

PLASMATERIALS, INC. TERMS AND CONDITIONS OF SALE

PRELIMINARY STATEMENT

Plasmaterials, Inc., a California corporation, (hereinafter referred to as "Plasmaterials") purchases the components and/or raw materials necessary to produce and supply sputtering targets, evaporation materials and associated ancillary products including precious metals for the purpose of fabricating and/or assembling such materials according to the specifications submitted by "Customers". Plasmaterials does not mine, manufacture or produce any of the starting materials used for the fabrication or production of such products.

GENERAL TERMS AND CONDITIONS

This document entitled **TERMS AND CONDITIONS OF SALE** is intended to set forth the terms and conditions of sale for sputtering targets, evaporation materials and other products to customers of Plasmaterials. Said terms and conditions set forth herein shall not be binding on Plasmaterials unless executed initially by the Customer by issuance of a written Purchase Order and subsequently accepted in writing by Plasmaterials via an Acknowledgment of the Customer order.

The terms of payment are specifically detailed as **Attachment 1**, which is incorporated by reference. The customer is responsible for the specification of the product or materials to be provided by Plasmaterials.

The Customer shall be solely responsible for the payment of all applicable taxes, duties or other charges that arise as a result of the sale of products supplied by Plasmaterials to the Customer. In addition, the Customer shall be responsible for procuring all permits, licenses or other government approvals as may be required in connection with the sale and transport of the subject product. In the event that Plasmaterials is required to pay any such tax or related fee or charge, Customer will reimburse Plasmaterials upon demand.

Unless other arrangements are made between Customer and Plasmaterials, any product shipped to Customer pursuant to the terms of this agreement shall be shipped by a method selected by Plasmaterials and shall be F.O.B. at Plasmaterials' facility. Customer shall assume all risk of loss from the point in time that the product is delivered to the selected carrier. Plasmaterials shall have no liability for any **DAMAGE, LOSS OR DELAY** which occurs while the product is in transit.

Plasmaterials shall retain a security interest in the product sold to Customer until such time as Plasmaterials receives payment in full for the product. By execution of this agreement, Customer hereby grants Plasmaterials such a security interest.

DELIVERY

All delivery dates are approximate and delivery schedules for non-stock products are only estimates of actual delivery dates. Conditions beyond the control of Plasmaterials are subject to change from when a quotation is initially offered or from when an Acknowledgement is sent. Plasmaterials will make every effort to make all deliveries on a timely basis but assumes no responsibilities to Customer for late or delayed deliveries. In rare cases it may be necessary to cancel an order if the product is deemed by Plasmaterials to be beyond Plasmaterials capability to supply. In such a case the order will be deemed cancelled and the Customer will be notified as soon as possible of Plasmaterials inability to produce such product. Plasmaterials will assume no financial responsibility for Customer losses because of order delay or cancellation. Delay or cancellation of product delivery will not be deemed a default of Customer contract.

LIMITED WARRANTY

Plasmaterials hereby warrants that it will order materials from its suppliers that comply with the specifications submitted by the Customer. Furthermore, where appropriate, Plasmaterials shall require its suppliers to provide a written Certificate of Purity indicating that the materials used for the manufacturing of the product are of purity of equal to or greater than that as set forth in the specification of Customer.

It is understood by Customer that Plasmaterials is relying on the certificates provided by its suppliers relating to the content of the materials to be used in the product sold to its customers. Any warranty of purity set forth herein is limited to Plasmaterials assurance that the materials used in the product provided to Customer are in conformance with the certification from the material supplier.

All Physical Vapor Deposition (PVD) Materials sold by Plasmaterials will be supplied with a **Typical Certificate of Analysis (CofA)**. The data supplied is typical of the metallic trace elements present from sample(s) of the raw materials used to produce the finished product(s) listed on the CofA. The data supplied is not taken from the actual product being produced as it is generated from a destructive test. This analytical listing is listed in Parts Per Million (ppm) based on atomic composition.

The purity stated on the Certificate of Analysis provided by Plasmaterials is based on metallic content only and is typical of that which is contained in the product supplied to Customer. In the event that a product supplied to Customer is in dispute as to purity content, this is not, in and of itself, sufficient reason to cancel the contract. An independent third-party analysis will be used to determine actual content. Such product shall be returned to Plasmaterials in its entirety and Plasmaterials will contract an independent third party to initiate a qualified analysis of such material. If the material in question does not meet the original specifications required by the contract, such product will either be replaced with qualifying material or Plasmaterials will refund or credit any monies paid by Customer for such product. Such a decision will be determined solely by Plasmaterials.

In consideration to its customers, upon request, Plasmaterials will supply a **Safety Data Sheet (SDS)** for the elemental constituents that comprise an alloy or compound. In some cases, SDS's for complex materials may not be available. The elemental SDS's are derived or taken from published literature and are not compiled by Plasmaterials directly. Plasmaterials is not responsible for any errors or misrepresentations of any data presented in the reproduced SDS provided with any PVD Materials supplied by Plasmaterials.

Plasmaterials agrees to assemble the subject product in a workman like manner consistent with the standards of the industry. Customer acknowledges and agrees that at times there may be a cosmetic defect in the finished product which does not detract from the products performance. In all cases Plasmaterials will employ "Best-Efforts-Basis" in all aspects of meeting the Customer specification.

Except as herein provided, Plasmaterials shall have no liability to Customer, whether in contract or in tort or other form of claim, for any damages sustained by Customer as a result of any defects in materials or workmanship in regard to the product sold to Customer. In the event of a defect in workmanship or materials reported to Plasmaterials by Customer in writing within thirty (30) days of Customer receipt of said product, Plasmaterials

shall promptly replace or repair the defective product at no charge to Customer. If said product cannot be replaced or repaired within a reasonable period of time, Plasmaterials shall refund or credit the customer the monies received from Customer for payment of the subject product.

BEST-EFFORTS-BASIS DESIGNATION

From time to time, it may be necessary for Plasmaterials to offer a product quotation with the designation "Best-Efforts-Basis". This means that this material will be attempted on an experimental basis where the final results cannot be determined at the time of offering a quotation. Plasmaterials will do everything possible to provide a product that, as nearly as possible, meets the general requirements set forth in the offering and purchase order but may not meet all the requested criteria. Aesthetic features, composition, phase purity, grain size and structure requirements, density, mechanical properties, metallurgical properties, geometrical configurations, etc. may not be met as requested based on the method in which the material was consolidated.

ON-SITE VISITS

At the discretion of Plasmaterials' Management, the Company reserves the right to refuse admittance of any individual, or group of individuals, into any of the Companies' facilities without expressed written consent signed by an Officer of the Company.

LIMITATION OF LIABILITY/DAMAGES

PLASMATERIALS SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, SPECIAL, DIRECT OR INDIRECT (INCLUDING BUT NOT LIMITED TO LOSS OF USE OR LOSS OF INCOME OR PROFITS) IN CONNECTION WITH THE SALE OF PRODUCT THAT EXCEEDS THE COST OF THE PRODUCT PURCHASED UNDER THIS AGREEMENT.

Customer hereby agrees to indemnify Plasmaterials harmless from any claims, damages or liabilities that may be asserted by Customer's employees and users of the sputtering targets or other product provided to Customer by Plasmaterials.

MEDIATION/ARBITRATION

Should any dispute arise directly or indirectly related to the subject matter of this agreement, the parties shall first attempt to resolve that dispute by way of mediation to be held in the San Francisco Bay Area, State of California, under the mediation rules of JAMS or the American Arbitration Association, whichever is first selected. The cost of mediation shall be shared equally between the parties.

If the dispute cannot be resolved through mediation, parties agree to arbitrate said dispute pursuant to the rules of JAMS to take place in the San Francisco Bay Area with each party being solely responsible for its own attorney's fees and costs incurred in connection with said arbitration.

This agreement shall be governed by the laws of the State of California without the principles of conflict of laws. Venue shall be deemed to be in the Alameda County, California with the Superior Court of California in and for the County of Alameda having jurisdiction over all issues contained herein.

This agreement takes precedent over any and all other agreements between Customer and Plasmaterials unless otherwise agreed upon in writing prior to the Acknowledgment of Order.

ATTACHMENT 1

TERMS OF PAYMENT

General terms of sale will be payment in advance unless written authorization is supplied by Plasmaterials of Customer approved credit. Customer approved credit may require Customer banking or credit references to be supplied to Plasmaterials in advance of order acceptance.

Upon Customer approved credit, for product excluding precious metals or product containing precious metal content, payment is due in full within thirty (30) days after Plasmaterials submits or transmits an invoice to Customer. For precious metal product and precious metal containing product see **PRECIOUS METAL ADDENDUM** below. If payment is not received on time Plasmaterials reserves the right to charge a late fee equal to one and one half percent (1.5%) of any past-due amount for each month or portion of a month that the past due amount remains unpaid but not more than amounts allowed by law. Such charge and collection of late payment will be adjusted in accordance with applicable law. Plasmaterials accepts payment in the form of Credit Cards (Visa, MasterCard, American Express), checks, Electronic Funds Transfer (EFT) or direct Wire Transfer to Plasmaterials account. If payment is to be made by credit card, a valid credit card must be submitted by Customer at time of order and the full price of the products as well as shipping charges, taxes, fees etc will be charged to said credit card prior to the delivery of product.

Precious metals include elemental gold, platinum, palladium, silver, iridium, ruthenium, osmium and iridium as well as alloys or composite materials containing these elements. At Plasmaterials discretion, precious metals may be subject to the purchase conditions contained in the PRECIOUS METAL ADDENDUM below.

Metal price is determined by the following schedule:

OPTION 1

- A. Within seven (7) days from receipt of order ninety percent (90%) of estimated metal price is due.**
- B. Actual price of metal is determined by Engelhard's Fabricated Price using the pricing the day after payment is received by Plasmaterials.**
- C. Remaining metal cost is priced on Engelhard's Fabricated Price the day after shipment and is due within ten (10) days of shipment.**
- D. Fabrication cost is due within ten (10) days after shipment.**
- E. A 2.5% surcharge over the listed Engelhard's Fabricated Price of metal will be charged.**

OPTION 2

- A. Payment for metal and fabrication are due within ten (10) days of shipment.**
- B. Price of metal is determined by Engelhard's Fabricated Price.**
- C. A 7.25% surcharge over the listed Engelhard's Fabricated Price of metal will be charged**