

## SCIEX GENERAL TERMS AND CONDITIONS OF SALE

These General Terms and Conditions of Sale ("Terms") shall govern all orders for and purchases of products and services from SCIEX, through its legal selling entities as indicated on the quotation ("SCIEX"), including installation of equipment, unless other terms are specifically designated by SCIEX to apply to a specific product or service, or where SCIEX and buyer have entered into a master purchase agreement or other written agreement that expressly provides that its terms supersede and replace these Terms with respect to the products or services covered by the master purchase agreement or other written agreement (See Section 11, SOLE TERMS, INCONSISTENCIES, ORDER OF PRECEDENCE).

**1. PRICE.** The price for any product or service (hereinafter collectively "Product") shall be the price stated in SCIEX's quotation to buyer for the Product ("SCIEX's Quotation") or, if SCIEX has not issued a quotation, SCIEX's list price of the Product at the time SCIEX receives buyer's purchase order. If SCIEX's price is stated by reference to a price list then the price shall be SCIEX's list price in the jurisdiction in which the Product is to be delivered or performed in effect at the time SCIEX receives buyer's purchase order. Prices stated are exclusive of all taxes, fees, licenses, duties, levies or other governmental assessments ("Taxes") and, unless otherwise stated in SCIEX's Quotation, shipping and handling charges, freight and insurance. All Taxes related to Product shall be paid by buyer (other than taxes assessed against SCIEX's net income), or in lieu thereof, buyer shall provide SCIEX with a tax exemption certificate acceptable to the relevant taxing authorities. Taxes and other charges payable by buyer may be billed as separate items on SCIEX's invoice.

**2. PAYMENT TERMS; COLLECTION COSTS; SECURITY TERMS.** Payment terms are as required by SCIEX. If SCIEX deems buyer to be or to have become uncreditworthy, SCIEX shall have the right to require alternative payment terms, including without limitation sight draft, letter of credit, payment in advance, or other assurance satisfactory to SCIEX. Payment for partial shipments shall be based on unit or prorated prices, and payment for partial installation(s) shall be based on percentage of completion of installation, as reasonably determined by SCIEX. If payment is not received by the due date, SCIEX may assess and buyer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If SCIEX retains a collection agency or attorney to collect unpaid amounts, SCIEX may invoice buyer for, and buyer will pay, all reasonable costs of collection, including without limitation reasonable attorneys' fees. Buyer hereby grants to SCIEX and SCIEX reserves a purchase money security interest in all tangible Product purchased from SCIEX, and in any proceeds thereof, for all amounts owing to SCIEX for or related to such Product. Upon request by SCIEX, buyer shall sign any reasonable documents required for SCIEX to perfect such security interest and, to the fullest extent permitted by law, buyer hereby expressly grants SCIEX authority and a limited power of attorney to file financing statements and amendments thereto for and on behalf of buyer for such Product and any proceeds thereof. Payment in full of all amounts owed for and related to such Product shall release such security interest in the Product and proceeds.

**3. CREDIT TERMS.** SCIEX may, at any time and in its sole discretion, limit or cancel the credit of buyer as to time and amount, suspend shipments, demand payment in cash before delivery of Product, or demand other assurances of buyer's performance. If buyer fails to agree and comply with the different terms of payment demanded, or fails to give adequate assurances of performance, SCIEX may, without prejudice to any other right or remedy SCIEX may have: (i) by notice to buyer, treat such failure or refusal as a repudiation by buyer of that portion of buyer's order not then fully performed, whereupon SCIEX may cancel all further deliveries, and any amounts unpaid for non-cancelled Product shall immediately become due and payable; or (ii) make shipments under reservation of a security interest and demand payment against tender of title documents.

**4. ACCEPTANCE OF ORDERS, DELIVERY, TITLE AND RISK OF LOSS, INSTALLATION.** SCIEX may accept or reject any buyer purchase order for Product in whole or in part. If a purchase order is accepted, SCIEX will use reasonable efforts to ship tangible Product or perform services, including equipment installation if agreed to by SCIEX, subject to the purchase order within a reasonable time after ordered, or, if a shipment, service commencement or installation date is indicated in SCIEX's Quotation or otherwise agreed upon in writing by an authorized representative of SCIEX, on or before such date. SCIEX may make delivery in installments, and each installment shall be deemed to be a separate sale. SCIEX may render a separate invoice for each installment, which invoice shall be paid without regard to prior or subsequent installments. Unless indicated otherwise in SCIEX's Quotation, title and risk of loss with respect to all Products except Products that are software or services, and risk of loss with respect to software, shall pass from SCIEX to buyer upon transfer of possession of the Product to a common or other third party carrier at SCIEX's facility. If SCIEX has undertaken to install a Product, it is buyer's responsibility, at buyer's cost, to have the installation site prepared and available for installation free of hazardous or unsafe conditions and, unless SCIEX otherwise agrees, to move the Product, uncrated, from the buyer's delivery dock or receiving location to the table top or other place of installation. Buyer shall not assign SCIEX personnel to work in biosafety level 3 or level 4 laboratories without prior written notice to SCIEX and SCIEX's consent.

**5. CANCELLATION AND DEFERRAL.** BUYER MAY NOT CANCEL ANY PURCHASE ORDER. However, unless otherwise stated in SCIEX's Quotation, buyer may defer the shipment date one time for up to 60 days for instruments and other hardware, and up to 30 days for reagents, consumables and other tangible Product, by giving written notice to SCIEX at least 30 days before the scheduled shipment date for instruments and other hardware, and at least 10 days before the scheduled shipment date for other Product.

**6. REJECTION AND RETURN OF GOODS.** Any claims for damaged, missing or defective Product must be reported in writing by buyer within 15 days from the date of buyer's receipt of the Product. In addition, buyer must promptly return a rejected Product to SCIEX, C.O.D., unused and in a condition no worse than that delivered to buyer and in the Product's original containers and packing material, accompanied by a valid return authorization number obtained from SCIEX. SCIEX may refuse any Product not timely rejected or sought to be returned without a valid return authorization number. For any valid claim timely made, SCIEX, at its option, may repair the Product or replace the Product with an identical or substantially similar Product. Shipping charges will not be credited. **THESE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR DAMAGED OR MISSING PRODUCT, AND, EXCEPT FOR EXPRESS WRITTEN WARRANTY RIGHTS, FOR DEFECTIVE PRODUCT.** SCIEX may require that buyer sign and deliver a properly completed certificate of decontamination prior to returning any Product.

**7. LIMITED WARRANTY.** SCIEEX makes only those warranties with respect to Product expressly identified as "warranties" and set forth in SCIEEX's current operating manual or catalog, or in a specific written warranty included with and covering Product, if any. Warranties are made only to the buyer purchasing the Product directly from SCIEEX, are not transferable and do not extend to the benefit of any other person or entity, unless otherwise expressly stated in writing by SCIEEX. **ANY PRODUCT NOT COVERED BY AN EXPRESS WRITTEN WARRANTY IS SOLD AND PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED.** Any description of Product recited in SCIEEX's Quotation is for the sole purpose of identifying Product, and any such description is not part of any contract between SCIEEX and buyer and does not constitute a warranty that Product shall conform to that description. Any sample or model used in connection with SCIEEX's Quotation is for illustrative purposes only and is not part of any contract between SCIEEX and buyer and does not constitute a warranty that Product will conform to the sample or model. No affirmation of fact or promise made by SCIEEX, whether or not in SCIEEX's Quotation, shall constitute a warranty that Product will conform to the affirmation or promise. Unless otherwise specified in writing in documentation shipped with Product or otherwise agreed by SCIEEX in writing, SCIEEX does not provide service or support for custom products or other products made to buyer's specifications. **THE WARRANTIES IDENTIFIED IN THE FIRST SENTENCE OF THIS PARAGRAPH ARE SCIEEX'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO PRODUCT AND ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, ALL OF WHICH OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS), WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE.**

## **8. INTELLECTUAL PROPERTY AND RELATED INDEMNITY.**

**8.1 BY SCIEEX.** Subject to the restrictions set forth in this Section 8 and provided buyer complies with its obligations in this Section 8, SCIEEX agrees to defend buyer, and indemnify buyer from and against any infringement damages finally awarded, in any legal action or proceeding brought by a third party against buyer to the extent that such action is based on a claim that the manufacture and sale of a Product by SCIEEX infringes any United States or foreign patent, copyright, trademark or other intellectual property right of such third party if SCIEEX had actual knowledge of such intellectual property right and infringement at the time of delivery of the Product to buyer. Notwithstanding the foregoing, SCIEEX shall have no liability or obligation under this Section 8 with respect to any claim of infringement based upon: (i) modifications to any Product made by buyer or a third party; (ii) manufacture, assembly, labeling or branding of Product by SCIEEX pursuant to specifications or designs or requests for specific labeling or branding furnished by buyer. Notwithstanding anything herein to the contrary, SCIEEX shall have no indemnification obligations with respect to Product originating from a third party and provided under these Terms. Buyer's sole right to indemnification with respect to such third party Product shall be pursuant to the original manufacturer's or licensor's indemnification obligations, if any, to the extent provided by the original manufacturer or licensor.

**8.1.1 Buyer's Obligations.** Buyer must notify SCIEEX in writing of any claim for which it may seek defense and indemnity from SCIEEX hereunder promptly after becoming aware of such claim, make no admission of liability with respect to the claim, and cooperate with and provide reasonable assistance to SCIEEX, at SCIEEX's expense with respect to reasonable out of pocket expenses paid by buyer to third parties for such assistance, in the defense or settlement of such claim. SCIEEX shall have sole authority to defend and/or settle any claim under this Section 8. SCIEEX's obligations under this Section 8 are contingent upon buyer's compliance with all the foregoing.

**8.1.2 Remedy for Infringement, Rights of SCIEEX, Exceptions.** If any Product or portion thereof is subject to a suit or other legal proceeding claiming that the Product or such portion infringes a third party's intellectual property right, or in SCIEEX's opinion is (are) likely to become subject of such a claim, SCIEEX shall, at its option, have the right to either: (a) procure for buyer the right to continue using the Product; or (b) modify the Product so that it becomes non-infringing; or (c) require buyer to return the Product and upon return, refund to buyer the price actually paid by buyer for the Product, less a reasonable amount for use, damage and obsolescence; or (d) substitute for the alleged infringing Product other suitable, non-infringing Products with comparable functionality.

**8.1.3 ENTIRE LIABILITY. THE FOREGOING STATES THE ENTIRE LIABILITY OF SCIEEX, AND THE EXCLUSIVE REMEDY OF BUYER, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET OR ANY OTHER INTELLECTUAL PROPERTY RIGHT BY OR IN CONNECTION WITH ANY PRODUCT.**

**8.2 BY BUYER FOR BUYER'S MODIFICATIONS OR SPECIFICATIONS.** If buyer modifies any Product or furnishes SCIEEX with specifications or designs or requests for specific labeling or branding, buyer agrees to defend, indemnify and hold SCIEEX harmless against all liabilities, damages, costs, expenses and claims arising from or based upon buyer's modifications or SCIEEX's manufacture and sale of Product or other performance in compliance with such specifications or designs or requests for labeling or branding.

**9. FORCE MAJEURE.** SCIEEX shall not be liable for any delay or failure of performance, including without limitation failure to deliver or failure to install, where such delay or failure arises or results from any cause beyond SCIEEX's reasonable control, including, but not limited to, flood, fire, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, pandemic or endemic, plant breakdown, computer or other equipment failure, unusually severe weather, earthquake or other act of God, power loss or reduction, strike, lock-out, boycott or other labor disputes of any kind (whether relating to its own employees or others), embargo, governmental regulation or an inability or delay in obtaining materials. In the event of any such delay or failure of performance, SCIEEX shall have such additional time within which to perform its obligations hereunder as may be reasonably necessary under the circumstances; and SCIEEX shall also have the right, to the extent necessary in SCIEEX's reasonable judgment, to apportion Product then available for delivery fairly among its various customers in such manner as SCIEEX may consider equitable.

**10. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL SCIEEX BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES SUSTAINED BY BUYER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR CAUSED BY PRODUCT, SCIEEX'S PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS RELATING TO THE PURCHASE OF PRODUCT OR PERFORMANCE OF SERVICES, SCIEEX'S BREACH OF THESE TERMS, THE POSSESSION OR USE OF ANY PRODUCT, OR THE PERFORMANCE BY SCIEEX OF ANY SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT SCIEEX IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, DOWNTIME, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL, OR BUSINESS OR OTHER FINANCIAL LOSS.**

**11. SOLE TERMS; INCONSISTENCIES; ORDER OF PRECEDENCE.** These Terms, together with SCIEX's Quotation, any applicable label license or patent statement or other written conditions of use, any other terms and conditions expressly agreed to in writing by an authorized representative of SCIEX (collectively, "SCIEX's Terms"), and buyer's statement on its purchase order (if accepted by SCIEX) of the name or identity of the Product(s) purchased, quantity, delivery date, bill to and ship to address and, if accurate, price (and only such information on buyer's purchase order), constitute the complete, exclusive and entire agreement between SCIEX and buyer with respect to purchases of Product (unless other terms and conditions are expressly designated to be applicable by SCIEX in writing), and SCIEX's offer to sell Product is expressly limited to such terms. Such terms shall take precedence over and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, and any of buyer's additional or different terms and conditions, which are hereby rejected and shall be void. Buyer's submission of a purchase order or other instrument for or regarding the purchase of Product, whether or not in response to an SCIEX Quotation, shall be deemed acceptance of and agreement to SCIEX's Terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order (except the name or identity of products purchased, quantity, delivery date, bill to and ship to address and, if accurate, price) or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in buyer's purchase order or other instrument or elsewhere. Any acceptance by SCIEX of any offer of buyer is expressly conditioned on buyer's assent to and acceptance of SCIEX's Terms to the extent they are additional or different terms from those of buyer's offer. Except as otherwise provided in these Terms, in the event of an inconsistency between these Terms and the terms appearing on SCIEX's Quotation or other agreement signed by an authorized representative of SCIEX, the terms appearing on SCIEX's Quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these Terms, and all other provisions of these Terms shall remain in full force and effect.

**12. NO IMPLIED RIGHTS.** Nothing in these Terms shall be deemed or construed (i) as a license or grant of any intellectual property rights, whether express, implied, by estoppel or otherwise; (ii) to limit SCIEX's rights to enforce its patent or other intellectual property rights, including, without limitation, as to use of any Product beyond that granted under any patent or other intellectual property label license or statement applicable to the Product; (iii) as granting buyer any right to be supplied with any Product or component thereof beyond those ordered by buyer and supplied by SCIEX in accordance with these Terms; or (iv) as a license or grant of any right to buyer to manufacture or to have manufactured any Product.

**13. CHOICE OF LAW.** Any contract between SCIEX and buyer relating to Product, including these Terms, and any disputes relating thereto, shall be governed by the laws of the SCIEX's local address shown on the Quotation, exclusive of its conflict of laws rules. Excluding both its choice of law provisions and the United Nations Convention on Contracts for the International Sale of Goods.

**14. EXPORT CONTROLS.**

Buyer specifically represents and warrants to SCIEX that it is aware that products and technical data supplied by SCIEX may be subject to multi-jurisdictional Export Control and Sanctions regulations including, but not limited to, the laws/measures of the United Nations, United States (e.g. the Export Administration Regulations administered by the United States Commerce Department Bureau of Industry and Security, the International Traffic in Arms Regulations, and the regulations and sanctions administered by the United States Treasury Department's Office of Foreign Assets Control), Member States of the European Union, United Kingdom, China, and Singapore (collectively "Export Control Laws"), and agrees to comply with all such applicable restrictions regarding exports, re-exports and in country transfers including obtaining any required U.S. or other country licenses, authorizations, and /or approvals. Buyer represents and warrants to SCIEX that buyer shall comply with all such local, national, and other laws and regulations of all jurisdictions globally relating to export controls, sanctions and similar matters which are applicable to buyer's business activities in connection with this Agreement and will take no action that will cause SCIEX to violate any such laws.

Parties further represent and warrants that they will provide information necessary to perform required analysis and due diligence and where necessary seek export authorizations and/or to ensure compliance with Export Control Laws. On receipt of products or technical data, buyer agrees that it will comply with all laws and regulations applicable to the installation or use of all products, including applicable import and export control laws and regulations of the U.S., E.U. and any other country having proper jurisdiction, and that it will not sell, transfer, export or re-export SCIEX's products or technical data for any prohibited use in contravention of above Export Control laws, including for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles capable of their delivery, nor use SCIEX's products or technology in any facility which engages in activities relating to such weapons.

**15. MISCELLANEOUS.** No amendment of SCIEX's Quotation or these Terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both SCIEX and buyer. SCIEX's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these Terms for any other purpose. If any provision of these Terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or unenforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect.

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