



CRYOWORKS, INC. TERMS AND CONDITIONS OF SALE

1. **General Terms and Conditions.** The terms and conditions contained herein, together with any additional or different terms contained in the final, written quote issued by CryoWorks, Inc. ("CryoWorks"), and submitted to Buyer, if any (which quote shall be incorporated herein and control over these terms and conditions to the extent it contains any conflicting terms and conditions), constitute the entire agreement (the "Agreement") between the parties with respect to the subject sale. Acceptance by CryoWorks of Buyer's purchase order and Buyer's acceptance of CryoWorks' quote is expressly limited to and conditioned upon Buyer's acceptance of these Terms and Conditions of Sale, which may not be changed or waived except in writing signed by CryoWorks. Any additional, inconsistent or different terms and conditions contained in Buyer's purchase order or other documents supplied by Buyer are hereby expressly rejected. Unless the context otherwise requires, the term "Equipment" as used herein shall mean all goods, equipment, parts, and accessories sold to Buyer by CryoWorks. Unless the context otherwise indicates, the term "Services" as used herein shall mean labor, supervision, repair and project engineering services provided by CryoWorks. As used herein, the term "Buyer" shall mean only the party issuing the purchase order to CryoWorks for Equipment or Services, regardless of whether or not the Buyer is the end user of the Equipment or Services.

2. **Payment Terms and Conditions.**

(a) Unless a different payment schedule is agreed to in writing by CryoWorks, payment terms are net 30 days from the invoice date, except that all payments made by credit card are due at the time of order placement. Late payments are subject to a 1.5% monthly late charge calculated per diem. Any checks returned for nonsufficient funds and any stopped or reversed payments shall be subject to a fee.

(b) If required by CryoWorks, Buyer will cause an irrevocable letter of credit to be established in favor of CryoWorks on a bank approved by CryoWorks before fulfilling any order, and if required, CryoWorks is entitled to charge any costs associated with the letter of credit to Buyer's account. Performance schedules are conditional upon receipt of the letter of credit within 30 days of award.

(c) Buyer agrees to furnish CryoWorks with any requested credit information. Buyer's credit limit will be set at CryoWorks' sole discretion and may be modified at any time based upon Buyer's credit risk as determined by CryoWorks. In the event that Buyer's credit risk increases or Buyer fails to pay timely, CryoWorks may suspend performance and/or require alternate payment methods.

(d) Buyer shall notify CryoWorks of any items disputed in good faith relating to an invoice within 15 days after the invoice date in writing specifying the nature of the disputed item, but in no event is Buyer entitled to withhold or set off any invoiced amounts without CryoWorks' prior written approval.

(e) In the event it becomes necessary for CryoWorks to refer Buyer's account to a third party for collection or for CryoWorks to take other enforcement action of this Agreement against Buyer, Buyer agrees to pay any and all attorney and arbitrator fees, lien filing fees, collection costs and legal expenses associated therewith incurred by CryoWorks.

3. **Taxes.** Federal, state, local, value added, sales and use, and other applicable taxes measured on the price of Equipment or Services in any legal system by any taxing authority are not included in the price unless otherwise agreed in writing by CryoWorks.

4. **Quotation Time Limitation.** All quotations are valid for a period of 30 calendar days from the date they are provided, unless otherwise expressed in writing by CryoWorks. If this Agreement is delayed or suspended in whole or in part by Buyer for more than 60 days, pricing shall either be subject to re-negotiation or the Agreement may be deemed cancelled for Buyer's convenience and subject to Section 16, at CryoWorks' sole option.

5. **Acceptance.** Acceptance of Equipment occurs at point of Delivery. Acceptance of any Services provided hereunder occurs at substantial completion of performance.

6. **Warranties.**

(a) Unless a different warranty is agreed to in writing by CryoWorks, CryoWorks provides Buyer the following warranties: (i) 90 days for installation and labor, (ii) 6 months for spare parts, electrical components and heater elements, (iii) 1 year for non-vacuum jacketed

CRYOWORKS, INC. TERMS AND CONDITIONS OF SALE

components and vacuum jacketed components without vacuum thermocouple gauge and (iv) 3 years for vacuum jacketed components with vacuum thermocouple gauge.

(b) All resale products and components only carry the warranty offered by their original manufacturer.

(c) **Limitations.** These warranties do not cover Buyer-furnished designs, goods, equipment, services or materials and do not apply to any Equipment or Services or parts thereof which CryoWorks determines: (i) to have been improperly installed or repaired; (ii) to have been altered or modified in any way without CryoWorks' prior written approval; (iii) to have been subjected to misuse, abuse, excessive external forces, negligence or accident; (iv) to have been installed, stored, used, or operated in a manner contrary to CryoWorks' instructions, specifications and drawings, outside the specified design conditions, or not used in accordance with normal operating and maintenance instructions; (v) are purchased as used Equipment, a prototype or a sample; or (vi) resulted from normal wear and tear, corrosion or erosion. Each of the foregoing shall act to void any existing warranty. Proper installation of normal maintenance parts does not constitute a modification.

(d) Buyer agrees to defend, indemnify and hold CryoWorks harmless from any third party claims arising out of the use, resale, or lease of said furnished Equipment or Services.

7. Exclusive Remedies.

(a) Should any failure to conform to the applicable warranties stated above occur during the warranty periods specified above, then Buyer shall appropriately decontaminate the Equipment and provide CryoWorks with prompt written notice identifying the problem, but in no event shall such notice be more than 30 days after discovery of such failure.

(b) Provided that Buyer has fulfilled all of its obligations under the Agreement and complied with the procedures set forth in this Section 7, CryoWorks shall inspect said Equipment within 10 business days after receipt of Buyer's notice.

(c) If, upon inspection, CryoWorks determines that there has been a nonconformity with the warranties stated above, CryoWorks' sole obligation, and Buyer's sole remedy, is for CryoWorks to correct such nonconformity by, at CryoWorks' option: (i) repair or replacement of the nonconforming Equipment or parts thereof; or (ii) refund the purchase price of the nonconforming Equipment or parts thereof; and (iii) in the case of nonconforming Services, re-perform the Services or refund the price therefor.

(d) Repairs or replacements made pursuant to warranty shall be warranted for the time remaining in the original warranty period or 30 days, whichever is longer.

(e) Subject to the limitations provided in this sub-paragraph, CryoWorks will make all arrangements to either transport such Equipment to and from CryoWorks' repair or factory facility or go to Buyer's site, at CryoWorks' sole option. CryoWorks shall not be responsible for providing working access to the defect, including disassembly and reassembly of Equipment, decontamination or for transportation costs to and from CryoWorks' repair or factory facility, all of which shall be at Buyer's risk and expense. Notwithstanding the foregoing, unless CryoWorks was contracted to provide the original installation, CryoWorks' warranty under this Section 7(e) does not cover Equipment removal and Equipment reinstallation labor. Unless preapproved in writing by CryoWorks, Buyer shall cover all shipping and field labor costs associated with replacement.

(f) If it is determined by CryoWorks that such failure was not covered by the warranties stated above, then CryoWorks will invoice Buyer, and Buyer agrees to pay, for all such inspection and other expenses. No CryoWorks liability exists for Equipment or Services shown to be defective until such time as the Equipment and Services have been paid for.

8. Disclaimer of Any Other Warranties. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER CLAIMS OF RELIEF AND WARRANTIES OF QUALITY, PERFORMANCE AND DESIGN, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED BY CRYOWORKS AND ALL EQUIPMENT MANUFACTURERS.

CRYOWORKS, INC. TERMS AND CONDITIONS OF SALE

9. **Termination.** No termination by Buyer for default shall be effective unless, within 15 days after receipt by CryoWorks of Buyer's written notice specifying such default, CryoWorks fails to initiate and pursue correction of such specified default. If CryoWorks elects to pursue correction, so long as it does so diligently, no termination shall occur.

10. **Excusable Delays.** The schedule for Delivery of Equipment and performance of Services is subject to modification for delays resulting from causes beyond CryoWorks' reasonable control, including but not limited to, acts of God, war, terrorism, strikes, restrictions of the United States Government or other governments having jurisdiction, delays in transportation, or inability to obtain necessary labor, materials, or manufacturing facilities.

11. **Delivery and Risk of Loss or Damage.**

(a) Unless otherwise agreed in writing by CryoWorks, all domestic and international shipments are EXW CryoWorks' plant, with responsibilities as defined in International Chamber of Commerce INCOTERMS 2010. The risk of loss or damage shall pass to Buyer upon the Equipment being made available at CryoWorks' premises.

(b) Notwithstanding anything to the contrary, all lead times quoted and accepted by CryoWorks shall be from the date CryoWorks accepts Buyer's purchase order in writing. EXW dates quoted are based on CryoWorks' best estimate of a realistic time when Equipment will be available, and are subject to change. EXW availability dates will be confirmed on CryoWorks' acceptance of any resulting order, and CryoWorks will use its best efforts to meet such date. CryoWorks may make early EXW full or partial shipment available and invoice Buyer accordingly.

(c) If CryoWorks agrees in writing to prepay transportation and transit insurance charges for the account of Buyer, then CryoWorks is entitled to include shipping, handling and any transit insurance charges on its invoice. Buyer shall indemnify, defend and hold CryoWorks harmless from any claims by freight carriers for Buyer's failure to pay freight charges. Any agreement by CryoWorks under this sub-paragraph does not alter the shipment being made EXW.

(d) Claims for shortages in or damages to any shipment are waived unless made in writing and received by CryoWorks within 10 days after receipt of Equipment by Buyer or its designated consignee.

12. **Laws, Codes and Standards.** Price and Delivery schedule are based on the applicable laws, codes, and standards stated in the Equipment specifications in effect as of the date of Seller's acceptance of the purchase order. If such laws, codes, and standards change, or if Purchaser changes the laws, codes, and standards stated in the Equipment specifications, and such change increases or decreases the cost of performing the work or impacts the Delivery schedule, then CryoWorks will advise Buyer of the same, and the parties shall promptly negotiate in good faith and mutually agree upon any modification to the order resulting from any such change. Any local laws, statutes, codes or standards, or interpretations thereof that do not match national building codes are hereby exempt from the Agreement unless written copies are presented by Buyer to CryoWorks as additional specifications and accepted in writing by CryoWorks as part of this Agreement.

13. **Title.** CryoWorks shall retain legal and equitable title to any Equipment until Buyer has paid for such Equipment in full, and Buyer shall complete and execute all documents required to this effect upon CryoWorks' request and allow CryoWorks to repossess the Equipment in the event of Buyer's failure to pay after receipt of written notice by CryoWorks. Retention of title does not alter the passing of risk of loss as provided herein.

14. **Installation.** Installation of Equipment furnished hereunder shall be by Buyer, unless otherwise agreed to in writing signed by CryoWorks' duly authorized representative. Installation services provided by CryoWorks or one of its affiliates shall be pursuant to a separate written agreement.

15. **Field Service.** Field service will be provided on a per diem basis upon written authorization by Buyer and at CryoWorks' rates in effect when such Services are provided. Buyer will provide free and unrestricted access to CryoWorks personnel, contractors, subcontractors, equipment and any other personnel necessary in order for CryoWorks to complete the contracted work.

16. **Cancellation.** Cancellation of any order must be by written notice to CryoWorks and will be subject to CryoWorks' cancellation charges and fees including, but not limited to, all costs incurred through the date of cancellation, the cost for materials ordered that

CRYOWORKS, INC. TERMS AND CONDITIONS OF SALE

cannot be returned, return fees, cancellation fees and restocking fees (of not less than 30%), cost to process such cancellation, plus a reasonable profit.

17. Intellectual Property and Confidentiality. Unless otherwise agreed to in writing signed by CryoWorks' duly authorized representative, all right, title and interest in any inventions, developments, improvements or modifications of the Equipment and Services made by CryoWorks or Buyer as a result of the Agreement shall exclusively remain with CryoWorks. Any design, reports, plans, drawings, standards, specifications or other information submitted to Buyer by CryoWorks ("CryoWorks Documents") were developed at CryoWorks' expense and shall remain CryoWorks' exclusive property. Without the express prior written consent of CryoWorks, Buyer shall not copy or disclose CryoWorks Documents to any third party, and shall not use them for any purpose other than to install, own, operate, and maintain the subject Equipment or to use the Services, including, without limitation, use with any other project, or for the completion of the project contemplated by this Agreement by others. CryoWorks Documents are not suitable for use on any other agreement or project and any reuse of CryoWorks Documents without the express written consent of CryoWorks will be at the sole risk of Buyer, and Buyer shall indemnify, defend and hold CryoWorks harmless from any and all claims arising from Buyer's reuse of CryoWorks Documents. Upon CryoWorks' request at any time, Buyer shall promptly return all CryoWorks Documents. If CryoWorks' Equipment is held to infringe a United States patent in effect as of the date of this Agreement (other than any infringement resulting from CryoWorks' compliance with Buyer's designs, specifications or instructions or from the use of the Equipment in combination with other materials or the operation of any process), then CryoWorks may at its option procure for Buyer the right to use the Equipment, modify or replace it with noninfringing Equipment; refund the purchase price allocable to the infringing Equipment, or settle or otherwise terminate said actions on behalf of Buyer. The foregoing is CryoWorks' entire liability and Buyer's sole remedy for patent infringements of the Equipment. Buyer shall defend, indemnify and hold CryoWorks harmless from all expenses, losses and other damages resulting from any actual or alleged infringement of intellectual property rights arising from CryoWorks' compliance with Buyer's designs, specifications or instructions, from the use of the Equipment in combination with other materials, or from the operation of any process.

18. Assignment. This Agreement may not be transferred or assigned by Buyer by operation of law or otherwise without the prior express written consent of CryoWorks. Any transfer or assignment by Buyer of any rights, duties or obligations without CryoWorks' prior written consent is void.

19. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL CRYOWORKS, ITS AFFILIATES, SUPPLIERS AND SUBCONTRACTORS BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME COSTS, COST OF DELAYS, OR FOR ANY PENALTIES, WHETHER ANY SUCH CLAIM FOR THE SAME IS BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CRYOWORKS' TOTAL LIABILITY ARISING OUT OF THIS AGREEMENT FOR ANY CLAIMS WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE, OR FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY DESIGN, SALE, INSTALLATION, OPERATION OR USE OF THE EQUIPMENT OR PERFORMANCE OF ANY SERVICES UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE ACTUALLY PAID TO CRYOWORKS BY BUYER FOR THE SPECIFIC EQUIPMENT OF OR THE SERVICES GIVING RISE TO THE CLAIM.

20. Export Sales; Compliance with Trade Laws.

(a) In no event shall CryoWorks be required to export or deliver any technical information, data and/or Equipment if such export or Delivery is then prohibited or restricted by any law or regulation of the United States government, or of any other applicable governmental agency of any country having jurisdiction, including the country in which the Equipment or Services to be sold will be installed, used, or performed.

(b) Should CryoWorks' performance of its obligations hereunder be prohibited by any applicable governmental agency, in whole or in part, or if the exportation or importation of the Equipment which is the subject of this Agreement be precluded because of the inability to obtain an export or import license within a reasonable time, then CryoWorks' obligations hereunder shall be terminated at CryoWorks' option, and CryoWorks shall be entitled to reasonable cancellation charges.

CRYOWORKS, INC. TERMS AND CONDITIONS OF SALE

(c) Unless otherwise agreed in writing by CryoWorks, Buyer accepts all responsibility for exporting and importing any Equipment sold hereunder outside of the United States, will be the exporter of record and importer of record, and will be responsible for filing any documents, obtaining any licenses required by the U.S. or other government agencies, and paying all duties and taxes necessary for exportation and importation.

(d) Buyer agrees not to export, re-export or import any Equipment, technical information or data of CryoWorks without full compliance with United States and other laws of countries having jurisdiction and shall cause the end user of Equipment or Services to comply with such applicable laws.

(e) Buyer warrants and represents that it is in full compliance with all such applicable export and import laws, including but not limited to, the International Traffic In Arms Regulations, the Export Administration Regulations, and all United States anti-boycott and embargo regulations, and Buyer shall provide CryoWorks with such written assurances of compliance as requested by CryoWorks from time to time. Specifically, Buyer agrees not to export, re-export, sell or lease any Equipment or components thereof or technical data supplied by CryoWorks to a prohibited person, to a prohibited country, or for a prohibited use under the U.S. or any other applicable trade laws.

(f) Buyer agrees to indemnify and hold CryoWorks harmless from and against any and all damages and expenses (including attorneys' fees) resulting from Buyer's violation of applicable export and import regulations.

21. Compliance with Anti-Bribery Laws. Buyer warrants and represents that it is familiar with the requirements of the U.S. Foreign Corrupt Practices Act and other similar anti-bribery laws, including without limitation, the OECD Anti-Bribery Convention and the UK Bribery Act, that it has not and will not violate those laws as may be amended from time to time, and that it neither has nor will it offer, make, or agree to make, directly or indirectly, any gift or payment of any kind or any political contribution in violation of such laws. Buyer shall provide CryoWorks with such written assurances of compliance with such laws as requested by CryoWorks from time to time. Any payment, offer of payment, or agreement to make a payment that is contrary to the laws of the United States or the laws of the country in which it is made, or any other payment in conflict with this clause, will constitute a material breach of this Agreement, and any obligation of CryoWorks hereunder shall automatically terminate upon such breach without further liability to CryoWorks. Buyer agrees to indemnify and hold CryoWorks harmless from and against any and all damages and expenses (including attorneys' fees) resulting from Buyer's violation of the requirements referenced in this Section.

22. Governing Law; Limitation of Actions; Arbitration.

(a) This Agreement and any claim, controversy or dispute arising under or related to the Agreement, the relationship of the parties, and the interpretation and enforcement of the rights and duties of the parties is exclusively governed by the laws of the State of California, without reference to any of its conflicts of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods.

(b) Buyer waives all state, federal and international jurisdiction causes of action arising under this Agreement after one year from the date of the occurrence of the event giving rise to any such claim, waives any sovereign immunity claims or defenses, and consents to and will not contest personal jurisdiction in the local and federal courts of Riverside County, California.

(c) Except for account collection disputes, any disputes, controversies or claims arising out of or relating to this Agreement, or the breach thereof which cannot be resolved amicably within 60 days, shall be settled by binding arbitration. This agreement to submit to binding arbitration shall be specifically enforceable under the prevailing arbitration law. The award of the arbitrator shall be final, and a judgment may be entered upon it by any court having jurisdiction. A party desiring to invoke this arbitration provision shall serve written notice upon the other of its intention to do so and the name of an impartial individual who is knowledgeable in matters pertaining to CryoWorks' industry to serve as an arbitrator. If the other party objects within 15 days to the arbitrator proposed, and the parties fail to agree on an arbitrator within 30 days thereafter, then the arbitrator shall be appointed by the arbitration tribunal. For domestic sales, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then prevailing. For international sales, the arbitration shall be conducted in accordance with the International Arbitration Rules then prevailing of the International Centre for Dispute Resolution. Unless the parties agree otherwise, all arbitrations shall be conducted and all related documents submitted shall be in the English language in Riverside, California, and the arbitrator shall apply the substantive governing laws as specified above. All awards granted by the arbitrator shall be final and binding on the parties, and

CRYOWORKS, INC. TERMS AND CONDITIONS OF SALE

shall include interest from the date of any breach or default and from the date of the award until paid in full. Judgment may be entered on any award or decision of the arbitration panel by either party in a court of competent jurisdiction. The arbitrator may grant emergency interim relief according to the applicable arbitration rules, and shall award costs, fees and other expenses of the arbitration, including reasonable attorney's fees, to the party not in default.

(d) If Buyer fails to promptly assume CryoWorks' defense when requested to do so as required under this Agreement, then CryoWorks may defend with counsel of its own choice at the expense of Buyer.

23. Miscellaneous.

(a) These Terms and Conditions constitute the complete and exclusive agreement between CryoWorks and Buyer regarding the subject sale transaction and except as agreed upon in a separate writing as contemplated by these Terms and Conditions, there are no agreements, understandings, restrictions, warranties, or representations between CryoWorks and Buyer other than those set forth herein.

(b) If any provision, or any part thereof, of this Agreement is found by any court or governmental agency of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, then such provision shall be deemed revised and applied to the maximum extent allowed by applicable law, and such invalidity or unenforceability shall not affect the remainder of such provision or any other provision here which shall remain in full force and effect.

(c) All obligations herein shall survive termination, expiration or completion of this Agreement.

(d) No term or condition is intended for the benefit of any third party, and CryoWorks and Buyer do not intend any term or condition to be enforceable by a third party, including any end user of Equipment or Services.

(e) CryoWorks' failure on any occasion to insist on strict performance of any term or condition hereof shall not constitute a waiver of compliance with such term or condition on any other occasion or a waiver of any default.

(f) References to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument as amended, replaced, consolidated or reenacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it.

(g) The headings used throughout are for convenience only and shall be given no legal effect.

(h) Fax copies shall be given the full force and effect as an original.

(i) All notices, consents, requests, demands, and other communications required or permitted under these Terms and Conditions shall be in writing and shall conclusively be deemed effective (1) on personal delivery, (2) on confirmed delivery by courier service, (3) on the first business day after transmission if sent by confirmed facsimile transmission or (4) three days after deposit in the United States mail, by certified mail, postage prepaid.