

INTEVAC, Inc.

FIXED PRICE PURCHASE ORDER TERMS AND CONDITIONS

(Applicable to Purchase Orders Issued Under Government Contracts
Subject to the Federal Acquisition Regulations)

PART I

1. **DEFINITIONS.** As used throughout this Order the following definitions apply unless otherwise specifically stated:

(a) FAR means the Federal Acquisition Regulation in effect on the date of this Order.

(b) Contracting Officer means the Government contracting officer(s) for the prime contract identified in this Order.

(c) Buyer means Intevac, Inc.

(d) Seller (or Subcontractor) means the legal entity which is the contracting party with Buyer with respect to this Order. In FAR clauses incorporated herein the term "Contractor" shall be deemed to refer to Seller, and the term "Subcontractor" refers to Seller's subcontractors.

(e) "This Order" (or "this subcontract") refers to this contractual instrument, and in FAR clauses incorporated herein the term "contract" means this Order (or this subcontract).

(f) Government refers to the Government of the United States acting through the Department or procuring activity or agency which awarded the prime contract.

(g) Prime contract means the Government contract (identified in this Order) under which this Order was issued.

2. **ACCEPTANCE.** Written acceptance by Seller of this Order or the commencement of any work or the performance of any services hereunder by Seller shall constitute acceptance by Seller of this Order, its terms and conditions and applicable law. Acceptance of this Order is limited to the terms and conditions stated

herein. Any additional or different terms proposed by Seller are objected to and hereby rejected unless Buyer agrees otherwise in writing.

3. **LOSS OR DAMAGE CAUSED BY SELLER.** In the event Seller, its employees, agents and/or subcontractors enter premises occupied by or under the control of Buyer or utilize property furnished by Buyer, whether on or off said premises, in the performance of this Order, Seller shall indemnify and hold harmless Buyer, its officers and employees, from any damage, expense or liability by reason of property damage, personal injury or death arising out of or in connection with negligent actions or omissions of Seller and also from any claim against Buyer as a third party for death of or injury to Seller's or Seller's subcontractor's employee arising out of and in the course of the employee's employment. Without in any way limiting the foregoing undertakings, Seller and its subcontractors at all tiers shall maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above and shall maintain proper worker's compensation insurance covering all employees performing this Order and, upon request, shall furnish Certificates of Insurance evidencing such coverage and listing Buyer as an "Additional Insured".

4. **RESPONSIBILITY FOR PROPERTY.** All property, including material, tooling and equipment which is furnished to Seller by Buyer for performance of this Order or for which Buyer has specifically agreed to pay Seller, shall be and remain the property of Buyer or the Government, as applicable, and title to such property shall not be affected by incorporation or attachment to any other property. All property manufactured or acquired by Seller under this Order, the title to which is in Buyer or the Government, and all property furnished or consigned to Seller by Buyer under this Order, including Government property, shall be kept and maintained in accordance with standards in FAR Part 45, which is hereby incorporated in and made a part of this Order. Such property shall be used by Seller only in the performance of this Order or as may otherwise be authorized by Buyer, or by the Government with respect to property of the Government; and shall remain the property of Buyer or the Government unless abandoned in place, in which case neither Buyer nor Government shall have any further obligation concerning same. When instructed by Buyer, Seller shall deliver the property covered by this clause to Buyer or the Government, as appropriate, F.O.B. carrier, Seller's plant at the completion or termination of this Order, or shall make such other disposition of property of the Government as Buyer, upon instructions of the Contracting Officer, may direct. Seller shall bear the risk of loss or destruction of and damage to property covered by this clause until delivered or returned to Buyer or the Government. Seller shall deliver or return Buyer property and Government property in the same condition as when manufactured, acquired, or received, except for reasonable wear and tear or for utilization thereof in accordance with the terms of this Order. With respect to Government property this clause applies only to Government property coming into Seller's possession or control solely under this Order; it does not, for example, apply to Government property held by Seller under a facilities or other Government contract which governs Seller's responsibility thereof.

5. **INSPECTION.** Seller shall permit Buyer's and Government inspectors to have access to Seller's plant at all reasonable hours for the purpose of inspecting any items covered by this Order or work in process for production of said items. All items

are subject to final inspection and approval at destination. Defective goods may be returned for credit replacement at Seller's expense. Seller shall not replace items returned as defective unless so directed by Buyer in writing. Inspection or failure to inspect at destination will not affect any express or implied warranties.

6. **PACKING, MARKING AND SHIPPING.**

(a) Seller shall pack, mark and ship all goods and supplies in accordance with the requirements of this Order so as to be in compliance with

transportation regulations and good commercial practice for protection and shipment and to secure the most advantageous transportation service and rates consistent therewith. No separate or additional charge is payable by Buyer for containers, crating, boxing, bundling, dunnage, drayage or storage unless specifically stated in this Order. Any expense incurred by Buyer as a result of improper preservation, packaging, packing, marking or method of shipment shall be reimbursed by Seller. A packing list showing this Order number (and release number, if applicable) shall be included with each shipment, and each container shall be marked to show the Order number. Seller shall mail original bill of lading to Buyer's Traffic Department at point of Order unless otherwise instructed. Any transportation charges paid by Seller for which Seller is entitled to reimbursement shall be shown on Seller's invoice as a separate line item and the receipted freight bill shall be attached thereto.

(b) In case of drop shipment, Seller shall send Buyer at time of shipment two copies of above packing list.

(c) If because of failure of Seller to meet the delivery requirements of this Order, Buyer finds it necessary to require shipment of any of the supplies covered by this Order by a method of transportation other than the method originally specified by Buyer, Seller shall reimburse Buyer the amount, if any, by which the cost of the more expeditious method of transportation exceeds the cost of the method of transportation originally specified, unless such failure is due to causes beyond the control and without the fault or negligence of the Seller.

7. **USE OF BUYER'S DATA.** Seller agrees not to use or disclose drawings, specifications, technical information and other data furnished by Buyer except in furnishing supplies under this Order; provided, however, that Seller may produce such supplies for sale to the Government where the Government has the right to authorize, and has authorized, the use of such drawings, specifications, technical information, and other data. Nothing in this clause, however, shall restrict Seller's rights to use or disclose uncopyrighted drawings, specifications, technical information and other data which are or become generally known to the public without breach of this provision by the Seller or are rightfully obtained from other sources.

8. **TAXES.** Except as Buyer has otherwise provided in this Order, the prices stated in the Order include all applicable Federal, state and local taxes and duties.

9. **PUBLIC RELEASES.** Seller shall not, without the prior written consent of Buyer, make any news release or public announcement concerning this Order.

10. **RISK OF LOSS AND RESPONSIBILITY FOR SUPPLIES.**

(a) When this Order specifies that the designated delivery point is F.O.B. carrier, Seller's plant, risk of loss (used in this clause to include damage, destruction, theft or other loss of the supplies) shall pass to Buyer upon delivery of the items to the common carrier by Seller properly addressed, labeled and consigned, and Buyer shall be responsible for asserting any claims against the carrier and for maintaining any required insurance against loss in transit.

(b) When this Order specifies that the designated delivery point is F.O.B. destination, risk of loss shall remain with Seller until delivery of the items to Buyer, and Seller shall be responsible for asserting any claims against the carrier and for maintaining any required insurance against loss in transit.

(c) Seller shall be responsible for the supplies covered by this Order until they are delivered at the designated delivery point, regardless of the point of inspection. After delivery to Buyer at the designated delivery point and prior to acceptance by Buyer or rejection and giving notice thereof by Buyer, Buyer shall be responsible for risk of loss. Seller shall bear all risks of loss as to properly rejected supplies after timely written notice of rejection has been given, except that Buyer shall be responsible for risk of loss as to the rejected supplies if such loss results from the negligence of officers, agents or employees of Buyer.

11. **DISPUTES.**

(a) Any dispute arising under this Order which is not settled by agreement or pursuant to the following paragraphs of this clause, may be settled by appropriate legal proceedings. Notwithstanding any other provisions herein, any decision of the Contracting Officer under the prime contract which binds the Buyer shall also bind Seller to the extent that it relates to this Order, provided Buyer shall have notified Seller promptly of such decision, and if requested by Seller, shall have appealed the decision in accordance with the Disputes clauses of the prime contract and taken any further action as may be required under this clause. Certification of Seller's claim by Buyer pursuant to the prime contract's Disputes clause shall occur only after the execution of a hold harmless agreement by Seller.

(b) Any decision on appeal, or any other decision of the Government under the prime contract which cannot be appealed under the Disputes clause of the prime contract if binding on Buyer, shall also bind Seller to the extent that it relates to this Order; provided Buyer shall have promptly notified Seller of such decision and, if requested by Seller, shall have brought suit or filed a claim, as appropriate, against the Government. A final judgment in any such suit or final disposition of such claim shall be conclusive upon Buyer and Seller.

(c) If any appeal, suit or claim is prosecuted by Buyer under this clause, Seller shall be permitted at Seller's expense, to participate fully in such prosecution for the purpose of protecting Seller's interest. If requested by Buyer, Seller shall prosecute any appeal, suit or claim initiated by Buyer at Seller's request. Each party shall cooperate fully in assisting the other party in such proceedings. Buyer agrees that after Seller has commenced to participate in any claim or proceeding against the Government pursuant to this clause, Buyer will not enter into a settlement with the Government or take any other action which would prejudice Seller's rights in such claim or proceeding without Seller's consent.

(d) During pendency of any dispute, decision, appeal suit or claim covered by this clause, Seller shall proceed diligently with performance. All costs and expenses incurred by Seller and Buyer in prosecuting any appeal, suit or claim

initiated by Buyer solely at Seller's request shall be paid by Seller; otherwise each party shall bear its allocable share of the expense. The rights and obligations of Buyer and Seller under this clause shall survive completion of, and final payment under this Order.

12. ASSIGNMENT. Neither this Order nor any interest therein, except the right to receive payment, may be assigned without prior written consent of Buyer. No assignment of the right to receive payment will affect Buyer's right of set-off against Seller; nor will such assignment be binding on Buyer unless and until Buyer receives an executed copy of the assignment and each invoice to be paid to the assignee is clearly marked to show such assignment. Seller shall not disclose any classified information relating to this Order to any assignee, except in conformance with the clause hereof entitled "Security Requirements".

13. WAIVER, MODIFICATION AND DELIVERY. The failure of Buyer in any one or more instances to insist on delivery at an agreed time or on performance of any other provision of this Order shall not be construed to be a waiver by Buyer of delivery time or any other provision in any later instance. Delivery according to Schedule, being an important condition hereof, will not be advanced or delayed without written agreement between the parties. Absent such agreement, if Seller delivers quantities in excess of the quantity called for, such excess quantities will be treated as being delivered for the convenience of Seller. Buyer may retain such excess quantities up to \$100 in value without compensating Seller therefor, and Seller waives all right, title, or interest therein. Quantities in excess of \$100 will be at the option of Buyer either be returned at Seller's expense or retained and paid for by Buyer at the purchase order unit price. No provision herein concerning inspection or conclusiveness of acceptance shall exclude any warranty or constitute a waiver thereof. A modification of this Order must be in writing and signed by Buyer's authorized Purchasing Representative if it is to be binding on Buyer.

14. LAWS. This Order shall be construed in accordance with the laws of the state in which the office issuing this Order is located. The rights and remedies provided Buyer and Seller herein shall be cumulative and in addition to any other rights and remedies provided by existing law or equity. Seller agrees that the supplies called for herein will be manufactured, prepared, sold and installed if applicable, in complete and strict compliance with all relevant Federal, state and local laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act of 1970, the Federal Hazardous Substances Act, the Transportation Safety Act of 1974 and the Toxic Substance Control Act.

15. PRICE WARRANTY. Seller warrants within the meaning of the anti-discrimination provisions of the Robinson-Patman Act (15 U.S.C. 13) that the prices for the articles sold to Buyer under this Order are no less favorable than those currently extended to any other customer in comparable status, buying the same or like articles in approximately equal or smaller quantities and under similar circumstances.

16. INTEREST.
(a) To the extent Buyer receives any interest pursuant to FAR 52.233-1 which is allocable to a claim of Seller arising under this Order and included in Buyer's claim on which such interest was received, Buyer shall pay Seller the portion thereof allocable to Seller. Otherwise, Buyer shall not be obligated for interest on any claim of Seller hereunder.

(b) Any liquidated amount owed by Seller to Buyer shall bear interest, unless paid within thirty days, at the rate the Secretary of the Treasury establishes for interest payments under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) from the date due until paid unless otherwise herein provided.

17. ANTI-KICKBACK ACT (see FAR 3.502 and FAR 52.203-7). Seller warrants that it is in full compliance with the provisions of the Anti-Kickback Act, as amended, 41 U.S.C. 51-58, and shall hold Buyer harmless from any liability resulting from failure of such compliance.

18. LIENS. All items to be delivered herein and all property to be returned to Buyer shall be free and clear of any and all claims, liens and encumbrances whatsoever.

19. WARRANTIES. All warranties, whether express or implied, affecting the items to be purchased hereunder are incorporated herein by reference and shall include, and be hereby supplemented by, the following express warranties of Seller: (a) all items detailed hereunder shall comply with any and all specifications, drawings, samples, or other descriptions furnished or adopted by Buyer; (b) all items detailed hereunder shall be merchantable, of good material and workmanship, free from defect, and suitable for their intended purpose; and (c) except in the case of items for which the Buyer furnishes complete specifications, the manufacture and sale by Seller of such items, the use, resale, installation and intended use of such items by the Buyer, and disclosures by Seller to Buyer in any manner hereunder shall not infringe upon or violate the rights of any person, corporation or partnership arising out of any license or franchise or any patent, trademark, or other proprietary right, now or hereafter in effect, or out of the doctrine of equitable rights. Seller shall indemnify and hold Buyer harmless from and against all liability, loss, and expense resulting from the breach of any warranty as well as any act or omission by the Seller, its agents or employees, whether negligent or otherwise, while in the performance of this Order. All obligations of Seller under this Order shall survive inspection and acceptance of and payment for the items.

20. FAIR LABOR STANDARDS ACT. Seller shall, at time of delivery or invoicing, certify that goods sold herein were manufactured or produced in full compliance with the Fair Labor Standards Act, as amended to the date of certification and all applicable United States Department of Labor Regulations promulgated thereunder.

21. OCCUPATIONAL SAFETY AND HEALTH ACT. Seller hereby warrants that all items furnished hereunder conform with the Occupational Safety and Health Act. In the event that items furnished hereunder do not conform with said Act and Buyer is penalized for such nonconformance, Seller shall indemnify Buyer for all penalties, costs, and expenses, including interest levied against Buyer.

22. SET-OFF. Any amounts owing to Buyer by Seller may be set-off against amounts otherwise due to Seller under this or any other purchase order with Buyer.

23. ABSENCE OF WAIVER. The failure of Buyer to insist on any provision of this Order shall not be construed as a waiver of either that provision or any other provision in any later instance.

24. DELIVERY. Seller shall strictly adhere to the delivery and completion schedules specified in this Order. If, at any time, Seller believes it may be unable to comply with the delivery or completion schedules, Seller shall immediately notify Buyer's authorized Procurement Representative in writing of the probable length of any anticipated delay and the reason for it, and shall immediately notify Buyer's authorized Procurement Representative of all further material changes in the situation.

25. ACCELERATED DELIVERY. Buyer, at its option, may retain items delivered more than thirty (30) days in advance of the delivery schedule, or may return them to the Seller at the Seller's risk and expense. If retained, times for payment and discounts and warranty shall be based on the contract delivery schedule.

26. INVOICING AND PAYMENT. Invoices must be rendered in duplicate upon shipment of material or performance of services. Invoices are paid from the date of receipt of material or performance of services and not on the basis of Seller's invoice date. If applicable, invoices must show cash discounts, which will be calculated from date of receipt of material or performance of services. Seller agrees as a condition of award of this Order that Buyer shall not be liable for any service charges, finance charges, interest charges, or other such fees in the course of making payments to Seller under this Order. Buyer will endeavor, however, to make prompt and timely payments to Seller, pursuant to the payment terms hereof. Delays encountered by Seller, if any, shall be directed to the immediate attention of Buyer's Purchasing Representative via telephone or telefax for expedient disposition.

PART II

CONTENTS OF PART II. Clauses in this Part II apply to this Order unless indicated otherwise in the clause or the Schedule of this Order. The text of Part II clauses identified herein by FAR paragraph number are incorporated by reference, subject to the Definitions clauses herein and to the modifications indicated. Any DOD FAR Supplement clauses which are similarly incorporated by reference will be identified as "DOD FAR Suppl."

27. STANDARD CONTRACTS CLAUSES. Where necessary to make the following clauses consistent with this Order, the words "Government", "Contracting Officer", and similar words as used herein, shall mean the Buyer's Purchasing Representative or his authorized designee, and "Contractor" means the Seller.

- Officials Not to Benefit (52.203-1)
- Covenant Against Contingent Fees (52.203-5)
- Pricing of Contract Modifications (DOD FAR Suppl. 252.243-7001)
- Preference for Certain Domestic Commodities (DOD FAR Suppl. 252.225-7012)
- Convict Labor (52.222-3)
- Used or Reconditioned Material, Residual Inventory, and Former Government Surplus (52.210-7)

28. DEFINITIONS (52.202-1) with clause paragraph (b) deleted.

29. RESTRICTION ON SUBCONTRACTOR SALES TO GOVERNMENT (52.203-6).

30. SECURITY REQUIREMENTS (52.204-2). The Government may act through the Buyer with respect to this clause. The last phrase of clause paragraph (c) is modified by inserting "by the Buyer" after "directed", and the words, "but excluding any reference to the Changes clause of this Contract" as appearing in paragraph (d) are deleted. Seller acknowledges access to the Defense Industrial Security Manual for Safeguarding Classified Information and its revisions.

31. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (52.209-5), applies if the amount of this Order is \$25,000 or more.

32. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (52.209-6), applies if the amount of this Order is \$25,000 or more.

33. PRIORITIES, ALLOCATIONS AND ALLOTMENTS (52.212-8).

34. EXAMINATION OF RECORDS BY THE COMPTROLLER GENERAL (52.215-1), applies if this is a first-tier subcontract in excess of \$10,000.

35. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (52.219-8).

36. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (52.219-9), applies if this Order is in excess of \$500,000 and Seller is not a small business concern. In the first sentence of paragraph (c), "Contracting Officer" means Buyer's Purchasing Representative or his authorized designee.

37. UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES (52.219-13), applies if the amount of this Order is \$10,000 or more.

38. UTILIZATION OF LABOR SURPLUS AREA CONCERNS (52.220-3).

39. LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (52.220-4), applies if this Order exceeds \$500,000. "Contracting Officer" means Buyer's Purchasing Representative.

40. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (52.222-1), in which "Contracting Officer" means Buyer's Purchasing Representative or his authorized designee.

41. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION - GENERAL (52.222-4), clause paragraphs (a) through (d) only; Buyer may withhold or recover from Seller such sums as the Contracting

Officer withholds or recovers from Buyer because of liability of Seller or its subcontractors under this clause.

42. NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (52.222-18).

43. WALSH-HEALEY PUBLIC CONTRACTS ACT (52.222-20).

44. CERTIFICATION OF NONSEGREGATED FACILITIES (52.222-21), applies if the amount of this Order is \$10,000 or more.

45. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (52.222-22), applies if the clause, Equal Opportunity, below also applies.

46. AFFIRMATIVE ACTION COMPLIANCE (52.222-25), applies if the clause, Equal Opportunity, below also applies.

47. EQUAL OPPORTUNITY (52.222-26).

48. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (52.222-35), applies if the amount of this Order is \$10,000 or more.

49. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (52.222-36), applies if the amount of this Order exceeds \$2,500.

50. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (52.222-37), applies if the amount of this Order is \$10,000 or more.

51. CLEAN AIR AND WATER (52.223-2), applies if the amount of this Order exceeds \$100,000.

52. BUY AMERICAN ACT - SUPPLIES (52.225-3).

53. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (52.225-11).

54. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (52.227-2), in which "Contracting Officer" means Buyer's Purchasing Representative and "Government" means Government or Buyer.

55. FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER (52.227-10).

56. RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (DOD FAR Suppl. 252.227-7013), applies if Seller is obligated to supply technical data or computer software under this Order.

57. RESTRICTIVE MARKING ON TECHNICAL DATA (DOD FAR Suppl. 252.227-7018), applies if the clause, Rights in Technical Data and Computer Software, above also applies.

58. IDENTIFICATION OF TECHNICAL DATA (DOD FAR Suppl. 252.227-7029), in which "number of this contract" means number of the prime contract, and "name of the Contractor" means name of the Prime Contractor.

59. CHANGES - FIXED-PRICE (52.243-1 or 52.243-1, Alternate II, if this Order is for services), in which "Contracting Officer" means Buyer's Purchasing Representative or his authorized designee and "Government" means Buyer.

60. NOTIFICATION OF CHANGES (52.243-7), in which "Contracting Officer" means only Buyer's Purchasing Representative, "Government" means Buyer, and "Administrative Contracting Officer" means Buyer's Subcontract Administrator. In clause paragraph (b) the notice shall be required in 21 days, and in clause paragraph (d) the Buyer's response will be provided within 30 days.

61. SPECIAL TOOLING PROVISIONS

(a) This clause applies if this Order for Special Tooling (as defined in FAR 52.245-17) as a deliverable item; it also applies if performance requires Special Tooling, the cost of which is, or is intended by Seller to be included in the price of this Order. In either case the Government may have the right to take title. If such tooling is not identified by type, kind or number, or is not otherwise specifically described in this Order, Seller will promptly after receipt of the Order furnish Buyer in writing a description of tooling Seller proposes to manufacture or acquire and the portion of the Order price allocable thereto. Unless Buyer thereafter advises Seller in writing that the tooling is to be Buyer property or unless the Schedule of this Order so provides, it will be treated in this Order as Government tooling and the clause, **SPECIAL TOOLING, FAR 52-245-17**, will be applied together with (A) and (B) as follows: (A) Communications from Seller to Contracting Officer will be through Buyer unless Buyer requests otherwise and the Contracting Officer may also communicate to Seller through Buyer. (B) Adjustments in the price of this Order provided for in the clause will be made only to the extent the Government acts through Buyer and correspondingly adjusts the prime contract; otherwise, Seller is responsible for direct arrangements with the Government, including payments to be made by Seller or the Government.

(b) **PAYMENT FOR AND DISPOSITION OF SPECIAL TOOLING.** This clause applies if Special Tooling is manufactured or acquired by Seller for or on behalf of Buyer or the Government in performance of this Order.

(1) Acceptability of Special Tooling will be determined by Buyer. One or more samples of each part to be manufactured from such tooling shall, if Buyer requests, be fabricated from the tooling and submitted to Buyer for tryout inspection in sufficient time to permit correction of tooling defects and to meet delivery dates in this Order. Seller's certified tryout inspection reports shall in any event be submitted to Buyer prior to acceptance of the tooling. Costs incurred by Seller in fabricating defective samples and in correcting tooling faults are included in the price of this Order.

(2) Payment under this Order on account of Special Tooling shall be contingent upon Seller's furnishing Buyer satisfactory evidence that the tooling (i) has been fabricated according to Buyer's specifications, if any, or (ii) is capable of producing acceptable parts.

(3) The following provisions apply, whether the tooling is or is to become the property of Buyer or the Government, except when

different arrangements are made between Seller and the Contracting Officer as to Government tooling; Seller bears risk of loss or damage to the tooling until delivered to Buyer; and at Buyer's request, Seller shall either (i) deliver the tooling to Buyer F.O.B. rail car or truck at Seller's plant, properly protected, and packed and marked in accordance with requirements of carrier selected by Buyer, or (ii) deliver same to Buyer at any location designated by Buyer, subject to Buyer paying Seller the transportation cost (at prevailing rates) of delivering the tooling to such location.

(c) **CARE OF SPECIAL TOOLING.** Any Special Tooling used by Seller in performance of this Order which belongs to the Government or to which the Government has the right to take title shall, at no increase in the price of this Order, be established in Seller's property accounts and be identified in accordance with FAR 45.505-4 and 45.506. Seller shall, within the price of this Order, keep any Buyer or Government Special Tooling utilized by Seller in performance of this Order in good condition, capable of producing acceptable parts. Buyer has the right to enter Seller's premises at reasonable times and inspect such tooling and Seller's control records pertaining thereto.

62. SPECIAL TEST EQUIPMENT (52.245-18), applies if this Order provides for delivery of Special Test Equipment (STE); it also applies if performance requires STE the cost of which is, or is intended by Seller to be, included in the price of this Order. Such STE may be (or become) the property of the Government; otherwise, of the Buyer. If such STE is not identified by type, kind or number, or is not specifically described in this Order, Seller will furnish Buyer in writing, promptly after receipt of this Order, a description of the STE that Seller proposes to make or otherwise acquire and the portion of the Order price allocable thereto. If this clause applies, the following also applies: (A) In FAR clause paragraph (b) "at Government expense" is deleted. (B) Communications with the Government from Seller pursuant to this clause shall be through Buyer. (C) Seller shall give Buyer 45 days advance written notice of intent to fabricate or acquire STE (see FAR clause paragraph (b)). (D) STE furnished by the Government to Seller shall be considered to be furnished through Buyer to Seller and is subject to the clause of this Order entitled RESPONSIBILITY FOR PROPERTY, instead of a Government Property clause. (E) Equitable adjustment of this Order when STE is furnished by the Government shall correspond to and be no more favorable to Seller than the related equitable adjustment in the prime contract is to Buyer. If the Government will not agree to an adjustment in Buyer's prime contract which is adequate to include an adjustment acceptable to Seller, Seller will be invited to participate in the negotiation with the Government when feasible. (F) Any STE used in the performance of this Order which belongs to the Government or to which the Government has the right to take title shall at no increase in the price of this Order be established in Seller's property accounts and identified in accordance with FAR 45.505-4. (G) The Buyer or the Government shall have access at reasonable times to Seller's plant to inspect STE to which the Government holds title and Seller's records pertaining thereto.

63. PROVISIONS RELATING TO COST OR PRICING DATA

(a) **Price Reduction.**

(1) If this Order, or any modification, thereof, exceeds \$500,000 and Seller furnishes cost or pricing data (see FAR 15.801) in negotiating this Order or any modification thereof, then this paragraph (a) together with either the clause in paragraph (b) or the clause in paragraph (c) below applies as hereinafter stated.

(2) If the Contracting Officer under the prime contract determines that any price, including profit or fee, negotiated in connection with the prime contract, any modification thereof, or any cost reimbursable under the prime contract was increased by any significant amount because:

(i) Seller or a subcontractor furnished cost or pricing data which were not complete, accurate and current as certified in its Certificate of Current Cost or Pricing Data;

(ii) a subcontractor or prospective subcontractor furnished Seller cost or pricing data that were not complete, accurate and current as certified in Seller's Certificate of Current Cost or Pricing Data; or

(iii) any of these parties furnished data of any description that were not accurate,

and such determination results in a reduction of the price, cost allowance, or fee under Buyer's contract or purchase order with its customer, the price or cost allowance of this Order shall be reduced in an amount equal to the reduction in Buyer's contract or purchase order.

(b) **Submission of Data.**

(1) As provided in (a) above, the clause in (2) below applies unless Buyer has waived its application in writing based on a determination either (A) that this Order or the modification concerned was entered into after adequate price competition, or (B) after Seller's compliance with FAR 15.804-3 and 15.806 establishing that the price was based either on prices set by law or regulation or on established catalog or market prices within the meaning of FAR 15.804-3.

(2) **SUBCONTRACTOR COST OR PRICING DATA (52.215-24).** The obligations which this FAR clause intends to be required of subcontractors are applicable to Seller. The Certificate required by paragraph (b) thereof is that set forth in FAR 15.804-4, substituting "Buyer" for the words "Contracting Officer" and "Government".

(c) **Excepted Subcontract.**

(1) If Buyer has waived application of the clause in (b) above as therein provided, the clause in (2) below applies.

(2) **SUBCONTRACTOR OR PRICING DATA - MODIFICATIONS (52.215-25).** The obligations which this FAR clause intends to be

required of subcontractors are applicable to Seller. The Certificate required by paragraph (c) thereof is that set forth in FAR 15.804-4, substituting "Buyer" for the words "Contracting Officer" and "Government".

64. TERMINATION (52.249-2), in which in paragraph (m) "Contracting Officer" means Contracting Officer or Buyer's Purchasing Representative and "Government" means Buyer; otherwise, in all parts of the clause "Contracting Officer" means Buyer's Purchasing Representative and "Government" means Buyer. Clause paragraph (c) is deleted, and the "1 year" period variously stated in clause paragraph (d) is changed to "six month(s)". The terms "90 days" in paragraph (k) is changed to "45 days". The provisions of this clause shall not limit or affect Buyer's right to terminate for default.

65. DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (52.249-8), in which "Contracting Officer" means Buyer's Purchasing Representative or his authorized designee, and "Government" means Buyer except in clause paragraph (c). To be relieved of liability for excess costs under clause paragraph (c), Seller must provide Buyer written notice of the cause of failure to perform which is beyond his control and without his fault or negligence within 20 days of occurrence of the cause.

66. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (52.203-11) applies if the amount of this Order exceeds \$100,000.

67. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (52.203-12) applies if the amount of this Order exceeds \$100,000.

68. STOP WORK ORDER (52.212-13), in which "Contracting Officer" means Buyer's Purchasing Representative or his authorized designee; the clause title, "Termination For Convenience Of The Government", in clause paragraph (a) (2) is modified to "Termination", and in clause paragraph (c) the words "for the convenience of the Government" are replaced by, "in accordance with the clause, Termination".

PART III

Clauses in this Part III are NOT part of this Order unless the Schedule so provides. If a Part III clause is made applicable by a provision in the Schedule and the Clause is identified by a FAR or DOD FAR Suppl. number, the text of such clause is incorporated by reference subject to the Definitions clauses herein and to the modifications indicated.

69. REQUIRED SOURCE FOR JEWEL BEARINGS AND RELATED ITEMS (52.208-1), applies only if this Order requires delivery of end items constituting or containing "jewel bearings" or "related items" as defined in the clause. Communications from Seller to Contracting Officer shall be through Buyer's Purchasing Representative.

70. INTENT TO FURNISH METALS AS GOVERNMENT - FURNISHED MATERIALS (DOD FAR Suppl. 252.208-7000), applies only if this Order requires delivery of end items constituting or containing "miniature and instrument ball bearings" as defined in the clause. Communications from Seller to the Contracting Officer shall be through Buyer's Purchasing Representative.

71. NEW MATERIAL (52.210-5), in which "Contracting Officer" means Buyer's Purchasing Representative and "Government" means Buyer in the last two sentences of the clause.

72. AUDIT - NEGOTIATION (52.215-2), altered as contemplated by paragraph (e) thereof, applies if the amount of this Order exceeds \$10,000.

73. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN-MASTER PLANS (DOD FAR Suppl. 252.219-7000).

74. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (52.223-3).

75. DUTY-FREE ENTRY (52.225-10), applies as modified below if foreign supplies over \$10,000 are to be procured and imported into the United States or if foreign supplies to be imported are listed in the Schedule of this Order. Seller shall address letters required by the clause to the Contracting Officer and transmit them through the Buyer. In clause paragraph (b) (1) "at least 20 days" is changed to "at least 30 days", and in paragraph (b) (2) "10 days" is changed to "15 days". Buyer may unilaterally reduce the prices of this Order by the amount that the Contracting Officer reduces the prices of Buyer's contract under which this Order is placed, because of the grant of duty-free entry to goods ordered by Seller.

76. DUTY-FREE ENTRY - QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (DOD FAR Suppl. 252.225-7009), except substitute for "Contracting Officer" the following: "Contracting Officer or Buyer's Purchasing Representative acting pursuant to authorization of the Contracting Officer." In the last sentence of clause paragraph (h) "this contract" means the prime contract.

77. PREFERENCE FOR DOMESTIC SPECIALTY METALS (MAJOR PROGRAMS) (DOD FAR Suppl. 252.225-7014).

78. AUTHORIZATION AND CONSENT (52.227-1), in which, in subparagraph (a) (1), "this contract" means the prime contract, and "through the Buyer" is inserted after "Contracting Officer" in subparagraph (a) (2) (ii).

79. AUTHORIZATION AND CONSENT (52.227-1 Alternate I), in which "this contract" refers to the prime contract.

80. PATENT INDEMNITY (52.227-3), in which Seller's obligation to indemnify runs to Buyer or the Government, as their interests may appear; also "Contracting Officer" is changed to "Buyer".

81. REFUND OF ROYALTIES (52.227-9), in which "Contracting Officer" means Buyer's Purchasing Representative in paragraphs (a) and (c) and the third time it appears in paragraph (d), and means Contracting Officer and Buyer's Purchasing Representative in paragraph (e). In paragraph (e), "this contract" means Buyer's contract or purchase order with its customer.

82. PATENT RIGHTS - RETENTION BY THE CONTRACTOR (Long Form) (52.227-12).

83. PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (52.227-13).

84. NOTICE OF CERTAIN LIMITED RIGHTS (DOD FAR Suppl. 252.227-7013 Alternate I), in which "Contracting Officer" means Buyer's Purchasing Representative or his authorized designee in subparagraph (m). This incorporates only additional clause paragraph (m) into Part II clause entitled Rights in Technical Data and Computer Software.

85. DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (DOD FAR Suppl. 252.227-7026), in which "Government" means Buyer. Buyer will not require delivery from Seller of any data or computer software identified in this Order for deferred delivery unless the Government requires delivery thereof from Buyer.

86. DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (DOD FAR Suppl. 252.227-7027), in which "Government" means Buyer except in the last sentence. Buyer will not order data or computer software pursuant to this clause unless the Government orders same from Buyer.

87. WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT) (52.228-3).

88. INSURANCE - WORK ON A GOVERNMENT INSTALLATION (52.228-5). This clause does not apply if Seller will not perform work on a Government installation. Coverages and minimum amounts are set forth in the Schedule.

89. COST ACCOUNTING STANDARDS (52.230-3), subject to the following changes; in clause paragraphs (a) (4) (ii) and (a) (5) "United States" means Buyer or the United States; in Note (2) appearing at the end of clause paragraph (d) the terms "Contractor" means prime contractor;

(b) **ADMINISTRATION OF COST ACCOUNTING STANDARDS (52.230-4)**. In clause paragraph (a) and (b) the "cognizant Contracting Officer" is the Government Contracting Officer having cognizance of Seller's organization. In clause paragraph (c) any amendment of this Order to be binding on Buyer requires agreement of Buyer in writing. The requirements which clause paragraph (d) intends to be imposed on subcontractors are applicable to Seller. In clause paragraph (e) "Contracting Officer" means Buyer. Note: This clause applies when 84 (a) of these Provisions also applies.

(c) **DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (52.230-5)**, applies if this is a negotiated Order in excess of \$500,000 and otherwise meets the criteria for subcontracts as set forth in paragraph (d) of the clause. "United States" in paragraph (a) (3) (ii) means "Buyer or the United States". If this clause is included in this Order, then clause 84 (b) above is not included.

(d) Substitute the following for clause paragraph (b) in the FAR clauses under 84 (a) and 84 (c) above:

"(b) If there is any reduction in the price or amount of the Buyer's contract or purchase order with its customer because of application of the provisions of the Cost Accounting Standards clause to Seller or Seller's subcontracts, then the price or amount of this Order shall be reduced in an amount equal to the reduction in Buyer's contract or purchase order."

(e) Seller shall communicate and otherwise deal directly with the Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Contracting Officer respecting this clause, provided Seller shall not be required to disclose to Buyer such communications containing information that is privileged and confidential to Seller.

90. SUPPLEMENTAL COST PRINCIPLES (DOD FAR Suppl. 252.231-7000).

91. RECOUPMENT OF NON-RECURRING COSTS (DOD FAR Suppl. 252-215-7004).

92. COMPETITION IN SUBCONTRACTING (52.244-5).

93. INSPECTION OF RESEARCH AND DEVELOPMENT - FIXED PRICE (52.246-7), in which "Government" means Buyer except that in clause paragraph (a), and the first time it appears in clause paragraph (f) it means Buyer or the Government. The provisions in this clause for access, rights to inspect, safety protection and relief from liability apply equally to Buyer and the Government. Part II clause entitled INSPECTION OF SUPPLIES - FIXED-PRICE is deleted.

94. INSPECTION OF RESEARCH AND DEVELOPMENT (Short Form) (52.246-9), in which "Government" means Buyer or the Government. Part II clause entitled INSPECTION OF SUPPLIES - FIXED-PRICE is deleted.

95. LIMITATION OF LIABILITY (52.246-23), in which the term "or the Government's acceptance of" of paragraph (b) is changed to "or the Government's or Buyer's acceptance of" and in clause paragraph (c) change "to the Government" to "to the Buyer or the Government".

96. PREFERENCE FOR U.S. - FLAG AIR CARRIERS (52.247-63).

97. PREFERENCE FOR PRIVATELY-OWNED U.S. FLAG COMMERCIAL VESSELS (52.247-64).

98. VALUE ENGINEERING (52.248-1), applies as modified herein if this Order is over \$100,000. Both the definitions herein and in the FAR clause text are modified as necessary to provide the following understandings: (i) VECPs submitted by Seller shall be submitted to Buyer's Purchasing Representative, not to the PCO or ACO; (ii) Buyer's Purchasing Representative has the unilateral right to process Seller's VECP, in whole, in part or not at all, to the Contracting Officer and this right is not

subject to challenge by Seller; (iii) if the decision of Buyer's Purchasing Representative is to process Seller's VECP to the PCO/ACO, identifying the Seller's role and including additional information appropriate to submission from a prime contractor, and Seller agrees to reasonable cooperation without expense to Buyer with respect to processing the VECP; (iv) whatever decisions are made with respect to a submitted VECP by the Contracting Officer which are binding on Buyer are to the same extent binding on Seller; (v) Buyer and Seller shall negotiate in the light of then existing circumstances the share or reward, if any, to which Seller shall be entitled for the VECP-related instant contract savings; provided, however, Buyer shall not be responsible to Seller for any cost, expense, share, reward or contractual adjustment unless and until Buyer's receipt of same from the Government. Buyer shall not be responsible for paying Seller any amount relating to concurrent, future or collateral savings and shall have no obligations whatsoever to Seller other than responsibilities and obligations relating to the quantity of items in this instant contract, as set forth in this clause. Seller shall have no claim against Buyer based on Buyer's failure, and Buyer has no obligation to Seller, to comply with Government record-keeping and other requirements relating to future contract or other savings which are not instant contract savings. Seller is cautioned against risking expenditures for VECP effort; however, if Seller persuades Buyer in preliminary discussions that a potential VECP holds significant promise, Buyer will, at Seller's request, seek to arrange discussions with the PCO in which Seller may participate.

99. DEFAULT (Fixed-Price Research and Development) (52.249-9), in which "Contracting Officer" means Buyer's Purchasing Representative and "Government" means Buyer, except in clause paragraph (c). To be relieved of liability for excess costs under clause paragraph (c), Seller must provide Buyer with written notice of the cause of failure to perform which is beyond his control and without his fault or negligence within 20 days of occurrence of the cause. Part II clause entitled DEFAULT (Fixed-Price Supply and Service) is deleted.

100. PRIVACY ACT NOTIFICATION (FAR Part 24 and FAR 52.224); PRIVACY ACT (FAR 52.224-2).

101. BUYER'S MATERIAL. When Buyer furnishes material for this Order, no scrap allowance will be made unless so authorized in the Purchase Order. At Buyer's express agreement, additional material supplied as a result of Seller's spoilage will be charged to Seller at Buyer's cost plus handling. Such charges may be deducted from any amounts due Seller. Spoiled and unused material shall be returned FOB Buyer's plant or credit allowed at prevailing market prices at Buyer's option. Seller shall promptly furnish Buyer upon request detailed inventory of all material belonging to Buyer in Seller's possession. Buyer shall not be liable for any failure or delay in the delivery to Seller of any material which Buyer has agreed to furnish Seller when such failure or delay is due to causes beyond Buyer's control and occurring without fault or negligence. Buyer shall notify Seller as soon as possible after beginning of such causes.

102. FIRST ARTICLE CLAUSE. Intevac shall, by written notice to suppliers within 30 days after receipt of the First Article units by Intevac, approve, conditionally approve, or disapprove First Article units. If First Article is disapproved by Intevac, the supplier may be required, at the option of Intevac, to submit additional First Article units, making any necessary changes, modifications, or repairs at no charge to Intevac.

Unless otherwise authorized by Intevac, the cost of procured material and/or labor which is incurred on the balance of this Order prior to the approval of the First Article shall be at the sole risk of the supplier and shall not be allocated to this Order for the purpose of progress payments (even if this Order contains a progress payment clause) or for the purpose of termination settlements should this Order be terminated.

If the supplier fails to deliver any First Article for test within the time frame specified or Intevac disapproves any First Article, the supplier shall be deemed to have failed to make delivery within the meaning of the "Default" clause of as specified in Part II and may be subject to termination.

103. GOVERNMENT DELAY OF WORK (52.212-15), in which "Contracting Officer" means Buyer's Purchasing Representative.

104. INTEGRITY OF UNIT PRICES, ALTERNATE I (52.215-26).

105. PRICING ADJUSTMENTS (DOD FAR Suppl. 252.215-7000).

106. PREFERENCE FOR DOMESTIC HAND OR MEASURING TOOLS (DOD FAR Suppl. 252.225-7015).

107. REPORTING OF ROYALTIES (FOREIGN) (52.227-8), in which "Contracting Officer" means Buyer's Purchasing Representative. (Reserved)

108. CERTIFICATION OF CLAIMS AND REQUESTS FOR ADJUSTMENT OR RELIEF (DOD FAR Suppl. 252.233-7000).

109. ENGINEERING CHANGE PROPOSALS (DOD FAR Suppl. 252.243-7000), in which "Contracting Officer" means Buyer's Purchasing Representative.

110. SUBCONTRACTS (FIXED-PRICE CONTRACTS) (52.244-1), in which "Contracting Officer" means Buyer's Purchasing Representative.

111. REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY (52.203-8) applies if the amount of this Order exceeds \$100,000.

112. REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY - MODIFICATION (52.203-9) applies if the amount of this Order exceeds \$100,000.

113. PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (52.203-10) applies if the amount of this Order exceeds \$25,000.

114. PROCUREMENT INTEGRITY - SERVICE CONTRACTING (52.203-13) applies if the amount of this Order exceeds \$100,000.