

Attachment A
PLASMA-THERM, LLC
GENERAL TERMS AND CONDITIONS
Spare Parts & Service

1. **GENERAL.** This quotation is an offer to sale spare parts and/or service, as noted in the attached purchase order or sales order confirmation (hereafter referred to interchangeably as “ITEM” or “ITEMS”), to the Buyer identified on the face page of said purchase order. The offer is conditioned upon Buyer’s acceptance of these General Terms and Conditions and upon final acceptance of Buyer’s purchase order by Plasma-Therm, LLC (hereafter, “Seller”). Buyer may accept this offer by placing its firm written purchase order at Seller’s headquarters. Unless otherwise agreed in writing by the parties, orders are accepted by Seller subject to these terms and conditions. In case of a conflict, inconsistency or addition not expressly accepted in writing by Seller, the terms and conditions of sale provided herein shall be considered as superseding the conflicting, inconsistent or additional terms stated in Buyer’s purchase order, order form, contract or otherwise. No work will commence in connection with the ITEMS covered by this agreement until a firm written purchase order is placed by Buyer and accepted by Seller. Upon final acceptance of Buyer’s firm purchase order by Seller, the terms and conditions set forth on this form shall constitute the entire agreement between Buyer and Seller and cannot be modified or canceled without the written agreement of both parties.

2. **TITLE TRANSFER.** If any ITEM is to be shipped to Buyer, shipment is made Ex-Works, Incoterms 2010. Named Place/Title Transfer: Seller’s Dock.

3. **SHIPMENT & DELIVERY.** Seller shall attempt to comply with, but does not guarantee, shipping date and loading and routing instructions. Seller reserves the right to allow or prorate shipments against all orders whenever, in its judgment, an oversold condition exists as to any particular product manufactured or sold by it. In the event of a default by Buyer, Seller may decline to make further shipments without waiving any of its rights under such order. If, despite such default, Seller elects to continue to make shipment, its action shall not constitute a waiver regarding or otherwise diminish Seller’s legal remedies with respect to such default or any future default.
If for any reason Buyer is not prepared to accept delivery of the ITEMS, Seller may store the ITEMS at Buyer’s expense and risk in the name of Buyer.

4. **PRICES & VALIDITY.** Irrespective of any prices quoted by Seller or listed on Buyer’s order, an order is accepted only at the prices shown on the written quotation. Installation of utilities required for equipment at Buyer’s expense and is not included in the specified price.
All prices quoted are valid for ninety (90) days from this quotation date for equipment, unless otherwise stated on the face of this quotation. All other terms and conditions of this quotation may be changed by Seller prior to its acceptance of Buyer’s purchase order.

5. **TAXES:** All prices quoted are subject to addition for any tax or charge now existing or hereafter imposed by Federal, State or municipal authorities, domestic or foreign, upon the ITEMS covered by this quotation or the production, sale, distribution or delivery thereof, or upon any feature of this transaction, other than taxes on Seller’s income. Without limiting the foregoing, Buyer agrees to pay or reimburse Seller for all sales, use, transfer, privilege, excise, and all other taxes and all tariffs and duties, whether international, national, state, or local, however designated, which are levied or imposed by reason of the provisioning of ITEMS and other performance hereunder by Seller, provided that Buyer is not otherwise exempt from the payment of such taxes.

6. **PAYMENT TERMS:** Each shipment or performance of an ITEM by Seller is a separate transaction and payment is to be made accordingly. Unless otherwise stated in the quotation or agreed in writing, payment for ITEMS will be as follows:

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a. Spare Parts

Net thirty (30) days from shipment.

b. Service

Net thirty (30) days from performance.

c. Late Payments: Any amounts not paid when due will bear interest at a rate of 1.5% per month or the maximum rate permissible by law, from the due date until paid and will pay Seller's reasonable expenses of collection, including but not limited to, attorney's fees and court costs. All payments shall be made by Buyer without set-off or other deduction. Seller may, without breach, suspend any provision of work on the ITEM in the event that timely payment is more than thirty (30) days past due.

d. Payment Instructions:

1. **All ITEMS:** For purchase orders under U.S. \$1,000.00 – wire transfer only. For purchase orders of U.S. \$1,000.00 and over – wire transfer or check payment.

2. **Check Payment:**

Plasma-Therm, LLC
10050 16th Street North
St. Petersburg, FL 33716

3. **Wire Transfer (USD) (Revised December 4, 2018):**

HSBC Bank
Routing Number for ACH: 022000020
Routing Number for Wire: 021001088
Swift Code: MRMDUS33
Account Number: 879004959

7. **SECURITY INTEREST & CREDIT.** Buyer grants to Seller a security interest in the products purchased hereunder to secure payment for those products. If requested by Seller, Buyer agrees to execute financing statements to perfect such security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to such financing statements if necessary or convenient for the perfection of Seller's security interest.

All orders are subject to credit approval by Seller. The amount of any credit extended by Seller to Buyer may be changed, and such credit may be withdrawn by Seller. With respect to an order on which credit is not extended by Seller or, if extended, is subsequently withdrawn, shipment or delivery shall be made, at Seller's election, Cash with Order (in whole or in part), C.O.D. or Sight Draft attached to Bill of Lading or other shipping documents, with all costs of collection (plus 18% interest on Sight Drafts not paid at maturity) for the account of Buyer. If, in the exclusive judgment of Seller, the financial condition of Buyer at any time does not justify the commencement or continuance of production, shipment or performance of ITEMS, then, in addition to all other remedies it may have under this quotation or allowed at law or in equity, Seller may make a written demand for full or partial payment in advance, suspend its production, shipment or performance of ITEMS until such payment is made and cancel the Buyer's purchase order if such payment is not received by Seller within thirty (30) days of such demand.

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8. RESCHEDULING. If Buyer requests one rescheduling of any ITEM's shipment, Buyer shall incur rescheduling charges that are determined as follows and due and payable within ten (10) days of the rescheduling.

Number of Weeks of Rescheduling Requested:	Rescheduling Charge:
Up to 30 days:	No Charge
31 to 90 days:	15% Purchase Price
91 to 120 days:	35% Purchase Price
121 days:	Order considered canceled

More than one rescheduling of an order will be considered a cancellation of the order. Sixty-six percent (66%) of the rescheduling charge shall be applied against the purchase price if the order is subsequently shipped or against the cancellation charges if the order is subsequently canceled. On any order that is rescheduled and subsequently canceled, cancellation charges will be based upon the time between the originally scheduled delivery date and the date of notice of cancellation.

9. PURCHASE ORDER CANCELLATIONS: In the event of a cancellation request by Buyer of any order, the following charges and conditions apply after acceptance of the purchase order:

Spare Parts:

- Stock items canceled prior to shipment - twenty five percent (25%) of the quoted price or a \$200.00 restocking charge, whichever is greater.
- For stock items cancelled after shipment: Seller is not obliged to accept the return of such ITEMS under any conditions; the return of ANY material to Seller has to be approved in advance and in writing by Seller; if approved Buyer will be charged twenty five percent (25%) of the quoted price or a \$200.00 restocking charge, whichever is greater; transportation, packaging, clearance, duty and any other costs involved in returning ITEMS to Seller shall be borne by Buyer.
- ITEMS that are fabricated parts, machined parts or vendor parts are non-cancelable and non-returnable before or after shipment and Buyer is subject to all charges incurred for fabrication and/or imposed by vendors.

10. FORCE MAJEURE: Seller is not liable for damages due to failure to perform any obligation under this quotation or any purchase order placed hereunder if such failure results directly or indirectly from circumstances beyond its control. Such circumstances include, but are not limited to, acts of God, acts of war or terrorism, civil commotion, riots, strikes, lockouts, embargoes, act or request of the federal, state or local government, telecommunications transmissions disruption, transportation delays, inability to obtain suitable equipment or components, Seller's supplier's delay or default, accident, fire, water damages, flood, earthquake or other natural catastrophes. Seller is not required to allocate production and deliverables among customers.

11. TECHNICAL DOCUMENTATION. Seller's technical documentation, brochures, and catalogs are intended for guidance only and are not binding, unless expressly stated otherwise. Seller reserves all rights in technical documentation provided to Buyer. Without prior written consent of Seller, such documentation shall neither in whole nor in part be disclosed to others or used for any purposes other than those for which they have been provided to Buyer. Buyer shall not reproduce or replicate machines, systems, components or parts thereof.

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12. WARRANTY: Unless otherwise stated in the quotation, Seller warrants that the ITEMS are to be free of material defects in materials and workmanship for the number of days specified immediately below.

a. Warranty Period

For Spare or Replacement Parts, ninety (90) days from the date of shipment, regardless of whether the part is used or put in storage following Buyer's receipt of the part, unless otherwise agreed to by the parties.

For Technical Services, thirty (30) days from performance.

QUOTATIONS DO NOT INCLUDE ANY EXPRESSED OR IMPLIED PROCESS AND/OR PERFORMANCE DEMONSTRATIONS OR GUARANTEES AS PART OF FINAL ACCEPTANCE OR WARRANTY UNLESS SPECIFICALLY SO STATED IN WRITING BY SELLER OR MUTUALLY AGREED IN WRITING BY THE PARTIES AT TIME OF PURCHASE ORDER ACCEPTANCE. IF NOT SO STATED AND MUTUALLY AGREED, FINAL ACCEPTANCE PROCESS DEMONSTRATIONS OR WARRANTY REPRESENTATIONS ARE LIMITED TO RE-DEMONSTRATION OF THE STANDARD PUBLISHED PLASMA-THERM, NON-CORROSIVE PROCESS AS STATED IN PLASMA-THERM' "STANDARD SOURCE INSPECTION ACCEPTANCE TEST PROCEDURE," TO BE CONDUCTED BY THE PLASMA-THERM CUSTOMER SUPPORT FIELD ENGINEER AS PART OF INSTALLATION.

b. General Limitations

The Seller Warranty is limited to the provision of parts, materials and labor in quantities necessary to correct the defect. The quantities and method of delivery shall be determined exclusively by Seller. On-site warranty labor may be provided as determined by Seller. On-site warranty services are provided on a prioritized, first come first served basis. Seller does not guarantee an On-site response priority, nor minimum or maximum On-site response times. The remedies set forth in this paragraph "General Limitations" shall be the sole and exclusive remedies of the Buyer for any breach of the foregoing warranties.

c. Purchase Authorizations Required

Notwithstanding the existence of the Seller Warranty, claims for warranty repairs by way of the replacement of parts shall be accompanied by a validated customer purchase authorization. The purchase authorization shall be in the amount of the aggregate price for the part(s) replaced. This policy serves two purposes:

1. The timely return to Seller of inventory exchanged under the terms of the warranty. Seller allows thirty (30) days for the return of parts exchanged under warranty. After thirty days Seller will invoice against the purchase authorization.
2. OEM items, such as Mass Flow Controllers, Vacuum Pumps and Valves, integrated into the Seller System possess unique warranty provisions. Seller must preserve its claim to warranty protection, in the event the OEM determines the failure mode is related to end user mistake, improper operation or failure to maintain the ITEM according to OEM procedures.

The provisions above may be waived by authorized Seller Customer Service personnel in instances where the part or material being replaced is of Seller origin and a Seller Field Engineer takes possession of the material or part being exchanged. OEM items may also be treated similarly provided that the Field Engineer determines that the failure mode is consistent with the OEM warranty provisions.

d. Exclusions From Warranty

Seller Warranty does not cover the following:

1. **Consumable parts:** Parts listed on the recommended spare parts list as consumables.

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2. **Shipping damage:** Damage occurring en-route from Seller is not covered under this warranty, but may be covered by the common carrier coverage.
3. **External sources:** External devices (except as specifically noted); accessories or parts added to an ITEM after the ITEM is shipped; accessories or parts added by third parties. This warranty does not cover damage or ITEM failures due to external causes, including accident, abuse, misuse, problems with electrical power, process gasses, vacuum facilities, plant provided facilities, repairs not authorized by Seller Customer Service Operations, usage not according to ITEM instructions, failure to perform required preventive maintenance. This warranty does not cover damage or ITEM failures due to integrating ITEM with non-genuine Plasma-Therm parts, or parts not supplied by Seller, unless approved by Seller Customer Service.

e. Warranty Claim Process

Seller will repair or replace ITEMS covered under this limited warranty that are returned to Seller's facility. To request warranty service, you must contact Seller's Customer Service Operation within the warranty period to obtain written Return Material Authorization (RMA). If warranty service is required, Seller will issue a RMA shipping package. The RMA package includes labels and instruction for use. Buyer must ship the ITEMS back to Seller in their original or equivalent freight packaging, prepay shipping charges, and insure the shipment or accept the risk of loss or damage during shipment. Seller will return ship the repaired or replacement ITEMS to you freight prepaid.

NOTE: Before you ship computer ITEMS to Seller back up the data on the hard-disk drive(s) and any other storage device(s) in the ITEM. Remove any removable media, such as diskettes, CDs, or PC Cards. If you have any questions, call Seller for technical assistance. Buyer is required to protect and control confidential or proprietary information present on electronic media.

Seller owns all parts removed from repaired ITEMS. Seller uses new and reconditioned parts made by various manufacturers in performing warranty repairs and building replacement ITEMS. If Seller repairs or replaces an ITEM, its warranty term is not extended, nor is the system warranty extended.

THE ABOVE WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES (INCLUDING THE WARRANTY OF MERCHANTABILITY), AND OF ANY OTHER OBLIGATION ON THE PART OF SELLER. SELLER DOES NOT WARRANT THAT ANY EQUIPMENT CAN BE USED FOR ANY PARTICULAR PURPOSE OR WITH ANY PARTICULAR PROCESS OTHER THAN THAT COVERED BY THE APPLICABLE PUBLISHED SPECIFICATIONS.

f. Post-Warranty or Non-Warranty Parts

Seller is under no obligation to accept and replace spare parts sold hereunder that are not or are no longer under warranty. Seller will only accept a returned ITEM after Buyer agreed in writing to pay the invoiced replacement costs and Seller has issued Buyer a written RMA for said ITEM. Within seven (7) days of Seller issuing a written RMA, Buyer must return the ITEM to Seller or verify with adequate tracking information that the ITEM is being shipped to Seller. Buyer must return the ITEM in its original condition and in its original or equivalent freight packaging, along with the original identifying documentation shipped with said ITEM or otherwise sufficient identifying documentation. All transportation, packaging, clearance, duty and other costs involved in returning ITEMS to Seller shall be borne by Buyer. If in Seller's discretion, Buyer fails to meet any of the above conditions, Seller may reject the ITEMS and have no obligation to issue a replacement for said ITEMS.

Any spare part issued by Seller under this section **12.e.** shall be under the warranty conditions noted within sections **12.b.-d.**, for a period of thirty (30) days following shipment regardless of whether the ITEM is

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used or put in storage following Buyer's receipt of said ITEM.

13. PATENT INFRINGEMENT.

a. Indemnification by Seller

If a third party claims that the purchased ITEM infringes that party's patent or copyright, Seller will defend Buyer against that claim and will pay all costs, damages and attorney's fees that a court finally awards, provided that Buyer: (i) promptly notifies Seller in writing of the claim and (ii) cooperates with Seller in, the defense of the claim and permits the Seller, through its counsel, to assume sole control over the defense and/or settlement of all such claims. If such a claim is made or appears likely, Seller, at its option, may obtain a license to enable Buyer to continue to use the product, may modify the product, or may replace it with one that is functionally equivalent. If Seller determines that none of these alternatives are reasonably available, Buyer agrees to return the product to Seller upon Seller's written request, in which case Seller will credit Buyer with an amount equal to the price paid for such product less a reasonable amount for depreciation. Seller's liability is limited to repair, replacement or adjustment as determined by Seller. Seller shall not be liable for any claim based on (i) anything Buyer provides which is incorporated into a product, (ii) Buyer's modification of a product or use thereof other than in its specified operating environment, or (iii) the combination, operation or use of a product with products provided by other manufacturers or other products not provided by Seller as a system. In no event will Seller's liability to Buyer under this paragraph exceed the purchase price of the respective product. This Section states the entire liability of Seller, and the sole and exclusive remedy of Buyer, with respect to infringement claims.

b. Indemnification by Buyer

Buyer shall indemnify Seller and hold it harmless (i) where drawings or information provided by Buyer infringe a third party's proprietary or industrial rights and (ii) for all claims for product liability raised by third parties if the occurrence of the damage is not clearly imputable to Seller. Buyer shall not, for any purpose, reverse engineer, de-compile or disassemble any ITEM or prototypes, software or other physical objects associated with any ITEM sold to Buyer by Seller. Seller reserves the right to seek compensation from Buyer for any claims, damages, or other losses suffered by Seller and resulting from Buyer's violation of any of its obligations within this paragraph **13.b.**

14. LIMITATION OF LIABILITY. Seller shall not be liable for consequential damages, for anticipated or lost profits, incidental, indirect, special or punitive damages, loss of time, loss of use, or other losses incurred by Buyer or any third party in connection with the ITEMS provided by Seller, even if advised of the possibility of such damages. In no event will Seller's liability in connection with an ITEM exceed the amounts paid to Seller by Buyer for such ITEM.

SELLER SHALL NOT BE LIABLE FOR DEFECTS IN OR FAILURES OF THIRD PARTY EQUIPMENT OR PARTS, OR FOR DEFAULTS BY, OR DEFECTS IN SERVICES RENDERED BY, THIRD PARTIES. THE LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION SHALL APPLY EVEN IF THE EXPRESS WARRANTIES OR REMEDIES NOTED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

15. NOTICES: Any notice given under this quotation and any purchase order placed hereunder will be deemed to be sufficiently given when sent in writing by certified or registered mail to the parties at their respective addresses set forth herein or as those addresses may be subsequently changed by giving notice. The date of mailing of any notice hereunder will be deemed the date on which that notice has been given.

16. EXPORT CONTROL: All quotations by Seller and all purchase orders are subject to compliance with all applicable laws and regulations. Buyer acknowledges that Seller's products and related technical information

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may be subject to export control regulations of the United States and other foreign governments (“Export Control Laws”). Buyer agrees to take all steps necessary to comply with applicable Export Control Laws, U.S. anti-boycott laws and the related policies and procedures of Seller as in effect from time to time. Buyer also agrees to assist Seller in obtaining export, import and other regulatory approvals that may be necessary or appropriate in connection with the performance of the transactions hereunder.

- 17. ASSIGNMENT:** Neither party may assign any of its rights or delegate any of its duties or obligations under this quotation without the other’s prior written consent, which will not be unreasonably delayed or withheld. Any assignment or delegation hereof by either party without the other’s consent will be deemed null and void and of no force or effect.
- 18. WAIVER & INVALIDITY:** Either party’s waiver of the other’s default in its obligations under this quotation will not in any way limit or affect that party’s right to enforce and compel strict compliance herewith in all other respects. In the event that any provision hereof conflicts with the law under which it is to be construed or if any such provision is held invalid by a court of competent jurisdiction, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law. The remainder of these General Terms and Conditions shall remain in full force and effect.
- 19. REMEDIES:** Except as specifically provided herein, each right or remedy accorded to either party under this quotation will not be exclusive, but cumulative of all other rights and remedies accorded hereunder or allowed by law. In any action or arbitration brought under or in connection with these General Terms and Conditions or any related agreement, the prevailing party shall be entitled to recover its actual costs and attorneys’ fees and all other litigation costs, including expert witness fees, and all actual attorneys’ fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.
- 20. CHOICE OF LAW & VENUE:** The contract created hereby shall be interpreted and construed under the laws of the State of Florida, without regard to the choice of law provisions thereof and not including the U.N. Convention on Contracts for the International Sale of Goods, if otherwise applicable. The parties agree that all actions or proceedings arising in connection with these General Terms and Conditions or any related agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in Hillsborough County, Florida. Each party waives any right it may have to assert the doctrine of forum *non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section.
- 21. CONFIDENTIALITY:** Buyer shall keep confidential the manufacturing and business secrets as well as any other proprietary information, which is clearly marked as confidential, received from Seller and shall neither directly nor indirectly disclose the same to any third party whomsoever nor publish them in any manner whatsoever nor use them for any other purpose, in particular but without limitation for the reproduction of machines, systems, components, and parts thereof. If Seller provides information or materials which Seller treats as proprietary or confidential, Buyer agrees to maintain such information in confidence, to take all reasonable precautions to prevent unauthorized disclosure, and to use such information only within the scope for which it was intended, until the information becomes publicly available through no fault of Buyer. Buyer shall be responsible for the compliance of Buyer’s personnel with these provisions.
- 22. INTERPRETATION:** Captions and heading used herein are for convenience only and shall not be used in the construction or interpretation of these General Terms and Conditions. This document shall be construed

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without regard to the identity of the person who drafted the various provisions. Whenever the singular or masculine or neuter is used in this Purchase Order, the same shall be construed to include the plural or feminine or body corporate where the context of this Purchase Order or the parties hereto may so require. The words "include" or "including" as used herein shall not be construed as words of limitation.

- 23. LICENSES:** Any License Agreement enclosed in the original factory packaging on non-Seller produced ITEMS will state those terms and conditions of any license granted to Buyer applicable to those ITEMS. In all other cases any software furnished by Seller under this Agreement is done so on a non-transferable license-to-use basis and all right, title and interest therein is and will remain vested exclusively in Seller or its licensors. Buyer will not decompile, disassemble, or otherwise derive the source code of any software furnished by Seller nor will Buyer make any copies of such software, except that Buyer may make one (1) copy of each such software product for backup purposes only. Buyer will return or destroy all copies of software upon cessation of related product usage. All software furnished by Seller is considered confidential information and will be held by the Buyer in strict confidence and disclosed on a need-to-know basis to only those employees who have agreed in writing to maintain the confidentiality of Buyer provided third party confidential information.
- 24. PARTIES BOUND:** These General Terms and Conditions shall be binding upon and inure to the benefit of the Seller and the Buyer and their respective successors and permitted assigns, subject to the restrictions against assignment provided above.