

## TERMS OF PURCHASE

- 1. General.** This Purchase Order ("PO") is submitted in accordance with, and its acceptance is conditioned on, these terms of purchase ("Terms") (the PO and these Terms, together, the "**Agreement**"). Any contrary terms proposed by Seller are hereby rejected. Seller's provision of any products ordered pursuant to this PO ("**Products**") shall be deemed Seller's explicit acceptance of these Terms as governing the transaction and THESE TERMS SHALL SUPERSEDE ANY TERMS SET FORTH IN ANY QUOTATION, INVOICE, ACKNOWLEDGEMENT OR OTHERWISE, UNLESS SUCH TERMS ARE AGREED TO IN WRITING BY BUYER AND NOTWITHSTANDING ANY CONTRARY LANGUAGE PROPOSED BY SELLER THAT THE ACCEPTANCE OR USE OF, OR PAYMENT FOR, THE PRODUCTS BYBUYER OR ANY OTHER ACT OR FAILURE TO ACT BY BUYER, CONSTITUTES ACCEPTANCE OF ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, reject or supplement these Terms shall be binding unless made in writing signed by Seller and Buyer. This Agreement shall constitute the entire agreement between Buyer and Seller and incorporates all of these representations, promises and statements made in connection with this purchase of the Products and the negotiation thereof. **The Agreement shall be deemed accepted by Seller unless Buyer has received notice of rejection in writing within five (5) business days following the date of Buyer's submission of the PO to Seller.**
- 2. Changes.** Buyer reserves the right at any time prior to acceptance by Seller to make written changes in any terms of this PO. In addition, subsequent to such acceptance, Buyer shall have the right to issue written change notices relating to (a) the quantity of Products ordered, (b) delivery schedules, (c) place of delivery or (d) method of shipment. If any such change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in the price or delivery schedule, or both. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days of receipt by Seller of notice of the change. Seller shall not suspend performance of this PO while Buyer and Seller are in the process of making such changes and any related adjustments. No substitutions shall be made without the prior written approval of Buyer. Price increases or extensions of time for delivery shall not be binding on Buyer unless evidenced by a PO change notice issued and signed by Buyer.
- 3. Delivery.** Time is of the essence and all Products shall be delivered on or before the delivery date set forth in the PO. Buyer reserves the right, without liability and in addition to its other rights and remedies, to cancel this Order or any portion thereof without charge and to purchase substitute Products elsewhere and charge Seller with any loss incurred if the Products are not delivered by the established delivery date. Unless noted otherwise on the face of the PO, delivery is Ex Works ("**Incoterms 2010**"). All shipments must be accompanied by a packing slip and other required documentation, which describes the articles, states the PO number and shows the shipment's destination. Seller will pack all Products in a manner suitable for shipment and sufficient to enable the Products to withstand normal and reasonable effects of shipping, including handling during loading and unloading.
- 4. No Partial Performance.** In no event shall Buyer be required to accept postponed or partial performance or substitutions unless Buyer has expressly agreed in writing to do so. Any unauthorized quantities of Products shipped to Buyer are subject to rejection by Buyer and return to Seller at Seller's expense.
- 5. Inspection.** All Products are subject to inspection and approval at the Destination. Buyer reserves the right to reject, or revoke acceptance of, Products which are not in accordance with the instructions, specifications, samples, drawings and data (the "**Specifications**") or Seller's warranty (express or implied), and any such Products will be held for Seller's instructions at Seller's risk and, if Seller so instructs, will be returned at Seller's expense. If inspection discloses that part of the Products received were defective or not in accordance with the Specifications, Buyer shall have the right to cancel any unshipped or un-rendered portion of this PO, or by reason of defects, latent or patent, or other breach of warranty. In addition to Buyer's right to cancel or return such defective Products, Buyer may recover all of its damages related to or arising from delivery and/or provision of defective Products, including manufacturing costs, damage to materials or other articles, installation and removal costs, damages caused by improper boxing, crating or packing and loss of profits or other special or consequential damages that it may incur. Furthermore, Buyer specifically reserves the right to rework any such defective Products at its own facilities and to charge the costs of such reworking back against Seller. Such rights shall be in addition to any other remedies provided by law. Buyer will charge Seller for the cost of inspecting any defective Products.
- 6. Intellectual Property.** All intellectual property ownership is determined according to US patent law. Buyer may use Products for development of its products and resell such products under its label.
- 7. Payment.** Unless noted otherwise on the face of the POC, Payment terms are Net 90 days from date of invoice. All invoices must be sent to the billing address indicated in the PO. Any cash discounts shall run from the date of receipt of the Products by Buyer or from the date of receipt of the invoice, whichever is later. Payment of Seller's invoices is subject to adjustment for shortages or non-conforming Products.
- 8. Warranty.** By accepting this PO, Seller expressly warrants that:
- all Products furnished hereunder will be in exact conformity with this PO and with the Specifications, shall be free from defects in material and workmanship, including latent defects, shall be free of any and all liens and encumbrances and shall be merchantable and fit for their intended purpose. If any Products are found to be defective in material or workmanship or otherwise not in exact conformity with this PO or with any Specification, Seller agrees on receipt of notice of defect or nonconformity from Buyer to promptly cure such defect or nonconformity. Buyer shall have the right, in addition to any other right which it may have hereunder or by law or equity, to reject and return any such Products at Seller's expense. Seller's shall bear risks and cost after notice of rejection.
  - the sale and use of the Products furnished hereunder or use thereof will not infringe upon or dilute, as applicable, any U.S. or foreign patent, copyright, trademark, trade name or other intellectual property right, or misappropriate any trade secret. In the event any claim of infringement, dilution, misappropriation or unfair competition is made, Buyer shall have, in addition to its other rights and remedies, the right to cancel delivery of any Products to which the claim relates and to return to Seller for full credit or any such Products previously delivered. Seller's obligations hereunder shall survive acceptance of the Products and payment therefore by Buyer.
- 9. Indemnity.**
- Seller agrees to defend, indemnify, save and hold harmless Buyer, its agents, employees, successors and assigns, from and against any and all liabilities, obligations, suits, claims, losses, damages, penalties, injuries, actions, costs and expenses (including reasonable attorneys' fees incurred in investigating and defending same) ("Claims") of whatsoever kind and nature, whether incurred by Buyer or alleged by others, in contract or tort (including, without in any way limiting the generality of the foregoing, strict liability in tort) or otherwise, arising in whole or in part out of a breach of any of Seller's warranties, breach of contract, negligence, allegedly defective material, workmanship or services, or out of any act or omission of Seller, its employees, agents or subcontractors. Seller recognizes that the Products may be incorporated in a product to be manufactured and sold (or said Product itself may be sold) by Buyer to its customers and consumers. Seller shall indemnify and hold Buyer harmless from any and all costs or recalls of such Products, including but not limited to costs incurred in transportation, labor, removal, installation, fines, penalties and attorneys' fees.
  - Seller agrees to defend, indemnify and hold harmless Buyer, its distributors and dealers from and against any and all Claims arising in whole or in part out of any claim of actual or alleged infringement or dilution, as applicable, of any U.S. or foreign letters patent, service mark, trademark, trade name, copyright or other intellectual property right, or misappropriation of any trade secret resulting from the Products. Buyer and all parties under threat of litigation as a result of Seller's breach of its warranty against intellectual property infringement shall have the right to employ, at Seller's expense, counsel or their own behalf and shall have the right to participate in their own defense.
  - To the extent that this PO calls for the performance of services by Seller on any premises owned, leased or controlled by Buyer, Seller hereby waives, and hereby agrees to indemnify and hold Buyer harmless from, any and all claims, damages, suits, actions, judgments and injuries of any nature whatsoever that Seller, its employees, agents or other representatives may have or incur as a result of their presence on said premises, whether or not arising out of any act or omission (whether or not negligent) of Buyer. In the event Buyer's tooling, molds, fixtures, machinery, or equipment is used by Seller in the performance of any work that might be required under this PO, such tooling, molds, fixtures, machinery or equipment shall be considered as being under the sole custody and control of Seller during the period of such use by Seller.
- 10. Insurance.** Seller shall at all times maintain product liability insurance coverage with limits per occurrence of not less than \$2,000,000 per person and not less than \$2,000,000 for property damage. Seller shall also maintain Public Liability, Property Damage and Employer's Liability and Compensation Insurance as well as protect Seller and Buyer from said risks and from any claims under any applicable laws, rules or regulations. At Buyer's request, Seller shall have Buyer listed as an additional named insured on all of such insurance and furnish Buyer with an insurance Carrier's Certificate evidencing all of such insurance described in this paragraph 9.
- 11. Compliance with Laws.** In the performance of this PO, Seller represents and warrants that it has complied, and hereby agrees to continue to comply during the performance of this PO, with all applicable federal, state and local laws, statutes, rules, regulations, orders and ordinances now or hereafter in effect, including without limitation (a) all of the provisions of the Fair Labor Standards Act of 1938, as amended, (b) all of the requirements of the Occupational Safety and Health Act of 1970, (c) federal laws, rules and regulations applicable to subcontractors of government contractors, including those relating to equal employment opportunity and affirmative action in employment and non-segregation of facilities (including, but not limited to, the requirements set out at 41 CFR 60-1.4, 60-250.4 and 60-741.4, which clauses are hereby incorporated by reference), and warrants that all Products described in this PO, and their use, will comply with all such laws, regulations, order and ordinances. Seller also warrants that it will abide by EO 13496. Seller hereby recognizes that Buyer may serve from time to time as a contractor for the United States Government and, if so, contract clauses required by the United States Government in such circumstances are incorporated herein by reference. **Additionally, to the extent applicable, (y) Seller and Seller subcontractors shall abide by the requirements of 41 CFR 60- 741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities, and (z) Seller and any Seller subcontractors shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**
- 12. Default.** If Buyer cancels this PO following Seller's failure to make deliveries when required hereunder or following any other default by Seller of any of its obligations hereunder, Buyer shall be entitled to payment from Seller for any and all damages (including, but not limited to, direct, consequential and special damages), including lost profits, attorneys' fees incurred relative to such failure or default and any additional expenses incurred by Buyer in procuring substitute goods, resulting from such cancellation for default.
- 13. Termination.** Buyer shall have the right to terminate this PO or any part thereof at any time by providing notice of termination and the reasons thereof to Seller.
- In case of termination by Buyer of all or any part of this PO without cause, any claim by Seller for damages due to termination must be submitted to Buyer within sixty (60) days after the effective date of termination and will be limited to reasonable, verifiable and actual direct costs which were incurred prior to termination and which were not and are not able to be mitigated, in an amount not to exceed, in any case, the remaining payments that would have been made under this PO, and subject further to the requirements and limitations set forth below.
  - If (i) Seller fails to make delivery of Products within the time specified on the PO, or any written extension thereof, (ii) Seller breaches any term, provision, warranty, representation, obligation or condition of this PO, (iii) Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature), (iv) any proceeding under the bankruptcy or insolvency laws brought by or against Seller, (v) a receiver for Seller is appointed or applied for, or (vi) an assignment for the benefit of creditors is made by Seller (the foregoing, "Cause"), Buyer may, without limiting are bought by Buyer and Buyer may purchase Products elsewhere on such terms as Buyer may deem appropriate, and Seller shall be liable to Buyer for any excess cost or expenses incurred by Buyer for any excess cost or expenses incurred by Buyer resulting therefrom.
  - Upon the termination of this PO, in whole or in part, by Buyer for any reason, with or without Cause, Seller shall immediately (i) stop all work hereunder, (ii) cause any of its suppliers or subcontractors to cease work and (iii) preserve and protect work in progress and materials on hand purchased for or committed to this PO in its own and in its suppliers' or subcontractors' plants pending Buyer's instructions. Seller shall not be paid for any work done after receipt of the notice of termination. Seller shall not be paid for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Buyer shall not owe Seller any lost profit or payment for any materials or Products that Seller may consume or sell to others in its ordinary case of business.
- 14. Setoff.** Buyer specifically reserves the right, in its sole discretion, to set off against any amounts to be paid by Buyer to Seller under this PO any amounts which Seller may owe to Buyer, whether by way of credit, indemnification or otherwise, and whether pursuant to this PO or any other agreement between Buyer and Seller.



BIOSYSTEMS

**15. Limitation of Liability.** In the event of a breach of any provision of this PO by Buyer by reason of failure to make payment when due or to accept delivery of the Products or otherwise, Buyer shall be liable only for the direct and documented costs actually incurred by Seller. IN NO EVENT SHALL BUYER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCTS TO BE PURCHASED HEREUNDER, AND IN NO EVENT SHALL BUYER BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND WHATSOEVER.

**16. Governing Law; Venue.** This Agreement shall be construed according to and governed by the laws of the State of Illinois excluding its conflict of law rules. The parties hereby agree that exclusive jurisdiction for any claim or dispute hereunder shall reside in the United States District Court in Richmond, Illinois, and waive any right to claim forum non conveniens. Both parties expressly consent to the exercise of personal jurisdiction in the State of Illinois in connection with any dispute or claim involving the other party and each party consents to the service of process in connection with any dispute or claim by personal delivery, mailing of such notice by certified mail, postage prepaid, or any other manner permitted by law. **Each party expressly waives any right to a jury trial that it may have in any judicial proceeding instituted hereunder.** Each party shall be responsible for its own legal costs.