



Detecting Pathogens at the Speed of Light

PathSensors Inc. Terms and Conditions

March 2018

1. **AGREEMENT.** Only the product (“Product(s)”), price, quantity, and delivery terms contained in Buyer’s purchase order, if accepted by Seller, together with the terms and conditions herein constitute an agreement between the parties (“Agreement”). Buyer represents and warrants that it intends to use the Products for its internal use and is not purchasing the products with the intent to resell or distribute the Products, unless authorized by Seller.

2. **CONTROLLING TERMS AND CONDITIONS.** This Agreement shall govern the sale of the Products to Buyer. If Buyer submits any other document that contains terms and conditions which are inconsistent with or in addition to this Agreement then any such term or condition shall not alter these Terms and Conditions or be part of this contract unless expressly accepted or agreed to by Seller in writing. The sale is expressly conditioned upon Buyer’s acceptance of this Agreement.

3. **PAYMENT TERMS.** Prices are stated in U.S. dollars. All sales are F.O.B. Origin and payments are due and payable net thirty (30) days after invoice date. Pro rata payment shall be due on partial shipments as made and invoiced. Payments not received by the date due shall bear interest at the rate of twelve percent (12%) per annum or the maximum rate allowed by law, whichever is less, until paid in full. The purchase prices of the Products are exclusive of all applicable sales and use taxes, value added taxes, export fees and duties or other similar fees and taxes. All shipping, handling, taxes, custom duties, tariffs and similar charges shall be at Buyer’s expense and, at Seller’s option, added to the price of the goods.

4. **SHIPPING TERMS.** Title to and all risk of loss of or damage to the goods shall pass to and be assumed by Buyer F.O.B. Origin. Buyer is responsible for all transportation charges and for filing timely and proper claims against carriers if goods are lost or damaged in transit. Seller’s estimated delivery date(s) stated on the front of this contract are approximate and subject to reasonable scheduling changes made after the date hereof. Seller shall not be liable for any loss or expense, whether by contract or tort, incurred by Buyer resulting from failure to meet the estimated delivery date.

5. **MODIFICATION AND CANCELLATION OF ORDERS.** Orders may not be modified or cancelled in whole or in part except by mutual written agreement of the parties. Cancellation of orders shall be effective only at seller’s option, and if Seller agrees to any cancellation, Buyer shall be responsible for return freight costs and all costs incurred by Seller as a result of such cancellation, including, but not limited to, a fifteen percent (15%) restocking fee and all labor and material costs incurred prior to termination.

6. **RETURNS.** All returns must be authorized by Seller. A Returned Material Authorization (RMA) number issued by Seller must accompany all returned goods or parts unless otherwise directed by Seller. All goods or parts returned to Seller must be shipped transportation charges prepaid. Seller does not accept collect or C.O.D. shipments.

7. **PACKING.** Unless a preferred packing method is provided for in the purchase order, all goods shall be packaged and packed for shipment and storage in accordance with good commercial practices. Preferred packing charges shall be paid by Buyer.

8. **COMPLIANCE WITH LAWS.** Buyer acknowledges that the goods supplied herewith may be subject to laws, regulations and executive orders (“Laws”) of the U.S. relating to export controls. Buyer represents and warrants that the Products will not be used for any purpose prohibited by the Laws and Buyer shall comply with the Laws as well as all laws and regulations in Buyer’s jurisdiction and any other location related to the import, export, re-export, transfer, shipping, and/or use of the Products.

9. **SELLER’S REMEDIES.** If Buyer fails to make timely payments for goods or services accepted, or fails to perform any other of Buyer’s obligations set forth herein, Seller may, at its option, defer further shipment(s), revise its terms of payment, cancel the unshipped balance, or pursue any other remedy set forth in this contract or provided by law.

10. **LIMITED WARRANTY.** Unless superseded by individual Product warranty terms formally set forth by Seller to Buyer in writing and/or included in Product Packaging, Seller’s standard warranty terms shall be limited to those set forth in this paragraph. For a period of one (1) year after shipment of the Product, Seller will at its option repair or replace on an exchange basis any Product or component part thereof returned to Seller to be defective in material or workmanship. All costs associated with the transportation, troubleshooting, installing or removing the Product or component part thereof shall be paid by Buyer. Repair or replacement of any Product or component thereof will not extend the original warranty period. This limited warranty extends only to Buyer and is not transferable to any other party and any transfer made in violation of this provision shall be void. This limited warranty does not apply to any Product or component which (i) has been subject to misuse, neglect, accident or improper storage; (ii) has been installed, repaired, maintained or altered in any way that in the judgment of Seller has adversely affected the condition of the Product; (iii) has been used, operated or maintained inconsistent with Seller recommendations or with normal practice and conditions, or (iv) has been changed or modified from its original condition. For consumable Product components such as BioDiscs, this limited warranty shall be modified as follows: (a) the unopened shelf life shall be 4 weeks from the manufacture date marked on the packaging; (b) the opened shelf life shall be 1 day from the date the product packaging is opened; THIS LIMITED WARRANTY IS ONLY A LIMITED WARRANTY TO REPAIR OR REPLACE AND NOT A WARRANTY OF THE CONDITION OR FUTURE PERFORMANCE OF THE PRODUCT. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, SPECIFICALLY INCLUDING, BUT WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED. BUYER WAIVES AND IN NO EVENT WILL SELLER BE RESPONSIBLE FOR ANY INCIDENTAL,



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CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND. No person is authorized to give any other warranty or to assume any additional obligation or liability on behalf of Seller. In no event will Seller's liability hereunder exceed the purchase price of the defective Product. This limited warranty shall not apply if Buyer has unpaid invoices. Buyer agrees that the warranty disclaimer and limited liability set forth herein are fundamental elements of this Agreement and Seller would not be able to provide the Product on an economic basis without such limitations.

11. **GRANTING OF RIGHTS.** Nothing contained herein shall be construed as granting Buyer any right to any intellectual property rights, including but not limited to patents, trademarks, trade secrets, or copyrights, owned or licensed by Seller. Further, Buyer agrees that it shall not, directly or indirectly, reverse engineer, decompile, modify, alter, disassemble or emulate the functionality of the product.

12. **INDEMNIFICATION.** Buyer shall indemnify Seller in the case of any Product misuse by Buyer.

13. **PATENTS.** If Buyer modifies the Product or provides Seller with designs, specifications, or instructions to modify the Product, then Buyer shall hold Seller harmless from and against any expense or loss resulting from infringement of patents or trademarks arising therefrom. Except as otherwise provided in the preceding sentence, Seller shall defend any suit or proceeding brought against Buyer so far as based on a claim that the Products furnished under this Agreement constitute an infringement of any patent of the United States, issued on or before the date of shipment, if notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein against Buyer. In case such goods, or any part thereof, are held to infringe and the use of said goods or part is enjoined, or Seller shall reasonably conclude that the goods are infringing. Seller shall, at its own expense, either procure for Buyer the right to continue using said goods or parts, or replace same with non-infringing goods; or modify such goods so they become non-infringing; or remove said goods from the market and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of seller for patent infringement by the said goods or any part thereof.

14. **FORCE MAJEURE.** Delay in performance or non-performance of any obligation contained herein, other than Buyer's obligation to pay, shall be excused to the extent such failure or non-performance is caused by a force majeure. For purposes of this Agreement, force majeure shall mean any cause or event preventing performance of an obligation under the Agreement which is beyond the reasonable control of Seller or Buyer, as the case may be, including without limitation, fire, flood, power shortage, mechanical breakdown, sabotage, shipwreck, embargo, explosion, strike or other labor trouble, accident, riot, acts of government authority (including, without limitations, acts based on laws or regulations now in existence as well as those enacted in the future), acts of God, war or acts of terrorism, and other events or conditions beyond the reasonable control of the affected party. In the event a force majeure continues for more than ninety (90) days, this Agreement may be terminated without any liability by either party upon written notice thereof to the other.

15. **NO ASSIGNMENT.** Buyer may not assign this Agreement, or its right to receive Products, without the prior written consent of Seller. Any such attempted assignment shall be void.

16. **GOVERNING LAW.** This contract shall be governed by and construed according to the laws of the United States of America and the State of Maryland, including the Uniform Commercial Code as enacted therein, without regard to its laws regarding conflicts of law.

17. **JURISDICTION AND VENUE.** All proceedings relating to this Agreement shall be maintained exclusively in the federal or state courts of Maryland and the parties hereby irrevocably and unconditionally submit and consent to exclusive jurisdiction and venue herein and expressly waive any right to object to personal jurisdiction or venue. Each of the parties hereby consents to the service of process by registered mail or by an express delivery service providing a return receipt at its address set forth above and agrees that its submissions to jurisdiction and its consent to service of process by mail are made for the express benefit of the other party.

18. **SEVERABILITY.** If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

19. **NO WAIVER.** The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any rights hereunder.

20. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties relating to the matter contained herein. This Agreement may not be amended, extended or modified in any matter, orally or otherwise, except by an instrument in writing signed by a duly authorized representative of each party.