

## TERMS AND CONDITIONS OF SALE

Thank you for your interest in purchasing Scientific Device Laboratory 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 contact Customer Service directly at (847) 803-9495.

Your purchase of products from SDL is subject to the following terms and conditions:

### 1. Applicability

1.1 Terms are Exclusive. These terms and conditions of sale (these “**Terms**”) are the only terms that govern the sale of products (“**Goods**”) by Scientific Device Laboratory (“**SDL**”) to you (“**Buyer**”). By submitting an order for Goods to SDL, Buyer agrees to accept and be bound by these Terms. These Terms may be altered only by a written contract signed by both SDL and Buyer, in which event the terms and conditions of said contract shall prevail only to the extent they are inconsistent with these Terms.

1.2 Other Proposed Terms Rejected and Disallowed. With respect to each order for Goods submitted by Buyer and accepted by SDL (each, an “**Individual Transaction**”), the SDL quotation, if any, Buyer purchase order, SDL Sales Confirmation and SDL invoice for such order (collectively, the “**Individual Transaction Documents**”) and these Terms comprise the entire agreement between SDL and Buyer for such Individual Transaction and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any additional or different terms set forth in Buyer’s general terms and conditions of purchase or form of purchase order (including any purchase order included in any Individual Transaction Documents) regardless whether or when Buyer has submitted to SDL such additional or different terms.

1.3 Formation of an Individual Transaction. An order submitted by Buyer is deemed by SDL to be an offer to purchase, which SDL may accept or reject in its sole discretion. SDL’s acceptance of Buyer’s offer to purchase is binding on SDL only if made by issuance of a written sales confirmation (“**Sales Confirmation**”) or, if not by Sales Confirmation, by shipment of the Goods ordered (and acceptance by shipment shall only be binding as to the portion of the order actually shipped by SDL). Any automatic or computer-generated response to an order by SDL’s e-order system or otherwise shall not be deemed acceptance of an order.

### 2. Price

2.1 Determining Price. SDL may change prices at any time without notice. Prices quoted to Buyer in writing are valid for 30 days unless stated otherwise in writing. If no price has been specified or quoted to Buyer, SDL standard retail pricing in effect at the time SDL accepts Buyer’s order will apply.

2.2 Governmental Charges and SDL Handling Fees. SDL product prices are exclusive of all sales, use and excise or similar taxes, duties, levies and charges of any kind imposed by any governmental authority, and SDL handling fees. Buyer shall be responsible for payment of all such governmental charges and SDL’s invoice will include applicable SDL handling fees any governmental charges that SDL may be required to pay, or collect and remit, to any governmental authority. If any exemption from any governmental charge is claimed by Buyer, Buyer must provide a valid, signed certificate or letter of exemption satisfactory to SDL for each respective jurisdiction claimed by Buyer.

2.3 Delivery and Shipping Costs - Insurance. SDL shall deliver all Goods to Buyer F.O.B. SDL’s loading dock (the “**Delivery Point**”). Buyer shall be responsible for payment of all shipping and delivery charges. Buyer shall be solely responsible for insuring the Goods against loss or damage in transit regardless of whether Buyer’s or SDL’s carrier is used.

2.4 Quantity. If SDL delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods at the price set forth in the Individual Transaction Documents adjusted pro rata.

### 3. Payment

3.1 Payment Terms: Unless stipulated otherwise in the Individual Transaction Documents, payment for each shipment is due within 30 days from the date of the invoice. SDL will invoice the product price and all other charges due when the Goods are shipped. Each order is a separate Individual Transaction, and Buyer may not set off any amount due under an invoice based on any claim or dispute pertaining to a different Individual Transaction or otherwise. Buyer shall specify with each payment the invoice to which such payment shall be applied, and if Buyer fails to so specify, SDL shall have the right to apply such payment in whole or in part to any unpaid Buyer invoice(s) as determined by SDL. All payments will be made in United States dollars.

3.2 Credit. Notwithstanding any provision of these Terms to the contrary, SDL shall not be obligated to grant credit terms to Buyer. SDL reserves the right, in its sole discretion and without prior notice, to deny, change or limit the amount or duration of credit to be allowed Buyer, either generally or with respect to a particular order, and may require cash payments in advance or security satisfactory to SDL. Acceptance of any order is subject to final credit approval by SDL, and notwithstanding issuance of any Sales Confirmation, SDL may cancel any Individual Transaction if SDL deems Buyer uncreditworthy in SDL's sole discretion.

3.3 Off-Shore Payment. Unless alternative arrangements have been made in the Individual Transaction Documents, payment by any Buyer located outside the USA shall be made by wire transfer or credit card. Buyer shall be responsible for payment of all wire transfer and credit card fees.

3.4. Late Payment: A 3% late fee will be applied to all invoices for which payment is not received within 30 days from invoice date. Additionally, Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse SDL for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' and paralegal fees. In addition to all other remedies available under these Terms or at law (which SDL does not waive by the exercise of any rights hereunder), SDL shall be entitled to cancel any Individual Transaction, stop delivery of Goods in transit and withhold shipments of additional Goods in whole or in part if Buyer fails to perform its obligations to SDL under any Individual Transaction Documents or these Terms.

### 4. Delivery

4.1 Delivery. SDL shall deliver the Goods to Buyer at the Delivery Point, using SDL's standard methods for packing and shipping such Goods unless otherwise stipulated in the applicable Individual Transaction Documents. The Goods will be shipped to the destination specified in the applicable Individual Transaction Documents.

4.2 Seller Delays - Partial Shipments. SDL delivery dates are estimates only and SDL will not be liable for any loss or damages resulting from any delay in delivery. SDL shall not be liable for any delays, loss or damage in transit. Buyer may not refuse delivery or otherwise be relieved of any obligations as the result of any such delay. SDL may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer and invoice each shipment separately. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in full or partial fulfillment of the applicable Individual Transaction.

4.3. Buyer Delays. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to SDL's notice that the Goods have been delivered at the Delivery Point and are ready for shipment, or if SDL is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided

appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered and SDL may issue its invoice therefor; and (iii) SDL, at its option, may store the Goods at Buyer's risk and expense until Buyer is ready for delivery, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

## 5. Risk of Loss

Title and risk of loss passes to Buyer upon delivery of the Goods to the commercial carrier at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to SDL a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Illinois Uniform Commercial Code.

## 6. Returns

6.1 Inspection. Buyer shall inspect the Goods within fifteen (15) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies SDL in writing of any non-conformity to the requirements of the applicable Individual Transaction Documents during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by SDL. All product returns must be preauthorized by SDL Customer Service's issuance of a Returned Materials Authorization ("RMA"). SDL Customer Service will approve the return of any product that is non-conforming, subject to examination and quality control testing deemed necessary by SDL, including determination that nonconformity has not been caused by any act or omission by the Buyer or the commercial carrier. Shipping returned product back to SDL is the responsibility of Buyer. Product returns on an approved RMA need to be shipped back to SDL no later than 60 days after the date of the RMA.

6.2 Remedies. If Buyer timely notifies SDL of any non-conformity of the Goods, SDL shall, in its sole discretion, either (a) replace such nonconforming Goods with conforming Goods, or (b) credit or refund the price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods to SDL's facility located at 411 Jarvis Ave., Des Plaines, IL 60018 USA. If SDL exercises its option to replace nonconforming Goods, SDL shall, after receiving Buyer's shipment of nonconforming Goods, deliver to Buyer, at Buyer's expense and risk of loss, the replaced Goods at the Delivery Point. Buyer acknowledges and agrees that the remedies set forth in this Section 7.2 are Buyer's exclusive remedies for the delivery of nonconforming Goods. Except as provided in this Section 7.2, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return any conforming Goods.

## 7. Limited Warranty – Disclaimer - Remedies

7.1 Limited Warranty. SDL warrants to Buyer that each of the Goods will conform to its express specifications as stated in the applicable product literature, if any, delivered by SDL pursuant to an Individual Transaction or to SDL's published specifications in effect as of the date of shipment under an Individual Transaction, subject to any expiration date and any other limitations on storage or use included in such specifications. This limited warranty is in effect until the earlier of (a) 90 days from the date the Goods are shipped and (b) the expiration date, if any, applicable to the Goods ("**Warranty Period**").

**7.2 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 8.1, SDL MAKES NO OTHER WARRANTIES OR REPRESENTATIONS TO BUYER OR ANY OTHER PERSON OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS. SDL SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT**

**LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT THAT MAY BE IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

7.3 Third Party Products. Products manufactured by a third party (“**Third Party Product**”) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 8.1. **SDL DISCLAIMS AND MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

7.4 Notification and Right to Examine. SDL shall not be liable for a breach of the warranty set forth in Section 8.1 unless: (a) Buyer gives written notice of the defect, reasonably described, to SDL within the Warranty Period; (b) SDL is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by SDL) returns such Goods to SDL's place of business at SDL's cost for examination; and (iii) SDL reasonably verifies Buyer's claim that the Goods are defective.

7.5 Exclusions. SDL shall not be liable for a breach of the warranty set forth in Section 8.1 if: (a) Buyer makes any further use of such Goods after giving such notice; (b) the defect arises because Buyer failed to follow SDL's instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (c) Buyer alters or repairs such Goods without the prior written consent of SDL.

7.6 Remedies. With respect to any Goods that do not conform to the requirements of Section 8.1 during the Warranty Period, SDL's sole obligation shall be either, in its sole discretion, to: (i) repair or replace such Goods (or the defective component thereof) or (ii) credit or refund to Buyer the price of such Goods at the pro rata contract rate. If SDL exercises its option to replace the nonconforming Goods, SDL shall deliver to Buyer, at Buyer's expense and risk of loss, the replaced Goods or components at the Delivery Point. **THE REMEDIES SET FORTH IN THIS SECTION 8.5 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SDL'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8.1.**

## **8. Indemnification**

8.1 Goods Manufactured According to Buyer's Specifications. If the Goods are manufactured by SDL according to Buyer's specifications, Buyer shall indemnify SDL from, and defend and hold SDL harmless from and against, any claims, losses, costs, liabilities and damages suffered, incurred or sustained by SDL or to which SDL becomes subject, resulting from, arising out of or relating to any claim: (i) that the Goods infringe upon the proprietary or other rights of any third party (except as may have been caused by a modification by SDL); and (ii) of loss or damage resulting from the Goods or the use thereof.

8.2 Repackaged or Combined Goods. If Buyer sells any Goods packaged for use in combination with other products of Buyer or third parties, Buyer shall indemnify SDL from, and defend and hold SDL harmless from and against, any claims, losses, costs, liabilities and damages suffered, incurred or sustained by SDL or to which SDL becomes subject, resulting from, arising out of or relating to any claim of loss or damage resulting from the use of the Goods in combination with such other products.

## **9. Intellectual Property**

9.1 Use Limitations: All intellectual property rights relating to products and services sold under the SDL label are the sole property of SDL. Unless otherwise expressly stated in the Individual Transaction Documents,

(a) SDL's sale of Goods grants to Buyer only the limited right to use or resell the quantity of Goods purchased from SDL without modification or duplication and (b) no modification or removal of any trade or service marks on SDL products is permitted.

9.2 Intellectual Property Ownership of Custom Products. Unless otherwise expressly stated in the Individual Transaction Documents, SDL exclusively owns all intellectual property rights in 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 SDL, or jointly by Buyer and SDL, in relation to processes, designs and methods utilized or developed in the course of SDL's manufacture for Buyer of a custom product. Buyer agrees to execute upon SDL's request additional documents of transfer and assignment evidencing SDL's exclusive right, title, and interest in and to any joint intellectual property.

## 10. Custom Products

10.1 Declining to Make or Deliver. SDL may in its sole discretion decline to design or manufacture a custom product at any stage of the product development process, if SDL concludes a proposed product is unsuitable for any reason or commercially impractical to manufacture. In no event will a declination by SDL relieve the prospective Buyer of its obligation to pay all fees earned by SDL during the product development process up to the point of SDL's declination.

10.2 Buyer Responsibilities. By submitting an order for a custom product, the Buyer represents and warrants to SDL that (a) Buyer has given to SDL all relevant information regarding the proposed custom product including all information relating to any biological, radiological, and chemical hazards associated with the handling, transport, exposure to, or other use of the materials supplied to SDL; and (b) that Buyer has the requisite rights, including but not limited to any necessary intellectual property rights, to instruct the method of manufacture of such product. Buyer shall indemnify SDL from, and defend and hold SDL harmless from and against, any claims, losses, costs, liabilities and damages suffered, incurred or sustained by SDL or to which SDL becomes subject, resulting from or arising out of any breach of Buyer's representations and warranties under this Section 11.2 or relating to any claim: (i) that such Goods infringe upon the proprietary or other rights of any third party (except as may have been caused by a modification by SDL); and (ii) of loss or damage resulting from the Goods or the use thereof.

## 11. Limitation of Liability

No claim by Buyer of any kind including, but not limited to, claims for indemnification, whether as to quality or amount of product delivered or non-delivery, shall be greater in amount than the purchase price for the Goods in respect of which damages are claimed. IN NO EVENT SHALL SDL BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOSS BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, OR LOSS OF DATA, ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, SERVICING, USE OR LOSS OF THE GOODS SOLD HEREUNDER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

## 12. Export and Import Restrictions

12.1 Compliance. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance.

12.2 Audit Cooperation. Buyer will cooperate fully with SDL in any official or unofficial audit or inspection related to applicable export or import control laws or regulations.

### 13. Miscellaneous

13.1 No Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under any Individual Transaction Documents without the prior written consent of SDL. Any purported assignment or delegation in violation of this Section 14.1 is null and void. No assignment or delegation relieves Buyer of any of its obligations under any Individual Transaction Documents.

13.2 Governing Law. All matters arising out of or relating to Individual Transactions and these Terms shall be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Illinois. The U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

13.3 Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to Individual Transactions and these Terms shall be instituted only in the federal courts of the United States of America or the courts of the State of Illinois in each case located in the City of Chicago and County of Cook, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

13.4 Buyer's Additional Responsibilities. Buyer agrees to use all SDL products in accordance with SDL's instructions. Buyer is solely responsible for (a) ensuring that the use of any SDL product complies with applicable laws, regulations and governmental guidance, (b) obtaining all necessary approvals and permissions for use or distribution of SDL products and (c) determining whether any SDL product is suitable for the particular use intended.

13.5 Excuses for Non-Performance. If the manufacture, transfer or receipt by either party of any Goods covered hereby is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the party so affected, such party shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference, and neither party shall be liable to the other for default or delay in performing, provided nothing herein shall excuse timely performance of Buyer's payment obligations.

13.6 Allocation. If shortages occur in SDL's supply of the Goods, or any materials, components, or parts necessary to produce the Goods for any reason, SDL may, without obligation to obtain similar Goods, materials, components or parts from other sources, allocate its available supply among its customers (whether under contract or not) and its own requirements in a manner and amount that in SDL's sole discretion is fair and reasonable. SDL may deduct the quantity not shipped because of this allocation from the quantity Buyer is obligated to purchase in any Individual Transaction.

13.7 No Waiver. No waiver by SDL of any of these Terms or the provisions of any Individual Transaction Documents shall be effective unless explicitly set forth in writing and signed by SDL. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms or any Individual Transaction Documents operates, or may be construed, as a waiver thereof.

13.8 Severability. If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

13.9 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and addressed to the parties at the physical or electronic addresses set forth on the face of the Individual Transaction Documents or to such other address that may be designated by the receiving party in writing.

13.10 No Third-Party Beneficiaries. These Terms and the provisions of all Individual Transaction Documents are for the sole benefit of SDL and Buyer and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever.

13.11 Headings. Section headings are for convenience only and shall not be used in the interpretation of these Terms.