

LI-COR® Biosciences UK Ltd.

STANDARD TERMS AND CONDITIONS

§ 1. Definitions

For the purposes of the Contract the terms listed below shall bear the following meanings:-

"Buyer" the person, firm or company purchasing the Products under the Contract.

"Contract" the contract or contracts for the purchase of the Products by the Buyer comprising these Terms and the Order.

"LI-COR" LI-COR Biosciences UK Limited, its assignees and successors in title.

"Order" the Buyer's order for the Products as accepted by LI-COR and attached to these Terms.

"Products" the Products to be purchased by the Buyer under the Contract according to the Specifications.

"Specifications" the requirements as to category, quality and quantity of the Products (if any) detailed in the Order.

"Terms" these terms and conditions of sale.

§ 2. General provisions, scope

- (1) The Products are sold upon these Terms and no agent or representative of LI-COR has any authority to vary or omit these Terms or any part thereof. Any terms and conditions printed on the Buyer's order forms or in the correspondence of either party or elsewhere or implied (whether in writing or verbally) by trade, custom or practice or course of dealing, are binding only insofar as they do not vary from these Terms and have been specifically agreed in writing by an authorised representative of LI-COR and any purported provisions to the contrary are hereby expressly excluded.
- (2) These Terms together with any particulars incorporated in the Order constitute the entire agreement between the parties concerning the supply of the Products and supersede any prior promises, undertakings, contracts, agreements or implications (whether written or oral). The Buyer hereby acknowledges that it has not entered into the Contract in reliance upon any representation other than those which have been reduced to writing and expressly included in the Contract.
- (3) LI-COR does not effect legal transactions with private consumers. Consequently, these Terms have no validity in respect of and are not intended for transactions with private end-users.

§ 3. Formation of the Contract

- (1) Any quotations issued by LI-COR are always non-binding and do not constitute offers capable of acceptance, and LI-COR reserves the right to withdraw or revise such quotations at any time before accepting the Order.
- (2) By submitting the Order the Buyer makes a binding declaration that it wishes to acquire the Products on these Terms. LI-COR shall be entitled to accept the contract offer inherent in the Order within two weeks of receipt by LI-COR by issuing a written Order confirmation. This Contract shall not exist until LI-COR has issued such written Order confirmation or the Order has been executed in full.
- (3) If the Buyer submits the Order electronically LI-COR will confirm receipt of the Order without delay unless precluded from doing so by malfunctions on its website. The confirmation of receipt shall not form an acceptance of the Order which shall follow thereafter.
- (4) LI-COR accepts the Order subject to being supplied correctly and punctually by its own suppliers. Accordingly, LI-COR shall be in no manner liable for non-delivery caused by the non-fulfilment of LI-COR's orders by LI-COR's suppliers.
- (5) The Buyer will be informed without delay if it is not possible to execute the Order. Any payment will be reimbursed as soon as reasonably possible.
- (6) If the Buyer submits the Order electronically the text of the Contract will be stored by LI-COR and sent to the Buyer electronically (by e-mail) on request along with a copy of these Terms.

§ 4. Delivery and payment

- (1) LI-COR will endeavour to comply with any delivery dates and deadlines stated in the Order confirmation provided that all necessary information has been supplied in a timely fashion by the Buyer with the Order. However, time shall not be of the essence in respect of the performance of LI-COR's obligations under the Contract, and details of delivery and performance dates are provided for guidance only and are non-binding on LI-COR.
- (2) The Buyer's sole remedy in the event of non-delivery which is not the fault of the Buyer shall be the reimbursement of sums paid for the Order.
- (3) Delivery shall be at the premises of the Buyer or at such other premises as are designated by the Buyer in writing and shall be at the cost and risk of the Buyer.
- (4) The costs of carriage and packaging will be charged to the Buyer on the invoice for the Products at the time of despatch. All packaging is non-returnable unless otherwise stated in writing.
- (5) Each delivery and the Order shall constitute a separate Contract under these Terms and LI-COR's failure to make any delivery in full, on time or at all shall not vitiate the Contract as a whole.
- (6) If performance or delivery is delayed or cancelled at the Buyer's request or for reasons for which the Buyer is responsible LI-COR shall be entitled to claim any expenses which it has already incurred to date fulfilling the Order and the Buyer shall promptly reimburse LI-COR for such costs upon receiving an invoice for the same.
- (7) The scope of supply shall be determined by LI-COR's written Order confirmation.
- (8) LI-COR reserves the right to make technical changes to the Products – in particular construction and design changes – based on improvements in technology or changed legislative requirements within the confines of what is reasonable, even after formation of the Contract, provided that the fitness of the Products for their intended purpose is not thereby materially impaired. The same shall apply to changes in the scope of supply.
- (9) If partial deliveries are necessary, the higher carriage costs thereby incurred will be invoiced in addition and paid for by the Buyer.

§ 5. Packaging and shipping, transfer of risk

- (1) Packing and the choice of packaging materials shall be LI-COR's responsibility. The choice of shipping method shall be at LI-COR's discretion. If the Buyer wishes express carriage, however, it shall pay the additional costs thereby incurred.
- (2) Save as provided in sub-paragraph (6) below, risk in the Products shall pass to the Buyer at the point they leave LI-COR's premises. Property in the Products remains LI-COR's and shall only pass to the Buyer upon full payment by the Buyer of all sums due (including any interest thereon). In the event of the Products being sold by the Buyer in such manner as to pass to a third party a valid title to the Products whilst any such sums are due as aforesaid, the Buyer shall be the trustee for LI-COR of the proceeds of such sale or to the claim for such proceeds and the Buyer shall place such proceeds in a separate bank account. LI-COR's rights under this paragraph shall attach to the proceeds of such sale. Nothing herein shall constitute the Buyer the agent of LI-COR for the purposes of any such sub-sale.

- (3) Before full payment being made as aforesaid, LI-COR may at any time enter the Buyer's premises and repossess and remove the Products therefrom (and dispose of the same in any manner it may decide) and before such payment the Buyer shall keep such Products as fiduciary agent and bailee of LI-COR separate and identifiable for this purpose.
- (4) Notwithstanding the provisions of this paragraph the Buyer shall be permitted to sell or use the Products with the prior written consent of LI-COR Provided that such consent may be immediately terminated by LI-COR in writing at any time and shall automatically terminate if the Buyer adopts a resolution for it to be wound up or if a petition is presented for the appointment of an administrator or a receiver or an administrative receiver is appointed in respect of any part of the Buyer's undertaking or assets or if the Buyer is unable to pay its debts within the meaning of Section 121 of the Insolvency Act 1986 (or any re-enactment of further enactment thereof) unless LI-COR otherwise expressly agrees in writing to the continuation of such right of sale/use.
- (5) The Buyer shall insure and keep insured the Products to their full value against all normal commercial risks until the date that property in the Products passes from LI-COR and shall whenever requested by LI-COR produce a copy of the policy of insurance.
- (6) Should supply include erection and assembly by LI-COR, the risk shall transfer to the Buyer at the time of acceptance.

§ 6. Prices and payment terms

- (1) The selling price quoted is for delivery ex works excluding statutory value-added tax in each case. Supply and invoicing shall be carried out at the list prices (plus value-added tax and carriage costs) and conditions effective on the shipping date.
- (2) LI-COR's prices are always calculated in £ Sterling, the price in £ Sterling being binding even if payment of the purchase price in a currency other than £ Sterling is agreed. Changes in the exchange rate with the £ Sterling which occur after the Contract has been formed relative to the exchange rate on the date the Contract is formed shall be for the purchaser's account.
- (3) The purchase price shall be payable immediately following issue of the invoice, within 30 days without deduction.
- (4) On expiry of 30 days from issue of the invoice the Buyer shall be in arrears. Whilst the Buyer is in arrears the Buyer shall pay interest on the outstanding amount before and after judgment at an annual rate of 8% above the base rate from time to time of the Bank of England (such interest to accrue on a day to day basis from the due date of payment, until receipt by LI-COR of the full amount). The Buyer shall furthermore indemnify LI-COR against all costs and expenses (including reasonable legal costs and expenses on a full indemnity basis) incurred or sustained by LI-COR in recovering sums due in each case without prejudice to any other rights or remedies available to LI-COR. LI-COR also reserves the right to substantiate and claim greater damages for the arrears in individual cases.
- (5) If the Buyer is in arrears as aforesaid LI-COR may furthermore suspend the delivery of Products under the Order (and any other) until payment in full of the outstanding amount (including interest accrued).
- (6) Should LI-COR become aware following formation of the Contract of circumstances which suggest that the Buyer may be unable to pay, LI-COR shall be entitled to refuse to supply the Products and to set the Buyer a reasonable period in which to pay the purchase price or provide adequate security. In this event supply of the Products purchased shall take place step by step with payment of the purchase price or provision of the security in such manner as LI-COR shall require.
- (7) If the Buyer is in arrears with a payment under the Contract or there are grounds to doubt its ability to pay LI-COR shall be entitled to declare any deferred invoice amounts (under the Order or any other) due immediately.
- (8) If payment of the purchase price in instalments has been agreed LI-COR shall be entitled to declare the entire outstanding purchase price due immediately should the Buyer be in arrears with the payment of an instalment.

§ 7. Warranty

- (1) LI-COR warrants that the Products shall be reasonably fit for the purpose for which they are supplied and shall conform with the Specification. All other warranties are hereby excluded to the fullest extent permitted by law.
- (2) Defects must be indicated to LI-COR in writing within a period of two weeks of receipt of the Products or (in the case of latent defects) within two weeks of discovery, otherwise the right to assert of any warranty claim shall be excluded. The Buyer shall bear the full burden of proof for all claim conditions, in particular the defect itself, the date on which the defect was found and the punctuality of the complaint. The Buyer's sole remedy in such event shall be replacement of the defective Products or reimbursement, as the parties shall agree in writing.
- (3) The warranty period shall be one year from delivery of the Products. This period and the right to claim under the warranty shall not apply if the Buyer has not notified the defect to LI-COR within the period required under sub-paragraph (2) above.
- (4) LI-COR's liability shall be limited to the legal warranty with the scope described in this paragraph 7. Manufacturers' warranties in respect of the components and software used in the Products shall be unaffected by this.
- (5) No warranty is given in respect of the deterioration of components of Products which occurs as a result of the usual and proper use of our equipment or normal wear and tear.
- (6) The Products are intended solely for laboratory and research purposes. LI-COR shall not be liable for any damage arising from failure to observe the relevant accompanying assembly, storage, operating, maintenance and inspection instructions. Neither shall LI-COR be liable should the Buyer carry out repairs, install other parts or make other technical changes to the Products without LI-COR's written consent or use the Products contrary to LI-COR's instructions. Neither shall LI-COR be liable for damage arising from the use of the Products domestically or on humans or animals.
- (7) In the event of the sale of used Products or used spare parts only the guarantees agreed in writing with authorised representatives of LI-COR shall apply. No other warranty shall be given in respect of such Products and these parts.
- (8) Assignment of compensation and warranty claims by the customer to third parties is impermissible. Nothing in the Contract should be construed as conferring rights on any third party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise and no third party shall be entitled to enforce the performance of any obligations under the Contract.
- (9) LI-COR has no liability in contract, tort (including negligence) or otherwise for any loss of use, profits, revenue, goodwill, or savings, loss under current or future contracts, administrative costs or disaster recovery costs or for any consequential or indirect loss or damage of any nature under the Contract.

- (10) The advice given by LI-COR in respect of the Products is given to the best of LI-COR's knowledge. However, LI-COR shall be liable for any resulting damage only in cases of grossly negligent or deliberately incorrect advice.
- (11) Nothing in these Terms should be construed as excluding or limiting LI-COR's liability in negligence for death, personal injury or fraud or otherwise insofar as any exclusion or limitation of liability is void, prohibited or unenforceable by law. All of paragraph 7 should be construed as subject to this sub-paragraph (11).
- (12) The Buyer shall indemnify and hold harmless LI-COR against all liabilities, losses, claims and expenses incurred by LI-COR by reason of any breach by the Buyer of the terms of the Contract or by reason of any use of the Products (whether directly or indirectly and whether in isolation or compounded with other products) by the Buyer or any person to whom the Products were supplied by the Buyer.

§ 8. Assembly

- (1) Depending on the equipment characteristics LI-COR Biosciences will decide on its own discretion if assembly of our equipment shall be carried out on the customer's site by our authorised technical staff.
- (2) In the event that assembly needs to be carried out by LI-COR's authorized technical staff and the customer refuses to do so, the customer shall ensure that the technical conditions specified by us (e.g., PC system requirements) are met and shall confirm this to us in writing on request. We accept no liability for damage arising from the fact that the necessary technical requirements are not provided by the customer. Any additional costs and expenses arising therefrom shall be for the customer's account.

§ 9. Force Majeure

LI-COR shall not be liable or responsible for any loss or damage caused by delay in the performance or non-performance of its obligations hereunder due to the occurrence of circumstances beyond its control.

§ 10. General

- (1) The Buyer shall not without the prior written consent of LI-COR assign, transfer or sub-contract the benefit or the burden of the Contract or any part thereof. LI-COR may assign or transfer its rights and obligations under the Contract.
- (2) Notices under the Contract are to be served in writing and may be served by fax or first class pre-paid post to the recipient's party's address as it appears in the Contract. Notices served by fax shall be deemed received immediately following transmission (subject to issue of a valid transmission slip) and notices served by post shall be deemed to have been received 2 business days after despatch (in the case of UK post) and 6 business days after despatch (in the case of air mail).
- (3) The Buyer shall have no right of set off under the Contract.

§ 11. Law and Jurisdiction

- (1) Any controversy or claim of whatsoever nature arising out of or relating in any manner whatsoever to the Contract or any breach of any terms of the Contract shall be governed by and construed in all respects in accordance with the laws of England. The place of the Contract's performance shall be England.
- (2) Each party hereby irrevocably acknowledges and agrees that the Courts of England shall have exclusive jurisdiction to resolve any controversy or claim of whatsoever nature arising out of or relating in any manner to the Contract any terms of the Contract or any breach of the Contract or any such terms.
- (3)