



**LI-COR TERMS and CONDITIONS of SALE – DigiWest® Profiling Technology Promotion  
From LI-COR, Inc. to BUYER**

- 1. General.** LI-COR Inc. (“LI-COR”) shall distribute to Buyer the services, products, goods and deliverables (“Deliverables”), set forth in Purchase Orders (as defined below), resulting from the performance of the DigiWest® protein profiling services (“Services”) by NMI Technologietransfer GmbH or any successor entity (“NMI TT”) pursuant to these Terms and Conditions of Sale (“Conditions”) and the terms and conditions of the applicable Purchase Order. “Buyer” means a customer to which the Deliverable(s) and/or the Service(s) are sold. Buyer will be deemed to have assented to these Conditions and on no other terms upon Buyer’s placement of a Purchase 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. Purchase Orders.** All Purchase Orders shall be submitted by Buyer to LI-COR and shall (a) identify the applicable study and describe the activities and duties of the project for which NMI TT is responsible, including without limitation, the Deliverables, any reports or other materials to be delivered to Buyer by LI-COR or NMI TT; (b) include a price quote and payment schedule of LI-COR’s fees for the project and any authorized expenses for which Buyer will be responsible as permitted hereunder; and (c) be governed by these Conditions and made a part hereof, (“Purchase Order”). LI-COR may, in its sole discretion, accept or reject any Purchase Order. LI-COR shall accept any Purchase Order by confirming the order (through written confirmation or invoice) or through the delivery of the Products, whichever occurs first. No Purchase Order is binding upon LI-COR unless accepted by LI-COR as provided in these Conditions.
- 3. Prices/Taxes.** All prices are quoted for delivery to Buyer by LI-COR or NMI TT exclusive of shipping and insurance charges, all of which are Buyer’s sole responsibility. All prices are exclusive of all sales, use, excise, value added, withholding and other taxes, all customs, duties, documentation charges, and freights forwarder charges and charge of any nature now or hereafter claimed or imposed by any governmental authority upon the sale of the Deliverables or performance of the Services. Any such charges will be added to the product invoice or subsequently invoiced to 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.** Buyer shall pay LI-COR in accordance with the fees and payment schedule included in the applicable, accepted Purchase Order. All payments shall be made immediately available in the currency of the given territory of said purchase (such as U.S. Dollars (USD, \$) in the United States, Euros (€) in the European Union, Britain Pounds Sterling (GBP, £) in the United Kingdom) or as otherwise instructed by LI-COR 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 or a financial institution deemed acceptable by LI-COR), 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 one and a half percent (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 any Deliverables or any deliverable 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 agrees to comply with all applicable laws and regulations regarding the possession and use of the Deliverables. No returns of Deliverable shall be permitted or crediting of Deliverables or Services rendered shall be provided by LI-COR to Buyer except as expressly set forth in Section 13 herein.
- 6. Buyer Materials.** “Buyer Materials” means any materials or samples provided by Buyer for the sole purpose of enabling LI-COR to distribute the Services and/or the Deliverables. Buyer agrees to: (a) promptly provide such Buyer Materials as reasonably requested by LI-COR or NMI TT in order to carry out the Services; and (b) ensure that such Buyer Materials are complete and accurate in all material respects for such purposes. Buyer is solely responsible for the proper delivery (including the proper packaging) of Buyer Materials to NMI TT for the rendering and performance of the Services. Buyer represents and warrants that Buyer Materials comply with all applicable laws and ethical obligations with respect to the use and possession of such Buyer Materials by NMI TT and that any Buyer Materials are safe and in a suitable condition for performance of the Services. Neither LI-COR nor NMI TT shall be responsible for any loss or damage to Buyer Materials while in transit or while in NMI TT’s possession. Upon conclusion of the Services and unless otherwise agreed in writing by the parties, Buyer Materials may either be returned to Buyer or destroyed by NMI TT, at Buyer’s option and at Buyer’s expense.
- 7. 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 NMI TT.
- 8. Shipment and Packing.** All pricing excludes any 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 Buyer and will appear as a separate item on LI-COR’s invoice. Buyer shall be responsible for all payment and fees to ship, transport, and provide any and all expenses related to Buyer Materials, Deliverable(s) and the Service(s), including but not limited to shipping, storage, transportation, duties, and taxes. Buyer agrees to ship and package Buyer Materials in accordance to LI-COR’s instructions for shipment and storage in accordance with standard commercial practices; provided, however, that Buyer may specify different shipping instructions, subject to agreement by LI-COR. All packaging shall conform to carrier requirements.
- 9. Title/Risk of Loss.** Buyer’s title to, and the risk of loss of and damage to, the Deliverables will pass to Buyer at time of delivery of Buyer Deliverables by LI-COR or NMI TT to the carrier. The carrier shall be deemed Buyer’s agent, and any claims for damages in shipment must be filed with the carrier. Risk of loss of and damage to Buyer Materials shall remain at all times with Buyer.
- 10. Intellectual Property Rights.** LI-COR, NMI TT and Buyer shall each retain title to and ownership of its own Intellectual Property Rights and such Intellectual Property Rights shall at all times remain the property of the respective party. Nothing contained in these Conditions shall be construed as granting or conferring any rights by express or implied license or otherwise to either Buyer, LI-COR or NMI TT other than the rights expressly

set out in these Conditions.

With respect to any Deliverable delivered pursuant to a valid Purchase Order, upon payment in full of all amounts due under such Purchase Order by Buyer, Buyer is, and shall be, the sole and exclusive owner of all right, title and interest in and to the Deliverables, including all Intellectual Property Rights therein, exclusive of any and all pre-existing LI-COR or NMI TT Intellectual Property Rights contained in the Deliverables. "Intellectual Property Rights" means the right, title and interest in and to inventions, original works of authorship, findings, conclusions, data, discoveries, developments, concepts, improvements, trade secrets, techniques, processes and know-how, whether or not patentable or registrable under patent, copyright or similar laws, including any and all moral rights and intellectual property rights inherent therein and appurtenant thereto, including, but not limited to, all patent rights, copyrights, trademarks, know-how and trade secrets and the rights to apply for the same.

11. **Acceptance.** All sales are final and all Deliverables shall automatically be deemed accepted upon delivery to Buyer. Failure to provide written notice to LI-COR of any shortages, Defects (as defined in Section 13), or damages relating to the Deliverables within ten (10) days after receipt shall conclusively deem that the Deliverables conform to the terms set forth in these Conditions and the applicable Purchase Order.

12. **Buyer Material Warranties.**

Buyer represents and warrants that it is the lawful owner of any and all Intellectual Property Rights and tangible property in Buyer Materials provided or supplied by Buyer to NMI TT in connection with the Services, including but not limited to any specifications, directions, materials or information provided by Buyer. EXCEPT AS OTHERWISE PROVIDED IN THESE CONDITIONS, BUYER MATERIALS BEING SUPPLIED UNDER THESE CONDITIONS ARE BEING SUPPLIED "AS IS", WITH NO WARRANTIES, EXPRESS OR IMPLIED. NOTWITHSTANDING THE FOREGOING, BUYER WARRANTS THAT BUYER MATERIALS WILL COMPLY AT THE TIME OF DELIVERY TO NMI TT WITH THE SPECIFICATIONS EXPRESSLY AGREED UPON AND APPLICABLE LAW. BUYER ACKNOWLEDGES THAT ANY NON-CONFORMITY OF THE FOREGOING SHALL BE A MATERIAL BREACH OF THESE CONDITIONS.

13. **Deliverable Warranties.**

(a) DELIVERABLES ARE PROVIDED "AS IS". EXCEPT AS EXPRESSLY SET FORTH IN SECTION 13(b) BELOW. LI-COR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ANY SERVICES, DELIVERABLES OR OTHER GOODS PROVIDED TO BUYER IN CONNECTION WITH THESE CONDITIONS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PROMOTION, PERFORMANCE, DEALING, USAGE OR TRADE. LI-COR EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE SERVICES, DELIVERABLES OR OTHER GOODS PROVIDED UNDER THESE CONDITIONS COMPLY WITH, OR WERE PRODUCED IN ACCORDANCE WITH, GOOD LABORATORY PRACTICES (GLP).

(b) Buyer shall provide notice to LI-COR of any Deliverables alleged to not be in conformance with the accepted Purchase Order ("Defects") in writing within ten (10) days after delivery of the Deliverables to Buyer. In the event that such Defects are determined and verified by LI-COR to have not been in conformance with the accepted Purchase Order, which is conditional upon Buyer notifying LI-COR as provided in this Section 13, LI-COR, in its sole option and discretion, may (a) have the Services re-performed by NMI TT pursuant to the applicable Purchase Order; or (b) provide a credit to Buyer for the amount paid by Buyer for such defective Deliverables. Buyer acknowledges and agrees that the remedies set forth in this Section 13 are

Buyer's exclusive remedies with regard to any Defects. Such remedies set out in this Section 13 shall not apply to (i) Deliverables that have been improperly or inadequately used or stored by Buyer; or (ii) Defects caused by negligence or accident, or loss of or damage to Deliverables after delivery as provided herein.

14. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LI-COR, ITS LICENSORS, OR NMI TT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE DELIVERABLES 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 DELIVERABLES OR THESE CONDITIONS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, DELIVERABLES LIABILITY OR OTHERWISE). LI-COR TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY DELIVERABLES PURCHASED BY BUYER OR SERVICES PERFORMED BY NMI TT ON BEHALF OF BUYER HEREUNDER SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID OR PAYABLE BY BUYER FOR SUCH DELIVERABLES OR SERVICES. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF LI-COR OR NMI TT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

15. **Nonexclusivity.** LI-COR retains the right to contract with other entities and customers to distribute, promote, or provide deliverables and/or services identical or similar to the Deliverables and/or Services, provided that such services and deliverables are developed without use of any Buyer Materials or Buyer's Intellectual Property Rights.

16. **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.

17. **Export Control.** Buyer acknowledges that the Deliverables may be subject to restrictions and controls imposed by the United States Government and the regulations thereunder, and Buyer agrees to comply with all such restrictions and controls. BUYER WARRANTS THAT IT WILL NOT EXPORT OR RE-EXPORT DELIVERABLES WITHOUT PRIOR WRITTEN NOTIFICATION AND APPROVAL OF LI-COR.

18. **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. In the event that LI-COR acquires the right from NMI TT to directly perform the Services, LI-COR shall have the right to provide all services hereunder, including the Services and Deliverables, directly without any performance by NMI TT. 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.

19. **Entire Agreement.** These Conditions 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.

20. **Force Majeure.** Shipping/delivery dates are approximate and may be delayed absent prompt receipt from Buyer of all necessary information. LI-COR and NMI TT 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 NMI TT or suppliers, 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.

21. **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 law.