



TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE:** Acceptance of any purchase order or contract ("Order") for any material or products ("Products") to be supplied by DIAZYME LABORATORIES, INC. ("DIAZYME") is conditioned upon the assent of the purchasing or contracting party ("Purchaser") to these Terms and Conditions. If any other purchasing forms or documents are used in connection with the purchase of the Products, then notwithstanding any provision therein to the contrary, the terms of all such forms or documents shall be governed by the provisions of these Terms and Conditions; and any terms thereof which are in conflict with, different from, or in addition to, the provisions of these Terms and Conditions shall be null and void and have no force or effect whatsoever. Any order for, direction to proceed, statement of intent to purchase, purchase or acceptance of Products shall constitute Purchaser's assent to these terms and conditions.
2. **DELIVERY, TITLE AND RISK OF LOSS:** Shipping and delivery dates are approximate and not guaranteed. DIAZYME shall not be bound to tender delivery of any Products for which DIAZYME has not promptly received shipping instructions and all other necessary information from Purchaser. If the shipment of Products is postponed or delayed by Purchaser for any reason, Purchaser agrees to reimburse DIAZYME for any and all storage costs and other additional expenses resulting therefrom. Products will be delivered Free Carrier (FCA - Incoterms 2010) Poway, California USA ("DIAZYME Shipping Point"). For sales in which the end destination is outside of the United States, legal title and risk of loss or damage shall transfer to Purchaser immediately after the Products have passed beyond the territorial limits of the United States. For all other shipments, legal title and risk of loss or damage shall transfer to Purchaser when Products are delivered by DIAZYME to and received by the carrier at the DIAZYME Shipping Point.
3. **LICENSING AND PERMITS:** Purchaser is responsible for obtaining any licensing or permit requirements of the country where Products will be used. The Purchaser shall obtain and pay for, at its own expense, any import permits or licenses required for the importation of the Products into the country where Products will be used.
4. **CHANGES:**
 - 4.1 If, at any time before delivery of the Products, Purchaser requests any change to the quantity, any technical specification or exhibit applicable thereto, and/or any schedule for performance or completion, of any Products, DIAZYME shall be entitled to an equitable adjustment in the price, schedule or any other terms of the Order. DIAZYME shall not be considered in breach of any Order, and is not required to commence work on any requested change unless and until an equitable adjustment has been negotiated and the Order is modified accordingly.
 - 4.2 No change, amendment or modification of any of the provisions of the Order shall be binding, unless in writing and issued by Purchaser's authorized contractual representative or an officer of the Purchaser and accepted in writing by an authorized contractual representative or officer of DIAZYME. Purchaser requested changes to pre-arranged standing orders need to be submitted at least five working days before the scheduled delivery date of the standing order.
5. **EXCUSABLE DELAYS:**
 - 5.1 DIAZYME shall not be liable for delays in delivery or performance or for failure to manufacture, deliver or perform due to causes beyond its reasonable control, including: (a)

acts of God, (b) acts or failures to act of Purchaser, (c) acts of governmental, civil or military authority, (d) strike, lockout or other labor disturbance, (e) fire, storm, flood, explosion, epidemic, war, riot, sabotage, (f) delays in transportation, breakage or accident to machinery, partial or entire failure of utilities; (g) inability on account of causes beyond the reasonable control of DIAZYME to obtain necessary materials, components, services or facilities; or (h) any other unforeseen circumstances beyond DIAZYME's reasonable control. In the event of any such excusable delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay. DIAZYME will notify Purchaser promptly of any material delay and will specify a revised delivery date as soon as practicable.

5.2 If DIAZYME determines its ability to support the total demands for the Products, or to obtain material or technology used directly or indirectly in the manufacture of the Products, is hindered or made impracticable due to causes set forth in paragraph 5.1 DIAZYME may allocate its available supply of the Products without any further obligations among Purchasers or terminate any orders on such a basis as DIAZYME determines to be equitable without liability for any failure of performance, which may result therefrom.

6. PRODUCT USE RESTRICTIONS:

6.1 Products marketed by DIAZYME for ***in vitro* diagnostic (IVD)** use have been cleared by the United States Food and Drug Administration ("FDA") for prescription use only. No license is conveyed or implied for Purchaser to use, and the Purchaser agrees to use the IVD Products according to use labeling or literature supplied by DIAZYME. Purchaser agrees not to use IVD Products for research and development, academic publications, advertising, patent submissions or any other purpose without written approval from DIAZYME.

6.2 Products marketed by DIAZYME for **research use only in the USA (RUO)** are intended primarily for laboratory research purposes in the USA. No license is conveyed or implied for Purchaser to use, and the Purchaser agrees to use the RUO Products according to use labeling or literature supplied by DIAZYME. Purchaser agrees not to use RUO Products, as labeled, for any other purposes in the USA, including but not limited to, *in vitro* diagnostic purposes, in foods, drugs, medical devices or cosmetics for humans or animals. Laboratory establishments and their affiliates allowed to develop lab tests (LDTs) with research use materials, bear all compliance responsibilities with Local, State and Federal Authorities.

6.3 Purchaser also agrees that it has the responsibility to inform Purchaser's customers and end use customers of the Seller's Product use restrictions.

7. **INSPECTION AND ACCEPTANCE:** Purchaser shall inspect or cause the goods to be inspected upon delivery. Purchaser must accept any tender of goods by DIAZYME substantially in conformity with the terms hereof. Purchaser will be deemed to have accepted tender of the goods if Purchaser fails to give DIAZYME written notice of rejection within seven (7) calendar days after the goods are delivered. Purchaser may not return any Products to DIAZYME without DIAZYME'S prior approval. Any request to return Products or obtain credit must be filed with DIAZYME and will include the purchase order number, the original product ship date, and all other identifying numbers such as serial numbers, and return material authorization (RMA) number. The returned Products must be returned with a statement justifying the return, the number of Products being returned and the type of Product being returned. If return authorization is granted, Products are to be returned in a clean, well package condition. Any notice of rejection shall describe the rejected goods and the defects upon which rejection is based. Purchaser is required to store all goods, including any rejected goods prior to the return shipment to DIAZYME, in accordance with package

specifications. Purchaser may not reject any goods that have not been stored by Purchaser in accordance with package specifications.

- 8. PACKAGING AND SHIPPING:** Products will be packaged with reasonable commercially feasible packaging and shipped via air freight, unless otherwise specified in the Order. Special packaging and deliveries may be provided at additional cost to Purchaser. All goods are shipped at the Purchaser's risk. Claims for damage in transit must be filed with the carrier. Shipments should be carefully examined on arrival before signing acknowledgement of receipt. A signed bill of lading or delivery ticket with no exceptions noted indicating the count, description, and condition is acceptable as evidence of receipt. DIAZYME will prepay the freight costs and charge these costs to the Purchaser. Purchaser may specify the method of shipment (i.e., carrier/freight forwarder) and/or routing desired. If a method is not specified, DIAZYME will contract for carriage at Purchaser's risk and expense using a reasonable commercially feasible method and route. Purchaser may insure a shipment and add the cost of such insurance to the transportation charge or request DIAZYME to use reasonable commercial efforts to assist Purchaser in arranging any desired insurance (in amounts that shall be mutually determined). All customs, duties, costs, taxes, insurance premiums, and other expenses relating to such transportation and delivery will be at Purchaser's expense. Product shipped in error by DIAZYME will be replaced at no additional cost to the Purchaser. Claim for shipment errors must be made within ten (10) calendar days after receipt of Product.
- 9. SALES AND SIMILAR TAXES:** The total purchase price of the Products does not include any taxes or duties of the country where the Purchaser is located, including but not limited to income tax, value added tax, withholding tax, sales tax, use tax, excise tax, personal property tax, assessments, ad valorem tax, stamp and documentary taxes, import duties or any other governmental charges, fees, fines, interest or other penalties whatsoever, in each case imposed by the country where the Purchaser is located or any political subdivision thereof. DIAZYME shall not be required to file, and Purchaser shall arrange for, a tax exemption for any such taxes or duties imposed by the country where the Purchaser is located or any political subdivision thereof, in a manner acceptable to the taxing authorities, or otherwise be responsible for payment of such taxes or duties. If DIAZYME is required to pay any taxes, duties, or any other governmental charges, fees, fines, interest or other penalties whatsoever assessed by the country where the Purchaser is located, Purchaser agrees to pay on behalf of DIAZYME any such amounts as they become due.
- 10. PAYMENT TERMS:** Purchaser shall pay DIAZYME for Products as set forth in the Order in U.S. dollars. For pre-pay accounts, payment must be received by DIAZYME prior to Product shipment. For credit accounts, payments shall be made as set forth in the Order and are due and payable thirty (30) days after date of invoice, unless otherwise stated. Past due payments are subject to late charges equal to one and one-half percent (1.5%) of the invoice value per calendar month for each such month or portion thereof that a payment is past due. All Credit Card payments are subject to a 2% fee.

Should Purchaser's financial responsibility become unsatisfactory to DIAZYME, DIAZYME may request security satisfactory to DIAZYME for future deliveries. If such security is not provided, in addition to DIAZYME'S other rights and remedies, DIAZYME may discontinue deliveries and terminate future orders.

11. WARRANTY:

- 11.1 DIAZYME warrants that any DIAZYME manufactured Products furnished to Purchaser will be free from defects in material, workmanship, and title until the expiration date listed on the Product label. If any Product fails to meet the foregoing warranty, DIAZYME shall correct such failure at its option by (a) delivering a replacement Product to Purchaser, or (b) repaying the portion of the purchase price paid by Purchaser attributed to the defective or nonconforming Product. Warranty for Products not manufactured by DIAZYME shall be

limited to the manufacturer's pass-through warranty to the extent provided by DIAZYME'S vendor.

11.2 The foregoing Product warranty will not extend to Products that have been subjected to: (a) improper installation or storage by Purchaser, (b) accident, damage, abuse or misuse, (c) abnormal or unusual operating conditions or operations or (d) operating conditions or applications above the rated capacity of the Product or not made known to DIAZYME prior to the date of purchase. Further, where Products or components thereof deteriorate in storage or have a limited life, such as lamps, fuses, filter paper, charcoal cartridges and others so identified; such deterioration or limited life shall not be considered a defect in workmanship or material. The warranties and remedies set forth herein are conditioned upon Purchaser promptly notifying DIAZYME of any defects and if required, promptly making the Product available for correction. At DIAZYME'S request and upon issuance of a return material authorization number from DIAZYME, Purchaser will securely pack and return the defective Product, transportation prepaid, to DIAZYME'S San Diego facility for repair or replacement. Any Product returned without authorization by DIAZYME for return will remain the property of the Purchaser and DIAZYME will not be liable for its loss or damage. Upon correction of any defect, DIAZYME will return the Product, transportation prepaid (exclusive of taxes, fees and duties), to the Purchaser's facility. After a Product has been repaired or replaced, this warranty shall continue with respect to the repaired or replaced Product for the balance of the original warranty period on the Product. The removal of the defective Product and the reinstallation of the required or replacement Product shall be the sole responsibility of Purchaser. If DIAZYME'S inspection of any Product which Purchaser claims to be defective does not disclose the defect in workmanship or material identified by Purchaser, DIAZYME'S standard repair charges will apply.

11.3 Products purchased by DIAZYME from a third party for resale to Purchaser, either independently or as incorporated in DIAZYME'S Products, shall carry only the warranty extended by the original manufacturer.

11.4 THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS CLAUSE 11 ARE THE EXCLUSIVE REMEDIES FOR CLAIMS BASED ON FAILURE OF PRODUCTS TO COMPLY WITH THE ABOVE WARRANTIES, WHETHER SUCH CLAIM IS BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO DIAZYME IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT PURCHASER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY DIAZYME FOR PURCHASER'S USE OR PURPOSE.

12. INDEMNITY: Purchaser shall indemnify and hold harmless DIAZYME and its subcontractors from any and all claims from third parties arising from performance hereunder. This provision shall apply notwithstanding any provisions of any other agreement to the full extent permitted by law and regardless of fault.

13. NO LICENSE: Except for the right to use Products, neither the acceptance of any Order, nor the furnishing of any Products, including without limitation the underlying technology, by DIAZYME will be construed as granting to Purchaser, either expressly, by implication, estoppel, or otherwise, any license or any other right under any invention or patent now or hereafter owned or controlled by DIAZYME.

14. CONFIDENTIAL INFORMATION:

14.1 Each party agrees to hold in confidence all drawings, diagrams, specifications, or other information furnished by the other party and identified as confidential or proprietary ("Confidential or Proprietary Information") and use such Confidential or Proprietary Information only for the purpose furnished. Each party further agrees not to reproduce, distribute, or disclose the other's Confidential or Proprietary Information to a third party without first obtaining the other's written consent. These restrictions shall not apply to information (a) which is or becomes part of the public domain through no fault of the receiving party (the "Recipient"), (b) which Recipient can show was in its possession prior to its receipt from the other party, (c) which Recipient can show was received by it from a third party authorized to disclose the information, or (d) which Recipient can show, by its contemporaneous business records, was independently developed. If disclosure is required by a governmental authority or is required for the carrying on of Recipient's ordinary business, disclosure may be made provided the other party is notified in writing prior to the disclosure and every reasonable effort is made to protect the other party's proprietary interests in the information.

14.2 Throughout the Order and at all times thereafter, the Purchaser and DIAZYME shall treat the Order, and everything contained therein, as private and confidential except as may be reasonably necessary for DIAZYME to carry out the work under the Order. In particular, the Purchaser shall not publish or release any information, drawings or photographs concerning the Products except with the prior written consent of DIAZYME and subject to such reasonable conditions as DIAZYME may prescribe; and DIAZYME shall not publish any information, drawing or photographs concerning the Purchaser's project or the Order except with the prior written consent of the Purchaser and subject to such reasonable conditions as the Purchaser may prescribe.

14.3 DIAZYME and Purchaser agree that a breach of this Clause 14 will result in irreparable and continuing damage to the non-breaching party for which there will be no adequate remedy at law, and the non-breaching party will be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages, including punitive damages, if appropriate).

15. COMPLIANCE WITH LAWS:

DIAZYME and Purchaser understand and acknowledge that each is committed to compliance with all laws and regulations of the country in which it is located, which are applicable to its business and operations, and to conduct its business affairs according to the highest standards of integrity. Each party certifies that it has performed and will perform all of its duties under the Order in accordance with such applicable laws and regulations, and that it will do nothing to cause the other to be in violation thereof. Each party will furnish the other party in a timely manner, all information reasonably requested in order to comply with such applicable laws and regulations. In addition, each party agrees to comply with the laws and regulations of the country where the other party is located to the extent applicable to the performance of its duties under the Order, provided that it is aware of or has been informed by the other party of such laws or regulations, which shall include the following:

15.1 Export Control. The parties acknowledge that the technology related to Products and/or Services is subject to U.S. export controls, which may include the U.S. Export Administration Regulations ("EAR"), and other regulations as deemed applicable (the "U.S. Export Regulations").

15.1.1 The parties agree to comply with all applicable U.S. Export Regulations and any specific limitations and provisos imposed by U.S. export agencies on

licenses, agreements or other authorizations particular to any transaction between the parties.

15.1.2 The parties acknowledge that any product, non-public domain technical data or services exported by each to the other remains subject to the U.S. Export Regulations after such export. Each party agrees that it will not authorize further disclosure, export, re-export or retransfer of any such product, non-public domain technical data or services to a third country, to any national (regardless of whether such national is an employee, consultant or independent contractor of either of the parties, as the case may be) of a third country, or to any entity, including any PRC entity, not specifically authorized by applicable U.S. export agencies pursuant to an export license, agreement or other export control document.

15.1.3 In the event that any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary or significant delay in obtaining them), such event will be deemed an excusable delay, and the responsible party will be excused from its obligation to provide those goods or services set forth in any Order for which such approvals, clearances and/or export or import authorizations are required.

15.2 Anti-corruption Laws. DIAZYME and Purchaser each represents and warrants that it is familiar with the terms and provisions of and agrees to comply with United States Public Law 95-213, the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA") and any applicable international and local country anti-bribery and anti-corruption laws and regulations (the FCPA and such applicable international and local country laws and rules are individually and collectively referred to as "Anti-Corruption Laws") and the purposes of such Anti-Corruption Laws.

15.2.1 Each party agrees that (i) any failure to comply with the terms of this Clause 15.2 will give the other party the immediate right to terminate any agreement between DIAZYME and Purchaser upon adequate notice; and (ii) if subsequent developments cause the certifications made and information reported by a party pursuant to this Clause 15.2 to be no longer accurate or complete, such party will immediately furnish the other party with a supplementary report detailing such change in circumstances.

16. LIMITATION OF LIABILITY; WAIVER OF CONSEQUENTIAL DAMAGES:

16.1 THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER CLAUSE 11) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE. THIS LIMITATION OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY CONFLICTING OR INCONSISTENT PROVISION CONTAINED IN ANY ORDER OR OTHER DOCUMENT FOR PRODUCTS OR SERVICES, AND TO THE FULL EXTENT PROVIDED BY LAW AND REGARDLESS OF FAULT. Notwithstanding anything to the contrary herein, DIAZYME'S total liability in the aggregate under the Order, including but not limited to Clause 11, shall never exceed the Order price actually received by DIAZYME for the Products.

16.2 In no event shall DIAZYME or its subcontractors or sub-suppliers be liable, regardless of the theory on which any claim may be based, whether in contract, infringement, negligence, strict liability, other tort or otherwise, for any special, indirect, incidental, or consequential damages, including, but not limited to, actual or anticipated loss of profit or revenue, loss or damage to property or equipment, business interruption, loss of

equipment, cost of purchased power, substitute equipment, and other costs incurred, reputation and data, facilities or services, or claims of customers of Purchaser for such damages.

16.3 It is expressly understood that any technical advice furnished by DIAZYME with respect to the use of Products is given without charge, and DIAZYME assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Purchaser's risk.

17. INSURANCE:

In the event DIAZYME performs work at Purchaser's Installation Site, DIAZYME will be responsible for maintaining at DIAZYME'S expense the following insurance covering DIAZYME'S liability for personal injury and property damage at the site:

17.1 Comprehensive General Liability with limits not less than \$1,000,000 for any one occurrence.

17.2 Automobile liability, including coverage for owned, hired and non-owned automobiles, with a single limit of not less than \$1,000,000 per occurrence.

17.3 Worker's Compensation Insurance in accordance with statutory requirements in the jurisdiction where the work is performed.

18. INDEPENDENT CONTRACTOR: DIAZYME is, and shall be deemed to be, an independent contractor and not an agent or employee of the Purchaser either expressly or impliedly. The Order shall not constitute, create, give effect to, or imply a joint venture, pooling arrangement, partnership, formal business organization or any type of permanent relationship of any kind beyond the specific purposes stated herein. Nothing in the Order shall grant to either Party the right to make commitments of any kind for, or on behalf of, the other Party.

19. ASSIGNMENT/SUBCONTRACTING: The Order for the Products may not be assigned by Purchaser without DIAZYME'S prior written consent. DIAZYME is authorized to contract with any subcontractor or sub-supplier it deems necessary, in its sole discretion, to complete the Products.

20. LANGUAGE: All writings and communications between DIAZYME and Purchaser shall be in English.

21. APPLICABLE LAW: The Order shall be construed in all respects as a contract made in the United States of America and subject to the laws of the State of California, exclusive of the State of California's choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods and any implementing legislation shall not apply to disputes or other matters arising under the Order.

22. ARBITRATION:

All disputes and differences arising out of or in connection with this Order, which cannot be settled amicably through direct and meaningful negotiations between the Parties within Sixty (60) days of service by either Party on the other of a written notice identifying such dispute or difference and requiring such negotiation, shall be settled under the auspices and in accordance with the Rules of Arbitration of the International Chamber of Commerce, in effect, at the time such arbitration is commenced by a three (3) person arbitral panel appointed in accordance with such rules. Such arbitration proceedings shall be conducted in the English language and shall take place in San Diego, California, U.S.A. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The relief that may be awarded is limited to actual

compensatory damages and may not provide for punitive damages. The decision of the Arbitral panel shall be final and binding on both Parties, their successors and assigns. Purchaser agrees to waive its right to sovereign immunity if it is a governmental entity.

22.1 Notwithstanding any reference to arbitration, DIAZYME and Purchaser shall continue to perform their respective obligations under the Order, except the part under arbitration or any part contingent on the resolution of such arbitration.

22.2 Unless otherwise awarded by the arbitration, the arbitration fees shall be borne by the losing Party.

23. SURVIVAL: DIAZYME and Purchaser agree that only the following Clauses, by their nature, shall survive the termination or expiration of the Order incorporating these terms and conditions: 11 (Warranty), 14 (Confidential Information), 16 (Limitation of Liability; Waiver of Consequential Damages), and 22 (Arbitration).

24. SEVERABILITY: Any provision of these terms and conditions which is finally determined by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions of these terms and conditions or affecting the validity or enforceability of such provision in any other jurisdiction. If a court of competent jurisdiction declares any provision of these terms and conditions to be invalid or unenforceable, Purchaser and DIAZYME shall request that such court reduce the scope, duration, or area of the provision, delete specific words or phrases from the provision, or replace the provision with a provision that is valid and enforceable and that comes closest to expressing the original intention of Purchaser and DIAZYME, and these terms and conditions shall be enforceable as so modified in the jurisdiction in which the provision was declared invalid or unenforceable.

25. WRITINGS REQUIRED: Any notice, order, direction, determination, requirement, consent, approval, clarification or ratification under the Order or these terms and conditions shall not be of any effect, unless in writing and signed by an authorized representative of the Contracts Department, Diazyme Laboratories, Inc., 3550 General Atomics Court, San Diego, CA 92121-1122, USA. No oral statement made by any person shall, in any manner or degree, modify or otherwise affect the terms of the Order.

26. NON-WAIVER: Should DIAZYME fail to insist, in one or more instances upon strict performance or to exercise any rights, it shall not waive or relinquish to any extent DIAZYME'S right to assert or rely upon any such terms or rights on any future occasion.

27. INTEGRATION: These terms and conditions supersede all prior arrangements, understandings, letters of intent, conversations and negotiations between DIAZYME and Purchaser with respect to the subject matter of these terms and conditions and constitute the entire agreement between DIAZYME and Purchaser. In the event of any conflict between the Order and these terms and conditions, these terms and conditions shall govern.