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 Cepheid and the Purchaser.

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 list price or quoted 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, invoices, and delivery dates are subject to change at any time prior to acceptance by the Purchaser. Cepheid reserves the right to settle the date of an order and execute delivery of the Goods on terms that are reasonable to Cepheid, and in no event shall Cepheid 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 by default on the part of 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 your various Customers in a manner deemed equitable by Cepheid, the Goods then available for delivery.

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 by default on the part of any manufacturer or sub-contractor to Cepheid (Force Majeure). Cepheid shall not be liable for any delay or failure in delivering the Goods, even if such delay or failure is caused by the Purchaser. It is the responsibility of Purchaser to determine and Purchaser assumes the risk for (i) the loss or damage that may occur in transit; (ii) any claim against Purchaser for breach of any warranty or condition; (iii) any claims or repairs done by other than Cepheid or a Cepheid authorized service provider, or (iv) any other abuse, misuse, or neglect or misapplication of the Goods. It is the Purchaser’s responsibility to determine and Purchaser assumes the risk for (v) the time of shipment; 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 by default on the part of any manufacturer or sub-contractor to Cepheid (Force Majeure).

Price(s) do not include GST which will be added to the invoice, as a separate line item.

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 1999 (New Zealand) (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 Parties further agree that (i) Cepheid owns or otherwise has a right, title and interest in the Goods; (ii) Purchaser 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 commodified; and (iii) all proceeds, as continuing security for payment of the Prices and all of the Purchaser’s outstanding debts and obligations to Cepheid.

Cepheid 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; and (iii) it is the responsibility of Purchaser to maintain sufficient insurance, and in the event of an insured Goods, present all necessary documents to Cepheid in order to register a Financing Change on the PPSR. The Purchaser shall: (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 on the PPSR against any Goods supplied by Cepheid; (iii) not demand to alter the Financing Statement pursuant to section 162 of the PPSA in respect of any Goods, including any services, without the prior written consent of Cepheid; (iv) 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); (v) 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; (vi) and procure from any persons considered by Cepheid to be: (i) to oblige the Purchaser to give a Notice of Objection under section 1 of the PPSA; (ii) to give a Notice of Objection under section 121 of the PPSA; and (iii) to give a Notice of Objection under section 121 of the PPSA.

Acceptance of Goods: Purchaser shall inspect all Goods within 30 days of receipt of the Goods, 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 in writing Material Authorization number, and promptly return the rejected Product to Cepheid, freight collect. Cepheid will 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 (1.5/2%) 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 not be defective in material and workmanship for a period of one year after shipment, (ii) conform to Cepheid’s published specifications for the Warranty, and (iii) are free of lens 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 defective 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. 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 GOODS.

Limitation of Remedies: If Cepheid Cannot or Does NOT Repair or Replace ANY DEFECTIVE GOODS AND CEPHEID’S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, CEPHEID’S ENTIRE LIABILITY FOR ANY LOSS OR DAMAGE UNDER THIS AGREEMENT, 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 GOODS.

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 Products (“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);
(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 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 Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

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.