

## Terms & Conditions of Sale

The following Terms and Conditions of Sale should accompany all quotations for Arcxis products as well as all invoices for payment for ordered Arcxis products.



### STANDARD TERMS AND CONDITIONS OF SALE

1. **AGREEMENT.** ALL SALES BY ARCXIS BIOTECHNOLOGIES (“SELLER”) OF ANY PRODUCTS (“PRODUCTS”) TO THE PURCHASER (“BUYER”) SHALL BE EXCLUSIVELY GOVERNED BY THESE TERMS AND CONDITIONS (“TERMS AND CONDITIONS”), THESE TERMS AND CONDITIONS TAKE PRECEDENCE OVER BUYER’S ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS, TO WHICH NOTICE OF OBJECTION IS HEREBY GIVEN. BUYER’S ENTITLEMENT TO THE PRODUCTS IS CONTINGENT UPON BUYER’S ACCEPTANCE OF THESE TERMS AND CONDITIONS, ANY CHANGES TO WHICH MUST SPECIFICALLY BE AGREED TO IN A WRITING EXECUTED BY SELLER AND BUYER BEFORE BECOMING BINDING ON EITHER PARTY. The parties expressly agree that except for the item type, quantity, requested delivery dates and location, any terms and conditions on Buyer’s purchase order will have no effect whatsoever. In addition, to the extent of any conflict or inconsistency between these Terms and Conditions and Buyer’s purchase order, these Terms and Conditions will control.
2. **Price:** Quoted Prices are valid for the 45 Days from the date of the quote unless canceled in writing by Seller. Shipping charges, insurance, duties and taxes are not included in prices and will be invoiced, if applicable, as separate items.
3. **Packing and loss or damage in transit:** Products will be packed for shipment in a manner suitable to air or truck. Unless otherwise indicated on the sales order acknowledgment, all sales are F.C.A. factory and all risk of loss or damage to Products in transit is upon Buyer. Payment will be made in accordance with Paragraph 5 below.
4. **Taxes:** Buyer is responsible for the ultimate payment of all taxes which may be assessed or levied on or on the account of materials sold hereunder to the Buyer whether termed a gross receipts tax, use tax, property tax, sales tax or otherwise. Where Buyer claims that this transaction is not subject to any such tax that Buyer is exempt or that Seller is not required to collect such tax, Buyer agrees to provide Seller with any documentation necessary to support such a claim, to allow Seller to document its decision not to collect such tax(es), and to indemnify Seller from any subsequent claims that such tax(es) were due.
5. **Terms of payment:** Payment terms are net 30 from day of invoicing not receipt or installation. Seller reserves the right in its sole discretion to require alternative payment terms, including, without limitation, sight draft, letter of credit or full or partial payment in advance. The purchase price shall become immediately due and payable and Seller may cancel any unfilled portion of a shipment upon Buyer's failure to make any payment when due. Overdue payments shall be subject to finance charges computed at a periodic rate (to the extent allowed by law of 1 1/2% per month (18% per year). Seller retains a first priority security interest in the Products sold until Seller receives payment in full for the Products. Buyer shall provide in a timely manner all documents reasonably required by Seller to perfect and enforce its security interest.
6. **Installation and site preparation:** Installation services are included in the purchase price of the equipment sold hereunder only if expressly so stated on the face of seller’s quotation or in Seller’s most current price list. For equipment requiring installation by Seller’s service personnel, it is the responsibility of the Buyer to prepare the site environmentally and provide the required services, power, water, drain, air, bottled gases, permits, licenses, approvals, etc. as well as whatever is required to un-crate and move the equipment to its location. The tasks that must be completed by the Buyer prior to Seller installation are outlined in the Seller’s pre-installation manual.
7. **Acceptance:** Equipment will be considered to be accepted once installation is completed or 90 days after a proven shipment receipt is available from the Buyer or Buyers’ representative, whichever occurs first.

Promptly upon receipt of each delivery of Products hereunder, Buyer shall examine such Products for any defects, damage or shortage. All claims, including without limitation for non-conforming Products, shortage or any other cause whatsoever, shall be deemed waived unless made in writing and received by Seller by (a) 14 days after Buyer's receipt of the Products, in the case of any non-conformities or deficiencies reasonably ascertainable by visual inspection or routine testing procedures, (b) 30 days after Buyer learns of the facts giving rise to the claim, in the case of any other non-conformities or deficiencies not reasonably ascertainable by visual inspection or routine testing procedures, or (c) 60 days after Buyer’s receipt of such shipment. Buyer's failure to give notice of any claim within the applicable time period specified above, shall be deemed an absolute and unconditional waiver of such claim, irrespective of whether the facts giving rise to such claim shall have been discovered or whether processing or use of the Products shall have then taken place.

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8. **Delivery dates:** The scheduled shipping date shown on the sales order acknowledgment is our best estimate of the time the Order will be shipped; Seller will use commercially reasonable efforts to meet desired delivery dates, but will not be liable to Buyer in any way for any late shipment. Seller may make, and invoice, partial shipments. Seller assumes no liability for loss, general damages, or special or consequential damages due to delays.
9. **Returned Goods:** Credit will not be issued for goods returned without prior approval. Buyer shall call Customer Service for required approval, return procedures and comply with such terms and procedures in the event of a return of goods. All returns are subject to a 25% restocking fee. Returns are not permitted for custom-made Products.
10. **Termination:** Upon any termination or cancellation of this sales order by Buyer, either in whole or in part, Buyer agrees to promptly pay appropriate termination or cancellation charges invoiced by Seller. Orders cancelled by Buyer less than 4 weeks prior to the scheduled ship date are subject to a 15% cancellation charge.
11. **Warranty:**
  - a. The Seller warrants hardware Products against defects in materials and workmanship based on the specific warranty period and terms specified in the Product quotation.
  - b. The Seller warrants that the software media, if any, on which the program is distributed and the related documentation will be free from defects in materials and workmanship for ninety (90) days from the date of shipment.
  - c. Seller's liability for breach of warranty shall exist only if the Products are installed, started in operation and tested in conformity with Seller's published instructions.
  - d. Seller makes and Buyer receives no other warranty, expressed or implied, and all warranties of merchantability, fitness for a particular purpose, title or non-infringement of third party rights are expressly excluded. No warranties are made by any of Seller's licensors or suppliers.
  - e. Consumable Products or the like are only warranted to conform to the quantity and content stated on the label and in the specifications at the time of order acceptance.

The exclusive remedy for any breach of warranty reported to Seller within the applicable warranty period shall be, at Seller's option, the repair or replacement of such Product with a new one of the same type or the refund of the purchase price for such Product. No agent, representative or employee of Seller has any authority to make any representations or warranties other than those set forth in this Section.

**Exclusions:** This warranty covers normal use. Preventive maintenance is not included. Seller does not warrant and will not be held responsible for loss or damages resulting from a cause other than defects in material or workmanship, including damage or loss caused by:

- a. negligence, neglect, accident, servicing or modification by anyone other than a qualified Service Engineer or Seller's duly authorized agent;
- b. any natural disaster, including earthquake, lightning, flood, or fire;
- c. electrical surges or use of improper power sources;
- d. misuse or non-conformance to recommended protocol or instrument operation procedure.

In all cases, Seller has sole responsibility and discretion for determining the cause and nature of a Product defect, and Seller's determination with regard thereto shall be final.

12. **LIMITATION OF LIABILITY; INDEMNITY:** SELLER'S TOTAL LIABILITY ARISING FROM THE PRODUCTS, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHERWISE, WILL BE LIMITED TO THE AMOUNT BUYER PAID FOR THE PRODUCTS FOR WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THE PRODUCTS, REGARDLESS OF WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER ARISING OUT OF DESIGN OR MANUFACTURING DEFECT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, DEFAULT, INDEMNITY OR ANY OTHER REASON OR LEGAL THEORY ARISING OUT OF THE USE OR HANDLING OF ITS PRODUCTS OR ITS PERFORMANCE UNDER THESE TERMS AND CONDITIONS. NO ACTION RELATING TO THE PRODUCTS MAY BE BROUGHT BY BUYER MORE THAN ONE YEAR AFTER SHIPMENT. SELLER DISCLAIMS ALL LIABILITY OF ANY KIND OF SELLER'S SUPPLIERS AND LICENSORS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF SECTIONS 11 AND 12 MAY NOT APPLY.
13. **Use of Products:** Buyer shall indemnify Seller against all claims, losses, damage, or injury arising out of or related to the use of the Products, whether sold separately or incorporated into any of Buyer's products or services. Products are for research or laboratory use only and are not to be administered to humans or animals or used for pharmaceutical, in vitro diagnostic or commercial purposes. Some Products may be used in clinical diagnostic laboratory systems after the laboratory has validated their complete systems as required by CLIA '88 regulations in the U.S. or equivalents in other countries. Persons using the Products should be technically qualified as defined in 40 C.F.R. § 720.3(ee) and should follow the Guidelines for Research Involving Recombinant DNA Molecules (N.I.H. Guidelines) as presented in the Federal Register, July 5, 1994 (59 FR 34496) and any amendments thereto.

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14. **Software Licenses and Copyrighted Material:** Subject to these Terms and Conditions, Seller grants to Buyer a non-exclusive, non-transferable license to use the software that is part of the Products solely in connection with Buyer's use of the Products. Buyer may not modify, reproduce, decompile, reverse engineer or transfer the software without Seller's prior written consent. The terms of the license are available from Seller and are accepted by Buyer on delivery of the licensed software. Unless otherwise specified, Seller's copyrighted material (software, firmware and printed documentation) may not be copied except for archive purpose, to replace a defective copy, or for program error verification by Buyer.
15. **Proprietary Information:** Seller may provide proprietary information to Buyer in connection with the Products. Buyer agrees that such information shall include all information which Buyer knows or reasonably may know is confidential. Such information shall remain the exclusive property of Seller and Buyer agrees to preserve and protect such information and to take all other acts reasonably requested by Seller with respect to it. Upon Seller's request, Buyer will return to Seller all documents containing Seller's proprietary information and retain no copies thereof. Buyer agrees that its obligation to protect Seller's proprietary information shall be ongoing and shall not cease upon completion or termination of these Terms and Conditions.
16. **Authority to Export:** These Terms and Conditions are subject to all laws, regulations, orders and other restrictions on the export from the U.S. or re-export of the Products. All orders accepted for export (and/or re-export) are subject to: a) issuance of an export (re-export) license by the United States Government, and b) the Buyer providing Seller with all documentation necessary for shipment to the destination country. Buyer shall hold Seller harmless from any liability arising from Buyer's failure to comply with such laws, regulations and orders, or the provisions of this paragraph
17. **Patent Indemnity:** Seller agrees to defend, at its own expense, any suit or legal proceeding which may be brought against Buyer alleging infringement by Buyer of any patent of the United States, by Buyer's use of the Product sold hereunder for its intended purpose, provided that Buyer shall give Seller prompt written notice of any claim, threat, or institution of suit or legal proceeding and provided that Seller shall then have the sole right to control and conduct the defense and/or settlement of such claim, threat, suit or legal proceeding, either in the name of Seller or Buyer or both, and Buyer shall, at Seller's request and expense, provide relevant information and reasonable cooperation. Seller shall pay final judgment and all costs and attorney's fees assessed against Buyer in any such suit or legal proceeding, provided Buyer has complied with the conditions hereof with respect to prompt notice and cooperation in connection with such suit or legal proceeding and given exclusive control thereof to Seller, but Seller shall not be liable for any attorney's fees or other legal expenses incurred by Buyer without the knowledge and prior written consent of Seller. Seller shall also have the right, at its own expense, to replace the equipment claimed to infringe with equally satisfactory non-infringing equipment, modify said Product so that it becomes non-infringing, or remove such equipment and refund the price thereof.

The foregoing indemnity fully defines Seller's obligations for patent infringement. Such obligations to defend and make payment shall specifically not apply to:

- a. an infringement claim resulting from additions or changes in or to the Product made by Buyer or any third party or from use in combination with other equipment, or
- b. an infringement claim which is settled without the consent of Seller, or
- c. an infringement claim which resulted from compliance by Seller with specifications furnished by Buyer.

The Total amount of Seller's obligation and liability under this Section shall not exceed the price paid by Buyer to Seller for the Product held to infringe and in no event will Seller be accountable for consequential damages under this indemnity, such as, for example, loss of business profits or goodwill. With respect to goods manufactured in whole or part to Buyers' specifications, the buyer will protect and indemnify Seller against all claims for damages or profits arising from infringements of patents, designs, copyrights or trademarks.

18. **Specifications:** Weights and dimension set forth in sales literature are not guaranteed unless previously certified in writing. Seller may without affecting the obligations under this sales order, make insignificant changes to the specification of the Product or Products delivered under this sales order from those contained in sales literature.
19. **Special Orders:** Buyer acknowledges that if this purchase is a special order, the provisions of this paragraph supersede any conflicting general terms of these Terms and Conditions. Buyer agrees to defend, protect, and hold harmless Seller against all suits at law or in equity and from any and all damages, claims, and demands for personal injury or actual or alleged infringement of any United States or foreign intellectual property right and to defend any suit or actions which may be brought against Seller for such injury and/or any alleged infringement because of the manufacture and/or sale of the material covered thereby. All special ordered Products are subject to a cancellation fee of 100% of the purchase price if cancelled at any time after placed. Special ordered Products shall be described in the purchase order at or before the time that their manufacture or assembly commences.
20. **General:** No waiver of rights under these Terms and Conditions by either party shall constitute a subsequent waiver of this or any other right under these Terms and Conditions. Neither these Terms and Conditions nor any rights under these Terms and Conditions shall be assigned or otherwise transferred by Buyer (by operation of law or otherwise) without the prior written consent of Seller and any unauthorized transfer or assignment shall be void. These Terms and Conditions shall bind and inure to the benefit of the successors and permitted assigns of the parties hereto. In the event that any of the terms of these Terms and Conditions are held to be illegal by any court of competent jurisdiction, all remaining terms of these Terms and Conditions shall remain in full force and effect. These Terms and Conditions constitute the entire agreement regarding the subject matter hereof and supersede all prior or contemporaneous understandings, written or oral.

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21. **Governing Law; Venue:** These Terms and Conditions will be governed by the laws of the State of California as applied to agreements between California residents performed entirely within California, without regard to any conflicts of law principles that would result in application of laws of any other jurisdiction. Buyer shall only bring an action arising from or relating to these Terms and Conditions in a federal or state court in San Francisco, California, and Buyer irrevocably submits to the personal jurisdiction and venue of such court in such action or in any action brought in such courts by Seller. Buyer irrevocably consents to the service of process from any of the aforesaid courts by mailing copies thereof by registered or certified mail, postage prepaid, to Buyer at its address designated pursuant to these Terms and Conditions, with such service of process to become effective thirty (30) days after such mailing. Buyer agrees to pay Seller's reasonable attorney's fees and costs required to enforce Seller's rights hereunder. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms and Conditions.