

**FUJIFILM HEALTHCARE AMERICAS CORPORATION  
IN VITRO DIAGNOSTICS PRODUCTS AND SERVICES  
SALES QUOTATION  
TERMS AND CONDITIONS**

**1. Terms and Conditions of Acceptance.**

The sale by FUJIFILM Healthcare Americas Corporation (“SELLER”) to BUYER of the products and/or services specified on this sales quotation (listed herein/attached hereto) (the “Products” or the “Services”, as applicable) is subject to these exclusive terms and conditions of sale set forth on this sales quotation (“Sales Quotation”). These terms and conditions and Sales Quotation constitute and set forth the entire contract (the “Agreement”) between the parties with respect to the purchase and sale of the Products or Services. **Products are NOT FOR RESALE without the express prior written approval of SELLER.** Upon receipt hereof, and subsequent acceptance of the Products or Services, BUYER will be deemed to have accepted and assented to these terms and conditions of Sale, which represent the entire valid and binding Agreement between SELLER and BUYER, and unless covered under separate written agreement signed by both parties, supersedes any and all prior understandings, agreements, representations, warranties, or other statements or promises, if any, which have been made by or to any of the parties in connection herewith. SELLER will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) that BUYER proffers in any purchase order, receipt, acceptance, confirmation, correspondence, or other document that BUYER proffers as an acceptance of this Agreement, unless SELLER specifically agrees to such provision in a written instrument signed by SELLER.

**2. Delivery, Title and Risk of Loss.**

Unless delivery terms are specified on the reverse hereof, shipments are FCA (Incoterms 2020) SELLER’s facilities, and the ownership and risk of loss thereof shall pass from SELLER to BUYER upon Seller’s delivery to BUYER’s carrier at SELLER’s facility. The date of delivery shown on the reverse hereof is SELLER’s best estimate only, and SELLER shall not be liable for any delivery later than that estimated date of delivery. SELLER may, as an accommodation to BUYER, arrange for the transportation, insurance, etc. to another delivery point as requested by BUYER, but the terms and risk of loss shall remain FCA SELLER’s facility, and the additional expense associated with this alternate delivery point shall be invoiced to BUYER along with the price of Products. If SELLER is required to pay the freight charges for any shipment, SELLER shall have the right to select the routing and carrier. Each shipment shall be considered a separate transaction. If SELLER elects to continue to make shipments notwithstanding any default by BUYER, such action shall not constitute a waiver of any default by BUYER or any provision of this Sales Quotation.

**3. Acceptance.**

Acceptance of Products shall occur as soon as practicable after BUYER’S receipt of delivery but not later than five (5) business days after such delivery unless, within such period, BUYER identifies any shortages, overages, or damages in the Products and so notifies SELLER in writing. Any rejection shall include a full and final statement of all defects on which the BUYER proposes to rely in order to justify such rejection. Any rejection shall be limited to the nonconforming portion of the Products.



**4. No Changes or Cancellations; Samples.**

BUYER shall have no right to change or cancel any portion of its obligation to purchase the Products. Cancellation of custom prepared Products will not be accepted after manufacturing has commenced, and BUYER is fully liable to SELLER for 100% of the cost of such custom prepared Products regardless of such cancellation. Samples are provided at no charge for the purpose of testing a particular lot.

**5. No Resale of Product.**

BUYER may not resell Products under this Agreement; any resale of Products is expressly prohibited unless a written, mutually-executed and effective "Distribution Agreement" is in place between SELLER and BUYER authorizing such resale; any resale will be subject to, and governed by, the terms and conditions of such Distribution Agreement, or SELLER has otherwise expressly authorized such resale in writing. For clarification purposes, BUYER may not resell the Products through a reseller, dealer, subdistributor, of any tier, or by any other means of selling, including without limitation, on any public sales forums used for general merchandise sales.

**6. Prices.**

SELLER reserves the right to adjust its prices without notice set forth on this Sales Quotation at any time before acceptance of this Sales Quotation by BUYER. Any price reduction will automatically apply to BUYER's invoice. After acceptance, SELLER reserves the right to adjust its price at any time to reflect increases in SELLER's or SELLER's supplier's costs due to changes in laws or regulations (such as changes in customs duties), including, without limitation, new charges imposed by any governmental agency, or material increase in cost of raw materials, or cost of procuring such raw materials, necessary to Products. Products specified in this Sales Quotation shall be fixed and unchangeable for any Products delivered within thirty (30) days of the date of SELLER's Sales Confirmation issued in response to any BUYER's purchase order issued hereunder.

**7. Taxes.**

All sales, use, transfer and similar taxes which SELLER may be required to pay or collect with respect to the Products shall be for BUYER's account. SELLER shall invoice BUYER for the amounts thereof at the time of shipment or as soon as they become known to SELLER. BUYER will pay or reimburse SELLER for all taxes or other amounts payable to governmental authorities in connection with the applicable transactions, or where applicable will provide SELLER with an exemption certificate satisfactory to SELLER.

**8. Payment.**

(a) Terms of payment shall be as specified in this Sales Quotation. SELLER shall invoice BUYER for Products sold hereunder at the time of their delivery. Unless otherwise agreed by SELLER in writing, payment terms shall be NET 30 days from delivery.

(b) SELLER may accept or apply any check or remittance received from or for the account of BUYER against any indebtedness owed by BUYER to SELLER, without prejudice to, or the discharge of, the outstanding balance of any such indebtedness, regardless of any condition, provision, statement, legend or notation appearing on, referring to or accompanying such check or remittance.



(c) Upon SELLER's prior approval, SELLER may accept VISA®, MasterCard® and American Express® as payment for order. If BUYER has provided BUYER's credit card or debit card for payment, BUYER hereby authorizes SELLER to charge such credit card or debit card to obtain payment. **This section does not apply to sales under Distribution Agreements.**

## **9. Credit.**

A condition of SELLER's obligation to deliver the Products or Services is its approval of BUYER's credit and payment arrangements. If BUYER's credit rating is not satisfactory to SELLER, SELLER may require shorter payment terms or payment in advance. Any credit extended by SELLER to BUYER hereunder is extended at SELLER's sole discretion and SELLER may at any time, with or without cause, declare all outstanding amounts immediately due and payable, require payment in advance for any undelivered Products, or otherwise alter the terms of payment hereunder. If SELLER extends credit terms to BUYER, SELLER shall retain and BUYER hereby grants to SELLER a security interest in all Products, and any proceeds thereof, as security for the payment of any balance owing on the purchase price for said Products or any other sums owing to SELLER under this Sales Quotation and this Agreement. In the event BUYER fails to make any payments when due or otherwise fails to perform any of its obligations under this Sales Quotation and this Agreement, SELLER shall have all rights and remedies of a secured creditor under applicable law.

## **10. Late Charge.**

BUYER shall pay a late charge to SELLER on all overdue amounts from the due date thereof through the date of payment, at a rate equal to one and one-half percent (1.5%) per month, provided, however, that that rate shall at no time exceed the maximum rate legally allowable under the applicable circumstances. Payment of such finance charges will not excuse or cure BUYER's breach or default for late payment. SELLER may apply any payments made by BUYER to SELLER at a time when any such late charge has accrued to such late charge before applying such payments to the purchase price due for any Products.

## **11. Limited Warranty.**

(a) SELLER warrants that the Products shall conform to the description and such additional specifications, if any, set forth or identified on this Sales Quotation, or otherwise agreed to in a written document prepared by SELLER relating to this Sales Quotation and that the Products have a shelf-life of ninety (90) days from the date of shipment to SELLER. This warranty shall apply for 15 days from the time of delivery, unless a different period is set forth on the Sales Quotation or in additional specifications referred to on the Sales Quotation. SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE WITH RESPECT TO THE PRODUCTS OR SERVICES. SAMPLES OF PRODUCTS PROVIDED BY SELLER TO BUYER ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND. Without limiting the generality of the foregoing, SELLER provides no warranty as to the suitability of the Products for the use intended by BUYER including without limitation, any use of the Products in connection with any other product. BUYER confirms that it is solely responsible for making such suitability determination. If resale is authorized by SELLER in writing, BUYER shall be responsible for ensuring that the terms of any such authorized Product resale will at all times be consistent with the exclusions, limitations and disclaimers of obligations, warranties and liabilities specified herein.



Unless otherwise indicated, PRODUCTS ARE FOR RESEARCH USE ONLY; PRODUCTS ARE NOT FOR HUMAN USE OR FOR DRUG PURPOSES, AND ARE NOT FOR INJECTION.

(b) The warranty set forth in Section 11(a) shall not apply to any nonconformity resulting from any storage or use of the Products following delivery to BUYER which is not in accordance with SELLER's instructions or standards (including temperature or other environmental requirements) or the labeling on the Products, or that is otherwise improper.

(c) (i) If BUYER discovers that any Product fails to conform to the warranty set forth in Section 11(a), BUYER shall notify SELLER in writing. Such notice must be given within three (3) business days of the date when BUYER discovers or should have discovered such alleged nonconformity, and in any case must be given within three (3) business days following the end of the warranty period set forth in Section 11(a). Such notice shall provide full details of such alleged nonconformity. BUYER shall additionally respond fully to any SELLER requests for further information concerning such alleged nonconformity and the manner in which the subject Product has been stored and used following delivery and, if requested by SELLER, shall return all or any part of the subject Product to a United States destination designated by SELLER. Upon confirming that a nonconformity exists and is covered by SELLER's warranty hereunder, SELLER shall, at SELLER's option, either replace any Product which SELLER determines not to conform to that warranty or credit BUYER with the purchase price attributable to that Product. BUYER shall prepay the shipping and other related charges for all such Products returned to SELLER after prior return authorization, and SELLER shall pay for the shipping and other related charges for any replacement Products delivered to BUYER. The remedy set forth in Section 11(c) shall constitute BUYER's sole and exclusive remedy for any breach of warranty. If BUYER shall fail to comply strictly with the procedures set forth therein, BUYER shall be barred from any remedy with respect to the affected Products.

(ii) A Return Goods Authorization number and shipping instructions must be obtained from SELLER prior to returning any Product. All Products must be returned in good condition and return is subject to a handling and restocking charge of 20% plus freight. No Product may be returned after 30 days of receipt. Where Product spoilage allegedly occurs in transit, BUYER shall, upon receipt of shipment of such Product, immediately contact SELLER to so notify SELLER and to request instructions from SELLER. Credit will not be issued on any Products that are returned without prior authorization from SELLER.

## **12. Intellectual Property Infringement; Indemnification from BUYER.**

(a) WITH RESPECT TO ANY PRODUCTS SOLD BY SELLER TO BUYER, SELLER DISCLAIMS ALL WARRANTIES OR OTHER LIABILITY, AND SHALL PROVIDE NO WARRANTY OR INDEMNITY WHATSOEVER, FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT, OR ANY ACTUAL OR ALLEGED MISAPPROPRIATION OF ANY TRADE SECRET.

(b) If SELLER procures or produces any Product to BUYER's specifications, BUYER shall indemnify, defend and hold harmless SELLER and SELLER's suppliers from any claim asserting such Product infringes any patent, copyright or other intellectual property right, and from any resulting or related loss, damage or liability.

(c) BUYER shall indemnify and hold harmless SELLER and its affiliates from and against all liabilities incurred by SELLER or its affiliates arising out of or resulting from the use or resale of the



Product or Samples or Services. BUYER acknowledges that it uses any material produced in a Sample at its own risk and shall undertake such tests as are necessary in order to satisfy itself that such materials are fit for the purposes for which BUYER proposes to use such materials. BUYER shall be responsible for the actions and omissions of any re-seller as if they were the actions and omissions of BUYER. BUYER shall notify SELLER in writing immediately upon BUYER's receipt of knowledge of any incident involving the Products or Samples or Services which result in personal injury or claim of any kind. BUYER agrees to fully cooperate with SELLER in the investigation and determination of the cause of such incident and shall make available to SELLER all statements, reports 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.

### **13. *Limitation of Liability.***

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY LOST PROFITS OR OTHER INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE AGGREGATE LIABILITY OF SELLER TO BUYER FOR ANY CLAIMS WHATSOEVER ARISING OUT OF OR RELATING TO THIS SALES QUOTATION OR THIS AGREEMENT BETWEEN BUYER AND SELLER, SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY BUYER TO SELLER HEREUNDER.

(b) Each limitation on liability or limited or exclusive remedy set forth in this Sales Quotation and this Agreement is independent of any other limitation or remedy and if any such limitation or remedy fails of its essential purpose or is otherwise held to be unenforceable, that shall not affect the validity of any other such limitation or remedy.

### **14. *BUYER Default.***

If BUYER fails to make any payment or to perform any other obligation hereunder when due, SELLER may, in addition to any other remedies which SELLER may have hereunder or under applicable law, upon notice to BUYER, suspend SELLER's performance hereunder and under any other agreements with BUYER, or terminate any unperformed portion of this Sales Quotation or any other such agreements, in which case BUYER shall be deemed to have repudiated this Sales Quotation and any other such terminated agreements.

### **15. *Contingencies.***

(a) SELLER shall not be responsible for any delay in performing or failure to perform hereunder due to any cause beyond SELLER's reasonable control affecting SELLER or SELLER's suppliers, including, without limitation, acts of God, war, riots or other civil commotion, embargoes, governmental laws, regulations or orders, fires, floods, earthquakes, strikes, lockouts or other labor difficulties, material increase in cost of obtaining raw materials or inability to obtain raw materials or other supply chain delays, or failure of suppliers to perform, whether or not such cause or event was in the contemplation of the parties at time the parties entered into this Sales Quotation and this Agreement. If such cause occurs and affects only a portion of SELLER's performance, SELLER may, at its option, perform to the extent that it is able to, and BUYER shall accept that performance. If SELLER's





performance is affected for more than ninety (90) days, SELLER may then, at its option, terminate the unperformed balance of this Sales Quotation without further liability to BUYER.

(b) In addition to causes covered by Section 15(a), other circumstances may arise which may result in SELLER having insufficient quantities of Products from its inventory and then contemplated sources of supply to meet the full requirements of all of SELLER's customers, contract or otherwise. Whenever such situation exists and SELLER's performance hereunder is not otherwise excused, SELLER may reduce deliveries of such Products on any basis which in SELLER's opinion is equitable, allowing for such priorities to such customers as SELLER deems appropriate. SELLER shall not be required to make up any such reduction later, although SELLER may do so if such Products subsequently become available and SELLER notifies BUYER of SELLER's intention to make up such shortfall. BUYER shall be obligated to accept any such reduced amount.

## **16. Independent Contractors.**

The relationship of SELLER and BUYER established hereunder is that of independent contractors, and nothing contained herein shall be construed to (i) give either party the power to direct or control the day-to-day activities of the other, (ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or (iii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. All financial obligations associated with BUYER's business are the sole responsibility of BUYER. All sales and other agreements between BUYER and its purchasers are BUYER's exclusive responsibility and shall have no effect on BUYER's obligations hereunder. BUYER shall be solely responsible for the acts of BUYER and its employees and agents. SELLER has no obligation whatsoever to insure any interests of BUYER or to make BUYER an additional insured or beneficiary under SELLER's own insurance.

## **17. Entire Agreement; Modifications: Waivers.**

(a) This Sales Quotation (including any materials expressly referred to herein) constitutes the sole and entire Agreement between the parties hereto concerning the subject matter hereof and supersedes all previous negotiations, purchase orders, agreements, warranties and other communications, oral or written, related thereto.

(b) Neither this Sales Quotation nor this Agreement or any rights hereunder shall be released or modified in any manner, except by a written document signed by duly authorized representatives of each of the parties.

(c) Any delay or failure by either party to enforce at any time any of its rights hereunder shall not be deemed to be a waiver of that party's right thereafter to enforce those rights or a waiver of such provision or of that party's right to resort to any remedy available to it. A waiver on one occasion shall not be construed as a waiver of any right on any future occasion.

## **18. Assignment.**

BUYER shall not assign or delegate any of its rights or obligations hereunder, whether voluntarily or by operation of law, and any such purported assignment or delegation shall be void and without effect.



## **19. Severability.**

If any part of this Sales Quotation or this Agreement is held to be prohibited or invalid under applicable law, then such part shall be ineffective to the extent of such prohibition or invalidity, without affecting the remainder of this Sales Quotation or this Agreement.

## **20. Proprietary Information.**

(a) SELLER may, from time to time, convey proprietary and confidential information to BUYER in connection with this Sales Quotation/Agreement. BUYER shall use that information only in connection with its performance under or related-to this Sales Quotation/Agreement and shall protect that information from disclosure to others with at least the same degree of care as that which is accorded to its own proprietary information, but in no event with less than reasonable care. Information will not be subject to this provision if it is or becomes a matter of public knowledge without the fault of BUYER or if it was or is received by BUYER from a third person under circumstances permitting its disclosure. Upon SELLER's request, BUYER shall cease all further use of such information and shall destroy all materials in its possession containing such information.

(b) BUYER agrees that SELLER retains proprietary rights in and to all product specifications, designs, engineering details, discoveries, inventions, patents, copyrights, trademarks, trade secrets and other proprietary rights relating to the Products. The Products are offered for sale and are sold by SELLER subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, to manufacture, duplicate or otherwise copy or reproduce any of the Products.

## **21. Governing Law.**

This Sales Quotation and this Agreement between BUYER and SELLER shall be governed by and construed in accordance with the laws of the State of New York, without application of any choice of law rules or the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

## **22. Dispute Resolution.**

(a) Any claim or dispute arising out of this Sales Quotation and this Agreement between SELLER and BUYER shall be conducted by a committee of three arbitrators and administered JAMS in accordance with the current Commercial Arbitration Rules of the American Arbitration Association. The final and binding arbitration proceedings shall be conducted in the English language and shall be held in Westchester County, New York.

(b) If any action or proceeding is commenced which arises out of or relates to this Sales Quotation, or the Agreement between BUYER and SELLER covered hereby, the prevailing party in such action or proceeding shall be entitled to recover from the other party the reasonable attorneys' fees, costs and expenses incurred by such prevailing party in connection with such action or proceeding and in enforcing any award or judgment thereby obtained.

(c) No action for breach of this Sales Quotation or this Agreement may be brought by BUYER against SELLER more than one (1) year after the cause of action accrues.



**23. Compliance with Law.**

BUYER shall use the Products in strict compliance with all and any applicable laws including any applicable regulations issued by the US Food and Drug Administration ("FDA"). If BUYER has been authorized in writing by SELLER to resell the Product, BUYER shall cause purchasers of the Products from BUYER to use the Products in strict compliance with all and any applicable laws including, without limitation, any applicable such regulations.

**24. Buyer Cooperation**

BUYER acknowledges that SELLER has certain reporting and other obligations to applicable regulatory authorities, including, without limitation, FDA (collectively, "Regulatory Authorities"). BUYER shall fully cooperate with SELLER and provide any reports or information as may be requested by SELLER regarding the Products. Without limiting the generality of the foregoing or any other obligations hereunder, BUYER shall immediately notify SELLER upon its receipt of any customer or consumer complaint of any adverse event or injury or upon its receipt of any inquiry from a Regulatory Authority regarding the Products. BUYER also shall fully cooperate with SELLER in the event of any inspection by a Regulatory Authority or in the event of a Product recall.

**25. Export Compliance****NO RESALE OF PRODUCTS WITHOUT THE EXPRESS PRIOR WRITTEN APPROVAL OF SELLER**

In purchasing SELLER's Products or Services, BUYER shall comply at all times with all applicable laws and regulations, including without limitation, United States Export Administration Regulations ("EAR") and any other applicable export control and sanctions regulations, and all environmental and health and safety laws and regulations (collectively, "Regulations"). In furtherance and not in limitation of the foregoing:

(a) Subject to the express prior written approval of SELLER, BUYER shall have the sole responsibility for obtaining and maintaining, and shall obtain and maintain, any and all approvals, licenses, permits, registrations or authorizations, howsoever called, of any applicable regulatory agency, department, bureau or other government entity necessary for use of SELLER's Products outside of the United States, and shall not sell any Products to, or for the use or benefit of, any intermediary or ultimate purchaser with which SELLER could not deal under laws or regulations of the United States or other applicable jurisdictions; and

(b) BUYER shall not directly or indirectly, engage in any activity or transaction in relation to any U.S. sanctioned country that, if undertaken by a U.S. person, would be in violation of U.S. sanctions laws and regulations, including, but not limited to, the International Emergency Economic Powers Act (50 U.S.C. § 1701-1706), the provisions of related Executive Orders, sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") and any other Regulations that may be in effect and applicable to such sanctioned countries, unless both (i) applicable authorizations are obtained or general licenses apply, and (ii) SELLER has provided its express prior written approval.

**26. Insurance**





**Value from Innovation**

BUYER shall maintain such third party liability and property damage insurance, including general and product liability and worker's compensation insurance coverage, with such insurers and in such amounts as shall be commercially reasonable. BUYER shall, upon SELLER's request, provide SELLER with certificates evidencing such insurance.

