

## m2p-labs, Inc. - Terms and conditions of sale

The terms and conditions of sale contained herein (“terms and conditions”) shall apply to all quotations and offers made by and purchase orders accepted by m2p-labs, Inc. (“m2p-labs”). If these terms and conditions conflict with the terms and conditions of a purchase order or procurement document issued by buyer, acceptance of buyer’s order is conditioned upon buyer’s acceptance of these terms and conditions irrespective of whether the buyer accepts them in writing, by implication or by acceptance of and payment for products sold hereunder, and irrespective of when buyer’s purchase order or procurement document is issued or whether it precedes or follows issuance of these terms and conditions. m2p-labs’ failure to object to provisions contained in any communication from buyer shall not be deemed a waiver of the provisions herein.

### 1. Payment terms, quotes and purchase orders

1.1. **Pricing.** Unless stated otherwise, prices are in US dollars and do not include shipping, insurance, customs duty or taxes, all of which shall be borne by Buyer.

1.2. **Invoicing.** Buyer shall be invoiced for products upon delivery of the applicable products in accordance with [Section 2.1](#) of these Terms and Conditions.

1.3. **Payment.** Buyer shall pay m2p-labs for all undamaged products subject to a Purchase Order (as defined below) not later than thirty (30) calendar days after the date of m2p-labs’ invoice for the same, assuming approval of Buyer’s credit by m2p-labs. Any amounts not paid within such thirty (30) calendar day period shall bear interest at the lesser of the maximum rate allowable under applicable law or two percent (2%) per month. Buyer’s payment of such interest on late payments shall not prevent m2p-labs from exercising any other rights under these Terms and Conditions or applicable law. The foregoing terms of payment may be changed by m2p-labs at any time.

1.4. **Taxes.** All amounts described herein are exclusive of all federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, withholding obligations and other levies now in force or enacted in the future. Accordingly, all fees payable to m2p-labs are subject to an increase equal to the amount of any such tax, excise or levy m2p-labs may be required to collect or pay in connection with the sale and/or distribution of the products, other than any tax on the net income of m2p-labs.

1.5. **Quotes.** From time to time, m2p-labs may issue a quotation or proposal (a “Quote”) to Buyer, which shall constitute an offer with respect to specified products that Buyer may order, which may contain certain assumptions, either explicit or incorporated by reference by means of citation to applicable catalogue or product numbers in m2p-labs’ price lists or product documentation published from time to time by m2p-labs. Unless otherwise agreed to in writing, all such Quotes, regardless of whether they reference these Terms and Conditions or not, shall be governed by the provisions contained herein. They are only valid for the stated time period and subject to change by m2p-labs on notice.

1.6. **Purchase Orders.** Buyer may offer to purchase products by issuing a purchase order, signed by its authorized representative, indicating the specific product(s) to be purchased, quantity, unit price (based upon m2p-labs’ then-current purchase prices, fees and charges), total purchase price, shipping instructions, requested delivery dates and bill-to and ship-to addresses (each, a “Purchase Order”).

1.7. **Purchase Order Acceptance.** All Orders are subject to approval and acceptance by m2p-labs (each approval and acceptance, a “Confirmation”). m2p-labs may accept a Purchase Order by countersigning or acknowledging the Purchase Order or m2p-labs shall be deemed to have accepted a Purchase Order if m2p-labs ships products pursuant to such Purchase Order.

1.8. **Cancellation of Purchase Orders.** Purchase Orders accepted by m2p-labs are subject to cancellation or return by Buyer only with the written consent of m2p-labs, and only upon payment by Buyer of reasonable cancellation charges that shall take into account expenses already incurred by m2p-labs or any third parties and commitments made by m2p-labs or any third parties in anticipation of filling the cancelled Purchase Order. m2p-labs shall have the right to cancel any previously accepted Purchase Order or to refuse or delay the shipment thereof in any event on account of failure by Buyer to make promptly any payments due m2p-labs or to comply with these Terms and Conditions or any other material breach of these Terms and Conditions by Buyer.

### 2. Shipping and delivery, acceptance of products and retention of title

2.1. **Shipping Terms.** Except as set forth below, shipping terms for delivery of the products shall be “Origin Collect” (which also may be referred to as “FOB” at m2p-labs’ location). Shipping terms for delivery of the m2p-labs disposable products (and components thereof) shall be “Prepay and Add” (which also may be referred to as “FOB” at the Buyer’s location). Such terms shall have the following meanings:

2.1.1. **Origin Collect.** “Origin Collect” shall mean that m2p-labs shall exercise commercially reasonable efforts to make the products subject to a Confirmation available for pick-up by a carrier designated by Buyer at m2p-labs’ manufacturing location on or about the estimated delivery date specified in the Purchase Order or, if different, in m2p-labs’ written Confirmation; provided, however, that in no event shall the estimated delivery date be sooner than thirty (30) days after acceptance of the applicable Purchase Order by m2p-labs. Buyer shall be responsible for obtaining insurance. Buyer shall have all risk of loss and damage in transit, and m2p-labs shall not be liable for delays arising during the shipping process. In the event of any delay caused by an act or omission of Buyer or the carrier, the date or dates for delivery of such products to the applicable carrier shall be extended for a period equal to the amount of the delay. Buyer shall be responsible for all costs identified in [Section 1.1](#) of these Terms and Conditions and, notwithstanding the foregoing, if m2p-labs pays any such costs, Buyer will promptly reimburse m2p-labs therefor. In addition to its other remedies, m2p-labs shall have the right to stop delivery in transit if Buyer is delinquent in payment for any other orders with m2p-labs. Under no circumstances will m2p-labs have any liability for penalties or other consequential damages or any kind or penalty in whole or in part for delay or failure to deliver any products to Buyer as agreed.

2.1.2. **Prepay and Add.** "Prepay and Add" shall mean that m2p-labs shall arrange for delivery of the m2p-labs disposable products such as microplates, foils and culture media (or components thereof) to Buyer and for insurance. m2p-labs shall retain title and all risk of loss in transit. m2p-labs shall be responsible for all costs identified in [Section 1.1](#) of these Terms and Conditions; provided, however, that Buyer shall reimburse m2p-labs for any additional costs related to requests by Buyer for special or expedited shipping arrangements. m2p-labs shall exercise commercially reasonable efforts to deliver the m2p-labs disposable products (or components thereof) on or about the estimated delivery date specified in the Purchase Order or, if different, in m2p-labs' written Confirmation; provided, however, that m2p-labs shall not be liable for delays arising during the shipping process and, provided, further, that in no event shall the estimated delivery date be sooner than five (5) days after receipt by m2p-labs of the applicable Purchase Order. In the event of any shipping delay or any delay caused by an act or omission of Buyer, the date or dates for delivery of such products to Buyer at the ship-to address set forth in the applicable Purchase Order shall be extended for a period equal to the amount of the delay.

2.2. **Acceptance/Inspection.** All products shall be deemed to be accepted on the date the products are delivered to Buyer at the ship-to address set forth in the applicable Purchase Order. Buyer shall inspect all products within five (5) Business Days after deemed acceptance (the "Inspection Period"). Buyer shall notify m2p-labs within the Inspection Period of any missing products or components of products, any delivery of products not ordered, and/or any damage to the delivered products that is or should be obvious upon a visual and physical inspection thereof. As soon as practicable upon receipt of any such notice pursuant to this [Section 2.2](#), m2p-labs shall use commercially reasonable efforts to provide replacement products for missing and/or damaged products (unless, in the event of a delivery subject to "Origin Collect" shipping terms as set forth in [Section 2.1.1](#), any such damage is attributable to an act or omission of Buyer or the carrier or any of their Affiliates). m2p-labs shall bear all expenses for such replacement products to the extent the Buyer previously paid for any corresponding damaged products and/or incomplete shipments. Replacement shipments shall also be subject to the shipping terms set forth in [Section 2.1](#). The replacement of any missing and/or damaged products pursuant to this [Section 2.2](#) is its sole remedy with respect to such missing or damaged products.

### 3. Software license and restrictions

3.1 Subject to customer's payment of the price identified on the quote, m2p-labs hereby grants to customer a non-exclusive license to use the m2p-labs software set forth in the quote and all related documentation provided by m2p-labs (the "Documentation," and referred to collectively with the Software as the "Software Products") solely for the purpose as identified in the Documentation.

3.2 Customer shall not, and shall not allow any third party to: (a) reverse assemble, decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code, or underlying ideas or algorithms of the Software; (b) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use the Software Products for the benefit of any third party; or (c) copy, modify, incorporate into or with other software or create a derivative work of any part of the Software Products. Notwithstanding anything to the contrary in the foregoing, customer may make one (1) copy of the Software Products for back-up purposes only, provided that customer reproduces all copyright notices and other proprietary legends on such copy.

3.3 The Software, including any updates, modifications and enhancements thereto, and any and all Documentation delivered by m2p-labs to customer shall at all times remain the sole and exclusive property of m2p-labs. In addition, as between m2p-labs and customer, m2p-labs is the sole owner of any inventions, discoveries, processes, methodologies, techniques, know-how, derivative works, improvements and enhancements arising out of or relating to the Software

3.4 Customer understands and agrees that m2p-labs considers the Software Products to be the proprietary and confidential information of m2p-labs. Customer agrees to maintain the Software Products in confidence, and except for the right of Customer to make a copy of the Software Products, Customer agrees not to disclose, duplicate or otherwise reproduce, directly or indirectly, the Software Products in whole or in part.

### 4. Proprietary rights

4.1. **m2p-labs' Proprietary Information.** m2p-labs grants to Buyer the right to use all samples, schematics, specifications, manuals, designs, products, and other technical, business, trade secret, proprietary and confidential information provided to Buyer by m2p-labs ("m2p-labs' Proprietary Information") solely for the purpose of Buyer using the product in its applications and uniquely for the items purchased. Buyer will not disclose or use any of m2p-labs' Proprietary Information for any other purpose including: (1) developing, designing, manufacturing, engineering, reverse engineering, refurbishing, selling or offering for sale items, parts or components of items, derivatives of or equivalents, or (2) assisting any third party in any manner to perform such activity. Buyer shall use reasonable care to protect m2p-labs' Proprietary Information, and in no event less than the care Buyer uses to protect its own like information.

4.2. **Use of Trademarks.** The trademarks, trade names/business names, trade dress and logos of the owner shall be used only in the form and manner approved by the owner Party in writing prior to commencing use thereof and may not be publicly disseminated, reproduced or used by Buyer without the prior written consent of m2p-labs.

4.3. **Retention of title.** Except as provided in [Section 4.1](#), m2p-labs retains full title in all Products delivered to the customer as long as the customer has not fulfilled all of its payment obligations in connection with the delivery of the respective Products or of any other products sold to Buyer. Buyer expressly authorizes m2p-labs to cross-collateralize all of its obligations with m2p-labs. During the retention of title, the customer shall not sell, pledge, mortgage, grant security interest or otherwise dispose of the respective Products. The customer authorizes m2p-labs to make registrations or filings with the competent authorities that might be necessary to effect such retention of title or to assert or perfect any liens or security interests if title is deemed to have passed.

## 5. **Warranty; exclusive remedies**

5.1 **Defective product.** m2p-labs warrants to Buyer that products of its manufacture will be, on the date of delivery to Buyer in accordance with [Section 2.1](#) and, for a period ending on: (i) the expiration date printed on the labeling of any consumable product; or, for all other products, (ii) the one (1) year anniversary of the date of delivery in accordance with [Section 2.1](#) (the “**Warranty Period**”), shall be free from defects in material and shall perform in substantial accordance with the published specifications therefor in the operators manual and other labeling provided with the products (the “Documentation”).

5.1.1 **Reporting Period.** The limited warranty set forth in this [Section 5.1](#) is subject to the restrictions set forth below and is contingent upon Buyer notifying m2p-labs in writing within thirty (30) calendar days following Buyer’s discovery of any alleged defect or failure to perform, and in no event later than ten (10) calendar days after the end of the Warranty Period.

5.1.1.1 **Termination of Warranty.** This limited warranty is not transferable and shall terminate with respect to any product upon any transfer or sale of such product by Buyer.

5.1.1.2 **Exclusions.** The limited warranty set forth in this [Section 5.1](#) will not apply with respect to defects or failures to conform caused by (a) neglect, accident, fire or other hazard, unauthorized alteration, modification, or repair, including without limitation, installation of unauthorized parts, (b) improper testing, storage, operation, transportation, interconnection, or installation of the products, (c) failure to continually provide a suitable operating environment for the products, (d) damage to the products or defects in the products that were or should have been obvious to Buyer upon a visual and physical inspection thereof during the Inspection Period, unless Buyer has notified m2p-labs thereof during such Inspection Period as provided in [Section 2.2](#) of these Terms and Conditions, or (e) any other cause beyond the range of normal usage of the products (except, in all of the foregoing cases, when caused by m2p-labs or m2p-labs’ authorized agent) (collectively, “**Non-Warranty Repairs**”). Buyer shall pay m2p-labs all costs of handling, inspection, repair and transportation related to Non-Warranty Repairs at m2p-labs’ then prevailing rates.

5.2 **Return of Defective Product.** Buyer shall follow m2p-labs’ instructions regarding return of defective product, and no product will be accepted for repair, replacement credit or refund without the written authorization of and in accordance with m2p-labs’ instructions. Replaced products shall become m2p-labs’ property. If m2p-labs determines that a returned product was not defective, Buyer shall pay m2p-labs all costs of handling, inspection, repair and transportation related to such product at m2p-labs’ then prevailing rates.

5.3 **Buyer’s Sole Remedies.** During the Warranty Period, m2p-labs, at its option, will repair or replace any products that prove to have a defect or refund to Buyer the purchase price of the defective product. Any product repaired or replaced will also be warranted for the remainder of the original Warranty Period or sixty (60) calendar days, whichever is the longer. If m2p-labs, in its sole discretion, elects not to repair or replace a product under warranty, m2p-labs will at its sole expense refund to Buyer the purchase price of such product. The repair or replacement of any product, or the refund to Buyer of the purchase price of such product, is Buyer’s sole remedy with respect to the failure of any product to be free from defects in material or to perform in substantial accordance with the published specifications therefor in the Documentation.

5.4 **Limitation on warranty.** Except as expressly set forth in this [article 5](#), m2p-labs makes no warranty, express, statutory, or otherwise, with respect to the products or otherwise in connection with these terms and conditions, and hereby expressly disclaims any other form of warranty, express or implied, including without limitation, any warranty of merchantability or fitness for a particular purpose. This stated warranty is exclusive and in lieu of all other warranties provided by law.

4.5 **Product Changes.** m2p-labs reserves the right to make changes in the design or construction of any of its products at any time without incurring any obligations to make any such changes on products previously purchased by Buyer.

## 6. **Limitations of liability**

6.1 **entire liability.** M2p-labs’ entire liability and buyer’s exclusive remedies against m2p-labs for any damages caused by any product defect or failure, or arising from the performance or non-performance of any work regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, shall be as follows:

6.1.1 for damaged products or incomplete deliveries: the remedies set forth in [section 2.2](#).

6.1.2 for product defects or failure: the remedies stated in the warranty section;

6.1.3 for delays in delivery: none unless the delivery is delayed by more than forty (40) business days by causes not attributable either to buyer, the carrier or to force majeure conditions, in which case buyer shall have the right, as its sole remedy, to cancel the order without incurring termination charges;

6.1.4 for claims other than set forth above: m2p-labs’ liability shall be limited to damages that are proven, in an amount not to exceed the total fees paid to m2p-labs by buyer for the particular item to which such liability relates.

6.2 **limitations.** Notwithstanding the foregoing, in no event shall m2p-labs be liable for any indirect, special, incidental, consequential, punitive or liquidated damages, (including without limitation any interruption of service, lost profits, or loss of data), without regard to cause or theory of liability and regardless of whether or not m2p-labs was advised such damages might arise.

6.3 **Subsidiaries and affiliates.** For purposes of the exclusive remedies and limitations of liability set forth in this section, m2p-labs shall be deemed to include m2p-labs, Inc., its subsidiaries and affiliates and the directors, officers, employees, agents, representatives, subcontractors and suppliers of each of them; and “damages” shall be deemed to refer collectively to all injury, damage, loss or expense incurred.

## 7. Patent indemnity

m2p-labs agrees to defend, at its own expense, any suit or legal proceeding which may be brought against Buyer alleging infringement by Buyer of any patent of the United States, as a result of Buyer's use of the Product sold hereunder for its intended purposes, provided that Buyer shall give m2p-labs prompt written notice of any notice of infringement, request to cease and desist, claim, threat, or institution of any such suit or legal proceeding, and provided further that m2p-labs shall then have the sole right to control and conduct the defense and/or settlement of such claim, threat, suit or legal proceeding, either in the name of m2p-labs or Buyer or both, and Buyer shall, at m2p-labs's request and expense, provide relevant information and reasonable cooperation. m2p-labs shall pay all final judgments and all costs and attorney's fees assessed against Buyer in any such suit or legal proceeding, provided Buyer has complied with the conditions hereof with respect to prompt notice and cooperation in connection with such suit or legal proceeding and given exclusive control thereof to m2p-labs. Notwithstanding the foregoing, m2p-labs shall not be liable for any attorney's fees or other legal expenses incurred by Buyer without the knowledge and prior written consent of m2p-labs. m2p-labs shall have the right, at its own expense, to procure for Buyer the right to continue using the Product claimed to infringe, replace said Product with an equally satisfactory non-infringing Product, modify said Product so that it becomes non-infringing, or remove such Product and refund the purchase price thereof less a reasonable amount for use, damage or obsolescence.

The foregoing indemnity fully defines m2p-labs's obligation for patent infringement. Such obligations shall specifically not apply to:

- a) an infringement claim resulting from additions or changes in or to the Product made by Buyer or any third party or from use in combination with other equipment; or
- b) an infringement claim which is settled without the prior written consent of m2p-labs; or
- c) an infringement claim which results from compliance by m2p-labs with specifications furnished by Buyer.

The total amount of m2p-lab's obligation and liability under this Section shall not exceed the price paid by Buyer to m2p-labs for the Product held to infringe, and in no event will m2p-labs be held accountable for consequential damages under this indemnity, such as loss of business profits or goodwill. With respect to any infringement claim arising from Product manufactured in whole or in part to Buyer's specifications or from use of such Product in conjunction with any other goods, Buyer will indemnify and hold harmless m2p-labs from and against all such claims for damages or profits arising from infringement of patents, designs, copyrights or trademarks.

## 8. General terms

8.1 Amendment; Waiver. m2p-labs, in its sole discretion, may amend these Terms and Conditions at any time. No express or implied waiver by m2p-labs of any event of default hereunder shall in any way be, or be construed as, a waiver of any future or subsequent event of default.

8.2 Entire Agreement. m2p-labs and Buyer acknowledge that these Terms and Conditions, together with m2p-labs' product list and corresponding price schedule and all Purchase Orders accepted by m2p-labs from time to time, set forth the complete, exclusive and integrated understanding of the parties which supersedes all proposals or prior or contemporaneous agreements, oral or written, and all other prior or contemporaneous communications between the parties relating to the purchase and sale of the products.

8.3 Force Majeure. Other than obligations to make payments of money, which obligations shall be absolute, neither party shall be liable for any damages or penalty for any delay in performance of, or failure to perform, any obligation hereunder or for failure to give the other party prior notice thereof when such delay or failure is due to the elements, acts of God, terrorist acts, delays in transportation, delays in delivery by vendors or other causes beyond that party's reasonable control, other than causes arising on account of such party's inadequate financial resources. If either party experiences an event of force majeure, the affected party shall notify the other party in writing of the nature of the delay and the anticipated length of the delay. The affected party shall take all commercially reasonable steps to formulate alternative means of performance to overcome the event of force majeure and shall keep the other party advised of such alternate performance and the process during the existence of the force majeure event. In the event of any such delay, the date or dates for delivery of the applicable products by m2p-labs shall be extended for a period equal to the time lost by reason of the delay.

8.4 Governing Law. These Terms and Conditions, the interpretation thereof, and any and all claims that may arise in connection with the products, will be governed by the laws of the State of New York, exclusive of the choice of law rules thereof, and expressly excluding application of the United Nations Convention on Contracts for the International Sale of Goods, as amended from time to time.

8.5 Severability. If any provision of these Terms and Conditions shall be held to be invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Instead, these Terms and Conditions shall be construed as though they do not contain the particular invalid or unenforceable provision or provisions and the rights and obligations of the parties shall be construed and enforced accordingly.

## 9. Definitions

9.1 Capitalized Terms. Capitalized terms used in these Terms and Conditions shall have the meaning set forth in these Terms and Conditions.

9.2 Additional Terms. In addition, as used in these Terms and Conditions, the following terms shall have the meaning set forth or as referenced below:

"Affiliate" shall mean with respect to any Party, any other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Party. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which banks in New York are authorized or obligated by New York state or United States federal law or executive order to remain closed.