

TERMS AND CONDITIONS OF SALE

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- 1. GENERAL.** Hamilton Laboratory Solutions LLC ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any document issued by Buyer are expressly rejected and if the terms and conditions in this Agreement differ from the terms of Buyer's offer, this document shall be construed as a counter offer and shall not be effective as an acceptance of Buyer's document. Buyer's receipt of Products or Seller's commencement of the services provided hereunder will constitute Buyer's acceptance of this Agreement. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.
- 2. PRICE.** All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice unless otherwise set forth in writing by Seller. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment. All prices are subject to adjustment on account of changes in specifications, quantities or shipment arrangements, increases in the cost of raw materials or cost of production, or other terms or conditions which are not part of Seller's original price quotation.
- 3. TAXES AND OTHER CHARGES.** Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby, all of which taxes and duties must be paid by Buyer. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.
- 4. TERMS OF PAYMENT.** Seller may invoice Buyer upon shipment for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. If Buyer fails to pay any amounts when due, Buyer shall pay Seller an administrative fee of one and one-half percent (1.5%) per month to cover Seller's internal costs associated with efforts to collect amounts due, together with all other costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. In the event that Buyer's past due balance exceeds One Hundred Thousand Dollars (\$100,000), Seller shall be entitled to require payment in advance or a joint check arrangement. All payments shall be made in U.S. Dollars.
- 5. DELIVERY; CANCELLATION OR CHANGES BY BUYER.** The Products will be shipped to the destination specified by Buyer, F.O.B. Seller's shipping point. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable

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control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Buyer acknowledges and agrees that products supplied by Seller are custom fabricated products and are not stocked items. Orders placed by Buyer with Seller may not be canceled prior to fabrication except upon Seller's written consent, and subject to Buyer's acceptance of Seller's cancellation and/or restocking charges that shall protect Seller against applicable costs and losses. Buyer may not cancel an order once Seller has begun the fabrication process. Seller reserves the right to cancel any sale hereunder without liability to Buyer (except for refund of monies already paid) if the manufacture or sale of the products is or becomes technically or economically impractical. No product may be returned except under warranty and with the prior written approval of Seller as evidenced by a Return Materials Authorization (RMA).

6. **TITLE AND RISK OF LOSS.** Notwithstanding the trade terms indicated above and subject to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.
7. **WARRANTY.** Seller warrants to its direct purchaser that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the product documentation, published specifications or package inserts. If a period of time is not specified in Seller's product documentation, published specifications or package inserts, the warranty period shall be one (1) year from the date of shipment to Buyer (the "Warranty Period"). Notwithstanding the foregoing, all Products are subject to tolerances and variations consistent with industry standards and customary manufacturing practices. If Seller determines, in its reasonable discretion, after an inspection of an allegedly defective Product (if such an inspection is requested by Seller), that a Product fails to meet industry standard tolerances or is otherwise defective, then Seller agrees during the Warranty Period, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that Buyer shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with service data and/or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions, then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions of the Seller's Terms and Conditions of Sale. No repair or replacement will extend the original warranty period. Consumables are expressly excluded this warranty.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller, but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) abuse, neglect, misuse, fault or negligence of or by Buyer, (iv) use of the Products in a

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manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products, (vii) use of the Products in combination with equipment or software not supplied by Seller, (viii) ordinary maintenance, (ix) alterations, repairs or installations that have not been performed by Seller or its authorized representative or (x) failure to maintain Products in accordance with Seller's written instructions.. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER OR ITS AUTHORIZED REPRESENTATIVE WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

No dealer or distributor of Seller's Products is authorized to bind Seller to any representation or warranty other than as set forth above.

8. INDEMNIFICATION.

8.1 By Seller. Seller agrees to indemnify, defend and save Buyer, its officers, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) ("Indemnified Items") for (i) injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of services at Buyer's premises under this Agreement and (ii) claims that a Product infringes any valid United States patent, copyright or trade secret; provided, however, Seller shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (iv) compliance with Buyer's designs, specifications or instructions, (v) use of the Product in an application or environment for which it was not designed or (vi) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer shall provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replaces or modifies the

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Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical, refunds to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN.

8.2 **By Buyer.** Buyer shall indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Seller without Seller's prior written approval.

9. **SOFTWARE.** With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Buyer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Accordingly, Seller and Buyer agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

10. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 7 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THERETOFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY OR (B) TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL

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DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

11. **EXPORT RESTRICTIONS.** Buyer acknowledges that each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, agents, or customers.
12. **PRODUCTION AND SHIPPING DATES.** Due to rapid changes in production levels and customer requirements, Seller cannot commence fabrication nor commit to an estimated schedule until it has received an acceptable Purchase Order or Contract, approved drawings (as may be applicable), color selection, clarifications to issues identified and verified/guaranteed dimensions. Seller will schedule fabrication of materials based on available production capacity at the time of receipt of all necessary information. The completion of the order is subject to acts of God or public enemy, fires, severe weather, strikes and labor shortages, delays caused by governments (including government priority, preference or allocation), delays of suppliers in furnishing materials or services, and any causes beyond Seller's control. In such event, Seller will reschedule the order into the next available production cycle. Buyer will reimburse Seller for all costs incurred by Seller due to any delay caused by Buyer (which may include processing fees for rescheduling, storage charges or escalation fees in the event that a shipment is to be delivered in a calendar year other than the year in which the Products were originally scheduled for delivery), Buyer's agents, Buyer's customers or any other entity working in conjunction with Buyer upon presentation of reasonable supporting documentation. Once established, shipping dates are estimates and are not guaranteed. Seller will use commercially reasonable efforts to make shipments as scheduled and reserves the right to make partial shipments.
13. **INSPECTION.** For any Products that are not installed by Seller, Buyer must inventory and inspect such Products within five (5) calendar days of receipt. If any damage is discovered, Buyer is responsible for filing any and all claim(s) with the carrier unless Seller in writing otherwise agrees to do so. Buyer shall not file warranty claims for damages incurred in shipping and handling.
14. **MANUFACTURE.** Seller reserves the right to discontinue the manufacture of, or to change or modify the design or construction of the Products sold, without incurring any obligation to Buyer.
15. **DRAWINGS AND ILLUSTRATIONS.** Unless otherwise agreed to in writing by Seller, any drawings, illustrations, photographs, descriptions, specifications, and particulars of weights and dimensions provided are only to show the general style, arrangement, and approximate dimensions of the Products offered. No work is to be based on drawings unless the drawings are certified and agreed to by an authorized representative of Seller. In no event will Seller supply manufacturing or proprietary drawings.
16. **POLLUTION.** Buyer agrees to indemnify, defend, and hold Seller harmless against any loss,

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damage, expense, claim and any other cost or liability (including, but not limited to, fines and penalties to the extent permitted by law, clean-up or other remedial or containment costs, or legal, technical or other professional fees) arising as a result of any pollution, contamination, or other loss or damage to the environment or natural resources attributable to Buyer which arise in connection with any goods or services provided by Seller, regardless of cause, including without limitation Seller's negligence, strict liability, or other act or omission.

17. **SOLVENCY.** Buyer's order represents that Buyer is solvent and able to pay for Products ordered. If Buyer fails to make payment when due or makes an assignment for the benefit of creditors or if bankruptcy or insolvency proceedings are instituted by or against Buyer, Buyer will be deemed to be in default, and Seller will have the right to terminate its obligations by written notice to Buyer, but such termination will not affect Buyer's obligation to pay for Products delivered and works in progress. Buyer shall reimburse Seller for all administrative and legal costs incurred by Seller to enforce any portion of an order, including costs associated with the collection of any unpaid amounts.
18. **PROVISIONS FOR INTERNATIONAL TRANSACTIONS.** The following provisions apply to sales to customers located outside the United States: (a) except as otherwise agreed upon by Seller in writing, Buyer will pay all customs fees, import duties, cargo insurance, taxes and other charges imposed on or relating to the purchase or sale of the Products in addition to the stated price; (b) except as otherwise agreed upon by Seller in writing, payment shall be made by issuance to Seller of an irrevocable letter of credit which (i) is issued and confirmed by a U.S. bank acceptable to Seller (ii) is governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 500 effective January 1, 1994) and otherwise acceptable in form and substance to Seller, and (iii) provides for payment to Seller of the full amount of the purchase price plus pre-paid freight in U.S. dollars upon presentation by Seller of sight drafts, Seller's invoice and such other documents as shall be required by the letter of credit. All banking and other charges for such letter of credit will be for the account of Buyer; (c) unless otherwise agreed upon by Seller in writing, prices are based on packing for domestic shipment, regardless of ultimate destination. Buyer will bear any additional expenses required to satisfy Buyer's specifications. Packages will be marked in accordance with Buyer's reasonable instructions, if any. Seller will furnish packing list and such other information as may be necessary to enable Buyer's agent to prepare documents required for export shipment. Buyer shall supply Seller with all necessary information and assistance for the most expeditious clearance of such shipment through customs.
19. **MISCELLANEOUS.** (a) Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void. (b) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Seller's manufacturing location, without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in the county and state of Seller's manufacturing location, in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise. (c) In the event of any legal proceeding between the Seller and Buyer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. Any action arising under this Agreement must be brought within one (1) year from the date that the cause of action arose. (d) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (e) In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain. (f) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. (g) Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary

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information of Seller. Buyer agrees that all drawings, prints and other technical material that Seller provides to Buyer, whether prepared by Seller or by third parties under contract to Seller, may contain data that embody trade secrets and confidential know-how of commercial value to Seller or third parties under contract to Seller. Buyer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public. (h) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other.