

ZEPTOMETRIX TERMS AND CONDITIONS OF SALE

UNLESS OTHERWISE EXPRESSLY AGREED TO IN A WRITING SIGNED BY AUTHORIZED REPRESENTATIVES OF ZEPTOMETRIX CORPORATION AND BUYER, ALL SALES OF OF ZEPTOMETRIX PRODUCTS ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- 1. GENERAL.** ZeptoMetrix Corporation ("ZMC") accepts orders for products from the person placing such order ("Buyer") for products listed on a ZMC quote, invoice or ZMC website ("Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein ("Terms"). Buyer represents (i) he or she is at least 18 years of age, and (ii) to the extent Buyer is placing the order as an employee or representative of a company or other entity, that he or she is authorized to place such order and the term "Buyer" shall then also include such company or entity. These Terms include all writings incorporated herein by reference, any quotation issued to Buyer by ZMC, and any terms, conditions and restrictions on use which accompany Products and/or as available on ZMC's website, all of which taken together are the complete and exclusive statement of the contract between ZMC and Buyer with respect to Buyer's purchase of ZMC's Products (the "Agreement"). Any of the following constitutes Buyer's acceptance of the Agreement: (a) written acknowledgement of Terms; (b) acceptance of any shipment or delivery of Products; (c) payment for any Products; or (d) any other act or expression of acceptance by Buyer. Any provisions contained in any writing, document or EDI issued by Buyer that are in addition to or inconsistent with the Agreement are expressly rejected and if any of the terms and conditions in this Agreement differ from or are in addition to the terms and/or conditions of Buyer's offer, this document shall be construed as a counteroffer and shall not be effective as an acceptance of Buyer's document. Course of dealing, course of performance, usage of trade and/or verbal agreements not reduced to writing and signed by an authorized representative of ZMC shall not be applied to the interpretation of the Agreement.
- 2. PRICE.** All prices provided in a written quote by ZMC are valid for the time period stated on the quote, or for thirty (30) days from the date of the quote in the event no time period is stated; otherwise, prices are as published by ZMC at the time of ZMC's acceptance of Buyer's order. Published prices may be changed by ZMC at any time without notice.
- 3. TAXES AND OTHER CHARGES.** Prices exclude all sales, value added, and other taxes charged and duties imposed with respect to the sale, delivery, or use of any Products. All such taxes and duties must be paid by Buyer unless otherwise exempt. Prices also exclude costs for freight, insurance, ZMC's standard handling charges and, where appropriate, ancillary charges that are specific to certain Products or needs of Buyer, said foregoing costs and charges to be added to Buyer's invoice.
- 4. TERMS OF PAYMENT.** ZMC shall invoice Buyer upon shipment of Products. Invoices shall be paid in full in U.S. dollars within thirty (30) days of the invoice date. If Buyer disputes in good faith any portion of an invoiced amount, it shall notify ZMC thereof in writing within ten (10) days of receipt of the applicable invoice; such notice shall identify the specific cause or nature of the dispute and the amount disputed. Buyer shall pay that portion of the invoice not in dispute in accordance with the payment terms in this Paragraph 4 (*Terms of Payment*). Parties shall work in good faith to promptly resolve any disputed invoice amounts; however, if such dispute cannot be resolved within thirty (30) days from date of Buyer's dispute notice, ZMC may exercise any of its rights under this Agreement or arising under applicable laws. ZMC reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to ZMC, at any time that ZMC believes in good faith that Buyer's financial condition does not justify the terms of payment specified. Buyer shall perform its obligations under the Agreement without setoff, deduction, recoupment, or withholding of any kind for amounts owed or payable to ZMC whether under the Agreement, any purchase order or invoice, applicable law, or otherwise, or whether relating to ZMC's breach, bankruptcy, or otherwise.

5. DELIVERY. Products shall be packaged and shipped in a method to preserve and protect from damage and/or degradation, in accordance with acceptable commercial practices and in compliance with all applicable laws. The Products will be shipped to the destination specified by Buyer, F.C.A. (Incoterms 2010) ZMC's facility. Title to and risk of loss of Products shall pass to Buyer at the place and time ZMC delivers Products to carrier. ZMC will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. ZMC reserves the right to withhold shipments in whole or in part if Buyer fails to make any payment to ZMC on undisputed invoices when due or otherwise fails to perform its obligations hereunder. All delivery dates are approximate only, and ZMC 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 ZMC's reasonable control. In the event of a delay due to any cause beyond ZMC's reasonable control, ZMC 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.

6. CHANGES; CANCELLATION. Any order accepted by ZMC may be modified or cancelled by Buyer only if expressly agreed to in writing by an authorized representative of ZMC.

7. INCORRECT, SHORT OR DAMAGED ORDER. (a) Buyer may request a refund or replacement of those Products that are damaged as a result of inadequate packaging by ZMC as required under Paragraph 5 (*Delivery*), or may have corrected any shortages or orders that are incorrectly fulfilled by ZMC ("Rejected Order"); provided, however, that Buyer contacts ZMC's customer service within ten (10) days from Buyer's receipt of Products and furnishes written evidence or documentation as may be reasonably requested by ZMC. If ZMC is not contacted within the ten (10) day period, the Products and order will be deemed accepted, such acceptance not to affect Buyer's Product Warranty rights in Paragraph 9 (*Product Warranty*). (b) If Buyer timely notifies ZMC of any Rejected Order, ZMC shall, in its sole discretion, (i) replace damaged Products, or correct any shortages or incorrectly filled orders, as the case may be; or (ii) credit or refund the price for the Rejected Order, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. (c) BUYER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS PARAGRAPH 7 ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES AND ZMC'S LIMIT OF LIABILITY FOR A REJECTED ORDER.

8. RETURN. Authorization for Product returns for situations not covered by Paragraph 7 must be pre-approved by ZMC customer service and a return authorization number issued in order to transact any return. Not all requests for return will be granted: for example, Products which cannot be resold will not be authorized for return absent non-conformance to specifications. Products authorized for return must arrive at ZMC's facilities in a state satisfactory for resale to be eligible for credit. A restocking charge of 20% of the applicable Product invoice amount for a returned order may be charged on returns that are not the result of any ZMC error, fault, or Product non-conformity with specifications.

9. PRODUCT WARRANTY. ZMC warrants to Buyer that all Products purchased by Buyer shall materially conform to their published specifications for a Product's Warranty Period ("Product Warranty"). The term "Warranty Period", as used herein, means until a Product's stated expiration date, or, if no expiration date is stated, then one (1) year from date of manufacture. The Product Warranty shall not be effective if ZMC determines, in its sole discretion, that non-conformance with applicable Product specifications is a result of: (i) a failure to handle, use, store, or transfer Product in accordance with its intended use and any certificate of analysis or package insert accompanying Product; (ii) any modification of the Product; or (iii) accident, abuse of Product, or negligence, in each of the foregoing cases, by a party other than ZMC.

10. DISCLAIMER. THE FOREGOING PRODUCT WARRANTY STATEMENT IN PARAGRAPH 9 (PRODUCT WARRANTY) EXTENDS ONLY TO BUYER AS THE ORIGINAL PURCHASER OF ZMC'S PRODUCT, AND MAY NOT BE TRANSFERRED EXCEPT AS EXPRESSLY STATED IN THESE TERMS. ZMC DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE WITH RESPECT TO PRODUCTS, INCLUDING WITHOUT LIMITATION, (A) IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR

ANY PARTICULAR PURPOSE; (B) ANY WARRANTY OF NON-INFRINGEMENT; (C) ANY WARRANTY THAT THE PRODUCTS WILL NOT POSE A SAFETY OR HEALTH RISK; AND (D) ANY WARRANTY THAT THE PRODUCTS WILL ACCOMPLISH ANY PARTICULAR RESULT.

11. EXCLUSIVE REMEDY FOR BREACH OF PRODUCT WARRANTY. Claims for breach of the Product Warranty must be submitted in writing by Buyer to ZMC customer service within the applicable Warranty Period and include details of such claim, or Buyer shall be deemed to have waived such claim. If a material non-conformity with a Product's specifications is validated to ZMC's reasonable satisfaction, ZMC will, at ZMC's exclusive option, either refund Buyer the applicable Product purchase price, including any related shipping charges, or provide replacement conforming Products at no additional charge or cost to Buyer. Where requested, Buyer will return non-conforming Products at ZMC's expense in accordance with ZMC's instructions. THIS REMEDY FOR BREACH OF THE PRODUCT WARRANTY SHALL BE THE SOLE AND EXCLUSIVE REMEDY AT LAW OR EQUITY AVAILABLE TO BUYER AND THE LIMIT OF LIABILITY OF ZMC.

12. BUYER'S USE OF PRODUCTS. The purchase of Products conveys to Buyer the right for Buyer to use the purchased Products (and components thereof) in compliance with the any certificate of analysis or package insert that may accompany a Product and, where relevant, a ZMC Material Transfer Agreement ("MTA"), which MTA is required for purchase of Products that are live biological materials ("Live Products"). In the event the terms and conditions of an MTA conflict with any terms and conditions of the Agreement, the terms and conditions of the MTA shall govern. **IN NO EVENT SHALL LIVE PRODUCTS BE PROPAGATED OR FURTHER TRANSFERRED BY BUYER WITHOUT ZMC'S PRIOR WRITTEN CONSENT.** Buyer has the responsibility to verify the hazards and to conduct any further research necessary to learn the hazards involved in using Products purchased from ZMC. Buyer also has the duty to warn third parties that Buyer permits to use and/or handle Products of any risks involved in such use or handling. Buyer agrees to properly test, store, use, transfer and dispose of any Products (or components thereof) purchased from ZMC in (a) conformity with good laboratory practices; (b) accordance with the practices of a reasonable person who is an expert in the field; (c) strict compliance with all applicable laws, regulations and guidelines, including but not limited to applicable regulations promulgated under the Federal Food, Drug and Cosmetic Act (Title 21 C.F.R. §§1-1499), and (d) conformity with any patent, copyright, trademark, or other intellectual or proprietary rights of third parties.

13. TECHNICAL ASSISTANCE. At Buyer's request, ZMC may, at its discretion, furnish technical assistance and information with respect to ZMC's Products. TO THE EXTENT ZMC OR ZMC PERSONNEL OFFERS SUCH TECHNICAL ASSISTANCE OR INFORMATION, THE DISCLAIMERS IN PARAGRAPH 10 (DISCLAIMER) AND LIMITATIONS OF LIABILITY IN PARAGRAPH 15 (LIMITATION OF LIABILITY) SHALL APPLY. ANY SUGGESTIONS BY ZMC OR ZMC PERSONNEL REGARDING USE, SELECTION, APPLICATION, OR SUITABILITY OF THE PRODUCTS SHALL NOT BE CONSTRUED AS AN EXPRESS WARRANTY UNLESS SPECIFICALLY DESIGNATED AS SUCH IN A WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ZMC.

14. INDEMNIFICATION. To the extent permitted by applicable law, Buyer agrees to defend and indemnify ZMC from and against any third party claims, suits, losses, demands, liabilities, costs and expenses (including reasonable attorney fees and costs and expenses of litigation) ("Losses") arising out of, directly or indirectly, (a) Buyer's use, and any result or data generated from such use, storage, sale or transfer of ZMC's Product (or component thereof); (b) any breach by Buyer of its obligations, representations and warranties made herein; or (c) the negligence or willful misconduct of Buyer, or Buyer's representatives or agents, in the performance of its obligations and permitted activities under this Agreement, provided, however, Buyer shall not be required to indemnify ZMC to the extent such Losses result from (i) the reckless or willful misconduct of ZMC or that of its authorized distributors; or (ii) breach of ZMC's obligations, representation and warranties made herein. The Buyer's indemnity obligations shall not apply to Losses arising from a claim that the Buyer's use of a Product or component thereof infringes the intellectual property rights of a third party, if and only to the extent that such claim: (d) is based on the Product, where the Product was not modified, improved, enhanced or altered by a party other than ZMC, or combined with any other product, compound, process, or technology not

provided by ZMC; or (e) has not arisen as a result of Buyer using the Product outside the scope of use as described in Paragraph 12, (*Buyer's Use of Products*). Buyer shall not, without the written consent of ZMC: (f) settle or compromise any action, suit or proceeding or consent to the entry of judgment which does not include as an unconditional term thereof plaintiff's written release of ZMC from all liability in respect of such action, suit or proceeding; or (g) settle or compromise any action, suit or proceeding in any manner which may materially and adversely affect ZMC other than as a result of money damages or other money payments.

15. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ZMC, OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE TO BUYER OR ANYONE CLAIMING THROUGH BUYER, FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOST PROFITS, ECONOMIC LOSS, LOSS OF GOODWILL, OR DAMAGES DUE TO LOSS OF USE OR BUSINESS STOPPAGE, WHETHER IN CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE EXERCISE OF RIGHTS HEREUNDER, REGARDLESS OF ANY NOTICE OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN. IN NO EVENT SHALL ZMC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT EXCEED TWICE THE AMOUNT PAID TO ZMC FOR THE PRODUCTS SOLD TO BUYER HEREUNDER. BUYER ACKNOWLEDGES AND AGREES THAT ZMC HAS SET ITS PRICES AND ENTERED INTO THE AGREEMENT IN RELIANCE UPON DISCLAIMERS OF WARRANTY AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE SAME REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS) AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

16. EXPORT COMPLIANCE. Buyer acknowledges that Products supplied by ZMC may be subject to export controls. Export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (15 CFR §§ 730-774) ("EAR"), which may restrict or require licenses for the export of Products 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 Product purchased from ZMC. Buyer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency, export, re-export, distribute, or supply any Product or component thereof, (i) 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, or (ii) which is classified on the Commerce Control List ("CCL") of the EAR (15 CFR 774, Supp. 1) and requires an export license based on country of destination. As a courtesy and aid to Buyer, ZMC may indicate that a Product is on the CCL or otherwise requires an export license; provided, however, that such statement or indication shall not be construed as a representation or warranty by ZMC regarding the proper export control classification for such Product. Buyer shall cooperate fully with ZMC in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold ZMC harmless from, or in connection with, any violation of this Paragraph 16 by Buyer or its employees, consultants, agents, or customers.

17. MISCELLANEOUS. (a) Buyer may not delegate any duties or assign or transfer any rights under these Terms or the Agreement, voluntarily or involuntarily, whether by sale, merger, consolidation or operation of law, without ZMC's prior written consent. Any assignment or transfer in violation of the foregoing shall be voidable by ZMC. (b) The Agreement, and all disputes and claims arising out of or related thereto, shall be governed by and construed in accordance with the laws of the State of New York without reference to its conflicts of law provisions. Buyer agrees all disputes and claims related to or arising out of this Agreement shall be venued exclusively in the State of New York. (c) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (d) 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. (e) No waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of the party waiving its right. ZMC's failure to enforce, or ZMC's waiver of, a breach of any provision herein, will not constitute a waiver of any other breach of such provision on any future occasion. (f) Nothing contained in the Agreement shall be construed so as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the Buyer and ZMC. Neither party has or grants any express or implied right under the Agreement to assume or create any obligations on behalf of or in the name of the other, or to bind the other party to any undertaking with any third party. (g) Neither party shall be required to perform or omit to perform any act required or permitted under the Agreement if such performance or omission would violate the provisions of any applicable law, regulations, or court or administrative agency orders; neither party shall be liable to the other party for breach of the Agreement as a result of acting or omitting to act as a result of complying with the foregoing. (h) No waiver, modification, or amendment of the Agreement shall be binding unless in writing and signed by an authorized representative of ZMC. (i) Parties represent that they have the requisite power, authority, and legal right to accept the Agreement and to perform the obligations hereunder. (j) Purchase of Products does not grant to Buyer any right or license, express or implied, to ZMC's intellectual or proprietary property or technology other than the right to use purchased Product as expressly permitted in this Agreement. (k) Buyer shall not use the name, logo, or trademark of ZMC or any variation thereof for any purpose without the express prior written consent of ZMC; provided, however, that Buyer may reference ZMC as source of purchased Products.