

## IVEK Corporation - Terms and Conditions of Sale

**1. Acceptance of Terms and Conditions of Sale.** By placing an order with IVEK Corporation (“IVEK”), Buyer agrees to be bound by these Terms and Conditions of Sale. IVEK shall not be bound by any other terms and conditions, regardless of whether Buyer tenders terms and conditions with an order or otherwise. These Terms and Conditions of Sale supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter and shall prevail over any conflicting or additional terms of any quote, order, previous agreement, acknowledgment or similar communications between IVEK and Buyer. As used in these Terms and Conditions of Sale, “Product” or “Products” includes all physical IVEK Products, individually and collectively.

**2. Pricing.** All prices are quoted in currency specified unless otherwise expressly stated and are valid for 30 days. Buyer is solely responsible for payment of all shipping charges, freight costs, taxes, import fees and duties, insurance, value added taxes, and any other charge incident to Buyer’s receipt of Products (“Additional Charges”).

**3. Payment.** Unless otherwise agreed in writing by IVEK, payment to IVEK shall be made in advance by electronic funds transfer in the currency specified. A late payment charge of one and a half (1.5%) percent per month, or the maximum percentage rate permitted by law, if lower, shall be charged on all past due balances. Buyer agrees to pay all costs and expenses incurred by IVEK in collecting or attempting to collect past -due balances, including, but not limited to, third party collection fees, reasonable attorneys’ fees, legal expenses and court costs. All credit card payments over \$1000 will include a processing fee of 3% of the total payment.

**4. Shipping Terms.** All Products delivered by IVEK to Buyers in the United States shall be FCA IVEK’s distribution center Incoterms® 2010, with risk of loss passing to Buyer upon IVEK’s delivery of the Products to a common carrier. All Products delivered by IVEK to Buyers outside the United States shall be DAP Buyer’s facility Incoterms® 2010. Where IVEK arranges for shipping, the costs of shipping and insurance will be added to Buyer’s invoice. If Buyer arranges shipping, then prior to shipment it shall provide IVEK with a certificate of insurance for the full value of the goods to be shipped. Delivery times quoted are estimates only and IVEK shall not be liable for delays in delivery.

### **5. Acceptance by Buyer, Cancellations & Returns.**

*(a) Acceptance by Buyer.* Shipments shall be deemed to be accepted by Buyer upon receipt of shipment. Any discrepancy in shipment quantity must be reported to IVEK within five (5) days of Buyer’s receipt of shipment.

*(b) Cancellations.* Buyer may cancel any order without incurring any charges within seventy-two (72) hours from the time Buyer e-mails or faxes its Purchase Order or a signed and dated copy of IVEK’s Order Acknowledgment. Any cancellation thereafter but prior to shipping shall be subject to a re -stocking fee of thirty-five percent (35%) and payment of all custom engineering fees related to the Products on the Purchase Order or Order Acknowledgment. Cancellations after shipment are subject to paragraph (c) below.

*(c) Returns.* Except for those Products which are sold to Buyer as not returnable, Buyer may return any Product to IVEK, provided, however, that as a condition to such return, Buyer must: i) comply with paragraph 11 below; ii) pay IVEK a re-stocking fee of thirty-five percent (35%) of the purchase order price for such Product; and (iii) pay IVEK all custom engineering fees related to such Product. IVEK shall not be obligated to accept for return any Product which is damaged after it leaves IVEK’s premises or distribution point. Upon acceptance of a return by IVEK, IVEK shall issue a credit to Buyer of the applicable amount, which credit may be used only against future purchases or other outstanding invoices.

**6. Compliance with Laws, Rules & Regulations.** Buyer acknowledges and accepts that: i.) Products may be exported from the United States only in accordance with US Export Administration Regulations and diversion contrary to US law is prohibited. Accordingly, Buyer warrants and represents that it is eligible to receive Products under US law and the laws of Buyer’s jurisdiction and Buyer agrees to abide by all export, import and re-export restrictions; ii.) Buyer shall be solely responsible for compliance with all laws, rules and regulations pertaining to the use of any Product, including without limitation any use that

requires approval from any governmental entity or authority with respect to research, testing or use in commerce; iii.) Products sold for biomedical purposes shall only be used for research purposes; iv.) any approval required by the US Food and Drug Administration, Internal Review Board (IRB), Human or Animal Experimentation Committee or other governmental entity or authority, whether of the US or any other jurisdiction, must be obtained by Buyer at its sole cost and effort; v.) IVEK expressly disclaims compliance with any and all such laws, rules, and regulations; and vi.) Buyer accepts full and complete responsibility for any such compliance.

**7. Limited Warranty.** IVEK WARRANTS AND REPRESENTS THAT, UNLESS IVEK SPECIFIES OTHERWISE IN WRITING, ALL PRODUCTS SHALL BE FREE FROM MATERIAL DEFECTS IN MATERIALS AND WORKMANSHIP FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF SHIPMENT BY IVEK TO BUYER. THE FOREGOING WARRANTY EXTENDS ONLY TO THE ORIGINAL BUYER AND SUCH WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE. EXCEPT FOR THE SPECIFIC WARRANTIES HERETOFORE DESCRIBED, IVEK EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OF GOODS OR OF FITNESS FOR A PARTICULAR PURPOSE OR ANY PURPOSE. BY ACCEPTING DELIVERY OF ANY PRODUCT, BUYER ACKNOWLEDGES AND AGREES THAT IVEK HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO OR FOR THE BENEFIT OF BUYER WHICH CONTRADICT ANY OF THE FOREGOING.

**8. What Is Not Covered.**

Notwithstanding the limited warranty contained in paragraph 7 above, such limited warranty does not cover: i) any Product which, in IVEK's sole judgment, has been subjected to abuse, accident, alteration, modification, tampering, negligence, misuse, faulty installation, lack of reasonable care, repair or service in any way that is not contemplated in the documentation for such Product; ii) any Product, the model or serial number of which has been altered, tampered with, defaced or removed; iii) the initial installation, installation and removal of any Product for repair; iv) shipping costs; v) operational adjustments covered in the operating manual for such Product; vi) normal maintenance; vii) damage occurring in shipment or due to acts of nature, terrorism, failures due to power surge or other force majeure causes; viii) cosmetic damage; ix) any hardware, software, firmware or other Product or service provided or furnished by anyone other than IVEK; x) Products that have been used outside IVEK's technical specifications for such Product; xi) refurbished Products; and xii) Products which have been purchased through an inventory clearance or liquidation sale or other sale specifying that such Product is being sold "as is." Repair by anyone other than IVEK will void any applicable warranties.

**9. Limitation Of Liability And Indemnification.** IN NO EVENT SHALL IVEK BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR OPPORTUNITY OR ANY DAMAGE WHICH MAY ARISE, IN WHOLE OR IN PART, FROM OR IN CONNECTION WITH THE USE, MISUSE OR NONUSE OF ANY PRODUCT. BUYER'S SOLE AND EXCLUSIVE REMEDY SHALL IN NO EVENT EXCEED THE REPAIR, REPLACEMENT OR COST OF THE SPECIFIC PRODUCT PURCHASED FROM IVEK. BUYER HEREBY INDEMNIFIES IVEK AND ITS PRINCIPALS, SHAREHOLDERS, OFFICERS, EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS AND DISTRIBUTORS ("RELATED PARTIES") FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, COURT COSTS AND LEGAL EXPENSES) ARISING OUT OF OR RELATED TO: I) ANY USE OF ANY PRODUCT BY BUYER OR UNDER BUYER'S DIRECTION, CONTROL OR AUTHORIZATION, WHETHER SUCH USE IS OF THE PRODUCT ALONE OR IN CONJUNCTION WITH OTHER PRODUCTS OR GOODS, TANGIBLE OR INTANGIBLE; AND II) ANY BREACH BY BUYER OF ANY WARRANTY, REPRESENTATION, COVENANT OR ACKNOWLEDGEMENT MADE BY BUYER IN THESE TERMS AND CONDITIONS OF SALE.

**10. Warranty Repair.** IVEK's sole obligation with respect to any Product which is found to contain any material defect in materials or workmanship within the applicable warranty period shall be, at IVEK's sole discretion, either to repair or replace such Product at no charge to the original buyer, or to refund the purchase price upon return of the defective Product to IVEK. The replacement Product need not be new (i.e., it may be used or reconditioned) or be of identical make, model or part, so long as IVEK has

reasonably determined that it is substantially equivalent or superior in all material respects to the Product being replaced. Repaired or replacement Products will be warranted for the remainder of the original applicable warranty period. All Products (including any part thereof) replaced by IVEK or for which the purchase price is refunded shall become the property of IVEK upon replacement or refund. All Warranty Repair returns shall comply with IVEK's return policy provided in paragraph 11 below.

**11. RMA and Warranty Repair Return Policy.**

If the Product is believed to be defective and is still in warranty, or if IVEK has otherwise agreed to accept return of a Product, the Buyer shall: i.) if the Product is alleged to be defective, provide IVEK with a written description in sufficient detail to allow IVEK to confirm such defect; ii.) obtain a Return Merchandise Authorization (RMA) number from IVEK; iii.) if requested by IVEK, provide written proof of purchase of the Product (such as a copy of the dated purchase invoice for the Product); iv) after an RMA number is issued, package the Product securely in the original or other suitable shipping package to ensure that it will not be damaged in transit, with the RMA number prominently marked on the outside of the package; and v.) within fifteen (15) days of issuance of the RMA, ship the Product at Buyer's sole expense to IVEK or its distribution point, as indicated by IVEK. In addition:

(a) If the Product is being returned for repair, Buyer must not include any manuals or accessories in the shipping package. IVEK will only replace the defective portion of the Product and will not ship back any accessories;

(b) Buyer is responsible for all shipping charges to IVEK. No Cash on Delivery ("COD") is allowed. Products sent COD will either be rejected by IVEK or become the property of IVEK, at IVEK's sole discretion.

(c) Buyer shall fully insure any Product for return to IVEK and IVEK shall in no event be responsible for any shipment lost in transit.

(d) Repaired or replaced Products will be shipped to Buyer via any common carrier selected by IVEK, with shipping charges prepaid by IVEK. Expedited shipping is available if shipping charges are prepaid by Buyer and only upon request.

(e) IVEK may reject or return any Product that is not packaged and shipped in strict compliance with the foregoing requirements or for which an RMA number has not been obtained or is not visible from the outside of the package. The Product owner agrees to pay IVEK's reasonable handling and return shipping charges for any Product that is not packaged and shipped in accordance with the foregoing requirements or that is determined by IVEK not to be defective or non-conforming.

**12. Copyright Statement.** No publication or documentation regarding, accompanying or contained in any Product may be reproduced, in whole or in part, in any form or by any means, or used to make any derivative work, including without limitation any translation or adaptation, without IVEK's prior written consent.

**13. Force Majeure.** Except for the obligations to make payments, neither party shall be bound to meet any obligation if prevented from doing so as a consequence of force majeure.

**14. Notice.** All notifications and communications between the parties relating to this Agreement or the subject matter hereof shall be made in writing and signed by a person duly authorized to provide such notice.

**15. Entire Agreement.** These Terms and Conditions of Sale shall not be modified or amended, except in writing and signed by Buyer and IVEK.

**16. No Assignment by Buyer.** These Terms and Conditions of Sale may not be assigned, sublicensed, leased, sold or otherwise transferred by Buyer without prior written consent from IVEK, and any transfer made without such prior written consent shall be null and void. These Terms and Conditions of Sale and any rights granted herein by IVEK are personal to Buyer.

**17. Enforceability/Severability.** If any provision of these Terms and Conditions of Sale shall be held void, voidable, invalid or inoperative, no other provision hereof shall be affected as a result, and accordingly, the remaining provisions shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein, provided, however, that if such void, voidable, invalid or inoperative provision is a material term or condition, the parties shall be compelled to supply a substitute provision, negotiated in good faith, which comes closest to their original intention.

**18. Waiver.** No provision of these Terms and Conditions of Sale 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.

**19. 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.

**20. Rights of Third Parties.** Nothing in these Terms and Conditions of Sale shall be construed so as to give any right or remedy to any third party whatsoever.

**21. Governing Law.** The sale of products by IVEK and these Terms and Conditions of Sale, together with all invoices, correspondence and other documents exchanged between IVEK and Buyer, shall be governed by and construed in accordance with the laws of the State of Vermont, USA, without regard to principles of conflicts of law or to the United Nations Convention on Contracts for the International Sale of Goods (CISG), which is hereby specifically disclaimed by the parties with respect to all of the foregoing. Any action, suit or proceeding arising out of or related to these Terms and Conditions of Sale, the documents heretofore described and the related subject matter of the foregoing shall be brought only in a federal or state court of competent jurisdiction located in the county in which IVEK has its principal place of business at the time of filing of such action, suit or proceeding, and the Parties hereby unconditionally and irrevocably consent and submit to such exclusive jurisdiction and waive any objection that either of them may now or hereafter have with respect thereto.

**22. Headings.** The paragraph headings in these Terms and Conditions of Sale are solely for the convenience of the parties and have no legal or contractual significance.

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