

CEPHEID TERMS AND CONDITIONS

- 1. Purchase Orders.** These Cepheid Terms and Conditions (these "Terms"), as posted on Cepheid's website at the time the purchaser ("Customer") submits its purchase order ("PO") to Cepheid, shall apply to such PO. All POs are subject to acceptance by Cepheid, which acceptance shall be limited to the terms and conditions of the Agreement (defined below). Upon Cepheid's acceptance of Customer's PO, such PO, together with these Terms and the applicable Cepheid Sales Quote (the "Quote"), shall constitute a contract between the Customer and Cepheid, which shall exclusively govern the accepted PO (collectively, the "Agreement"). Notwithstanding the foregoing, unless otherwise agreed to by the parties in a writing signed by both parties, the following shall be void, shall have no binding effect, and are expressly rejected by Cepheid: (i) any terms or conditions in Customer's PO, other than Customer contact, bill-to, and ship-to information and quantities of Products (defined below); and (ii) any other agreement, document, terms, or conditions concerning the subject matter of the Agreement. By submitting its PO, Customer expressly agrees to the Agreement. As used in these Terms, "Reagent Products" means Cepheid reagent and ancillary consumable products, "Instruments" means Cepheid instruments and instrument accessories, and "Products" means Reagent Products and Instruments.
- 2. EUA, RUO, and IUO Products.** Customer may purchase Products that have been cleared or approved by the United States Food and Drug Administration ("FDA") and/or Products that have not received clearance or approval by FDA as cleared or approved medical devices, but: (i) have received Emergency Use Authorization from FDA permitting certain distribution and use; or (ii) are distributed by Cepheid for purposes of "research use only" (RUO) or "investigational use only" (IUO). Customer acknowledges that: (a) requirements under Applicable Law (defined below) for Products described in this section under (i) and (ii) may differ, or be exempt from, those applicable to medical devices cleared or approved by FDA; and (b) Products labeled "research use only" or "investigational use only" are not being sold by Cepheid for Customer's use for clinical diagnostic purposes.
- 3. Price.** The sales prices for the Products shall be the prices stated in the Quote. The following shall be added to the invoice: (i) the reasonable cost of packing, crating, shipping, and insurance, which shall be prepaid; and (ii) applicable taxes, including any sales, use, or other local taxes required to be collected on the sale. If Customer is eligible for a tax exemption, Customer must maintain a valid tax exemption certificate on file with Cepheid.
- 4. Delivery, Title, and Risk of Loss.** Products shall be packed in Cepheid's standard shipping packages and shipped by method and carrier to be selected by Cepheid, unless otherwise permitted in writing by Cepheid. Cepheid shall use reasonable efforts to effect shipment of Products on or before quoted, estimated, or requested dates, but makes no representations, warranties, or guarantees as to shipment or delivery dates. Cepheid may make deliveries in installments, and each installment shall be deemed a separate sale, for which a separate invoice shall be rendered by Cepheid. Deliveries shall be made F.O.B. Origin. Title and risk of loss with respect to the Products, except software, shall pass from Cepheid to Customer upon transfer of possession to a common carrier.
- 5. Supply.** Customer acknowledges that supply is limited. Therefore, notwithstanding anything to the contrary in the Agreement, Cepheid makes no guarantees or representations concerning the availability of the Products at any time and reserves the right, in its sole discretion, to: (i) reject or cancel any PO; (ii) apportion among its various customers the Products then available for delivery; (iii) determine delivery dates; and (iv) offer Customer alternate quantities of the Products or substitute products of substantially similar functionality as the Products ordered, which offer Customer may reject in Customer's sole discretion. In the event of any of the foregoing, Cepheid shall promptly notify Customer in writing (email acceptable). Customer acknowledges and agrees that in no event shall any of the foregoing constitute a breach of any obligation to Customer by Cepheid.
- 6. Acceptance of Products.** Customer shall inspect all Products within thirty (30) days of receipt thereof. Any Instrument that is defective may be rejected by Customer, provided: (i) it is (or has been) a standard product offered by Cepheid; and (ii) it has not been used, abused, or damaged by the Customer or Customer's agents. Any Reagent Product shipped by Cepheid in damaged packaging, or with damage to the Reagent Product's container, in each case that compromises the integrity of the Reagent Product, may be returned to Cepheid. Any Product shipped by Cepheid in error shall be purchased by Customer (unless Cepheid informs Customer that it does not agree to sell such Product to Customer) or returned to Cepheid unused, in its original packaging, and in its original condition. To reject or return a Product described in this section, Customer must notify Cepheid in writing of the reason for the rejection or return within thirty (30) days of receipt of the Product, obtain a Return Material Authorization number, and promptly return the Product to Cepheid, freight collect. Except with respect to Products shipped in error, Cepheid shall promptly repair or replace the Product with conforming Product or return the purchase price of the Product (which return may be in the form of a credit). Any Products not properly and timely rejected and/or returned in accordance with this section, including Products shipped in error, shall be deemed accepted by Customer, and Customer shall be invoiced accordingly. Except as expressly set forth in this section, all sales are final, and Products are not returnable or refundable.
- 7. Payment Terms.** Payment terms are cash on delivery, except where Customer has established and maintained open account credit to Cepheid's satisfaction. Cepheid reserves the right to require alternative payment mechanisms, including without limitation, prepayment, sign draft, or letter of credit. Payment terms for sales on open account are net thirty (30) days from date of Cepheid's invoice to Customer. Customer's obligation to pay for Products is not conditioned on Customer's inspection of the Products. Any invoiced amount not paid when due shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum allowed by law, if less.
- 8. Customer's Financial Condition.** Cepheid's obligations under the Agreement are subject to Cepheid's approval at all times of Customer's financial condition. If the financial condition of Customer at any time becomes unsatisfactory to Cepheid or if Customer fails to make any payment when due, Cepheid may: (i) defer or decline to provide any Product to Customer; and/or (ii) revoke any open account credit of Customer.
- 9. Limited Warranty.** Cepheid warrants that the GeneXpert instruments: (i) shall be free from defects in material and workmanship for a period of one year after shipment; (ii) conform to Cepheid's published specifications for the GeneXpert instruments; and (iii) are free of liens and encumbrances when shipped. Cepheid does not warrant any defects in any GeneXpert instruments caused by: (a) improper use, installation, removal, or testing; (b) Customer's failure to provide a suitable operating environment for the GeneXpert instruments; (c) use of the GeneXpert instruments for purposes other than that for which they were designed; (d) unauthorized attachments; (e) unusual physical or electrical stress; (f) modifications or repairs performed by anyone other than Cepheid or a Cepheid authorized service provider; or (f) any other abuse, misuse, or neglect of the GeneXpert instruments. It is Customer's responsibility to determine, and Customer shall assume the risk for the suitability of Products for Customer's use and distribution and Customer's use and distribution of the Products in compliance with all applicable laws, rules, regulations, regulatory guidance, and industry codes, including, without limitation, the Social Security Act and all state and federal fraud and abuse laws (collectively, "Applicable Law"), the Products' labeling, inserts, and manuals, and other Product-related information and materials published by Cepheid or any regulatory authority. This warranty extends to Customer only, and not to Customer's customers or any other third party. Except as expressly set forth in these Terms, Products are sold "AS IS." THERE ARE NO WARRANTIES AS TO PRODUCTS WHICH EXTEND BEYOND THE FACE HEREOF. CEPHEID DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING PRODUCTS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. CEPHEID SHALL HAVE NO STRICT LIABILITY, GOODS LIABILITY, OR NEGLIGENCE, WHETHER ACTIVE OR PASSIVE. CUSTOMER'S EXCLUSIVE REMEDY UNDER THIS WARRANTY IS LIMITED TO REPAIR OR REPLACEMENT OF THE INSTRUMENT. In the event of any conflict between the terms of the warranty in the Agreement, including the limitations of liability set forth in Section 10, and those in any other document, the more restrictive terms shall apply as to the extent of such conflict.
- 10. LIMITATION OF LIABILITY.** IN NO EVENT SHALL CEPHEID BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL CONSEQUENTIAL, OR EXEMPLARY LOSS OR DAMAGE (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, DATA, PROFITS OR GOODWILL) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING ACTIVE, PASSIVE, OR IMPUTED NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE. THE FOREGOING LIMITATION APPLIES EVEN IF CEPHEID WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR ANY REMEDY HAS FAILED OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL CEPHEID'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT EXCEED THE AMOUNT ACTUALLY PAID TO CEPHEID BY CUSTOMER FOR THE PRODUCTS THAT ARE THE SUBJECT OF OR GAVE RISE TO THE CLAIM.
- 11. Patents.** Cepheid shall settle or defend any suit or proceeding brought against Customer if and to the extent the suit or proceeding is based on a claim that any Cepheid Products as sold directly infringe any issued United States patent. Cepheid shall pay all damages and costs finally awarded against Customer on account of any actual infringement. Customer shall: (i) within ten days after receipt by Customer of a communication, notice, or other action relating to an alleged infringement, inform Cepheid in writing of the event and furnish to Cepheid a copy of any communication; and (ii) give Cepheid all authority (including the right to exclusive control of the defense of any suit or proceeding), information and assistance necessary to settle or defend the suit or proceeding. Cepheid shall not be bound in any manner by any settlement made without its prior express written consent. In the event Cepheid Products are held to constitute infringement and their use is enjoined, Cepheid may, at its option: (a) obtain for Customer the right to continue using the Cepheid Products; (b) modify the Cepheid Products so that they become non-infringing; or (iii) remove the Cepheid Products and grant Customer a credit. Cepheid has no obligations under this section if the alleged infringement arises out of: (1) Cepheid's compliance with Customer's specifications; (2) Customer's addition to or modification of a Cepheid Product; or (3) Customer's use of a Cepheid Product with products provided by parties other than Cepheid. Cepheid's obligations under this section do not apply to any alleged infringement occurring after Customer has received notice of the alleged infringement unless Cepheid subsequently gives Customer express written consent for the continuing alleged infringement. Cepheid shall not be liable for any incidental or consequential damages arising out of a patent infringement. Cepheid's liability hereunder shall not exceed the purchase price paid by Customer for the allegedly infringing Cepheid Products. The foregoing states the sole and exclusive liability of Cepheid with respect to patent infringement and is in lieu of any and all other warranties, expressed or implied, in regard thereto.

12. **Disclosure Requirements.** The parties intend and believe this Agreement, and any discounts in price, rebates, and other price reductions (collectively, "Discounts") provided hereunder, comply with the federal Anti-Kickback Statute at 42 U.S.C. § 1320a-7b(b) and discount safe harbor at 42 C.F.R. § 1001.952(h). Each party will maintain all documents concerning the Discounts and provide such documents and other related information upon request by any state or federal agency. Customer agrees to fully and accurately report all Discounts when required and as appropriately allocated among equipment, products and/or services, as applicable.
13. **Compliance with Applicable Law.** Each party represents and warrants to the other party that it shall perform its obligations under the Agreement, and the activities contemplated hereunder, including any use or distribution of the Products, in compliance with Applicable Law, the Products' labeling, inserts, and manuals, and other Product-related information and materials published by Cepheid or any regulatory authority. Customer shall indemnify and hold Cepheid from and against all losses, liabilities, and expenses (including reasonable attorneys' fees and costs) to the extent arising from any breach of the foregoing.
14. **Force Majeure.** Cepheid shall not be liable, nor be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any obligation under the Agreement when such failure or delay arises or results from acts beyond Cepheid's reasonable control, including, without limitation, the following: (i) acts of God, (ii) flood, fire, earthquakes, pandemics, or epidemics; (iii) shortages of supplies, infrastructure, or transportation; (iv) law, rule, regulation, or action by any governmental authority; (v) national, regional, or global emergency; or (vi) labor stoppages or slowdowns or other industrial disturbances.
15. **Choice of Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of California.
16. **Assignment.** Neither party may transfer or assign the Agreement or any of its rights, duties, or obligations under the Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld.
17. **Entire Agreement; Modification.** The Agreement: (i) constitutes the final, complete, and exclusive agreement of the parties concerning the subject matter of the Agreement; (ii) supersedes all prior written and oral agreements, representations and understandings between Cepheid and Customer concerning such subject matter, other than as set forth in a signed written agreement between the parties that, by its terms, is intended to supplement the Agreement; (iii) supersedes all terms and conditions set forth in a PO, except as expressly set forth in these Terms; and (iv) may be modified only by a writing signed by the parties. Each party represents to the other party that in entering the Agreement, it is not relying upon any representation, agreement, warranty, or statement, other than those expressly set forth in the Agreement.