

CEPHEID TERMS AND CONDITIONS

- 1.0 **Definitions.** The following capitalized terms and definitions shall apply to these Terms and Conditions (“Terms”):
- 1.1 “**Applicable Law**” means all applicable laws, rules, regulations, regulatory guidance, and industry codes, including, without limitation, the Social Security Act, state and federal fraud and abuse laws, and export control laws and regulations.
 - 1.2 “**Customer**” means:
 - (i) if Customer has a Customer Contract, the customer identified on the Customer Contract; or
 - (ii) if Customer does not have a Customer Contract and is purchasing a Product pursuant to a Cepheid sales quote that references these Terms, the customer submitting the Order.
 - 1.3 “**Customer Contract**” means the signed written agreement between Customer and Cepheid that refers to and/or incorporates these Terms by reference.
 - 1.4 “**Discounts**” means any discounts in price, rebates, and other price reductions.
 - 1.5 “**FDA**” means the United States Food and Drug Administration.
 - 1.6 “**IUO**” means Products labeled “investigational use only.”
 - 1.7 “**Instruments**” means Cepheid instruments and instrument accessories.
 - 1.8 “**Order**” means Customer’s purchase order or electronic order.
 - 1.9 “**RUO**” means Products labeled “research use only.”
 - 1.10 “**Reagent Products**” means Cepheid reagent tests.
 - 1.11 “**Products**” means Reagent Products, Instruments, and other products which Customer may acquire pursuant to this Agreement.
- 2.0 **Applicability of Terms.** These Terms shall apply as follows:
- 2.1 If Customer has a Customer Contract, these Terms shall form part of such Customer Contract, and all references in these Terms to this “Agreement” shall refer to the Customer Contract, inclusive of these Terms.
 - 2.2 If Customer does not have a Customer Contract and is purchasing a Product pursuant to a Cepheid sales quote that references these Terms: (i) these Terms, as posted on Cepheid’s website at the time Customer submits its Order shall apply to Customer’s Order; (ii) upon Cepheid’s acceptance of Customer’s purchase order or Customer’s submission of an electronic order, Customer’s Order, together with these Terms and the applicable sales quote, shall constitute a contract between the Customer and Cepheid, which shall exclusively govern Customer’s Order; (iii) by submitting its Order, Customer expressly agrees to the terms and conditions of this Agreement; and (iv) all references in these Terms to this “Agreement” shall refer to the accepted purchase order or submitted electronic order, these Terms, and the applicable sales quote, collectively.
- 3.0 **Orders.** All Orders are subject to acceptance by Cepheid, which acceptance shall be limited to the terms and conditions of this Agreement. Unless otherwise agreed to in a writing signed by authorized representatives of the parties, the following shall be void, shall have no binding effect, and are expressly rejected by Cepheid: (i) any shipment or delivery dates in Customer’s Order; (ii) any other terms or conditions in Customer’s Order that are in addition to or inconsistent with this Agreement; and (iii) any other agreement, document, terms, or conditions concerning the subject matter of this Agreement. Customer shall ensure that all Orders are submitted in conformance with the applicable sales quote or Customer Contract.
- 4.0 **Price.** The prices for the Products shall be as set forth in the: (i) Customer Contract; or (ii) sales quote if Customer does not have a Customer Contract (and prices shall expire on the quote expiration date in the sales quote). Prices are exclusive of applicable taxes. Cepheid may, in its reasonable discretion, provide initial Instrument training to Customer. Any “price per test” may be rounded.
- 5.0 **Cepheid Invoices.** The following shall be added to Cepheid’s invoices: (i) the reasonable cost of packing, crating, and shipping, 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.
- 6.0 **Cepheid Payment Terms.**
- 6.1 Cepheid’s 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.
 - 6.2 Payment terms for sales by Cepheid on open account, and for any other invoices Cepheid is permitted to issue to Customer pursuant to the Customer Contract are net thirty (30) days from date on Cepheid’s invoice to Customer, unless otherwise expressly agreed to by the parties in a Customer Contract
 - 6.3 Any amount invoiced by Cepheid 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.
- 7.0 **Customer’s Financial Condition.** Cepheid’s obligations under this 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.
- 8.0 **Delivery; Title; Risk of Loss.**
- 8.1 Products shipped by Cepheid shall be packed in Cepheid’s standard shipping packages and shipped by method and carrier to be selected by Cepheid, unless otherwise agreed upon by Cepheid in writing. 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. Cepheid reserves the right to apportion among its various customers the Products then available for delivery.
 - 8.2 Deliveries of Products purchased directly from Cepheid shall be made pursuant to the shipping term specified in the: (i) Customer Contract; or (ii) sales quote if Customer does not have a Customer Contract. If no shipping term is specified in the Customer Contract or sales quote (as applicable), deliveries shall be made F.O.B. origin. For sales made F.O.B. origin, title, and risk of loss with respect to purchased Products, except software, shall pass from Cepheid to Customer upon transfer of possession to a common carrier. For sales made F.O.B. destination, title and risk of loss with respect to purchased Products, except software, shall pass from Cepheid to Customer upon delivery.
- 9.0 **Acceptance of Products.** Customer shall inspect all Products within thirty (30) days of delivery. Any Product that is defective may be rejected by Customer, provided it: (i) is (or has been) a standard product offered by Cepheid; and (ii) has not been used, abused, or damaged by Customer or Customer’s agents. 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 delivery of the Product, obtain a Return Material Authorization number, and promptly return the product to Cepheid, freight collect. Except with respect to Product 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 Product not properly and timely rejected and/or returned in accordance with this section, including Product shipped in error, shall be deemed accepted by Customer, and Customer shall be invoiced accordingly. Cepheid reserves the right to determine, in its reasonable discretion, whether a Product may be rejected or returned for the reasons set forth in this section. Except as expressly set forth in this Agreement, all sales are final, and Product are not returnable or refundable.
- 10.0 **Supply.** Except as otherwise expressly provided in the Customer Contract, Cepheid makes no guarantees or representations concerning the availability of the Products at any time and reserves the right, in its sole discretion, to (without breach of any obligation): (i) reject or cancel any Order; (ii) determine shipment and delivery dates, which may be before or after any shipment or delivery dates included in an Order; and (iii) offer Customer alternate quantities of Products or substitute products. In the event of any of the foregoing, Cepheid shall promptly notify Customer in writing (email acceptable).

- 11.0 Own Use. Customer shall use Products solely for its own use and shall not sell or redistribute, or permit the sale or redistribution of, Products to any third party, except as approved in writing in advance by an authorized representative of Cepheid.
- 12.0 EUA, RUO, IVO Products. Customer may purchase and/or acquire the use of Products that have been cleared or approved by the FDA and/or Products that have not, but have received Emergency Use Authorization from the FDA are distributed for purposes of “research use only” or “investigational use only.” Customer acknowledges that: (i) requirements under Applicable Law for Products authorized under Emergency Use Authorization and RUO and IVO Products may differ, or be exempt from, those applicable to medical devices cleared or approved by the FDA; (ii) RUO and IVO Products are not being sold by Cepheid for Customer’s use for clinical diagnostic purposes; (iii) purchases of RUO and IVO Products shall not count towards any minimum purchase requirements that Customer may have (notwithstanding anything to the contrary in a Customer Contract); and (iv) subsequent versions of Products (including those with similar or modified intended use claims or performance characteristics) that may, in the future, be authorized, cleared, or approved by the FDA may be offered on different terms, including at different prices.
- 13.0 Limited Warranty. Cepheid warrants that Cepheid Products have been manufactured in compliance with Applicable Law and shall be free of liens and encumbrances when shipped. Cepheid further warrants that GeneXpert® instruments: (i) shall be free from defects in material and workmanship for a period of one year after shipment; and (ii) conform to Cepheid’s published specifications for the GeneXpert instruments. Cepheid does not warrant any defects in any GeneXpert instruments caused by: (a) improper use, installation, removal, or testing; (b) 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 (g) any other abuse, misuse, or neglect of the GeneXpert instruments (in each case, except as caused by Cepheid). It is Customer’s responsibility to determine, and Customer shall assume the risk for the suitability of Product for Customer’s use and/or distribution and Customer’s use and/or distribution of Product in compliance with all Applicable Law and the Products’ labeling, inserts, and manuals, and other Product-related information and materials published by Cepheid or any regulatory authority. This warranty extends to the initial Customer only, and not to Customer’s customers or any other third party. Except as expressly set forth in this Agreement, Product 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.
- 14.0 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 THIS 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 THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY PAID TO CEPHEID BY CUSTOMER FOR THE PRODUCTS THAT ARE THE SUBJECT OF OR GAVE RISE TO THE CLAIM.
- 15.0 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 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 (c) 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 written 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.
- 16.0 Confidential Information, Feedback, Customer Data.
- 16.1 Without limiting the rights or obligations set forth in the Customer Contract with respect to confidential information (if any), Customer agrees to keep any confidential information disclosed by Cepheid about future Cepheid products, software, and services, including any planned or future development efforts. If Customer provides Cepheid with any feedback regarding any Cepheid product, software, or service, Cepheid shall be entitled to use any such feedback for any purpose, without notice, restriction, or remuneration to anyone.
- 16.2 If Customer returns any equipment to Cepheid for any reason, Customer shall ensure that it saves any data it wishes to retain, and removes and deletes all data from such equipment, prior to its return. Customer understands and agrees that Cepheid shall: (i) delete any data remaining on returned equipment; and (ii) shall have no responsibility or liability with respect to such data.
- 16.3 If Customer provides Cepheid with “protected health information,” as such term is defined in 45 C.F.R. § 160.103 of the Privacy Rule, the Business Associate Agreement available on Cepheid’s website (https://www.cepheid.com/en_US/systems/business-associates-agreement) shall apply.
- 16.4 The provisions of this Section shall survive any expiration or termination of this Agreement.
- 17.0 Disclosure Requirements. The parties intend and believe this Agreement, and any 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 acknowledges that Cepheid may supply Instruments and other Products and/or services identified in this Agreement as part of Customer’s purchase of Products under this Agreement. Customer agrees to report all Discounts fully and accurately, when required and as appropriately allocated among equipment, other Products and/or services, as applicable. Upon Customer’s request, Cepheid will provide Customer with further information regarding the Discounts and the allocation of Customer’s purchase price for Products and services, as applicable.
- 18.0 Compliance with Applicable Law. Each party represents and warrants to the other party that it shall perform its obligations under this Agreement, and the activities contemplated thereunder, including any use or distribution of the Products, in compliance with Applicable Law.
- 19.0 Notices. Except as otherwise provided in this Agreement, all notices shall be in writing and hand-delivered, sent by nationally recognized overnight courier, with proof of delivery, or by certified mail with return receipt requested to Cepheid at 904 Caribbean Drive, Sunnyvale, CA 94089, and to Customer at the address identified in this Agreement (with a courtesy copy to a party’s “Legal Department” at the same address), and notice shall be deemed given on the date delivered if hand-delivered; on the date shown on the proof of delivery if sent by overnight courier; and on the date shown on the return receipt if sent by certified mail.
- 20.0 Force Majeure. Neither party shall be liable for any failure or delay in fulfilling or performing any obligation under this Agreement to the extent such failure or delay arises or results from any cause beyond its reasonable control and without its fault or negligence, 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; and (vi) labor stoppages or slowdowns or other industrial disturbances.
- 21.0 Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of California, without regard to conflict of laws principles. Any dispute or claim arising out of or related to this Agreement shall be brought in the state or federal courts of such state, and each party hereby submits to the exclusive jurisdiction of such courts.
- 22.0 Assignment. Neither party may transfer or assign this Agreement or any of its rights, duties, or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 23.0 Entire Agreement; Modifications. This Agreement (including the exhibits, schedules, addenda attached to a Customer Contract, each of which is hereby incorporated by reference, and any online terms incorporated into a Customer Contract by reference): (i) constitutes the final, complete, and exclusive agreement of the parties concerning

the subject matter of this Agreement; (ii) supersedes all prior written and oral agreements, representations, and understandings between Cepheid and Customer concerning such subject matter; (iii) except as otherwise provided in this Agreement, supersedes all terms set forth in any order; and (iv) except as otherwise provided in this Agreement, may be modified only by a writing signed by the parties. Each party represents to the other party that in entering this Agreement, it is not relying upon any representation, agreement, warranty, or statement, other than those expressly set forth in this Agreement.

- 24.0 Counterparts; Electronic Signatures. If this Agreement requires the parties' signatures, then: (i) this Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument; (ii) counterparts may be delivered via facsimile, electronic mail (including PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civ. Code § 1633.1, et seq.) (or other applicable law) or other transmission method; and (iii) any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes
- 25.0 Miscellaneous. The parties hereto are independent contractors. Any right or obligation of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will so survive. Expiration or termination of this Agreement shall not affect any right or obligation of a party which accrued prior to such expiration or termination. The parties agree that it would be difficult or impossible to determine Cepheid's damages in the event of Customer's default and that any fees set forth in the Customer Contract for which Cepheid may invoice Customer due to Customer's default are a reasonable estimate of such damages and shall not be deemed, a penalty or forfeiture. No right or remedy referred to in this Agreement is intended to or shall be exclusive, but each shall be cumulative and in addition to any other right or remedy referred to in this Agreement or otherwise available at law or in equity. No provision of this Agreement shall be deemed waived unless such waiver is in writing and signed by an authorized representative of the party against whom it is sought to be enforced. No delay or failure to exercise or enforce any right or provision of this Agreement shall be considered a waiver thereof or of any right thereafter to exercise and enforce that or any other right or provision.