



RareCyte, Inc. Terms and Conditions of Sale

RARECYTE

EQUIPMENT AND COMPONENTS SALE

TERMS AND CONDITIONS

These Terms and Conditions set forth the terms under which RareCyte will sell to the purchaser ("Purchaser") identified in the Purchase Order submitted by Purchaser to RareCyte, and Purchaser will purchase and use, the equipment, products, reagents, parts and/or components of RareCyte identified in the Purchase Order ("Purchased Products"). In the event of a conflict or inconsistency between these Terms and Conditions and such Purchase Order, these Terms and Conditions will control and supersede to the extent of any conflict.

1. SCOPE OF SUPPLY

RareCyte will sell to Purchaser the particular Purchased Product(s) described in the Purchase Order, in accordance with RareCyte's existing specifications for the applicable Purchased Product (the "Specifications"), and subject to these Terms and Conditions. Any terms in such Purchase Order that are contrary to any terms in these Terms and Conditions are not binding on RareCyte, and these Terms and Conditions control the purchase and use of the Purchased Product(s) by Purchaser. A Purchase Order is not considered accepted by RareCyte until the Purchased Products are shipped or until RareCyte sends an acknowledgement. Purchaser may not cancel a Purchase Order once accepted by RareCyte without RareCyte's prior written consent. If Purchaser cancels a Purchase Order with RareCyte's written consent, Purchaser is responsible for any and all costs and expenses incurred by RareCyte in connection with the cancelled Purchase Order, including materials costs. RareCyte will use its good faith efforts to mitigate the cancellation costs.

2. DELIVERY

2.1. Delivery Terms. Delivery of the Purchased Products shall be FOB (INCOTERMS 2010) RareCyte's facility, labeled for shipping to Purchaser's premises (as set forth on the Purchase Order). Purchaser shall specify the shipping route and shall pay the actual costs of shipping and insurance. RareCyte will package and arrange to ship (according to Purchaser's specified shipping instructions) the Purchased Products to Purchaser in a manner that generally conforms to RareCyte's commercial practice and is acceptable to common carriers for shipment. RareCyte shall provide Purchaser with all necessary documentation related to transportation, logistics, tax and duties purposes, including bills of lading, as well as information and documentation relating to the Purchased Product (instructions, manuals), as may be specified in the Purchase Order.

2.2. Delivery Time. RareCyte will use reasonable efforts to deliver the Purchased Product(s) at such delivery time specified in the Purchase Order (such time as discussed and agreed by the Parties). If RareCyte expects it will not be able to conclude the delivery by the agreed time, RareCyte will notify Purchaser, and will provide its best estimate of the expected new delivery date. If the expected late delivery of the Purchased Product(s) is more than 20 days after the agreed date of delivery, then Purchaser will have the right to terminate the applicable Purchase Order.

3. INSPECTION AND CONSEQUENCES OF REJECTION

Purchaser, or its designated inspection agent, shall carefully inspect all Purchased Products promptly upon delivery of the Purchased Product. No claim for shortage or damage will be valid or enforceable against RareCyte unless Purchaser gives RareCyte written notice specifying in detail the nonconformity or defect within seven business days from the date that Purchaser receives the Purchased Products. Purchaser shall supply such reasonable documentation of any loss as RareCyte may reasonably request. If any Purchased Products fail to meet the Specifications or is damaged and provided that the non-conformity was not caused by Purchaser or due to misuse or handling after RareCyte delivered the Purchased Product to Purchaser, RareCyte will promptly either (i) replace/remedy such rejected Purchased Product(s), or (ii) credit Purchaser's account for such properly rejected Purchased Product returned by Purchaser to RareCyte.

4. PRICING AND PAYMENT

4.1. All prices stated in the Purchase Order (each, a "Price") are inclusive of all packaging materials. All freight charges, including insurance, loading, unloading, and transportation shall be separately stated in the Purchase Order, as specified by RareCyte.

4.2. RareCyte will invoice Purchaser with each shipment. Unless otherwise stated in the Purchase Order, payment will be made in full by Purchaser at net thirty (30) days from the date Purchaser receives RareCyte's invoice. All past due sums will bear interest at the rate of 1.5% per month until paid in full. In addition, Purchaser will reimburse RareCyte for all expenses, costs, and attorney's fees incurred or expended by RareCyte in collecting any past due sums, whether or not suit is commenced.

4.3. Any and all taxes (federal, state, local, sales, use and excise), excises, assessments, levies, imports, duties, costs, charges and penalties that may be assessed, levied, demanded or imposed by any governmental authority in connection with the Purchased Products will be paid by Purchaser.

4.4. Any failure to make full payment when and as payment is due shall be considered to be a material breach of these Terms and Conditions, and without limiting any other rights or remedies to which RareCyte may be legally entitled, shall entitle RareCyte to avail itself of any or all of the following: (i) to withhold further delivery of the Purchased Products; (ii) to pick up or repossess from Purchaser any Purchased Products for which Purchaser has not fully paid RareCyte; (iii) to terminate this Agreement for material breach; (iv) to put Purchaser on C.O.D. payment terms for all future orders; (v) to demand written assurances from Purchaser of Purchaser's solvency and ability to meet its financial obligations

as they become due; or (vi) to offset any amounts that Purchaser owes RareCyte against any amounts RareCyte may owe to Purchaser for any reason.

5. REPRESENTATIONS AND WARRANTIES

5.1. Subject to Paragraph 5.4, RareCyte represents and warrants to Purchaser that the Purchased Product(s) furnished by RareCyte to Purchaser under these Terms and Conditions, and their production: (a) will conform to the Specifications applicable to the Purchased Product as of the date of manufacture; (b) will be free from any liens or encumbrances; and (c) will be free from material defects in material and workmanship under normal use and operation for a period of twelve (12) months from the date the Purchased Product is delivered by RareCyte in accordance with Section 2.1.

5.2. Subject to Paragraph 5.4, RareCyte will, at RareCyte's expense, either repair or replace the Purchased Product(s) that do not comply with the warranty set forth in Section 5.1, or, or if repair or replacement is no commercially practical as determined by RareCyte, refund the purchase price paid for the applicable Purchased Product, and such repair, replacement or refund will be Purchaser's exclusive remedy for the breach of the above warranty. Any Purchased Product repaired or replaced is provided with a full new Purchased Product warranty (under Section 5.1) for such product as of the date it is delivered. The decision to repair, replace or refund a Purchased Product shall be RareCyte's.

5.3. EXCEPT FOR THE EXPRESS WARRANTY IN SECTION 5.1, RARECYTE GIVES NO, AND HEREBY DISCLAIMS ANY AND ALL, OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

5.4 Purchaser further acknowledges that RareCyte has created the developer's kit, including the base staining kit, using best practices and extensive testing and development. For a Purchaser using or purchasing the developer's kit, Purchaser acknowledges that Purchaser can incorporate or include antibodies, reagents, or the like of their choice in a developer kit. Purchaser assumes all responsibility and liability for the performance and results of a developer kit when using or incorporating any antibodies, reagents, or the like, such as in an open channel or included in any manner, that is not provided to Purchaser by RareCyte or sold to Purchaser by RareCyte.

6. USE OF RARECYTE TECHNOLOGY

6.1. Purchaser recognizes and acknowledges the exclusive right of RareCyte in and to RareCyte's intellectual property in the Purchased Products and Confidential Information, including all of RareCyte's trademarks and service marks.

6.2. RareCyte Software included in or with the Purchased Products, if any, is licensed and not sold. RareCyte hereby grants Purchaser a non-exclusive, non-transferrable, license to use the RareCyte

Software (as defined below) solely in connection with and to the extent necessary for the use of the Purchased Products as permitted in this Agreement, subject to and in accordance with the limitations in Section 10 of these Terms and Conditions. "RareCyte Software" means any and all applications, help files, libraries, source code, firmware, executables, applets, scripts, forms, user manuals and documentation, technical manuals, systems manuals, and all other products included in or with any of the software licensed with the Purchased Products. None of RareCyte's' source code is included and is expressly excluded from the licenses granted in these Terms and Conditions.

6.3. Nothing herein grants to Purchaser any rights to reverse engineer, decompile, or do anything other than as specifically permitted herein for the RareCyte Software, subject to any rights of reverse engineering or decompilation or other acts which cannot be excluded by applicable laws; provided however that the limitations and terms and conditions set forth herein shall be enforced as broadly as possible. RareCyte reserves all of its rights in law and equity to each element of the RareCyte Software, including without limitation all associated intellectual property and Confidential Information in and related to the RareCyte Software. RareCyte shall have no obligations to provide any support, maintenance or any other services with respect to any RareCyte Software.

6.4. All right, title and interest in and to any discovery or invention conceived or reduced to practice by Purchaser through use of the Purchased Products (including use of RareCyte Technology in accordance with these Terms and Conditions for full use and operation of the Purchased Products) shall belong to Purchaser; *except as* provided in the following sentence. Any and all improvements, modifications, enhancement or derivatives to Purchased Products or RareCyte know-how and other information, technology and intellectual property (including methods) shall belong to and be owned by RareCyte, and Purchaser hereby assigns and agrees to assign to RareCyte Purchaser's entire rights, title and interest in and to all such RareCyte improvements made, identified or created by or on behalf of Purchaser.

7. LIABILITY AND LIMITATION OF LIABILITY

NEITHER PARTY WILL BE LIABLE TO THE OTHER, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, BY REASON OF ANY BREACH OR DEFAULT UNDER THESE TERMS AND CONDITIONS. IN ADDITION, IN NO EVENT SHALL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO ANY PURCHASE ORDER EXCEED THE TOTAL AMOUNTS PAID BY PURCHASER HEREUNDER. THE FOREGOING LIMITATIONS IN THIS SECTION 7 SHALL NOT APPLY TO EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EITHER PARTY'S BREACH OF SECTION 8 (CONFIDENTIALITY), EITHER PARTY'S OBLIGATIONS PURSUANT TO SECTION 9 (INDEMNIFICATION), OR PURCHASER'S BREACH OF ITS OBLIGATIONS UNDER SECTION 6 OR SECTION 10.

8. CONFIDENTIALITY

The Parties agree that the terms of any Purchase Order and these Terms and Conditions, the relationship of the Parties, the Specifications, the RareCyte Software, and any information disclosed by RareCyte (the “Disclosing Party”) to Purchaser (the “Receiving Party”) that the Receiving Party knew or should have reasonably known was the confidential or proprietary information of the Disclosing Party, shall be deemed the “Confidential Information” of the Disclosing Party. The Receiving Party will not disclose or use the Confidential Information of the Disclosing Party except to perform its obligations hereunder, and will use at least reasonable measures to protect the security and confidentiality of such information from any unauthorized use, access and disclosure. For clarity, the foregoing confidentiality obligations and limitations on use shall not apply to any particular information that: (a) is known to the Receiving Party prior to receipt from the Disclosing Party, or (b) is, or becomes without breach of this Agreement, publicly known or publicly available. In addition, a Receiving Party may disclose particular Confidential Information of the other Party, to the extent such disclosure is required by law or court order, provided that the Receiving Party gives the other Party reasonable prior written notice of such disclosure obligation and a reasonable opportunity to contest such disclosure. Each Party’s confidentiality obligations and obligations to restrict use of the other Party’s Confidential Information under this Section 8 shall commence as of the effective date of the initial Purchase Order and terminate when Receiving Party no longer has any Confidential Information of Disclosing Party in its possession. Further, notwithstanding the foregoing, RareCyte shall have the right to disclose that Purchaser is a customer of RareCyte products.

9. INDEMNIFICATION

Purchaser will defend, indemnify and hold harmless RareCyte and its officers and directors, from and against any losses, liabilities, costs or expenses (including reasonable attorneys’ fees) arising directly from any actions, claims or suits by a third party (a “Claim”) against RareCyte to the extent based on Purchaser’s use of the Purchased Product, *provided that* (a) RareCyte gives Purchaser prompt notice of the Claim, and Purchaser has full rights to control the defense and settlement of the Claim; and (b) Purchaser will have no indemnification obligation hereunder to the extent that RareCyte has an indemnification obligation for such Claim under the foregoing paragraph.

10. LIMITATIONS ON USE

Purchaser acknowledges that the Purchased Product(s) sold to Purchaser are the proprietary products of RareCyte’s technology, and Purchaser agrees that its use of such Purchased Product(s) is subject to the following limitations: (a) the Purchased Products purchased by Purchaser shall be used solely for Purchaser’s own internal research and development activities, and shall not be used to perform services for third parties; (b) the Purchased Products shall not be used for any use other than **research use only**, and shall not be used to conduct any diagnostic testing in a human clinical setting or for any clinical investigational use outside of an IRB approved protocol; (c) Purchaser shall

not sell or transfer the Purchased Products to any third party (other than to Purchaser's successor in interest in connection with an assignment by Purchaser as permitted under Section 12) without RareCyte's prior written consent, not to be unreasonably withheld; and (d) Purchaser shall not conduct, or engage any other party to conduct, any analysis of any of the Purchased Product in order to determine the structure, composition, components or functioning of any of the Purchased Products.

11. ARBITRATION & JURISDICTION

All claims and disputes arising under any Purchase Order or relating to these Terms and Conditions will to be settled by binding arbitration in the State of Washington. The arbitration will be governed by the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), as modified by this section. The right to a hearing will be determined by the AAA rules, and the hearing (if any) must take place in Seattle, Washington (King County). Any such arbitration shall be conducted by an arbitrator experienced in the test and measurement industry and shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. The arbitrator's ruling is binding and may be entered as a judgment in any court of competent jurisdiction. In the event this agreement to arbitrate is held unenforceable by a court, then the disputes that would have otherwise been arbitrated shall be exclusively brought in the state and federal courts located in Seattle, Washington. The laws of the state of Washington, excluding its conflicts of law principles that would result in the application of other laws, govern these Terms and Conditions and all Purchase Orders issued hereunder. The United Nations Convention on Contracts for International Sale of Goods will not apply to Purchased Products sold under these Terms and Conditions. The prevailing party in a dispute shall be entitled to recover its reasonable attorneys' fees, costs and disbursements in addition to any other relief to which it may be entitled. Notwithstanding the foregoing, RareCyte at its option may also seek to enforce these Terms and Conditions in any court having jurisdiction over Purchaser for any restraining order, injunctive or other equitable or mandatory relief necessary to protect RareCyte's intellectual property or Confidential Information during the pendency of any proceedings.

12. GENERAL

These Terms and Conditions, along with all attached Purchase Orders, constitute the entire agreement between Purchaser and RareCyte relating to the subject matter herein, and supersede all prior or contemporaneous oral or written communications, including all sourcing/supply agreements, relating to the Purchaser's purchase and use of Purchased Products. All pre-printed or inconsistent terms on any Purchaser purchase order, order form, or other business processing document shall have no effect. If any provision of these Terms and Conditions is held to be invalid or unenforceable, the remaining provisions of these Terms and Conditions will remain in full force and effect, and a court of competent jurisdiction shall construe such unenforceable provision so as to be enforceable and consistent with the intent of the parties. Purchaser agrees to comply with all applicable export laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export. Neither



Party may assign these Terms and Conditions or any part thereof, by operation of law or otherwise, without the prior written consent of the other Party, and any attempted assignment in violation of the foregoing will be null and void, *except that* a Party may assign these Terms and Conditions to its successor in interest in connection with the merger, acquisition or sale of all or substantially all of the assets of such Party. All notices, consents and approvals under these Terms and Conditions must be delivered in writing by courier, or by email, which shall be sent to the other party's primary contact set forth in the Purchase Order.

13. INFORMATION

RareCyte may use your information, as a customer, for RareCyte-related marketing, sales, or other purposes. If you would like to opt-out, please email info@rarecyte.com.