

## **PURCHASE ORDER TERMS & CONDITIONS**

As used herein, “**Buyer**” means FUJIFILM Cellular Dynamics, Inc. and “**Seller**” includes Seller (as identified in Buyer’s purchase order), its subsidiaries and affiliates.

**1. SERVICES & DELIVERABLES; ACCEPTANCE.** Seller agrees to perform the services (“**Services**”) and/or provide the goods or Service deliverables (collectively referred to as “**Goods**”), described in Buyer’s purchase order, in accordance with the applicable purchase order, scope of work and with these Terms and Conditions (collectively, this “**Agreement**”). Buyer’s purchase order constitutes Buyer’s offer to purchase such Services and/or Goods on the terms and conditions set forth herein and therein. Upon Seller’s acknowledgement of Buyer’s purchase order or, in the absence of such acknowledgement, shipment of Goods or commencement of performance of a Service, Seller shall be bound by the provisions of this Agreement, including all provisions set forth on the face of Buyer’s applicable purchase order, whether Seller acknowledges or otherwise signs this Agreement or the purchase order. This writing does not constitute a firm offer within the meaning of the Uniform Commercial Code as in effect in Wisconsin (or any other state the laws of which are held by a court of competent jurisdiction to be applicable hereto), and may be revoked at any time prior to acceptance. **ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS CONTAINED IN ANY ACKNOWLEDGMENT, INVOICE OR OTHER COMMUNICATION OF SELLER, ARE HEREBY EXPRESSLY REJECTED BY BUYER. THIS AGREEMENT MAY NOT BE ADDED TO, MODIFIED, SUPERSEDED OR OTHERWISE ALTERED, EXCEPT AS SET FORTH IN A WRITING SIGNED BY AN AUTHORIZED BUYER REPRESENTATIVE.** To the extent that this Agreement might be treated as Buyer’s acceptance of any prior offer of Seller, such acceptance is expressly made on condition of assent by Seller to the terms and conditions hereof, and shipment of the Goods or commencement of performance of any Services by Seller shall constitute such assent. Buyer hereby reserves the right to reschedule any delivery or cancel any purchase order issued at any time prior to shipment of the Goods or prior to commencement of any Services. Buyer shall not be subject to any charges or other fees as a result of such cancellation.

**2. DELIVERY.** Time is of the essence. Delivery of Goods shall be made pursuant to the schedule, via the carrier and to the place specified on the face of the applicable purchase order. Buyer reserves the right to return, shipping charges collect, all Goods received in advance of the delivery schedule. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of land transportation (or other mode of transportation if delivery exclusively by land is not possible). If no method of shipment is specified in the purchase order, Seller shall use the least expensive carrier. In the event Seller fails to deliver the Goods within the time specified, Buyer may, at its option, decline to accept the Goods and terminate this Agreement or may demand its allocable fair share of Seller’s available Goods and terminate the balance of this Agreement. Seller shall package all items in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify contents without opening and all boxes and packages must contain packing sheets listing contents. Buyer’s purchase order number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.

**3. RISK OF LOSS & DESTRUCTION OF GOODS.** Seller assumes all risk of loss until receipt by Buyer. Title to the Goods shall pass to Buyer upon receipt by it of the Goods at Buyer’s designated destination.

If the Goods ordered are destroyed prior to title passing to Buyer, Buyer may at its option cancel this Agreement or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, Buyer shall have the right to require delivery of the Goods not destroyed.

**4. PAYMENT.** As full consideration for the performance of the Services, delivery of the Goods and the assignment of rights to Buyer as provided herein, Buyer shall pay Seller (i) the amount agreed upon and specified in the applicable purchase order, or (ii) Seller’s quoted price on date of shipment (for Goods) or the date performance was commenced (for Services), whichever is lower. Applicable taxes and other charges such as shipping costs, duties, customs, tariffs, imposts and government imposed surcharges shall be stated separately on Seller’s invoice. Payment is made when Buyer’s check is mailed. Payment shall not constitute acceptance. All personal property taxes assessable upon the Goods prior to receipt by Buyer of Goods conforming to the purchase order shall be borne by Seller. Seller shall invoice Buyer only for all Goods delivered and all Services actually performed. Each invoice submitted by Seller must be provided to Buyer within ninety (90) days of delivery of Goods or completion of the Services and must reference the applicable purchase order, and Buyer reserves the right to return unpaid all incorrect invoices. Buyer will receive a 2% discount of the invoiced amount for all Invoices that are submitted more than ninety (90) days after completion of the Services or delivery of the Goods. Unless otherwise specified on the face of a purchase order, Buyer shall pay the invoiced amount within sixty (60) days after receipt of a correct invoice. Seller will receive no royalty or other remuneration on the production or distribution of any products developed by Buyer or Seller in connection with or based on the Goods or Services provided.

## **5. WARRANTIES.**

**5.1 Services:** Seller represents and warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current good and sound professional procedures. Further, Seller represents and warrants that the Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in this Agreement. Seller represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory or regulatory restriction to which Seller is bound.

**5.2 Goods:** Seller warrants that all Goods provided will be new and will not be used or refurbished. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications for a period of fifteen (15) months from the date of delivery to Buyer or for the period provided in Seller’s standard warranty covering the Goods, whichever is longer. Seller hereby agrees that it will make spare parts available to Buyer for a period of five (5) years from the date of shipment at Seller’s then current price, less applicable discounts. Additionally, Goods purchased shall be subject to all written and oral express warranties made by Seller’s agents, and to all warranties provided for by the California Commercial Code. All warranties shall be construed as conditions as well as warranties and shall not be exclusive. Seller shall furnish to Buyer Seller’s standard warranty and service guaranty applicable to the Goods. All warranties and Service guaranties shall run both to Buyer and to its customers.

If Buyer identifies a warranty problem with the Goods during the warranty period, Buyer will promptly notify Seller of such problems and will return the Goods to Seller, at Seller’s expense. Within five (5) business days of receipt of the returned Goods, Seller shall, at Buyer’s

option, either repair or replace such Goods, or credit Buyer's account for the same. Replacement and repaired Goods shall be warranted for the remainder or the warranty period or six (6) months, whichever is longer.

**6. INSPECTION.** Buyer shall have a reasonable time after receipt of Goods or Service deliverables and before payment to inspect them for conformity hereto, and Goods received prior to inspection shall not be deemed accepted until Buyer has run an adequate test to determine whether the Goods conform to the specifications hereof. Use of a portion of the Goods for the purpose of testing shall not constitute an acceptance of the Goods. If Goods tendered do not wholly conform to the requirements herein, Buyer shall have the right to reject such Goods. Nonconforming Goods will be returned to Seller freight collect and risk of loss will pass to Seller upon Buyer's delivery to the common carrier.

**7. INDEPENDENT CONTRACTOR.** Buyer is interested only in the results obtained under this Agreement; the manner and means of achieving the results are subject to Seller's sole control. Seller is an independent contractor for all purposes, without express or implied authority to bind Buyer by contract or otherwise. Neither Seller nor its employees, agents or subcontractors ("Seller's Assistants") are agents or employees of Buyer, and therefore are not entitled to any employee benefits of Buyer, including but not limited to, any type of insurance. Seller shall be responsible for all costs and expenses incident to performing its obligation under this Agreement and shall provide Seller's own supplies and equipment.

**8. SELLER RESPONSIBLE FOR TAXES AND RECORDS.** Seller shall be solely responsible for filing the appropriate federal, state and local tax forms, including, without limitation, a Schedule C or a Form 1120, and paying all such taxes or fees, including estimated taxes and employment taxes, due with respect to Seller's receipt of payment under this Agreement. Seller further agrees to provide Buyer with reasonable assistance in the event of a government audit. Buyer shall have no responsibility to pay or withhold from any payment to Seller under this Agreement, any federal, state or local taxes or fees. Buyer will, as appropriate, regularly report amounts paid to Seller by filing Form 1099-MISC with the Internal Revenue Service.

**9. INSURANCE.** Seller shall be solely responsible for maintaining and requiring Seller's Assistants to maintain such adequate health, auto, workers' compensation, unemployment compensation, disability, liability, and other insurance, as is required by law or as is the common practice in Seller's and Seller's Assistants' trades or businesses, whichever affords greater coverage. Upon request, Seller shall provide Buyer with certificates of insurance or evidence of coverage before commencing performance under this Agreement. Seller shall provide adequate coverage for any Buyer property under the care, custody or control of Seller or Seller's Assistants.

**10. INDEMNITY.** Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and costs of suit arising out of or in any way connected with the Goods or Services provided under this Agreement, including, without limitation (i) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean up costs, (ii) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor, (iii) any claim based on the negligent act(s) or omission(s) or willful misconduct of Seller or any Seller's Assistants, and (iv) any claim by a third party against Buyer alleging that Goods or Services, the results

of such Services or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes. Seller shall not settle any such suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including attorneys' fees.

Should Buyer's use, or use by its distributors, subcontractors or customers, of any Goods or Services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either (a) substitute fully equivalent non-infringing Goods or Services; (b) modify the Goods or Services so that they no longer infringe but remain fully equivalent in functionality; (c) obtain for Buyer, its distributors, subcontractors or customers the right to continue using the Goods or Services; or (d) if none of the foregoing is possible, refund any amounts paid for the infringing Goods or Services.

**11. CONFIDENTIALITY.** Seller will acquire knowledge of Buyer Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such Buyer Confidential Information in confidence during and following termination or expiration of this Agreement. "Buyer Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined herein) and other material or information considered proprietary by Buyer relating to the current or anticipated business or affairs of Buyer which is disclosed directly or indirectly to Seller. In addition, Buyer Confidential Information means any third party's proprietary or confidential information disclosed to Seller in the course of providing Services or Goods to Buyer. Buyer Confidential Information does not include any information (i) which Seller lawfully knew without restriction on disclosure before Buyer disclosed it to Seller, (ii) which is now or becomes publicly known through no wrongful act or failure to act of Seller, (iii) which Seller developed independently without use of the Buyer Confidential Information, as evidenced by appropriate documentation, or (iv) which is hereafter lawfully furnished to Seller by a third party as a matter of right and without restriction on disclosure. In addition, Seller may disclose Buyer Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law so long as Seller provides prompt notice to Buyer of such requirement prior to disclosure.

Seller agrees not to copy, alter or directly or indirectly disclose any Buyer Confidential Information. Additionally, Seller agrees to limit its internal distribution of Buyer Confidential Information to Seller's Assistants who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Seller's Assistants of nondisclosure agreements with provisions substantially similar to those set forth herein. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized disclosure or use of Buyer Confidential Information.

Seller further agrees not to use the Buyer Confidential Information except in the course of performing hereunder and will not use such Buyer Confidential Information for its own benefit or for the benefit of any third party. The mingling of Buyer Confidential Information with information of Seller shall not affect the confidential nature or ownership of the same

as stated hereunder. Seller agrees not to design or manufacture any products, or file any patent application, copyright registration, or the like, which incorporate Buyer Confidential Information. All Buyer Confidential Information is and shall remain the property of Buyer. Upon Buyer's written request or the termination of this Agreement, Seller shall return, transfer or assign to Buyer all Buyer Confidential Information, including all Work Product, as defined herein, and all copies thereof.

**12. OWNERSHIP OF WORK PRODUCT.** For purposes of this Agreement, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, Service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others which result from or relate to the Services performed hereunder. Standard Goods manufactured by Seller and sold to Buyer without having been designed, customized or modified for Buyer do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of Buyer. Seller hereby agrees to irrevocably assign and transfer to Buyer and does hereby assign and transfer to Buyer all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. Buyer will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that Buyer deems appropriate. Seller agrees; (a) to disclose promptly in writing to Buyer all Work Product in its possession; (b) to assist Buyer in every reasonable way, at Buyer's expense, to secure, perfect, register, apply for, maintain, and defend for Buyer's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in Buyer's name as it deems appropriate; and (c) to otherwise treat all Work Product as Buyer Confidential information as described above. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Agreement. All tools and equipment supplied by Buyer to Seller shall remain the sole property of Buyer.

Seller will ensure that Seller's Assistants appropriately waive any and all claims and assign to Buyer any and all rights or any interests in any Work Product or original works created in connection with this Agreement. Seller irrevocably agrees not to assert against Buyer or its direct or indirect customers, assignees or licensees any claim of any intellectual property rights of Seller affecting the Work Product. Buyer will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities or trade secret or Buyer Confidential Information, unless (i) such works relate to Buyer's business, or Buyer's actual or demonstrably anticipated research or development, or (ii) such works result from any Services performed by Seller for Buyer.

**13. NONINTERFERENCE WITH BUSINESS.** During and for a period of two years immediately after the termination or expiration of this Agreement, Seller agrees not to unlawfully Interfere with the business of Buyer in any manner, and further agrees not to solicit or induce any employee or independent contractor to terminate or breach an employment, contractual or other relationship with Buyer.

**14. INSURANCE.** Unless more specific insurance provisions are attached, the following shall apply. At all times during its performance under this Agreement, Seller shall obtain and keep in force

comprehensive general and professional liability and general liability insurance, including coverage for death, bodily or personal injury, property damage, including products liability, pollution liability (if requested by the Buyer), and automobile coverages, with limits of not less than \$1,000,000 each claim and \$3,000,000 each occurrence, with the exception of \$1,000,000 each occurrence for automobile coverage. All certificates evidencing such insurance, shall be provided to Buyer upon request, shall name Buyer as an additional Insured, and shall provide for notification of any expiration or cancellation of such insurance to Buyer at least thirty days prior to such expiration or cancellation. Seller represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance to Buyer upon request.

**15. TERMINATION.** Buyer may terminate this Agreement upon written notice to Seller if Seller fails to perform or otherwise breaches this Agreement, files a petition in bankruptcy, becomes insolvent, or dissolves. In the event of such termination, Buyer shall pay Seller for the portion of the Services satisfactorily performed and those conforming Goods delivered to Buyer through the date of termination, less appropriate offsets, including any additional costs to be incurred by Buyer in completing the Services.

Buyer may terminate this Agreement, or any Service(s), for any other reason upon thirty (30) days' written notice to Seller. Seller shall cease to perform Services and/or provide Goods under this Agreement on the date of termination specified in such notice. In the event of such termination, Buyer shall be liable to Seller only for those Services satisfactorily performed and those conforming Goods delivered to Buyer through the date of termination, less appropriate offsets.

Seller may terminate this Agreement upon written notice to Buyer if Buyer fails to pay Seller within sixty (60) days after Seller notifies Buyer in writing that payment is past due.

Upon the expiration or termination of this Agreement for any reason: (a) each party will be released from all obligations to the other that otherwise would arise after the date of expiration or termination, except for those which by their terms survive such termination or expiration; and (b) Seller will promptly notify Buyer of all Buyer Confidential Information or any Work Product in Seller's possession and, at the expense of Seller and in accordance with Buyer's instructions, will promptly deliver to Buyer all such Buyer Confidential Information and/or Work Product.

**16. REMEDIES.** If Seller breaches this Agreement, Buyer shall have all remedies available by law and at equity. For the purchase of Goods, Seller's sole remedy in the event of breach of this Agreement by Buyer shall have the right to recover damages in the amount equal to the difference between market price at the time of breach and the purchase price specified in this Agreement. No alternate method of measuring damages shall apply to any such transaction. Seller shall have no right to resell Goods for Buyer's account in the event of wrongful rejection, revocation of acceptance, failure to make payment or repudiation by Buyer and any resale so made shall be for the account of Seller.

**17. FORCE MAJEURE.** Buyer shall not be liable for any failure to perform including failure to (i) accept performance or Services or, (ii) take delivery of the Goods as provided caused by circumstances beyond its control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action, accident, labor difficulties or shortage, inability to obtain materials, equipment or transportation. In the event Buyer is so



excused, either party may terminate this Agreement and Buyer shall at its expense and risk, return any Goods received to the place of shipment.

**18. SEVERABILITY.** If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**19. LIMITATION OF LIABILITY.** IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR SELLER'S ASSISTANTS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE

**20. ASSIGNMENT; WAIVER.** Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of Buyer. Any assignment or transfer without such written consent shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of Buyer without restriction. A waiver of any default hereunder or of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

**21. NONEXCLUSIVE AGREEMENT.** This is not an exclusive agreement. Buyer is free to engage others to perform Services or provide Goods the same as or similar to Seller's. Seller is free to, and is encouraged to, advertise, offer and provide Seller's Services and/or Goods to others; provided however, that Seller does not breach this Agreement.

**22. NOTICES.** Except for purchase orders which may be sent by local mail, facsimile transmission or electronically transmitted, all notices, and other communications hereunder shall be in writing, and shall be addressed to Seller or to an authorized Buyer representative, and shall be considered given when (a) delivered personally, (b) sent by confirmed telex or facsimile, (c) sent by commercial overnight courier with written verification receipt, or (d) three (3) days after having been sent, postage prepaid, by first class or certified mail.

**23. SURVIVAL OF OBLIGATIONS.** Any obligations and duties, which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

**24. GOVERNING LAW.** This Agreement shall be construed in accordance with, and disputes shall be governed by, the laws of the State of Wisconsin, excluding its conflict of law rules. The federal and state courts located in Dane County, Wisconsin shall have jurisdiction and venue over all controversies arising out of, or relating to, this Agreement, and Seller hereby irrevocably and unconditionally submits and waives any objection to such jurisdiction and venue of such courts. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties and it shall not apply to the terms and conditions or subject matter of this Agreement.

**25. ENTIRE AGREEMENT; MODIFICATION.** This Agreement is the complete, final and exclusive statement of the terms of the agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter hereof. This Agreement may not be varied, modified, altered, or amended except in writing, including a purchase order or a change order issued by Buyer, signed by the parties.

The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Seller. Notwithstanding the foregoing, this Agreement will not supersede or take the place of any written agreement which is signed by both parties and covers the same subject matter as this Agreement or its related purchase orders.

## **26. COMPLIANCE WITH LAWS.**

**26.1 General:** Seller shall comply fully with all applicable executive orders and federal, state and local laws and related regulations in the performance of this Agreement including, but not limited to, those relating to general business practices, employment and employment practices, taxes, export control, customs clearance, and health, safety and the environment.

**26.2 Equal Employment Opportunity:** The Equal Opportunity Clauses found at 41 Code of Federal Regulations (CFR) 60-1.4(a)(1-7), 60-250.4(a-m) and 60-741.5(a)(1-6) are incorporated herein by reference as though set forth at length, and made an express part of this Agreement. Seller warrants and certifies specific compliance with such Equal Opportunity Clauses and the following Federal Acquisition Regulations (FAR): (i) 52.222-26 "Equal Opportunity", (ii) 52.222-35 "Affirmative Action for Special Disabled and Vietnam Veterans", and (iii) 52.222-36 "Affirmative Action for Handicapped Workers". Additionally, if Seller is a subcontractor described in 41 CFR Section 61-250.1 then the contract clause set forth in 41 CFR Section 61-250.10 shall be deemed incorporated herein by reference. Buyer requires and Seller further warrants and certifies that it will not obtain merchandise from manufacturers/sellers where Seller has knowledge or has reason to believe that such manufacturers/sellers utilize forced, prison or child labor.

**26.3 Small Business Plan Requirements:** Pursuant to FAR 52.219.9, if Seller (i) is not considered a Small Business (as the term is defined in section 3 of the Small Business Act) and (ii) is providing Goods or Services under this Agreement in an amount greater than or equal to \$500,000, and (iii) is subcontracting a portion of the Goods or Services from a third party, Seller agrees to submit to Buyer a Small Business Plan or letter stating that Seller does not have a Small Business Plan and listing the approximate dollar amount to be subcontracted.

**26.4 Hazardous Materials:** If Goods include hazardous materials, Seller represents and warrants that Seller understands the nature of any hazards associated with the manufacture, handling and transportation of such materials.

**26.5 Customs:** Upon Buyer's request, Seller will promptly provide Buyer with a statement of origin for all Goods and United States Customs documentation for Goods wholly or partially manufactured outside of the United States.

**27. INJUNCTIVE RELIEF.** Seller acknowledges and agrees that the obligations and promises of Seller under this Agreement are of a unique, intellectual nature giving them particular value. Seller's breach of any of the promises contained in this Agreement will result in irreparable and continuing damage to Buyer for which there will be no adequate remedy at law and, in the event of such breach, Buyer will be entitled to seek injunctive relief or a decree of specific performance.