



## **Vacuum Innovations LLC**

### **Terms & Conditions – ALL SALES**

Vacuum Innovations designs, manufactures and sells custom vacuum chambers for industrial manufacturing processes and testing (“Products”). All Vacuum Innovations (Seller) quotations are provided and orders for Products are accepted upon and subject to the terms and conditions set forth herein (“Conditions”). Customer orders are received subject to Seller’s acceptance of a purchase agreement executed by all parties (the “Purchase Agreement”). Collectively, a Purchase Agreement together with these Conditions, is referred to as the “Contract” In the event of a conflict between (1) any terms or conditions contained in these Conditions and (2) any terms or conditions contained in the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern. These Conditions, including any written warranty if issued by Vacuum Innovations, may not be added to, modified, superseded, or otherwise altered except by a written instrument signed by an authorized representative of Seller and delivered by Seller to Customer. Additional or different terms submitted by anyone other than Seller are specifically rejected and shall be deemed to be of no effect. Each shipment received by Customer from Seller shall be deemed to be upon these Conditions except as they may be added to, modified, superseded, or otherwise altered as provided above, notwithstanding any terms and conditions that may be contained in any Purchase Agreement or other Customer form or correspondence. No prior course of dealing or usage of trade not expressly set forth in the Contract shall be admissible to explain, modify, or contradict the Contract in any way. This cancels and supersedes all prior contracts, unless otherwise specified in writing by Seller.

**PRICING.** All Seller quotations, including price lists and discount schedules, are intended as indications of the price at which Products are available and are subject to change without notice. Unless otherwise agreed in writing, Seller shall charge its prices in effect at the time of shipment of Products. Seller reserves the right to amend any quotation at any time prior to Seller’s issuance of a written order acknowledgement or full execution of a Contract.

**TAXES.** Prices quoted do not include sales, use, excise or other taxes. When required by law, taxes will be billed and collected as a separate item at time of shipment unless proof of valid exemption satisfactory to the taxing authority is provided to Seller.

**WARRANTIES.** Except as otherwise provided in writing by Seller, on a Product-by-Product basis, for a period commencing on the date a Product is delivered to Customer and ending on the earlier of the one-year (the “Warranty Period”), Seller warrants that the Product will be free from defects in materials and workmanship and will conform to written design specifications in all material respects. Customer agrees that there have been no affirmations of fact or promises made by Seller relating to the Products that have become part of the basis of the bargain, other than any affirmations and promises expressly to set forth in the Agreement. Materials not specified by the Customer shall be Seller’s standard materials of construction. If any part of said equipment or material manufactured by Vacuum Innovations, as determined by the seller, is defective in workmanship or material, and not subjected to misuse or abuse: 1) Within the Warranty Period, Vacuum Innovations will furnish an exchange part for the defective one, f.o.b. seller's facility Dansville, New York, and installation and cost of installation thereof will be the responsibility of the customer. 2) Component parts not manufactured by Vacuum Innovations shall be warranted to the extent of the original manufacturer's warranty. Vacuum Innovations shall not be liable for any operation delays or consequential damages under this warranty. There shall be no other obligation expressed or implied. **DISCLAIMERS.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN WRITING, SELLER DOES NOT MAKE AND HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND



IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. ANY AFFIRMATION OF FACT OR PROMISE MADE BY SELLER SHALL NOT BE DEEMED TO CREATE AN EXPRESS WARRANTY THAT THE GOODS SHALL CONFORM TO THE AFFIRMATION OR PROMISE. WITHOUT LIMITING THE FOREGOING, SELLER SPECIFICALLY DISCLAIMS ALL WARRANTIES UNLESS OTHERWISE EXPRESSLY PROVIDED IN WRITING, IN THE EVENT THAT SELLER CUSTOM BUILDS A PRODUCT TO CUSTOMER'S DESIGN SPECIFICATIONS; FOR ANY DAMAGE RESULTING FROM IMPROPER STORAGE OR HANDLING FOLLOWING SHIPMENT; FOR PRODUCTS THAT HAVE BEEN REPAIRED BY CUSTOMER OR THIRD PARTIES UNLESS SELLER AUTHORIZES SUCH REPAIRS IN WRITING IN ADVANCE; FOR ANY DEFECTS IN ANY COMPONENTS OR EQUIPMENT FURNISHED BY CUSTOMER OR THIRD PARTIES; AND FOR THE RESULTS OBTAINED BY THE USE OF ANY PRODUCT IN CUSTOMER'S MANUFACTURING PROCESSES OR IN COMBINATION WITH OTHER MATERIALS AND/OR EQUIPMENT.

**LIMITATION OF LIABILITY.** Seller's sole liability and Customer's sole remedy in any cause of action based on contract, tort or otherwise in connection with any Products furnished pursuant to the Agreement, shall be limited to either (i) the repair or replacement of any warranted Product or (ii) damages limited to the total amount paid by Customer to Seller under the Agreement, the election of such remedies to be made by Seller in its sole discretion. Immediately upon discovery of any breach of warranty, Customer shall notify Seller of such breach in writing. Customer shall return to Seller all Products that are subject to a warranty claim F.O.B. Seller's plant or F.O.B. at another location designated by Seller. Without limiting the forgoing, under no circumstances shall the Seller be liable for any expenses for removal of allegedly defective Products or for installation costs of repaired or replaced Products. In addition to being subject to the Limitation of Liability above, no action, whether based on contract, tort or otherwise, arising out of or related to Products furnished pursuant to the Agreement may be brought by Customer more than one year after the cause of action has accrued and no claims for breach of warranty may be brought by Customer unless Customer notifies the Seller in writing within 30 days of discovery of the breach. Any claim made after the time periods specified in the foregoing sentence shall be deemed to be null and void.

**PROPRIETARY INFORMATION.** Any Customer information provided to Seller relating to a Contract shall not be considered confidential unless otherwise agreed to by Seller in a separate agreement. All drawings, works of authorship, trade secrets, inventions, improvements, or other items made or developed by or for the Seller in connection with the performance of its obligations hereunder (the "Works") shall be Seller's property. Purchaser hereby assigns all right and title in and to such Works to Seller. Purchaser shall not use or disclose any of Seller's trade secrets or other confidential information, whether designated as such, except as required in connection with the use of the goods or services covered hereunder.

**REJECTION OF PRODUCTS; INSPECTIONS.** Unless otherwise expressly provided within the Contract, failure of Customer to give notice of any claim with respect to any Product delivered hereunder within fifteen (15) days after its receipt of such Product, shall be an unqualified acceptance of such Products and a waiver by Customer of any and all claims with respect thereto, other than warranty claims as expressly provided for herein. Thereafter, the shipment shall be deemed accepted and complete. Defects not impairing the operation of Products shall not be grounds for rejection. Seller reserves the right to inspect allegedly defective Products at points of delivery or have them shipped to a destination of its choice.

**CANCELLATIONS.** Customer orders may not be cancelled without Seller's written consent. Customer agrees to indemnify Seller against all loss, damage or expense incurred due to cancellation including but not limited to the cost of special materials, cost of custom or non-stock Products completed or in process, overhead, and any reasonable costs incurred to collect such losses from Customer.



**GOVERNING LAW.** All disputes claims or controversies arising out of or in any way relating to the Contract or the sale of Products by Seller to Customer, shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of New York without regard to its conflict of law rules.

**SEVERABILITY.** If any provisions of this Contract are held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the other portions hereof, all of which provisions are hereby declared severable.

**INDEMNIFICATION.** Purchaser shall defend, indemnify and hold Seller and its affiliates harmless from any and all loss or damage sustained by Seller and from and against all claims asserted against Seller with respect to the goods or services covered hereunder arising in whole or in part out of (a) failure of Purchaser, its agents, employees, or customers to follow specifications, instructions, warnings or recommendations furnished by Seller or others; (b) failure of Purchaser, its agents, employees or customers to comply with all applicable legal requirements; (c) misuse of the goods by Purchaser, its agents, employees or customers; (d) misrepresentation by Purchaser, its agents, employees or customers; (e) the full extent of the negligence of Purchaser, its agents, employees or customers; or, (f) alleged infringement of any patent, trademark, trade secret, copyright, or other intellectual property or proprietary right of Purchaser or a third party as a result of Seller's performance in accordance with Purchaser's designs, plans or specifications. Purchaser hereby waives and releases Seller and its affiliates from all rights of contribution or indemnity to which it may otherwise be entitled.

**MISCELLANEOUS.** In making and performing this Contract, the parties hereto are acting and shall act as independent contractors. No waiver by Seller of default by Purchaser shall be deemed a waiver of any subsequent default. The parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

**LATE CHARGES.** If Purchaser fails to pay any invoice in full when due, Purchaser shall pay Seller 1½% of the unpaid amount for each month or part of a month it remains unpaid. If the Purchaser delays delivery for 30 days or more beyond the original delivery date, Purchaser shall pay Seller 1% of the price for each additional month or part of a month delay. Such an amount is a carrying charge only and shall not be construed as liquidated damages. Such amount shall be in addition to all other remedies Seller may have under applicable law

**NO PARTIAL ACCEPTANCE.** Purchaser may not accept part of a shipment of goods. Acceptance of any part of a shipment shall constitute acceptance of the entire shipment.

**NO REVOCATION.** Purchaser may not, after accepting the goods, revoke the acceptance.

**TERMS OF PAYMENT.** Subject to the approval of Seller's credit department, terms of payment are net-30 days after shipping date or date services rendered or as otherwise set forth in the Contract. If Purchaser fails to comply with any provisions of this Contract or fails to make payments in accordance with the terms of this Contract, Seller may at its option defer further shipments or, without waiving any other rights it may have, terminate this Contract. In all cases, if the Purchaser requests shipment delays, payment shall become due at Seller's option, from the date on which Seller is prepared to make shipment. If, in Seller's judgment, the financial condition of Purchaser does not justify continuation of production or shipment on the terms of payment specified, Seller may cancel any unfilled order of part hereof unless Purchaser shall, upon notice, pay for all merchandise delivered.



**TITLE AND RISK OF LOSS: SHIPMENT SECURITY INTEREST.** Title to and all risk of loss or damage to the products vests in Purchaser at the time Seller delivers the products to the carrier regardless of any shipping and insurance arrangements made by Seller on Purchaser's behalf. However, Seller reserves and by execution of these Terms and Conditions, Purchaser grants, until full payment is received a purchase money security interest in each of the products delivered. Purchaser hereby authorizes Seller to file such financing statements and deliver such notices as Seller may reasonably require perfecting such purchase money security interest. The seller shall have all rights and may exercise all remedies of a secured creditor under Article 9 of the Uniform Commercial Code as adopted from time to time in the Commonwealth of Massachusetts. The remedies reserved herein shall be cumulative and in addition to any other remedies provided in law or equity. No waiver of the remedy for any breach of any provision in these Terms shall constitute a waiver of any other remedy. As accommodation when specifically requested by Purchaser, Seller will prepay transportation charges, which will be invoiced separately. In the absence of specific shipping instructions, Seller will determine method of shipment

**FORCE MAJEURE.** Seller shall not be liable, nor deemed in default hereunder, for any failure or delay in delivering the products or in the performance of its other obligations to Purchaser hereunder caused by or arising out of (a) good faith compliance with any applicable foreign or domestic governmental regulation, or order of whatever nature, whether foreign, federal, state or local; (b) Acts of God or of a public enemy, acts of the United States, any State, territory or any political subdivision of the foregoing or the District of Columbia; (c) Acts of the Purchaser, its agents or employees; or floods, strikes, fires, or other unusually severe weather conditions; (such as, but not limited to, floods, fires, or tornadoes); (d) strikes and other labor trouble, severe accidents at our facility or a facility closure (whether voluntary or involuntary); (e) delays or nonperformance by suppliers (or other third parties) of raw materials, power or other needed supplies or services (f) delays or nonperformance by transporting carriers; and/or any other cause, contingency, or circumstance not subject to the reasonable control of Seller affecting the performance of Seller's obligations hereunder. If, due to any such contingency, Seller is unable to supply the total orders of all its customers, Seller shall have the right to pro- rate its available supply among its customers, including Purchaser. In no event shall Seller be obligated to purchase the goods from others in order to enable it to deliver goods to Purchaser hereunder."

**EXPORT TERMS AND CONDITIONS.** These conditions apply to any Seller equipment that is to be shipped by Seller outside of the United States: Dollar denomination. Any equipment price is payable in the U.S., in U.S. Dollars (USD) unless otherwise specified. Seller does not accept liability for variations in exchange rates between the date of this Agreement and the date of payment. Unless otherwise agreed to by Seller, payment shall be made by an irrevocable letter of credit in U. S. Dollars confirmed by a U.S. banking institution acceptable to Seller. The said letter of credit must allow payment against a sight draft that shall be supported by on board bills of lading (without benefit of customer approval). Seller shall not be obligated to commence performance of this order until it has received the said letter of credit from the confirming U.S. bank, and all dates for the completion of performance shall be extended by an equitable amount of time at least equal to the time taken by the Purchaser in providing the said letter of credit. Customs. It shall be the responsibility of the Purchaser to clear the equipment through the customs department of the country to which the equipment is shipped, and to comply with all other rules and regulations of said country relative thereto. The Purchaser shall fully satisfy all import license requirements and other similar rules and regulations prior to instructing the Seller to commence performance of this order. Duties, Taxes, etc. The Purchaser will either pay directly, or reimburse Seller for all duties, taxes, license or registration fees, assessment or levies of any nature whatsoever now or hereafter imposed by or under the authority of any law, rule or regulation with respect to the ownership, manufacture, importation, transportation, installation, purchase, sale or use of the equipment, except income taxes on Seller imposed by the Government of the United States.



**ATTORNEYS' FEES AND INTERESTS UPON DEFAULT.** In the event of Purchaser's default under this or any other Contract between Purchaser and Seller, Purchaser agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller, together with simple interest on unpaid amounts from the date of shipment at the highest legal rate permissible in the Commonwealth of New York. Seller may, at its election demand that Purchaser furnish within ten (10) days a guaranty of full payment which satisfies Seller, upon the occurrence of a default which includes the following events: (a) Purchaser's arbitrary deductions from payment due to Seller; (b) the insolvency of, the business failure of, any transfer of, or change in ownership of Purchaser's business, the appointment of a custodian, trustee, liquidator or receiver for or for any of the property of Purchaser, the assignment for the benefit of creditors by Purchaser, or the filing of a petition under bankruptcy, insolvency or debtor's relief law or the filing of a petition for any adjustment of indebtedness by or against Purchaser; (c) the determination by Seller that any representation or warranty made to Seller by Purchaser under this or any other Contract between the parties is or was, when it was made, untrue or materially misleading; (d) Purchaser's failure to pay or perform its financial obligations to Seller; (e) impairment of Purchaser's credit information or Seller's receipt of unfavorable credit reports made to Seller; or (f) the failure of Purchaser's business to comply with any law or regulation controlling its operation.

**ASSIGNMENT.** No assignment by either party of any rights, including rights to moneys due or to become due, or delegation of any duties herein, or under any orders subject to these Terms shall be binding upon the other party until its written consent has been obtained.

**NON-WAIVER.** Any failure by either party to enforce any provision shall not constitute a waiver of the provisions or prejudice the right of either party to enforce the provision at any subsequent time.

**HEADINGS.** The headings used are for convenient reference only and shall not affect the interpretation of the Terms and Conditions stated herein.

**NON-CANCELABLE AGREEMENT.** The Contract cannot be canceled or terminated except as expressly provided herein. Your obligation to make **INSTALLMENT SALE** payments and to pay any other amounts due hereunder shall be **ABSOLUTE AND UNCONDITIONAL** and shall not be subject to any delay, reduction, set-off, defense, counterclaim, or recoupment for any reason whatsoever.