

INTEVAC, INC.  
PURCHASE ORDER ("P.O.") TERMS AND CONDITIONS

AGREEMENT BY SELLER TO FURNISH THE MATERIAL OR SERVICES HEREBY ORDERED, OR ITS FURNISHING OF SUCH MATERIALS OR SERVICES IN WHOLE OR IN PART, SHALL CONSTITUTE ACCEPTANCE BY SELLER OF THIS P.O. SUBJECT TO THESE TERMS AND CONDITIONS. ANY TERMS AND CONDITIONS PROPOSED BY SELLER INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS OF PURCHASE HEREIN CONTAINED SHALL BE VOID AND OF NO EFFECT UNLESS SPECIFICALLY AGREED TO BY BUYER IN WRITING.

**1. PRICES AND TAXES.** Acceptance of this P.O. constitutes a warranty that the prices to be charged for articles or services ordered do not exceed the lowest price charged to any other customer for similar quantities and delivery requirements. Unless otherwise specified, the prices set forth in this P.O. include all applicable federal, state, and local taxes.

**2. INVOICES.** Seller will submit invoices in duplicate showing the following information: P.O. number; item number, description, size, quantity; unit prices; each applicable tax; extended totals; and any other information specified elsewhere herein. A Bill of Lading or express receipt must accompany each invoice. Payment of invoice will not constitute acceptance of goods. Buyer may at any time set off any amount owed by Buyer to Seller against any amount owed by Seller to Buyer.

**3. DISCOUNTS.** Time in connection with any discount offered by Seller will be computed from the latest of the (i) scheduled delivery date, (ii) date of actual delivery, or (iii) date an acceptable invoice is received. For the purpose of earning the discount, payment will be deemed to have been made on the date of mailing of Buyer's check.

**4. OVER SHIPMENTS.** Buyer will pay only for maximum quantities ordered. Over shipments will be held by Buyer at Seller's risk and expense for a reasonable time awaiting shipping instructions. Return shipping charges will be at Seller's expense.

**5. PACKING AND SHIPMENT.** Unless otherwise specified, when the price of this P.O. is based on the weight of the ordered goods, such price is to cover only the net weight of material ordered, and no charges will be allowed for packing, handling, transportation, storage or other packing requirements. Seller will package and pack all goods in a manner which is (i) in accordance with good commercial practice, (ii) acceptable to common carriers for shipment at the lowest rate for the particular goods, (iii) in accordance with I.C.C. regulations, and (iv) adequate to insure safe arrival of the goods at the named destination. Seller will mark all containers with necessary lifting, handling, and shipping information and with P.O. numbers, date of shipment, and the names of the consignee and consignor. An itemized packing list must accompany each shipment. No partial or complete delivery will be made prior to the due date or dates shown unless Buyer has given prior written consent.

**6. F.O.B. POINT.** Unless otherwise specifically provided on the face of this order, the products ordered hereunder will be delivered on an F.O.B. origin basis.

**7. WARRANTY**

(a) Seller warrants that all goods delivered (i) will be free from defects in workmanship, material, and manufacture, (ii) will comply with the requirements of this P.O., including any drawings or specifications incorporated herein or samples furnished by Seller, and (iii) where design is Seller's responsibility, will be free from defects in design. The foregoing warranties constitute conditions to this P.O.. They are in addition to all other warranties, whether express or implied, and will survive any delivery, inspection, acceptance or payment by Buyer. All warranties run to the benefit of Buyer and its customers.

(b) Buyer's approval of Seller's materials or design will not relieve Seller of any warranties.

(c) If any goods delivered do not meet the warranties specified herein or otherwise applicable, Buyer may, at its option, (i) require Seller to correct any defective or nonconforming goods by repair or replacement at no cost to Buyer, or (ii) return such defective or nonconforming goods to Seller at Seller's expense and recover from Seller the order price thereof, or (iii) correct the defective or nonconforming goods itself and charge Seller with the cost of such correction.

**8. INSPECTION AND ACCEPTANCE.** Notwithstanding any prior inspection or payments, all goods will be subject to final inspection and acceptance at Buyer's plant within a reasonable time after delivery. In case any item is defective in material or workmanship, or otherwise not in conformity with the requirements of this order, Buyer will have the right to reject it, to require its correction or to accept it with an adjustment in price. Any item that has been rejected or required to be corrected must be replaced or

INTEVAC, INC.  
PURCHASE ORDER ("P.O.") TERMS AND CONDITIONS

corrected by and at the expense of Seller promptly after notice. If, after being requested by Buyer, Seller fails to promptly replace or correct any defective item, then Buyer may (i) replace or correct such item and charge to Seller the cost occasioned thereby, (ii) without further notice, cancel this P.O. for default in accordance with Item 10 below, or (iii) require an appropriate reduction in price.

**9. CHANGE ORDERS**

(a) The Buyer may at any time, by a written order, suspend performance hereunder, increase or decrease the ordered quantities, change the due date or make changes in any one or more of the following: (i) applicable drawings, designs or specifications; (ii) method of shipment or packing; and/or (iii) place of delivery.

(b) If the change causes an increase in the cost or the time required by Seller for performance of this P.O. and Seller so notifies Buyer, then an equitable adjustment will be made in the order price or delivery schedule or both, and the P.O. will be modified accordingly in writing. No claim by Seller for such an adjustment will be valid unless asserted within twenty (20) days from the date of receipt by Seller of the notification of change; provided, however, that such period may be extended upon the written approval of Buyer.

(c) Nothing in this Item 9 is intended to excuse Seller from proceeding with this P.O. as changed or amended.

**10. TERMINATION FOR DEFAULT**

(a) Buyer may, by written notice, terminate this order in whole or in part at any time for breach of any one or more of its terms. Further, the insolvency of the Seller or adjudication of bankruptcy of the Seller or the filing of a voluntary or involuntary petition of bankruptcy by the Seller or the making of an assignment for the benefit of creditors by the Seller shall also be a breach hereof.

(B) IN THE EVENT OF SELLER'S DEFAULT HEREUNDER, THE BUYER MAY EXERCISE ANY OR ALL RIGHTS ACCRUING TO IT, BOTH AT LAW OR IN EQUITY. (c) Nothing in this Item 10 is intended to excuse seller from proceeding with any uncanceled portion of this P.O..

(d) Seller's obligations under the warranty, patent and confidentiality provisions of this purchase order shall survive such termination.

**11. TERMINATION FOR CONVENIENCE**

(a) At any time for convenience, Buyer may terminate work under this P.O., in whole or in part, by written or telegraphic notice.

(b) Upon such termination, Seller will, to the extent and at the times specified by Buyer, stop all work under this P.O., place no further orders for materials to complete the work, assign to Buyer all Seller's interests under terminated subcontracts and orders, settle all claims thereunder after obtaining Buyer's approval, protect all property in which Buyer has or may acquire an interest, and transfer title and make delivery to Buyer of all articles, materials, work in process, and other things held or acquired by Seller in connection with the terminated portion of this P.O.. Seller will proceed promptly to comply with Buyer's instructions respecting each of the foregoing without awaiting settlement or payment of its termination claim.

(c) Within six (6) months after such termination, Seller may submit to Buyer its written claim for termination charges, in the form and with the certifications prescribed by Buyer. Failure to submit the claim within six months will constitute a waiver of all claims and a release of all Buyer's liability arising out of the termination.

(d) The parties may agree upon the amount to be paid Seller for such termination. If they fail to agree, Buyer will pay Seller the following amounts:

(i) The contract price for all items completed or services rendered in accordance with this P.O. and not previously paid for.

(ii) The actual costs incurred by Seller which are properly allocable under recognized commercial accounting practices to the terminated portion of this P.O., plus a fair and reasonable profit on such costs.

(iii) The reasonable costs incurred by Seller in making settlement hereunder and in protecting property in which Buyer has or may acquire an interest.

(e) Payments made under Items 11(d)(i) and (ii) above may not exceed the aggregate price specified in this P.O. less payments otherwise made or to be made.

(d) Seller's obligations under the warranty, patent and confidentiality provisions of this purchase order shall survive such termination.

INTEVAC, INC.  
PURCHASE ORDER ("P.O.") TERMS AND CONDITIONS

**12. RISK OF LOSS OR DAMAGE.** Notwithstanding any prior inspections and irrespective of the F.O.B. point named herein, Seller will bear all risk of loss, damage or destruction to the ordered goods until final acceptance of the goods by Buyer at destination. Seller will bear the same risk with respect to any goods rejected by Buyer. Buyer, however, will be responsible for any loss occasioned by the gross negligence of its employees acting within the scope of their employment.

**13. BUYER'S PROPERTY.** Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this P.O. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this P.O. without Buyer's prior written consent. Seller shall notify Buyer's Procurement Representative if Buyer's property is lost, damaged, or destroyed. As directed by Buyer, upon completion, termination or cancellation of this P.O. Seller shall deliver such property, to the extent not incorporated in delivered goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses.

**14. WAIVER.** The failure of Buyer to enforce at any time any of the provisions of this P.O., to exercise any election or option provided herein, or to require at any time the performance by Seller of any of the provisions herein will not in any way be construed to be a waiver of such provisions.

**15. REMEDIES.** The remedies stated herein are in addition to all other remedies at law or in equity.

**16. INDEMNIFICATION**

(a) Seller agrees to indemnify Buyer, its agents, customers, successors, and assigns against any loss, damage, and liability (including costs and expenses) for actual or alleged infringement of any patent, copyright or trademark arising out of the use or sale of the goods by Buyer, its agents or customers -- provided, however, that Buyer must notify Seller of any suit, claim or demand involving such infringement and permit Seller to defend against or settle the same. If any injunction is issued as the result of any such infringement, Seller agrees, at Buyer's option, to (i) refund to Buyer the amounts paid to Seller for the goods covered by the injunction, or (ii) furnish Buyer with acceptable and noninfringing goods.

(b) Seller agrees to indemnify Buyer against any and all liability and expense resulting from any alleged defect in the goods, whether latent or patent, including allegedly improper construction and design, or from the failure of the goods to comply with specifications.

(c) Seller warrants that there are no liabilities for royalties, mechanics liens or other encumbrances on the goods supplied and agrees to indemnify Buyer against any such liabilities.

(d) The above indemnifications are in addition to all other rights of indemnification of Buyer against Seller.

**17. NON-DISCLOSURE OF CONFIDENTIAL MATTER.** Seller will not quote for sale to others, without Buyer's written authorization, any goods purchased under Buyer's specifications or drawings. All specifications, drawings, samples, and other data furnished by Buyer will be treated by Seller as confidential information, will remain Buyer's property, and will be returned to Buyer on request.

**18. ASSIGNMENTS.** No right or obligation under this P.O. (including the right to receive monies due) may be assigned by Seller without the prior written consent of Buyer, and any purported assignment without such consent will be void. Buyer may assign this P.O. at any time if such assignment is considered necessary by Buyer in connection with a sale of Buyer's assets or a transfer of its obligations.

**19. DELIVERY; NOTICE OF DELAYS.** It is understood and agreed that time is of the essence for this order. Whenever any event delays or threatens to delay the timely performance of this P.O., Seller will immediately notify Buyer of such event and furnish all relevant details. Receipt by Buyer of such notice will not constitute a waiver of the due dates hereunder.

**20. PATENT LICENSE.** Seller, as part consideration for this P.O. and without further cost to Buyer, hereby grants to Buyer and its customer(s) an irrevocable, non-exclusive, royalty-free license to use, sell, manufacture, and cause to be manufactured products embodying any inventions and discoveries made, conceived or actually reduced to practice in connection with the performance of this P.O..

**21. APPLICABLE LAW.** This P.O. will be governed by the laws of the State of California.