

# TERMS AND CONDITIONS OF PURCHASE

In the terms and conditions below, II-VI Incorporated shall be referred to as "II-VI," the company supplying goods or services under this purchase order (the "Purchase Order") shall be referred to as the "Seller," and the goods and services described in and provided pursuant to this Purchase Order are referred to as "Goods" or "Services," as the case may be. If a formal written agreement exists between II-VI and the Seller for the purchase of such Goods and Services, then the terms of such written agreement shall supersede any contrary terms contained in this Purchase Order.

## 1. ACKNOWLEDGEMENT AND ACCEPTANCE

Acceptance of this Purchase Order by Seller constitutes acceptance of all of the terms and conditions stated herein. To the extent that any quotation, order acceptance, confirmation, invoice or other document of Seller contains conflicting, differing or additional terms from these terms and conditions, these terms and conditions will control and all such conflicting, differing or additional terms are rejected by II-VI and shall have no effect unless expressly agreed to in writing by II-VI. Seller's signed acknowledgement of the Purchase Order, or Seller's shipment of, or acceptance of payment for, Products or Services shall conclusively affirm Seller's assent to these terms and conditions. If this Purchase Order is not signed and returned to II-VI, either by mail or fax, within ten (10) days from the date hereof, II-VI, at its option, may cancel this Purchase Order.

## 2. FOB; DAMAGE DURING DELIVERY

Delivery of Goods under this Purchase Order shall be by FOB: II-VI, Saxonburg, Pennsylvania, and, unless otherwise agreed and / or stated in this Purchase Order, the risk of loss or damage shall remain with the Seller until actual delivery to II-VI. Seller shall be responsible for damages sustained during delivery. Any resulting claims against carriers shall be the responsibility of the Seller. Replacement of any damaged Goods shall be the sole responsibility of Seller.

## 3. TERMS

Terms of payment shall be as outlined in this Purchase Order. All invoices for payment shall include the Purchase Order number, and shall include a summary of the total Purchase Order value, total value of Goods provided or Services performed to date of the invoice, total value of invoicing to date and value of the current invoice. Invoices for payment not including such information will be returned to the Seller without payment.

## 4. PACKAGING

All packages, cases, crates, etc., are to be marked with the Seller's name and the applicable II-VI Purchase Order number. A packing list must accompany each shipment of Goods. II-VI shall not be liable for any packaging charges, unless otherwise agreed to in advance.

## 5. DELIVERY

The delivery and performance requirements and specified dates of this Purchase Order shall be strictly adhered to and shall not be changed or modified without the prior written acceptance of II-VI. In the event of failure to deliver or perform by the dates specified in a Purchase Order, II-VI reserves the right to cancel such Purchase Order in total or any unexecuted part of such Purchase Order. Goods not shipped in time to meet the delivery requirements and dates under a Purchase Order, at II-VI's option, shall be delivered at the fastest means available, at the sole expense of the Seller.

## 6. DELAY IN SUPPLY

In the event of failure by the Seller to deliver any Goods or perform any Services contained in this Purchase Order, other than as a result of Acts of God, force majeure, civil commotions, fire, war, perils of the sea, delay in transit and other causes beyond the Seller's control, II-VI shall have the right to cancel all or any remaining part of this Purchase Order, without payment of compensation, and obtain delivery or performance from other sources. Any and all increased costs and expenses thereby incurred by II-VI in obtaining such delivery or performance shall be setoff against any moneys due or to become due to the Seller or shall be recoverable as damages hereunder.

## 7. CHANGES

Except as otherwise provided herein, this Purchase Order may not be amended, modified, supplemented, cancelled or discharged, except in writing signed by II-VI and Seller.

## 8. INDEMNITY; INSURANCE

Seller shall indemnify, defend and hold II-VI harmless from any claim, cause of action, or liability incurred by II-VI arising from third party claims for personal injury, death, or damage to tangible property to the extent caused by Seller's acts or negligence. Seller may not settle any indemnified claim without the written consent of II-VI. This indemnification shall survive delivery of the Products or Services to II-VI and any subsequent sale or other transfer of the Products or Services to a third party. Seller shall maintain such insurance coverage as is necessary in order to adequately protect II-VI from such damages, liabilities, claims, losses and expenses (including reasonable attorneys' fees), including but not limited to general liability, completed operations, products liability, automobile (including non-owned automobile liability), worker's compensation and employer's liability insurance. As applicable, Seller shall have II-VI added as an additional insured on such insurance policies. Seller shall upon request provide II-VI with certificates evidencing such insurance coverage.

## 9. QUALITY REQUIREMENTS

The Seller shall provide and maintain an inspection system acceptable to II-VI covering the inspection of Goods provided under this Purchase Order, and Seller shall tender to II-VI for acceptance only such Goods that have been inspected in accordance with such inspection system and that have been determined by the Seller to conform with the Purchase Order requirements. However, all Goods provided under this Purchase Order are subject to final inspection and acceptance within a reasonable time after actual delivery and II-VI shall have the right to reject any defective or non-conforming Goods despite any prior inspection by the Seller.

## 10. RETURN OF DEFECTIVE GOODS

All Goods supplied under this Purchase Order that do not meet with the approval of II-VI's Quality Assurance Department, that are shipped contrary to Purchase Order instructions or that are in excess of the quantity or quantities ordered under this Purchase Order, will be returned to Seller or held pending a mutual agreement between II-VI and Seller regarding their disposition, subject to the Seller's risk of loss and sole expense.

## 11. TOOLING AND MATERIALS

Unless otherwise agreed to by II-VI, all special purpose tooling or materials used by Seller to fulfill this Purchase Order shall be the property of II-VI, shall be removable at any time without additional cost upon demand by II-VI, shall be used only in filling orders from II-VI, shall be kept separate from other tools and materials, and shall be clearly identified as the property of II-VI.

## 12. PURCHASE ORDER

Purchase orders sent via fax serves as an official intent of purchase by II-VI. Only authorized personnel of II-VI will be allowed to issue purchase orders.

## 13. CHEMICALS & HAZARDOUS SUBSTANCES

A Material Safety Data Sheet (MSDS), as prescribed by II-VI ("Data Sheet"), addressed to the attention of the II-VI Hazard Communication Coordinator, shall accompany all chemicals & hazardous substances provided under a Purchase Order. The Sellers shall maintain a catalog of any and all applicable Data Sheets that are provided in connection with the Seller's performance of work under a Purchase Order at a II-VI site.

## 14. EQUAL EMPLOYMENT CLAUSE

Seller is on notice that II-VI may utilize Goods or Services purchased under this Purchase Order in the transaction of business with the United States Government. The Seller, therefore, represents and warrants that it shall comply with Executive Order 11246 and any amendments thereto, pertaining to non-discrimination in employment. Seller also represents and warrants to II-VI that the Seller is in compliance and shall comply with Section 503 of the Rehabilitation Act of 1973 and the Vietnam Readjustment Act of 1974. Upon request, the Seller shall supply II-VI with copies of compliance reports and any other information necessary to demonstrate compliance therewith.

## 15. WARRANTY

Seller warrants all materials and services delivered hereunder to be free from defect of material or workmanship and to conform strictly to the specifications, drawings, or sample specified or furnished. This warranty shall survive any inspection, delivery, acceptance, or payment by II-VI of the materials or services.

**16. BANKRUPTCY**

In the event of any proceedings, voluntary or involuntary, in bankruptcy by or against Seller, the inability of Seller to meet its debts as they become due, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then II-VI shall be entitled, at its sole option, to cancel any unfilled part of this Purchase Order without any liability whatsoever.

**17. ASSIGNMENT**

Seller shall not delegate any duties, nor assign any rights or claims under this Purchase Order, or for the breach hereof, without the prior written consent of II-VI, and any such attempted delegation or assignment shall be void.

**18. SET-OFF AND COUNTERCLAIMS**

All claims for moneys due or to become due from II-VI shall be subject to deduction by II-VI for any set-off or counterclaim arising out of this or any other of II-VI's purchase orders with Seller.

**19. GOVERNING LAW**

This Purchase Order and the acceptance of it shall be a contract made in the Commonwealth of Pennsylvania and governed by the laws thereof, without giving effect to conflicts of law principles, and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods.

**20. INTELLECTUAL PROPERTY INFRINGEMENT**

With respect to the Goods or Services provided under this Purchase Agreement, Seller shall defend, indemnify and hold harmless II-VI, its directors, officers, employees, agents and affiliates for and against any and all liabilities, claims, damages, expenses and costs (including legal fees and expenses) arising from or related in any way to a violation or infringement of any patent, copyright, trademark, trade dress, and trade secret, or any other contractual right, proprietary right or intellectual property right, of any third party.

**21. CONFIDENTIAL DISCLOSURE**

Seller agrees to take adequate protective actions to secure information provided and stamped or marked "II-VI proprietary" including, but not limited to, designs, processes, drawings, specifications, reports, data and other technical or business information in order to prevent improper disclosure. Unless otherwise provided herein or authorized by Buyer in writing, Seller shall use such information and items and the features thereof only in the performance of this purchase order. Seller shall not make copies; take pictures or videotapes of any items stated above. The Seller shall keep all items stated above in a secure area. "II-VI proprietary" items are to be returned to II-VI upon request or when no longer required by the Seller.