

## TERMS AND CONDITIONS OF SALE OF INOVAR PRODUCTS

- 1. OFFERS:** Offers made and prices quoted by INOVAR are valid for 30 days from the quotation date, unless otherwise specified in writing within the quotation.
- 2. CONTROLLING TERMS:** No orders for products or services of INOVAR shall be binding on INOVAR until acknowledged in writing by an officer of INOVAR. These terms and conditions of sale apply to all purchase orders transmitted to INOVAR, they take precedence over Purchaser's additional or different terms, and they are the complete and exclusive statement of the terms of the agreement of the parties. ISSUANCE OF A PURCHASE ORDER AND/OR ACCEPTANCE OF ITEMS BY PURCHASER SHALL IRREVOCABLY MANIFEST PURCHASER'S ASSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AND INOVAR AGREES TO FURNISH PRODUCTS AND SERVICES ONLY UPON THESE TERMS AND CONDITIONS. INOVAR'S failure to object to terms contained in any communication from Purchaser shall not be deemed a waiver of this provision. No waiver, alteration, or modification of any of the provisions hereof shall be binding on INOVAR unless made in writing and signed by an officer of INOVAR.
- 3. SHIPMENT, DELAYS IN PERFORMANCE:** Shipment dates are approximate. Delivery of items to a carrier at INOVAR'S plant or other loading point shall constitute delivery to Purchaser; and title shall thereupon pass to Purchaser, and all risk of loss or damage to goods thereafter shall be borne by Purchaser. Shipment of items to Purchaser's desired location, if arranged by INOVAR, shall be either freight collect or freight prepaid with charges invoiced to Purchaser, unless otherwise agreed. INOVAR reserves the right to make partial deliveries, and all such partial deliveries may be separately invoiced and shall be paid for when due. Delay in delivery of any installment shall not relieve Purchaser of its obligations to accept later deliveries. In no event shall INOVAR be liable for any failure or delay in performance or delivery due to unforeseen circumstances or causes beyond its control, including, but not limited to, acts of nature, acts of government, labor difficulties, or unavailability of necessary labor, materials, manufacturing facilities, or transportation.
- 4. SHIPMENT INTO STORAGE, CANCELLATION:** If for any reason attributable to Purchaser, including, but not limited to, failure to give shipping instructions or make a due payment, INOVAR withholds shipping it to Purchaser, INOVAR may store the items, at Purchaser's risk, in a warehouse or upon INOVAR premises, and in addition to its responsibilities otherwise under the order, including to make payments when due, Purchaser shall pay all costs resulting therefrom. No order may be cancelled by Purchaser, nor may shipments be deferred, unless agreed to by a separate document signed by an officer of INOVAR, setting forth and conditioned upon the payment to INOVAR of amounts as specified therein sufficient to compensate INOVAR for any loss incurred due to such cancellation, including any lost profit.

5. **PAYMENT, SECURITY:** Payments shall be due in 30 days after shipment, or in accordance with the terms stated on INOVAR'S invoices if otherwise. Any amounts not paid when due shall be subject to a late payment charge at the rate of 1% per month, but not higher than permitted by law; and, in the event of any default in payment, without limitation of its rights otherwise, INOVAR shall be entitled to discontinue performance under any arrangement with Purchaser and to recover all costs of collection, including attorneys' fees. INOVAR reserves the right, at any time, to require an irrevocable letter of credit from a bank which it designates or, when, in INOVAR'S opinion, the financial condition of Purchaser so warrants, to alter or suspend credit, refuse shipment, or cancel unfilled orders.

6. **TAXES AND OTHER CHARGES:** Any manufacturer's tax, sales tax, use tax, value added tax, excise tax, custom, inspection or resting fee, or any other tax, fee, or charge of any nature whatsoever imposed by any governmental authority, upon or with respect to the transactions covered hereby shall be paid by Purchaser in addition to the prices quoted or invoiced. In the event INOVAR is required to pay any such tax, fee, or charge, Purchaser shall reimburse INOVAR therefore promptly upon notice from INOVAR.

7. **INTELLECTUAL PROPERTY INDEMNITY:** INOVAR accepts no liability for, and Purchaser shall defend, indemnify and hold INOVAR harmless against any expense or loss resulting from infringement of patents, copyrights, trademarks or other intellectual property rights of others arising from INOVAR'S compliance with Purchaser's specifications, instructions or requirements that a product be produced. While INOVAR takes reasonable efforts to maintain confidentiality of Purchaser's trade secrets, manufacturing methods, and design, Purchaser agrees products of competitive Purchasers may be produced by INOVAR, possibly in close proximity. Purchaser acknowledges that employees of competitive Purchasers may observe Purchaser's products during manufacture or as complete units. Buyer acknowledges the aforementioned does not constitute the release of Purchaser's intellectual property or the violation of any confidentiality agreements. Further, Purchaser acknowledges that any confidentiality agreement signed by INOVAR does not prevent INOVAR from performing services of any kind for, or contracting with, any Purchaser which may or may not be competitive with Purchaser, knowingly or unknowingly to INOVAR.

8. **ACCEPTANCE OF ITEMS:** If Purchaser has any claim or complaint concerning any item including, without limitation, claimed shortages, defects, quality problems, or delivery errors, it shall notify INOVAR in writing within 30 days after receipt thereof, specifying the basis of its complaint. If no notice is received from Purchaser within 30 days of receipt, the items shall be deemed accepted on the date of delivery and Purchaser shall be deemed to have waived all claims and complaints, except as permitted by INOVAR'S express warranty.

9. **INCOMPLETE INFORMATION:** Purchaser is expected to provide INOVAR with accurate and timely information upon which to produce to Purchaser's requirements. Should INOVAR discover errors, omissions, obsolete parts, changes, additional materials requirements, and/or incomplete speci-

fications on documentation provided by the Purchaser, INOVAR shall notify the customer of these problems and request appropriate authorizations to continue based on a changed scope of work that may increase total costs to the Purchaser and/or result in delivery delays.

10. EXPRESS WARRANTY, REPAIRS, RETURNS: INOVAR warrants to Purchaser that items provided by INOVAR shall conform to Purchaser's specifications and shall be free from defects in material and workmanship when used under normal operating conditions and that all service provided by INOVAR shall be performed in a workmanlike manner. This warranty shall apply for such period of time and under such conditions as are specified in INOVAR'S standard warranty for each item. If not otherwise specified, INOVAR items shall carry a warranty for a period of one year from shipment by INOVAR. The warranty granted hereunder, however, does not include parts which INOVAR considers as consumables under normal operating conditions; and, if a system includes major subsystems or components not manufactured by INOVAR, INOVAR'S warranty with respect to such shall be limited to the warranty extended to INOVAR by the supplier thereof. In no event shall INOVAR'S warranty apply to defects caused in whole or in part by external causes, such as, but not limited to, catastrophe, power failure or fluctuations, environmental extremes, electrostatic discharge, or improper or unconventional use, maintenance, or application. If an item or part thereof proves defective and does not meet its warranty, such item or part shall be repaired or replaced, at INOVAR'S option. INOVAR'S obligation to repair or replace shall be conditioned upon INOVAR'S receiving written notice of any alleged defect during the applicable warranty period and within 10 days after its discovery and, at INOVAR'S option, return of such item or part to INOVAR'S factory in Logan, Utah or such other facility as INOVAR may designate. All items returned to INOVAR must be accompanied by an INOVAR Return Materials Authorization signed by an authorized representative of INOVAR. Unless specifically noted otherwise in writing, return of items by Purchaser shall constitute Purchaser's authorization for INOVAR to repair such and to invoice Purchaser for its standard charges if the item is not covered by the terms of the warranty. Purchaser shall be responsible for all freight and customs charges and all risk of loss or damage during transit, both to and from INOVAR'S facility, whether or not the item meets warranty requirements. THE FOREGOING WARRANTY IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. INOVAR SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. LIMITATION OF LIABILITY: IN NO EVENT SHALL INOVAR BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR CONTINGENT DAMAGES, NOR SHALL ITS LIABILITY EXCEED THE PURCHASE PRICE OF THE ITEM WHICH GAVE RISE TO THE CLAIM, WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE.

12. INDEMNIFICATION: Purchaser agrees to defend, indemnify and hold INOVAR harmless from and against all claims of any kind, whether based on contract, tort or otherwise, for any losses, ex-

penses, damages and liabilities (special, indirect, incidental, consequential or contingent) which may arise out of the use of items by Purchaser or others, or otherwise be based upon events occurring subsequent to shipment by INOVAR, except those caused solely by defects in materials or workmanship or by the sole negligence of INOVAR, which shall be governed by the provisions limiting liability set forth in Paragraph 10 or otherwise herein.

13. ASSIGNMENT, WAIVER. EXPORT, LAW: Purchaser shall not assign any of its rights or obligations without INOVAR'S prior written consent. INOVAR'S failure to exercise any of its rights shall not constitute a waiver or forfeiture of such rights, and specific statement of its rights herein shall not limit its rights otherwise available. Purchaser shall not take any action which might violate any governmental regulation pertaining to import/export, and any violation of this covenant shall be subject to its indemnification responsibilities set forth in Paragraph 11 above. Disputes relating to transactions between Purchaser and INOVAR shall be governed by and determined in accordance with the laws of Delaware, and the courts of such state shall have jurisdiction. Any action relating to transactions covered by these terms and conditions, other than a claim for non-payment, must be commenced within one year after the cause of action has occurred.