



## TERMS AND CONDITIONS OF PURCHASE

**1. GENERAL PROVISIONS.**

- a. The Parties agree to these General Terms and Conditions (the "General Terms").
- b. "Buyer" means II-VI Incorporated, and any of its Affiliates, subsidiaries, successors or assigns. "Affiliates" of a Party include that Party's subsidiaries, entities in which it owns at least 30% of the voting shares, and other entities that it controls. "Supplier" means the entity identified in a Purchase Order. "Products" means all the products that Supplier supplies to Buyer. "Purchase Order" means a purchase order issued by Buyer for the supply of Products, which may be a written or electronic document, and may also include particular shipping instructions and other specifications required by Buyer. Words and terms of inclusion, like "including," are not limiting. Upon acceptance of a Purchase Order, the General Terms apply.
- c. The General Terms do not create any obligation by Buyer to purchase Products from Supplier, except as described in a Purchase Order, or to purchase Products exclusively from Supplier.
- d. Different or supplemental terms or conditions, whether they are contained in an acknowledgment of a Purchase Order, an invoice, or otherwise, are not binding on Buyer, and Buyer rejects them. The General Terms may be modified or supplemented only by a written document duly signed by Buyer and Supplier.

**2. PURCHASE OF PRODUCTS.**

- a. Subject to the General Terms, Supplier agrees to sell and Buyer agrees to buy the Products that Buyer describes in the Purchase Orders Buyer issues from time to time.
- b. A Purchase Order will become binding upon acceptance by Supplier. Each Purchase Order is deemed to be accepted by Supplier upon the first of the following to occur: (i) Supplier accepts it in writing; (ii) Supplier begins performance under the Purchase Order; or (iii) the passage of five business days after Supplier's receipt of a Purchase Order without written notice to Buyer that Supplier does not accept.
- c. Buyer may provide Supplier a forecast of anticipated Product purchases. Except as the Parties otherwise agree, all forecasts are non-binding on Buyer and Buyer may purchase in excess of the quantities specified in a forecast. Supplier must immediately notify Buyer of any anticipated inability to satisfy a forecast.
- d. Supplier will accept all Purchase Orders that are consistent with the forecast (if provided) for the applicable Product.
- e. Supplier agrees to obtain and clearly reference Supplier's Purchase Order number on Supplier's invoice for Products under that Purchase Order. Buyer may consider invalid any invoice that does not contain a correct Purchase Order number.

- f. In the event of a Force Majeure or shortage in materials, Supplier will fulfill Purchase Orders no less favorably than any other customer of Supplier. Supplier will provide Buyer with as much notice as possible if it anticipates or has reason to believe that Supplier's output of the Product will not be sufficient to meet all of Buyer's requirements for any period.

**3. PURCHASE ORDER CHANGES AND CANCELLATION.**

- a. Buyer reserves the right at any time to modify or cancel a Purchase Order upon notice to Supplier.
- b. Buyer may reschedule Products in any Purchase Order without charge, by giving notice to Supplier no later than one business day before the scheduled shipping date.
- c. Buyer may change the delivery destination for Products in any Purchase Order, without charge, by giving notice to Supplier no later than one business day before the scheduled shipping date.
- d. Buyer may cancel a Purchase Order at any time by giving notice to Supplier, and Supplier will immediately cease all further work in connection with that Purchase Order.
- e. Supplier will not charge Buyer for cancellations outside of the Product's standard lead time, or 30 calendar days before delivery, whichever is shorter; except that: (i) for Supplier's off-the-shelf products, Supplier may invoice Buyer for cancelled Products it cannot sell to its other customers after good faith, verifiable efforts to do so for at least three months. Supplier must invoice Buyer within 30 calendar days after the three-month period, or all claims are waived; and (ii) for Buyer-unique products, Supplier will use its best efforts to return or re-use raw materials purchased for the cancelled Purchase Order. If neither returning nor re-using the raw materials is possible, Supplier will use its best efforts to sell them.
- f. Supplier may invoice Buyer within 90 days after the date of Purchase Order cancellation at a charge equal to: (i) Supplier's cost for raw materials that it could not return, re-use, or sell, and (ii) a pro-rata share of the Product price based on percentage completion of the cancelled Product for work-in-progress. Upon request, Supplier will provide Buyer proof of the time of purchase and purchase price of materials identified in Supplier's invoice, and proof of Supplier's efforts to return, re-use, and sell the materials.
- g. If Buyer pays an invoice that includes cancelled Product, Supplier will promptly ship all Product and work-in-progress that is the subject of that invoice to the location that Buyer specifies.
- h. THIS SECTION SETS FORTH SUPPLIER'S ENTIRE REMEDIES WITH RESPECT TO THE CANCELLATION OF ANY PURCHASE ORDER.

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**4. PURCHASE PRICES AND TERMS OF PAYMENT.**

- a. Supplier will not raise the purchase prices during the Term. Supplier will review Product pricing no less frequently than quarterly, and reduce prices to account for any material variations on the market prices of components, parts and raw material used in the Product, as well as improvements in production and competitive market conditions.
- b. Unless otherwise specified in a Purchase Order, Buyer will pay all properly invoiced amounts due to Supplier within 60 days after receipt of the invoice, except for amounts that Buyer disputes. The Parties will try in good faith to promptly resolve all invoice-related disputes. Supplier will continue to perform its obligations under all Purchase Orders while an invoice-related dispute is pending. Payment of an invoice is not evidence that any Products meet the requirements of the General Terms, or a Purchase Order.
- c. Buyer may, at any time, set off amounts that Supplier owes to Buyer against amounts Buyer owes to Supplier.
- d. Supplier warrants to Buyer that the price paid by Buyer for Products will not be higher than the lowest price offered by Supplier within the preceding 90 days to other customers at similar volumes for similar products and services.

**5. SHIPMENT, DELIVERY AND ACCEPTANCE BY BUYER.**

- a. Unless otherwise specified in a Purchase Order, all Products purchased by Buyer from Supplier must be shipped FCA Shipper's Site (Incoterms 2010) to the destination specified by Buyer in each Purchase Order ("**Buyer's Destination**"). Supplier will follow all shipping instructions provided by Buyer, and will properly and carefully package the Products for shipment. Any loss or damage that results from Supplier's improper packaging or crating will be borne by Supplier. Title to and risk of loss of the Products will pass to Buyer upon receipt by Buyer at Buyer's defined final destination, and any rightful rejection or revocation of acceptance of any Products by Buyer will immediately shift the risk of loss back to Supplier.
- b. All items shipped to Buyer will be properly identified with Buyer's Purchase Order number and any Purchase Order item number or other identification number shown. Supplier accepts full responsibility for the completeness and accuracy of all transport and customs documentation ("**Shipping Documents**") provided with respect to Products. Supplier accepts all liabilities resulting from incomplete or inaccurate data on Shipping Documents, or failure to comply with any import or export requirements.
- c. Buyer will have a reasonable opportunity to inspect the Products after Buyer receives them at Buyer's Destination. Buyer will not be deemed to have accepted any Products until after Buyer has had a reasonable time for inspection. Buyer may inspect any commercial lot of the Products consisting of numerous units of the same product by inspecting a reasonable sampling, and Buyer may revoke acceptance of any other units of that commercial lot that Buyer later discovers to be defective. If Buyer rejects, or revokes acceptance, of any Products, Supplier will promptly

replace or correct, at Buyer's option, any unsatisfactory units, at Supplier's expense, including all shipping and replacement costs. Buyer's inspection, failure to inspect or reject Products, or payment for Products, will not relieve Supplier of any of its obligations, and does not does not waive, impair, or reduce Buyer's rights under the General Terms, or a Purchase Order.

- d. When Supplier is responsible for export or import of Product, Supplier will obtain all export, re-export, and import authorizations and permits necessary to fulfill all applicable government requirements relating to the shipment of the Product.
- e. At Buyer's request, Supplier will provide Buyer for each Product the: country of origin, import tariff classification number, export classification number, information as to whether or not the Product is classified under the U.S. Munitions List (22 C.F.R. 121), and all other information Buyer reasonably requests for import, export or distribution of the Product.

**6. WARRANTIES.**

- a. Supplier represents and warrants to Buyer that: (i) the services provided in connection with a Product will be provided in a competent, professional manner, in accordance with the highest standards and best practices of Supplier's industry; (ii) all Products will be free from defects in materials and workmanship, and will be merchantable and fit for their particular purpose; (iii) all Products will conform to and perform in accordance with all specifications, drawings, samples and other requirements referred to in the General Terms, and any relevant Purchase Order; (iv) when shipped, all Products will be free from liens, security interests and encumbrances, including any retained title or other rights to secure payment; (v) all Products will be manufactured, produced, labeled, furnished and delivered to Buyer in full and complete compliance with all applicable laws and regulations; and (vi) no Product will infringe or misappropriate any intellectual property rights; and (vii) Supplier will notify Buyer in writing 12 months before implementing any material change to or discontinuance of any Product, including any change to its: form, fit, function, design, appearance, location of manufacture, components, component vendor, or manufacturing process. If Buyer requests, Supplier will provide all information, documents and certifications that Buyer reasonably requires to evidence Supplier's compliance with Supplier's warranties.
- b. Supplier will use due diligence protocols, standards and procedures in its supply chain management that enable Supplier to comply with its warranties and representations to Buyer.
- c. Supplier shall, upon notice from Buyer of nonconforming Products, promptly repair or replace that item at Supplier's expense. If Supplier fails to remedy the nonconforming Products within five business days, Buyer may, at its option, return the nonconforming Products to Supplier who will accept its return and pay Buyer a full refund of all amounts

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paid under the applicable Purchase Order. Supplier shall bear all cost and risk of loss associated with return of nonconforming Products.

**7. COMPLIANCE WITH LAWS.**

- a. Supplier represents and warrants to Buyer that Supplier is, and during the Term will be, in compliance with all applicable laws and regulations governing the activities contemplated by the Agreement, including (i) manufacturing, (ii) international transactions or activities, including, export controls, import controls, customs regulations, trade embargoes and other trade sanctions, and laws governing unlawful boycotts, and (iii) commercial or governmental bribery, including payments to foreign government officials. Supplier assumes all responsibility for shipments of Products requiring any government import clearance. Supplier will not act in any fashion or take any action that will render Buyer liable for a violation of any applicable anti-bribery legislation (including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010). If Supplier is subject to these laws, Supplier is and will remain in compliance with the U.S. Mine Safety and Health Act, the U.S. Occupational Safety and Health Act, the U.S. Toxic Substances Control Act, and the U.S. Foreign Corrupt Practices Act. Supplier has and will maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under all Purchase Orders, and the General Terms.
- b. Supplier represents to Buyer, that Supplier is, and the Products are, in compliance with all laws, regulations, statutes and ordinances of all governmental entities, now or hereafter enacted, which regulate any material because it is radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment ("Hazardous Regulations"), including but not limited to Comprehensive Environmental Response Compensation and Liability Act of 1980, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act, the Clean Air Act, the Montreal Protocol, the Toxic Substances Control Act, the Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment as amended from time to time ("RoHS Directive"), Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment, as amended from time to time ("WEEE Directive"), Regulation (EC) No 1907/2006 ("REACH"), any European Union Member State implementations thereof; and similar laws, rules, statutes, treaties or orders and international understandings.
- c. Supplier represents and warrants that all Products it delivers to Buyer are DRC Conflict Free, as defined by and consistent with the U.S. Securities and Exchange Commission's final rule on Conflict Minerals, 17 C.F.R. Parts 240 and 249(b), promulgated pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Supplier agrees to furnish information that Buyer reasonably requests to support its representations under this subsection, including written certification. Additionally, Supplier represents that it is compliant with the UK Modern Slavery Act 2015, and other similar requirements, including U.S. FAR 52.222-50 – Combating Trafficking in Persons.
- d. When applicable, Supplier will provide a Safety Data Sheet (SDS), as prescribed by Buyer ("Data Sheet"), addressed to the attention of the II-VI Hazard Communication Coordinator, for all chemicals & hazardous substances provided under a Purchase Order. Supplier will maintain a catalog of all applicable Data Sheets that are provided in connection with the Supplier's performance of work under a Purchase Order at Buyer's site.
- e. Buyer may utilize Products purchased under a Purchase Order in transacting business with the U.S. Government. When applicable, Supplier will comply with U.S. Executive Order 11246 pertaining to non-discrimination in employment. Supplier also represents and warrants to Buyer that, when applicable, Supplier is in compliance with Section 503 of the Rehabilitation Act of 1973 and the Vietnam Readjustment Act of 1974. Upon request, Supplier will supply Buyer with copies of compliance reports and any other information necessary to demonstrate this compliance.
- f. If Supplier fails to comply with an applicable law, order, rule, ordinance or regulation and, as a result, Buyer is fined or suffers any other penalty or loss, Supplier will pay the fine and costs, or reimburse Buyer for payment. To the extent that Supplier's personnel are required to enter onto Buyer's site or property, Supplier will ensure that its personnel comply with Buyer's health, safety and environmental policies and standards.
- g. Supplier represents and warrants that it will act in a manner consistent with Buyer's "Code of Business Conduct and Ethics" Policy, as amended from time to time, which is located at: [https://www.ii-vi.com/wp-content/uploads/2018/06/2018-02\\_Code\\_of\\_Business\\_Conduct\\_and\\_Ethics.pdf](https://www.ii-vi.com/wp-content/uploads/2018/06/2018-02_Code_of_Business_Conduct_and_Ethics.pdf).

**8. LICENSE GRANT.**

Supplier grants to Buyer, its distributors, and end users, a perpetual, irrevocable, non-exclusive, worldwide, fully paid-up, royalty-free license to use, modify, sell, offer for sale, import, and otherwise dispose of the Products.

**9. CONFIDENTIAL INFORMATION.**

- a. A Party (the "Discloser") may disclose "Confidential Information" to the other Party (the "Recipient"). "Confidential Information" is all information that the Discloser marks confidential or that a reasonable business person would consider confidential.
- b. Recipient may use Confidential Information only for the purpose of buying and selling Products under the General

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Terms and related Purchase Orders (the "Purpose"). Recipient must use a reasonable degree of care to protect Confidential Information and to prevent unauthorized use or disclosure. Recipient may share Confidential Information with its, or any of its employees, directors, agents or third party contractors, who need to know it in connection with the Purpose, and who have agreed in writing to keep confidential Discloser's Confidential Information, or information of a type that would include Discloser's Confidential Information.

- c. Confidential Information does not include information that: (a) was known to Recipient without restriction before receipt from Discloser; (b) is publicly available through no fault of Recipient; (c) is rightfully received by Recipient from a third party without a duty of confidentiality; or (d) is independently developed by Recipient. A Party is permitted to disclose Confidential Information when compelled to do so by law if that Party provides reasonable prior notice to the other Party (unless a law or court order bars giving notice).
- d. Each Party has a duty not to disclose the existence of this agreement, the Purpose, or the nature of the parties' business dealings with each other, without the other Party's prior, written consent.
- e. If a Party breaches this provision, the other Party may seek injunctive and other equitable or similar relief. The parties waive any requirement to post bond, or prove actual damages, in connection with seeking this relief.
- f. After performance related to the final Purchase Order issued under the General Terms is concluded: (i) Recipient's duty to protect Confidential Information that is disclosed hereunder expires five years thereafter, and (ii) the Recipient must destroy or return the Discloser's Confidential Information to the Discloser, except Confidential Information that is automatically stored on a backup system in the ordinary course of business. Confidential Information that is retained and stored remains subject to the same confidentiality and use limitations of this agreement even after its termination.

**10. INDEMNIFICATION.**

- a. Supplier will indemnify and hold Buyer harmless from and against all liabilities, costs, losses or expenses, including reasonable attorneys' fees, incurred or suffered by Buyer as a result of or in connection with any of the following: (i) death, personal injury or tangible property damage caused by an act or omission of Supplier; (ii) Supplier's negligence or willful misconduct; (iii) use of Products by Buyer as contemplated, including any allegation that a Product infringes or misappropriates any intellectual property right of a third party; or (iv) Supplier's breach or alleged breach of any agreement between the Parties, the General Terms, or any additional terms applicable to a Purchase Order.
- b. Buyer will notify Supplier in writing of any claim, act or allegation, promptly after learning of it, and will assist and cooperate in its defense or settlement. Defense and settlement will be at Supplier's sole expense, and Supplier

will pay all damages and costs awarded against Buyer as a result of any arbitration, suit or proceeding.

**11. LIMITATION OF LIABILITY.**

- a. Except as set forth in Section 11.c. below, each Party's maximum aggregate liability for all claims relating to a Purchase Order, the General Terms, whether for breach of contract, breach of warranty or in tort, including negligence, is limited to the greater of (i) three times the amount Buyer actually paid to Supplier during the previous consecutive 12 months immediately prior to the claim, or (ii) US \$2,000,000.00.
- b. Except as set forth in Section 11.c. below, in no event will either Party be liable for any indirect, punitive, special, exemplary, incidental or consequential damages in connection with or arising out of a Purchase Order, or the General Terms (including loss of business, revenue, profits, goodwill or other economic advantage), however they arise (breach of contract, breach of warranty or in tort, including negligence, or otherwise), even if such Party was previously advised of the possibility of such damages, and whether or not the damages are foreseeable.
- c. The limitations in 11.a. and 11b. do not apply to a Party's liability for: (i) death or personal injury resulting from its own acts or omissions; (ii) its own breach of confidentiality obligations; (iii) its own indemnification obligations; or (iv) its own gross negligence or willful misconduct.

**12. INSURANCE.**

- a. Supplier will, at its own expense, carry and maintain insurance in full force and effect with financially sound and reputable insurers, which includes: (i) commercial general liability (including product liability) in a sum no less than US\$3,000,000 for each occurrence and US\$5,000,000 in the aggregate; (ii) workers' compensation insurance in compliance with the applicable laws of each jurisdiction affected by a Purchase Order; and (iii) if the Supplier will use or provide for use of motor vehicles in providing and/or performing the Purchase Order, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of those vehicles, with limits of no less than US\$3,000,000.
- b. If Buyer requests, Supplier will promptly provide Buyer with a certificate of insurance evidencing this coverage.

**13. MISCELLANEOUS.**

- a. For Buyer to assess Supplier's performance under the General Terms, including Supplier's compliance with respect to pricing, specifications, warranties and certifications, Buyer or its designated representative(s) have the right, with reasonable notice to Supplier, to access and audit Supplier's facilities, books, records, goods and services related to the Supplier's compliance with the General Terms. The costs of any audit will be paid by Buyer, unless the audit reveals nonconformance by Supplier, in which case Supplier will

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- promptly reimburse Buyer for the reasonable costs of the audit.
- b. Time is of the essence in Supplier's performance. Supplier must immediately notify Buyer whenever Supplier has knowledge of an actual or potential delay to the timely performance of a Purchase Order. If Supplier refuses or fails to meet the delivery date(s) specified in a Purchase Order, Buyer may, without limiting its other rights and remedies, direct expedited routing and charge excess costs to Supplier, or cancel all or part of the Purchase Order.
  - c. The General Terms, along with any other written agreement signed by the Parties contemporaneously with, or after execution of, the General Terms, comprise the complete understanding and contract between Supplier and Buyer with respect to their subject matter, and supersede any prior written or oral understandings on the same subject, except for an active NDA between the Parties. No purported amendment, modification or waiver of a provision will be binding on Buyer unless it is in a written document signed by an authorized representative of Buyer. Any waiver is limited to the circumstance or event specifically referenced in the written waiver document. Headings are for purposes of reference only and shall not in any way limit or affect the meaning or interpretation of any of the terms. If the scope of any of the provisions of this Agreement is too broad or otherwise unenforceable to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties consent and agree that the scope may be judicially modified to the extent necessary to conform to law.
  - d. Supplier may not assign or subcontract any of its rights or obligations under the Agreement without Buyer's prior written consent. Supplier is responsible for the performance or non-performance of any subcontractor and will indemnify, defend and hold harmless Buyer from and against all claims, actions, losses, damages, costs and expenses (including reasonable attorneys' fees) arising from a subcontractor's acts or omissions.
  - e. Supplier may not announce, describe, or confirm the existence or terms of this Agreement or use the name, logo, trademark, or other symbol of Buyer (the "**Buyer Name**") in publicity releases or advertising without securing the prior written consent of Buyer.
  - f. If a provision of a Purchase Order, or the General Terms, is held to be unenforceable by the final order of any court of competent jurisdiction, that provision will be severed and not affect the interpretation or enforceability of the remaining provisions.
  - g. The General Terms are governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without reference to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the General Terms. Supplier consents to the exclusive jurisdiction and venue of the Federal and State courts located in Allegheny County, Pennsylvania, as the exclusive forum for the resolution of disputes.
  - h. Title to and all other rights in tangible property that Buyer provides to Supplier, or that Supplier produces in submitting a bid or estimate to Buyer, or in carrying out a Purchase Order, will be vested in Buyer, and Supplier agrees to return or deliver all tangible property to Buyer promptly, on request. Supplier assigns to Buyer all copyrights in and to any literary property produced by Supplier for Buyer.
  - i. Unless Buyer agrees otherwise, all special purpose tooling or materials that Supplier uses to fulfill a Purchase Order: (i) remains the property of Buyer; (ii) is removable at any time upon demand by Buyer without additional cost; (iii) will only be used by Supplier in filling orders from Buyer; (iv) will be kept separate from Supplier's other tools and materials; and (v) will be clearly identified by Supplier as the property of Buyer.
  - j. As used in this Agreement, "**Force Majeure**" means an act or event that: (a) prevents a Party from performing its obligations under this Agreement or an Order or SOW; (b) is beyond the reasonable control of and not the fault of the Party; and (c) could not be avoided or overcome, despite the Party's best efforts to do so. Force Majeure events include fire, hurricane, flood, storm, riot, acts of war, government, or other embargoes or restrictions on shipping or transport. Force Majeure events do not include economic hardship, labor strikes, supply shortages, changes in market conditions, lack of internet access, viruses, security incidents, insufficiency of funds, changes in the law, court orders, or legislative, judicial, or administrative rulings. Neither Party shall be liable for any delay in performing, or for failing to perform, its obligations under this Agreement resulting from Force Majeure if that Party uses its commercially reasonable efforts to mitigate its effects. The Party affected by a Force Majeure must promptly notify the other Party of the event (not later than five business days after discovery), and any impacted delivery dates shall be extended for the period of delay or inability to perform. If a Party's performance is delayed by Force Majeure for fifteen business days or more, the unaffected Party may at any time thereafter terminate this Agreement or an impacted SOW or Order upon notice.
  - k. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.
  - l. This Agreement and all SOWs, Purchase Orders, change orders, amendments, or other documents requiring signature may be executed using digital or electronic signatures, and those documents that are digitally or electronically executed will be legally binding.