Cepheid Sales Agreement

PURCHASER’S TERMS: Any order submitted 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 article of the Cepheid Sales Agreement is subject to transfer or assignment, and (i) shall continue to be effective for all 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 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 any cause beyond Cepheid’s control, including, but not limited to, act of God, lockout, strikes, fire, riots, tempest, pandemic, boycott, embargo, government regulations, accidents to machinery, war, non-availability of materials or default by any manufacturer or sub-contractor to Cepheid [Force Majeure]. Cepheid may make deliveries in installments, and such 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 quote ("the Quote") and the terms and conditions annexed 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 part of a purchase order if it determines among its various Customers the products then available among those Customers; (ii) determine delivery dates; and (iii) allocate limited 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.

the Purchase agreement is valid for a period of 12 months from the date of final acceptance.

Acceptance of Goods: Purchaser shall inspect all Goods within 30 days of receipt thereof, and may reject any Product that is defective provided that it is (i) defective and has been produced 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 by the Purchaser and 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.

Rejection of Goods: Purchaser’s failure 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.

LIMITED LIABILITY: 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 Purchaser’s compliance with applicable laws, regulations, codes or 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 attempted repairs or modifications done by other than Cepheid or a Cepheid authorized service provider, or (v) 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. CEPIHEID DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, REGARDING THE GOODS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE GOODS ARE FREE FROM DEFECTS. CEPHEID SHALL HAVE THE EXCLUSIVE REMEDIES FOR ANY DEFECTIVE GOOD.

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 CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING FROM A DEFECT IN ANY GOODS.

Cepheid Holdings Pty Ltd ABN 89 160 640 034 Bldg A, Suite 2, L3, 11 Talavera Rd, Macquarie Park, NSW 2133 Australia. www.cepheid.com

Cepheidanz@cepheid.com

18001 107 884

Phone: (02) 9803 0213

Confidential - Company Proprietary
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.

DE-IDENTIFICATION OF PERSONAL DATA: The Purchaser acknowledges that Cepheid would not require access to any Personal Data, including patients’ Personal Data, at any time in performance of its obligations under this Sales Agreement. Where applicable, in the event any data is required to remedy technical issues and/or performance of the equipment and/or Product (“Permitted Purposes”), the Purchaser agrees that prior to providing or granting access to such data to Cepheid, the Purchaser shall be responsible to ensure all Personal Data in such data, if any, are De-identified and Coded to ensure that the identity of the individual to whom the data pertains is not identifiable to and is not traceable by Cepheid and/or Cepheid’s Personnel. The Purchaser further represents that it has established policies and procedures in place to prevent the release of individuals’ Personal Data and is responsible for informing and ensuring its employees to comply with the Purchaser’s obligations in this clause. The Purchaser shall fully indemnify Cepheid and its affiliates against any and all claims, losses or damages arising from or related to non-compliance of this clause including but not limited to costs on a solicitor/attorney-client basis.

For the purpose of this clause,

(a) “Personal Data” means any information, data and/or opinion relating to and about an identified or reasonably identifiable natural person;
(b) “De-Identified” means the identity of the individuals is not known to and ensure data is not traceable by Cepheid and/or Cepheid’s Personnel; and
(c) “Coded” means that a number, letter, symbol, or combination thereof (i.e. the code) has replaced identifying individual information (such as name or national registered identification number); and
(d) “Cepheid’s Personnel” means employees, agent and/or contractor of Cepheid associated with the performance of its obligations under this Sales Agreement.

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 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 these 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.