

**ILX LIGHTWAVE CORPORATION**  
**ILX SUPPLIER GENERAL TERMS AND CONDITIONS OF PURCHASE**

- 1. DEFINITIONS.** “Goods” shall mean the materials, products, data, software and/or services identified on the applicable Buyer purchase order or elsewhere in the Order. “Buyer” shall mean ILX Lightwave Corporation. “Seller” shall mean the legal entity which is providing the Goods to Buyer. “Order” shall mean these terms and conditions, the terms and conditions on the applicable Buyer purchase order (including, without limitation, the description of the Goods and information related to delivery and prices for such Goods), and any Change Order (as set forth in Section 4 herein) issued by Buyer in writing; provided, however, that reference to any Seller offer, proposal or quotation in this Order shall not constitute a modification of any of the terms and conditions of this Order.
- 2. ACCEPTANCE.** Acceptance of this Order by Seller is expressly limited to the terms and conditions contained in this Order. Any terms or conditions stated by the Seller in any prior, concurrent or subsequent proposal, offer, quotation, acknowledgement or other document, are deemed by Buyer to be a material alteration of this Order and are hereby rejected and inapplicable unless specifically agreed to by Buyer in writing. Seller shall be deemed to have accepted this Order and all of its terms and conditions if Seller does any of the following: (a) delivers any of the Goods ordered; (b) commences performance under this Order; or (c) delivers to Buyer any form of acknowledgement related to this Order.
- 3. PRICES, TAXES & INVOICES.** Prices shall be in U.S. dollars. Seller warrants that the prices and other terms for Goods provided under this Order are not less favorable than those extended to all its other customers for the same or like Goods in equal or less quantities. All invoices shall be rendered within twenty-four (24) hours after each shipment or providing of Goods. The prices in the Order shall include all applicable taxes and duties, except state and/or local sales / use taxes, which by law may be passed on to the Buyer. Taxes, freight and similar charges shall be shown separately on invoices. Buyer shall make payment of Seller invoices thirty (30) days after receipt thereof, subject to adjustment for errors, shortages, rejections and other justifiable causes. Buyer shall have the right to set off or withhold any amount due and owing to the Seller on this Order or on any other transaction that the Buyer or its subsidiaries, divisions or affiliates has with Seller.
- 4. CHANGES AND TERMINATION.** Buyer may, at any time, by written change to the Order (any such change referred to as a “Change Order”) in whole or part: (a) suspend performance of the Order; (b) make changes in the drawings, designs specifications, method of shipment or packing requirements; (c) make changes in the time and/or place of delivery for the Goods; or (d) change the quantity of Goods ordered. If any such Change Orders causes an increase or decrease in the cost of, or the time required for, performance of this Order, an equitable adjustment shall be made in the Order price and/or delivery dates, and such adjustment shall be set forth in a Change Order. Buyer may terminate this Order, in whole or part, for any reason, and at any time, by written notice to Seller. Subject to Section 5, any claim by Seller related to such termination shall not exceed the actual, documented and reasonable costs incurred by Seller in performance of the acceptably completed portion of the Order. Notwithstanding the foregoing, no payment shall be due Seller for any undelivered terminated Goods that are: (a) in Seller’s standard stock; or (b) are readily marketable. In no event shall Buyer’s payment for terminated Goods exceed the aggregate price payable by Buyer for finished Goods under the Order. Any Seller claim related to a Change Order or a Buyer termination may be deemed, at Buyer’s option, absolutely and unconditionally waived unless such claim is asserted by Seller in writing (including the amount of the claim and any information or documents supporting such claim), delivered to Buyer within thirty (30) days of the date of Seller’s receipt of the Change Order or termination.
- 5. DELIVERY / COMPLETION.** Delivery and/or completion within the time specified in the Order are of the essence. Buyer reserves the right to terminate, without incurring any cost or liability whatsoever, all or part of the undelivered and/or uncompleted portion of an Order if Seller does not, or if in the Buyer’s reasonable judgement Seller cannot, make deliveries and/or completion as specified in the Order. If Seller’s delivery and/or completion fail to meet the Order schedule, Buyer shall be entitled to request delivery and/or completion by the most expeditious means available with expenses related to such means to be borne by Seller. Buyer shall not be required to make payment for Goods delivered to Buyer which are in excess of quantities specified by Buyer. If delivery dates are not stated, Seller shall perform to its best delivery date. Buyer may return, or store at the Seller’s expense, any Goods delivered more than five (5) days in advance of the Order date.
- 6. INSPECTION, AUDIT & RECORDS.** Upon five (5) calendar days advanced written or verbal notice, Buyer, or its designated representative may, during normal working hours: (a) inspect and/or test any or all Goods at any time, place or stage of production (including, without limitation, any materials or parts related thereto); and/or (b) audit and examine all books, records, documents, computer systems, facilities and other items relating to this Order. If such inspection, testing, auditing or examination is done at Seller’s premises, Seller will, without additional charge, provide all reasonable facilities and assistance required for safe and convenient inspection, testing, auditing and/or examination. The foregoing shall not relieve Seller of its obligation to make full and adequate test and inspection of the Goods. Buyer and/or its designated representative may reject any or all Goods based on inspection by sampling. Seller shall maintain adequate accounting and quality records in accordance with generally accepted practices.
- 7. WARRANTIES.** In addition to and without prejudice to all other warranties, express or implied by law, Seller warrants that Goods will be: (a) free from defects in workmanship, materials, and design; (b) suitable for any purpose stated in the Order; and (c) in conformity with all the other requirements of this Order (including, without limitation, any applicable specifications, drawings, descriptions and/or samples). These warranties and all other warranties, express or implied, shall survive any inspection, delivery, acceptance and/or payment of the Goods, and such inspection, delivery, acceptance and/or payment shall in no way affect Buyer’s warranty rights. In addition to any other rights Buyer may have, if the Goods fail to meet any applicable warranties within eighteen (18) months after acceptance by Buyer, Buyer may, at Buyer’s option, either: (a) return such Goods to Seller (or in the case of services, require Seller to return to the place where the services were provided), at Seller’s sole expense, for correction or replacement so as to comply with the applicable warranties; or (b) obtain a credit or refund on such Goods equal to full price paid by Buyer therefore. Any such Goods corrected or replaced shall be warranted, from the date of Buyer’s receipt thereof, for the same period and to the same extent as the Goods originally furnished under the Order. Risk of loss and freight costs related to return of Goods not meeting the applicable warranties shall be borne by Seller to and from Seller’s facility. Seller further warrants and represents that: (a) the Goods provided hereunder are free of any claim or encumbrance; (b) Seller has the right to provide the Goods hereunder, including, without limitation, the right to grant any applicable licenses; (c) Seller has adequate facilities, resources, personnel and expertise to accomplish its obligations under the Order; and (d) Seller has no knowledge that the Goods infringe any patent, copyright or trademark, or involve a misappropriation of any trade secret.
- 8. DELAY & FORCE MAJEURE.** When any actual or potential event delays or threatens delay of delivery and/or completion of the Goods, Seller shall immediately provide Buyer notice thereof, including all relevant information with respect thereto. Any delay or failure by Seller to perform its obligations to this Order shall be excused if and to the extent that such is caused by an event or occurrence beyond Seller’s reasonable control, including fires, floods, windstorms, explosions, riots, wars, and natural disasters. The Seller’s inability to obtain material through its regular sources, delays related to suppliers, and material shortages do not constitute an event or occurrence beyond Seller’s reasonable control.
- 9. ASSIGNMENT & SUBCONTRACTING.** Seller shall not assign this Order or any rights under this Order without the prior written consent of Buyer. Seller shall not subcontract any substantial portion of this Order without Buyer’s written consent.

10. **CESSATION OF PRODUCTION.** If production or provision of any Goods is to be permanently discontinued at any time within one (1) year after final delivery or provision of such Goods under this Order, Seller shall give Buyer at least one hundred and eighty (180) days prior notice of such discontinuance and shall during such time accept orders from Buyer for a reasonable quantity of such Goods.
11. **PACKING, SHIPPING & TITLE.** Seller shall not make any charges for packing or storage. All Goods shall be packed, marked and otherwise prepared in accordance with good commercial practices to ensure safe delivery and to obtain the lowest shipping rates. On containers, Seller shall mark applicable handling and loading instructions, shipping information, order number, Goods description, shipment date, and names and address of Seller and Buyer. Buyer's count or weight on shipments shall be conclusive. An itemized packing list, an original bill of lading and documentation supporting freight charges shall accompany each shipment. Unless otherwise specified on the face of this Order, Goods shall be shipped FCA Buyer's stated destination for the Goods. Notwithstanding the foregoing or any term to the contrary, Buyer shall pay the actual and reasonable freight costs associated with the original shipment of the Goods to Buyer. Seller shall prepay and add allowable freight charges to the applicable invoice. Title to the Goods shall pass to Buyer at Buyer's designated destination for the Goods (except in the case of software or other Goods that are licensed to the Buyer, in which case title shall remain with Seller or the applicable title owner).
12. **BUYER'S PROPERTY.** If Buyer furnishes and/or pays for material, tools or equipment other than the Goods ("Buyer's Property"), title thereto shall be with and remain in Buyer, and Seller shall identify, maintain and preserve such Buyer Property and shall dispose of such only in accordance with Buyer's written instructions, which Buyer may give at any time. Buyer Property shall be used only in the performance of this Order or as otherwise instructed by Buyer in writing. Seller shall be responsible for any loss, damage, or destruction to Buyer Property (normal wear and tear allowed). Buyer does not warrant the accuracy or any other aspect of the Buyer Property.
13. **COMPLIANCE WITH LAW.** Seller shall comply with all applicable laws, statutes, rules, regulations, executive orders and ordinances of the U.S. Government, or of any state or local authority, which now or may hereafter govern performance of this Order. Without limiting the foregoing, Seller shall comply with all U.S. laws and regulations governing the import, export or reexport of the Goods and/or any technology related thereto. Seller is an equal opportunity employer, and incorporates by reference all applicable provisions of Executive Order 11246; Seller agrees to meet its affirmative action obligations pursuant to this Executive Order.
14. **INTELLECTUAL PROPERTY INDEMNIFICATION.** Seller shall adequately and timely defend, indemnify and hold harmless Buyer and Buyer's subsidiaries, agents and customers (collectively "Indemnified Parties"), from and against any and all claims, suits, losses, liability, damages and costs, including, without limitation, legal fees and court costs (collectively "Actions"), arising from or incidental to any claim of infringement of any existing or future patents, copyrights, or trademarks, or violation of any trade secrets, with respect to the Goods or any part thereof. This provision shall not apply to infringement claims based on Goods manufactured or provided solely to Buyer's design or specifications in so far as such infringement is caused by such design or specifications.
15. **GENERAL INDEMNITY.** Seller agrees to indemnify, defend and hold harmless the Indemnified Parties (as defined in Section 14) from and against any and all Actions (as defined in Section 14), arising out of or incidental to the injuries or death to any persons, damage to or destruction of any property, or breach of any Seller warranty or representation made part of this Order, which is caused by or arises from any acts or omissions of Seller or Seller's agents, suppliers, contractors or employees. Seller shall maintain such insurance as will protect the Indemnified Parties and Buyer from claims under applicable Worker's Compensation Acts and from any and all other claims for damages, personal injury or death to any person which may arise under this Order. Upon Buyer's request, certificates of such insurance shall be filed with the Buyer and shall be subject to Buyer's reasonable approval for adequacy of protection.
16. **CONFIDENTIAL INFORMATION.** Any information disclosed by Buyer to Seller (including, without limitation, any specifications, drawings, data, or information related to Buyer's business) shall be considered "Confidential Information". Seller shall not disclose any Confidential Information without Buyer's written consent. Buyer shall, at all times, retain all right, title and interest in the Confidential Information and all copies thereof. Seller shall use Confidential Information only to accomplish its obligations under this Order. Notwithstanding the foregoing, Confidential Information shall not include information which is or becomes publicly known through no wrongful act of Seller. Seller agrees to use a reasonable degree of care to protect the Confidential Information from unauthorized use or disclosure. Confidential Information and all copies thereof shall be returned to Buyer upon the earlier of Buyer's written request or the delivery / completion of the Goods. Buyer shall own all inventions and copyrightable work which Seller or any other party may derive from the Confidential Information, and Seller agrees to assign, and hereby does assign to Buyer any such copyrightable works and/or inventions, whether or not reduced to practice. Any information which Seller discloses to Buyer in connection with this Order shall not, unless agreed to by Buyer in writing, be deemed to be confidential or proprietary information and shall be acquired free from any restrictions as to use or disclosure.
17. **GOVERNING LAW & DISPUTES.** This Order is formed and shall be construed, performed and enforced under the laws of the State of Montana, U.S.A., exclusive of its choice of law or conflict of law provisions, and Buyer and Seller agree that the proper and sole venue for all actions arising under the Order shall be in the applicable courts in the State of Montana. The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this Order. During the pendency of any dispute arising under this Order, Seller shall proceed diligently with its obligations under the Order.
18. **GENERAL PROVISIONS.** (a) Sections 1, 2, 6, 7, 9, 10, 12, 14, 15, 16, 17 and 18 of these Order terms and conditions shall survive expiration, termination or cancellation of this Order for any reason. (b) In the event that any of the terms or conditions of this Order are in conflict with any rule of law or statutory provision or otherwise unenforceable, such terms or conditions shall be deemed stricken from this Order, but such invalidity or unenforceability shall not invalidate any of the other terms and conditions of this Order and this Order shall continue in full force. (c) No rights or obligations other than those expressly recited herein are to be granted or implied from this Order; in particular, no license is hereby granted or implied, either directly or indirectly, under any patent, copyright, trademark, trade secret or other intellectual property right now held by, or which may be obtained by, or which is or may be licensable by Buyer. (d) The failure of Buyer to insist, in any one or more instances, upon the performance of any of the terms or conditions of this Order, or to excuse any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect. (e) Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted with Buyer to furnish the Goods. (f) There are no understandings, agreements or representations, express or implied, written or oral, not specified in the Order, and any modification of these terms and conditions must be approved in writing by a duly authorized representative of Buyer.