

# General Terms & Conditions of Purchase of IVOCLAR



## 1. General remarks, subcontracting and legal regulations

These General Terms and Conditions of Purchase ("Terms and Conditions") apply exclusively to all purchases of goods, software and/or services («Deliverables») by the IVOCLAR Group company designated in the order (referred to below as "IVOCLAR"). "Supplier" shall mean any person, firm or company to whom IVOCLAR's purchase order is issued. These Terms and Conditions shall be included in any future individual contract of purchase between IVOCLAR and Supplier. Upon Supplier's acceptance of a purchase order these Terms and Conditions shall be binding. Any different or additional terms and conditions of Supplier are hereby expressly rejected and shall be of no effect nor in any circumstances binding on IVOCLAR. Where these General Terms and Conditions require a communication to be in writing, e-mail, fax and other forms of written communication shall suffice. Supplier may not subcontract any part of an IVOCLAR order to any third parties without the express written agreement of IVOCLAR. The Supplier shall not be relieved of any of the Supplier's obligations under these Terms and Conditions by the appointment of a subcontractor. The Supplier shall remain primarily liable for the acts or omissions of any subcontractors it appoints.

## 2. Purchase orders, prices, setoff rights, no exclusivity

Only written purchase orders issued by IVOCLAR are valid. Verbal or phone orders, as well as additions, changes or different conditions, are recognized only if they have been confirmed in writing by IVOCLAR. Unless expressly stated otherwise in a purchase order issued by IVOCLAR or a written agreement signed by an authorized IVOCLAR representative, IVOCLAR is not committing to any exclusive arrangements with any Suppliers and is not committing to purchase any minimum or maximum volumes. IVOCLAR may terminate its purchase order in whole or in part upon written or electronic notice to Suppliers at any time prior to the delivery of the Deliverables. Upon such notification, Supplier shall immediately stop all work and/or shipment of goods and cause its suppliers and/or subcontractors to cease their work against the purchase order and protect property in Supplier's or subcontractors' possession for which IVOCLAR has or may require an interest. In the event of the termination of an order for custom products (i.e. products created or customized by Supplier at IVOCLAR's request to meet IVOCLAR's specific needs or specifications), IVOCLAR shall only pay the actual direct unavoidable costs incurred up to the time of termination which are properly allocable to, and arise directly from, this termination less salvage value, provided recognized accounting practices and principles are used and consistently applied. Suppliers shall not be entitled to any anticipatory profits with respect to the terminated portion. In no event shall termination charges exceed the price agreed for the terminated items nor shall IVOCLAR be liable for incidental or consequential liabilities. Supplier shall submit any termination claim to IVOCLAR within thirty (30) calendar days after a termination notice. No payment will be due for terminations of purchase orders for standard products (i.e. products of Suppliers' standard offering to the market). To the extent VAT or other sales tax applies to the purchase of Deliverables by IVOCLAR from Supplier, Supplier's invoice shall state separately the amount of applicable VAT or other sales tax, compliant with applicable regulations and IVOCLAR specific requirements communicated to Supplier. All offers, visits, services and drafting of documents relating to the preparation of offers will be free of charge. IVOCLAR shall be entitled to set off the amount owing at any time from Supplier to IVOCLAR (or any of IVOCLAR's affiliated companies) against any amount payable at any time by IVOCLAR in connection with the purchase.

## 3. Delivery

Transportation is subject to the conditions stipulated in the purchase order. Supplier is responsible for proper packing and labeling of products and packaging. The delivery term shall be set out in the purchase order according to INCOTERMS® 2020, in case the delivery term is not set out in the purchase order or any agreement, DDP INCOTERMS® 2020 will apply. Risk and title is deemed transferred when the ordered goods arrive at IVOCLAR's premises or such other place of delivery indicated in the purchase order. Unless contrary instructions are given in writing to Supplier, transport insurance is the responsibility of Supplier. Deliverables must arrive at / be provided to IVOCLAR on the agreed delivery date. If Supplier has reason(s) to believe that timely delivery is partly or completely unlikely, Supplier shall immediately inform IVOCLAR by indicating the reason(s) and the estimated length of the delay. In case of delay Supplier shall, at its own cost, choose the most expedient means of transport or delivery. Partial or advance deliveries are only permitted with the express written agreement of IVOCLAR. IVOCLAR has the right to inspect and reject (if not compliant) all received goods. If appropriate IVOCLAR shall check deliveries within a reasonable time period and notify Supplier of any patent deficiency. No inspection, tests, approval, design approval, or acceptance of the Deliverables relieves Supplier from responsibility for warranty, latent defects, fraud, or negligence. Payment by IVOCLAR does not constitute a waiver of a possible complaint. If Supplier fails for any reason whatsoever to effect delivery on the agreed delivery date, IVOCLAR may claim damages to the amount of 1 % of the net price of the goods per calendar day, up to a maximum of 10% of the price of the late Deliverables and /or cancel the order without any payment being due. This is without prejudice to any further legal claims. Deliveries in excess or short of the ordered quantity may only be made with IVOCLAR's express written agreement. If an excess amount has been delivered, IVOCLAR has the right to return the unordered excess amount at the Supplier's cost without warning and/or to charge Supplier for all additional costs (e.g. storage).

## 4. Warranty

Supplier warrants and guarantees that the Deliverables are free of deficiencies which might affect their value or fitness for the intended use, are free of design or other defects, have the promised characteristics and meet the stipulated performance and specification requirements. Supplier guarantees that services will be timely, expertly and properly performed, by highly qualified personnel with a high standard of care. Supplier guarantees the performance of services in line with the agreed service levels without interruption. Supplier is not entitled to suspend any services

for any reason. Services will be provided at the agreed locations only. Service locations may not be changed without IVOCLAR's prior consent. Supplier warrants to promptly repair any deficiencies in the Deliverables or to deliver replacements satisfactory to IVOCLAR, in each case free of charge, at IVOCLAR's choice and at Supplier's risk. In urgent cases, or if Supplier is tardy, IVOCLAR shall be entitled at its option to have the defects repaired or to replace the defective Deliverables, in either case at Supplier's cost. IVOCLAR shall in its sole discretion, at Supplier's cost, be entitled to recall such Deliverables that may have the potential to cause danger to the assets of third parties, human health or safety of life. IVOCLAR shall be entitled to have defective services re-performed any time after IVOCLAR discovers such defects in the performance of services. Supplier's guarantees shall also extend to parts and Deliverables manufactured or provided by subcontractors, unless expressly agreed upon in writing to the contrary and alternative claims against the subcontractors are available to IVOCLAR. Unless expressly agreed otherwise in writing, the guarantee period for equipment and hardware shall be twenty-four (24) months and twelve (12) months for services. The guarantee period begins upon acceptance of the Deliverables by IVOCLAR. Replacements and repaired items shall also be covered by the same guarantee as the delivered goods.

## 5. Invoices and payment

Invoices must be submitted to IVOCLAR with proof of origin and with the IVOCLAR order number, according to applicable regulations. Unless otherwise agreed, payment shall be due within 60 days after receipt of the invoice, but no sooner than 60 days after the Deliverables have been received or accepted respectively. Assignment of accounts receivable to third parties shall not be recognized unless expressly agreed to in writing by IVOCLAR.

## 6. Tools and materials

Tools, dies or other material provided to Supplier by IVOCLAR, or which have been paid for in part or in full by IVOCLAR, shall not be used to execute the orders of third parties or for any other purpose without the express written agreement of IVOCLAR. Such tools, dies and material shall be clearly marked as property of IVOCLAR and they shall be suitably stored, maintained and insured by Supplier. They remain the property of IVOCLAR, and their return can be requested by IVOCLAR at any time.

## 7. Technical data and confidentiality

All information, data, specifications and drawings provided by IVOCLAR to Supplier for the purpose of providing the relevant Deliverables prior to or subsequent to the formation of the contract ("IVOCLAR Information"), may only be used by Supplier as necessary for executing his obligations under the contract. Supplier may not use IVOCLAR information for any other purposes, including copying IVOCLAR products, be-it for itself or for others. Supplier may not copy, disclose or make any such information available to third parties. IVOCLAR's provision of information to Supplier shall not be deemed to transfer any proprietary rights in such information to Supplier, and all rights remain with IVOCLAR. Upon demand, all documentation including all parts and reproductions thereof shall immediately be returned to IVOCLAR. Supplier shall consider the purchase order itself, as well as any related work and deliveries, as trade secrets and shall therefore treat them confidentially. Supplier shall not advertise or publish the fact that IVOCLAR has contracted to purchase goods or services from IVOCLAR, nor shall any information relating to the order be disclosed without IVOCLAR's written permission.

## 8. Intellectual property rights

Supplier shall ensure that the delivery and use of the Deliverables do not infringe a patent, design, copyright or any other rights of third parties and any restrictions must be communicated to IVOCLAR before an order is placed, latest however upon order confirmation. Supplier agrees that any information, drawings, know-how, specifications, designs, concepts, techniques, developments, inventions, technologies and other work products generated or developed in the course of work performed under the Agreement by Supplier and any intellectual property and other proprietary rights therein or thereto shall vest in IVOCLAR. Supplier assigns or shall cause to be assigned to IVOCLAR all right, title and interest to any and all such items and rights and to do everything necessary to perfect such rights and to protect IVOCLAR's interest therein. Supplier shall inform any third parties who might seek recourse thereon of IVOCLAR's proprietary rights; Supplier shall immediately inform IVOCLAR of such an event. Supplier shall indemnify, defend and hold IVOCLAR harmless from and against any and all penalties, fines, costs, losses and liability incurred by IVOCLAR related to any claims for actual or alleged infringement related to the Deliverables. This provision shall not apply to purchase orders for items entirely designed by IVOCLAR. All rights, title and interest to any analyses, planning and design documents, knowledge, idea's, creations, programming material (software in source code and object code), inventions, copy rights or other intellectual property, including associated documentation, reports and drawings, whether patentable or not, resulting from any discussions between the parties in the framework of a possible relationship or order or from any development or other activities (i) conducted by or with the cooperation of IVOCLAR, (ii) conducted by Supplier based, in whole or are part, on IVOCLAR's instructions, IVOCLAR's specifications, any information provided by IVOCLAR or (iii) ordered by and/ or (directly or indirectly) paid for by IVOCLAR, as well as any data, information, or reports generated through IVOCLAR's use of the Deliverables (the "Results"), shall belong fully and exclusively to IVOCLAR. The Results may only be used by Supplier as necessary for executing his obligations under the contract. Supplier may not use the Results for any other purposes, be-it for itself or for others, and must keep them confidential. Supplier shall not supply any Deliverables based on IVOCLAR's design or customized for IVOCLAR to any third parties and Supplier shall indemnify, defend and hold IVOCLAR harmless against any claims, costs, losses or liabilities incurred by IVOCLAR as a result of Supplier's breach hereof.

## 9. Software

Delivery of software occurs when the software is made available to IVOCLAR, the software documentation and all necessary information to install and activate the software (including keys and entitlement documentation) is provided, and the software is ready for installation or operational use. If software installation is part of the order, delivery shall have occurred only when the software has passed the formal acceptance test, (such acceptance test being an integral part of the installation service), or, in the absence thereof, if the software is installed and ready for the intended use, fulfilling the agreed specifications. Unless expressly agreed otherwise in writing, Supplier grants IVOCLAR a worldwide, irrevocable, transferable, sub-licensable, non-exclusive, royalty-free license to use the software. IVOCLAR will not be bound by license terms of any third party, which have not been explicitly mentioned in the software documentation or otherwise informed to IVOCLAR in writing. Supplier guarantees that software possesses all material functions and features described in, and performs in accordance with, the software documentation. Supplier guarantees that software has been developed in accordance with the professional standards of the industry and it does not contain any code or functionality that would allow unauthorized access, use, removal, manipulation or destruction of systems, data or software, such as spyware, trap doors, time bombs or disabling devices. Unless otherwise agreed in writing the guarantee period for embedded software shall be the same as the guarantee period for the goods in which it is embedded and the guarantee period for stand-alone software is 24 (twenty-four) months from delivery. Supplier will immediately provide updates free of charge for critical errors that relate to security, functionality and usability of the software. Supplier shall provide maintenance and support for any version or release of the software for at least 24 (twenty-four) months. All third-party software components included in the software, including, but not limited to Open-Source Software, must be expressly identified in the software documentation and the respective license terms must be provided. None of the software license terms may limit the intended commercial use of the software or contain any obligations or conditions that may provide a legal right to any third party to access such software, or that could otherwise impose any limitation or condition on IVOCLAR's use, reproduction, modification, distribution or conveyance of such software ("Copyleft Effect"). Before confirmation of the order, the Supplier shall provide IVOCLAR with the written confirmation stating that under the normal use of Open-Source Software neither the Deliverables nor IVOCLAR products shall be subject to a Copyleft Effect. Supplier shall indemnify, defend and hold IVOCLAR, its distributors and customers harmless against any claims or liabilities which may arise as a result of Supplier's breach hereof. IVOCLAR has the right to modify and enhance (or have third parties modify and enhance) the software or to create any other derivative work based upon the software. IVOCLAR has the right to commission such modifications, enhancements and derivative work, including software, to its customers. Any information or know-how relating to the use by IVOCLAR of the software in its products, operations or elsewhere, is IVOCLAR Confidential and proprietary Information and may not be shared with third parties without IVOCLAR's written consent.

## 10. Changes to deliverables and no assignment

Supplier must not modify any specifications of Deliverables or components thereof without IVOCLAR's prior written approval. Supplier must inform IVOCLAR in writing at least 90 days prior to an intended modification of specifications of Deliverables. In that case, IVOCLAR is entitled to terminate the order, to claim a price reduction and/or compensation of all costs and damages resulting thereof. The Suppliers obligations herein may not be assigned by Suppliers, nor may Suppliers delegate the performance of any of its duties hereunder without Supplier's written consent.

## 11. Termination support

Irrespective of the grounds of the termination, the Supplier must continue to perform the Services during the notice period and must provide all termination assistance reasonably required by IVOCLAR for the transfer of the services to IVOCLAR or its designee, migration and/or phase out at the then applicable rates for support services as agreed between the Parties. If required for operational continuity, IVOCLAR may require the extension of the Services beyond termination at equivalent conditions for a period of 6 months.

## 12. Liability, general indemnification, insurance

Supplier shall be liable to the full extent for any damage related to the Deliverables and breach of Supplier's obligations under these Terms and Conditions. Supplier shall indemnify, defend and hold IVOCLAR, its employees, officers, directors, customers and partners ("Indemnified Parties"), harmless from and against any loss suffered and any liability incurred by the Indemnified Parties, including without limitation product liability, damages (whether direct or indirect (including, without limitation, loss of profits), fines, penalties, costs and expenses (including reasonable attorney's fees) and third party claims, whenever such loss or liability is related to or arising out of Supplier's (or its employees, agents or subcontractors) failure to comply with any of its obligations under these Terms and Conditions, any defects in Deliverables, conduct, violation of law, or negligent act or omission. Supplier shall maintain insurance coverages at levels of insurance acceptable to IVOCLAR in IVOCLAR's sole discretion and shall provide IVOCLAR with written proof of insurance when requested.

## 13. Compliance with laws

Supplier shall comply, and certifies that it currently complies with all laws, regulations, and standards, including but not limited to those relating to medical devices, material compliance, environmental compliance, employee protection, export and import control and product safety applicable to the deliverables, including the manufacturing, transportation, worldwide use and delivery thereof. All products, services, and technologies shall only be exported, re-exported,

imported, or transferred in accordance with all applicable laws. Unless stipulated otherwise by IVOCLAR in writing, Supplier acknowledges that any Deliverable may be used, integrated in, or sold with IVOCLAR products intended for sale worldwide, including but not limited to the EEA, the USA, and China. Supplier must ensure compliance of the Deliverables with all applicable laws (including material compliance, product safety laws, medical device laws) in such end destinations accordingly. Supplier confirms that it complies with the IVOCLAR Supplier Code of Conduct set out on Suppliers: Ivoclar Upon IVOCLAR 's request, Supplier shall immediately provide all relevant information and certifications relating to its and its sub-suppliers' compliance with any applicable law, regulation, standard, or IVOCLAR Supplier Code of Conduct. Upon reasonable notice IVOCLAR shall be entitled to carry out on-site/off-site audits of the Supplier and its sub-suppliers. IVOCLAR may carry out such audits in person or through a third party. Supplier shall inform IVOCLAR about goods containing substances, that are subject to statutorily imposed restrictions and/or information requirements (e. g. REACH, RoHS), including those set out in the so-called "List of Restricted and Declarable Substances For Electrical and Mechanical Products" ([www.bomcheck.net/suppliers/restricted-and-declarable-substances-list](http://www.bomcheck.net/suppliers/restricted-and-declarable-substances-list)) applicable at the time of delivery. Supplier must promptly inform IVOCLAR, if Supplier cannot ensure compliance with any law, regulation, or IVOCLAR Supplier Code of Conduct, or if compliance is at risk for future deliveries especially in the case of updates to material compliance laws and regulations. The obligations under this section constitute material obligations of the Supplier and Supplier shall indemnify, defend and hold IVOCLAR harmless against any claims or liabilities which may arise as a result of Supplier's breach hereof.

## 14. Protection of data; personal data

Supplier must ensure that all IVOCLAR data it holds, is kept secure and must implement all appropriate technical and organizational measures and controls to protect the IVOCLAR data and ensure the ongoing confidentiality, integrity and availability thereof. Upon termination, and anytime at IVOCLAR's reasonable request, Supplier must provide to IVOCLAR or its designee, all such requested IVOCLAR data in a customary format. In the framework of IVOCLAR's relationships with Supplier, IVOCLAR and Supplier may each process limited personal data of the other Party's employees or contractors, as necessary for the execution of the contract and their obligations hereunder (e.g. to process & execute orders, process payments, arrange shipments and deliveries, to provide services, and relating correspondence). Supplier will comply with all data privacy obligations applicable to it and will ensure that its affiliates and subcontractors, who have access to personal data of the other Party, are subject to the same data privacy obligations. Supplier is not entitled to use, store and process any IVOCLAR related personal data obtained under or in connection with the business relationship, unless explicitly permitted by IVOCLAR in writing and subject to withdrawal of such permission at any time. Should any services provided by Supplier involve the processing of personal data for or on behalf of IVOCLAR, the Parties will enter into a data processing agreement agreeable to IVOCLAR. The obligations under this section constitute material obligations of the Supplier and Supplier shall indemnify, defend and hold IVOCLAR harmless against any claims or liabilities which may arise as a result of Supplier's breach hereof.

## 15. Venue and governing law

A purchase order as well as the commercial and contractual relationship between IVOCLAR and the Supplier shall be governed in accordance with the laws of IVOCLAR's principal place of business in the country where such purchase order was issued without regard to any conflict of law provisions. The Vienna Convention on the International Sale of Goods shall not apply. In the event of disputes arising out of, or in connection with, the purchase order or with these Terms and Conditions, the Parties hereby declare that the courts at the place where IVOCLAR has its registered office shall have sole jurisdiction. However, IVOCLAR is also entitled to file actions against the Supplier in any other courts holding jurisdiction over him.

## 16. Equal opportunity employer and employment immigration compliance (applies to U.S. suppliers only)

IVOCLAR is an equal opportunity employer and federal contractor. Consequently, the parties agree that, to the extent applicable: (1) they will comply with the following laws, which are incorporated herein by reference: Executive Order 11246, and Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A) relating to the notice of employee rights under federal labor laws; and (2) this contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations, respectively, prohibit discrimination against qualified protected veterans and 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. EMPLOYMENT IMMIGRATION COMPLIANCE. This Purchase Order is subject to the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and any successor statutes thereto. In connection with the execution of this Purchase Order, Suppliers hereby represents, warrants, and covenants that Suppliers has complied, and will continue to comply, in all respects, with all U.S. immigration laws, statutes, rules, codes, orders, and regulations, including the employment eligibility verification requirements set forth in the IRCA.

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