

Cepheid Sales Agreement - Australia

PURCHASER'S TERMS: Any other document provided by the Purchaser, INCLUDING OTHER TERMS AND CONDITIONS SUBMITTED WITH ANY PURCHASE ORDER, and not specifically referenced in this agreement or expressly agreed to in writing shall be of no effect. This agreement is binding unless an agreement modification is submitted and mutually approved by the Purchaser and CEPHEID. This agreement is valid for a period of 12 months from the date of final acceptance.

ACCEPTANCE OF PURCHASE ORDERS: Purchase Orders are binding only upon acceptance by Cepheid. Cepheid will only accept Purchase Orders that are issued in conformance with the provisions of this Sales Agreement (and attached Quotation as appropriate). Upon acceptance of a Purchase Order, this Sales Agreement (and attached Quotation as appropriate) and such accepted Purchase Order shall constitute a contract between the Purchaser and Cepheid.

PRICE: The sales price(s) for the Goods will be the listed or posted price(s) of Cepheid in effect at the time of shipment, or the price stated in a written Quotation provided by Cepheid. Cepheid's quotations are subject to change at any time prior to acceptance of an order and expire sixty (60) days from the date of this Sales Agreement. The reasonable cost of packing, crating, shipping, and insurance are prepaid and will be added to the invoice. Where applicable, the Purchaser will pay directly all import duties. Price(s) do not include GST which will be added to the invoice, as a separate line item.

DELIVERY: Goods will be packed in Cepheid's standard shipping packages and shipped by method and carrier to be selected by Cepheid, unless otherwise specified otherwise by Cepheid. Cepheid will use reasonable effort to effect shipment of the Goods on or before quoted shipment dates; however Cepheid shall not be liable for any delay or failure in delivery where such delay or failure results from any cause beyond Cepheid's control, including, but not limited to, act of God, lockouts, strikes, fire, riots, tempest, pandemic, boycott, embargo, government regulations, accidents to machinery, war, non-availability of materials or default by any manufacturer for or sub-contractor to Cepheid [Force Majeure]. Cepheid may make deliveries in installments, and each installment shall be deemed to be a separate sale, for which a separate invoice will be rendered by Cepheid. Cepheid shall also have the right, to the extent necessary in Cepheid's reasonable judgment, to apportion fairly among its various Customers in a manner deemed equitable by Cepheid, the Goods then available for delivery.

Your purchase is governed by the terms and conditions of the present quotation (the "Quote") and the terms and conditions attached in Annex A (the "Terms"). No other agreement, whether written or oral, and no other terms or conditions in any purchase order or other document, that are contrary or in addition to those in this Quote or the Terms shall apply or be binding upon Cepheid. By submitting a purchase order for the products identified in this Quote, you accept the terms and conditions in this Sales Quote and the Terms.

You acknowledge that availability of supplies is limited. Therefore, Cepheid makes no guarantees or representations concerning the availability of any product at any time and reserves the right, in its sole discretion, to: (i) reject or cancel any order; (ii) apportion among its various customers the products then available for delivery; (iii) determine delivery dates; and (iv) offer you alternate quantities of products or offer you substitute products of substantially similar functionality as the products ordered, which offer you may reject in your sole discretion. In the event of any of the foregoing, Cepheid shall promptly notify you in writing (email acceptable). You acknowledge and agree that in no event shall any of the foregoing constitute a breach of any obligation to you by Cepheid.

Cepheid shall not be liable nor be deemed to have defaulted under or breached any agreement with you, for any failure or delay in fulfilling or performing any obligation to you concerning the products, when such failure or delay arising or resulting from Force Majeure as provided in Article 9 of the Terms.

ALL SALES ARE FINAL, AND PRODUCTS ARE NOT RETURNABLE AND NON-REFUNDABLE.

In the event of any conflict between the terms and conditions of this Quote and the Terms, those of this Quote shall control to the extent of such conflict.

TITLE AND RISK OF LOSS: Title and risk of loss with respect to all Goods except software, and risk of loss with respect to software, shall pass from Cepheid to the Purchaser upon delivery. Delivery shall be deemed made upon transfer of possession to a common carrier F.O.B. origin.

PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (PPSA): For the purposes of the PPSA, terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA.

The Purchaser accepts, acknowledges and agrees that the terms and conditions of this Sale Agreement constitute a Security Agreement which creates a security interest in favour of Cepheid and in (i) all Goods previously supplied by Cepheid to the Purchaser (if any); (ii) all present and after acquired Goods supplied to the Purchaser by Cepheid (or for the Purchaser's account) including products in which Goods become processed or comingled; and (iii) all Proceeds, as continuing security for payment of the Prices and all of the Purchaser's outstanding debts and obligations to Cepheid.

The Purchaser agrees to grant to Cepheid a Purchase Money Security Interest (PMSI). The Purchaser accepts, acknowledges, and agrees that: (i) Cepheid obtains a Security Interest in all Goods supplied by Cepheid to the Purchaser on credit, including any Commingled Goods; (ii) Cepheid can, without notice to the Purchaser, seek Registration of its Security Interest on the PPSR; (iii) Pursuant to section 275(6) of the PPSA, the Purchaser agrees Cepheid is not required to disclose to an interested person information pertaining to Cepheid's Security Interest unless required to do so pursuant to the PPSA or at law generally.

The Purchaser will: (i) sign any further documents and/or provide any further information (which information the Purchaser warrants to be complete, accurate and up-to-date in all respects) which Cepheid may reasonably require to enable perfection of its Security Interest or registration of a Financing Statement or Financing Change Statement on the PPSR; (ii) not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods, including any services, without the prior written consent of Cepheid; (iii) give Cepheid not less than 14 days written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business practice); (iv) indemnify Cepheid against any costs Cepheid incurs in perfecting and maintaining its perfected Security Interest in the Goods or such other Personal Property under the PPSA and any costs Cepheid may incur in the course of enforcing any of its rights under this Sale Agreement, the PPSA or at law generally; (v) and procure from any persons considered by Cepheid to be relevant to its security position, such agreement and waivers as Cepheid may at any time reasonably require.

To the extent permitted by the PPSA the Purchaser waives its rights to: (i) receive a notice under any of subsections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157 of the PPSA; (ii) receive a statement that includes the information referred to in paragraph 132 (3)(d) of the PPSA; (iii) receive a statement under subsection 132(4) of the PPSA; (iv) redeem Collateral after default under section 142 of the PPSA unless Cepheid agrees in writing to such redemption; (v) reinstate the Security Agreement under section 143 of the PPSA; and (vi) give a Notice of Objection under section 137 of the PPSA.

ACCEPTANCE OF GOODS: Purchaser shall inspect all Goods within 30 days of receipt thereof, and may reject any Product that is defective provided that (i) it is (or has been) a standard product offered by Cepheid, and (ii) it has not been used, abused, or damaged by the Purchaser or Purchaser's agents. Any Product not properly and timely rejected by the Purchaser shall be deemed accepted. To reject a Product, Purchaser must notify Cepheid in writing within 30 days of receipt of the Product, obtain a Return Material Authorization number, and promptly return the rejected Product to Cepheid, freight collect. Cepheid shall promptly repair or replace the rejected Product with conforming Product.

PAYMENT TERMS: Payment terms are cash on delivery, except where Purchaser has established and maintained open account credit to Cepheid's satisfaction. Cepheid reserves the right to require alternative payment mechanisms, including without limitation, Sight Draft, Letter of Credit, or Payment in Advance. Payment terms for sales on open account are net thirty (30) days from date of Cepheid's invoice to Purchaser. Purchaser's obligation to pay for Goods is not conditioned on Purchaser's inspection of the Goods. Any invoiced amount which is not paid when due shall bear a late charge at the rate of one and one-half percent (1-1/2%) per month.

PREVENTION OF WIRE FRAUD: Cepheid and the Purchaser both recognize that there is a risk of wire fraud when individuals impersonating a business demand immediate payment under new wire transfer instructions. To avoid this risk, both Cepheid and the Purchaser agree that transfer instructions provided in Cepheid invoice will apply. In the event that there is a change in the wire transfer instructions, both Parties must agree to an updated wire transfer, in writing, using the Business Contact listed in the Quotation, before any monies will be transmitted using the new wire instructions. Both Parties further agree that they will never change wire transfer instructions by email. Further, both Parties agree that they will never require an immediate payment under the new instructions. The Parties will provide for a ten (10) business day grace period to verify any wire transfer instruction changes before any outstanding payments would be due using the new instructions.

PURCHASER'S FINANCIAL CONDITION: Cepheid's obligations under this Sales Agreement are subject to Cepheid's approval at all times of Purchaser's financial condition. If the financial condition of Purchaser at any time becomes unsatisfactory to Cepheid or if Purchaser fails to make any payment when due, Cepheid may (i) defer or decline to make any shipment of Goods to Purchaser, or (ii) revoke any open account credit Purchaser has.

LIMITED WARRANTY: Cepheid warrants that the Goods (i) will 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 Goods, and (iii) are free of liens and encumbrances when shipped to Purchaser. It is the responsibility of Purchaser to determine and Purchaser assumes the risk for (i) the suitability of the Goods for Purchaser's intended use, and (ii) their compliance with applicable laws, regulations, codes and standards. Specific terms of the warranty or warranties for the Goods are set forth in Cepheid's current user's manual, catalog, or written guarantee covering such Good. Cepheid does not warrant any defects in any Goods caused by (i) improper installation, removal or testing, (ii) Purchaser's failure to provide a suitable operating environment for the Goods, (iii) use of the Goods for purposes other than that for which they were designed, (iv) unauthorized attachments, (v) unusual physical or electrical stress, (vi) modifications or repairs done by other than Cepheid or a Cepheid authorized service provider, or (vii) any other abuse, misuse, or neglect of the Goods. This warranty extends to Purchaser only, and not to Purchaser's customers, except as agreed to in writing by Cepheid. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF. CEPHEID DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, REGARDING THE GOODS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CEPHEID SHALL HAVE NO STRICT LIABILITY, GOODS LIABILITY OR NEGLIGENCE, WHETHER ACTIVE OR PASSIVE.

LIMITATION OF REMEDIES: PURCHASER'S EXCLUSIVE REMEDY FOR ANY DEFECTIVE GOOD IS LIMITED TO THE REPAIR OR REPLACEMENT OF ANY DEFECTIVE GOOD. IF CEPHEID CANNOT OR DOES NOT REPAIR OR REPLACE A DEFECTIVE GOOD, CEPHEID WILL REMOVE THE GOOD AND RETURN THE PURCHASE PRICE FOR THE DEFECTIVE GOOD AND CEPHEID SHALL HAVE NO LIABILITY FOR GENERAL, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING FROM A DEFECT IN ANY GOODS.

LIMITATION OF LIABILITY: EVEN IF CEPHEID CANNOT OR DOES NOT REPAIR OR REPLACE ANY DEFECTIVE GOODS AND PURCHASER'S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, CEPHEID'S ENTIRE LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE FOR ANY DEFECTIVE GOOD, AND CEPHEID SHALL HAVE NO LIABILITY FOR GENERAL, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING FROM A DEFECT IN ANY GOOD.

PROPORTIONAL REDUCTION OF LIABILITY: Cepheid's liability (if any) under this Sales Agreement for any loss and/or damage incurred by the Purchaser and/or any third party will be reduced proportionately to the extent that any fault, negligent act, or omission of the Purchaser (or its subcontractor, agent, or personnel) and/or third party contributed to those loss, damage, expense, or liability.

PATENTS: Purchaser will: (i) within ten days after receipt by Purchaser 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 expressed written consent. In the event Goods are held to constitute infringement and their use is enjoined, Cepheid may, at its option, (i) obtain for Purchaser the right to continue using the Goods, (ii) modify the Goods so that they become non-infringing, or (iii) remove the Goods, grant Purchaser a credit and accept their return. Cepheid has no obligations under this section if the alleged infringement arises out of: (i) Cepheid's compliance with Purchaser's specifications, (ii) Purchaser's addition to or modification of a Product, or (iii) Purchaser's use of a Product with Goods provided by parties other than Cepheid. Cepheid's obligations under this section do not apply to any alleged infringement occurring after Purchaser has received notice of the alleged infringement unless Cepheid subsequently gives Purchaser 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 Purchaser for the allegedly infringing Goods. 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.**

APPLICABLE LAW AND VENUE: This Sales Agreement shall be governed by the law of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

ASSIGNMENT: Neither party may transfer or assign any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party and such consent shall not be unreasonably withheld; PROVIDED THAT either party may assign all of its rights and obligations to a corporation which has acquired substantially all of the business and assets of the assignor and assumed in writing the obligations of a party to this Agreement, or to a corporation surviving a merger and consolidation to which the party to this agreement is a party.

ENTIRE AGREEMENT; MODIFICATION: This Sales Agreement and any documents referred to in this Sales Agreement: (i) are the final, complete, and exclusive statement of the terms of the agreement of the parties concerning the subject matter of those documents; (ii) supersede all prior written and oral agreements and understandings between Cepheid and Purchaser with respect to the Goods, and (iii) may be modified only by a signed writing.

