

Terms & Conditions

1. General: Entire Agreement

A. The sale of instrument(s), consumable(s), reagent(s) or service part(s) (collectively hereinafter referred to as the "**Product(s)**") or provision of services in support of Products (the "**Service(s)**") by BioChain Institute, Inc. (the "**Seller**") to the party purchasing the Products (the "**Buyer**") shall be governed by these terms and conditions.

B. Seller's offer to sell the Products to Buyer is expressly limited to Buyer's acceptance to these terms and conditions. Any of the following constitutes Buyer's unqualified acceptance of these terms and conditions:

- Issuance or assignment of a purchase order for the Products
- Acceptance of any Product under the purchase order
- or Payment for any of the Products under the purchase order

C. This Agreement shall be the exclusive agreement between the parties for the Products and Services, subject to the terms and conditions herein. Any prior understandings, agreements, and representations, oral or written, are superseded by these terms and conditions. No modification to these terms and conditions shall be valid unless in writing and signed by Seller.

D. Agents and sales representatives of Seller have no authority to make any representations not included herein, and any such representations should not be relied on by Buyer.

2. Price

The Products and other items or Services covered by this Agreement shall be sold and invoiced at the prices listed on the quotation, website or published price list. Prices do not include sales, excise, use or other taxes imposed by reason of this transaction. Buyer will pay and indemnify and hold Seller harmless from all such taxes.

3. Payment Terms

A. Payment terms are net thirty (30) days from date of invoice. Seller reserves the right to require alternative payment terms, including, without limitation, letter of credit or payment in advance.

B. If payment is not received by the due date, a late charge will be added at the rate of one percent (1%) per month, (twelve percent (12%) per year) or the maximum legal rate, whichever is less, to unpaid invoices from the due date thereof.

C. All payments will be made as follows.

All checks should be sent to:

BioChain Institute, Inc 39600
Eureka Drive Newark, CA
94560

All payments by wire transfer should be submitted to:

Beneficiary: BioChain Institute Inc. Bank: JPMorgan Chase Bank N.A. Bank A/C: 412667755 Bank Address: 560 Mission Street, Floor 5, San Francisco, CA 94105 USA. Swift Code: CHASUS33; ABA: 322271627

4. Shipment

A. Seller will use commercially reasonable efforts to comply with shipping instructions provided by Buyer. In the absence of any specific shipping instruction, Seller will ship by the method it deems most advantageous. Transportation charges will be charged to Buyer or subsequently invoiced to Buyer by Seller. When special or export packaging is required, the cost of the same, if not set forth on the invoice, will be separately invoiced.

B. All Products shall be suitably packed for air and ground shipment, unless otherwise requested by Buyer and agreed to in writing by Seller.

5. Title, Risk Of Loss, Insurance

Unless stated otherwise by Seller, all shipments will be EXW (Ex Works) (as defined in Incoterms 2000) Seller's shipping facility, if destination of delivery is outside the United States, and F.O.B. (Free on Board) (as defined in U.C.C. Section 2-319) Seller's shipping facility, if destination of delivery is within the United States. Title to each shipment of the Products sold hereunder and risk of loss thereon shall pass to Buyer when Seller or its agent tenders such shipment to the carrier, but such shipment shall remain subject to Seller's rights of stoppage in transit and of reclamation.

6. Acceptance

Buyer shall accept any tender of the Products by Seller which substantially conforms to the description of the Products set forth herein. Buyer shall be deemed to have irrevocably accepted any Product and, subject to Section 10, Buyer's right to reject such Product shall cease, unless Buyer gives to Seller notice of rejection in writing: (a) in the case of defects discoverable through inspection, within ten (10) days after delivery to the destination specified in Buyer's purchase order, or (b) in the case of defects not discoverable through inspection, within twenty (20) days after delivery to the destination specified in Buyer's purchase order. Buyer's notice must specify the nature of the defect or grounds for the rejection in reasonable detail. Buyer must obtain a return material authorization ("RMA") number from Seller prior to returning any defective Product. Buyer's return shall not be accepted at Seller's facility without a RMA number.

7. Returns

Seller may, at its discretion, accept the return of a purchased Product within twenty (20) days of shipment from Seller. All returns must be in original packaging and unopened and must display a valid RMA number provided by Seller. Buyer is responsible for paying a twenty-five percent (25%) restocking fee and all return shipping and insurance charges. Buyer assumes all liability for any damage that occurs on return shipment to Seller. For greater clarity, purchased consumables (the "**Consumable(s)**") or reagents (the "**Reagent(s)**") may not be returned by Buyer.

8. Force Majeure

Seller shall not be liable, directly or indirectly, for any delay or failure in performance of any obligation under this Agreement, including any delivery obligation, where such delay or failure arises or results from a cause beyond Seller's reasonable control, or beyond the reasonable control of Seller's suppliers or contractors, including, but not limited to strike, boycott or other labor disputes, embargo, governmental regulation, inability or delay in obtaining materials, acts of God, war, earthquake, fire, or flood. In the event of such force majeure, the time for delivery or other performance will be extended for a period equal to the duration of the delay caused thereby, provided that Seller notifies Buyer of the nature and duration of such force majeure event.

9. Limitation of Liability

IN NO EVENT WILL SELLER BE RESPONSIBLE OR LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOST PROFITS, OR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR CONTINGENT DAMAGES ARISING FROM OR RELATING TO THIS CONTRACT, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, INCLUDING FOR ANY LIABILITY ON ACCOUNT OF A CLAIMED DEFECT IN ANY PRODUCT DELIVERED BY SELLER, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCT PAID BY BUYER ON WHICH THE CLAIM IS BASED.

10. Warranty

A. Consumable and Reagent Warranty. Seller warrants that the Consumables and Reagents purchased from Seller will be free from defects in materials and workmanship during the applicable warranty period, provided that the Consumable or Reagent have been used at all times in accordance with the instruction manual and user guide. Each Consumable and Reagent is shipped with documentation stating specifications and other technical information. Seller's Consumables and Reagents are warranted to meet or exceed the stated specifications. Sellers' sole obligation and the Buyer's sole remedy are limited to replacement of the Consumable or Reagent free of charge in the event that the Consumable or Reagent fails to perform as warranted.

The warranty period for the Consumable or Reagent ends six (6) months after the date of shipment, or the stated life of the Product, whichever is the shorter.

B. Instrument Warranty. Seller warrants that the instrument purchased from Seller will be free from defects in materials and workmanship during the applicable warranty period, provided that the Instrument has been operated at all times in accordance with the instruction manual and user guide by or under the direct supervision of a certified operator who has attended Seller's training course for the Instrument. The warranty period for the Instrument ends twelve (12) months after the date of installation (as certified by Seller Representative) or thirteen (13) months after the date of shipment, whichever is shorter. Seller will provide depot service for instrument Products under warranty. Buyer may purchase an upgrade to field service for the instrument products.

C. Warranty Exclusion. The warranties provided above and the remedies provided below will not apply to any Product if: (i) Seller determines that a problem is caused by accident, abuse, misuse, negligence, misapplication, fire, earthquake, flood, other force majeure event, failure of electrical power, the use of unauthorized parts or reagents, or unauthorized repairs or modifications; (ii) Seller determines that a problem is caused during or as a result of shipment or relocation; (iii) Seller's serial number has been removed or defaced from the Product; or (iv) a problem arises from or is based on Seller's compliance with Buyer's specifications

11. Assignment

This Agreement and Buyer's rights hereunder may not be assigned to any third party by Buyer except with the prior written approval of Seller. Any assignment of this Agreement or any rights hereunder in violation of this Section will be null and void.

12. Compliance with Law

A. Buyer agrees to comply with all applicable foreign, U.S., state, and local laws, rules, and regulations relating to this Agreement and the Products including the laws, rules, and regulations of the United States which restrict the export and re-export of commodities and technical data of United States origin, including the Products.

C. Buyer will defend, indemnify, and hold harmless Seller from and against any violation of any laws, rules or regulations by Buyer or any of its agents, officers, directors, or employees in violation of this Section.

13. Service Agreement

Buyer may purchase annual maintenance and support services for any Product provided that Seller generally offers such services at such time.

Terms and Conditions – Services (this part shall only be sent with an instrument purchase) 1. SERVICES

Subject to the terms and conditions herein, Seller will use commercially reasonable efforts to provide to Buyer Services for diagnosis and repair for any malfunction of instrument resulting from and traceable to defects in materials and workmanship of Seller.

Subject to Buyer's payment of the fees for the Services, Seller will be responsible for all costs incurred in providing the Services including labor and materials, shipping and travel expenses, except as otherwise provided herein. Seller shall have the right to determine in its sole discretion what corrective action Seller will perform to fix any malfunction in the Product. Seller may subcontract the Services to a third party contractor provided that Seller will be responsible for the third party contractor's compliance with the terms herein.

Buyer shall reference the applicable contract number as shown on Seller's quotation for the Services on all purchase orders submitted by Buyer to Seller. Seller provides Services for the Products in accordance with reasonable safety expectations.

2. REPLACEMENT PART(S)

As part of the Services, Seller will provide, free of charge, Replacement Parts for any defective or damaged parts due to defects in materials and workmanship. Replacement Parts may be new, remanufactured, or refurbished at Seller's sole discretion. Any Replacement Parts that have been replaced will become the property of Seller.

3. RESPONSE TIME AND RETURN PROCEDURE

Buyer may contact Seller via telephone or email to report any malfunction of the Product, during the hours of 8:00 a.m. and 5:00 p.m., Pacific Standard Time ("PST"), Monday through Friday, excluding holidays. A list of standard holidays will be provided to Buyer upon request. Seller will make commercially reasonable efforts to acknowledge receipt of a Service request by phone within one (1) hour, and by email within twenty-four (24) hours. All Service requests from Buyer will receive preferential consideration over Service requests from other Buyers that are not under existing warranty or Service Agreement.

For Service requests under depot service, if the Service request cannot be resolved over the telephone, Seller will fax or email a Service request package, containing a Service request number, clearance forms, and if applicable, customs forms to Buyer within twenty-four (24) hours thereafter. Upon receiving the Service request package, Buyer will ship the defective Product to Seller's facility in accordance with the instructions provided by Seller. Seller will be responsible for the cost of shipping the defective Product to Seller and the cost of shipping the repaired or replaced Product to Buyer, but not the insurance cost. Buyer will have the option to purchase insurance.

For Service requests under field service, if the Service request cannot be resolved over the telephone, Seller will dispatch its Seller Representative. Seller will use commercially reasonable efforts to have its Seller Representative arrive at Buyer's location within two (2) days after the Seller Representative is dispatched. Three (3) day response time is not guaranteed.

4. SUPPORT CONDITIONS

Seller's obligation to provide the Services is conditioned on Buyer: a) notifying Seller of any malfunction of the Product within a reasonable period of time; b) providing Seller all information relating to the malfunction; c) shipping the defective Product (if the Product is depot serviced) to Seller's facility in accordance with Seller's instructions; d) providing access to the defective Product and Buyer's facility where the Product is located and informing Seller of any potential hazards which may be encountered while servicing the Product (if the Product is field serviced); and e) returning a completed and signed Clearance Certification.

5. SERVICE EXCLUSIONS

Seller is not obligated to provide the Services if any malfunction arises from or relates to: (a) improper installation of the Product; (b) neglect, misuse or abuse of the Product; (c) use of unauthorized parts, Consumables or Reagents, or removal of any parts; (d) repair, modification or alteration of the Product by anyone other than an authorized Seller Representative; (e) relocation of the Product; (f) failure of or erratic electrical power; or (h) fire, earthquake, flood, or other force majeure event. The Services do not include training in using, diagnosing, or repairing the Product, relocation of the Product, or any service other than those referred to herein. Seller may refuse to provide the Services with respect to any Product which has not been properly maintained or which cannot be decontaminated or cleaned to remove any hazardous material.

6. REINSTATEMENT INSPECTION

If the original warranty or previous Service Agreement for any Product has expired, a reinstatement inspection by Seller, which confirms that such Product has been properly maintained, will be required before Seller will provide the Services for such Product under this Agreement. If reinstatement inspection is required, Buyer will be separately billed for the costs for reinstatement inspection. The fees for Services do not include reinstatement inspection.

7. WARRANTY AND DISCLAIMER

THE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. EXCEPT AS PROVIDED IN THE TERMS AND CONDITIONS OF SALE OF THE PRODUCT, SELLER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SERVICES, THE PRODUCTS, AND THE REPLACEMENT PARTS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

8. LIMITATION OF LIABILITY

IN NO EVENT WILL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST PROFITS, ARISING FROM OR RELATING TO THE SERVICES EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THE SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID FOR THE SERVICES. ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT.

9. INDEMNITY

Buyer will defend, indemnify, and hold Seller harmless from any and all claims, losses, damages, debts, settlements, costs, attorneys' fees, expenses and liabilities of any type whatsoever (collectively referred to as "Claims") arising from or related to any injury to employees or contractors of Seller caused by improper installation or use of a Product by Buyer, power supply used by Buyer with a Product, or any material processed by a Product. Seller will have the right to participate in or conduct the defense of such Claim with counsel of its own choice. Seller will use reasonable effort to promptly notify Buyer of any such Claim. No settlement of a Claim will be binding on Seller without its prior written consent.

10. TERM AND TERMINATION

Either party may terminate a Service Agreement, effective immediately, if the other party commits a material breach of the terms and conditions herein and fails to cure such breach within thirty (30) days after receiving written notice thereof. If Seller terminates a Service Agreement as a result of Buyer's material breach, Seller will not be obligated to refund any portion of the fees paid for the Services. Buyer may terminate a Service Agreement by providing to Seller thirty (30) days prior written notice if Seller trades in the Product to purchase another Product from Seller. In which event, Seller will provide a prorated refund of the fees paid for the Services based on the remaining duration of the Service Agreement. Sections 7, 8, 9, 10, 11, and 12 will survive any termination or expiration of a Service Agreement.

11. INDEPENDENT CONTRACTOR

The parties are acting hereunder as independent contractors and not as partners, agents, fiduciaries, or joint venturers. Neither party has the power or authority represent, act for, bind, or otherwise create or assume any obligation on behalf of the other party.

12. FORCE MAJEURE

Any delay in the performance of any duties under Warranty or a Service Agreement (except for payment of fee owed) by either party will not be considered a breach if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or other event beyond the control of such party, provided that such party uses reasonable efforts to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.