



Standard Terms and Conditions of Sale From LI-COR Biosciences, Lincoln, Nebraska, USA

1. **General.** LI-COR Inc. ("LI-COR") is delivering these goods and products ("Products") subject to these Terms and Conditions of Sale ("Conditions"). Buyer will be deemed to have assented to these Conditions upon Buyer's placement of order. Notwithstanding the above, failure of LI-COR to object to provisions contained in any purchase order or other form or document from Buyer shall not be construed as a waiver of these Conditions nor an acceptance of any such provision.

2. **Buyer's Use Only/No Resale.** The purchase of Products only conveys to Buyer the non-transferable right for only Buyer to use the quantity of Products and components of Products purchased in compliance with the applicable intended use statement, limited use statement or limited label license, if any, in LI-COR catalogues or on the label or other documentation accompanying the Products (all such statements or licenses being incorporated herein by reference as if set forth herein in their entirety). Buyer has no right to resell the Products, or any portion of them, and any such resale is strictly prohibited unless LI-COR first accepts and approves a purchase order and acknowledges in writing that the Products may be resold by Buyer and the terms of such resales.

3. **Prices/Taxes.** All prices are quoted for delivery to Buyer when goods are loaded on the carrier at LI-COR premises in Lincoln, Nebraska, USA. Accordingly, unless otherwise specified by LI-COR, prices are exclusive of shipping, insurance and installation charges, all of which are Buyer's sole responsibility. All prices are exclusive of all sales, use, excise, value added, withholding and other taxes, and all customs, duties, documentation charges, and freights forwarder charges now or hereafter claimed or imposed by any governmental authority upon the sale of the Products. Any such charges will be added to the product invoice or subsequently invoiced to the Buyer. In the event LI-COR is required to pay any such tax, duty or charge, Buyer will promptly reimburse LI-COR.

4. **Payment Terms.** All payments shall be made in immediately available U.S. Dollars net thirty (30) days from the date of invoice for qualified accounts, without set-off, deduction or withholding of any kind, unless otherwise stated by LI-COR in writing and may be paid by check (drawn on a U.S. bank), wire transfer or major credit card. All open account invoicing must be pre-approved. Any amounts not paid when due will accrue interest at the rate of 1 1/2% per month, or the maximum amount allowed by law, if lower. In the event that any payment is more than thirty (30) days late, LI-COR shall have the right to suspend doing business with Buyer until all past due balances are made current. Buyer shall pay for all costs (including reasonable fees) incurred by LI-COR in connection with the collection of late payments. Each accepted purchase order is a separate, independent transaction, and Buyer has no right of set-off against other purchase orders or other transactions with LI-COR. Buyer hereby grants LI-COR a security interest in the Products in the amount of the unpaid balance of the purchase price until paid in full. LI-COR may file a financing statement for such security interest and Buyer shall sign any such statements or other documentation necessary to perfect LI-COR security interest.

5. **Return Policy** Buyer may return non-consumable Products to LI-COR within forty-five (45) days of invoice date only with prior authorization by LI-COR. The Product(s) being returned new and unused condition and must be resalable as new. Any returned Product(s) are subject to payment of a fifteen percent (15%) re-stocking fee on all items returned. Buyer shall be responsible to make payment to LI-COR for any and all expenses related to de-installation of the Product(s), including but not limited to shipping, duties, and taxes. All payments subject to this provision shall be made to LI-COR within thirty (30) days of return, or de-installation, of the Product(s).

6. **Delays In Performance.** LI-COR shall not be liable for any delay in performance hereunder due to unforeseen circumstances or due to circumstances beyond its control including, but not limited to, acts of nature, acts

of government, labor disputes, delays in transportation, delays in customs clearance and delays in delivery or inability to deliver by LI-COR suppliers.

7. **Shipment and Packing.** All Product prices exclude costs of shipping and handling and insurance, in accordance with delivery terms designated by LI-COR. Unless otherwise agreed in writing, such costs will be paid by the Buyer and will appear as a separate item on LI-COR invoice. LI-COR shall ship in accordance with LI-COR standard practices. Buyer may specify different shipping instructions, subject to agreement by LI-COR. Unless otherwise agreed to in writing by LI-COR, all products shall be packaged, if appropriate, for shipment and storage in accordance with standard commercial practices. All packing shall conform to carrier requirements.

8. **Partial Shipments.** Any Products delivered in partial shipments may be invoiced individually. Additional shipping and handling charges may apply.

9. **Title/Risk of Loss.** All domestic shipments are made FOB per Uniform Commercial Code. All international shipments are made per INCOTERMS 2000 designated by LI-COR. LI-COR title to the Products and the risk of loss of or damage to the Products ordered by the Buyer will pass to Buyer at time of LI-COR delivery of Products to the carrier. The carrier shall be deemed Buyer's agent, and any claims for damages in shipment must be filed with the carrier. LI-COR is authorized to designate a carrier pursuant to LI-COR standard shipping practices unless otherwise specified in writing by Buyer.

10. **Intellectual Property Rights.** Title to and ownership of the documentation, and any improved, updated, modified or additional parts thereof, and all copyright, patent, trade secret, trademark and other intellectual property rights embodied in the Products, shall at all times remain the property of LI-COR or LI-COR licensors.

11. **Acceptance.** All sales are final and all Products shall automatically be deemed accepted upon delivery to Buyer when goods are loaded on the carrier at LI-COR premises in Lincoln, Nebraska, USA. Buyer may not return any Products to LI-COR except as provided for by LI-COR warranty or as provided herein.

12. **Product Warranties.** Unless otherwise specified by LI-COR:

(a) LI-COR warrants that, for a period of twelve (12) months from the date of shipment of the Products from LI-COR (the "Warranty Period"), unless otherwise specified for individual Products or extended by a Support Contract or Extended Warranty Contract, the Products sold hereunder will be free from material defects in materials and workmanship and will conform to LI-COR published specifications in effect as of the date of manufacture. LI-COR SPECIFICALLY DISCLAIMS ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE OR LOST PROFITS) WHICH MAY RESULT FROM THE USE OF PRODUCTS PURCHASED HEREUNDER, AS FURTHER SET FORTH IN SECTION 13 OF THESE CONDITIONS OF SALE. This limited warranty extends only to Buyer as original purchaser unless otherwise agreed upon in writing by LI-COR.

(b) The foregoing warranty shall not apply if the defective Product (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by LI-COR, (ii) has been repaired or altered by persons other than LI-COR, (iii) has not been installed, operated, repaired and maintained in accordance with the documentation or operated outside of the environmental specifications for the Product; (iv) has failed due an Act of God, including but not limited to fire, flood, tornado, earthquake, hurricane or lightning or (v) has been used with any devices, accessories or products not manufactured by or approved by LI-COR. In addition, the foregoing warranty shall not apply to Products (i)

marked or identified as "sample," (ii) loaned or provided to Buyer at no cost, or (iii) which are sold "as is."

(c) If during the Warranty Period: (i) LI-COR is notified promptly in writing upon discovery of any defect in the Product, including a detailed description of such alleged defect, (ii) such Product is returned, transportation charges prepaid, to LI-COR designated manufacturing facility subject to the prior approval of LI-COR with a valid Return Material Authorization ("RMA") number, and (iii) LI-COR inspections and tests determine that the Product is indeed defective and the Product has not been subjected to any of the conditions set forth above, then, as Buyer's sole remedy and LI-COR sole obligation under the foregoing warranty, LI-COR will, at LI-COR option, repair or replace without charge the defective Product. In no event will the Buyer itself nor will the Buyer allow any party other than LI-COR or a third party authorized in writing by LI-COR to perform any service on the Products.

(d) During the Warranty Period, LI-COR will provide on-site warranty repair for Odyssey® Infrared Imager, Aerius® Automated Infrared Imager, Pearl® Imager and/or 4300 DNA Analyzer Products including travel costs, repair parts, and labor to maintain the hardware in proper operating condition. At LI-COR discretion, the Buyer may be required to run certain diagnostic procedures to help determine the source of the problem before on-site warranty repair is rendered. If an on-site service call is initiated, LI-COR will dispatch a service technician to the Buyer site. On-site service will be provided 8:00 a.m. to 5:00 p.m. (Buyer local time), Monday through Friday, excluding LI-COR holidays. The cost of a repair/service call for an instrument malfunction caused by third party hardware and/or software will be billed to Buyer on a time and material basis.

(e) Any Product that has either been repaired or replaced under this warranty shall have warranty coverage (parts only) for the longer of ninety (90) days or the remaining original warranty period. Replacement parts used in the repair of Products may be new or equivalent to new.

(f) EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, LI-COR MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ANY PRODUCTS OR OTHER PRODUCTS PROVIDED IN CONNECTION WITH THESE CONDITIONS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

(g) Notwithstanding anything herein to the contrary, LI-COR makes no warranty with respect to any third party products provided under these Conditions. Buyer's sole remedy with respect to such third party products shall be pursuant to the original manufacturer's or licensor's warranty, if any, to Buyer, to the extent permitted by the original manufacturer or licensor.

13. Limitation of Liability. IN NO EVENT SHALL LI-COR, ITS LICENSORS OR ITS SUPPLIERS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE PRODUCTS OR THESE CONDITIONS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE). LI-COR TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCTS PURCHASED BY BUYER HEREUNDER SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID BY BUYER FOR SUCH PRODUCTS. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF LI-COR OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

14. Authorized Use of Biotechnology Products. Unless otherwise expressly indicated in LI-COR catalogues, LI-COR website or on the label or other documentation accompanying Biotechnology Products, the LI-COR

Biotechnology Products are intended for **RESEARCH USE ONLY** and are not to be used for any other purposes including, but not limited to, unauthorized commercial purposes, *in vitro* diagnostic purposes, *ex vivo* or *in vivo* therapeutic purposes, investigational use, in foods, drugs, devices or cosmetics of any kind, or for consumption by or use in connection with or administration or application to humans or animals. Buyer acknowledges that the Biotechnology Products have not necessarily been tested for safety or efficacy, unless expressly stated in LI-COR catalogues or on the label or other documentation accompanying the Biotechnology Products.

15. Severability. If any portion of these Conditions is held invalid, the parties agree that such invalidity shall not affect the validity of the remaining portions of these Conditions.

16. Export Control. Buyer acknowledges and agrees that the Products purchased under these Conditions may be subject to restrictions and controls imposed by the United States Government and the regulations thereunder. **BUYER WARRANTS THAT IT WILL NOT EXPORT OR RE-EXPORT ANY PRODUCTS PURCHASED WITHOUT PRIOR WRITTEN NOTIFICATION AND APPROVAL OF LI-COR.**

17. Assignment. Buyer shall not assign or transfer these Conditions or any rights or obligations under these Conditions, whether voluntary or by operation of law, without the prior written consent of LI-COR. LI-COR may assign or transfer these Conditions to any successor by way of merger, acquisition or sale of all or substantially all of the assets relating to these Conditions. LI-COR or any successor may assign all or part of the right to payments under these Conditions. Any assignment or transfer of these Conditions made in contravention of the terms hereof shall be null and void. Subject to the foregoing, these Conditions shall be binding on and inure to the benefit of the parties' respective successors and permitted assigns.

18. Entire Agreement. These Conditions of Sale take precedence over Buyer's additional or different terms and conditions, to which notice of objection is hereby given. Acceptance by Buyer is limited to LI-COR Conditions of Sale. Neither LI-COR commencement of performance nor delivery shall be deemed or construed as acceptance of Buyer's additional or different terms and conditions. These Conditions supersede all prior communications, transactions, and understandings, whether oral or written, and constitute the sole and entire agreement between the parties pertaining to the referenced quotation or purchase order, provided that: (1) these Conditions shall not, without LI-COR prior written consent, supersede any conflicting terms of: (a) prior written agreements duly executed by LI-COR, or (b) governmental purchase orders, terms of purchase, requests for quotation or acquisition regulations relative to governmental purchasers; and (2) to the extent not in conflict with any such prior or governmental terms, these Conditions shall supplement them. No modification, addition or deletion, or waiver of any of the terms and conditions of these Conditions shall be binding on either party unless made in a non-preprinted agreement clearly understood by both parties to be a modification or waiver, and signed by a duly authorized representative of each party.

19. Force Majeure. Shipping dates are approximate and may be delayed absent prompt receipt from Buyer of all necessary information. LI-COR shall not be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to Acts of God, government actions, war, civil disturbance, insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by LI-COR suppliers or subcontractors, transportation difficulties, customs clearance, shortage of energy, raw materials or equipment, or Buyer's fault or negligence. In the event of any such delay the date of delivery shall, at the request of LI-COR, be deferred for a period equal to the time lost by reason of the delay.

20. Governing Law and Venue. These Conditions and performance by the parties hereunder shall be construed in accordance with the laws of the State of Nebraska, U.S.A., without regard to provisions on the conflicts of laws.