

**LABCYTE - SUPPORT DEPARTMENT - TERMS AND CONDITIONS OF SALE—END USER**

**1. ACCEPTANCE:**

ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND UPON BUYER'S ASSENT THERETO. NO VARIATION OF THESE TERMS AND CONDITIONS SHALL BE BINDING UPON SELLER UNLESS AGREED TO IN WRITING AND SIGNED BY AN OFFICER OF SELLER. This invoice (or acknowledgement) ("Agreement"), and not any purchase order or other document of buyer ("Buyer"), shall be deemed an offer or counter-offer and is a rejection of any inconsistent prior terms and conditions. Buyer, by accepting Labcyte's products comprised of software ("Software"), hardware ("Hardware"), spare parts ("Spare Parts") and consumables ("Consumables") (collectively and individually, the "Products"), shall be deemed to have assented to the terms and conditions set forth on this or other documents hereafter sent by Labcyte ("Seller"), notwithstanding any terms contained in any prior or later communications from Buyer and whether or not Seller specifically or expressly objects to any such terms. Seller's failure to object to any provisions of any subsequent document, communication or act of Buyer shall not be deemed a waiver of any of the terms hereof.

**2. CHANGES:**

Orders arising hereunder may be changed or amended only by written agreement signed by both Buyer and Seller, setting forth the particular changes to be made and the effect, if any, of such changes on the price and time of delivery, except that when Buyer requires expedited service involving overtime, overtime charges will be added at Seller's sole discretion to the price specified on the face hereof or in an attached schedule. It is hereby understood and agreed that any purchase order, memorandum, or other instrument issued by Buyer in connection with this transaction is for Buyer's internal use only and its terms shall be of no force and effect with respect to the transaction covered by this contract. Buyer may not cancel this order unless such cancellation is expressly agreed to in writing by Seller. In such event, Seller will advise Buyer of the total charge for such cancellation, and Buyer agrees to pay such charges, including, but not limited to, storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-refundable materials, cancellation costs imposed on Seller by its suppliers, and any other cost resulting from cancellation of this order by Buyer which is permitted by Seller. Certification of such costs by Seller's certified public accountants shall be conclusive on the parties hereto.

**3. SECURITY INTEREST:**

Buyer hereby grants and Seller reserves a purchase money security interest in the Products and in the proceeds of any sale or lease thereof for the amount of the purchase price of the Products. Upon Seller's request, Buyer shall sign any documentation necessary to perfect such security interest. Payment in full of the purchase price shall release the security interest.

**4. DELIVERY, CLAIMS, DELAYS:**

(a) All shipments are FOB (UCC) Seller's shipping point for shipments to locations within the United States and DAP (INCOTERMS 2010) Seller's shipping point for shipments to locations outside the United States, unless otherwise prominently noted on the face hereof or in an attached schedule. Buyer shall be responsible for shipping, handling, insurance, and other similar costs. Delivery of the goods to the carrier at Seller's shipping point shall constitute delivery to Buyer and Buyer shall bear all risk of loss or damage in transit. Seller reserves the right to determine the exact method of shipment and the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of Buyer's obligations to accept remaining deliveries.

(b) Immediately upon Buyer's receipt of any goods shipped hereunder, Buyer shall inspect the exterior packaging of the same and shall notify Seller in writing of any observed external damage and shall hold the goods for Seller's written instructions concerning disposition. Buyer agrees to store the goods in their original packaging until uncrating is performed by a Labcyte service representative. Any damage resulting from the Buyer removing the packaging or moving any unpacked goods is not covered under the warranty.

(c) Seller shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver, or otherwise perform hereunder due to any cause beyond Seller's reasonable control, including, without limitation, acts of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Seller's business, fire, explosion, recall, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, lightning, flood, windstorm or other acts of God, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies or power at current prices.

**5. ALLOCATION OF GOODS:**

If Seller is unable for any reason to supply the total demands for good specified in Buyer's order, Seller may allocate its available supply among any or all buyers on such basis as Seller may deem fair and practical, without liability for any failure of performance which may result therefrom.

**6. PAYMENT:**

Terms of sale are 30% net 10 days after placement of the order, and 70% net 30 days after the date of Seller's invoice with payments due in at Seller's headquarters in Santa Clara County, California, unless otherwise stated, or unless other provisions for payment have been made with and approved by Seller. Payments are to be made in United States funds, unless otherwise stipulated. Fees not paid when due shall accrue late charges at a rate of 1.5% per month, or the maximum rate allowed under law, whichever is lower, from the date such payment was due until the date paid. If the financial condition of Buyer results in the insecurity of Seller, in its sole and absolute discretion, as to the ultimate collectability of the purchase price, Seller may, without notice to Buyer, delay or postpone the delivery of the Products; and Seller, at its option, is authorized to change the terms of payment to payment in full or in part in advance of shipment of the entire undelivered balance of the Products. In the event of default by Buyer in the payment of the purchase price or otherwise, of this or any other order, Seller, at its option, without prejudice to any other of Seller's lawful remedies, may defer delivery, cancel this Agreement, or sell any undelivered Products on hand for the account of Buyer and apply such proceeds as a credit, without set-off or deduction of any kind, against the contract purchase price, and Buyer agrees to pay the balance then due to Seller on demand. Buyer agrees to pay all costs, including, but not limited to, reasonable attorney and accounting fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof.

**7. TAXES AND OTHER CHARGES:**

Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any government authority, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore; or, in lieu of such payment, Buyer shall provide Seller at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

**8. WARRANTIES:**

(a) Seller warrants to Buyer that each Product replaced shall conform in all material respects to the description of the Product as provided to Buyer by Seller through Seller's designated product specifications for a period of (90) days after delivery of such Product to Buyer. SELLER'S SOLE AND EXCLUSIVE LIABILITY AND BUYER'S EXCLUSIVE REMEDY WITH RESPECT TO PRODUCTS PROVED TO SELLER'S SATISFACTION TO BE DEFECTIVE OR NONCONFORMING SHALL BE REPAIR OR REPLACEMENT OF SUCH PRODUCTS WITHOUT CHARGE OR REFUND OF THE PURCHASE PRICE, IN SELLER'S SOLE DISCRETION, UPON THE RETURN OF SUCH PRODUCTS IN ACCORDANCE WITH SELLER'S INSTRUCTIONS. Seller's warranties made in connection with this Agreement shall not be effective if Seller has determined, in its sole discretion, that Buyer has misused, improperly installed, operated, maintained, or repaired the Products in any manner, has failed to use the Products in accordance with industry standards or practices, or has failed to use the Products in accordance with instructions, if any, furnished by Seller.

(b) EXCEPT FOR THE WARRANTIES EXPLICITLY SET FORTH IN SECTION 8(a), SELLER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING, TRADE USAGE OR OTHERWISE, WITH RESPECT TO THE SUBJECT MATTER HEREOF, IN CONNECTION WITH THIS AGREEMENT. SELLER SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE LIMITATIONS OF WARRANTY SET FORTH IN THIS AGREEMENT SHALL SURVIVE THE CANCELLATION, COMPLETION, OR OTHER

TERMINATION OF THIS CONTRACT FOR ANY REASON. Some jurisdictions do not permit the exclusion of implied warranties, and so the above may not apply to Buyer.

**9. LIMITATION OF LIABILITY:**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND RESULTING FROM ANY USE OR FAILURE OF THE PRODUCTS OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF DATA, LOSS OF WORK IN PROGRESS, DOWNTIME, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, LOSS OF PRODUCTS OF BUYER OR OTHER USE OR ANY LIABILITY OF BUYER TO A THIRD PARTY ON ACCOUNT OF SUCH LOSS, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT, WHETHER OR NOT SELLER WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT WILL SELLERS' TOTAL LIABILITY TO BUYER FOR ALL DAMAGES IN ANY ONE OR MORE CAUSES OF ACTION EXCEED AMOUNTS RECEIVED FROM BUYER UNDER THESE TERMS AND CONDITIONS. ANY ACTION WITH RESPECT TO ANY PRODUCT SOLD HEREUNDER SHALL BE COMMENCED, AND ANY CLAIMS FOR BREACH OF CONTRACT MUST BE RECEIVED, WITHIN NINETY (90) DAYS OF SHIPMENT OF SUCH PRODUCT HERUNDER, REGARDLESS OF THE NATURE OF SUCH CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED IN THIS AGREEMENT. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL SURVIVE THE CANCELLATION, COMPLETION, OR OTHER TERMINATION OF THIS AGREEMENT FOR ANY REASON.

**10. BUYER'S RESTRICTED USE OF PRODUCTS:**

(a) Buyer agrees to comply with instructions, if any, furnished by Seller relating to the use of the Products and not misuse the Products in any manner. Buyer shall not reverse engineer, decompile, disassemble or modify the Products or create derivative works of the Software. Buyer acknowledges that Seller retains ownership of all patents, copyrights, trademarks, trade secrets and other proprietary rights relating to or residing in the Products or any portion thereof and that the Software is licensed, not sold, to Buyer pursuant to a separate end user license agreement ("EULA"), provided with the Products or upon request, solely for use under the terms hereof and of the EULA.

(b) Notwithstanding anything to the contrary herein, any invention or discovery made by Buyer using the Products will be owned by Buyer and may be used by Buyer for any purpose, and will not require any additional license from Seller.

**11. BUYER'S REPRESENTATIONS, RELEASE, AND INDEMNITY:**

Buyer represents and warrants that it shall use all Products ordered herein in accordance with Section 10, "Buyer's Restricted Use of Products," and that any such use of Products will not violate any law, regulation, judicial order, or injunction. Buyer agrees to release, discharge, disclaim, and renounce any and all claims, demands, actions, causes of action, and/or suits in law or equity, now existing or hereafter arising, whether known or unknown, against Seller, its officers, directors, employees, agents, successors, and assigns (collectively the "Released Parties") with respect to the use of the Products. Buyer agrees to indemnify and hold harmless the Released Parties from and against any suits, losses, claims, demands, liabilities, costs, and expenses (including attorney, accounting, expert witness, and consulting fees) that Seller may sustain or incur as a result of any claim against Seller based upon negligence, breach of warranty, strict liability in tort, contract, or any other theory of law or equity arising out of, directly or indirectly, the use of the Products, or by reason of Buyer's failure to perform its obligations contained herein. Buyer shall notify in writing within fifteen (15) days of Buyer's receipt of knowledge of any accident, or incident involving the Products which results in personal injury or damage to property, and Buyer shall fully cooperate with Seller in the investigation and determination of the cause of such accident and shall make available to Seller all statements, reports, recordings, and tests made by Buyer or made available to Buyer by others. The furnishing of such information to Seller and any investigation by Seller of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by Seller.

**12. PATENT DISCLAIMER:**

Seller does not warrant that the use or sale of the Products delivered hereunder will not infringe the claims of any United States or other patents covering the product itself or the use thereof in combination with other products or in the operation of any process.

**13. RETURNS:**

Products may not be returned for credit except with Seller's written permission, and then only in strict compliance with Seller's return shipment authorization instructions.

**14. TECHNICAL ASSISTANCE:**

(a) At Buyer's request, Seller may, at Seller's discretion, furnish technical assistance with respect to the Products for such fees and other consideration agreed to in writing by Buyer and Seller. SELLER MAKES NO WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO TECHNICAL ASSISTANCE OR INFORMATION PROVIDED BY SELLER OR SELLER'S PERSONNEL. ANY SUGGESTIONS BY SELLER REGARDING USE, SELECTION, APPLICATION, OR SUITABILITY OF THE PRODUCTS SHALL NOT BE CONSTRUED AS AN EXPRESS WARRANTY UNLESS SPECIFICALLY DESIGNATED AS SUCH IN WRITING BY AN OFFICER OR AUTHORIZED AGENT OF SELLER.

(b) Seller reserves the right, at its discretion, to install and uninstall software for service, calibration or diagnosis of the Product. This software remains the property of Seller and is not part of the Product sale.

**15. MISCELLANEOUS:**

(a) Seller reserves the right to correct clerical errors and omissions. Buyer shall not export or reexport, directly or indirectly, any Products or underlying information or technology in violation of any United States or foreign law or regulations. These terms and conditions, and any document referred to on the face hereof, constitute the entire agreement between Seller and Buyer. Seller's failure to strictly enforce any term or condition of this order or to exercise any right, power, or privilege arising hereunder shall not constitute a waiver of Seller's right to strictly enforce such terms or conditions or exercise such right, power, or privilege thereafter. All rights and remedies under this order are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity. Any waiver or default by Buyer hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, rights, powers, and privileges shall not be affected or impaired thereby. The paragraph headings herein are for convenience only and form no part of the terms and conditions and shall not affect the interpretation of the terms and conditions. Subject to the terms and conditions of this Agreement, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, corporate representatives, agents, successors, and assigns.

(b) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. THE UNITED NATIONS CONVENTION ON THE SALE OF GOODS SHALL NOT BE APPLICABLE TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT. UNLESS PROHIBITED BY APPLICABLE LAW, BUYER HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS OF SANTA CLARA COUNTY, CALIFORNIA REGARDING ANY AND ALL DISPUTES ARISING FROM THIS AGREEMENT. THE PARTIES HEREBY DESIGNATE SANTA CLARA COUNTY, CALIFORNIA AS THE PLACE OF PERFORMANCE AND PAYMENT.