



AVS Standard Terms and Conditions

Advanced Vacuum Systems

TERMS AND CONDITIONS INCORPORATED IN AND MADE PART OF ALL QUOTATIONS, CONTRACTS AND SALES

1. **Terms.** These Terms and Conditions shall be incorporated in and become a part of any agreement between AVS, Incorporated, a Massachusetts corporation ("AVS" or "we" or "us") and you ("Buyer") relating to the equipment, parts and/or service (the "Products" or "Services") identified or described on the face hereof or in an attached AVS quotation, contract or invoice document (the "Agreement"). **AVS's acceptance of any order is expressly conditioned on Buyer's agreement to these Terms and Conditions.** No other terms, conditions, agreements or warranties, whether contained in Buyer's purchase order form or otherwise shall be binding on AVS, except to the extent such other terms are typed or handwritten in full (and not merely printed or incorporated by reference) in a document signed by an officer of AVS. The rights and duties of Buyer, of any other person claiming through or under Buyer and of AVS, with respect to the sale, delivery, installation and use of the Products or Services, will be governed by these Terms and Conditions and the laws of the Commonwealth of Massachusetts.
2. **Acceptance.** An order shall only be considered as accepted when written acceptance by Buyer is received by AVS in writing. Until such acceptance is received by AVS, this quotation is non-obligatory and subject to prior sale or other withdrawal. No printing or typing errors in the quotation or invoice shall bind AVS. In any event, the Agreement and these Terms and Conditions shall become binding on both parties upon Buyer's acceptance of AVS's first delivery of any Products and/or Services, or upon commencement of manufacturing operations. Buyer is required to advise AVS prior to acceptance if anything herein is incorrect or is otherwise unacceptable.
3. **Price.** All prices quoted, unless otherwise noted by AVS, are F.O.B. Ayer, Massachusetts and exclude sales and use taxes and transportation and insurance charges, all of which will be borne by Buyer. All quotations are made for acceptance at AVS's home office in Massachusetts within thirty (30) days of the date thereof and are subject to change during that period.
4. **Payment Due.** Invoices are due and payable in full in USA dollars, drawn on a USA bank within ten (10) days of the invoice date. On any invoice not paid when due, interest shall accrue at the rate of one and one-half percent (1.5%) per month or the maximum lawful rate, whichever is less, commencing the thirty-first (31st) day after the date of each invoice concerned. Should any portion of any invoice be disputed, undisputed portions of the invoice and other invoices not in dispute shall nevertheless be paid when due without offset or reduction. If any payment is not made when due, AVS may, without liability to AVS, defer the performance of any further work, and retain shipments for Buyer on any contract until all outstanding bills have been paid, and Buyer shall remain liable for any and all costs incurred by AVS, including loss of reasonable profits. Down payments shall not accrue interest. Payment for parts is due on delivery or immediately upon receipt of invoices, without any reduction whatsoever. AVS expressly reserves all of its other rights and remedies at law and in equity.
5. **Security Interest.** In the event any payment hereunder is not made when due, Buyer hereby grants to AVS a security interest in the Products, which security interest shall extend to all parts, replacements, or accessories now or hereafter attached to the Products (collectively, the "Collateral"). Buyer hereby agrees to perform or cooperate with AVS in performing all acts necessary to protect AVS's security interest, including the filing of a UCC-1 Financing Statement. AVS shall have all the rights and remedies of a secured party under the Uniform Commercial Code. Any repossession or removal of the Collateral shall be without prejudice to any other remedy of AVS hereunder, at law or in equity. Any and all bank charges are to be covered by Buyer. If the account is placed for collection, Buyer agrees to pay AVS's reasonable attorneys' fees and other costs of collection.
6. **Title.** Title to Products supplied shall pass to Buyer only when Buyer has paid all amounts payable under this Agreement in full. When checks or bills of exchange are accepted, payment will only be considered as settled when these have been cleared. Buyer shall not have the right to sell transfer, or pledge Products until they have been paid for in full. In the event that Buyer does not pay all amounts as due or elects to cancel the order, Seller shall retain title to the Products. Seller shall also have the right to recover money owed by selling or disposing of the Product in any manner as it deems appropriate. Seller will refund to Buyer up to 100% of Buyer deposits already paid if the net proceeds received are in excess of Seller's outstanding obligations, plus any modifications and/or enhancements added for the resale.



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7. Risk of Loss. Subject to AVS's right of stoppage in transit, and notwithstanding the time of title transfer as described in Section 6 Title above, AVS's delivery to a carrier shall be complete delivery by us and shall transfer all risk of loss or damage to Buyer, including all risk of loss or damage in transit. Selection of the carrier and delivery route shall be made by AVS unless otherwise specified in writing by Buyer. Buyer acknowledges that in no event shall the carrier be deemed an agent of AVS. AVS does not insure Product shipments, unless requested in writing by Buyer, and then the insurance cost is Buyer's sole responsibility.

8. Drawings. Two copies each of General Arrangement Drawing, wiring diagram, operating and maintenance instructions, along with manufacturers' literature will be furnished as applicable. No other drawings will be supplied unless specifically agreed to prior to purchase of system. Dimensions, weights, illustrations, and drawings shall only be binding if expressly confirmed in writing. Gross weights and shipping crate dimensions are given approximately and to the best of AVS's knowledge and are not binding.

9. Shipment Date. AVS shall not be liable for any delay affecting delivery. Shipment and delivery dates are approximate and are based on AVS's best estimate as to AVS's ability to fulfill an order, and is not a schedule guarantee. The delivery period quoted shall only apply after complete clarification of all technical details and receipt of a down payment, or irrevocable letter of credit and import license or other documents, necessary to initiate the order. AVS shall have no liability to Buyer or any third party for any loss, damage, or expense from any delay or failure to meet the estimated schedule.

10. Inspection and Acceptance of Products. Buyer shall be entitled to inspect Product at AVS's manufacturing facility in Ayer, Massachusetts. Products not rejected at that time or within ten (10) days after receipt by Buyer, are deemed to be irrevocably accepted by Buyer. Any discrepancy in shipment quantity must be reported within ten (10) days of receipt of the Products. Any returns approved by AVS shall require a return merchandise authorization number from AVS, which shall be displayed on packaging.

11. Force Majeure. Neither party shall be responsible for its non compliance with any of its obligations hereunder, if so prevented by cause(s) beyond its reasonable control including but not limited to acts of God, fire, flood, earthquake, riots, wars, acts of terrorism, acts or omissions of other parties, general or local strikes, lock-out, material shortage, actions by government or any agency thereof, boycott or trade embargoes. The party claiming a Force Majeure event shall notify the other party within 5 days from the occurrence of such event by registered letter and specify the estimated extent of delay caused or likely to be caused. The party shall forthwith notify the other party upon expiration of such cause. If the causes provided above prevent either party hereto to perform its obligations for more than 2 months, both party shall meet and try in good faith to find an amicable solution and shall use all reasonable endeavors to minimize the consequences of such Force Majeure.

12. Warranty. AVS warrants, to the original Buyer only, for a period of one (1) year from acceptance on delivery that its Products shall: a) materially conform to AVS's published and/or expressly agreed specifications; b) be free from defects in material and workmanship; and c) that its Services shall be performed in accordance with generally accepted standard of care for similar professional practices at the time of performance. Note: Consumable items, i.e. thermocouples, heat shields, heating elements, vacuum gauges, hearth supports, hearth rails, o-rings and seals, are considered consumable and do not carry a warranty. Purchased components are warranted by the original manufacturer. AVS will not take responsibility for material deficiencies which occur as a result of improper or inappropriate use faulty installation by Buyer or third parties, normal wear, faulty or negligent treatment, improper testing, assembly, mishandling or which has been operated contrary to current instructions relating to installation, maintenance or operation, or contrary to industry standards relating to acceptable input power. AVS will have no responsibility for any results following inappropriate changes or for changes or repairs performed by Buyer or third parties without AVS's express written authorization.

13. Remedies: If Buyer discovers within the one (1) year period a material nonconformity or defect in material, workmanship or standard of care, Buyer must promptly notify AVS in writing. Within a reasonable time after such notification, AVS will: (i) repair, replace or re-perform, at AVS's option, any such nonconforming or defective Product or Service F.O.B. AVS's manufacturing facility, at AVS's expense, or (ii) at AVS's option, refund to Buyer the purchase price against return of the Product, in each case provided the non-conformity or defect is proved to AVS's



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satisfaction. THESE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF THIS WARRANTY. ANY PRODUCT OF AVS'S DESIGN DELIVERED HEREUNDER SHALL BE DEEMED TO BE CONFORMING IF IT FALLS WITHIN A REASONABLE RANGE OF SPECIFICATIONS (E.G., 5% FOR PERFORMANCE). BUYER ASSUMES FULL RESPONSIBILITY FOR CORROSION AND EROSION OF THE PRODUCTS AFTER SHIPMENT. THE WARRANTIES SET FORTH IN THIS DOCUMENT ARE THE ONLY WARRANTIES MADE BY AVS. ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT AVS WAS AWARE OF SUCH INTENDED USE), NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND WARRANTIES AGAINST LATENT DEFECTS, ARE ALL EXCLUDED. Applicable law may not allow the exclusion of implied warranties, so the above exclusions may not apply to Buyer. Buyer shall make any warranty claim within ten (10) days after the defect appears. If AVS agrees to replace or repair a defective Product(s), Buyer shall provide the space for dismantling, reassembling, and handling the equipment in connection with the reconditioning or replacement.

14. Indemnification. Buyer shall indemnify, hold harmless and defend AVS and its officers, directors, shareholders, employees, affiliates and agents, of, from and against any and all loss, damage, expense (including reasonable attorneys fees), claims, suits, or liabilities which AVS or any of its officers, directors, shareholders, employees, affiliates and agents may sustain or incur at any time, including but not limited to any injury to or death of any person or damage to any property, arising out of any acts attributable to the conduct of Buyer or its officers, directors, shareholders, employees, affiliates and agents with respect to the Products and/or Services, including, but not limited to, the negligence, willful misconduct, or improper maintenance or use of the Products or Services by the Buyer, its officers, directors, shareholders, employees, affiliates and agents.

15. Massachusetts and California customers: AVS is required to collect all applicable State, sales and use taxes. Applicable taxes will be computed at the time of shipment.

16. Limitation of Liability. IN NO EVENT SHALL AVS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES TO ANY PROPERTY OR TO ANY PERSON whether based upon breach of warranty or contract, negligence, tort or other legal theory, arising out of this Agreement or the sale, delivery, installation, or use of the Products and Services. Such damages include, but are not limited to, loss of profits, savings or revenue, loss of use of the Products or any associated equipment, cost of capital, cost of any substitute equipment, facilities or services, downtime, claims of third parties, including Buyer, and damage to property. IN NO EVENT SHALL AVS'S LIABILITY FOR ANY CLAIM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SALE, DELIVERY, INSTALLATION OR USE OF THE PRODUCTS OR SERVICES EXCEED THE PURCHASE PRICE OF SUCH PRODUCTS OR SERVICES PAID TO AVS. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

17. Miscellaneous. These Terms and Conditions shall be construed in accordance with the law of the Commonwealth of Massachusetts. Any legal action or other legal proceeding relating to the Agreement or these Terms and Conditions, or the enforcement of any provision of these Terms and Conditions, must be brought or otherwise commenced in any state or federal court located in the Commonwealth of Massachusetts. No rights, duties, agreements or obligations hereunder or under the Agreement may be assigned or transferred by Buyer without the prior written consent of AVS. Any attempted or purported assignment shall be void. Notwithstanding the foregoing assignment restriction, this Agreement shall be binding upon the parties hereto and their respective successors and assigns. The waiver of any provision hereof or of any breach or default hereunder shall not be deemed a waiver of any other provision hereof or breach or default hereunder. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, at as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.