

# TERMS AND CONDITIONS OF SERVICE/SALE



## 1. GENERAL INTERPRETATION

In these conditions:

- (1) Ipora Management Inc., DBA Infinity Laboratories ("Infinity Laboratories");
- (2) 'Buyer' means the purchaser of any goods/services specified on a Purchase Order and/or Test Requisition Form to Infinity Laboratories, whether by telephone, courier, in-person, fax or e-mail to Infinity Laboratories;
- (3) 'Goods/services' means the products and/or tests specified on a purchase order or Test Requisition Form from the Buyer to Infinity Laboratories;
- (4) Each time the Buyer places an order for goods/services/services with Infinity Laboratories or the Buyer accepts goods/services/services from Infinity Laboratories the Buyer agrees to be bound by these terms and conditions. These Terms and Conditions supersede any other written or verbal agreement between the parties and any other terms or conditions referred to in any purchase order placed or other document produced by the Buyer;

## 2. QUOTATIONS AND PRICES

**2.1** Any price quoted by Infinity Laboratories to the Buyer for any goods/services is based on Infinity Laboratories' estimated cost of production, manufacture, labor, and/or supply at the time of quotation. The price quoted is subject to alteration by Infinity Laboratories due to any increase in Infinity Laboratories' costs between the date of quotation and the customer's confirmation.

**2.2** Any price quoted in a purchase order or Agreement of Sale is based on and applies to any quantities, delivery dates, places of delivery and contract start and end dates set out in the Agreement of Sale. Infinity Laboratories is free to alter the price quoted in the purchase order or Agreement of Sale if there is any change in the quantity, delivery dates, and place of delivery or contract start and end dates.

**2.3** Unless otherwise expressly agreed by Infinity Laboratories in writing all goods/services will be charged for at the prices ruling at the date or dates of delivery. All prices are expressed in American dollars, unless otherwise specified in writing by Infinity Laboratories.

**2.4** A quotation is not an offer by Infinity Laboratories to act and may be withdrawn without notice. Any order given in respect of a quotation is not binding on Infinity Laboratories until accepted by Infinity Laboratories in writing.

## 3. ORDERS

Orders accepted by Infinity Laboratories that are cancelled or altered in whole or in part by the Buyer are subject to fees. Any product or service that was rendered, whether in whole or part shall be invoiced according to that which Infinity Laboratories has initiated and/or completed.

## 4. TERMS OF PAYMENT

Net cash 30 days from date of invoice, but Infinity Laboratories reserves the right to vary the terms of payment or to require payment in cash in full prior to delivery.

## 5. INTEREST

Where an account is not paid by the Buyer as provided in this Agreement, Infinity Laboratories shall without prejudice to any other remedies available to it be entitled to charge interest on the amount outstanding calculated from the date payment is due until the date payment is made on the amount outstanding from time to time at 2.0% per month compounding.

## 6. CLAIMS

**6.1** Any claim by the Buyer for short or wrongful delivery of the goods/services must be notified to Infinity Laboratories in writing within 7 days after delivery of the goods/services to the Buyer. Any claim which the Buyer does not notify within that time (time being of the essence) shall subject to the discretion of Infinity Laboratories be deemed to have been absolutely waived.

**6.2** The Buyer must, subject to obtaining prior written authority from Infinity Laboratories, return a sample of the subject of a claim to Infinity Laboratories within 21 days from the date of receipt of authorization.

**6.3** Infinity Laboratories makes no representation about, and accepts no responsibility for, the goods/services complying with any law, regulation or standard that applies in any jurisdiction outside the United State of America.

## 7. DESCRIPTION

Any description of the goods/services is given in the way of identification only and the use of such description shall not constitute the contract of sale by description.

## 8. IMPLIED TERMS AND LIABILITY

**8.1** Infinity Laboratories acknowledges that, under applicable State, Territory, and Commonwealth laws, certain conditions and warranties may be implied in the contract between Infinity Laboratories and the Buyer and rights and remedies conferred upon the Buyer and other parties in relation to goods/services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). The limitations below are subject to these Non-excludable Rights.

**8.2** Subject to the above, Infinity Laboratories disclaims all conditions and warranties expressed or implied, and rights and remedies conferred on the Buyer or other parties, by statute the common law, equity, trade, custom or usage or otherwise howsoever and all such conditions and warranties and such rights and remedies are hereby expressly excluded other than any Non-excludable Rights.

## 9. INDIRECT LOSS

In no event shall Infinity Laboratories be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the Buyer howsoever arising including any loss or damage arising from or caused or contributed to by negligence of Infinity Laboratories, its servants or agents, nor shall Infinity Laboratories be liable for special, incidental, indirect or consequential, or economic loss or damage suffered by the Buyer as a result of a breach by Infinity Laboratories of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.

## 10. INDEMNITY

The Buyer shall indemnify and keep indemnified and hold Infinity Laboratories harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by Infinity Laboratories, and from

and against all actions, proceedings, claims or demands made against Infinity Laboratories, arising from one or more of the following:

- (a) As a result of the Buyer's failure to comply with any laws, rules, standards or regulations applicable in relation to the goods/services or the use of the goods/services;
- (b) As a result of any other negligence, breach of contract or other breach of duty by the Buyer; or
- (c) As a result of Infinity Laboratories adhering to instructions that the Buyer has given Infinity Laboratories about the goods/services.

## 11. DELIVERY AND FORCE MAJEURE

**11.2** Any time quoted for delivery is an estimate only.

**11.3** Infinity Laboratories shall not be liable for any loss or damage which is a consequence or result of any failure to deliver or delay in delivering the goods/services or shipping documents or service whatever the cause of such failure to deliver or late delivery maybe.

**11.4** Infinity Laboratories shall not be liable for any loss or damage to the Buyer or any other party in connection with the agreement that is the direct or indirect result or consequence of any circumstances of whatsoever nature beyond Infinity Laboratories' control including but not limited to fire, flood, drought, explosion, epidemic, riot, embargo, war, hostilities between any powers, civil commotion, breakdown of machinery, strike, lock-out or other industrial act or dispute or the break-down of or accident to plant, crop failure or crop sabotage, the unavailability or shortage of raw materials, labor, power supplies or transport facilities, failure or delay in delivery or shipment on the part of manufacturers, producers, suppliers, merchants or agents, delay in delivery from a manufacturer's plant to the port of shipment, delay in transportation or failure or inability to obtain licenses or any act of God or any law, regulation, order, direction or policy of any local, State or Federal Government or Government authority or instrumentality (a Force Majeure Event).

**11.5** If Infinity Laboratories determines that it is unable to comply with any term or condition in the agreement by reason of a Force Majeure Event or that it is unable to deliver within a reasonable time or at all Infinity Laboratories may cancel the Contract. In the event of cancellation the Buyer shall have no claim against Infinity Laboratories for any loss, cost or expense whatsoever. The Buyer shall not be relieved of any obligation to accept or pay for the goods/services by reason of any delay in or failure to deliver.

**11.6** For the purposes of this clause freight or shipping space shall be deemed unavailable if Infinity Laboratories, having taken all reasonable steps to procure the same, has failed to do so. Infinity Laboratories shall not be deemed to have failed to take all reasonable steps because it may have allocated available freight or shipping space for shipment of other goods/services under contracts entered into before or after this contract.

**11.7** Infinity Laboratories reserves the right to treat the action of any Government affecting the goods/services intended to satisfy this Contract such as the alteration or introduction of any duty, tax, export or import license, minimum government prices, quotas, trade impediments, or other restrictions as a Force Majeure Event entitling Infinity Laboratories to cancel the Contract by giving written notice of the cancellation to the Buyer.

**11.8** All payments under this Contract and under any other existing contract between the Buyer and Infinity Laboratories are to be made on the due date as a condition precedent to future deliveries under the Contract.

## 12. PROPERTY & RISK

- (a) The risk of loss or damage to the goods/services shall pass to the Buyer on delivery.
- (b) Property in the goods/services shall not pass from Infinity Laboratories to the Buyer until the Buyer has paid all monies outstanding from the Buyer to Infinity Laboratories on any account in full.

(c) The Buyer agrees to store the goods/services separately and mark them so as to render them identifiable as being made from or with goods/services which are the property of Infinity Laboratories.

### **13. RIGHTS IN RELATION TO THE GOODS/SERVICES:**

**13.1** In connection with the goods/services while they remain the property of Infinity Laboratories, the Buyer agrees with Infinity Laboratories that:

13.1.1 the Buyer has no right or claim to any interest in the goods/services to secure any liquidated or unliquidated debt or obligation Infinity Laboratories owes to the Buyer;

13.1.2 the Buyer cannot claim any lien over the goods/services;

13.1.3 the Buyer will not create any absolute or defeasible interest in the goods/services in relation to any third party except as may be authorized by Infinity Laboratories;

13.1.4 where the Buyer is in actual or constructive possession of the goods/services:

13.1.4.1 the Buyer will not deliver them or any document of title to the goods/services to any person except as directed by Infinity Laboratories; and

13.1.4.2 it is in possession of the goods/services as a bailee of those goods/services and owes Infinity Laboratories the duties and liabilities of a bailee.

**13.2** In connection with the goods/services, Infinity Laboratories states to the Buyer that:

13.2.2 Infinity Laboratories has the right to supply the goods/services to the Buyer;

13.2.3 the activities of the Buyer in supplying the goods/services do not infringe the rights of the owner of the goods/services (where Infinity Laboratories is not the owner of the goods/services).

13.2.4 if the goods/services are not owned by Infinity Laboratories, that Infinity Laboratories is authorised to supply the goods/services to the Buyer.

**13.3** Infinity Laboratories and the Buyer agree that:

13.3.1 the property of Infinity Laboratories in the goods/services remains with Infinity Laboratories until Infinity Laboratories has been paid in full for the goods/services under all individual contracts for the supply of the goods/services between Infinity Laboratories and the Buyer;

13.3.2 the Buyer is a bailee of the goods/services until such time as property in them passes to the Buyer and that this bailment continues in relation to each of the goods/services until the price of the goods/services has been paid in full;

13.3.3 pending payment in full for the goods/services, the Buyer:

13.3.3.1 must not supply any of the goods/services to any person outside of its ordinary or usual course of business;

13.3.3.2 must not allow any person to have or acquire any security interest in the goods/services;

13.3.3.3 must insure the goods/services for their full insurable or

13.3.3.4 replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business;

13.3.3.5 must not remove, deface or obliterate any identifying plate, mark or number on any of the goods/services.

**13.4** Despite clause 13.3, if the Buyer supplies any of the goods/services to any person before all monies payable by the Buyer have been paid to Infinity Laboratories (and have not been claimed or clawed-back by any person standing in the place of or representing the Buyer), the Buyer agrees that:

13.4.1 it holds the proceeds of re-supply of all the goods/services on trust for and as agent for Infinity Laboratories immediately when they are receivable or are received;

13.4.2 it must either pay the amount of the proceeds or re-supply to Infinity Laboratories immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for Infinity Laboratories;

13.4.3 any accessory or item which accedes to any of the goods/services by an act of the Buyer or any person at the direction or request of the buyer becomes and remains the property of Infinity Laboratories

until Infinity Laboratories is paid in accordance with clause 17.3.1 when the property in the goods/services (including the accessory) passes to the Buyer;

13.4.4 if the Buyer fails to pay for the goods/services within the period of credit (if any) extended by Infinity Laboratories to the Buyer, Infinity Laboratories may recover possession of all the goods/services at any site owned, possessed or controlled by the Buyer and the Buyer agrees that Infinity Laboratories has an irrevocable license to do so.

## 14. PERFORMANCE AND REPRESENTATIONS

The Buyer acknowledges that neither Infinity Laboratories nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the goods/services for any particular purpose or any other matter.

## 15. INSTALLMENTS

The failure of Infinity Laboratories to deliver any installment shall not entitle the Buyer to cancel the balance of the order. In the event of the Buyer making default in respect of any installment, Infinity Laboratories may elect to treat the default as a breach of contract relating to each other installment.

## 16. DEFAULT IN PAYMENT

**16.1** Infinity Laboratories may treat any default by the Buyer in payment of any monies due to Infinity Laboratories as a breach of these Terms and Conditions. Infinity Laboratories reserves the right thereupon to cease work on the relevant order and all other orders placed by the Buyer and hold all the Buyer's work until the due payment or payments are made. Recurring payments default may, at Infinity Laboratories' discretion, lead to the Buyer's account with Infinity Laboratories being closed and any further order placed by the Buyer and accepted by Infinity Laboratories will only be processed when prepaid. The buyer shall pay all of Infinity Laboratories' costs and expenses (including legal costs determined as between Solicitor/own client and mercantile agents) which may be incurred in the recovery or attempted recovery of overdue amounts from the buyer.

**16.2** If Infinity Laboratories reasonably anticipates that the Buyer will fail to pay for the goods/services otherwise fail to observe and or perform the Buyer's obligations under these Terms, Infinity Laboratories may cancel the order for the goods/services. Cancellation of the order pursuant to this clause shall not affect the rights of Infinity Laboratories to recover from the Buyer any monies due to Infinity Laboratories by reason of the order or damages in breach thereof. If:

- a. the Buyer makes default in any payment due hereunder;
- b. a resolution is passed or proposed or a petition is presented or an application made for winding up of the Buyer;
- c. a Receiver is appointed of the property or any part of the property of the Buyer;
- d. the Buyer makes or proposes to make any arrangement with its creditors;
- e. execution is levied upon the assets of the Buyer and is not satisfied within seven days, then Infinity Laboratories may at its option withhold further deliveries of the goods/services or cancel the Contract without prejudice to its rights under this Contract provided that Infinity Laboratories may at any time and

from time to time upon such terms as it may determine waive any of its rights under this clause without prejudice to its rights to subsequently rely upon such clause.

## 17. WAIVER

Failure by Infinity Laboratories to insist upon strict performance of any term, warranty or condition of the Deed or these terms and conditions of sale shall not be deemed as a waiver thereof or of any rights Infinity Laboratories may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

## 18. INTELLECTUAL PROPERTY RIGHTS

The Buyer warrants that any design or instruction furnished to Infinity Laboratories shall not be such as will cause Infinity Laboratories to infringe any Intellectual property rights (including patents, registered designs, trademarks, copyright, confidential information and the like) in the execution of the Buyer's order and the Buyer agrees to indemnify Infinity Laboratories against any infringement or unauthorized use of the intellectual property rights arising out of the manufacture or use of the goods/services and it is especially agreed that the sale and purchase of goods/services does not confer on the Buyer any license or rights under any intellectual property rights which is the property of Infinity Laboratories.

## 19. INSPECTION

Any inspection or test agreed upon prior to acceptance of the goods/services by the Buyer must, unless otherwise agreed, be carried out at Infinity Laboratories' premises. In the event of any specialized inspection being required or special tests prescribed by the Buyer, the cost shall be to the Buyer's account. In the case of any inspection prior to acceptance of the goods/services, Infinity Laboratories accepts no responsibility for any defects in the goods/services which are identified once the goods/services in question have left Infinity Laboratories' premises but which should reasonably have been detected upon inspection at Infinity Laboratories' premises.

## 20. INSTRUCTIONS BY THE BUYER

The Buyer shall indemnify Infinity Laboratories from and hold it harmless against all losses, expenses or liability whatsoever and howsoever incurred by Infinity Laboratories as result of compliance\_ or adherence by Infinity Laboratories with any instruction of the Buyer in relation to the goods/services.

## 21. NOTICES

Any notice to be given by the Buyer to Infinity Laboratories shall be sent to Infinity Laboratories' valid business address 621 SouthPark Drive, Suite 100, Littleton, Colorado 80120. No notice shall be deemed to have been given until it is actually received at the address.

## 22. SEVERANCE

If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision in the Agreement and each such other provision shall remain in full force and effect.

## 23. DISPUTE RESOLUTION

If a dispute arises out of or in connection with an order or this Agreement the parties shall use their best endeavors to bring the matter to the other party's attention as soon as possible, to resolve the dispute through discussion in good faith and to promptly elevate it to senior levels of management as appropriate for the nature of the dispute. If the dispute remains unresolved within 7 business days following the referral of the dispute to senior levels of management, either party may commence mediation and/or litigation in a court that has jurisdiction to hear and determine the dispute.

## 24. EXECUTION OF CREDIT APPLICATION AS A DEED

Where the Buyer completes a credit application the parties acknowledge and accept that the terms and conditions of the application are executed as a Deed.

## 25. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Colorado and the parties submit to the jurisdiction of its Courts.

## 26. SECURITY INTEREST

The Buyer gives Infinity Laboratories a Security Interest in all of the Buyer's present and after-acquired assets/property in which Goods/services or materials supplied or financed by Infinity Laboratories have been attached or incorporated.