



ChemBio Diagnostic Systems, Inc.

U.S. STANDARD TERMS AND CONDITIONS

These terms and conditions and the contract, order, proposal, quotation or invoice to which they are attached (collectively, the "Agreement"), constitute the Agreement between ChemBio Diagnostic Systems, Inc. ("ChemBio") and the customer identified in the attached contract, order, proposal, quotation or invoice ("Customer"), pursuant to which ChemBio shall sell, and Customer shall purchase, the quantity of product(s) identified in the attached contract, order, proposal, quotation or invoice ("the Products") at the price(s) set forth therein.

1. Purchase Orders; Product Returns

a) Purchase Orders. Unless otherwise specified, the Customer shall purchase Product through the delivery of purchase orders to ChemBio, which shall be placed no less than 45 days in advance of the requested delivery date. All orders shall be made in writing on purchase order forms reasonably satisfactory to ChemBio (which shall be subject to the terms and conditions of this Agreement), sent by courier, personal delivery, facsimile, or email. Each purchase order shall state the quantity and type of Product to be purchased, requested delivery date(s), routing instructions, destination, and confirmation of Price. No term or condition contained in any such purchase order, purchase acknowledgement, or other instrument shall alter, amend, modify, or supplement the parties' obligations hereunder unless specifically agreed in writing by ChemBio. All orders are subject to acceptance by ChemBio at its headquarters. ChemBio reserves the right to charge Customer a fee for (i) any change in, or cancellation of, an accepted order and (ii) any order that requires any special shipping or handling.

b) Returned Product. As a general matter, except as expressly permitted herein, ChemBio shall not accept or permit the return of Product after shipment to the Customer. Notwithstanding the foregoing, ChemBio will accept a return of Product and will provide the Customer with a replacement, refund or credit, as determined by ChemBio, if (i) ChemBio ships to the Customer Product that was not ordered by the Customer under this Agreement, (ii) inadvertently or erroneously ships a different quantity of Product than the Customer ordered under this Agreement or (iii) ships Product which does not meet the limited warranty set forth in Section 5(a) (in which case Customer's sole remedies shall be as set forth in Sections 5(c) and 5(d)). In the event ChemBio invoices the Customer for Product at an incorrect price, a refund, credit or corrected invoice will be issued by ChemBio, as appropriate.

2. **Sale of Products by ChemBio.** ChemBio shall use commercially reasonable efforts to fill Customer's orders for the Product(s) placed in accordance with the terms of this Agreement.

3. Price; Taxes and Duties; Shipment.

a) Prices. ChemBio shall sell the Product(s) to Customer at the price set forth as acknowledged on the attached contract, order, proposal, quotation or invoice ("Price"). The Price includes ChemBio's standard packaging existing as of the date of shipment. If Customer requests and ChemBio agrees to provide non-standard packaging, Customer shall pay ChemBio an additional fee for such packaging in accordance with ChemBio's then existing pricing policies.

b) Risk of Loss; Taxes and Duties. All Product shall be shipped to Customer EX Works (Incoterms 2010) ChemBio's Medford, NY facilities or other point of origin designated by ChemBio, unless otherwise agreed in writing by ChemBio. Title and risk of loss shall pass to Customer at the time of delivery to the shipper at the point of origin. Prices are exclusive of all sales, use, transaction, inventory, value added, and similar taxes; export/import duties and fees and other governmental charges; and freight, shipping, and insurance charges. Customer shall have sole responsibility for paying all such charges.

c) Shipment by ChemBio. At Customer's request made in its purchase order, ChemBio may, on Customer's behalf, choose a carrier, arrange for transportation of the Product to Customer or Customer's customers, insure the Product during shipment, and pay any U.S. export duties. ChemBio will offer Customer the option to purchase insurance for the value of Product before delivery to the shipper. ChemBio shall charge Customer for all such expenditures in addition to the Price of the Product(s), and Customer shall pay such amounts. ChemBio will assist Customer in seeking compensation from the shipper for damaged Product(s).

4. **Payment Terms.** Unless otherwise agreed in writing by Chembio, Credit Approved Customer shall pay Chembio for Product(s) purchased hereunder within thirty (30) days from the date of the invoice therefor. Any amounts owed to Chembio in connection with the Product, including without limitation, any costs Chembio incurs on Customer's behalf for shipping, freight, insurance, and duties and all other amounts due Chembio under this Agreement, shall be paid in U.S. dollars. Amounts not paid when due shall bear a late charge of 1.5 percent per month (or, if less, the maximum lawful rate) from the due date until paid.

5. **Warranty and Disclaimer.**

a) **Warranty.** Chembio warrants that Product delivered to Customer hereunder (i) shall be consistent with the Product description and specifications for such Product that Chembio may supply to Customer from time to time, as in effect at the time of shipment, and (ii) shall be free from defects in materials and workmanship for such Product's stated shelf-life (the "Warranty Period").

b) **Limitation of Warranties.** THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR OBLIGATIONS, EXPRESS OR IMPLIED. CHEMBIO EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. THE PRODUCT IS NOT WARRANTED TO PROVIDE PERFECT RESULTS AND COULD YIELD A FALSE POSITIVE OR FALSE NEGATIVE RESULT.

c) **Remedies and Limitation.** During the Warranty Period, Chembio shall replace or, at Chembio's option, refund the Price or credit (against the Price of future purchases of Product) the Price of any Product that does not comply with the warranty set forth in Section 5(a). At Chembio's request and expense, Customer shall return any Product to be replaced or for which the Price is to be refunded or credited. Chembio's obligations to replace defective Product or refund or credit the Price pursuant to this Section 5(c) shall not apply to any Product that has been subjected to misuse, mishandling, storage in a manner inconsistent with Product labeling, neglect, modification, or unusual physical or chemical stress after delivery to the shipper.

d) **Limitation of Remedies and Liability.** CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE PRODUCT, INCLUDING ANY CLAIMS BY THIRD PARTIES MADE AGAINST CUSTOMER, SHALL BE REFUND, CREDIT OR REPLACEMENT AS PROVIDED IN SECTION 5(c). IN NO EVENT SHALL CHEMBIO BE LIABLE FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF PROFITS, OR FOR ANY OTHER SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, HOWEVER CAUSED, EVEN IF CHEMBIO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF THE FOREGOING LIMITATION SHALL BE FOUND INAPPLICABLE FOR ANY REASON,

CHEMBIO'S LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE PRICE PAID FOR THE DEFECTIVE PRODUCT.

6. **Trademark and Patent Protection.**

a) **Generally.** Customer acknowledges the validity of and Chembio's ownership of all patents, trademarks and other rights related to the Product(s). Customer acknowledges that all trademarks used by Chembio in connection with the Product(s) and any foreign language translations thereof ("Company Trademarks") are the sole property of Chembio.

b) **No Technology Transfer.** Neither party shall acquire any right, title, or interest in any trademark, trade name, logo, patent, technology, domain names, or know-how of the other party by reason of this Agreement. Each party shall be responsible for registering, as necessary, its own trademarks, trade names, and logos and for obtaining patent or other protection for its own technology.

7. **Termination.**

a) **Termination by Chembio.** Without waiving any other rights Chembio may have, Chembio may terminate this Agreement immediately by notice given following the occurrence of any of the following events:

i) Customer fails to purchase any minimum quantity of Product specified in the attached contract, order, proposal, quotation or invoice.

ii) Customer fails to comply with any of its payment obligations under this Agreement.

iii) Customer is in breach of any other term of this Agreement if the breach is not cured within ten (10) days after written notice of such breach.

iv) Customer becomes the subject of insolvency or bankruptcy proceedings, ceases doing business, makes an assignment of asset for the benefit of creditors, dissolves, or has a trustee appointed for all or a substantial portion of Customer's assets.

b) **Survival.** Upon the termination or expiration of the term of this Agreement, the rights and obligations of the parties under this Agreement shall end, and neither party shall have any claim, including any claim for termination damages, against the other; provided, however, that the following obligations shall survive termination or expiration of this Agreement: (i) Customer's payment obligations specified in this Agreement; (ii) Chembio's warranty obligations specified in Section 5; (iii) the trademark and patent provisions specified in Section 6; (iv) the indemnity obligations specified in Section 8(d); (v) the mutual attorney fees obligation specified in Section 8(f); and (vi) any other obligation that by its terms survives such termination or expiration.

c) Chembio's Remedies. Chembio's exercise of any of its rights and remedies under this Agreement or at law following Customer's breach shall not be the exclusive rights or remedies of Chembio and shall in no way limit Chembio's additional rights or remedies available to it under this Agreement or law.

8. General Provisions.

a) Non-assignment. Customer may not assign, transfer, or sell its rights under this Agreement, or delegate its duties hereunder, to any person including any Affiliate (as defined below) of Customer, without the prior written consent of Chembio, which may be granted or withheld in Chembio's sole discretion. A transfer of a controlling interest in Customer shall constitute an assignment. Any purported assignment without Chembio's consent shall be void and shall constitute a material breach of this Agreement.

b) Entire Agreement; Modification. This Agreement contains the entire and final agreement between the parties. No modification of any of its provisions, or any future representation, promise, or addition, shall be binding upon the parties unless made in writing and signed by both parties.

c) Waiver. A waiver of any obligation Customer has under this Agreement shall be effective only if in writing signed by Chembio. Any waiver shall not affect Chembio's right to require strict compliance with the Agreement in the future.

d) Indemnification. Customer shall defend, indemnify and hold harmless Chembio, its affiliates and each of their respective shareholders, officers, directors, agents and employees from any claims, demands, loss, damage, liability or expense, including attorney fees and costs (however incurred, including at trial, on appeal, and on any petition for review), arising out of the acts or omissions of Customer or its Affiliates, agents, subdistributors or employees.

e) Notices. Any notices hereunder shall be given in writing directed to the address of each party set forth on the attached contract, order or invoice, or to such other address as either party may specify by written notice to the other, and shall be deemed given (i) when personally delivered; (ii) if sent by recognized courier service, on the second business day after deposit with such courier, properly addressed and fee prepaid or billed to sender; (iii) if sent by U.S. certified mail, return receipt requested, on the fourth business day after deposit in the U.S. mail, properly addressed and postage prepaid; or (iv) if sent by facsimile, upon and after the receipt of a machine-generated written confirmation report corresponding to the notice given evidencing the proper facsimile number of the receiving party, provided a copy of such notice is also sent by mail.

f) Attorney Fees. In the event of a default under this Agreement, the defaulting party shall reimburse the non-defaulting party for all costs and expenses reasonably incurred by the non-defaulting party in connection with the default, including, without limitation, attorney fees and costs (however incurred, including at trial, on appeal and on any petition for review). Additionally, in the event any suit or action is brought to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party all reasonable attorney fees and costs (however incurred, including at trial, on appeal, and on any petition for review), together with such other expenses, costs, and disbursements as may be allowed by law.

g) Governing Law. The rights of the parties under this Agreement shall be governed by the laws of the State of New York, U.S.A., excluding choice of law rules.

h) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. A facsimile transmission of a signed original shall have the same effect as delivery of the signed original.

i) Currency. All amounts payable under this Agreement shall be paid in U.S. dollars, unless otherwise agreed in writing. The conversion rate for any payments made in another currency shall be that quoted in the Wall Street Journal for the first business day of the month in which payment is due.

j) Agency. Customer is an independent business and has not power, right, or authority to bind Chembio or to assume or to create any obligation or responsibility, express or implied, on behalf of Chembio. Customer shall not take any action that could lead a third party to believe it has such authority. Nothing stated in this Agreement shall be construed as creating relationships of partners, employer and employee, franchiser and franchisee, or principal and agent between the parties.

k) Arbitration. Any dispute in connection with this Agreement shall be settled by final and binding arbitration conducted in English in accordance with the rules of the American Arbitration Association and the arbitration shall take place in New York, U.S.A. The arbitration shall be heard and determined by a single arbitrator. The award shall be made and shall be payable in U.S. dollars. The award shall include interest from the date of any breach or other violation of this Agreement. The arbitrator shall also fix an appropriate rate of interest from the date of the breach or other violation to the date when the award is paid in full. If the amount in controversy exceeds \$10,000, the arbitrator's decision shall include a statement specifying in reasonable detail the basis for and computation of the award, if any. A party substantially prevailing in the arbitration shall also be entitled to

recover such amount for its costs and attorney fees incurred in connection with the arbitration, as shall be determined by the arbitrator. Judgment upon the arbitration award may be entered in any court having jurisdiction. Nothing herein shall prevent either party from resorting to a court of competent jurisdiction solely to seek injunctive relief. The parties agree that the award of the arbitral tribunal will be the sole and exclusive remedy between them regarding any and all claims and counterclaims presented to the tribunal.

- l) Force Majeure. Neither party shall be liable for any delay of default in performing its obligations (other than payment obligations and Customer's obligations to obtain regulatory approval for import and sale of the Product) if such default or delay is caused by any event beyond the reasonable control of such party, including but not limited to, acts of nature, war or insurrection, civil commotion, destruction of production facilities or materials by earthquake, fire, storm or flood, labor disturbances or

strikes, epidemic, materials shortages, equipment malfunction or other similar event. The party suffering such cause shall immediately notify the other party of the cause and the expected duration of such cause. If either party's performance is delayed by more than 60 days pursuant to this Section 8(l), the other party may immediately terminate this Agreement by written notice given before the affected party resumes performance.

- m) Affiliates. Any breach or violation of any term of this Agreement by any Affiliate of Customer or sub distributor or agent authorized in accordance with the Agreement, shall be deemed to be a breach or a violation by Customer. An "Affiliate" is a person or entity controlling, controlled by, or under common control with Customer.
- n) No Third Party Beneficiaries. No person or entity shall be a third party beneficiary under this Agreement.

(END OF U.S. TERMS AND CONDITIONS)