



INTEVAC, INC.  
GENERAL PURCHASING PROVISIONS  
GPP 3 USG Fixed Price dated March 7, 2007

AGREEMENT BY THE SELLER IDENTIFIED ON THIS P.O. ("SELLER") TO FURNISH THE GOODS OR SERVICES HEREBY ORDERED, OR ITS FURNISHING OF SUCH GOODS OR SERVICES IN WHOLE OR IN PART, SHALL CONSTITUTE ACCEPTANCE BY SELLER OF THIS P.O. SUBJECT TO THESE TERMS AND CONDITIONS. ANY TERMS OR CONDITIONS PROPOSED BY SELLER INCONSISTENT WITH OR IN ADDITION TO THESE TERMS AND CONDITIONS ARE EXPRESSLY REJECTED AND SHALL BE VOID AND OF NO EFFECT UNLESS SPECIFICALLY AGREED TO BY INTEVAC, INC. ("BUYER") IN WRITING.

**1. PRICES AND TAXES.** Seller hereby warrants that the prices to be charged for the goods or services ordered do not exceed the lowest price charged to any of its other customers for similar quantities and delivery requirements. If, before delivery of the goods or services, Seller reduces the prices to one or more of its customers for similar quantities and delivery requirements, the prices provided to Buyer shall be likewise reduced. 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; Intevac part number; item description, size and 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 an invoice will not constitute acceptance of goods or services. Buyer may at any time set off any amount owed by Buyer to Seller against any amount owed by Seller to Buyer.

**3. DISCOUNTS.** In connection with any discount offered by Seller, time will be computed from the latest of the (i) scheduled delivery date, (ii) date of actual delivery, or (iii) date Buyer receives an acceptable invoice. For the purpose of earning the discount, payment will be deemed to have been made on the date Buyer mails its 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 goods under this P.O. is based on the weight of such 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. Seller must include an itemized packing list with each shipment. Unless Buyer has given prior written consent, Seller will not make any partial delivery nor make any delivery (partial or complete) prior to the due date or dates shown.

**6. F.O.B. POINT.** Unless otherwise specifically provided on the face of this P.O., the goods ordered hereunder will be delivered DDP, Intevac's dock (Incoterms 2000).

**7. WARRANTIES.**

(a) Seller warrants that all goods, services and deliverables delivered hereunder (i) will be free from defects in workmanship, materials, and manufacture or, in the case of services, will be performed in a professional manner consistent with the prevailing standards of care and skill exercised in the industry, (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. Seller also warrants that all goods and deliverables (including components thereof) will be neither used nor reconditioned without Buyer's prior written consent. 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 or deliverables 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 or deliverables by repair or replacement at no cost to Buyer, or (ii) return such defective or nonconforming goods or deliverables and all other goods or deliverables in such shipment or delivery, to Seller at Seller's expense and recover from Seller the order price thereof, or (iii) correct or replace the defective or nonconforming goods or deliverables itself and charge Seller with the cost of such correction or replacement. If any services provided by Seller do not comply with the foregoing warranties, then Seller will, at Buyer's option, either promptly reperform or redeliver such services in a manner



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which complies with such warranty, or pay to Intevac all amounts it paid for the nonconforming services. In addition, Seller agrees to reimburse Intevac for all other costs, expenses and damages which it incurs related to any such defective or nonconforming goods or services.

**8. INSPECTION AND ACCEPTANCE.** Notwithstanding any prior inspection or payments, all goods and services deliverables will be subject to final inspection and acceptance at Buyer's location within a reasonable time after delivery. If any item is defective in material or workmanship, or otherwise not in conformity with the requirements of this P.O., Buyer will have the right to (a) reject it and receive a full refund of any amounts paid, (b) require its correction, or (c) accept it with an adjustment in price. If Buyer requires that such an item be corrected, Seller must promptly replace or correct such item at its expense. If, after being requested by Buyer, Seller fails to promptly replace or correct any defective or nonconforming 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 Section 10 below, or (iii) require an appropriate reduction in price.

**9. CHANGE ORDERS**

(a) Buyer may at any time, by a written order, increase 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 20 days from the date of receipt by Seller of the notification of change.

**10. TERMINATION**

(a) Buyer may, by written notice, terminate this P.O. in whole or in part at any time if Seller breaches any one or more of its terms, becomes insolvent, is adjudicated bankrupt, or is the subject of a voluntary or involuntary petition of bankruptcy, or makes an assignment for the benefit of creditors.

(b) At any time for convenience, Buyer may terminate all or any part of this P.O. by written notice to Seller. Seller will have no liability for such termination to the extent such termination is prior to Seller's stated lead time for any terminated goods or the termination relates to non-custom Seller goods. If a termination for convenience relates to custom goods, then Buyer agrees to pay to Seller such amount as is agreed by the parties to compensate Seller for its actual direct damages necessarily arising from such termination which Seller could not have avoided through commercially prudent procurement practices. Seller must submit to Buyer a written claim for such cancellation charges within 10 days after receipt of Buyer's termination notice. Failure to so provide such claim will constitute a waiver of all claims and a release of all Buyer's liability arising out of such termination. Seller shall, whenever possible, place any such work in process in inventory and sell it to other customers. In no event will any claim for custom goods exceed the total price quoted for the items canceled. Buyer may inspect and audit Seller's relevant records and documents prior to agreeing to pay Seller's claim.

(c) Nothing in this Section 10 is intended to excuse Seller from proceeding with any uncanceled portion of this P.O.

(d) The remedies stated herein are in addition to all other remedies at law or in equity. Seller's obligations under the sections of this P.O. titled "Warranties," "Termination," "Buyer's Property," "Indemnification," "Confidentiality", "Patent License" and "General" will survive any termination of this P.O.

**11. RISK OF LOSS OR DAMAGE.** Notwithstanding any prior inspections and irrespective of the delivery 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 its location. 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.

**12. BUYER'S PROPERTY.** Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable, all of Buyer's property delivered to Seller 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 to perform 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.



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**13. INDEMNIFICATION**

(a) Seller agrees, at its own expense, to indemnify, defend and hold harmless Buyer, its agents, customers, successors, and assigns against any loss, damage, and liability (including costs and expenses) for actual or alleged infringement or misappropriation of any patent, copyright, trademark or trade secret arising out of the use or sale of the goods or deliverables by Buyer, its agents or customers. Buyer agrees to notify Seller of any suit, claim or demand involving such infringement or misappropriation and permit Seller to defend against or settle the same, subject to Buyer's prior approval. If any injunction is issued as the result of any such infringement or misappropriation, 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, defend and hold harmless Buyer against any and all liability and expense resulting from any alleged defect in the goods or deliverables, whether latent or patent, including allegedly improper construction and design, or from the failure of the goods to comply with specifications.

(c) Seller confirms that upon delivery it is conveying to Buyer good and marketable title to all goods and deliverables, free of any security interest or claim of any other person 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.

**14. CONFIDENTIALITY.** 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. This P.O. does not supersede the terms of any nondisclosure agreement between the parties.

**15. 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.

**16. DELIVERY; NOTICE OF DELAYS.** The parties agree that time is of the essence for this P.O. 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.

**17. 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 or discoveries made, conceived or actually reduced to practice in connection with the performance of this P.O.

**18. GOVERNMENT REGULATIONS**

(a) If a United States Government contract is noted on the face of this P.O., and Seller is providing other than a commercial item as defined in Article 18.(b), Seller shall comply with those Federal Acquisition Regulations ("FAR") and agency clauses included in Buyer's GPP4 USG Flow-down Terms (March 7, 2007). These terms are incorporated herein by reference and may be found at <http://www.intevac.com/Company/Suppliers/>. If you cannot access the Internet, please contact the Buyer for a copy of the referenced terms.

(b) If a United States Government contract is noted on the face of this P.O., and Seller is providing "commercial items" as that term is defined FAR 2.101, then Seller shall comply with the following FAR/DFAR clauses which must be incorporated into contracts or subcontracts for commercial items.

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| (1) Utilization of Small Business Concerns                                   | FAR 52.219-8      |
| (2) Equal Opportunity  | FAR 52.222-26     |
| (3) Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era | FAR 52.222-35     |
| (4) Affirmative Action for Workers with Disabilities                         | FAR 52.222-36     |
| (5) Subcontracts for Commercial Items and Commercial Components              | FAR 52.244-6      |
| (6) Preference for Privately Owned U.S. Flag Commercial Vessels              | FAR 52.247-64     |
| (7) Preference for Domestic Specialty Metals, Alternate 1                    | DFAR 252.225-7014 |
| (8) Subcontracts for Commercial Items and Commercial Components              | DFAR 252.244-7000 |
| (9) Transportation of Supplies by Sea  | DFAR 252.247-7023 |
| (10) Notification of Transportation of Supplies by Sea                       | DFAR 252.247-702  |



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(c) If a priority rating is identified on the face of this P.O., the PO will be a "rated order" certified for national defense use, and the Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 CFR Part 700).

**19. GENERAL.** This P.O. will be governed by the laws of the State of California, without reference to conflicts of law principles. The state and federal trial courts of general jurisdiction over Santa Clara, California, will have exclusive jurisdiction and venue over any suit filed in connection with this P.O. (other than to enforce a judgment). Seller and Buyer hereby consent to jurisdiction and venue in such courts with regard to controversies in connection with this P.O. In any action to enforce, or arising out of, this P.O., the prevailing party will be entitled to be awarded all court costs and reasonable legal fees incurred. Seller will not, without Buyer's prior written consent, make any news release or public announcement concerning this P.O. which directly or indirectly identifies Buyer. If Buyer fails 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, such failure will not in any way be construed to be a waiver of such provisions.