

# TERMS AND CONDITIONS FOR LUMPULSE™ PRODUCT SALES

## 1. DEFINITIONS

**Buyer** - The company, firm or person from whom the order for the purchase of Products is received

**Seller** - Fujirebio Diagnostics, Inc. and Fujirebio US  
**Conditions** - These General Terms and Conditions of Sale  
**Contract** - Any contract between the Seller and the Buyer for the sale and purchase of the Products incorporating these terms and conditions  
**Products** - Any Products supplied by the Seller to the Buyer (including any part or parts of them) pursuant to the Contract.

## 2. APPLICATION OF TERMS

**2.1** The Seller submits all quotations and accepts all orders from the Buyer subject to the Conditions and, unless otherwise expressly agreed in writing, these Conditions shall govern and form part of every Contract to the exclusion of any other terms and conditions, whether expressed or implied, of the Buyer (including any terms and conditions, which the Buyer purports to apply under any purchase order, specification or any other document whatsoever and whenever. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in these Conditions or Contract.

**2.2** Notwithstanding the foregoing, if the Seller and the Buyer have executed a formal written contract which is in full force and effect, the terms and conditions of that contract will apply and govern, to the exclusion of any inconsistent Condition in this Contract.

**2.3** Each order or acceptance of a quotation for Products by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase Products subject to these Conditions.

**2.4** No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order, which may include email or facsimile, is issued by the Seller or, if earlier, the Seller delivers the Products to the Buyer. Any order shall be accepted entirely at the discretion of the Seller.

**2.5** Any variation, cancellation or waiver of these Conditions shall only be effective if made in writing and signed by a duly authorized representative of the Seller. For the avoidance of doubt, the Seller's drivers, sales representatives, warehouse and depot staff are not so authorized.

## 3. PRICE AND PAYMENT

**3.1** All payments shall be made in U.S. Dollars.

**3.2** Unless otherwise agreed by the Seller in writing, the price for the Products shall be the price set in the Seller's price list as at the date of the order for the Products.

**3.3** The Seller's prices are subject to alteration without notice and are stated exclusive of sales and all other taxes or levies and all costs and charges in relation to packaging, labelling, carriage and freight all of which the buyer shall bear where applicable.

**3.4** Unless orders are accepted on a pre-payment basis, when payment for the Products shall be due in advance of delivery, accounts are due for payment within thirty (30) days of the date of invoice and no accounts shall be deemed to be paid until the Seller has received cleared funds.

**3.5** The Buyer shall notify the Seller of any invoice discrepancy within 14 days of receipt of the invoice after which time the invoice shall be deemed accepted by the Buyer.

**3.6** The Seller reserves the right to withhold delivery of subsequent orders when the Buyer's account is overdue and in such cases the Seller shall have the right to release any Buyer reserved or ordered Products.

**3.7** If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest interest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorney's fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder.

## 4. DELIVERY; CANCELLATION; CHANGES

**4.1** The Seller will use reasonable efforts to meet any time or date for delivery given. Notwithstanding this, any time or date for delivery given by the Seller is an estimate only and the Seller will not be held liable or responsible for any delay or non-delivery nor for any loss, expense or damage whatsoever resulting from any such delay or non-delivery and the Buyer shall not be entitled to treat a Contract as repudiated by reason of late delivery.

**4.2** The Seller reserves the right to refuse to deliver any order if the Buyer goes or threatens to go into liquidation, makes any composition or arrangement with its creditors or has appointed an administrator or an administrative receiver, provided always that title in the Products has not already passed to the Buyer.

**4.3** When signing for Products from the carrier, the Buyer agrees to check that the number of packages received agrees with the number on the delivery note and immediately to record any numerical discrepancy or obvious external damage on the carrier's delivery note. The Seller will consider claims for damages, shortages or incorrect delivery only if notified within 14 days of receipt of the Products and claims for non-delivery only if notified within 14 days of the date of invoice. If any claim is so notified, the Seller's sole responsibility will be limited to replacing or redelivering the Products in question or collecting excess deliveries at its expense and the Buyer will not be entitled to any other compensation whatsoever. The Seller will accept no liability for any claims however caused not notified within these periods nor will the Seller have any liability in respect of damage or shortages caused by the acts or omissions of the Buyer.

**4.4** The Seller reserves the right to deliver in more than one instalment and to invoice each instalment separately

**4.5** If delivery is by installments a notifiable claim in one instalment will not entitle the Buyer to reject all instalments.

**4.6** Any order received on a Friday which requires dry ice or other form of temperature control will be dispatched the following Monday (or in the case of holiday on next available business day). In the event the Buyer requires a weekend delivery, the Buyer shall be solely responsible for receipt and shall be liable for any degradation of the Products in the event that the Products cannot be delivered.

**4.7** The Seller will not accept the return of unwanted Products correctly delivered against an order.

## 5. RISK

The Products shall be at the risk of the Buyer from the time of delivery to the Buyer's premises or until from the time of collection from the Seller's premises or on behalf of the Buyer, whichever is the applicable.

## 6. TITLE AND RISK OF LOSS

Subject to the security intent section below and to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the

carrier, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be. Any claims for damage to, or loss or incorrect delivery of, the Products will be filed directly with the carrier by Buyer.

## 7. SECURITY INTEREST

Seller reserves and Buyer grants to Seller a security interest in all Products sold and all proceeds thereof to secure the full payment and performance by Buyer of its obligations and liabilities to Seller. Buyer acknowledges and agrees that this document or copies of this document may be filed with the appropriate authorities as a financing statement and agrees to execute and deliver such other documents as Seller may request in order to evidence or perfect such security interest. Buyer will be liable to Seller for all costs of collection, including without limitation, attorney's fees.

## 8. NO RIGHT OF SET-OFF

The Buyer shall make all payments due under the Contract without any deduction to sums due under the Contract whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

## 9. SAFETY AND RECALL

**9.1** The Buyer should satisfy itself that the persons responsible for the shipping, storage, handling and/or use of any Products supplied by the Seller have all the information required on health and safety requirements

(as required by Applicable Law and conditions of storage and any health and material safety data sheets and/or summaries of product characteristics). The Seller shall not be liable to the Buyer in any civil proceedings brought by the Buyer against the Seller in respect of a breach of the Applicable Law, shipping, storage, handling or use instructions or any other applicable health and safety legislation or any regulations, orders or directions made pursuant to such health and safety legislation in force from time to time or under any directive, regulation, order or other instrument relating to health and safety, where such exclusion of liability is permitted by law.

**9.2** The Buyer shall keep the Seller properly informed of all customer complaints concerning the Products and shall comply with any directions of the Seller in any issues, proceedings or negotiations relating to such complaint.

**9.3** In the event of any product recall the Buyer agrees to cooperate with the Seller in taking all necessary steps to remove the relevant product from the market place in a timely manner.

## 10. INSPECTION, STORAGE, TRANSPORT AND USAGE CONDITIONS

**10.1** All stocks of Products shall be stored and transported by the Buyer in accordance with product temperature conditions as issued or amended by the Seller from time to time.

**10.2** The Seller shall be entitled with the prior agreement of the Buyer (such agreement not to be unreasonably withheld) to inspect the Buyer's stocks of the Seller's products at the Buyer's depots, sub-depots or other business premises.

## 11. LIABILITY AND CONSEQUENTIAL LOSS

**11.1** Sections 4 and 10 of this Contract set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, representatives or sub-contractors) in respect of any breach of these Conditions or other contract and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

**11.2** If any of the Products should prove to be not fit for their intended purpose within 12 months of the date of invoice (or within their expiry dates if earlier or later) when stored and used correctly, the Seller will either replace or, at its sole option, refund the purchase price but shall have no liability to the Buyer for any other consequential loss, damage or expense.

**11.3** The Seller shall not in any circumstances whatsoever (whether by reason of negligence, breach of contract, misrepresentation or otherwise) be liable for any economic loss, damage or expense, whether direct, indirect or consequential (including, without prejudice to the generality of the foregoing, loss of profits, business interruption, loss of goodwill or reputation) arising out of or in any way connected with the delivery and/or sale and/or use of the Products whether by the Buyer or by any third party.

**11.4** Nothing in this Section 10 shall be taken to limit or restrict the Seller's liability (i) for personal injury or death resulting from the negligence of the Seller, its employees and agents; or (ii) for fraud or fraudulent misrepresentation or for any other matter for which it would be illegal for the Seller to exclude, limit or attempt to exclude or limit its liability.

**11.5** The total aggregate liability of the Seller howsoever arising in connection with this Contract whether for negligence or breach of contract or otherwise shall in no event exceed the value of the Products sold by the Seller under this Contract.

**11.6** The price of the Products has been calculated on the basis that the Seller will exclude or limit its liability as set out in the Contract and the Buyer, by placing an order, agrees and warrants that the Buyer shall insure against or bear itself any loss for which the Seller has excluded or limited its liability in the Contract and the Seller shall have no further liability to the Buyer.

## 12. BUYER'S WARRANTY AND INDEMNITY

**12.1** The Buyer warrants that the Products shall only be resold by the Buyer in their original form as packaged and supplied by the Seller without any breaking down or repacking, without the Seller's prior written approval.

The Buyer will not remove, alter or add to the labels on or the leaflets within these packages prior to any such sale without the Seller's prior written approval.

**12.2** The Buyer acknowledges that the Products may be perishable and may become denatured if they are stored or transported incorrectly. The Buyer warrants that, if it resells the Products, the Buyer will:

**12.2.1** ship and handle the Products in the same manner as they were supplied by Seller to the Buyer and in accordance with the marketing authorization for the relevant Products;

**12.2.2** store the Products in suitable conditions and supply only those of satisfactory quality and, in each case, in accordance with the marketing authorization for the relevant Products; and

**12.2.3** ensure that customers purchasing the Products ship, store and handle the Products in the same conditions as those specified in Conditions 12.2.1 and 12.2.2.

**12.3** The Buyer agrees to indemnify and hold the Seller harmless from and against any claims, costs,

expenses, and damage arising out of: (i) the abnormal or improper use, misuse or neglect of the Products or any breach of these terms and conditions or default on the part of the Buyer; or (ii) any use or sale of any Products manufactured by the Buyer and incorporating any Products supplied by the Seller to the Buyer.

**13. FORCE MAJEURE** The Seller reserves the right to suspend or cancel the Contract in whole or part, including but not limited to deferring the date of delivery or reducing the volume of the Products ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the Seller's reasonable control including, but not limited to, acts of God, fire, wind, accident, pandemic, epidemic, widespread disease, industrial action, riot, war, civil commotion, flood, breakdowns of plant or machinery, the acts of a third party or the intervention of a competent authority provided that, if the event in question continues for a continuous period in excess of one hundred and eighty (180) days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

## 14. SHIPPING AND HANDLING CHARGES

Except otherwise stated on the order confirmation as per the Incoterm or approved in writing by the Seller, the Products are shipped Ex Works (Incoterms ICC 2010), and notwithstanding any terms of delivery or payment of the transportation costs covered by this Contract or otherwise agreed to by the Parties, the risks of loss or damage shall pass to the Buyer upon collection of the Products by the first carrier at the Seller's premises, plants or warehouses.

## 15. BREACH OF CONTRACT OR INSOLVENCY

**15.1** The Seller may immediately suspend performance of the Contract, cancel any outstanding delivery of the Products, stop any Products in transit or by notice in writing to the Buyer terminate the Contract without liability to the Seller if:

**15.1.1** The Buyer commits a material breach of any of its obligations under the Contract which is incapable of remedy or fails to remedy a breach of its obligations under the Contract which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Seller to remedy or desist from such breach within a period of fourteen (14) days; or  
**15.1.2** The Buyer enters into bankruptcy, individual voluntary arrangement, liquidation, receivership, administration or into a corporate voluntary arrangement; or  
**15.1.3** The Buyer ceases, or threatens to cease to carry on business; or  
**15.1.4** any sum payable under the Contract is not paid within seven (7) days of its due date for payment in accordance with this contract; or  
**15.2** Notwithstanding any such termination or suspension in accordance with Condition 15.1 the Buyer shall pay the Seller for all Products delivered up to and including the date of suspension or termination.  
**15.3** Termination of the Contract for any reason shall be without prejudice to the rights and remedies of either party which may have accrued up to termination.

## 16. SUBCONTRACTING, ASSIGNMENT AND THIRD PARTY RIGHTS

**16.1** The Buyer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Seller. The Seller may assign, charge, subcontract or transfer the Contract or any part of it to any person.

**16.2** A person who is not a party to the Contract has no right under the Contract to enforce any of these terms and conditions.

## 17. MISCELLANEOUS

**17.1** For the avoidance of doubt, acceptance of the Buyer's order does not in any way entitle the Buyer to use any trademarks owned by the Seller, its associates and affiliates. Any infringement of the Seller's intellectual property rights, whether by substitution, passing-off, copyright or trademark infringement or any other improper use whatsoever will result in the Seller taking appropriate action to safeguard its interests.

**17.2** If any of these Conditions is held to be invalid, unenforceable or unlawful for whatever reason, such decision shall not affect the validity or enforceability of the remaining conditions or the Contract which will remain valid and enforceable in all respects.

**17.3** The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

**17.4** The Contract sets out the entire agreement and understanding between the Buyer and the Seller in connection with the sale of the Products and shall supersede and replace all documentation previously issued by the Seller purporting to set out its conditions of sale of the Products. All samples, drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the

Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract and this is not a sale by sample.

## 18. APPLICABLE LAW AND JURISDICTION

These terms and conditions shall be governed by and construed in accordance with the laws of Delaware.