

TERMS AND CONDITIONS

1. **Parties.** These terms and conditions of purchase are the only terms which govern the purchase of the goods and services by DECHERT DYNAMICS CORP. ("Buyer") from the seller named on the purchase order ("Seller"), collectively, the "Parties."

2. **Acceptance.** This Purchase order (including any documents incorporated herein) is an offer to buy expressly conditioned upon Seller's acceptance of these terms and conditions. This purchase order shall become the entire contract between Buyer and Seller. An acknowledgement of this purchase order shall operate as acceptance of this offer upon the terms and conditions herein even though the acknowledgement states terms and conditions which are additional to or different from those stated herein. Seller's terms and conditions shall not be binding upon Buyer, except to the extent Buyer specifically accepts in writing such terms and conditions. Commencement or performance shall constitute acceptance of the terms and conditions stated herein. Any reference herein to any proposal, quotation or other communication by Seller shall, unless indicated to the contrary herein, be deemed to be limited to the description of the products or services.

3. **Commercial Items.** Commercial Items means –

- a) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that (i) has been sold, leased or licensed to the general public, or (ii) has been offered for sale, lease or licensed to the general public;
- b) Any item that evolved from an item described in Paragraph (a) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements of this Purchase order;
- c) Any item that would satisfy a criterion expressed in Paragraphs (a) or (b) of this clause, but for - (i) modifications of a type customarily available in the commercial marketplace; or (ii) minor modifications of a type not customarily available in the commercial marketplace made to meet the

federal government requirements expressed in this purchase order. "Minor" modifications means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.

- d) Any combination of items meeting the requirements of Paragraphs (a), (b), (c), or (e) of this clause that are of a type customarily combined and sold in combination to the general public;
- e) Installation services, maintenance services, repair services, training services and other services if such services are procured for support of an item referred to in Paragraphs (1), (b), (c) or (d) of this clause and if the source of such services – (i) offers such services to the general public and the Federal government contemporaneously and under similar terms and conditions; and (ii) offers to use the same work force for providing Buyer with such services as the source uses for providing such services to the general public.
- f) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for the specific tasks based performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog market price for a specific service performed.
- g) Any item, combination of items or services referenced in Paragraphs (a) through (f), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries or affiliates of the Seller; or

- h) A non-developmental item, if the Government determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple state and local governments.

4. **Inspection, Access, and Audit.** All work in progress (including work performed by Seller's subcontractors and suppliers) shall be subject to inspections and tests as Buyer may direct and may be performed by Buyer, Buyer's customer, or representatives of either. If inspections and tests are made on Seller's (or Seller's subcontractor's or supplier's) premises, Seller shall furnish, at no additional charge, facilities and assistance for sale and convenient inspections and tests. Buyer may charge Seller for additional costs to Buyer when work is not ready for scheduled inspections. All shipments shall be subject to inspection and acceptance or rejection by Buyer after receipt and performance testing at site or delivery destination. Buyer shall have the right to require the prompt correction of defective work by Seller, at Seller's expense. Buyer may backcharge Seller for the cost of any corrections made by Buyer. If correction is impractical, Seller shall bear all risk after notice or rejection and shall, at Buyer's request, promptly make all necessary replacements at Seller's expense. If Seller fails to make prompt replacements, Buyer may make such replacements and backcharge Seller for excess costs incurred by Buyer. No substitutions of materials or accessories shall be made without prior written consent of Buyer.

Seller shall provide Buyer and/or Buyer's customer or their representatives with access to plant, facilities and records of Seller and its subcontractors and suppliers for inspection and/or audit.

5. **Delivery.** Seller shall furnish all resources necessary to assure compliance with the established delivery dates. Delivery, in whole or in part, shall not be made more than fifteen (15) calendar days prior to the delivery date specified herein without prior written approval of Buyer. Seller shall be responsible for packaging, loading, and tying down of each shipment in accordance with the specifications and requirements of the purchase order or in the absence thereof, in a manner to ensure safe shipment of the materials or ordered items.

6. **Ownership.** Title to materials (or goods or information developed) furnished under this purchase order shall be deemed transferred to Buyer or Buyer's customer as payments are made, and in the same proportion as the cumulative payments bear

to the purchase order price. Seller shall identify and segregate such materials, which are the property of Buyer, unless waived in writing by Buyer. In the event payments are made by Buyer prior to delivery, Seller shall execute and deliver such security agreements, financing statements, and other documents as may be deemed necessary to Buyer to protect its rights therein. If title is not transferred in accordance with the foregoing, title shall pass to Buyer or Buyer's customer upon loading on board carrier and acceptance by such carrier at the point of shipment. Seller warrants that the equipment and materials will be free and clear of all liens, claims, and encumbrances at the time of delivery.

7. **Risk of Loss.** Seller shall have risk of loss of the materials or ordered items furnished under this purchase order until arrival on board carrier at the destination designated in this purchase order.

8. **Changes.** Buyer may, by written change notice, make changes in the work covered by this purchase order. Seller shall comply with such change notices. If the change materially affects Seller's cost or time for performance, the purchase order will be equitably adjusted in writing. Seller must assert any claim for adjustment within fifteen (15) days after receipt of any such change notice. Seller shall, at Buyer's direction, proceed with the change pending resolution of any dispute.

9. **Assignment and Status.** Seller shall not assign this purchase order in whole or in part without Buyer's prior written consent. Seller shall promptly notify Buyer of any change in its status including, but not limited to: bankruptcy; insolvency; change of ownership or control; strikes or work stoppage.

10. **Set-off.** Buyer may set-off any amount(s) due from Seller to Buyer, liquidated or unliquidated, against payments due to Seller under this or any other purchase order. For example, any credit or credit memo from Seller may be set-off against any amounts payable to Buyer and the net amount remitted.

11. **Patents.** If the product or any part thereof is held in any suit or proceeding to constitute infringement or its use is enjoined, Seller shall at its expense, in a timely manner: (1) procure for the Buyer and its customers the right to continue using the product or part thereof and (2) replace it with a substantially equivalent non-infringing product, or (3) modify it so it becomes non-infringing, but is substantially, functionally equivalent.

12. **Compliance with Laws and Regulations.** Seller in the performance of this order shall comply with all federal, state, and local laws, rules and regulations applicable to or incorporated by reference in this order.

Each invoice submitted against this order shall constitute a representation and warranty by Seller that the goods, supply and/or services were delivered in compliance with all such legal requirements and if Buyer is subjected to any liability as the result of Seller's or its subcontractor's failure to comply with the requirements of this clause, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense resulting from such failure.

13. **Termination.** Buyer may terminate this purchase order for its convenience, in whole or in part at any time by written notice. In such event, Seller shall promptly comply with the directions contained in such notice and shall, subject to such direction: (1) take all necessary action to terminate the work as provided in the notice, minimizing costs; (2) protect, preserve and deliver any property related to this Purchase order which is in Seller's possession pursuant to Buyer's direction; and (3) continue the performance of such part of the work, if any, as may not have been terminated by the notice. If Seller at the time of such termination has in stock or on firm order any completed or uncompleted items or any raw, semi-processed, or completed materials for use in fulfilling this Purchase order, then: (1) in the case of completed items or materials, Buyer may either require delivery of all or part of the completed items or materials and make payment thereof at the purchase price, or, without taking delivery thereof, pay Seller the difference, if any, or the purchase price over the market price at the time of termination; and (2) in the case of uncompleted items or raw or semi-processed materials, Buyer shall, at its option, either require Seller to deliver all or part of such items or materials at the portion of the purchase price representing their stage of completion, or, without taking delivery thereof, pay Seller with respect to such items or materials as are properly allocable to this Purchase order, a portion of the purchase price representing the state of completion of such items or materials, reduced by the higher of the market or scrap value of such items or materials at such stage of completion; and (3) in the case of items or materials which Seller has on firm order, Buyer shall, at its option, either take an assignment of Seller's rights under such order or pay the costs, if any, of settling or discharging Seller's obligation under such Purchase order. In no event, however, shall Buyer be

responsible or liable for consequential damages or anticipatory profits.

Buyer may terminate this Purchase order in whole or in part for default: (1) if Seller fails to deliver items and materials or to perform the services within the time or in the manner provided under this Purchase order; (2) if reasonable grounds for insecurity arise with respect to Seller's future performance and Seller fails to furnish adequate assurances within ten (10) days after a written demand by Buyer for such assurance; or (3) if Seller becomes insolvent or makes an assignment for the benefit of creditors, commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings. In the event Buyer terminates this Purchase order, in whole or in part, for default, Buyer shall be entitled to all rights and remedies provided by law.

14. **Subcontracting.** Seller shall not subcontract any portion of the work without prior written approval of Buyer.

15. **Warranty.** Seller warrants that the items delivered hereunder shall be free from defects in design, workmanship and materials, shall be of the kind and quality described in this Purchase order, shall be fit for the purpose intended, shall perform in the manner specified and shall comply with all requirements of this Purchase order. All items shall be warranted by Seller for two (2) years from the date such items are placed in service by Buyer or four (4) years after acceptance by Buyer, whichever occurs first. Seller shall correct any nonconformance at its sole expense, as directed by Buyer, by promptly: (1) repairing or replacing the nonconforming items (and correcting any plans, specifications or drawings affected) in a timely manner; (2) furnishing Buyer any materials, parts and instructions necessary to enable Buyer or its customer to correct or have corrected the nonconformity; or (3) refunding the purchase price, or an appropriate portion thereof, to Buyer.

Seller warrants that services furnished shall reflect the highest standards of professional knowledge and judgment, shall be free from defects in workmanship, and shall be in compliance with all requirements of this Purchase order, until one (1) year from the completion of such services. Seller shall correct any nonconformity with this warranty at its sole expense, as directed by Buyer, by promptly (1) reperforming the nonconforming services, or (2) refunding the purchase price or appropriate portion thereof to Buyer.

The warranty with respect to any corrected equipment, materials or services shall be extended to one (1) year from the date of repair or replacement or reperformance of service(s) or as stated in paragraphs above, whichever is later.

16. **Resolution of Conflicts or Inconsistencies.** Seller shall clarify with Buyer any inconsistencies or conflicts in this Purchase order. Should Seller fail to contact Buyer to resolve any such conflicts or inconsistencies, Seller will be solely responsible for any errors resulting from any conflicts or inconsistencies occurring in this Purchase order. Where documents are referenced, the issue date in effect at the time of Purchase order or Change notice placement shall be applicable, unless another issue date is specified in the Purchase order or Change notice.

17. **Order of Precedence.** Any inconsistencies in this purchase order shall be resolved in the following order:

- (a) Disposition of properly authorized deviation;
- (b) Supplements to the purchase order;
- (c) purchase order exclusive of appendices, exhibits, attachments, drawings, specifications, and other plans or documents;
- (d) Appendices, exhibits, or attachments;
- (e) Drawings or specifications;
- (f) Other plans or documents referenced in the purchase order.

18. **Taxes.** The purchase price shall not include sales or use taxes imposed upon the sale or use of tangible personal property or services contemplated by this Purchase order, and such taxes, if applicable, are for Buyer's account. If Seller is registered to collect applicable sales or use taxes, it shall do so as an addition to the purchase price, unless Buyer furnishes an exemption certificate. All other taxes imposed prior to delivery at the destination point are for the account of Seller, including property taxes imposed with respect to equipment/materials for which title has passed to Buyer pursuant to this Purchase order, including but not limited to, inventory taxes that may be levied while equipment/materials are being stored by Seller or are otherwise in Seller's custody.

19. **Buyer Furnished Property.** The following terms apply to any tools, patterns, equipment, material, or other property which is supplied to Seller by Buyer (hereinafter "Buyer Furnished Property"):

Seller shall not use Buyer Furnished Property on any other work without the prior written consent of Buyer.

Title to Buyer Furnished Property shall remain with Buyer. Seller shall segregate and clearly mark Buyer Furnished Property to show Buyer's ownership and shall preserve Buyer's title thereto free and clear of all encumbrances. Seller shall, if requested by Buyer, submit to Buyer an itemized inventory showing the description and location of each item of Buyer Furnished Property. Buyer shall have the right to enter Seller's premises to inspect Buyer Furnished Property. Should Seller fail to perform the duties imposed upon it by this section or should Buyer at any time have reason to believe that its title to or right to the possession of any Buyer Furnished Property is threatened, Buyer shall have the right to enter upon Seller's premises and remove such property. Upon completion or termination of this purchase order, Seller shall segregate all Buyer Furnished Property and shall dispose of the same as Buyer may direct. Buyer reserves the right to abandon Buyer Furnished Property at no additional cost to Buyer upon issuance of written notification to Seller of such intent.

Seller shall, at its expense, perform all maintenance, repairs and replacements necessary with respect to Buyer Furnished Property so that the same may remain suitable for the use contemplated hereby and may be returned to Buyer in as good condition as when received, except for reasonable wear and tear or consumption of materials necessarily resulting from their use.

Seller shall give Buyer prompt written notice of any Buyer Furnished Property which upon delivery is found to be defective. The correction or replacement of such defective property shall be accomplished at Buyer's written direction.

Upon delivery to Seller, the risk of loss or damage to Buyer Furnished Property shall be upon Seller. Risk of loss or damage shall transfer to Buyer when such property is returned to Buyer.

Seller waives any and all claims relating to loss, damage, injury or delay arising out of or related to Buyer Furnished Property and Seller shall indemnify Buyer against any and all liability for damage to property or injury to or death of persons arising from or incidental to the presence or use of Buyer Furnished Property, whether such damage, injury or death be caused by defects in such property,

negligence in the use thereof, strict liability or otherwise.

20. **Liens.** Seller agrees that if Buyer has provided the Seller with advance funding, milestone payments, progress payments, or other funding prior to completion of the work required by this order and delivery, as appropriate, that Buyer shall have a lien against Seller to the extent of such funding.

21. **Survival.** The provisions entitled "Inspection, Access and Audits," "Patents," "Compliance with Laws and Regulations," "Warranty," "Insurance and Indemnity," and "Buyer-Furnished Property," apply notwithstanding any other provision of the purchase order and shall survive completion of the purchase order.

22. **Insurance and Indemnity.** During the entire term of this purchase order, Seller shall maintain, at its own expense, the following minimum insurance: (i) comprehensive general liability coverage, including broad form contractual coverage, providing limits for bodily injury, including death, of at least \$1,000,000 for each person and \$1,000,000 for each occurrence and property damage coverage of at least \$1,000,000 for each occurrence; (ii) Worker's Compensation as required by applicable federal and state worker's compensation and occupational disease statutes; (iii) Employer's Liability of at least \$1,000,000; and (iv) Comprehensive Auto of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury. Buyer makes no representations or warranties that the insurance required under this Section will be sufficient or adequate for Seller.

All insurance policies shall be issued by an acceptable insurance company and will include the following: (i) Buyer and the principal shall be named as additional insureds (except on workers' compensation and professional liability); (ii) a waiver of subrogation in favor of Buyer (except on professional liability); (iii) cross liability or severability or interest coverage (liability policies only); (iv) Seller's insurance is primary and any insurance maintained by Buyer or principal is considered excess and non-contributory; and (v) a thirty (30) day advance written notice in the event of cancellation, non-renewal, or material change of any policy (the following cancellation language in quotation marks must be crossed out on the Certificate of Insurance that is provided to the Buyer: "endeavor to" and "but failure to mail such notice shall impose no obligation or liability or any kind upon Buyer, its agents or representatives). As to work done on Buyer's premises, Seller assumes the entire

responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any injury (including death), or damage to property sustained in connection with or to have arisen out of the acts or omissions of Seller or its subcontractors, agents or employees. Seller shall indemnify and hold Buyer harmless from and against any and all claims, demands, actions, causes of action, suits, damages, expenses (including attorneys' fees) and liabilities whatsoever resulting from or arising in any manner on account of or by reasons of any injury to or death of any person or any damage to or loss of property attributable to the acts or omissions of the Seller or its subcontractors, agents or employees.