

## General Terms and Conditions of Sale

These *General Terms and Conditions of Sale*, together with any additional terms that may separately be made applicable in writing by FUJIFILM Irvine Scientific, Inc. d/b/a FUJIFILM Biosciences Inc. ("Seller") to particular products and/or services (collectively, the "Agreement"), govern the sale by Seller of its products ("Products") and/or services ("Services") to its customer ("Buyer").

A contract for the sale of Products and/or Services will be formed only if and when a purchase order from Buyer (an "Order") is accepted by Seller in writing, including by issuance of an invoice for Products and/or Services, or Seller ships Products or undertakes performance of Services ordered. By ordering Products and/or Services subject to these *General Terms and Conditions of Sale*, Buyer agrees to be bound by their terms.

Additional terms separately agreed to in writing by the parties may include: (a) a *Supply Agreement*; (b) a *Quality Agreement*; and (c) a *Master Acknowledgment Packet*. In the event of a conflict between the documents that constitute the Agreement, the documents will have the following priority to the extent applicable to the Products or Services: (a) the *Supply Agreement*; (b) the *Quality Agreement*; (c) the *Master Acknowledgment Packet*; and (d) these *General Terms and Conditions of Sale*.

This Agreement is the complete and exclusive contract between Buyer and Seller with respect to the purchase of the Products and/or Services and 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. No amendment, modification, or waiver of this Agreement will be valid unless set forth in a written instrument signed by the party to be bound. SELLER WILL NOT BE BOUND BY, AND SPECIFICALLY REJECTS, 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) 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 DOCUMENT SIGNED BY AN AUTHORIZED SIGNATORY OF SELLER. IF THE TERMS AND CONDITIONS IN THIS AGREEMENT DIFFER FROM THE TERMS PROVIDED BY BUYER IN ANY FORM, THIS AGREEMENT WILL SERVE AS THE GOVERNING TERMS FOR THE CONTRACT.

**UNLESS OTHERWISE EXPRESSLY STATED IN WRITING BY SELLER, PRODUCTS ARE SOLD BY SELLER FOR THE EXCLUSIVE USE OF BUYER, AND BUYER HAS NO RIGHT TO RESELL, TRANSFER, OR CONVEY TO ANY OTHER PARTY, IN WHOLE OR IN PART, ANY PRODUCTS HEREUNDER.**

## Order Quantity; Delivery; Partial Shipments

For Off-the-Shelf Products, Seller will deliver the quantity specified in the Order. For Custom and Made-to-Order Products, Seller will deliver the quantity specified in the Order +/- 10 percent, and Buyer will purchase the final quantity produced and shipped by Seller. Title and risk of loss shall pass from Seller to Buyer upon Seller's delivery to a commercial carrier at Seller's shipping point. Seller may, as an accommodation to Buyer, arrange for the transportation, insurance, etc. to another delivery point as requested by Buyer, but the title and risk of loss shall remain FCA Seller's shipping point facility, and the additional expense associated with this alternate delivery point shall be invoiced to Buyer along with the price of Products.

Seller's shipping dates are approximate only, and Seller will not be liable for any loss or damages resulting from any delay in delivery. Seller may, in its sole discretion, make partial shipments and invoice each shipment separately. Buyer may not refuse delivery or otherwise be relieved of any obligations as the result of such delay or partial shipment. If Buyer does not timely accept Products, Seller may, in its sole discretion, store products for Buyer and charge Buyer reasonable storage charges. Seller is under no obligation to store Products.

If a shortage occurs in any shipment received from Seller, Buyer will notify Seller's Customer Service Department within 3 business days for a credit or replacement Product. Otherwise, the Order will be deemed complete.

### **Conditions and Intended Use**

Unless otherwise indicated in a written instrument signed by Seller, PRODUCTS ARE FOR RESEARCH USE AND FURTHER MANUFACTURING **ONLY**; PRODUCTS ARE **NOT** FOR HUMAN USE OR FOR DRUG PURPOSES AND ARE **NOT** FOR INJECTION. Buyer is solely responsible for ensuring that its use of a Product is compliant with Buyer's purpose(s). Seller is not responsible or liable for results of the use of the Product or for intellectual property infringements or other violations of any law or regulation that may occur with the Buyer's use of the Products. Products are not to be used beyond the "expiration date" specified on a Product's label, and any such use voids any and all warranties.

### **Pricing; Taxes; Delivery Fees**

Seller reserves the right to change prices without notice. Prices are those listed on [www.fujifilmbiosciences.com](http://www.fujifilmbiosciences.com) at the date and time that an Order is placed.

Buyer expressly acknowledges and agrees that the price of Products and/or Services does not include (i) any taxes which may apply to the sale or use of those Products and/or Services, including sales, use, privilege, excise or property taxes or tariffs relating to or affecting raw materials, spare or component parts, or the Products or Services (collectively, "Taxes"); (ii) any applicable customs, duties, levies and similar impositions made by any governmental authority or agency relating to or affecting raw materials, spare or component parts, or the Products or Services (collectively, "Government Impositions"); and (iii) Surcharges (as defined below). Buyer is solely responsible for the payment of all such Taxes, Government Impositions and Surcharges, whether or not invoiced by Seller and regardless of whether imposed prior to or after the acceptance of Buyer's Order by Seller. Buyer acknowledges and agrees that Taxes, Government Impositions and Surcharges are not price increases. Buyer will pay or reimburse Seller for all Taxes, Government Impositions or other amounts payable to governmental authorities in connection with the applicable transactions (other than Seller's net income taxes), or where applicable will provide Seller with a current, valid exemption certificate satisfactory to Seller for each jurisdiction. For purposes of this Section, "Surcharges" means surcharges implemented by Seller and passed through to Buyer at any time in its sole discretion to offset Seller's cost increases, including, without limitation, cost increases arising from supply chain shortages or energy, materials, logistics, labor, and/or shipping charges.

Prices do not include delivery or shipping and handling charges, including but not limited to standard packaging and dry ice or cold packaging for perishable Products. If such charges are incurred, Seller will add them to Buyer's invoice.

### **Payment Terms; Credit Approval**

Buyer will pay Seller, in the currency specified in the invoice, within 30 days of the date of receipt of Seller's invoice. Each Order constitutes a separate and independent transaction, and Buyer is prohibited from off-setting payments for Products or Services from one Order against another Order. Seller may charge a finance charge of 1.5% per month (annual percentage rate of 18%), or the highest rate allowable by applicable law, whichever is higher, determined and compounded on a daily basis from the date due until the date paid, to past due accounts. Payment of such finance charges will not excuse or cure Buyer's breach or default for late payment.

Upon Seller's prior approval, Seller may accept VISA®, MasterCard® and American Express® as payment for an 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.

A condition of Seller's obligation to deliver the Products or perform the Services is its approval of Buyer's credit and payment arrangements. If Buyer's credit worthiness is not satisfactory to Seller, Seller may require shorter payment terms or payment in advance and further reserves the right to cancel Orders and to suspend or cancel delivery of Products or performance of Services if Buyer does not pay amounts due or otherwise fails to comply with this Agreement.

#### **Uncontrollable Circumstances; Product Allocation**

Seller will not be responsible for, or be considered to be in breach of or default under this Agreement on account of, any circumstance beyond Seller's reasonable control (including, but not limited to, Seller's inability, after due and timely diligence, to procure materials, parts or equipment or to perform the Services). Seller shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or perform due to any circumstance beyond Seller's reasonable control. In addition, if Seller is unable for any reason to supply the total demands for Products or Services 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.

#### **Cancellation of Orders; Change in Delivery Date or Terms**

Buyer may not cancel or change an Order for Products or Services unless a written notice requesting such change or cancellation is received and accepted by Seller.

If a cancellation is accepted, Buyer is fully liable to Seller for 100% of the purchase price of Custom or Made to Order Products (up to 110% of the Order quantity if already produced), plus reasonable destruction costs, regardless of such cancellation.

Buyer will be responsible for reasonable costs incurred by Seller if Buyer changes the requested delivery date or terms for any reason.

#### **Returns; Damaged or Defective Product**

A Return Goods Authorization number and shipping instructions must be obtained from Seller's Customer Service Department prior to returning any Product. Credit will not be issued on any Products that are returned without prior authorization from Seller.

No Product may be returned unless Buyer has contacted Seller within 5 days of receipt and returned the Product within 30 days of receipt. Unless a Product is damaged or defective for reasons not caused by Buyer or the shipping carrier, all Products must be returned in good condition satisfactory for resale, and the return is subject to a handling and restocking fee of 20% of the sale price plus shipping charges.

Where Buyer alleges that the Product was damaged or defective at the time of shipment, Buyer will notify Seller within 10 days of delivery and will provide Seller with documentation of the damage or defect.

For Product lost, damaged or spoiled in transit, Seller will provide Buyer commercially reasonable assistance with filing claims for lost, damaged or spoiled Product, but Seller will not be liable for any loss, damage or spoliation that occurred after Product was loaded at Seller's shipping point.

### **Express Warranty**

Unless otherwise indicated, Seller represents and warrants that each Product will be in conformity with the results reported in the certificate of analysis ("COA") or other accompanying documentation for such Product at the time it is shipped by Seller.

Seller expressly disclaims any and all warranties regarding Products and Services manufactured, supplied or provided by third parties that Buyer may purchase through Seller. Buyer must seek Product and Services support and make warranty claims, as applicable, to the third-party manufacturer or service provider.

### **Disclaimer of Other Warranties**

Except for the foregoing warranty that each Product will be in conformity with the results reported in the COA for such Product at the time it is shipped, SELLER MAKES NO OTHER REPRESENTATION, WARRANTY OR PROMISE OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING THE PRODUCTS OR SERVICES. SELLER DISCLAIMS AND EXCLUDES ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, OR WARRANTY OR CONDITION ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE, OR STATEMENTS OF SELLER REPRESENTATIVES. PRODUCT WARRANTIES APPLICABLE TO PRODUCTS EXTEND ONLY TO BUYER AS ORIGINAL PURCHASER AND SHALL NOT PASS THROUGH TO END USERS OR ANY THIRD PARTY. UNAUTHORIZED DISTRIBUTION OR RESALE OF PRODUCTS VOIDS ALL PRODUCT WARRANTIES. SELLER GIVES NO, AND DISCLAIMS ANY, WARRANTIES, UNDERTAKINGS OR SIMILAR TERMS WHATSOEVER IN RESPECT OF ANY ADVICE OR ASSISTANCE GIVEN BY SELLER IN CONNECTION WITH THE USE OF THE PRODUCT IN OR AS A DRUG PRODUCT (INCLUDING ADVICE OR ASSISTANCE RELATED TO ANY REGULATORY APPROVAL), AND SELLER SHALL HAVE NO LIABILITY TO BUYER OR ANY OTHER PARTY IN CONNECTION WITH ANY SUCH ADVICE OR ASSISTANCE.

### **Exclusive Remedy and Release of Other Liabilities**

In the event of a breach of the foregoing warranty, Seller, in its sole discretion, shall (a) repair or replace the damaged or defective Product; (b) refund the purchase price of the Product; or (c) take any other measures Seller deems reasonably necessary to comply with its warranty obligations. THIS REMEDY SHALL BE THE EXCLUSIVE AND SOLE REMEDY OF BUYER FOR ANY BREACH OF WARRANTY OR OTHER BREACH OF THE AGREEMENT. The warranties, obligations and liabilities of Seller and the remedies of Buyer set forth in this Agreement are exclusive, and BUYER HEREBY WAIVES, DISCLAIMS AND RELEASES ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF SELLER AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF BUYER AGAINST SELLER, express or implied, arising by law or otherwise, with respect to the Products and any other goods or Services delivered under this Agreement including, without limitation, any obligation, liability, right, claim or remedy in contract, tort (including claims for Seller's own negligence or strict liability) or for infringement.



## **Liability**

Buyer acknowledges and agrees that: (i) the potential extent of liability arising from the Products and Services is better known to Buyer than to Seller; (ii) the potential extent of such liability is disproportionate to the amounts which Seller can reasonably charge for the Products and Services; (iii) Buyer is better able to, and shall, insure against any liabilities Buyer might suffer, and (iv) consequently Seller shall restrict its liability as set out in this clause and Buyer shall indemnify Seller as set forth herein, and the parties agree that nothing herein shall limit or exclude Buyer's liability to Seller under those indemnities.

SAVE THAT NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES THE LIABILITY OF ANY PARTY TO THE OTHER FOR ANY LIABILITY THAT IS NOT PERMITTED TO BE LIMITED OR EXCLUDED BY LAW:

SELLER'S TOTAL LIABILITY, WHETHER OR NOT ARISING PURSUANT TO AN INDEMNITY, IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING UNDER THIS AGREEMENT SHALL IN ALL CIRCUMSTANCES BE LIMITED TO THE PRICE PAID FOR THE PRODUCTS OR SERVICES BY BUYER IN THE APPLICABLE ORDER; AND

UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), FOR BREACH OF STATUTORY DUTY OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR: LOSS OF PROFIT; LOSS OF BUSINESS; DEPLETION OF GOODWILL; LOSS OF ANTICIPATED SAVINGS; LOSS OR CORRUPTION OF DATA OR INFORMATION; OR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PURE ECONOMIC LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES, INCLUDING THE COSTS OF ANY RECALL OF THE PRODUCT.

## **Indemnity**

Buyer shall indemnify, defend and hold harmless Seller and its affiliates from and against any and all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees and other costs of defending and/or settling any action) that Seller may incur as the result of (i) a claim against Seller for infringement of third-party intellectual property rights based on Seller's manufacture or sale of a Custom Product or other Product made by Seller pursuant to Buyer's instructions, specifications, or other directions, or using Buyer-provided materials; (ii) Buyer's modification, use or resale of Product; (iii) Buyer's failure to comply with the terms of this Agreement or applicable law; and (iv) all other liabilities incurred by Seller or its affiliates arising out of or resulting from the use or resale of the Product or Services. Buyer shall be responsible for the actions and omissions of any re-seller or third party that acquires the Products from Buyer, regardless of whether such resale or acquisition is authorized, 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 Services which results 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.

## **Insurance**

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. Buyer is solely responsible for maintaining any insurance coverage for any loss of, damage to, or spoilage of Products in transit once risk of loss has passed to Buyer at Seller's shipping point.

### **Intellectual Property Rights; Use of Seller Name and Marks**

The Products and Services may involve valuable patent, copyright, trademark, trade secret and other intellectual property rights of Seller. Seller reserves all such rights. No title to or ownership of any intellectual property rights related to any Product or Service is transferred to Buyer pursuant to this Agreement. Buyer will not attempt to reverse engineer or conduct an analysis that would determine the composition of any Product or component thereof (including any software) or to otherwise misappropriate, circumvent or violate any of Seller's intellectual property rights. Buyer will not use Seller's name, trademarks, logos or service marks or refer to Seller or any of its affiliates directly or indirectly in any customer list, advertising, sales presentation, news release, release to any professional or trade publication or for any other purposes without Seller's prior written approval of such use and of the form and substance of the reference.

### **Confidential Information**

The parties may have executed a non-disclosure agreement prior to entering into this Agreement. In the event that no such non-disclosure agreement exists, the provisions of this Agreement shall govern any Confidential Information (defined below) disclosed on or after the effective date of this Agreement. In the event a non-disclosure agreement has been executed, the terms of such agreement shall govern any Confidential Information disclosed on or after the effective date of this Agreement.

"Confidential Information" means all data, information and materials (in whatever form) that Seller discloses to Buyer that Seller advises upon or shortly after disclosure to Buyer that the data, information and materials are confidential or proprietary or any other information that Seller discloses that should be reasonably understood to be confidential or proprietary given the nature of the information and the circumstances of disclosure.

Seller may disclose to Buyer, or Buyer may otherwise access, certain Confidential Information. Except as otherwise authorized by Seller in writing, Buyer will use such Confidential Information only for the purposes for which it is disclosed by Seller, will not disclose it to any third party, and will take appropriate steps to protect it from any unauthorized use or disclosure. All materials containing Confidential Information delivered by or on behalf of the Seller under this Agreement are and shall remain the property of Seller. At Seller's written request, Buyer shall promptly return to Seller or destroy and certify the destruction of, all those materials and any copies.

### **General Contract Provisions**

Any failure by Seller to insist upon or enforce performance by Buyer of any of the provisions of this Agreement or to exercise any right or remedy under this Agreement or applicable law will not be construed as a waiver or relinquishment to any extent of Seller's right to assert or rely upon any such provision, right or remedy in that or any other instance.



This Agreement will inure to the benefit of and be binding upon the parties and their respective successors, assigns and legal representatives. Buyer may not assign any rights or obligations under this Agreement without the prior written consent of Seller, and any such attempted assignment will be void.

If any provision of this Agreement is found to be invalid or unenforceable, then the remainder shall have full force and effect, and the invalid provision shall be partially enforced to the maximum extent permitted by law to effectuate the purpose of the Agreement.

This Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of New York, without reference to its choice of law principles. The provisions of the U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

All disputes, controversies or differences between the parties arising out of or in relation to or in connection with this Agreement shall be attempted to be settled through good-faith negotiation between senior management of both parties, followed if necessary (and only if agreed by the parties) by professionally assisted mediation. Any mediator so designated must be acceptable to each party. The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential and may not be used in a later evidentiary proceeding. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties. In the event that negotiation or mediation does not result in a resolution of the dispute, the parties shall proceed to binding arbitration as set forth below.

All disputes, controversies or differences between the parties arising out of or in relation to or in connection with this Agreement that cannot be amicably settled shall be finally settled by arbitration before one arbitrator pursuant to the JAMS Comprehensive Arbitration Rules and Procedures ("JAMS Rules"). Arbitration requested by any party shall be conducted in New York, New York. Arbitration may be commenced at any time by the party seeking resolution by giving written notice to the other party that such dispute has been referred to arbitration. The arbitrator shall be selected by the mutual agreement of the parties, but if the parties do not so agree within twenty (20) days after the date of the arbitration notice, the arbitrator shall be selected pursuant to the JAMS Rules. Any award rendered by the arbitrator shall be conclusive and binding upon the parties. This provision for arbitration shall be specifically enforceable by the parties and the decision of the arbitrator in accordance herewith shall be final and binding and there shall be no right of appeal therefrom. Notwithstanding the determination by the parties to utilize arbitration as specified above for resolution of disputes arising out of or in connection with this Agreement, nothing herein shall preclude either party from seeking and obtaining from a court of competent jurisdiction appropriate equitable relief, including without limitation, a temporary restraining order or other injunctive relief, to prevent a breach of this Agreement relating to intellectual property, confidentiality, or non-hire and non-solicitation, or to otherwise maintain the status quo pending outcome of any arbitration.

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 or otherwise transfer 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 or individual 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 or individuals, unless both (i) applicable authorizations are obtained or general licenses apply, and (ii) Seller has provided its express prior written approval.