



IN-VITRO DIAGNOSTICS ♦ CONTRACT R&D ♦ OEM ♦ FDA-REGULATED

ALFA SCIENTIFIC DESIGNS INC. TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Terms and Conditions of Sale (the "Conditions") the following words and expressions are expressly defined and shall have the following meanings:

"Buyer" means the person, firm or company who purchases the Goods and/or Services from the Company;

"Company" means Alfa Scientific, whose registered office is at 13200 Gregg Street, Poway, CA 92064

"Contract" means any contract between the Company and the Buyer for the sale and purchase of the Goods and/or the provision of Services, incorporating these Conditions;

"Delivery Point" means the place where delivery of the Goods is to take place under.

"Goods" means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them); and

"Services" means any services agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

2. CONTRACTS

- 2.1 The Contract shall be made (and without limitation orders shall only be accepted) on and subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing by both the Company and the Buyer. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 2.3 Each order or purported acceptance of a quotation for Goods and/or Services by the Buyer to the Company shall be deemed to be an offer by the Buyer to purchase Goods and/or Services from the Company subject to these Conditions.
- 2.4 Any quotation, estimate or tender previously given or made by the Company (including the contents of the Company's website) shall not be deemed to be an offer but rather an invitation to treat.
- 2.5 The Company may, at its absolute discretion, accept or reject any order placed by the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any typographical, clerical or other error or omission in the Company's website or in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. DESCRIPTION

- 3.1 The quantity and description of the Goods and/or Services shall be as set out in the Company's written acknowledgement of order. Note that the customer agrees that for any order involving a "custom product configuration or label" the customer agrees to accept their total order quantity +/- 10% of the total order quantity.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them.

4. DELIVERY OF GOODS AND SUPPLY OF SERVICES

- 4.1 Any dates quoted by the Company for delivery of the Goods are approximate only and intended to be an estimate. Time for delivery of Goods and/or supply of Services shall not be made of the essence by notice and time for delivery and/or supply of

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Services may only be made of the essence if expressly agreed by the Company in writing within a written acknowledgement of order issued by the Company. If no dates are so specified, delivery shall be within a reasonable time.

- 4.2 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of contracts, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.
- 4.3 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorizations then without prejudice to any other right or remedy available to the Company:
 - 4.3.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - 4.3.2 the Goods shall be deemed to have been delivered; and
 - 4.3.3 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.4 Where the Delivery Point is agreed in writing by the Company to be a place other than the Company's place of business, the Company's obligation is then only to deliver as near to the Delivery Point as safe hard roads permit.
- 4.5 The Company may deliver the Goods by separate installments and in such event each separate installment shall:
 - 4.5.1 be a separate Contract and no cancellation or termination of any one Contract relating to an installment shall entitle the Buyer to or cancel any other Contract or installment; and the Buyer shall not be entitled to accept part only of the Goods
 - 4.5.2 be invoiced and paid for in accordance with the provisions of the Contract.

5. NON-DELIVERY OF GOODS

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any shortage in delivery of Goods, for loss of Goods or for non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of such shortage in delivery, loss of Goods or non-delivery of Goods (as applicable), within 3 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for shortage in delivery of Goods, loss of Goods or non-delivery of Goods shall be limited to replacing the Goods within a reasonable time or (at the Company's sole option) or issuing a credit note.

6. RISK AND TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, ownership of the Goods and/or property in the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 6.2.1 the Goods; and
 - 6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until such time as ownership of the Goods and/or property in the Goods passes to the Buyer, the Buyer shall:
 - 6.3.1 hold the Goods as the Company's fiduciary agent and bailee;
 - 6.3.2 maintain the Goods in satisfactory condition and keep them protected and insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.

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- 6.4 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 6.5.1 the Buyer has a bankruptcy order made against it.
- 6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts.

7. PRICES

- 7.1 The price for Goods and/or Services:
- 7.1.1 shall be the price set out in the Company's written acknowledgement of order; and
- 7.1.2 shall be exclusive of:
- (A) any value added tax;
- (B) all costs or charges in relation to packaging, loading, unloading, carriage and insurance;
- (C) any other sales tax or excise duties paid or payable by the Company.
- 7.2 In the event of the Buyer cancelling a part of the order in accordance with the provisions of Condition 12, the Company reserves the right to revise the price or prices quoted for Goods already delivered.

8. TERMS OF PAYMENT

- 8.1 Unless credit facilities have been granted to the Buyer pursuant to Condition 10, payment of the price for the Goods and/or the Services shall be due from the Buyer in cash at the earlier of delivery of the Goods by the Company or provision of the said Services by the Company.
- 8.2 Time for payment shall be net 30 days from receipt of goods unless mutually agreed in writing.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.5 Unless otherwise expressly agreed upon in writing, no other discounts or commissions are to become due or allowable to the Buyer (any previous course of dealing between the parties notwithstanding) and in all cases the Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid Court Order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

9. LATE PAYMENT

- 9.1 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 1% per month accruing on a daily basis until payment is made, whether before or after any judgment.
- 9.2 When payment of any of the Company's invoices is overdue, the Company may suspend its performance of the Contract(s) to which the invoice relates and/or of any other Contract then subsisting between the Company and the Buyer.
- 9.3 In the event of legal action being taken by the Company against the Buyer for breach of payment obligations hereunder, the Buyer shall be responsible for all costs and disbursements incurred by the Company on a full indemnity basis.

10. CREDIT LIMITS

- 10.1 Where the Company agrees (at its sole discretion) to grant the Buyer a credit limit, payment of the price for the Goods and/or the Services shall be due from the Buyer in dollars within 30 days from the date on which an invoice in respect of the Goods and/or the Services is issued from the Company to the Buyer following delivery of the Goods or provision of the Services.

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- 10.2 The Company reserves the right to withdraw or vary credit limits at any time by summary written notice to the Buyer without either giving any reason for so doing, or thereby incurring any liability to the Buyer.
- 10.3 If the Buyer proposes to take Goods and/or Services from the Company in excess of the Buyer's credit limit, the Company may require payment in dollars for such excess of Goods and/or Services at the earlier of delivery of the Goods by the Company or upon the provision of the Services.
- 11. QUALITY**
- 11.1 The Company warrants that (subject to the other provisions of these Conditions) upon delivery, and for a period equaling the expiration date printed on the product.
- 11.2 The Company shall not be liable for a breach of the warranty in Condition 11.1 unless:
- 11.2.1 the Buyer gives written notice of the defect to the Company, and to the carrier if the defect is as a result of damage in transit, within 3 days of the time when the Buyer discovers or ought to have discovered the defect; and
- 11.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost (should the notice of defect prove accurate, or at the Buyer's cost if not) for the examination to take place there.
- 11.3 The Company shall not be liable for a breach of the warranty in Condition 11.1 if:
- 11.3.1 the Buyer makes any further use of such Goods after giving such notice; or
- 11.3.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, transportation, installation, commissioning, modification, use or maintenance of the Goods or (if there are none) good trade practice; or
- 11.3.3 the defect arises as a result of any default of, or caused by, the Buyer or (without limitation) as a result of misuse, abuse, improper installation, neglect, improper shipping by a party other than the Company; or
- 11.3.4 the Buyer alters, repairs or modifies such Goods without the written consent of the Company; or
- 11.3.5 the defect arises due to a cause beyond the Company's reasonable control, such as: act of God, explosion, flood, tempest, fire or accident, including without limitation lightning; war or threat of war, national emergency, sabotage, terrorism, insurrection, protest, riot, epidemic, civil disturbance or requisition; Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials; or power failure or breakdown in machinery.
- 11.4 Subject to Condition 11.2 and Condition 11.3, if any of the Goods do not conform with the warranty in Condition 11.1 the Company shall at its option repair or replace such Goods (or the defective part) without charge for labour or parts or refund the price of such Goods at the original purchase price. The Company shall pay for return transportation to the Buyer of such repaired or replaced Goods.
- 11.5 If the Company complies with Condition 11.4 it shall have no further liability for a breach of the warranty in Condition 11.1 in respect of such Goods.
- 12. CUSTOMER CANCELLATION OF ORDERS**
- Contracts and orders and parts thereof may be cancelled only by the Company's written acceptance of such cancellation and only within 48 hours of placing the order. Where the Company accepts such cancellation, the Company reserves the right to charge the Buyer with the amount of any losses or expenses directly or indirectly resulting from such cancellation such as a restocking fee. When the Company does not accept such cancellation, subject to the effect of the other Conditions contained herein, the Company reserves the right to recover the full price from the Buyer and to charge the Buyer with additional losses both direct and indirect resulting from such cancellation. In any case where the Company was required to place a deposit with a manufacturer or supplier in respect of an order, the Company may require the Buyer to reimburse such sum in the event of cancellation.
- 13. LIMITATION OF LIABILITY**
- 13.1 Subject to Conditions 3, 4, 5, 11, 14 and 15, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-Contractors) to the Buyer in respect of:
- 13.1.1 any breach of these Conditions;

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- 13.1.2 any defect in the Goods and/or the Services;
- 13.1.3 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 13.1.4 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

13.2 Subject to Condition 13.1:

- 13.2.1 the Company's total liability in contract, tort (including without limitation negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- 13.2.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profits, loss of business, loss of contracts, damage to property, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14. FORCE MAJEURE

- 14.1 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods and/or the Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: act of God, explosion, flood, tempest, fire or accident; war or threat of war, national emergency, sabotage, terrorism, insurrection, protest, riot, epidemic, civil disturbance or requisition; Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials; and power failure or breakdown in machinery.

15. INSOLVENCY

The Company shall have the right to terminate the Contract forthwith in any of the circumstances outlined in Condition 7.6 in any of which cases the Company shall have no further obligation hereunder and the price for all Goods delivered and Services performed and to be performed shall become immediately due and payable.

16. ASSIGNMENT

- 16.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 16.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

17. COMMUNICATIONS

- 17.1 All communications between the Buyer and the Company about or in connection with the Contract shall be in writing and delivered by hand or sent by pre-paid first class mail or sent by facsimile transmission:
 - 17.1.1 (in case of communications to the Company) to its main place of business; or
 - 17.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified in writing to the Company by the Buyer.

18. APPLICABLE LAW

- 18.1 These Conditions and/or the Contract and any disputes or claims arising out of or in connection with their subject matter are governed by and construed in accordance with the law of the state of California, USA.
- 18.2 The Buyer and the Company irrevocably agree that the Courts of California have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions and/or the Contract.

The above Conditions will be incorporated into any Contract with any Buyer to the exclusion of any other terms and conditions.