

IVEK Corporation - Terms and Conditions of Purchase

- 1. Acceptance of Terms and Conditions of Purchase.** These Terms and Conditions of Purchase and all documents referenced herein (collectively, the "Order") is an offer by IVEK Corporation ("Buyer") to purchase the goods ("Goods") and/or services ("Services") and together with the Goods, the deliverables ("Deliverables") described in Buyer's purchase order from the person or entity to whom the purchase order is addressed ("Seller"). Acceptance is limited to the terms of the Order. The Order is the only terms and conditions which govern the purchase of Deliverables by Buyer and supersede all prior and contemporaneous terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the provisions of the Order is hereby deemed material and objected to and rejected. No terms of any document or form submitted by Seller shall be effective to alter or add to the provisions contained in the Order. Unless otherwise stated herein, Seller's acknowledgment of the Order, shipment of Goods or commencement of any Services shall constitute acceptance by Seller of the Order.
- 2. Delivery.** Time is of the essence. Unless otherwise agreed by Buyer in writing, all shipments are FOB destination at the address specified in the Purchase Order and title and risk of loss/damage shall pass to Buyer at such time and place. The Order must be shipped complete for delivery by the date requested. Seller shall deliver Goods in the quantities and on the date(s) specified in the Order. Buyer shall not be obligated to accept untimely, excess or under shipments and such shipments in whole or in part may, at Buyer's option, be returned to Seller, or held for disposition, at Seller's expense and risk.
- 3. Inspection.** All Deliverables are subject to inspection and testing by authorized representative(s) of Buyer and/or Buyer's customers at all reasonable times and places, including during production. Buyer reserves the right to reject or revoke acceptance, in whole or in part, of Goods which fail to meet any requirement of the Order, notwithstanding inspection, testing, delivery, acceptance and/or payment and such Goods may, at Buyer's option, be returned to Seller at Seller's cost or held for disposition at Seller's risk and expense. Buyer and its designees shall have the right to audit and inspect Seller and Seller's suppliers' records and facilities to determine Seller's and its supplier's compliance with the Order.
- 4. Pricing.** All prices are in US dollars unless otherwise expressly stated. Unless otherwise expressly agreed by Buyer in writing, the price includes all taxes (sales, use, excise, privilege, ad valorem, and other taxes, duties, tariffs and assessments now or hereafter imposed or levied) and charges for packing, hauling, storage and transportation to Buyer's designated point of delivery. Buyer is not obligated to any minimum purchase or future purchase obligations under this Order and forecasts, estimates and similar projections of Buyer are not purchase commitments. Buyer shall have no obligation to purchase or otherwise compensate Seller for any of Seller's finished products, work in process or raw materials, not expressly covered by an Order issued by Buyer.
- 5. Payment Terms.** Seller shall issue an invoice to Buyer on or any time after the completion of delivery of Goods or Services. Buyer shall pay all properly invoiced amounts due to Seller within 45 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.
- 6. Changes.** No change to any Order is binding upon Buyer unless it is in a signed writing, and specifically states that it amends such Order. Buyer shall have the right at any time to make changes in drawings, specifications, quantities, materials, packaging, time and place of delivery, and method of transportation, and cancel an Order, in whole or in part, without liability. If any such changes result in an increase or decrease in the cost or the time required for performance, an equitable adjustment may be made by Buyer or Buyer may, at its option, terminate an Order if agreement on an adjustment cannot be reached. Claims for adjustment must be asserted by Seller within ten days of the change order. Seller agrees to accept any such changes.
- 7. Warranties.** Seller warrants that (I) all Deliverables are and will be (a) in full conformity with specifications, drawings, samples, quantities, delivery schedules, and descriptions furnished or specified by Buyer; (b) free from defects in material, workmanship and design; (c) merchantable and fit and sufficient for the purposes intended; (d) free and clear of all liens, claims, security interests or other encumbrances; (e) free of claims of infringement or misappropriation of any third party's intellectual property rights; and (f) produced or provided in compliance with all applicable foreign, federal, provincial, state, and local laws and regulations as well as requirements and standards applicable to the Deliverables including without limitation European Regulation EC 1907/2006 (REACH), European Union Directive EU 2015/863 (RoHS3) and State of California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and (II) Seller shall (a) comply with all applicable laws and Buyer's prime contract (if any); and (b) refrain from engaging in any illegal, unethical, or deceptive practices. All warranties shall survive inspection, testing, delivery, acceptance, termination and payment and failure to inspect, test or discover any defect or other nonconformance. These warranties shall be in addition to all other warranties, express, implied or statutory. **NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY FOR DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.**
- 8. Indemnification.** Seller, shall defend, indemnify, and hold Buyer, its affiliates and their respective officers, directors, members, managers, shareholders, employees, customers, successors and assigns, harmless against any and all claims, demands, damages, losses, liabilities, lawsuits, dispute resolution, judgments, fines, settlements, penalties, costs and expenses including without limitation all attorneys' fees and litigation costs and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, whether direct, indirect, incidental, consequential, or otherwise (collectively, "Claims") arising out of relating to (i) the Deliverables (including death, injury and property damage); (ii) actual or alleged act, omission, negligence or failure to comply with the Order or any other agreement between Buyer and Seller; (iii) any Recall; (iv) actual or alleged infringement or misappropriation of any IP Right; (v) loss or damage to Buyer's Property; and (vi) Seller's breach of the Order. Seller shall not enter into any settlement without Buyer's prior written consent. This indemnification is in addition to the warranty obligations of Seller. Seller also represents and warrants that the manufacture, sale, performance and use of the Deliverables will not infringe any patent, copyright, trademark, trade secret, know how or other intellectual property or proprietary right ("IP Right"). If all or any portion of the Goods are held to constitute an infringement of a patent and/or their use is enjoined for any reason, Seller shall promptly, and at its own expense, either procure for Buyer the right to continue using such Goods royalty-free or replace such Goods to Buyer's satisfaction with non-infringing Goods of equal quality and performance.
- 9. Insurance.** Seller shall obtain and at all times in which the Order is in effect maintain, at its cost and with financially sound and reputable insurers, insurance as designated by Buyer from time to time, but no less than: (I) **LIABILITY INSURANCE:** Primary comprehensive or commercial general liability insurance with limits of at least \$5 million, including coverage for: (i) Products and Completed Operations liability; (ii) Blanket Contractual liability; and (iii) Cross Liability endorsement or Severability of Interest clause; (II) **WORKERS COMPENSATION INSURANCE:** All Seller's of Goods or Services shall obtain and provide written proof of workers compensation insurance coverage for any of Seller's employees who will be on Buyer's premises for any reason including, but not limited to, delivery of Goods or performance of Services. Prior hereto and at any time upon request, Seller shall provide certificates of insurance to Buyer along with other documentation as may be required by Buyer to evidence the insurance coverages required herein. Seller shall provide written notice to Buyer no less than 30 days prior to the effective date of cancellation or material reduction of any required insurance coverage.

10. **Termination.** Buyer may terminate any Order, in whole or in part, without liability to Buyer within 7 days of placing the Order, or with a minimum of 2 days' notice prior to shipment (except for custom product Orders for which cancellation will be negotiated), or at any time if (i) Seller breaches the Order or fails to deliver the Goods or to perform the Services by the specified time; (ii) a petition initiating a proceeding under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Seller; (iii) Seller is insolvent or executes an assignment for the benefit of creditors; (iv) a receiver is appointed for Seller or any substantial part of its assets; (v) Buyer is insecure with respect to Seller's ability to perform and Seller is unable to provide Buyer with adequate assurance of its ability to perform within five days after Buyer's request therefore. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination. Upon receipt of notice of any termination, Seller shall, unless the notice directs otherwise, immediately discontinue all work.
11. **Waiver.** No provision of these Terms and Conditions of Purchase shall be deemed to have been waived by any act or acquiescence on the part of either party, it being understood that waiver may only occur by an instrument in writing signed by an authorized officer of the party against whom such waiver is sought to be enforced. In the event of a waiver, whether in writing or by operation of law, such waiver shall not constitute a waiver of any other provision or of the same provision on another occasion.
12. **Confidential Information/Nondisclosure Agreement.** All information, documents, specifications, suggestions, comments and data ("Information") heretofore or hereafter furnished or disclosed by Buyer to Seller is and shall remain the confidential and proprietary Information of Buyer and shall be maintained in strict confidence and only used for purposes of fulfilling an Order. Further, Seller shall not in any manner advertise or publish the fact that it has furnished Buyer, or contracted to furnish Buyer, any Deliverables without the prior written consent of Buyer. Buyer makes no warranty with respect to Information. Any implied warranties that may exist with respect to any Information provided by Buyer, including any warranty of merchantability and warranty of fitness for a particular purpose are excluded.
13. **Force Majeure.** Buyer shall not be liable for failure to take delivery of the Goods or to allow performance of the Services or to otherwise perform hereunder if such failure or inability is due to causes beyond Buyer's control.
14. **Assignment.** These Terms and Conditions of Purchase may not be assigned, sublicensed, leased, sold or otherwise transferred by Seller without prior written consent from Buyer, and any transfer made without such prior written consent shall be null and void. These Terms and Conditions of Purchase and any rights granted herein by Buyer are personal to Seller.
15. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
16. **Governing Law.** ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT ARE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF VERMONT, USA without giving effect to any choice or conflict of law provision or rule (whether of the State of Vermont or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Vermont.
17. **Submission to Jurisdiction.** ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF VERMONT AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING.
18. **Notices.** All notifications and communications between the Buyer and Seller relating to the Order or the subject matter hereof shall be made in writing and signed by a person duly authorized to provide such notice.
19. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
20. **Cumulative Remedies.** All rights and remedies of the parties, whether at law or in equity, shall be cumulative and none of them shall be in limitation of any other right or remedy.
21. **Headings.** The paragraph headings in these Terms and Conditions of Purchase are solely for the convenience of the parties and have no legal or contractual significance.

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