

System Biosciences (SBI)

Sales Terms & Conditions

General

The following terms and conditions of sale (the "Terms and Conditions") apply to all quotations made and purchase orders accepted by System Biosciences ("SBI"). Unqualified acceptance of these Terms and Conditions by the buyer indicated on the face of this form (the "Buyer") may be made by either: (1) written acceptance, (2) placement of a purchase order with SBI that refers to a valid SBI quotation, or (3) receipt by Buyer of delivery of any of the SBI products or services described on the face of this form (the "Products" or "Services"). These Terms and Conditions, any additional Product specific terms and conditions accompanying a written quotation, and any literature accompanying the Products are collectively referred to as the "Agreement." Any terms or conditions in any purchase order or other document provided by the Buyer that are in addition to or inconsistent with any terms of the Agreement are expressly rejected by SBI and shall not be binding on SBI.

Entire Agreement

The Agreement constitutes the entire agreement between SBI and the Buyer pertaining to the sale of the Products or Services by SBI to the Buyer, and supersedes all previous communications, representations and agreements, whether oral or written, between the Buyer and SBI with respect to the sale of the Products or Services. This Agreement may not be modified, supplemented, qualified, or interpreted except in a writing signed by Buyer and SBI.

Prices, Taxes, Payment

Any written price quotation for the Products or Services, accompanying this or any other form, shall become void unless accepted by Buyer within thirty (30) days after its sending by SBI, or if earlier revoked by SBI. All prices quoted, all orders accepted, and all billings rendered are exclusive of all federal, state and local withholding, excise, sales, use and similar taxes, fees, or charges imposed by any governmental authority on this transaction. Buyer will reimburse SBI for any such tax, fee or charge, at the time of sale or thereafter, that SBI is required to pay. Terms of payment are net thirty days from the date of invoice. In the event that payment is not received within such thirty-day period, any unpaid balance shall bear interest at the rate of 1 and 1/2% per month, or the maximum amount allowed by law, if lower. Any credit terms extended to Buyer may be changed or withdrawn completely by SBI at any time. On any order for which credit is not extended by SBI, shipment or delivery shall require, at SBI's election, credit card payment with order (in whole or in part), or C.O.D. or sight draft attached to the bill of lading or other shipping documents, and all costs of collection shall be paid by Buyer. If any proceeding is brought by or against Buyer under bankruptcy or insolvency laws, SBI shall be entitled to cancel any order by Buyer then outstanding, and entitled to full payment of any outstanding SBI invoices.

Cancellation

Cancellations of purchase orders by Buyer (prior to shipment of the Products or Services ordered) will be subject to SBI's standard cancellation fees of 15% of the purchase order. Once shipment of Products or Services has been made by SBI, cancellation of purchase orders will not be permitted.

Title; Delivery; Acceptance

All sales are made F.O.B. SBI's location in Palo Alto, CA, USA to an agent of the Buyer, including a common carrier, notwithstanding any prepayment of freight by SBI. Buyer will be responsible for shipping charges, and will reimburse SBI for all shipping costs SBI incurs. Risk of loss shall pass to Buyer at the time the Products are delivered to such common carrier, and Buyer shall provide whatever insurance against loss or damage it considers necessary once the goods leave SBI's premises in Palo Alto, CA, USA. In the event of any default by Buyer, SBI may decline to make further shipments until such default is remedied, without in any way affecting its rights under this Agreement. SBI will not be liable for delay or non-delivery of SBI products or services when caused by any cause beyond the reasonable control of SBI, including (without limitation) acts of God, fire, flood, tornado, earthquake, hurricane, lightning, government actions, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by SBI's suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or Buyer's fault or negligence. Products or Services delivered will be deemed accepted by the Buyer unless written notice of defect or shortage is received by SBI within thirty (30) days after Buyer's receipt of such shipment.

Reagent Use License

Subject to the Agreement, Buyer shall have, in connection with the purchase of SBI reagent Products and Services, a one-time, royalty-free use license solely for in-house research uses. For additional rights transferred by purchase of the Products or Services, please see specific literature accompanying the Products or Services. Except as expressly set forth in the Agreement, no right or license to any intellectual property owned or licensable by SBI is conveyed or implied by the Agreement. Buyer shall not transfer, resell, or distribute Products or Services to any third party.

Assignment

Buyer shall not assign its purchase order or any interest therein or any rights or obligations under this Agreement without the prior written consent of SBI. Any attempted assignment or delegation shall be null and void.

Technical Data

Buyer shall not, without SBI's prior written consent, use, duplicate, or disclose any technical data or any information directly concerning the Products or Services that is disclosed by SBI to Buyer, for any purposes other than for the use, operation or maintenance of Products or Services purchased hereunder.

Governing Law and Venue; Non-Waiver

This Agreement and performance by the parties hereunder shall be construed in accordance with the laws of the State of California, U.S.A., without regard to provisions on the conflicts of laws, and shall not be governed by the United Nations Convention on Agreements for the International Sale of Goods. Buyer and SBI consent to the exclusive jurisdiction of, and venue in, the state and federal courts of Santa Clara County, California, U.S.A. The failure by SBI to enforce at any time any of the provisions in this Agreement will in no way be construed as a waiver of such or any other provision.

Indemnity

Buyer shall comply with all applicable federal, state or local laws, rules, regulations or ordinances ("Laws") in performing under this Agreement and in storing and using the Products or Services. Buyer will indemnify, defend and hold SBI harmless from any and all expenses, damages, costs or

losses resulting from any third party suit, claim or proceeding brought against SBI, either severally or jointly with Buyer, to the extent that such suit or proceeding arises from Buyer's (a) non-compliance with Laws or (b) infringement of any intellectual property right by the use or combination of Product or Service with another component or product (but not by the use of any Product or Service alone).

Warranty

The Products sold hereunder shall conform at the time of shipment to the terms of SBI's standard warranty for such Products, as stated in the package insert accompanying the Products. Buyer's sole and exclusive remedy, and SBI's sole and exclusive obligation, under this warranty shall be, at SBI's option, **either replacement or product credit of the purchase price of any non-conforming Products or Services**. Customer must request product credit in writing within 60 days of receipt of Products or Services. EXCEPT AS SET FORTH IN THIS SECTION, THE PRODUCTS ARE PROVIDED "AS IS," AND SBI DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SBI PRODUCTS SOLD HEREUNDER, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. Nothing herein shall be construed as providing or intending to provide SBI's warranty to Buyer set forth above to any customer(s) of Buyer. **Under no circumstances are cash refunds offered by SBI to Buyer.**

Limitation of Liability

SBI SHALL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, NOR FOR ANY LOSS OF BUSINESS, LOSS OF USE OR OF DATA, INTERRUPTION OF BUSINESS, LOST PROFITS OR GOODWILL, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THIS AGREEMENT, EVEN IF SBI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THIS EXCLUSION APPLIES TO ANY LIABILITY THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS AGAINST BUYER. SBI'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PRICE PAID BY BUYER FOR SUCH PRODUCT OR SERVICE.