

Life Technologies' General Terms and Conditions of Sale

Welcome to Life Technologies, and thank you for your interest in purchasing our products. We value your business and our goal is to make your purchasing experience as smooth as possible. If you have any questions about our quotation or ordering process, please call Customer Services at 1-800-955-6288.

1. Contract Terms. These are the contract terms and conditions ("Terms") under which we sell our products and services to you. Some of our products and services are subject to intellectual property licenses, software licenses, or other contract terms that you will not find here ("Supplementary Terms"). You can find Supplementary Terms in our quotation to you or in literature that accompanies the product or service. You may also obtain copies from Customer Services. These Terms, together with our quotation (if any) and Supplementary Terms (if any), create the contract ("Contract") between us for the purchase and sale of products and services. The Contract between us is created when we accept your order, either by sending a written confirmation, or by shipping the product or otherwise initiating action to provide what you have ordered. The Contract is between you and the Life Technologies' entity that appears on our quotation, order confirmation or dispatch note. If any conditions within the Contract documents conflict with each other, we will give them the following priority: the quotation, Supplementary Terms, and finally these Terms.

2. Delivery, Title and Ordering.

2.1 We will try to meet the delivery dates specified in your order, depending on availability and any lead times that may apply. Sometimes we deliver orders in installments. If we do, we may send you a separate invoice for each delivery.

2.2 Once you have placed your order, you cannot cancel it. If delaying the date of delivery would be helpful, please contact Customer Services to see if we can reschedule your delivery.

2.3 All our products are sold FOB our facility. Products are delivered when we load them onto the commercial carrier at our facility. At this point you become responsible for risk of loss and damage. If any product is lost or damaged while it is being transported, we will try to help you deal with the issue with the carrier. We do not clear products for import into your country. Doing so is your responsibility. Title to products will pass to you (except for software, where we retain title) upon our delivery of the products to the carrier.

3. Inspection.

3.1 We want you to receive our products in good condition. You can return products that are damaged or defective on delivery, or correct any shortages, if you contact Customer Services within 5 days from the day you receive the products. When you contact Customer Services, we will give you instructions on returning the products and on replacements. If you do not contact us within this five-day period, the products will be deemed accepted, but you will not lose any warranty rights. Authorization for all product returns must be approved by Customer Services and a return authorization number given to you prior to the return of goods. Not all items will be authorized for return. Items authorized for return must arrive at our facilities in a state satisfactory for resale to be eligible for product credit. A restocking charge of 25% or \$25 (whichever is greater) shall be charged on returns that are not the result of any error or fault of ours. Shipping charges will not be credited. Goods may not be returned for credit after 20 days after your receipt of the goods.

3.2 Custom products that we make in accordance with your specifications can only be returned if the custom products do not conform to the given specifications. In that case, we will, in our sole discretion, either replace the custom products or issue a refund to you equivalent to the price you paid for the custom products.

4. Price. The price for products and services is shown in our quotation to you. If we do not provide you with a quotation, the price will be the list price that applies to your country on the date we receive your order. Our prices do not include any taxes (including VAT), duties, levies or other government fees that may apply to your order. If they apply, it will be your responsibility to pay them. If we pay them, we will add them to your invoice. You are also responsible for standard delivery and handling charges, if any. We will also add these charges to your invoice. For details of our freight policy, please call Customer Services.

5. Payment. You must pay invoices within 30 days from the invoice date in the currency specified in our invoice. Each order is a separate transaction, and you may not set-off payments from one order against another. If you are late in making payment, without affecting our other rights, we may suspend delivery or cancel the Contract, reject your future orders, and charge you a late-payment charge, from the due date until paid, at the rate of one percent (1%) per month (12% per year) or, if less, the maximum amount allowed by law. You agree to pay this late charge when we demand. If we appoint a collection agency or an attorney to recover any unpaid amounts, we can charge you and you agree to pay all reasonable costs of collection, including all associated reasonable attorneys' fees.

6. Product Use and Restrictions.

6.1 Unless we expressly state otherwise in Supplementary Terms, all products are for RESEARCH USE ONLY, AND NOT FOR HUMAN OR ANIMAL THERAPEUTIC OR DIAGNOSTIC USE. You must use our products in accordance with our instructions, and you may not purchase products with the intention of reselling them or otherwise act as a distributor of our products. Unless we state otherwise in Supplementary Terms, we do not submit our products for regulatory review by any government body or other organization, and we do not validate them for clinical, therapeutic or diagnostic use, for safety and effectiveness, or for any other specific use or

application. You are solely responsible for making sure that the way you use our products complies with applicable laws, regulations and governmental policies. You must obtain all necessary approvals, intellectual property rights, licenses and permissions you may need. It is solely your responsibility to make sure the products are suitable for your particular use. If you are looking for commercial use rights to our products (including the right to perform fee-for-services), please contact our outlicensing department at outlicensing@lifetech.com.

6.2 You may not sell, rent, lease, loan, transfer or assign any instrument that contains or requires software for operation or other use unless you first permanently delete or uninstall the software. Licenses to our software products are not transferrable.

7. Instrument Related Services and Installation.

7.1 When you purchase an instrument, we can install it and provide training, maintenance, repairs and any other services that we expressly agree on. We also offer annual and other instrument service plans. For full details of our instrument service plans please contact Customer Services.

7.2 If we install or service an instrument at your premises, it is your responsibility to make sure that the workplace where the instrument is to be located or serviced is safe. It is also your responsibility to move the instrument (uncrated) to the place of installation and onto any tabletop, where it will be installed, to avoid any additional manual handling. We do not install or service instruments in biosafety level-3 laboratories, unless we agree otherwise in writing in advance. We do not install or service instruments in biosafety level-4 laboratories.

8. Limited Warranties.

8.1 Limited Warranties for consumables. Unless a different written warranty is included with product literature, we warrant that each consumable will meet its specifications stated in our published catalogs and associated Supplementary Terms. This warranty lasts from the time we deliver the consumable until either the consumable's expiry or "use by" date or its specified number of uses. If we do not specify the expiry date or number of uses, the warranty will last for 12 months from the date we deliver the consumable.

8.2 Limited Warranties for instruments. Unless a different written warranty is included with product literature, we warrant that instruments will be free of defects in materials and workmanship for 12 months after they are installed, provided however, regardless of installation date, this warranty will not last longer than 15 months from the date of shipment. We also warrant that instruments will perform in accordance with our published specifications when they are delivered. We warrant that spare parts you purchase from us and that we install, or are installed by a company we have certified as an authorized installer, will be free of defects in materials and workmanship for 3 months from the date we deliver them, or, if longer, the original warranty period of the instrument in which the part is installed. We do not warrant parts that you do not purchase from us or we do not install. These parts are sold "as is."

8.3 Limited Warranty for instrument related services. Unless a different written warranty is included with product literature, we warrant that our services will be performed at least in accordance with the customary standard of care for the instrument service industry.

8.4 Exclusions. Our warranties do not apply to defects or failures caused by (a) external sources such as short circuits or incorrect voltages; (b) normal wear and tear; (c) instruments sold to you as a 'used' product; (d) contact with improperly used or unapproved chemicals or samples; (e) parts that are excluded from warranty in the instrument's Supplementary Terms; (f) repair, modification, alteration or installation by anyone other than us or a person authorized by us; (g) removal, use or maintenance in an improper, inadequate, or unapproved manner, such as failure to follow our instructions or operating guidelines, operation outside of stated environmental or use specifications, or operation with unapproved software, materials or other products; (h) manufacture in accordance with specifications you gave us; (i) installation of software or interfacing, or use of the instrument in combination with software or products we have not approved; or (j) neglect or accident caused by you.

8.5 Submitting Warranty Claims and Remedies. If a product does not meet our warranty, you must notify Customer Services in writing during the warranty period and as soon as reasonably practicable after you discover the failure. For valid product claims timely made, we will replace or repair the product, or provide you with a credit for the price you paid, at our option, after you return the product to us in accordance with the instructions received from Customer Services. If you wish to make a claim for a breach of our instrument related service warranty, you must do so within 90 days after we complete the service. For valid service claims timely made, we will re-perform the services or refund you the price charged to you for the services, at our option.

8.6 Limitations. OUR WARRANTIES EXTEND ONLY TO YOU, THE ORIGINAL PURCHASER, AND YOU CANNOT TRANSFER THEM. IN NO EVENT WILL OUR TOTAL LIABILITY FOR BREACH OF WARRANTY EXCEED THE PURCHASE PRICE OF THE PRODUCT OR SERVICE. THE ABOVE WARRANTIES ARE EXCLUSIVE, AND WE MAKE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OF NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT OR SERVICE, WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

9. Third Party Products. We do not support or make any warranties about products manufactured by third parties you purchased through one of our sales channels. When you buy a third party product, we will let you know that this purchase is governed by the third-party's own contract terms. You must look directly to the relevant third-party manufacturer for product support, warranties, and to make warranty claims.

10. Custom Products.

10.1 When you ask us to manufacture a custom product, for example an oligonucleotide kit intended to detect a nucleic acid sequence specified by you, primer/probe or other product with non-off-the-shelf elements, we may decline the design or manufacture of such custom product, at any stage of the design or manufacture process, if the custom product is unsuitable or commercially impractical to be synthesized in that way. If that is the case, we will notify you as soon as possible and you will not be obligated to pay any fees for any expenses incurred by us in connection with a declined product.

10.2 By submitting an order for a custom product you represent and agree that (a) you have provided us with all information that you are aware of regarding any biological, radiological and chemical hazards associated with the handling, transport, exposure or other usage of the materials you supply to us; and (b) you have the right to cause the sequences that you requested us to manufacture to be manufactured.

11. Intellectual Property.

11.1 You acknowledge that all intellectual property rights relating to our products and services, as between you and us, are solely and exclusively owned by us. Our sale of products to you only grants you a limited, non-transferable right, for only you to use the quantity of the products that you have bought from us in accordance with the Contract. When we sell products to you, we do not grant you a license to our intellectual property, whether express, implied, by estoppel or otherwise, or grant you the right to make or have made any product or to use the product beyond the scope of the Supplemental Terms. Nothing in the Contract limits our ability to enforce our intellectual property rights.

11.2 In relation to processes, methods or related synthesis of a custom product, or otherwise in connection with the design or manufacture of a custom product, any inventions (patentable or otherwise), discoveries, improvements, data, know-how or other results that are conceived, developed, discovered, reduced to practice, or generated by or for us, or jointly by us and you, will be and will remain our sole and exclusive intellectual property, and you transfer and assign all of your right, title and interest in and to any such joint intellectual property to us and assist us, at our request and at our expense, in securing and recording our rights in such intellectual property.

12. Intellectual Property Indemnity.

12.1. Our Indemnity of You. We will defend and indemnify you from and against infringement damages finally awarded in any legal action brought by a third party against you to the extent that the action is based on a claim that our manufacture and sale of a product infringes any patent, copyright, trademark or other intellectual property right of such third party if we had actual knowledge of such intellectual property right and the actual infringement at the time of delivery of the product to you. This indemnity does not apply to products that we made, assembled or labeled in reliance upon your instructions, specifications, or other directions, or to claims based on your use or resale of products, or to modifications made by you or any third party. This indemnity does not apply to products originating from third parties. THIS INDEMNITY IS OUR ONLY LIABILITY TO YOU, AND YOUR ONLY REMEDY, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS BY OR IN CONNECTION WITH ANY PRODUCT. As a condition to this indemnity, you must (i) notify us in writing, as soon as you become aware of any claim; (ii) not admit any liability or take any other action in connection with the claim that could affect the defense; (iii) allow us to solely control the defense or settlement of the claim; and (iv) give us your reasonable information, co-operation and assistance.

12.2 Your Indemnity of Us. If a third party makes a claim against us for infringement of its intellectual property rights based on our manufacture or sale of a product we make under your instructions, specifications, directions, installation, assembly, or using materials you provide to us, or based on your modification, use or resale of a product, then you will indemnify and hold us harmless 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 we may have to pay as a result of the claim.

12.3 Avoidance. We wish to avoid claims of intellectual property infringement. If we believe a product may be subject to a claim for intellectual property infringement, then you will allow us, at our option and expense, to either: (a) secure for you the right to continue using the product; (b) substitute the product with another suitable product with similar functionality; or (c) require you to return the product to us for a refund of the purchase price you paid. In the case of instruments, we will deduct a reasonable amount for the instrument's use, damage and obsolescence.

13. Limitations of Liability.

13.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE WILL NOT BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOSS OF REVENUE) THAT YOU MIGHT INCUR UNDER THE CONTRACT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH OUR PRODUCTS OR SERVICES, EVEN IF WE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, OUR MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, OR ANY PRODUCT OR SERVICE, IS LIMITED TO THE AMOUNT YOU PAID TO US FOR THE PRODUCT OR SERVICE PURCHASED. HOWEVER, THESE PROVISIONS DO NOT LIMIT OUR LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE OR FRAUD, FRAUDULENT MISREPRESENTATION OR ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED BY LAW.

13.2 DELIVERY DATES AND TIMES ARE ESTIMATES ONLY AND WE WILL NOT BE LIABLE (IN CONTRACT, DELICT, TORT OR OTHERWISE) FOR ANY LOSSES, EXPENSES, CLAIMS OR DAMAGES CAUSED BY A LATE DELIVERY.

14. Export Control. Products and information that you receive from us are subject to United States, European Union and local export-control laws and regulations. You may not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any such product or information (including products derived from or based on our products or information) to any destination, entity, or person prohibited by United States, European Union or local laws or regulations.

15. Entire Contract.

15.1 The Contract represents the entire agreement between you and us regarding the products and services we provide to you under it, and supersedes and replaces any previous agreements between us (whether written or oral). Any of your additional or different terms and conditions that you may provide to us, are material alternations and we reject them. Our offer to sell products and perform services is expressly limited to the terms of the Contract. If you submit a purchase order, or other document for the purchase of products or services, whether or not in response to a quotation, you are deemed to have accepted and agree to the Contract, to the exclusion of (a) any other terms and conditions appearing in or referenced in your purchase order or other documents you give to us, and (b) any previous course of dealing, course of performance, trade usage or co-existent agreement. The Contract cannot be amended or modified unless you and we agree in writing.

15.2 We reserve the right to change these Terms at any time. Any changes made to these Terms will not apply to the Contract between us for any order we receive before the changes are made. The most recent revision date can be found at the end of these Terms

16. Miscellaneous.

16.1 We will not be responsible or liable for failing to perform our obligations under the Contract to the extent caused by circumstances beyond our reasonable control. In certain situations, we may use our reasonable judgment and apportion products then available for delivery fairly among our customers.

16.2 Our failure to exercise any rights under the Contract is not a waiver of our rights to damages for your breach of contract and is not a waiver of any subsequent breach. If any provision or part of the Contract is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the Contract. No person other than you or us will have any rights under the Contract. Headings are for convenience only and shall not be used in the interpretation of these Terms.

16.3 You agree to keep confidential any non-public technical information, commercial information (including prices, without limitation) or instructions (including any gene sequences, oligo types or sequences) received from us as a result of discussions, negotiations and other communications between us in relation to our products or services.

17. Governing Law. The Contract and performance under it will be governed by the laws of the State of California, USA, without regard to provision on the conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

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