



TERMS AND CONDITIONS OF SALE

These general terms and conditions of sale (these "General Terms of Sale") shall, by themselves and as part of the final terms of sale, as defined in Section 12 hereof, govern all orders for and purchases of products and/or services (including software licensed hereunder), including installation of equipment as provided in these General Terms of Sale, (collectively, the "Products") from Medicinal Genomics Corporation ("MGC) by the buyer thereof ("Buyer").

THROUGH BUYER'S ACCEPTANCE OF ANY PRODUCT FROM MGC, BUYER WILL BE DEEMED TO HAVE AGREED TO ALL OF THESE GENERAL TERMS OF SALE WITHOUT THE NEED FOR ANY EXECUTION OR DELIVERY BY BUYER OR MGC OF ANY FURTHER INSTRUMENT OR AGREEMENT OR OTHER DOCUMENT.

1. PRICE.

The price for any Product shall be the price stated in MGC's written quotation to Buyer for the Products ("MGC's Quotation") or, if MGC has not issued a quotation, then the price shall be MGC's list price for such Product on the date that MGC receives Buyer's purchase order. MGC's Quotations are valid for a period of 90 days after the date of the particular MGC Quotation, unless otherwise stated therein. If MGC's price is stated by reference to a price list, then such price shall be MGC's then-current list price in the jurisdiction in which the relevant Product is to be delivered, or performed as to services, in effect on the date that MGC receives Buyer's purchase order for such Product. Prices stated are exclusive of all taxes, fees, licenses, duties, levies or other governmental assessments ("Taxes") and, unless otherwise stated in MGC's Quotation, exclusive of all shipping and handling charges, freight and insurance. The Buyer shall pay all Taxes related to the Products (other than taxes assessed against MGC's net income), or in lieu thereof, Buyer shall provide MGC with a tax exemption certificate acceptable to the relevant taxing authorities. Taxes and other charges payable by Buyer may be billed as separate items on MGC's invoice to Buyer for the relevant Product.

2. PAYMENT TERMS; COLLECTION COSTS; SECURITY TERMS.

Payment is due 30 days after the date of MGC's invoice for the relevant Product. MGC in its sole discretion shall have the right to require alternative payment terms by Buyer, including without limitation sight draft, letter of credit, or payment in advance. Payment for partial shipments shall be based on unit or prorated prices, and payment for partial installation(s) shall be based on percentage of completion of installation, as reasonably determined by MGC. If payment is not received by the due date thereof, MGC may assess, and Buyer shall pay, a late payment charge at the rate of 1 1/2% per month or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment.

If MGC retains a collection agency or attorney to collect unpaid amounts, MGC may invoice Buyer for, and Buyer shall pay, all reasonable costs of collection, including without limitation reasonable attorney's fees. Buyer hereby grants to MGC, and MGC reserves, a purchase money security interest in all tangible Products purchased from MGC, and in any proceeds thereof, for all amounts owing to MGC for or related to such Products. Upon request by MGC, Buyer shall sign any reasonable documents required for MGC to perfect such security interest and, to the fullest extent permitted by law, Buyer hereby expressly grants MGC authority and a limited power of attorney to file financing statements and amendments thereto for and on behalf of Buyer for such Products and any proceeds thereof. Payment in full of all amounts owed for and related to such Products shall release such security interest in the Products and proceeds for which such full payment has been made.



3. CREDIT TERMS.

MGC may, at any time and in its sole discretion, limit or cancel the credit of Buyer from MGC, as to time and amount, suspend shipments, demand payment in cash before delivery of Products, or demand other assurances of Buyer's performance. If Buyer fails to agree and comply with the different terms of payment demanded, or fails to give adequate assurances of performance, MGC may, without prejudice to any other right or remedy MGC may have: (a) by written notice to Buyer, treat such failure or refusal as a repudiation by Buyer of that portion of Buyer's order not then fully performed, whereupon MGC may cancel all further deliveries, and any amounts unpaid for non-cancelled Products shall immediately become due and payable; or (b) make shipments under reservation of the purchase money security interest referred to in Section 2 hereof and demand payment from Buyer against tender of title documents.

4. ACCEPTANCE OF ORDERS; DELIVERY; TITLE AND RISK OF LOSS; INSTALLATION.

The acceptance by MGC of any purchase order or other order document from Buyer shall in each case be subject to the provisions of Section 12 hereof, captioned "SOLE TERMS; CONFLICT OF TERMS." MGC may accept or reject any Buyer purchase order for the Products in whole or in part. If a purchase order of Buyer is accepted by MGC, MGC shall use reasonable efforts to ship the tangible Products or to perform the services according to otherwise agreed upon delivery dates.

MGC may make delivery in installments, and each such installment shall be deemed to be a separate sale of Product by MGC. MGC may render a separate invoice for each such installment, which invoice shall be paid by Buyer without regard to prior or subsequent installments.

Unless indicated otherwise in MGC's Quotation, title and risk of loss with respect to all Products, except Products that are software or services, and risk of loss with respect to software, shall pass from MGC to Buyer upon transfer of possession of the Products by MGC to a common carrier or other third-party carrier at MGC's facility.

If MGC has undertaken to install the Products, it is Buyer's responsibility, at Buyer's cost, to have the installation site prepared and available for installation, free of hazardous or unsafe conditions and, unless MGC otherwise agrees in writing, to move the Products, uncrated, from the Buyer's delivery dock or receiving location to the table top or other place of installation. Buyer shall not assign MGC personnel to work in biosafety level 3 or level 4 laboratories without prior written notice to MGC and without MGC's prior written consent.

5. CANCELLATION AND DEFERRAL.

BUYER MAY NOT CANCEL ANY PURCHASE ORDER FOR PRODUCTS WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF MGC, provided that, unless otherwise stated in MGC's Quotation, Buyer may defer the shipment date one time for up to twenty (20) days for any Product, by giving written notice to MGC at least thirty (30) days before the scheduled shipment date. The buyer will be charged a twenty percent (20%) restocking fee for all orders cancelled after products have shipped.

6. REJECTION AND RETURN OF GOODS.

Buyer must report any claims for damaged, missing or defective Products in writing within fifteen (15) days of Buyer's receipt of the Products. In addition, Buyer must promptly return, at Buyer's own expense, a rejected Product to MGC in a condition as delivered to Buyer and in the Product's original containers and packing material, accompanied by a valid return authorization number obtained from MGC. MGC may refuse any Products not timely rejected or sought to be returned without a valid Return Authorization Number. For any valid claim timely made, MGC, at its option, may repair the Product or replace the Product with an identical or substantially similar Product. **THESE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR DAMAGED OR MISSING PRODUCTS, AND, EXCEPT FOR**



EXPRESS WRITTEN WARRANTY RIGHTS, FOR DEFECTIVE PRODUCT. MGC may require that Buyer sign and deliver a properly completed certificate of decontamination prior to returning any Products.

7. LIMITED WARRANTY.

MGC makes only those warranties with respect to the Products expressly identified as “warranties” and set forth in MGC’s current operating manual or catalog, or in a specific written warranty included with and covering the Products, if any. Warranties are made only to Buyer and are not transferable and do not extend to the benefit of any other person or entity, unless otherwise expressly stated in writing by MGC. **ANY PRODUCT NOT COVERED BY AN EXPRESS WRITTEN WARRANTY IS SOLD AND PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED.**

Any description of the Products recited in MGC’s Quotation is for the sole purpose of identifying the Products, and any such description is not part of any contract between MGC and Buyer, is for illustrative purposes only, and does not constitute a warranty that the Products shall conform to such description. Unless otherwise specified in writing in documentation shipped with the Products or otherwise agreed to by MGC in writing, MGC shall not provide service or support for any custom Products or other Products made to Buyer’s specifications.

THE WARRANTIES IDENTIFIED IN THE FIRST SENTENCE OF THIS SECTION 7 ARE MGC’S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO THE PRODUCTS AND ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, ALL OF WHICH OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY WARRANTY REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT (INCLUDING WITHOUT LIMITATION, CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS), WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE.

8. INDEMNIFICATION.

INDEMNIFICATION BY MGC.

Subject to the restrictions set forth in this Section 8, and provided Buyer complies with its obligations under this Section 8, MGC shall defend, indemnify and hold Buyer harmless against all liabilities, damages, costs, expenses and claims arising from or based upon any legal action or proceeding brought by a third party against Buyer to the extent that such action is based on a claim that the manufacture and/or sale of a Product to Buyer by MGC infringes any United State patent, copyright, trademark or other intellectual property right of such third party. MGC will not indemnify for claims related to third party products purchased by MGC on behalf of Buyer. Notwithstanding the foregoing, MGC shall have no liability or obligation under this Section 8 with respect to any claim of infringement based upon: (a) modifications to any Products made by Buyer or a third party or (b) manufacture, assembly, labeling or branding of the Products by MGC pursuant to written specifications or designs or requests for specific labeling or branding furnished by Buyer (including any such specifications or designs or requests delivered to MGC by email or facsimile). Notwithstanding anything herein to the contrary, MGC shall have no indemnification obligations with respect to products originating from a third party and provided under these General Terms of Sale. Buyer’s sole right to indemnification with respect to such third-party products shall be pursuant to the original manufacturer’s or licensor’s indemnification obligations, if any to the extent provided by the original manufacturer or licensor. MGC’s obligations under this Section 8 are entirely contingent upon Buyer’s compliance with all of the following: Buyer shall notify MGC in writing, in commercially reasonable detail, of any claim for



which Buyer may seek defense and indemnity from MGC hereunder, forty-five (45) days after becoming aware of such claim, make no admission of liability with respect to the claim, and shall cooperate with and provide reasonable assistance to MGC, at MGC's expense with respect to reasonable out of pocket expenses paid by Buyer to third parties for such assistance, in the defense or settlement of such claim. MGC shall have sole authority to defend and/or settle any claim under Section 8 hereof.

REMEDY FOR INFRINGEMENT; RIGHTS OF MGC; EXCEPTIONS.

If any Product or portion thereof is subject to litigation or other legal or equitable proceeding claiming that such Product or such portion infringes a third party's intellectual property right, or in MGC's opinion is likely to become subject of such a claim, MGC shall, at its option, have the right to either: (a) procure for Buyer the right to continue using such Product; (b) modify the Product or a portion thereof so that it becomes non-infringing; (c) require Buyer to return the Product or portion thereof and upon return, refund to Buyer the price actually paid by Buyer for such Product or portion thereof (with the refund as to any portion to be allocated reasonably by MGC in good faith), less a reasonable amount for use, damage and obsolescence; or (d) substitute for the alleged infringing Product or portion thereof other suitable, non-infringing Product or portions thereof with comparable functionality.

ENTIRE INDEMNIFICATION LIABILITY OF MGC.

THE FOREGOING STATES THE ENTIRE LIABILITY OF MGC AS TO LIABILITY TO BUYER, AND THE EXCLUSIVE REMEDY OF BUYER, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR ANY OTHER INTELLECTUAL PROPERTY RIGHT BY OR IN CONNECTION WITH ANY PRODUCT.

INDEMNIFICATION BY BUYER.

Buyer shall defend, indemnify and hold MGC harmless against all liabilities, damages, costs, expenses and claims arising from or based upon (a) Buyer's modifications to any Product or resulting from MGC's manufacture and sale of such Products or other performance in compliance with specifications or designs or requests for labeling or branding provided by Buyer; (b) Buyer's failure to comply with all laws applicable to the performance of its business; and (c) a breach of any of the representations, warranties or covenants made by Buyer in these General Terms of Sale including the New Customer Questionnaire (as defined herein below).

INDEMNIFIED PARTIES.

For purposes, solely of this Section 8, the terms "MGC" and "Buyer" shall mean and include the respective members of the Board of Directors, or similar governing body, the officers, stockholders or other equity holders, and employees of and consultants to and agents of, the respective referenced party.

9. COMPLIANCE WITH LAWS; USE OF PRODUCT; VALIDATION.

Without limiting the generality of Section 7 hereof, captioned "LIMITED WARRANTY," unless otherwise expressly stated in writing by MGC, no claim or representation is made or intended (a) as to any clinical use of the Products (whether diagnostic, prognostic, therapeutic, blood banking or any other clinical use); (b) that the Products have been cleared, approved, registered or otherwise qualified (collectively, an "Approval") by MGC with any regulatory agency for use in any clinical procedure or for other use requiring compliance with any federal, state, provincial, international or any other



governmental agency or regulatory body regulating food, diagnostic, therapeutic, blood or other clinical products, medical devices or similar products (collectively, "Regulatory Laws"); (c) that the Products satisfy or shall satisfy the requirements of any governmental body or other organization including, but not limited to the United States Food and Drug Administration or the International Organization for Standardization; or (d) that the Products or their performance is suitable or has been validated for any specific use or application. The Products shall not be used for any purpose that would require Approval unless and until proper Approval is obtained, or in the case of use in diagnostic laboratory systems and then only to the extent permitted by law, and only if such laboratory has validated its complete system as required by the Clinical Laboratory Improvement Act of 1988, as amended, in the United States, or has validated itself under equivalent regulations in other countries.

If Buyer elects to use any of the Products for a purpose that would subject Buyer, its customers or such Products to Regulatory Laws or other applicable law, Buyer shall be solely responsible for any legal actions, legal claims or financial fines arising out its non-compliance of such laws, and for obtaining any required Approval or other approvals as may be required and otherwise ensuring that its use of such Products complies with such laws.

Prior to ordering any products from MGC, Buyer shall review and complete the New Customer Questionnaire online at www.medicinalgenomics.com/newcustomer. The New Customer Questionnaire and the information provided therein by Buyer shall be considered part of these General Terms of Sale and are incorporated herein by reference.

Unless otherwise expressly stated in writing, the Products have not been tested by or for MGC for any particular use or purpose, or for safety or efficacy. It is Buyer's responsibility, and not MGC's, to validate the performance of the Products for any specific use or application and to ensure that the Products meet applicable regulatory, certification, validation or its other requirements, since the use and performance characteristics of the Products have not been validated by MGC for any specific use or application, except as may be otherwise expressly set forth by MGC in writing by a duly authorized representative. The Products shall, in all cases, be used in strict accordance with applicable instructions, warnings and other information in user manuals and other Product documentation.

10. FORCE MAJEURE.

MGC shall not be liable for any delay or failure of performance, including without limitation, failure to deliver or failure to install any Product, where such delay or failure arises or results from any cause beyond MGC's reasonable control, including, but not limited to, flood, fire explosion, natural catastrophe, military operations blockade, sabotage, revolution, riot, civil commotion, war or civil war, acts of terrorism, plant breakdown, computer or other equipment failure, unusually severe weather earthquake or other act of God, power loss or reduction, strike, lock-out, boycott or other labor disputes of any kind (whether relating to its own employees or others), embargo, governmental regulations or any inability or delay in obtaining materials. In the event of any such delay or failure of performance, MGC shall have such additional time within which to perform its obligations hereunder as may be reasonably necessary under the circumstances; and MGC shall also have the right, to the extent necessary, in MGC's reasonable judgment, to apportion those Products then available for delivery, fairly among its various customers in a manner MGC considers equitable.

11. LIMITATION OF LIABILITY.

TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL MGC BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED



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12. SOLE TERMS; CONFLICT OF TERMS.

These General Terms of Sale, together with MGC's Quotation, any applicable label license or patent statement, any other written agreements or conditions of use provided by MGC for the relevant Products(s), and any other terms and conditions expressly agreed to in writing by an authorized representative of MGC (collectively, the "Final Terms of Sale"), (a) shall constitute the complete, exclusive and entire agreement between MGC and Buyer with respect to purchase(s) of the Products (unless other terms and conditions are expressly designated to be applicable by MGC in writing by a duly authorized MGC representative), and MGC's offer to sell the Products is expressly limited to such terms; and (b) shall control over and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, between Buyer and MGC with respect to such purchase(s); and (c) shall control over and supersede and replace, to the extent not accepted in writing by MGC as aforementioned, any additional or different terms and conditions contained in any statement in any purchase order by Buyer, which additional or different terms and conditions are hereby rejected and shall be void unless specifically so accepted in writing by MGC; and (d) except as otherwise provided in these General Terms of Sale, in the event of an inconsistency between these General Terms of Sale and the terms appearing on MGC's Quotation or other agreement signed by an authorized representative of MGC, the terms appearing on MGC's Quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these General Terms of Sale, and all other provisions of these General Terms of Sale shall remain in full force and effect.

Buyer's submission of a purchase order or other instrument for or regarding the purchase of the Products, whether or not in response to MGC's Quotation, shall be deemed acceptance of and agreement to the Final Terms of Sale to the exclusion of any other terms and conditions appearing in or referenced in such purchase order (except the name or identity of the Products purchased, quantity, delivery date, billing and shipping address and if, accurate, price) or other instrument, which are hereby deemed to be material alterations and written notice of objection to which is hereby given, notwithstanding anything contained to the contrary in Buyer's purchase order or other instrument or elsewhere.

Any acceptance by MGC of any offer of Buyer for the Products is expressly conditioned on Buyer's assent to and acceptance of the Final Terms of Sale, to the extent that such Final Terms of Sale, including these General Terms of Sale, are additional to or different from those of Buyer's offer or other documents.

Resale through brokers, exporters, or otherwise is prohibited. If Buyer breaches this resale prohibition, in addition to MGS's cancellation rights, Buyer agrees to fully indemnify MGC, its officers, employees and distributors from any and all liability related to such resale including attorney fees and costs.



13. NO IMPLIED RIGHTS; SOFTWARE LICENSE.

Except as expressly set forth herein, nothing in these General Terms of Sale shall be deemed or construed (a) as a license or grant by MGC of any intellectual property rights, whether express, implied, by estoppels or otherwise; (b) to limit MGC's rights to enforce its patent or other intellectual property rights, including, without limitation, as to use of any Products beyond uses granted under any patent or other intellectual property label license or statement applicable to the Products; (c) as granting Buyer any right to be supplied with any Products or component thereof beyond those ordered by Buyer and supplied by MGC in accordance with the Final Terms of Sale; or (d) as a license or grant of any right to Buyer to have manufactured any Products.

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GOVERNMENT END USERS.

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MGC warrants to Buyer that any media on which the Software is distributed are free from defects under normal use and service for a period of ninety (90) days from the date of delivery. MGC's entire liability and Buyer's exclusive remedy as to the media shall be, at MGC's option, either (a) return of any purchase price to Buyer or (b) replacement of the media that does not meet this Limited Warranty.

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