



NUVIA Dynamics Inc., "Seller" **Terms and Conditions of Sale**

Seller desires to provide its Customers with prompt and efficient service. However, to negotiate individually the terms and conditions of each sales contract would substantially impair seller's ability to provide such service. Accordingly, Products and Services furnished by Seller are sold only on the terms and conditions stated herein, notwithstanding any terms or conditions on Customer's order. Seller's performance of any contract is expressly made conditional on Customer's agreement to Seller's Terms and Conditions of Sale unless otherwise specifically agreed to in writing by Seller. In the absence of such agreement, commencement of performance and/or shipment shall be for Customer's convenience only and shall not be deemed for construed to be acceptance of Customer's terms and conditions, or any of them. If a contract is not earlier formed by agreement in writing, acceptance of any Product or Service shall be deemed acceptance of the terms and conditions herein. All contracts for the sale of Products shall be construed under and governed by the law of the location of Seller's Plant at Concord, Ontario, Canada.

Acceptance

Acceptance of Customer orders shall occur only when acknowledged in writing from Seller's Plant. Concord, Ontario, Canada. Quotations and Prices All quotations are subject to the terms and conditions stated herein as well as any additional terms and conditions that may appear on the face thereof. In the case of conflict between the terms and conditions stated therein and those appearing on the face hereof, the latter shall control. Seller's prices and quotations are subject to the following:

- (a) All published prices are subject to change without notice.
- (b) Unless otherwise specified in writing, all quotations expire sixty (60) days after date thereof, may be terminated earlier by notice, and constitute only solicitations for offers to purchase; further, budgetary quotations and estimates are for preliminary information only and shall neither constitute offers, nor impose any obligations or liability upon Seller.
- (c) Unless otherwise stated in writing by Seller, all prices quoted shall be exclusive of transportation, insurance, taxes (including, without limitation, any sales, use or similar tax, and any tax levied on or assessed to Seller after Product shipment by reason of Seller's retention of security interest as provided herein, license fees, customs fees, duties and other charges related thereto and Customer shall report and pay any and all such shipping charges, premiums, taxes, fees, duties and other charges related thereto and shall hold Seller harmless there from provided that, if Seller, in its sole discretion, chooses to make any such payment, Customer shall reimburse Seller in full upon demand.
- (d) Stenographical typographical and clerical errors are subject to correction.
- (e) Prices quoted are for Products only and do not include technical data, proprietary rights of any kind, patent rights, qualification, environmental or other than Seller's standard unless expressly agreed to in writing by Seller.
- (f) Weights and dimensions are approximate only. Dimensional drawings can be obtained upon request.

Terms of Payment

Unless credit is granted or otherwise specified in writing, payment is due upon shipment. All payments on approved credit accounts shall be due in full thirty (30) days from date of invoice. Past due balances shall be subject to a service charge of 1% per month (12% per annum), but not more than the amounts allowed by law. Partial shipments will be billed as made and payments therefore are subject to the above terms. Payment shall not be withheld for delay in delivery of required documentation unless a separate price is stated therefore, and then only to the extent of the price stated for such undelivered documentation. Seller may cancel or delay delivery of Products in the event Customer fails to make prompt payment therefore or in the event of an arrearage in Customer's account with Seller. Seller hereby retains a security interest in the products furnished until Customer has made payment in full in accordance with the terms hereof. Customer shall cooperate fully with Seller to execute such documents and to accomplish such filings and for recordings thereof as Seller may deem necessary for the protection of Seller's interest in the Products furnished. Payment is to be made in stated currency (mostly Canadian, US or Euro).

Transportation and Risk of Loss

Transportation will normally follow Customer's shipping instruction, but Seller reserves the right to send Product freight collect and to select the means of transportation and routing when Customer's instructions are deemed unsuitable. Unless otherwise advised, Seller may insure to full value of the Products or declared full value thereof to the transportation company at the time of shipment and all freight and insurance costs shall be for Customer's account. Risk of loss or damage shall pass to Customer at the FOB point, which shall be the point of manufacture or such other place as Seller shall specify in writing notwithstanding installation by or under supervision of Seller. Confiscation or destruction of or damage to Products shall not release, reduce or in any way affect the liability of Customer thereof. All Products must be inspected upon receipt and claims should be filed with the transportation company when there is evidence of shipping damage, either concealed or external. Notwithstanding any defects or nonconformity, or any other matter, risk of loss and/or damage shall remain the Customer's until the Products are returned at Customer's expense to Seller, Customer at its expense shall fully insure Products against all loss and/or damage until Seller has been paid in full therefore, or the Products have been returned for what ever reason to Seller.

Performance

Seller will make all reasonable effort to observe its dates indicated for performance. However, Seller shall not be liable in any way because of any delay in performance hereunder due to unforeseen circumstances or to causes beyond its control including without limitation strike lock-out, riot, war, fire, act of God accident, failure or breakdown of component necessary to order completion, subcontractor supplier of Customer used delays, inability to obtain or substantial rise in the price of labor, materials or manufacturing facilities, or compliance with any law, regulation or order whether valid or invalid of any cognizant governmental body or any instrumentality thereof whether now existing or hereafter created. Performance shall be deemed suspended during and extended for such time as any such circumstances or causes delay its execution. Whenever such circumstances or causes have been remedied, Seller will make and Customer shall accept performance hereunder. In addition, Seller's inventories and current production must be allocated to comply with applicable Government regulations in the absence of such regulations. Seller reserves the right, in its sole discretion, to allocate inventories and current production and substitute suitable materials when, in its opinion such allocation or substitution is necessary due to such circumstances or causes. No penalty clause of any kind shall be effective. As used herein, 'performance' shall include without limitation, fabrication, shipment, delivery, assembly, installation, testing and warranty repair or replacement as applicable.

Acceptance

The furnishing by Seller of a Product to the Customer shall constitute acceptance of that Product by the Customer, unless notice of defect or nonconformity is received by Seller within thirty (30) days of receipt of the Product at Customer's designated receiving address, provided that for product for which Seller agreed in writing to perform, acceptance testing after installation, the completion of Seller's applicable acceptance test or execution of Seller's acceptance form by Customer shall constitute acceptance of the Product by Customer. Notwithstanding the foregoing, any use of a Product by Customer, its agents, employees, contractors or licenses, for any purpose, after receipt thereof, shall constitute acceptance of that Product by Customer. Seller may repair or at its option, replace defective or nonconforming parts after receipt of notice of defect or nonconformity. Each instrument furnished by Seller undergoes a strict Quality Control process and inspection before final shipment. Every effort is made to ensure that orders are complete. Upon receipt of shipment, the contents of the shipment should be checked against the packing list and (if applicable) against customer's Purchase Order and any discrepancies should be reported to Seller **within 30 days of delivery** at the designated delivery address.

NUVIA Dynamics Inc.

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Assignments and Terminations

Any assignment by Customer of any contract hereunder without the express written consent of Seller is void. No order may be terminated by Customer except by agreement in writing. Terminations by agreement are subject to the following conditions.

- (1) Customers will pay, at the applicable contract prices, for all Products which are completely manufactured and allocable to Customer at the time of Seller's receipt of notice of termination.
- (2) Customer will pay all costs, direct and indirect, which have been incurred by Seller about Products which have not been completely manufactured at the time of Seller's receipt of notice of termination, plus a pro rata portion of normal profit on the contract.
- (3) Customer will pay a termination charge on all other Products affected by the termination. Seller's normal accounting practices shall be used to determine costs and other charges. To reduce termination charges, Seller will divert completed parts, material or work-in-process from terminated contracts to other Customers whenever, in Seller's sole discretion, it is practicable to do so.

Warranty

Seller customarily warrants that each standard Product sold by it is free of defects in materials and workmanship, Seller's obligation under said warranty continues for 12 months commencing on date of shipment and under such conditions applied in Seller's warranty for the individual Product. Unless otherwise specified on the face hereof or otherwise mutually agreed upon in writing, Seller's applicable standard warranty is incorporated therein the Seller or Seller's replacement of defective parts shall be the sole and exclusive remedy under warranty, if Seller may as an alternative elect to refund an equitable portion of the purchase price of the product.

This warranty is expressly in lieu of and excludes all other express or implied warranties, including but not limited to warranties of fitness for purpose, use, or application, and all other obligations or liabilities on the part of Seller, unless such warranties, obligations or liabilities are expressly agreed to in writing by Seller.

Some experimental, developmental or special application product or products with a life test requirement are sold without warrant. ***In such case, Seller warrants that the Products meet applicable specifications when shipped by Seller but Seller shall have no other or further responsibility therefore, whatsoever.***

All claims under warranty must be made promptly after occurrence or circumstances giving rise thereto and must be received within the applicable warranty period by Seller or its authorized representative. Such claims should include the Product type and serial number, and a full description of the circumstances giving rise to the claim. Before any Products are returned for repair and/or adjustment, written authorization from Seller for the return and instructions as to how and where these Products should be shipped must be obtained. Any product returned to Seller for examination shall be sent prepaid via the means of transportation indicated as acceptable by Seller. Seller reserves the right to reject any warranty claim not promptly reported and any warranty claim on any item that has been altered or has been shipped by a non-acceptable means of transportation. When any Product is returned for examination and inspection or for any other reason, Customer shall be responsible for all damage resulting from improper packing or handling and loss in transit, notwithstanding any defect or nonconformity in the Product. In all cases, Seller has sole responsibility for determining the cause and nature of failure and Seller's determination with regard thereto shall be final. After warranty replacement or adjustments, Seller will return any product to Customer, collect, by means of transportation acceptable to Seller. If it is found the Seller's Products have been returned without cause and are still serviceable, Customer will be notified and a charge for testing and examination may be made, in Seller's sole discretion, on any Product so returned.

Most of Seller's Products are delivered with a Standard 12-month warranty from the date shipped from the Seller's Plant in Concord, Ontario, Canada. The warranty covers defects in materials and workmanship. The CS-3 Airborne Cesium Magnetometer is covered by a 24-month warranty covering defects in material and workmanship. Consumable items such as batteries and cables are covered by a 90-day Limited Warranty. All 3rd party, stand alone products are sold subject to their original equipment manufacturer's (OEM) warranties. Damage due to improper handling or usage is not covered by warranty. Shipping charges are **NOT** covered by the warranty and are the shipper's responsibility.

Before sending equipment for warranty repair, Customer Service is to be contacted and a detailed description of the problem is to be provided. Items sent for warranty repair are to be sent prepaid, collect shipments will not be accepted unless prior arrangements have been made with Seller.

Seller reserves the right to reject any warranty claim on items that have been altered or shipped by a non-acceptable form of transportation. Customer shall be responsible for all damage resulting from improper packaging or handling, and for loss in transit, notwithstanding any defector non-conformity in the equipment. Any damage to the equipment due to misuse or neglect is not covered by the warranty.

Damages and Liability

Seller's liability for damages shall not exceed the payment. If any received by Seller for the unit of Product or service furnished or to be furnished which is the subject of claim or dispute. In no event will Seller be liable for incidental, consequential or special damages, of any kind, however caused, arising out of or in any way connected with, any contract for Products or the purchase or use of products finished by Seller to Customer.

Trademark

Unless otherwise stipulated, Seller reserves the right to have its name or trademark appear on each piece and to use in its display or advertising any illustrations of the same.

Drawings and Specifications

Seller's drawings or prints furnished with this quotation are strictly confidential and cannot be used for any purpose other than relating to Seller. All rights thereto are reserved and no print can be copied or distributed in part or in whole without specific permission in writing from Seller. The purchaser specifically agreed not to reproduce the specific product for sale or use.

Disputes

All disputes under any contract concerning Products not otherwise resolved between Seller and Customer shall be resolved in a court of competent jurisdiction for this location of Seller's plant at Concord, Ontario, Canada, and no other place, provided that in Seller's sole discretion such action may be heard in some other place designated by Seller (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form arising out of, or in any way connected with the Products or services furnished by Seller may be brought by Customer more one (1) year after the cause of action has accrued. If any part, provision or clause of the terms and conditions of sale, or the application thereof to any person or circumstances is held invalid, void or un-arguable such holding shall not elect and shall leave valid all other parts, providing clauses or precautions of the terms and conditions remaining and to the end the terms and conditions shall be treated as severable.

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