, without incurring any liability to the Purchaser whatsoever, suspend production and/or delivery and require full or partial payment in advance as a condition of continuing production and/or delivery.

5. EXPORT PAYMENT TERMS

Unless other arrangements have been made, payment on export orders shall be made by irrevocable confirmed letter of credit, payable in U.S. dollars against Seller's invoice and standard shipping documents. Such letter of credit shall be in an amount equal to the full purchase prices of the goods, and shall be established in a Philadelphia or New York bank acceptable to Seller, preferably M&T Bank of Buffalo, NY U.S.A.

6. DELIVERY, RISK OF LOSS

6.1 **Delivery Date.** Delivery and completion schedules are approximate only and are based on conditions at the time of acceptance of Purchaser's order.

6.2 **Risk of Loss.** Unless otherwise agreed to in writing, delivery shall be complete upon transfer of possession to common carrier, F.O.B. shipping point whereupon all risk of loss, damage or destruction to the goods shall pass to Purchaser.

6.3 **Insurance.** For Purchaser's protection, Seller may, in its sole discretion, insure all shipments at full value. Any charges therefor shall be billed to Purchaser unless, at least ten days prior to shipment, Purchaser has certified its intention to obtain insurance in form and amount acceptable to Seller.

6.4 **Instructions.** Where appropriate in Seller's opinion, Seller may provide instruction or documentation designed to provide Purchaser with an adequate working knowledge of the goods. Unless otherwise stated in writing, instruction shall be limited to operation of the goods and will not include training in maintenance, repair or programming.

6.5 **Non-Delivery.** The quantity of any installment of goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Purchaser on delivery unless Purchaser can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of goods (even if caused by Seller's negligence) unless Purchaser gives written notice to Seller of the non-delivery within seven (7) days of the date when the goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the goods shall be limited to replacing the goods within a reasonable time or adjusting the invoice respecting such goods to reflect the actual quantity delivered. Purchaser acknowledges and agrees that the remedies set forth in Section 3 are Purchaser's exclusive remedies for any non-delivery of goods.

7. TITLE

Unless otherwise agreed to in writing, title to the goods shall remain with Seller until all payments due hereunder have been made.

8. CHANGES, CANCELLATIONS, AND RETURN

8.1 **Accepted Orders Not Subject to Change.** Orders accepted by Seller are not subject to change or cancellation by Purchaser except with Seller's written consent and upon payment of not less than 25% of the price to cover the cost or loss incurred by Seller.

8.2 **Return of Goods.** No goods shall be returned to Seller without Seller's consent thereto in writing. All returns are subject to a credit charge and any return of the goods must be fully insured by and at the expense of Purchaser.

9. FORCE MAJEURE

9.1 Seller will make every effort to complete shipment and installation where indicated, but shall not be liable for any loss or damage for delay in delivery or inability to install due to causes beyond its reasonable control, including, but not limited to, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, acts of government or compliance with any government rules or regulations. Should such a delay occur, Seller may reasonably extend delivery or production schedules, or at its option, cancel the order in whole or part without liability other than to return any unearned deposit or prepayment.

10. REPRESENTATIONS AND WARRANTIES

10.1 **Compliance with Law.** Purchaser shall comply with all applicable laws, regulations, and ordinances. Purchaser shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations hereunder. Purchaser shall comply with all export and import laws of all countries involved in the sale of the Products or any resale of the Products by Purchaser. Purchaser assumes all responsibility for shipments of Products requiring any government import clearance. Seller may suspend all provision of goods or Services if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Purchaser.

10.2 **Product Warranty.** Seller warrants that the Products sold hereunder shall be free from defects in material or workmanship under normal use and service for a period of one year from the date of shipment; provided, however, that this warranty shall not apply to:

(A) Goods or parts thereof returned without Seller's approval, such approval to be given by Seller's providing Purchaser with a Returned Material Authorization (RMA) Number,

(B) Goods or parts thereof which have been modified or altered by persons other than personnel authorized by Seller,

(C) Consumable material such as, without limitation, filters, fuses, lubricants, docking cables, docking cams, docking gusset cam followers, and

(D) Parts or goods thereof manufactured by Purchaser.

10.3 **Limitation of Warranty.** Seller's obligation under the warranty provided in paragraph 10.1 of this Article is limited to the following:

- (A) Seller shall ship to Purchaser replacement parts or repaired parts at Seller's option, as required in Seller's opinion, to repair defects in material or workmanship. Seller shall ship such replacement or repaired parts freight prepaid to Purchaser's factory or such other location as specified by Purchaser and agreed to by Seller. In case of emergency, Seller agrees to endeavor to ship emergency replacement parts within two (2) business days after the receipt of notice of defects in the case of replacement parts or after receipt of the defective parts in the case of repaired parts.
- (B) Seller shall provide the replacement parts or repaired parts and freight charge described in paragraph 10.2 (A) of this Article at Seller's expense on condition that subsequent to Purchaser's discovery of such defect, written notice of any defect is given to Seller immediately and that Seller's inspection reveals that Purchaser's claim is valid under the terms of this Warranty. The time required by Seller to affect its inspection and make its determination shall not delay its performance as described in paragraph 10.2 (A) of this Article. If Seller fails to make this inspection and determine within thirty (30) days after receipt of notice of defect in the case of replacement parts or after receipt of the defective parts in the case of repaired parts, Purchaser's claim shall be deemed to be valid.
- (C) If Seller requests Purchaser to return the defective parts, Purchaser shall return the defective parts freight prepaid to Seller's office, or such other location as specified by Seller and agreed by Purchaser. If Purchaser fails to return the defective parts within thirty (30) days after Seller requests their return, in writing, Purchaser's claim shall be deemed invalid, and Seller shall invoice the Purchaser for the parts and freight.
- (D) Repair or replacement parts deliveries hereunder shall not interrupt or prolong the term of this warranty except that replacement parts shall be warranted for thirty (30) days or the remainder of the warranty period whichever is greater.

10.4 **NO IMPLIED WARRANTY.** EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 10, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

11. LIMITATION OF LIABILITY

IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.

12. INSTALLATION

12.1 **Installation and Additional Charges.** Except for complete in2 Test Head Positioners, unless otherwise expressly stipulated in writing, the goods covered hereby shall be installed by and at the expense of Purchaser. If Seller specifies it will be responsible for installation of the goods, the following applies: Seller shall provide technical personnel to assist Purchaser's personnel and provide technical supervision of the installation task. Installation of many in2 Test Head Positioners require that Purchaser's test system manufacturer's personnel also be present during the installation of the test system's test head into the in2 Test Head Positioner. Except as otherwise specified below, prices shown include the cost of Seller's technical personnel provided that the installation is performed within the continent where the goods were purchased and during normal business hours, as Seller in its sole discretion shall determine. The cost of Purchaser's personnel, the test system manufacturer's service personnel and any overtime charges or other special expenses for Seller's technical personnel shall be additional charges to the prices shown, which Purchaser agrees to pay.

12.2 **Purchaser's Responsibilities.** Purchaser shall, at its own expense, provide all proper and necessary labor and materials for uncrating and transporting the goods from Purchaser's receiving dock to Purchaser's installation site and for carpentry work, conduit wiring and other preparations required for such installation and connections. All such labor and materials shall be completed and available at the time of installation of the goods. Additionally, Purchaser shall provide free access to the premises of installation, and, if necessary, safe space thereon for storage of goods and equipment prior to the installation. If any special work of any type must be performed in order to comply with requirements of any governmental authority, including procurement of special certificates, the same shall be performed or procured by Purchaser at Purchaser's expense.

12.3 **Outside Personnel.** If, for any reason, technical supervision or installation assistance must be performed by anyone other than Seller's own technical personnel, an additional charge will be made for the cost of such outside labor, which the Purchaser agrees to pay, and it remains the Purchaser's responsibility to comply with local regulations.

13. PATENT, TRADEMARK, AND OTHER INFRINGEMENT

13.1 **Infringements by Seller.** If Purchaser receives a claim that any goods, in whole or in part, infringe upon the rights of others under United States property rights, patents, United States trademarks or other United States intellectual property rights, Purchaser shall notify Seller immediately in writing. As to all infringement claims relating to goods or parts manufactured by Seller:

(A) Purchaser shall give Seller information, assistance, and exclusive authority to evaluate, defend and settle such claims, and

(B) Seller shall then at its own expense and/or option defend or settle such claims, procure for the Purchaser the right to use the goods, remove or modify the goods to avoid infringements, or remove the goods and refund the purchase price, less reasonable depreciation.

13.2 **Infringement by Purchaser.** If some or all of the goods sold hereunder are made by Seller pursuant to drawings or specifications furnished by the Purchaser, should a claim be made that such goods infringe the rights of any third party under patent, trademark or otherwise, Purchaser shall indemnify and hold Seller harmless against any liability or expense, including reasonable attorney's fees, incurred by Seller in connection therewith.

14. DESIGNS AND TRADE SECRETS

14.1 **Ownership of Seller's Intellectual Property.** Any drawings, data, designs, software programs or other technical information supplied by Seller to Purchaser in connection with the sale of the goods shall remain the exclusive intellectual property of the Seller and nothing herein shall be construed as an assignment or grant of such intellectual property rights to the Purchaser. Such information shall not be used, reproduced, or disclosed to others without Seller's prior written consent, other than as expressly permitted hereby.

14.2 **Confidentiality.** All non-public, confidential or proprietary information of Seller, including but not limited to, writings, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Purchaser, whether disclosed orally or disclosed or accessed in writing, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection herewith is confidential, solely for the use of performing its obligations hereunder and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Purchaser shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) Purchaser demonstrates was known to Purchaser at the time of disclosure; or (c) Purchaser demonstrates was rightfully obtained by Purchaser on a non-confidential basis from a third party.

15. ASSIGNMENT

15.1 Neither party may assign any rights or obligations in connection with the sale of the goods to the Purchaser without the written consent of the other. No assignment or delegation relieves Purchaser of any of its obligations hereunder.

16. MODIFICATION

16.1 These Terms and Conditions of Sale may not be changed, modified, or amended, except in writing signed by authorized representatives of the parties.

17. GOVERNING LAW

17.1 The rights and obligations of the parties in connection with the sale of goods to the Purchaser shall be governed by the laws of the State of New Jersey, without giving effect to any choice or conflict of law provision or rule (whether of the State of New Jersey or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New Jersey. Any legal suit, action, or proceeding arising out of or relating hereto shall be instituted in the federal courts of the United States of America or the courts of the State of New Jersey, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding