

TERMS AND CONDITIONS OF PURCHASE

August 2020

- 1. General** - This Purchase Order shall be governed by Positek RFID, Inc.'s (Positek) Purchase Order Terms and Conditions hereinafter referred to as "these Terms and Conditions" as set forth below unless the Supplier has signed a separate supply agreement with Positek, in which case the terms and conditions of that agreement shall control the provision of Products and/or Services under this Purchase Order. Any inconsistent or additional terms or conditions proposed by the Supplier are hereby rejected and shall not bind Positek in any way. These Terms and Conditions shall, together with the Purchase Order (including its Schedules), regulate the purchase of the Products and/or Services defined in this Purchase Order.
- 2. Definitions** - The following terms shall be used herein with the definitions stated in this clause 2:

"Confidential Information" means any information regarding the business affairs, developments, trade secrets, know-how, personnel, customers, suppliers, specifications, drawings, designs, descriptions, operational and testing information, technical information and data, and all other information of a confidential nature furnished by Positek in connection with the Products and/or Services.

"Delivery Date" means the date for delivery of the Products or Services as set out in this Purchase Order or agreed between the parties in writing.

"Documentation" means materials provided in writing by Supplier ancillary to the use of Products or Services.

"Positek" means the Positek company which has issued this Purchase Order.

"Intellectual Property Rights" means any patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyright, design rights, database rights, know-how, confidential information, trade and business and/or domain names and any other similar protected rights (whether registered or unregistered) in any country.

"Personal Data" means any information relating to an identified or identifiable natural person; an identified or identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identification number, to one or more factors including opinions (whether true or not) specific to his or her physical, physiological, mental, economic, cultural or social identity.

"Price" means the amount to be paid by Positek for the Products and Services pursuant to clause 4 herein.

"Product(s)" means the products defined in the Purchase Order to be supplied by Supplier under this Purchase Order.

"Purchase Order" means this purchase order form and any Schedules to it or other items referred to in it but excludes any other printed terms or conditions of sale or purchase or other form of documents.

"Services" means any product related service(s), including, but not limited to, customizing, installation, commissioning, maintenance, technical support, consulting and training.

"Supplier" means the recipient of this Purchase Order.

"Support Services" means services for maintenance of Products, including the provision of updates, patches and upgrades for software Products as further detailed in the Purchase Order.

"Terms and Conditions" means these Positek Purchase Order purchasing terms and conditions.

"Warranty Period" means a minimum of twelve (12) months or any other agreed period beginning on the later of acceptance, delivery or installation of Products and/or Services under this Purchase Order.
- 3. Purchase Order Acceptance** - Supplier has read and understood these Terms and Conditions, and agrees that (i) Supplier's written acceptance or commencement of any work, (ii) Supplier's delivery of any Product(s) or Service(s), or if Supplier does not object to the Terms and Conditions or any of its schedules under this Purchase Order within three (3) business days of issuance by Positek, then subject to any cancellation under clause 5, shall otherwise constitute Supplier's acceptance of this Purchase Order.
- 4. Changes to Purchase Order** - Positek may, by giving written notice to the Supplier at any time not later than five (5) business days prior to the Delivery Date stated in this Purchase Order, change the Delivery Date(s), quantities or types of Product(s) or Service(s) ordered without incurring any additional costs or liability. Supplier specifically agrees that it shall make no change in any design, configuration, material, part or manufacturing process which has been approved by Positek and which is applicable to this Purchase Order without the prior approval by Positek. Breach of this obligation shall be considered a material breach of contract.
- 5. Cancellation of Purchase Order** - Positek reserves the right to cancel all or any part of this Purchase Order if this Purchase Order is not accepted by Supplier within three (3) business days from the date of issue by Positek, without incurring any liability whatsoever.
- 6. Price, Delivery, Title and Risk of Loss** - Prices shall be stated in the currency agreed in this Purchase Order and be valid in accordance with Incoterms® 2010 Delivered Duty Paid (DDP) to the delivery address set out in this Purchase Order. Supplier shall deliver all Products and/or Services at its expense undamaged to the delivery address set out in the Purchase Order during Positek's normal business hours unless otherwise notified in writing by Positek. Supplier shall ensure that a description of the Products and/or Services,

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their quantity, Positek's Purchase Order number and, where applicable, part numbers and revision levels, are clearly visible upon delivery. Unless this Purchase Order, specifies otherwise, prices include all fees, charges and expenses, including costs related to travel, accommodation, and appropriate packaging incurred in connection with the fulfilment of this Purchase Order. All shipments will be packed to prevent damage in transit, assure lowest transportation cost, and meet carrier's tariff requirements. No charge to Positek will be made for boxing, crating or storage without its prior written authorization. In case of any inconsistency between these Terms and Conditions and Incoterms® 2010, these Terms and Conditions shall prevail. Supplier shall, when relevant, at its own cost prepare and submit to Positek all documents and drawings, if any, required under this Purchase Order. Ownership to the Products passes to Positek upon delivery. Supplier commits to a world-wide best price policy for Positek. If Products and/or Services are custom-made for Positek, this best price policy is extended to comparison of a closest comparable product/service sold by Supplier.

7. Taxes - Prices payable under this Purchase Order exclude all taxes imposed by the Federal Government, or any state or municipality, in respect of sale of Products and/or Services, including any sales, use, excise, withholding, services, consumption, or other similar tax (collectively "Taxes"). Unless Positek presents Supplier with a valid tax exemption certificate, Positek shall pay all such Taxes, provided that (i) such Taxes are itemized on Supplier's invoice, and (ii) Positek is not liable for any tax which is based, in whole or in part, on Supplier's income.

8. Warranty on Price - Prices stated in this Purchase Order are fixed at the date of this Purchase Order and may not be varied unless stated in this Purchase Order. However, Supplier shall pass on to Positek any decrease of prices including, but not limited to the prices on Supplier's standard price list for Products and/or Services occurred before delivery.

9. Invoicing Terms - Supplier shall send the invoices describing the amount of Price and applicable Taxes, with reference to this Purchase Order and line item number, to the address stated on this Purchase Order or otherwise designated by Positek. Supplier shall have the right to issue invoices at the timing of: for Products or Project Services - upon Acceptance in accordance with clause 11 herein; for Services on an ongoing basis: monthly in arrears unless otherwise designated on this Purchase Order.

10. Payment Terms - Payment for Products and/or Services delivered and accepted in accordance with clause 11 shall be made by Positek to Supplier within 45 days from receipt of an invoice issued in accordance with clause 9 herein. Positek shall be entitled to set off any amount owing by Supplier to Positek against any amount payable by Positek under this Purchase Order. Positek shall be entitled to a discount on invoice price for payment within less than 45 days of invoice receipt when so noted on the face of the Purchase Order.

11. Inspection of Deliverables/Acceptance - Positek may perform a delivery inspection and/or test of the Products and/or Services delivered by Supplier under this Purchase Order. Any defects found during such delivery inspection or test shall be duly documented and within ten (10) days from delivery of the Products or Services and be reported to Supplier in writing. If Positek does not report any defects within the stipulated time frame, the Products and/or Services shall be deemed to be subject to Acceptance. Acceptance does not waive Positek's right to subsequently reject Products which are found upon first usage to be non-functional. If Positek submit a report on defects, Supplier shall, at its own cost and without undue delay, replace or correct defective or non-confirming Products and/or Services. Positek shall after such replacement or correction within five (5) days acknowledge the replaced or corrective Products and/or Services. Upon such acknowledgement or if Positek does not submit an acknowledgement to Supplier within the stipulated time frame, the Products and/or Services shall be subject to Acceptance. If Positek does not accept the Products and/or Services or if Supplier, when requested by Positek, fails to replace or correct defective or non-confirming Products or Services without undue delay, Positek may terminate this Purchase Order and/or replace or correct such Products and/or Services using other resources and in either event charge Supplier the costs or damages occasioned thereby, including without limitation any incidental or consequential damages. Operational use or payment of the Products and/or Services prior to formal Acceptance shall not constitute an implied declaration of Acceptance by Positek.

12. Delays and liquidated damages - Time shall be of the essence regarding any time or period given for delivery, dispatch, performance or completion in the Purchase Order. The Supplier shall immediately notify Positek of any anticipated or actual delay. In the event that an agreed Delivery Date is delayed, and such failure is not due to circumstances for which Positek is responsible, Positek has a right at its option to either (i) claim liquidated damages or (ii) terminate this Purchase Order without liability. Where liquidated damages apply, Positek may set off any liquidated damages from an invoice from Supplier. Supplier shall, for each commenced week of delay, pay to Positek as liquidated damages three per cent (3%) of the total value of this Purchase Order. The maximum liquidated damages due to a delay shall be limited to twenty-four (24%) per cent of the total value of this Purchase Order. Payment of liquidated damages is not the sole and exclusive compensation for delays and Positek has a right, at its option, to require compensation under this clause and/or any other compensation Positek is entitled to under these Terms and Conditions and at law.

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- 13. Warranties** - Supplier warrants that the Products and all replacements shall be new, free and clear of all liens, encumbrances, security interest, and other claims arising due to Supplier. Supplier warrants that the Services shall be performed in a professional manner, with all reasonable skill and care, at least to industry standards by appropriately trained and experienced personnel. Supplier warrants that from the later of acceptance, delivery or installation (unless defined otherwise in this Purchase Order) and for the duration of the Warranty Period, the Products shall conform with the description and other particulars stated in this Purchase Order and these Terms and Conditions, be of satisfactory quality and fit for its purpose including be free from all defects in materials, workmanship and installation. If any Products are found to be defective during the applicable Warranty Period, Positek may, without prejudice to any other right or remedy it may have, require the Supplier at the Supplier's cost and without undue delay, at Positek's option either repair or replace the defective Products to ensure that the Products are compliant with this Purchase Order and these Terms and Conditions. Supplier warrants to Positek that it shall co-operate with Positek, its agents, subcontractors and any third parties providing the Services as reasonably requested by Positek, ensure that the Services conform with the Service Description set out in this Purchase Order and achieve the Service Levels agreed in this Purchase Order. If any of the Services are not in accordance with this Purchase Order, or if Supplier otherwise fails to fulfil its obligations under this Purchase Order, Positek may without liability at any time and without prejudice to its other rights or remedies, by written notice require Supplier to re-perform the Services as soon as reasonably practicable at no cost or liability to Positek.
- 14. Support Services** - If any Support Services are required such services shall be agreed in the Purchase Order. Invoicing for Support Services may be sent by Supplier to Positek monthly in arrears. Service Levels, availability and related Service Levels Credits shall be agreed upon in the Purchase Order.
- 15. Discontinuation of Supply** - Subject to the warranties set forth herein, Supplier warrants that for five (5) years after the completion, expiration or termination, as relevant, of this Purchase Order, Supplier shall be available, if applicable, to perform necessary and appropriate maintenance, repairs, engineering changes, and the like and shall keep all necessary parts on hand for any repairs at Supplier's then current rates or other commercially reasonable charges, whichever are lower. After this five (5) year period, Supplier shall (i) give not less than six (6) months prior written notice if it intends to no longer provide such Services or Products, and (ii) provide Positek all necessary information and documentation, whether or not proprietary or confidential, necessary to enable Positek to maintain and repair such Products, either directly or through one or more subcontractors.
- 16. Embedded software in the Products and Documentation** - Where the Products shall include all or any embedded software, and/or where and to the extent that any Intellectual Property Rights subsist in the Products, then, the Supplier hereby warrants and represents that it has obtained all necessary approvals, rights, titles and licenses to sell or otherwise transfer the Products/Services to Positek for Positek's own use or for further distribution, and/or to permit third parties to use each copy of such embedded software and to make such other copies as are reasonably necessary to support their intended use. The foregoing explicitly includes any open source software or other third-party software components integrated into or provided with the Products or Services. Supplier further guarantees that it has fulfilled and continuously fulfills any applicable obligations related to open source software or other third-party software components integrated into or provided with the Products or Services. Where the Products are created or modified for Positek, the Supplier hereby grants Positek a license (save that such license shall be exclusive) for the period commencing immediately upon their creation until such time as all Intellectual Property Rights are fully and completely vested in Positek. Where the Supplier grants Positek a periodic license and the fees are payable on a recurring basis, Positek shall have the right to terminate the license in writing on not less than thirty (30) days' notice, such notice to take effect at the end of the then current period.
- 17. Intellectual Property Rights Indemnities** - Supplier warrants and represents that it owns the necessary Intellectual Property Rights in the Products, Services and Documentation related to their sale hereunder and Positek's use and distribution thereof, free and clear of any encumbrances, and has procured the necessary consents in relation to moral rights or otherwise necessary to make this warranty. Supplier at its own expense shall defend, indemnify and hold Positek and its affiliates and customers (collectively hereafter in this Clause, "Positek Indemnitees") harmless from any and all claims, costs, expenses, damages or other liabilities, including court costs and reasonable attorneys' fees, arising out of or relating to any patent, trademark, copyright or other intellectual property infringement claims or claims based on misappropriation of trade secret or other proprietary rights arising out of or relating to the manufacture, use, transfer, sale or other distribution of the Products [Services or Documentation, whether alone or in combination with other items.] If the manufacture, use, transfer, sale or other distribution of any of the Products [Services or Documentation] by a Positek Indemnitee constitutes an infringement or misappropriation or is enjoined, Supplier shall, at its own expense and option, (i) procure for all Positek Indemnitees the right to continue using, transferring, selling, and otherwise distributing such Product [Service or Documentation], (ii) modify such Product [Service or Documentation] so that it becomes non-infringing, while conforming to the applicable specifications, or (iii) replace such Product [Service or Documentation] with a non-infringing substitute, which conforms to the applicable specifications. The rights of Positek Indemnitees under this Section shall not become time-barred.

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18. Compliance with Law and Corporate Social Responsibility - In the performance of its obligations under this Purchase Order, Supplier shall comply with (i) all laws, regulations, privacy principles, codes of practice, and local country standards including but not limited to those found at www.Positek.com; (ii) any government policies, guidelines and codes of conduct relevant to your obligations; and (iii) as otherwise communicated by Positek to Supplier from time to time. Supplier shall not offer to give to any employee, agent or representative of Positek any gratuity, compensation, gift, remuneration, or benefit for the purposes of securing any business from Positek or influencing that person with respect to this Purchase Order. Supplier shall ensure that its personnel do not accept gratuities which would influence their impartiality create a conflict of interest or create the appearance of a bribe or impropriety, relative to purchases made pursuant to this Purchase Order. Supplier shall at all times comply with the applicable laws relating to anti-bribery including but not limited to the OECD Convention policies against corruption, the Foreign Corrupt Practices Act of the USA and the UK Bribery Act 2010 (the "Applicable Anti-Bribery Laws"). The Supplier shall not engage in any activity, practice or conduct which would constitute an offence under the applicable Anti-Bribery Laws. Supplier shall have and maintain in place throughout the term of this Purchase Order their own policies and procedures to ensure compliance with the Applicable Anti-Bribery Laws and shall enforce them where appropriate. Supplier shall (i) not use child labor or involuntary labor of any kind; (ii) treat all its employees with dignity and respect; (iii) not illegally discriminate in hiring and employment practices; (iv) provide its employees with a safe and healthy workplace; (v) not tolerate or be involved in any form of corruption or bribery; (vi) comply with all applicable environmental regulations and standards; and (vii) not utilize Conflict Minerals, as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act and regulations promulgated thereunder, in any products supplied hereunder.

Supplier warrants and represents that it has no public official or foreign public official as its director, officer, controlling shareholder, or employee who will provide the Products or perform the Service under this Purchase Order and that no public official or foreign public official has a controlling interest in Supplier at the effective date of this Purchase Order. Supplier shall immediately notify Positek in writing if such warranty or representation is no longer true.

Supplier should, wherever possible: (1) promote environmental sustainability within their own organization; (2) procure goods and services based on environmental sustainability; (3) communicate critical environmental concerns; (4) communicate opportunities for positive environmental impacts; and (5) disclose environmental data and targets (where relevant).

Positek may terminate this Purchase Order, or suspend or withhold payment effective immediately upon written notice to Supplier, if it has a good faith belief that Supplier has breached, or has caused a breach of this Section 18. Positek will not be liable for any claims, losses, or damages arising from or related to failure by Supplier to comply with this Section 18 or related to the termination of this Purchase Order under this Section 18, Supplier shall indemnify and hold Positek harmless against any such claims, losses, or damages.

19. Exports - The parties acknowledge that Products and or Services, their respective Documentation and other materials supplied under this Purchase Order may be subject to export control laws and regulations of the United States and other countries. Supplier must at its cost obtain all licenses, consents and approvals as may be required from time to time under local laws and regulations and those of any other country, including but not limited to the U.S. Export Administration Regulations, and the Customs-Trade Partnership Against Terrorism ("C-TPAT") that may affect or regulate such export. Supplier shall, on request, provide a copy of any such licenses, consents or approvals to Positek as well as any export control classification numbers, tariff codes, country of origin and any other information reasonably requested by Positek in connection with the import or subsequent export of the Products, Services and Documentation. Supplier releases, defends, indemnifies and holds harmless Positek and its affiliates and its customers, servants and agents (collectively hereafter in this Clause, "Positek") harmless against all actions, claims and demands, damages and expenses (including attorneys' fees and other cost of defending or settling any action, claim or demand) which may be instituted against Positek arising out of a breach of this clause by the Supplier or the negligence of the Supplier, its agents, employees or of any other person for whose acts or omissions the Supplier is vicariously liable.

20. Required Insurance - While performing its obligations under this Purchase Order (and for a period of three (3) years thereafter), Supplier shall maintain in force policies of insurance including at a minimum (i) workers compensation insurance as required by law, (ii) public liability to the value of five million U.S. dollars (\$5 million) per claim, (iii) products liability to the value of \$5 million per claim and in the aggregate in any insurance year, (iv) professional indemnity; or errors and omissions; insurance to the value of \$5 million per claim and (v) any other policies that it is required to maintain by law. Supplier shall be able to provide Positek evidence of the insurance terms and amounts upon request by Positek. If the Supplier fails to comply with this clause, Positek may arrange such cover, at the Supplier's cost.

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- 21. Permitted Processing and access to Personal Data** - Supplier shall only process any Personal Data held in connection with this Purchase Order for the purposes of fulfilling its obligations under this Purchase Order and in accordance with Positek's instruction and all relevant privacy legislation. In this regard Supplier shall implement all necessary measures to protect Personal Data including protection against accidental or unlawful misuse and loss, and from unauthorized access, disclosure, modification and processing. Only Supplier's authorized personnel with a legitimate role in fulfilling its obligations under this Purchase Order have access to the Personal Data. Supplier shall not transfer, disclose or allow access by a person, or permit the same by another person, outside of the jurisdiction where Personal Data is held in connection with this Purchase Order without the prior written consent of Positek. Where such consent is given and Supplier transfers Personal Data outside the European Economic Area pursuant to this clause, such transfer shall be subject to the Standard Contractual Clauses issued by the European Commission. Supplier is responsible for the compliance of its personnel and subcontractors with its obligations under this clause and shall indemnify Positek and its customers against any and all claims, losses, liabilities, damages, costs and expenses (including legal fees) incurred by Positek as a result of the Supplier's breach of this Clause.
- 22. Audit** - The Supplier shall maintain records and supporting documentation of all financial and non-financial transactions under this Purchase Order and compliance with the obligations of clauses 18 and 19 herein sufficient to permit a complete audit in accordance with this clause for a period of seven (7) years, or longer if required by law. Supplier must, at no additional cost to Positek, at Positek's request, provide to Positek and its internal and external auditors, inspectors, regulators and other agents or representatives, access at reasonable times and on reasonable notice to Supplier's and, if relevant, subcontractors premises, Supplier environment (including systems and networks), Supplier personnel and all materials relating to this Purchase Order.
- 23. Intellectual Property Rights** - With the exception of any pre-existing Intellectual Property Rights or any open source software, all Intellectual Property Rights in any material created in the performance of its obligations under this Purchase Order vests in, or is hereby transferred or assigned to, Positek immediately upon creation. To the extent, if any, that any such Intellectual Property Rights are not assigned hereunder, Supplier hereby grants to Positek a perpetual, irrevocable, royalty-free, exclusive license under such Intellectual Property Rights to manufacture, use, sell, distribute or otherwise exploit such Intellectual Property Rights.
- 24. Performance Indemnities to Positek** - Supplier shall indemnify Positek against all loss, costs, damages, expenses (including court costs and reasonable attorneys' fees) which Positek may incur or become liable arising from i) defective Products and/or Services, including but not limited to defective workmanship, design or services supplied or provided by Supplier; ii) loss or damage to property; iii) death or injury to personnel; iv) any claim by a third party; or (v) non-compliance with any applicable laws, caused or contributed to by, or resulting from any act or omission of, the Supplier, its officers, employees, sub-contractors and agents.
- 25. Limitation of Liability** - Either party's total cumulative liability to the other party for any and all claims arising out of or in connection with this Purchase Order for breach of contract, breach of warranty, breach of statutory duty or negligence (or other tort) is limited to the Price in this Purchase Order. This limitation of liability shall not apply to claims for Supplier's obligations of indemnification hereunder or for breaches of laws, confidentiality, data protection, or to injury to persons or death, or to damages related to fraud, misconduct, default, or gross negligence. Notwithstanding the foregoing clause, and regardless whether the Supplier has been advised of the possibility of such loss or damages, a party shall not be liable for loss of production, loss of profits, loss of anticipated savings, loss of goodwill or any other indirect, incidental, special or consequential damages; provided, however, that the above limitations shall not apply so far as it relates to damages Positek suffers arising from Supplier's obligations of indemnification hereunder or for breaches of confidentiality, data protection, or to injury to persons or death, or to damages related to fraud, misconduct, default, or gross negligence.
- 26. Applicable Law** - This Purchase Order shall be governed by and construed according to the laws of the state of California, USA. The conflict of laws provisions in the applicable law and the "UN Convention on Contracts for International Sale of Goods" dated April 11, 1980 (CISG) shall not apply.
- 27. Dispute Settlement** - Any dispute arising out of or in connection with this Purchase Order, including any question regarding its existence, validity, breach or termination, shall be referred to and finally resolved by arbitration in the state of California, USA in accordance with the Arbitration Rules of the American Arbitration Association for the time being in force, which rules are deemed to be incorporated by reference in this clause. The arbitration tribunal shall consist of a single arbitrator. The language of the arbitration shall be English. The Parties hereto undertake to keep the arbitration proceedings and all information, pleadings, documents, evidence and all matters relating thereto confidential.

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- 28. Entire Agreement** - Unless in accordance with clause 1 of these Terms and Conditions, Supplier has signed a separate supply agreement with Positek which shall instead govern this Purchase Order, this Purchase Order otherwise constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior undertakings, agreements, representations and warranties. Each party acknowledges that, in entering into this Purchase Order, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided herein.
- 29. Severability** - If any provisions of this Purchase Order (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Purchase Order, and the validity and enforceability of the other provisions of this Purchase Order shall not be affected.
- 30. Modifications** - No amendments or additions to this Purchase Order or these Terms and Conditions is binding unless made in writing and signed by duly authorized representatives of each party.
- 31. Subcontractors** - Supplier may use sub-manufacturers and/or subcontractors upon Positek's prior written consent. Supplier shall make such sub-manufacturers and/or subcontractors to comply with the standards and requirements contained in this Purchase Order and shall be fully liable for their non-compliance therewith.
- 32. Confidentiality; Publicity** - Any Confidential Information which one party has disclosed or may hereafter disclose (the "Disclosing Party") to the other party in connection with the Products or Services covered by this Purchase Order and which is designated as confidential by explicit identification or from the context of disclosure shall be deemed to be confidential or proprietary information and shall only be disclosed to those of its employees, advisors, contractors or subcontractors who have a need to know and are under obligations of confidentiality and shall not otherwise be disclosed to any third party without Disclosing Party's prior written consent. Supplier shall not, without obtaining Positek's consent, in any manner, advertise or publish the fact that the Products or Services ordered hereunder have been contracted for or furnished by Supplier to Positek.
- 33. Assignment** - The Supplier may not assign, delegate or transfer all or any part of its right or obligations under this Purchase Order without the prior written consent of Positek.
- 34. Force Majeure** - If a party ("Affected Party") is unable to perform its obligations because of any event outside its reasonable control, including but not limited to strikes by employees of a third party, fires, wars, acts of God, governmental controls ("Force Majeure Event"), then it shall promptly notify the other party of its inability to perform and the nature and extent of the circumstances that amounts to a Force Majeure Event. Subject to compliance with the aforesaid, the Affected Party's obligation to perform those obligations affected by the Force Majeure Event shall be suspended for the duration of the delay arising directly out of the Force Majeure Event but the Affected Party shall otherwise comply in full with all its obligations under this Purchase Order and these Terms and Conditions. If a delay in performance by Supplier arising directly out of a Force Majeure Event continues for more than fourteen (14) days, Positek may at its election, by notice to the Supplier, modify or cancel this Purchase Order without being liable to the Supplier in damages or otherwise.
- 35. Termination** - Positek may by notice in writing to Supplier terminate this Purchase Order forthwith if Supplier is in material default of this Purchase Order or if Supplier becomes or threatens to become or is in jeopardy of becoming subject to any form of bankruptcy or insolvency administration. Positek may, at its option and without any cost or liability, terminate this Purchase Order by giving Supplier not less than five (5) days prior written notice.
- 36. Survival** - Notwithstanding anything to the contrary in these Terms and Conditions, the expiration or termination of this Purchase Order shall not affect or prejudice any provisions of these Terms and Conditions which are expressly or by implication intended to continue in effect after such expiration or termination.
- 37. Government Contracting** - The parties hereby incorporate the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), 41 CFR 60-741.5(a) and 29 CFR Part 471, Appendix A to Subpart A, if applicable. To the extent applicable, **the parties shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**