

INTEVAC TERMS AND CONDITIONS OF SALE FOR PROCESS EQUIPMENT

1. CONTROLLING DOCUMENT

By delivering an order for the products (including spare parts) ("**Products**") or installation services ("**Services**") identified in the quote or other related document to which these terms are attached (the "**Quote**"), the Intevac customer ("**Customer**") agrees with Intevac, Inc. (and/or one or more of its subsidiaries if and as specified in the Quote) ("**Intevac**"), that the following applicable terms (the "**Terms**") together with the Quote, set forth the entire agreement (the "**Agreement**") between the parties regarding the Product sale or Services delivery, as applicable. The Agreement includes any attachments to the Quote. Any term or condition of Customer's order inconsistent with or in addition to the Agreement are rejected and shall not be binding on Intevac, unless expressly agreed in a writing signed by an authorized representative of Intevac. If these Terms conflict with the Quote, then for payment and delivery terms the Quote shall control, otherwise these Terms shall control.

2. QUOTATIONS AND PRICES

Intevac's prices, quotations, and contracts are subject to the following:

- (a) All published prices are subject to change without notice.
- (b) Unless otherwise stated in writing, all quotations are firm for, and expire, sixty (60) days after date thereof, but shall constitute only solicitations for offers to purchase; provided that, budgetary quotations and estimates are for preliminary information only and shall neither constitute offers, nor impose any responsibility or liability upon Intevac.
- (c) Unless otherwise stated in writing by Intevac, all prices quoted shall be exclusive of transportation, insurance, taxes (including, without limitation, any sales tax, use tax, VAT tax or similar tax), license fees, customs fees, duties and other charges related thereto, and Customer shall report and pay any and all such shipping charges, premiums, taxes, fees, duties and other charges related thereto, and shall hold Intevac harmless therefrom. If Intevac chooses to make any such payment, Customer shall reimburse Intevac in full upon demand.
- (d) Stenographic, typographical and clerical errors are subject to correction.
- (e) Unless expressly agreed to in writing by Intevac, prices quoted are for Products and Services only and do not include: (i) transfer of title to technical data or proprietary rights of any kind, including patent rights, (ii) qualification or testing other than Intevac's standard tests or (iii) packaging other than Intevac's normal commercial packaging.
- (f) Published weights and dimensions are approximate only. Manuals, programs, listings, drawings or other documentation required for the Products must be referenced specifically and will be the latest applicable version.
- (g) All Prices are quoted in, and all payments will be made in, immediately available United States dollars.

3. TERMS OF PAYMENT

3.1 Payment Schedule. Unless indicated differently in the quote, the price of each Product (other than spares) ("**Systems**") is based on payment increments in accordance with the following schedule:

Date of Order	30%
On Shipment from Intevac's Plant	60%
On Conclusion of the Installation and successful completion of factory acceptance testing (" FAT "), but not to exceed 90 days from date of shipment.	10%

Intevac may invoice Customer for Services upon completion of the Services and for Products consisting of spares on shipment of such item. All amounts due under this Agreement shall be paid within 30 days of the invoice date. All amounts under this Agreement are quoted in, and payable in, United States dollars. However, Systems and related Services and expenses shall be paid in accordance with **Section 3.3**. Any objection to amounts of invoices must be submitted to Intevac in writing within 30 calendar days of Customer's receipt of the disputed invoice, or such objection shall be deemed waived.

3.2 Letter of Credit Terms.

(a) Generally. Intevac requires that Customer provide a letter of credit for the System. Customer shall provide to Intevac an irrevocable commercial letter of credit in an amount equal to the price of the Products, Services and any other amount payable under the Agreement with respect to the System (the "**System Price**"). The letter of credit shall (i) name Intevac as beneficiary, (ii) be issued by a bank acceptable to Intevac located in the jurisdiction of the Customer, (iii) be advised and confirmed by a U.S. bank designated by Intevac, (iv) allow for partial draws, (v) have an expiration date at least 5 months after the Final Acceptance Test completion date, and (vi) otherwise be in form and substance provided in Attachment A and, in any case, be acceptable to Intevac. If Intevac notifies Customer that the delivery of any Products or Services will be delayed or if Customer delays delivery, Customer agrees, to amend or replace the letter of credit so that the expiration date is at least 5 months after the latest scheduled delivery date as so revised. Customer must deliver such amended or replacement letter of credit within 10 days following notice of a change in the scheduled delivery date. The letter of credit will be payable upon Intevac's presentation of the documents specified below. All costs and/or fees resulting from the opening, confirming and maintaining of the letter of credit will be borne by Customer throughout the full validity period of such letter of credit.

(b) Payment and Draw Terms. 30% of the System Price shall be paid by Swift to the account indicated by Intevac in writing upon, and subject to, receipt by Customer of Intevac's invoice for such amount. The remaining 70% of the System Price shall be payable under the irrevocable commercial letter of credit described in **Section 3.3 (a)** above which shall allow draws on the following terms:

(i) a first drawing in the amount of 60% of the System Price payable at sight upon presentation of the following documents:

A) Invoice;

required; B) Export license or document stating that no export licence is

C) Transportation bill; and

D) Packing list (4 copies)

(ii) a second drawing in the amount of 10% of the System Price payable at sight upon presentation of the following documents

A) Invoice; and

B) A certificate from Intevac stating that either (1) the System installation is complete and FAT for the System has been successfully completed or (2) 90 days have elapsed from the original System shipment date.

In addition, to the foregoing, the letter of credit will provide that the entire stated amount shall be payable at sight upon presentation of (1) an invoice; and (2) a certificate from Intevac stating that Customer has failed to deliver a replacement or an extension to the letter of credit as required under the terms of the Agreement.

3.3 Security Interest. Intevac retains a security interest in Products delivered hereunder and in proceeds from the sale, exchange, collection, or disposition thereof, until Customer has made payment in full for such Products. Customer shall, upon request by Intevac, provide all information and signatures required by Intevac to perfect such security interest. Intevac reserves all rights granted to a secured creditor under applicable law, including the right to repossess upon default of the Agreement by Customer. To simplify such repossession, Intevac may require Customer to assemble the collateral and make it available to Intevac at a place reasonably convenient to both parties and designated by Intevac.

4. TRANSPORTATION AND RISK OF LOSS

4.1 Delivery Terms. Unless otherwise expressly agreed by Intevac in writing, all sales and shipments are FCA Intevac's Factory place of manufacture of the Product, or such other place as Intevac shall specify in writing (Incoterms 2010), with all transportation and insurance at the expense of Customer. Intevac will normally follow Customer's shipping instructions, but Intevac reserves the right to ship Products freight collect and to select the means of transportation and routing when Customer's instructions are deemed unsuitable. Unless otherwise advised, Intevac may insure the full value of the Products shipped or declare the full value thereof to the transportation company at the time of delivery and all such freight and insurance costs shall be for Customer's account.

4.2 Delays. If, because of delays in completion of facilities, or for any other cause, Customer delays or fails to provide authorization to ship the Product to Customer on the scheduled shipping date, Customer hereby authorizes Intevac to ship the Product to storage upon completion of its manufacture. All storage expenses shall be for the account of Customer and shall be paid immediately upon invoice. Any payment increments due upon shipment shall be paid by Customer at the time of such shipment to storage, and any payment increments due after shipment shall be paid by Customer within 90 days from the date of shipment to storage, or earlier if the Product is removed from storage and installed. Any and all taxes levied on or with respect to a Product after completion of manufacture or the scheduled delivery date, shall be paid by Customer. If, because of improper storage or for any other reason, the Product is damaged or degraded in any way after shipment, resulting in additional cost to install, Customer shall be responsible for such additional costs.

4.3 Risk of Loss. Product risk of loss and/or damage shall pass from Intevac to Customer at the delivery point, regardless of the form of shipping documents, any provisions for payment of freight by Intevac, or any installation responsibilities of Intevac. Confiscation or destruction of, or damage to, Products shall not release, reduce, or in any way affect the liability of Customer for the purchase price and freight and insurance costs. All Products must be inspected upon receipt, and claims should be filed with the transportation company when there is evidence of damage, either concealed or external. If other provisions of the Agreement allow Customer to return a Product, such risk of loss shall remain with Customer until the Product is returned (at Customer's expense) to such place as Intevac may designate in writing. Until Intevac has been paid in full for a Product, Customer, at its expense, shall fully insure such Product against all loss or damage and shall name Intevac as loss payee under such policy.

5. CANCELLATION AND RESCHEDULING

5.1 Cancellation. Product delivery under the Agreement may not be canceled or rescheduled by Customer except as set forth below. Cancellation of any Product delivery would cause substantial damage to Intevac in an amount that would be difficult to ascertain. Therefore, if Customer cancels delivery of any Products ordered under the Agreement or fails to meet any obligation hereunder, Customer agrees to pay Intevac liquidated damages for cancellation in accordance with the below schedule.

<u>Date Prior to Scheduled Shipment Written Cancellation Notice Received</u>	<u>Cancellation Charges</u>
4 weeks or less	100% of net price of canceled Products
From over 4 weeks to 8 weeks or less	80% of net price of canceled Products
From over 8 weeks to 12 weeks or less	60% of net price of canceled Products
Over 12 weeks	40% of net price of canceled Products

5.2 Rescheduling. A rescheduling is a written request to move the scheduled shipment date by up to 6 weeks. A request to move the scheduled shipment date by more than 6 weeks is considered a cancellation. Customer may reschedule Product delivery one time and agrees to pay the following rescheduling fees, however no Product delivery may be rescheduled to a date beyond the end of the Intevac fiscal quarter in which the original delivery date occurred. A request to reschedule a Product delivery already rescheduled once shall be considered a cancellation.

<u>Date Prior to Scheduled Shipment Written Reschedule Notice Received</u>	<u>Rescheduling Charges</u>
4 weeks or less	15% of net price of rescheduled Products
From over 4 weeks to 8 weeks or less	5% of net price of rescheduled Products
From over 8 weeks to 12 weeks or less	2.5% of net price of rescheduled Products
Over 12 weeks	No charge

6. PERFORMANCE

Dates for delivery or other performance are best current estimates only and not considered absolute. Intevac is not in breach or otherwise liable for damages if it fails to perform by such dates. Intevac

shall not be liable in any way because of any delay in performance hereunder which is due to unforeseen circumstances, or to causes beyond its control, including, without limitation, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion, subcontractor, supplier, or Customer caused delays, inability to obtain labor, materials, or manufacturing facilities, curtailment of or failure to obtain sufficient electrical or other energy supplies, or compliance with any law, regulation or order, whether valid or invalid. Provided any such delay is neither material nor indefinite, Intevac's performance shall be deemed suspended during and extended for such time as any such circumstances or causes delay its execution, and whenever such circumstances and/or causes have been remedied, Intevac will make and Customer shall accept performance hereunder. Delay in performance shall not be considered material or indefinite unless it exceeds, or is reasonably estimated by Intevac to exceed, a period of 6 months. No penalty clause of any kind shall be effective against Intevac for delays in performance. Intevac may, in the absence of applicable government regulations, during any period of shortage due to circumstances beyond its control, allocate inventories and current production, among its customers. As used herein, "performance" shall include, without limitation, fabrication, shipment, delivery, assembly, installation, testing, and warranty repair or replacement as applicable.

7. SYSTEM INSTALLATION

7.1 Installation and Testing. Customer and Intevac shall coordinate System installation requirements no later than 1 month prior to the scheduled shipment date, unless otherwise agreed to in writing by Intevac. Customer shall be responsible for having the building, equipment, and services ready to receive the System on the estimated delivery date. This shall include, but not be limited to, having completed utilities, installation, access, lighting, ventilation, and mounting facilities, as applicable. Installation shall be performed under the surveillance of Intevac's representative. Upon completion of the installation, Intevac's representative shall demonstrate to Customer that the System performs according to the specifications by repeating a portion of the Intevac standard acceptance test for the System. Intevac's personnel are non-union. While every effort will be made to avoid conflicts, Customer shall be responsible for any costs resulting from union difficulties.

7.2 Customer Responsibilities. Customer shall provide labor and rigging services and equipment necessary to unload the System from the transport vehicle and move it to final position. Customer shall be responsible for prompt completion of the building, utilities, floor installation, access closure, and any other room finishing necessary to permit Intevac's representative to proceed with assembly and testing of the System without delay. If delays in completion of the building, utilities, or finishing prevent Intevac's representative from performing productive work, Intevac shall bill Customer at standard service rates for any extra time and/or travel made necessary by the delay. Unless otherwise specifically agreed to in writing, Intevac shall be responsible only for the supervision of assembly and testing of the System and shall not be responsible for connecting the System to utilities.

7.3 Design Assistance. Unless specifically requested by Customer and expressly set forth in writing in the Quote or an accepted purchase order, Intevac will have no design responsibility whatsoever for any matters affecting or related to the adequacy of the architectural design, utilities, and utility locations of the room in which the Product is to be installed.

7.4 Local Requirements. Customer shall be responsible for obtaining all permits and for meeting all other requirements of any kind whatsoever relating to state and local codes, registration, regulations, and ordinances. Intevac makes no warranty of any kind regarding compliance by Products with such requirements.

8. ACCEPTANCE

Each System furnished by Intevac shall be deemed accepted by Customer upon completion by Intevac of its applicable acceptance tests, execution of Intevac's acceptance form by Customer, or 90 days following shipment of the System, whichever occurs first. Products consisting of spares will be deemed accepted if not rejected as non-conforming within 5 business days following receipt. Prior to acceptance, Intevac may repair or, at its option, replace defective or nonconforming parts. In addition, if not sooner accepted, if Customer, its agents, employees or licensees uses a Product for any purpose without the express written approval of Intevac, then such Product will be deemed to have been accepted. The Products shall be deemed unqualifiedly accepted as of the applicable date of acceptance and Customer will be conclusively presumed to have waived all such claims and complaints, except as permitted by Intevac's express warranty set forth below.

9. MATERIALS AND IMPROVEMENTS

9.1 Materials Requirements. To conserve scarce materials and efficiently use high value parts, Products may contain recycled or remanufactured parts. Such parts are subject to the same high standards of quality control applied to other parts and are covered by the same standard warranty.

9.2 Production Performance Improvements. Improvements in specifications and/or performance capabilities of Products may be developed after the date of the Agreement. Incorporation of such improvements in Customer's Product shall be at Intevac's sole discretion, provided that the requirements of the Agreement are met.

10. WARRANTY AND REPAIR

10.1 Warranty and Remedy. Intevac warrants to Customer that all Products provided by Intevac hereunder will be free from defects in material and workmanship when used under normal operating conditions, and that all Services provided by Intevac will be performed in a workmanlike manner. The foregoing warranty shall apply, (a) for Systems, for a period of 1 year from the date of acceptance by Customer, but not to exceed 15 months from date of shipment from Intevac, (b) for non-consumable spares parts, for a period of 6 months from the date of shipment; and (c) for Services, for a period of 90 days from the date of performance. Customer's sole and exclusive remedy, and Intevac's exclusive obligation and liability, with respect to the above warranties, is, (i) for Products, for Intevac to replace the affected Product, correct the deficiencies or, at Intevac's option, upon return to Intevac of such Product, refund to Customer an equitable portion of the amounts paid to Intevac for such Product, and (ii) for Services, for Intevac to re-perform the affected Services or, at Intevac's option, refund to Customer an equitable portion of the amounts paid to Intevac for such Services.

10.2 Remedy Process. All warranty repair or replacement of parts shall be limited to equipment malfunctions which are, as determined by Intevac, due and traceable to defects in original material or workmanship. Intevac's Product warranty obligations shall cease in the event of abuse, accident, alteration, misuse, or neglect of the equipment. In-warranty repair or replacement parts are warranted only for the unexpired portion of the original warranty period. The warranty provided hereunder shall not apply to parts or materials which Intevac considers as consumables under normal operating conditions. After expiration of the applicable warranty period, Customer shall be charged at the then current prices for requested parts, labor and transportation.

10.3 Supplier Warranties. In addition to the warranties stated above, warranties given by suppliers of equipment or proprietary components not manufactured by Intevac but incorporated by

Intevac into Products, and specifically identified by Intevac as carrying a warranty different than that stated above, shall be passed on to Customer, provided that in no event shall Intevac have any liability for failure of any such supplier to perform on its warranty.

10.4 Product Repair. Unless specifically noted otherwise in writing, return of a Product or parts constitutes Customer's authorization for Intevac to repair such Product or part and to invoice Customer for any and all reasonable costs of repair, labor, parts and freight on items not covered by the terms of the warranty. Such authorization includes charges for handling of returned items found not defective, including a 15% restocking charge for spare parts. All returns shall be in accordance with Intevac's return materials authorization process. Any product returned to Intevac for examination shall be sent prepaid via the means of transportation indicated as acceptable by Intevac. Intevac is responsible for costs of shipping to return Products found to be defective and under warranty. Customer is otherwise responsible for return costs of shipping, e.g. for items out of warranty or not found to be defective. Customer shall bear the risk of loss or damage during transit of Products and parts whether or not the item meets warranty requirements. Any warranty parts replaced shall become the property of Intevac.

10.5 Exclusive Warranty. THE WARRANTY IN THIS SECTION IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, USE, OR APPLICATION, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF INTEVAC, UNLESS SUCH OTHER WARRANTIES, OBLIGATIONS, OR LIABILITIES ARE EXPRESSLY AGREED TO IN WRITING BY INTEVAC. STATEMENTS MADE BY ANY PERSON, INCLUDING REPRESENTATIONS BY INTEVAC PERSONNEL, WHICH ARE INCONSISTENT OR IN CONFLICT WITH THE TERMS OF THE ABOVE WARRANTY SHALL NOT BE BINDING UPON INTEVAC UNLESS REDUCED TO WRITING AND APPROVED BY AN OFFICER OF INTEVAC.

11. INDEMNITY

11.1 Intevac Indemnity.

(a) Indemnity. Intevac shall defend, protect, and indemnify Customer from all damages, penalties, expenses, fees or other losses awarded to a third party or agreed in settlement arising from any claim that any Product provided under this Agreement infringes any copyright or any apparatus claim of a patent or misappropriates trade secrets of any third party. Intevac shall have the sole right to defend any such suit or proceeding brought against Customer. Customer agrees to notify Intevac promptly in writing of any such claim and provide Intevac information and assistance for defense of such suit or proceeding.

(b) Potential Infringement. If any Product provided under this Agreement is, or Intevac believes may be, held to infringe or misappropriate as provided above and all use of said Product by Customer is, or, in Intevac's opinion, may be, enjoined, Intevac shall, at its own expense and option, either modify it so it becomes non-infringing, replace same with a non infringing item, procure for Customer the right to continue using such item, or remove such item and refund to Customer the purchase price paid to Intevac, together with transportation and installation costs thereof (if paid by Customer). In no event shall Intevac's total liability to Customer under or as a result of compliance with the provisions of this **Section 11.1** exceed the aggregate sum paid by Customer for the allegedly infringing item.

(c) Limitations on Intevac's Indemnity. Intevac shall have no liability for any claim of infringement or misappropriation arising as a result of (a) Customer's use or sale of any Product provided under this Agreement in combination with any items not supplied by Intevac; (b) production processes, design, development, manufacturing, distribution (sale, lease or other form of

commercialization) or servicing of photovoltaic cells or modules, but excluding the design, development, manufacturing, distribution (sale or lease) and servicing of equipment or any process or recipe for using such equipment; (c) any modification of a Product by Customer or third parties; (d) any item produced using any Product; (e) Intevac's compliance with Customer's design, formulae, processes, specifications' or instructions, or with Customer's requirements that a design be produced to perform a specific process; or (f) Customer's failure to use the latest version of any item provided by Intevac, if infringement would have been avoided but for such use.

(d) Entire Liability. The foregoing states the entire liability of Intevac for patent infringement by any Product, or by any part thereof. THE FOREGOING PROVISION IS STATED IN LIEU OF ANY OTHER EXPRESSED, IMPLIED, OR STATUTORY WARRANTY AGAINST INFRINGEMENT AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY INFRINGEMENT OF ANY KIND, EXCEPT WITH RESPECT TO ANY FRAUD BY INTEVAC.

11.2 Customer Indemnity. Customer shall defend, protect, and indemnify Intevac from all damages, penalties, expenses, fees or other losses awarded to a third party or agreed in settlement arising from any claim for infringement of any copyright or patent or misappropriation of trade secrets of any third party, based on any of the items excluded from liability by Intevac under **Section 11.1(c)**. Customer shall have the sole right to defend any such suit or proceeding brought against Intevac. Intevac agrees to notify Customer promptly in writing of any such claim and provide Customer information and assistance for defense of such suit or proceeding.

12. LIMITATION OF LIABILITY

12.1 Limit on Liability of Non-Performance. EACH PARTY'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH NON-PERFORMANCE ON THE PART OF EITHER PARTY OF THIS AGREEMENT, OR THE PROVISION OF ANY SERVICE OR THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSPECTION, REPAIR, MAINTENANCE, INSTALLATION, WARRANTY OR USE OF ANY PRODUCT FURNISHED UNDER THE AGREEMENT, SHALL BE LIMITED TO THE AMOUNT PAID OR PAYABLE BY CUSTOMER FOR THE RELATED ITEM, AND IN NO EVENT SHALL EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY OF THE FOREGOING EXCEED, IN THE CASE OF INTEVAC, THE LESSER OF THE TOTAL AMOUNTS RECEIVED BY INTEVAC FROM CUSTOMER UNDER THIS AGREEMENT OR \$5M AND, IN THE CASE OF CUSTOMER, THE LESSER OF THE TOTAL AMOUNTS PAYABLE TO INTEVAC BY CUSTOMER UNDER THIS AGREEMENT OR \$5M. THIS LIABILITY LIMIT IS CUMULATIVE AND NOT PER INCIDENT.

12.2 Limit on Certain Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR COSTS OF SUBSTITUTE GOODS OR SERVICES OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

12.3 Exclusions. The limitations in this Section do not apply to breach of or liability under **Section 11**, or to any claim for infringement, misappropriation or violation of a party's intellectual property rights or in the event of gross negligence or on the part of either party resulting in damage to Customer's facilities or harm to personnel or a third party.

13. IP RIGHTS, OWNERSHIP AND LICENSE

13.1 License. Intevac grants to Customer a non-assignable, non-transferable, non-exclusive, royalty-free license to use patented methods and processes of Intevac to the extent necessary for Customer to use, in the manner permitted hereunder Product purchased under the Agreement. This license does not extend to the use of any of Intevac's patented methods or processes in products not purchased from or supplied by Intevac or in Products which have been substantially altered by

Customer or any third party. Any and all such other use of Intevac's patented methods or processes is expressly not authorized. Customer shall not disassemble any Product or use any of the technical information for any purpose related to "reverse engineering" of any Product.

13.2 Software License. Intevac grants to Customer a personal, non-assignable, non-transferable, non-sublicensable, non-exclusive, royalty-free right to use, solely in object code form, any software provided with a Product. This grant shall be limited to use with the Product for which the software was provided. Customer may make a single archive copy of such software, provided that any copy must contain the same copyright notice and proprietary markings as the original software. Use of software on any equipment other than that for which it was provided or any other material breach shall automatically terminate this license. The terms of any agreement packaged with the software shall prevail over these Terms.

13.3 No Other Grant of Rights. Except as set forth in Sections 13.1 and 13.2, the sale, lease, or other transfer of Intevac's Products to Customer does not convey any license or right, by implication, estoppel, or otherwise, to any method or process invention of any patent.

13.4 Drawings and Data. All drawings, specifications, photographs, or other data furnished by Intevac, other than that contained in published brochures or product specifications, shall be treated as proprietary information by Customer, shall not be disclosed to any third party, shall remain the sole property of Intevac, and shall be returned to Intevac upon request. Any proprietary information transferred from Customer to Intevac shall be pursuant to Intevac's standard Proprietary Information Nondisclosure Agreement.

14. MISCELLANEOUS

14.1 Assignment. The Agreement may not be assigned by Customer unless agreed by Intevac in writing. Any attempt to assign without such written consent shall be void and considered an order cancellation. Without Customer's consent, Intevac may assign and delegate some or all of its rights and obligations under the Agreement to an Intevac subsidiary.

14.2 California Law and Disputes. The parties exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods, if applicable. Rather, the Agreement will be governed by and construed according to the laws of the State of California, without regard to provisions concerning the applicability of the laws of other jurisdictions. Any action based on the Agreement must be commenced within 1 year after the cause of action arises. The state and federal trial courts of general jurisdiction over Santa Clara, California, will have exclusive (other than in connection with enforcement of a judgment) jurisdiction and venue over any suit filed in connection with the Agreement. The parties hereby consent to jurisdiction and venue in such courts with regard to controversies in connection with the Agreement. In any action to enforce, or arising out of, the Agreement, the prevailing party will be entitled to be awarded all court costs and reasonable legal fees incurred.

14.3 Severability. If any part, term or provision of the Agreement is held void, illegal, or unenforceable or in conflict with any laws having jurisdiction over the Agreement, the remaining portions shall remain in full force and effect. The parties agree, however, to negotiate an equitable amendment to the Agreement if a material provision is thus adversely affected.

14.4 Independent Contractors. The relationship of Customer and Intevac established by the Agreement is that of buyer and seller, and nothing contained in the Agreement shall be construed (a) to give either party the power to direct or control the day-to-day activities of the other; or (b) to

constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

14.5 Construction. The Agreement is the result of negotiations among, and has been reviewed by, Intevac and Customer. Accordingly, the Agreement will be deemed to be the product of both parties, and no ambiguity will be construed in favor of or against either party.

14.6 Export Laws. Customer shall not export the Products in violation of all then current export and import laws and regulations of the U.S. Government and the government of each other applicable country.

14.7 Official Language. The English version is the official version of the Agreement. If the Agreement is translated into any other language and a conflict exists between the translation and the English version, the English version shall control.

14.8 Survival. The termination of the Agreement shall not affect (a) any payment obligation that arose prior to termination or, where applicable, after termination, nor (b) **Sections 1, 3, 4.3, 10, 11, 12, 13 and 14**, each of which shall survive.

ATTACHMENT A

:40A: FORM OF DOCUMENTARY CREDIT
: : IRREVOCABLE
:
:40E: APPLICABLE RULES
: : UCP LATEST VERSION
:
:31D: DATE AND PLACE OF EXPIRY
: : () AT NEGO BANK'S COUNTER
:
:51A: APPLICANT BANK
:50 : APPLICANT
:
:59 : BENEFICIARY
:
:32B: CURRENCY CODE, AMOUNT
:
:41D: AVAILABLE WITH ... BY ...
: : ANY BANK
: : BY NEGOTIATION
:
:42C: DRAFTS AT ...
: : DRAFT AT SIGHT
:
:43P: PARTIAL SHIPMENTS
: : ALLOWED
:
:43T: TRANSHIPMENT
: : ALLOWED
:
:44E: PORT OF LOADING/AIRPORT OF DEPARTURE
: : ANY PORT/AIRPORT IN USA OR HONG KONG OR SINGAPORE
:
:44F: PORT OF DISCHARGE/AIRPORT OF DESTINATION
: : ANY PORT OR AIRPORT IN CHINA
:
:44C: LATEST DATE OF SHIPMENT
: : ()
:
:45A: DESCRIPTION OF GOODS AND/OR SERVICES
: : +TRADE TERM:FCA
:
:46A: DOCUMENTS REQUIRED
: : +SIGNED COMMERCIAL INVOICES IN 3 COPIES, INDICATING L/C NO.
: : +2/3 SET OF CLEAN ON BOARD OCEAN B/L, MADE OUT TO THE ORDER OF
: : (), MARKED FREIGHT COLLECT AND NOTIFY ()
: : OR
: : CLEAN AIR WAYBILL CONSIGNED TO () AT
: : (), MARKED
: : FREIGHT COLLECT AND NOTIFY ()
: : +PACKING LIST IN 3 COPIES.

: :
 :47A: ADDITIONAL CONDITIONS
 : : +THE DRAFTS MUST BEAR THE CLAUSE DRAWN UNDER DOCUMENTARY CREDIT
 : : NO. ()
 : : +THIS CREDIT REPRESENTS 70 PCT OF THE INVOICE VALUE FOR
 : : USD().
 : : THE 30 PCT OF THE INVOICE VALUE FOR USD() WILL BE
 : : EFFECTED THE PAYMENT BY APPLICANT OUTSIDE OF THIS L/C WITHOUT
 : : OUR RESPONSIBILITIES).
 : : +PAYMENT TERMS OF THIS L/C AMOUNT FOR USD():
 : : (A)60 PCT OF THE INVOICE VALUE (USD()) WILL BE PAID AT
 : : SIGHT AGAINST DOCUMENTS REQUIRED AS PER FIELD 46A
 : : ALL DOCUMENTS MUST BE PRESENTED FOR NEGOTIATION WITHIN 30
 : : DAYS AFTER THE DATE OF SHIPMENT BUT IN ANY EVENT NOT LATER
 : : THAN L/C EXPIRY DATE.
 : : (B)10 PCT OF THE INVOICE VALUE (USD()) WILL BE PAID
 : : AGAINST:
 : : +SIGNED COMMERCIAL INVOICE IN 2 COPIES.
 : : +EITHER AN FACTORY ACCEPTANCE CERTIFICATE SIGNED BY
 : : BOTH () . AND THE BENEFICIARY OR A
 : : BENEFICIARY CERTIFICATE ATTESTING THAT 90 DAYS HAVE ELAPSED
 : : FROM ORIGINAL SHIPMENT DATE.
 : : +A COPY OF AN IRREVOCABLE STANDBY LETTER OF CREDIT IN FAVOR
 : : OF () AGAINST THE BENEFICIARY'S FAILURE
 : : TO PERFORM ITS OBLIGATIONS WITH RESPECT TO THE WARRANTY
 : : DURING THE WARRANTY PERIOD FOR AN AMOUNT EQUAL TO () PCT OF
 : : THE CONTRACT VALUE (USD()). THIS STANDBY LETTER OF
 : : CREDIT MUST BE SENT THROUGH ().
 : : SWIFT CODE: ().
 : : ALL DOCUMENTS MUST BE PRESENTED FOR NEGOTIATION WITHIN THE
 : : VALIDITY OF THIS CREDIT.
 : : +AIR SHIPMENT MUST BE EFFECTED BY ().
 : : +L/C NUMBER MUST NOT BE SHOWN ON OCEAN B/L AND AIR WAYBILL.
 : :
 :71B: CHARGES
 : : ALL BANKING CHARGES ARE FOR ACCOUNT OF APPLICANT
 : :
 :49 : CONFIRMATION INSTRUCTIONS
 : : WITHOUT / (WITH)
 : :
 :78 : INSTRUCTIONS TO THE PAYING/ACCEPTING/NEGOTIATING BANK
 : : +UPON RECEIPT OF DOCUMENTS COMPLYING WITH THE TERMS AND
 : : CONDITIONS OF THIS CREDIT, WE SHALL COVER YOU AS PER
 : : YOUR INSTRUCTION.
 : : +ALL DOCUMENTS MUST BE DESPATCHED IN ONE LOT BY COURIER
 : : TO ()
 : : +A FEE OF USD() WILL BE DEDUCTED FROM EACH DRAWING FOR
 : : DOCTS PRESENTED WITH DISCREPANCY(IES).
 : :
 :57D: "ADVISE THROUGH" BANK
 : : BANK OF AMERICA
 : : 1 FLEET WAY, PA6-580-02-30,

: : SCRANTON, PA 18507-1999
: : SWIFT:BOFAUS3N