

## **Intevac Photonics Inc. Purchase Order Terms and Conditions for Commercial Suppliers**

THESE TERMS AND CONDITIONS SHALL APPLY TO ANY PURCHASE ORDER OR AMENDMENT ISSUED BY BUYER INTEVAC PHOTONICS, INC. TO SELLER. SELLER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS SHALL OCCUR UPON SELLER'S ACCEPTANCE OF THE PURCHASE ORDER, CONTRACT OR SUBCONTRACT; OR SELLER'S COMMENCEMENT OF PERFORMANCE IN SUPPLYING THE GOODS AND/OR SERVICES UNDER THE PURCHASE ORDER, WHICHEVER OCCURS FIRST. 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 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. DELIVERY POINT.** Unless otherwise specifically provided on the face of this P.O., the goods ordered hereunder will be delivered FOB Destination (Intevac's Facility), or if an international supplier then delivered DDP (Incoterms 2010) to Intevac's Facility, or any other destination designated in writing by Intevac.

### **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 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. QUALITY CONTROL SYSTEM.** SELLER agrees to provide and maintain a quality control system to an industry recognized Quality Standard and to provide access to SELLER's facilities at all reasonable times by BUYER for the purposes of inspecting and observing the quality process. Further, SELLER shall be in compliance with any other specific quality requirements identified in this Contract. Records of all quality control inspection work by SELLER shall be kept complete and available to BUYER and its Customers. SELLER agrees to notify BUYER'S Procurement Representative of product that does not meet the requirements of this order that cannot be reworked to compliance. Written Approval will be required by BUYER'S Procurement Representative prior to SELLER's shipment of nonconforming material to BUYER. Additionally, SELLER shall notify BUYER'S Procurement Representative if SELLER discovers that previously delivered product does not meet the requirements of this order. SELLER agrees to notify BUYER'S Procurement Representative with changes in product and/or process which affect compliance with applicable Specifications, Technical Data Sheets, or reliability of the product, changes of suppliers, and changes of manufacturing facility locations.

All hardware, data, other documentation, tooling and equipment required by SELLER during the performance of this order, except that equipment and tooling which SELLER utilizes during the sensor manufacturing process, shall be maintained under configuration control. SELLER shall submit for approval all Class 1 changes to the configuration (i.e. those which affect form, fit, function and safety). BUYER shall provide written approval to all Class 1 changes. BUYER'S approval for Class 2 changes ("Minor Changes") is not required. BUYER'S approval of the drawing package shall constitute a baseline release for hardware fabrication. BUYER'S approval of other such documentation shall likewise constitute a baseline release for applicable activities.

The SELLER shall submit Major Engineering Change Orders (ECO's) to BUYER for written approval prior to implementing any such changes. BUYER'S approval shall in no way relieve the SELLER from complying with the requirements of the order, nor shall approval relieve the SELLER's technical responsibility for the design. The SELLER shall further submit Minor ECO's for informational purposes. Any SELLER classification disagreements shall be referred to BUYER for a final decision.

Where applicable for parts assemblies, SELLER shall maintain a Foreign Object Debris/Damage (FOD) prevention program. SELLER's FOD prevention program shall include: 1) The review of design and manufacturing processes to identify and eliminate foreign object entrapment areas and paths through which foreign objects can migrate; 2) SELLER shall employ appropriate housekeeping practices to ensure timely removal of residue/debris, if any, generated during manufacturing operations or tasks; 3) SELLER shall determine if sensitive areas that may have a high probability for introduction of foreign objects should have special emphasis controls in place appropriate for the manufacturing environment; and 4) By delivering items to BUYER, SELLER shall be deemed to have certified to BUYER that such items are free from any foreign material(s) that could result in FOD.

## **10. 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.

#### **11. 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. Buyer 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.

**12. 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.

**13. 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.

#### **14. INDEMNIFICATION**

(a) Seller shall, at its own expense, defend, indemnify and hold harmless Buyer, its agents, customers, successors, and assigns from any claim, suit or proceeding (a "Claim") brought against Buyer to the extent it is based upon a claim that the goods or deliverables provided under this P.O. infringe upon any patent or copyright, or misappropriate any trade secret, of any third party. Buyer shall, at its own expense, defend, indemnify and hold harmless Seller, its agents, customers, successors, and assigns from any Claim brought against Seller to the extent it is based upon a claim that: (i) Seller's required compliance with any specifications provided by Buyer infringes upon any patent of any third party or (ii) any equipment or materials (not provided or recommended by Seller) with which Buyer combines with the goods or deliverables, infringe upon any patent or copyright, or misappropriates any trade secret, of any third party. The party seeking indemnification agrees that it shall promptly notify the other party in writing of any such Claim and give the indemnifying party full information and reasonable assistance in connection therewith, at the expense of the indemnifying party. The indemnifying party shall have the sole right to control the defense of any such Claim and the sole right to settle or compromise any such Claim, subject to the approval of the indemnified party.

(b) Seller will have no liability for any Claim to the extent covered by Buyer's indemnity or based on modifications to the goods or deliverables made by Buyer.

(c) The foregoing states the entire liability of each party to the other concerning infringement of intellectual property rights, including but not limited to, patent, copyright, trademark and trade secret rights.

(d) Where Seller will perform work or services on Buyer's premises, Seller agrees to the following:

(i) Seller shall indemnify and hold harmless Buyer from any claims brought by Seller's employees, third party subcontractors, agents, or consultants (collectively referred to as "Seller's Personnel"), for injury to person or wrongful death that occurs while Seller's Personnel are working on Buyer's premises, regardless of the actual cause or proximate cause of the injury. Seller shall flow down this indemnification requirement to all subcontractors it retains to work on Buyer's premises.

(ii) Seller shall maintain, and cause its subcontractors, agents and consultants, to maintain, the insurance coverages that the higher of those specified in the purchase order, or any other attachment to this Contract, or the following: Statutory Workers' Compensation coverage and Employers' Liability with a limit of \$1,000,000 per occurrence; Commercial General Liability (including bodily injury and property damage, products / completed operations coverage and contractual liability coverage) with a limit of \$2,000,000 per occurrence. When applicable to Seller's performance of the Contract, Seller shall also maintain, and cause its subcontractors to maintain, (i) Automobile Liability coverage with a limit of \$1,000,000 per accident; and (ii) Professional Liability covering the services provided by Seller. Upon Buyer's request, Seller shall (i) provide Buyer with certificates of insurance evidencing required insurance, and (ii) arrange for a waiver of subrogation in favor of Buyer.

(iii) Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's customer. Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this Contract.

**15. 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. Seller will not, without Buyer's prior written consent, make any news release or public announcement concerning this Purchase Order which directly or indirectly identifies Buyer.

**16. 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.

**17. 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 Purchase Order; 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.

**18. IP OWNERSHIP AND LICENSE.** Intevac shall own all right, title and interest in and to inventions, discoveries, developments, trade secrets, works of authorship and other materials (and all other related intellectual property rights) created, developed or discovered, whether jointly or singly, by Seller or Buyer under or in connection with this PO (collectively, the "Assigned IP"). Seller hereby assigns, agrees to assign, and to cause its contractors to assign, to Buyer all of Seller's or such contractors' right, title and interest in and to the Assigned IP. To the extent any Assigned IP or any goods or deliverables provided hereunder include any pre-existing intellectual property rights of Seller or another party, Seller hereby grants to Buyer a worldwide, nonexclusive, royalty-free, perpetual, irrevocable license, with right of sublicense, to use such pre-existing intellectual property rights in connection with any product or service, including the right to use, make, have made, offer to sell, sell, have sold or import products or to reproduce, modify, create derivative works of, distribute, disclose, perform and display such pre-existing intellectual property rights. Seller shall, and shall cause its contractors to, execute and deliver such documents as Buyer may request to confirm or give effect to the foregoing assignments and licenses, or in connection with the establishment, maintenance, protection, or enforcement by Buyer of the Assigned IP or the foregoing licenses.

**19. PROHIBITED DISCRIMINATION.** The Seller and their subcontractors shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and against qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. U.S. Executive Order 11246, 29 C.F.R. Part 471, Appendix A to Subpart A, and 41 C.F.R. Parts 60-1.4, 60-1.7, 60-4.3 are incorporated by reference into these Terms and Conditions.

**20. CONFLICT MINERALS FREE MATERIAL REQUIREMENT.** Seller will not knowingly purchase materials that contain conflict minerals and that directly or indirectly finance or benefit armed groups, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Seller shall take steps to identify and assess risk in its supply chain and will make continued efforts to ensure that Conflict Minerals are not used in products sold or supplied

to Buyer. The remedies herein reserved will be cumulative, and additional to any other or further remedies provided in law or equity, unless specifically stated otherwise.

**21. SUSPECT/COUNTERFEIT PARTS.** Seller represents and warrants that it has policies and procedures in place (or similar measures in the absence of such policies and procedures) to ensure that none of the supplies or materials furnished under this Agreement are "suspect/counterfeit parts" and certifies, to the best of its knowledge and belief, that no such parts have been or are being furnished to Buyer by Seller. "Suspect/counterfeit parts" are parts that may be of new manufacture, but are misleadingly labeled to provide the impression they are of a different class or quality or from a different source than is actually the case. They also include refurbished parts, complete with false labeling, that are represented as new parts or any parts that re designated as suspect by the U.S. Government, such as parts listed in alerts published by the Defense Contract Management Agency [DCMA] under the Government-Industry Data Exchange Program [GIDEP]. If Buyer reasonably determines that Seller has supplied suspect/counterfeit parts to Buyer, Buyer shall promptly notify Seller and Seller shall immediately replace the suspect/counterfeit parts with parts acceptable to Buyer. Notwithstanding any other provision contained herein, Seller shall be liable for all costs incurred by Buyer to remove and replace the suspect/counterfeit parts, including without limitation to Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's goods after counterfeit parts have been exchanged out. Seller's warranty against suspect/counterfeit parts shall survive any termination or expiration of this Agreement.

**22. U.S. EXPORT LAW REQUIREMENTS.** Performance of the Purchase Order, Contract or Subcontract may involve the use of or access to articles, technical data or software that is subject to export controls set forth in the following: 22 USC 2751-2796, the Arms Export Control Act; 22 CFR 120-130, the International Traffic in Arms Regulations [ITAR]; 50 USC 2401-2420, The Export Administration Act; and 15 CFR 768-799, Export Administration Regulations [EAR]; along with their supplemental laws and regulations collectively referred to as the "Export Laws and Regulations." Seller represents and warrants that for all ITAR controlled Goods and Services, that is a U.S. Person as that term is defined in the Export Laws and Regulations. Seller shall comply with any and all Export Laws and Regulations and any license(s) issued thereunder.

Seller shall not grant any Foreign National personnel access to any ITAR or EAR controlled technical data, software or Defense Articles, or provide an unauthorized Defense Service utilizing Buyer's technical data, as those terms are defined in the applicable Export Laws and Regulations, without the prior written consent of Buyer. Any request for such information must state the intended recipient's citizenship and status under 8 USC 1101 and \* USC 1324 (The Immigration and Naturalization Act), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this Paragraph shall relieve Seller of its obligations to comply with the provision of this Paragraph or the Export Laws and Regulations, nor shall any consent constitute a waiver of these requirements of this Paragraph, nor constitute consent for the Seller to violate any provision of the U.S. Export Laws and Regulations.

Seller understands that the export, re-export or re-transfer of Buyer's technical data may require a U.S. export license or other approval. Seller will not transfer Buyer's technical data in violation of any U.S. Export Law or Regulation, including by making any exports or re-exports of Buyer's controlled technical data to the U.S. embargoed countries of North Korea, Cuba, Iran, Sudan, Syria, or to other restricted destination or parties that may be added to the restricted export list by the U.S. Government. Export compliance guidelines and classification information for Buyer's technical data are available by contacting Buyer. In the event of an alleged breach of the U.S. Export Controls by Seller, the Seller shall furnish to Buyer all information requested to establish Seller's compliance with U.S. Export Regulations.

Seller shall indemnify and hold harmless Buyer from and against any and all damages, liabilities, penalties fines, costs and expenses, including attorney's fees and costs, arising out of any claim for the Buyer's failure to comply with the requirement contained under this section or the provisions contained in the Export Laws and Regulations. Where Seller has failed to perform in accordance with this section concerning Export Laws and Regulations, Seller will be deemed to be in breach of the Purchase Order, Contract or Subcontract, and Buyer may terminate for Default immediately.

**23. PROTECTION OF PROPRIETARY INFORMATION.** If a separate confidentiality, nondisclosure, or proprietary information agreement exists between Seller and Buyer, which relates to the subject matter of the Purchase Order, Contract or Subcontract, then confidential or proprietary information furnished by one party to the other party shall be protected pursuant to such agreement, and the remainder of this Paragraph shall not apply.

For purposes of this Paragraph, "Information" shall mean information disclosed to Seller by Buyer, in connection with this Purchase Order, which is identified by one party as being proprietary, or which is information that a reasonable person would understand to be proprietary information. Examples of "Proprietary Information" include, but are not limited to, customer lists, pricing policies, markets analyses, business plans or programs, software specifications, manuals, notes, annotations, performance data, designs, drawings, processes, data reports, test reports, and photographs; and engineering, manufacturing or technical data relating to Buyer's products, services, equipment, or processes, as well as derivative works thereof. Buyer's Proprietary Information will only be used by Seller upon receipt of Buyer's written approval.

**24. APPLICABLE LAW.** The Purchase Order, Contract and/or Subcontract and The Parties performance hereunder, shall be construed and enforced in accordance with the laws of the State of California. Seller shall comply with all applicable laws, Executive Orders, or regulations. Seller agrees to indemnify and hold harmless Buyer against any loss, cost, liability or damage by reason of Seller's violation of any applicable laws, Executive Orders or regulations.

**25. DISPUTE RESOLUTION.** Any controversy or claim arising out of or related to his order shall be settled by arbitration in the City of Santa Clara, State of California, in accordance with the commercial rule of the American arbitration Association, by arbitrator appointed in accordance with those rules. The determination by the arbitrator shall be enforceable in any court of competent jurisdiction. Each party shall bear their own attorney's fees and costs and the arbitrator shall have no authority to make such award.

**26. END OF LIFE NOTICE.** Seller will provide Buyer with 12 months' written notice of the affected Good's end-of-sale date and/or the last day when the affected product can be ordered. Seller will flow down this requirement to all of its subcontractors.

**27. NON WAIVER.** If Buyer fails to enforce at any time any of the provisions of this Purchase Order., 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.