

Standard Terms and Conditions of Sale

1. APPLICATION

- 1.1 In these Terms and Conditions, "NDI" means Northern Digital Inc., "Customer" means the legal entity purchasing the Product(s) from NDI, "Product(s)" means the disposable reflective marker spheres, approved for use with BrainLAB systems (90 count and 270 count) or Sterilized NDI Passive Markers, or NDI Disposable Products, being purchased by Customer from NDI under a purchase order from Customer accepted by NDI, whether by facsimile transmission or other means. All Product(s) are furnished only on the terms and conditions stated herein. Customer has the non-assignable, non-exclusive right to resell the Product(s) purchased from NDI hereunder in a manner which accords with these Terms and Conditions and to markets consistent with Customer's business as has been expressly disclosed to NDI.
- 1.2 Customer's terms and conditions in any order documentation preprinted or otherwise, shall not apply.
- 1.3 These standard terms and conditions are deemed to be accepted by Customer at the earliest of (i) Customer issuing to NDI its written purchase order and (ii) delivery of the Product(s).
- 1.4 Customer acknowledges and agrees that this is a commercial and not a consumer transaction and that the employee or other person signing the purchase order has the authority to legally bind Customer to the transaction in accordance with these standard terms and conditions.

2. QUOTATIONS/OFFERS

- 2.1 NDI's quotations and prices are non-binding and constitute solicitations for offers to purchase only.
- 2.2 All prices are subject to change without notice unless set out in an unexpired written quotation from NDI addressed to Customer or in a binding contract between NDI and Customer.
- 2.3 A final and binding contract comes into force no sooner than upon receipt by Customer of NDI's final order confirmation.

3. PRICING

- 3.1 Prices set forth in NDI's quotations are EXW NDI's point of origin (INCOTERMS 2010), the point of origin to be at the discretion of NDI. Insurance, freight, taxes, duties, and other charges are not included and will be additionally charged to Customer, unless otherwise stated in NDI's order confirmation.

4. DATE OF DELIVERY/PARTIAL DELIVERY

- 4.1 The Product(s) shall be delivered on a date to be confirmed by NDI. Any specific date of delivery agreed to by NDI is only an estimate based on conditions at the time of the agreement. Notwithstanding the following provisions, NDI may postpone the specified date on notice to Customer.
- 4.2 Customer's order shall not be cancelled by Customer, nor shall Customer cause the shipment of the Product(s) to be delayed, except with the written consent of NDI.
- 4.3 NDI shall not be liable for delays in performance (including but not limited to shipment or delivery) due to Act of God, strike, regulatory difficulties, or due to unforeseen circumstances or any event beyond NDI's control. The same applies if the delay occurs at NDI's suppliers or their sub-suppliers. In these cases, NDI shall be entitled to postpone performance and delivery for the duration of the obstruction and an additional appropriate time to resume performance and/or to make partial shipment. In case of permanent obstructions, NDI shall have the right to cancel the contract in part or in whole.

5. TERMS OF PAYMENT

- 5.1 Payment will be made net 14 days from date of shipment.
- 5.2 Payment shall be made to NDI in the currency set out in NDI's quotation. After 14 days, accounts shall accrue interest at the rate of ten percent (10%) per year, calculated daily, or the maximum rate permitted by law, whichever is less.
- 5.3 Customer shall not have the right to offset any claims without the express written consent of NDI.

6. TRANSPORTATION AND RISK OF LOSS

- 6.1 NDI shall be entitled to insure the Product(s) at Customer's expense. Appropriate means of transportation to Customer's site will be chosen by NDI. Upon mutual agreement, Customer may arrange its own means of transportation, insurance, and payment of all taxes, duties, and fees.
- 6.2 Risk of loss, damage, or destruction of the Product(s) shall pass from NDI to Customer at NDI's point of origin. If delivery is delayed due to circumstances

caused by or within the responsibility of Customer, risk of loss, damage or destruction shall pass to Customer when NDI is in a position to deliver the Product(s).

7. WARRANTY

- 7.1 NDI warrants that the Product(s) are free from defects in material and workmanship under normal use and in substantial compliance with operational features of NDI's published specifications at the time of sale. The warranty period shall expire at the earlier of (i) first use of the Product(s) and (ii) ninety (90) days from shipment of the Product(s) to Customer. This warranty applies only to Customer (being that legal entity which contracted directly with NDI for the supply of the Product(s)) or that legal entity to which any Product was resold with the express written permission of NDI and NDI reserves the right to require evidence of such express permission. The obligations of NDI set forth in this warranty are conditional upon proper transportation, shipping, handling, storage, installation, use, maintenance, and compliance with any applicable recommendations of NDI and are further conditional upon Customer promptly notifying NDI of any defect and, if required, promptly making the Product(s) available to NDI for correction. Without limiting the foregoing, this warranty shall not apply to defects or damage resulting from: fire, misuse, abuse, accident, neglect, improper installation, exposure to ultra-violet light, lack of or improper care and/or maintenance, modification or repair not authorized by NDI, improper site preparation and maintenance, and any other cause beyond the control of NDI. NDI shall be given reasonable opportunity to investigate all claims and no Product(s) shall be returned to NDI without NDI first providing Customer with a return material authorization number and shipping instructions. All Product(s) returned to NDI shall be at the Customer's risk and expense and shall be properly packaged.
- 7.2 NDI's obligations under the foregoing warranty shall be limited to replacing the Product(s) EXW (Incoterms 2010) NDI's point of origin.
- 7.3 The foregoing warranty is the entire warranty of NDI. NDI neither assumes nor authorizes any person, purporting to act on its behalf, to modify or to change this warranty, or any other warranty or liability concerning the Product(s).
- 7.4 THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, USE OR APPLICATION.
- 7.5 Customer warrants that it has obtained and will maintain all regulatory clearances to market, sell or otherwise distribute Product(s) and will be responsible to monitor requirements for regulatory approvals, to obtain required approvals and clearances to market and sell the Product(s), and for compliance with all present and future statutes, laws, ordinances, and regulations relating to the labelling, advertising, promotion, sale or other distribution of the Product(s).

8. EXAMINATION AND NOTIFICATION OF DEFECTS

- 8.1 Customer shall examine the Product(s) and notify NDI within 14 days after Customer's receipt of the Product(s) of Customer's discovery of any defects in the Product(s) and its rejection thereof. Otherwise, Customer shall be deemed to have accepted the Product(s).

9. LIMITATIONS OF LIABILITY

- 9.1 The total liability of NDI (including its suppliers and subcontractors, if any) on any claim arising out of, connected with, or resulting from the manufacture, sale, delivery, resale, repair, replacement or use of any of the Product(s), or otherwise arising in any way out of this contract, shall not exceed the price paid by Customer to NDI for the Product(s) which give rise to the claim.
- 9.2 NDI shall not be liable for any loss of use, revenue or anticipated profits, loss of stored or transmitted data or for incidental, unforeseen, special, punitive or consequential damages arising out of or in connection with this agreement or the sale or use of NDI's Product(s).
- 9.3 In no event shall NDI's liability hereunder exceed the actual loss or damage sustained by Customer.
- 9.4 NDI makes no representation, warranty, or condition whatsoever that the Product(s) is/are fit for a specific purpose and Customer, by its acceptance of the Product(s), hereby warrants to NDI that the Product(s) is/are fit for the use and purpose for which Customer intends to use the Product(s).
- 9.5 In no event shall NDI be liable for any claims, losses, damages, judgments, costs, awards, expenses, or liabilities of any kind whatsoever arising directly or indirectly from any injury to person or property, arising from the Product(s) or any use thereof save and except where such a claim is found by a Court of competent jurisdiction to be directly attributable to the sole negligence of NDI.

- 9.6 The limitations and exclusions of liability contained in this Article 9, shall apply whether or not any such damages are construed as arising in contract or in tort.
- 9.7 NDI shall not be responsible for any damage and/or injury arising out the use of NDI Product(s) in conjunction with third party products unless this use has been expressly authorized in writing by NDI.
- 9.8 Customer shall indemnify and hold NDI harmless from any claims for property damage or bodily injury outside NDI's liability in accordance with this agreement.

10. RETENTION OF TITLE

- 10.1 NDI shall retain title to the Product(s) until payment of the purchase price is made in full. Until such time, Customer shall do no act to encumber NDI's title to the Product(s) or its access to the Product(s). In the event of default of payment by Customer when due, NDI may, in addition to its other rights, and without notice, enter on Customer's premises and retake possession of the Product(s). Until NDI has retaken repossession of the Product(s), the Product(s) shall remain at the risk of Customer.
- 10.2 If any third party takes any steps to levy execution upon or otherwise dispose of any Product(s), Customer shall immediately notify NDI. If Customer fails to do so, Customer will be held liable for any damages caused.

11. POST MARKET SURVEILLANCE AND VIGILANCE

- 11.1 In the event Customer resells or re-distributes the Products in any way, Customer agrees to undertake the following actions:
- (i) establish and maintain a complaints and vigilance system in accordance with the regulatory requirements of the markets in which the Customer resells or re-distributes the Products;
 - (ii) maintain and provide access to records of identification and traceability and make the same available to NDI when requested;
 - (iii) assist NDI in any Product recall, Product safety inspection, or Product update which NDI reasonably believes is necessary to protect the health and welfare of the public or the proper functioning of any of the Products, including advising the appropriate regulatory agencies affected by such action;
 - (iv) provide information regarding Products through communication with NDI Regional Managers, respond to surveys, and cooperate with post-market surveillance programs;
 - (v) forward received complaints and/or reportable incidents to NDI on a timely basis, by fax or email, but not later than three (3) business days, including a detailed description of the complaint or reportable incident and the environment in which the incident occurred.

12. EXPORT CONTROL

- 12.1 NDI shall not be liable for:
- (i) any delay in delivery; or
 - (ii) any inability to deliver;
- due to export restrictions. In this case, NDI may cancel the contract and shall not be liable for any damages arising out of or in connection with such cancellation.
- 12.2 Export regulations may apply to the resale or export of the Product(s). In addition, Product(s) may contain U.S. components including, but not limited to, software and technology, in which case, compliance with U.S. regulations may be required. Customer shall ensure compliance with all regulations application to the re-sale or export of the Product(s).

13. INTELLECTUAL PROPERTY

- 13.1 All rights to patents, trademarks, copyrights and any other intellectual property relating in any way to the Product(s) shall remain the property of NDI.

14. PROTECTION OF ENVIRONMENT

- 14.1 Upon end of use, Customer shall dispose of the Product(s) at its own cost in accordance with any applicable laws or regulations. NDI shall not be required to take back any Product(s) for disposal.

15. DISCOUNT SAFE HARBOR NOTIFICATION

- 15.1 The prices on the invoice may reflect discounts. To the extent required by 42 C.F.R. § 1001.952(h) (the Anti-Kickback Statute discount safe harbor regulations) or other applicable laws and regulations, Buyer must fully and accurately reflect in cost reports or other submissions to federal healthcare programs all such discounts and, upon request by the Secretary of the U.S. Department of Health and Human Services or a state agency, must make available information provided to Buyer by NDI concerning the discounts.

16. APPLICABLE LAW/PARTIAL INVALIDITY

- 16.1 These terms and conditions as well as all contractual and other legal relationships between the parties relating to the Product(s) shall be governed by, subject to, and construed in accordance with the laws of the Province of Ontario and Canada, as applicable, and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Ontario and Canada, as applicable.
- 16.2 Nothing in this agreement shall prevent NDI from seeking injunctive relief or other legal remedy to prevent unauthorized copying, disclosure, use, retention, or distribution of NDI's intellectual property.
- 16.3 If any part of the terms and conditions is held void or unenforceable, such part will be treated as separable, leaving valid the remainder of these terms and conditions. The invalid clause will be replaced by the valid clause that generally comes closest to the commercial intention of the invalid clause.
- 16.4 It is expressly agreed by the parties that the United Nations' Convention on the International Sale of Goods (CISG) does not apply to this agreement.

17. Notice

- 17.1 Any notice or other communication required or permitted to be given under this agreement may be sent by facsimile or e-mail transmission and shall be deemed to have been received one hour after it was sent or at the start of business on the first business day thereafter.

18. GOVERNING LANGUAGE

- 18.1 NDI and the Customer agree that in the event of any conflict or inconsistency between the English version of these Terms and Conditions and any translation hereof, the English version shall be the governing version.