

# Terms and Conditions

## for BioFire Defense, LLC Instruments and Products

These terms and conditions of sale shall govern the transaction between Buyer and Seller, notwithstanding any conflicting term or condition, and notwithstanding Seller's acknowledgment of any other document or communication to the contrary. Buyer's placement of an order with Seller constitutes acceptance of these terms and conditions. Seller hereby disclaims and rejects any additional or different terms proposed by Buyer in its purchase order or otherwise, and such additional or different terms are hereby null and void.

### 1. CERTAIN DEFINITIONS

(a) "Assays" means thermal cycling oligonucleotide assays designed, synthesized and/or manufactured by Seller and furnished to Buyer, including primers, probes and reagents made a part of Assays furnished to Buyer.

(b) "Buyer" refers to the business, firm, partnership, company or other business entity or person(s) listed on the face side of its purchase order.

(c) "Custom Assays" means Assays designed, synthesized or manufactured by Seller containing one or more oligonucleotides based upon a Specified Sequence furnished by Buyer.

(d) "Devices" means items of tangible personal property, such as instruments, devices, parts or assemblies.

(e) "Permitted Uses" means the field of use and/or application of the Products (or specific Products or classes of Products) by end-users, as specified on Product labels or inserts affixed to or accompanying the Products, subject to any restrictions or limitations on usage set forth therein.

(f) "Products" means Devices, Software, Assays or other items covered by Buyer's purchase order.

(g) "Seller" means BioFire Defense, LLC, a Delaware corporation.

(h) "Software" shall mean computer software, machine readable instructions or instruction sets owned or licensed by Seller and delivered with or installed, loaded, integrated, embedded, bundled, incorporated or read into memory on any Devices, including all user manuals, instructions and other documentation related thereto.

(i) "Specified Sequence" means the specific oligonucleotide sequence and related information specified by Buyer.

(j) "Third Party Licenses" means rights or licenses of Buyer under contractual agreements between Buyer and one or more third parties.

### 2. ACCEPTANCE OF PURCHASE ORDER

By completing and delivering its purchase order to Seller, Buyer agrees to the terms and conditions hereof. Seller reserves the right to reject any purchase order for any reason, including but not limited to Buyer's credit history, product availability, etc. Seller shall not be deemed to have accepted Buyer's purchase order, or to have any obligations hereunder, unless and until (a) Seller delivers written acknowledgement of acceptance to Buyer or (b) Seller delivers Products to Buyer, whichever occurs first. Notwithstanding the foregoing, any purchase order placed for Assays shall, subject to Section 13 ("Limited Warranty"), be non-cancellable and non-refundable immediately upon Buyer's placement of such order.

### 3. SHIPPING AND INSURANCE

Seller shall deliver the Products to a common carrier for shipment and delivery, in accordance with Seller's ordinary packaging, shipping and insurance practices, to the address designated by Buyer ("Delivery Point"). Buyer shall bear all freight, insurance and other shipping expenses to Delivery Point, unless otherwise agreed by Seller in a written quotation delivered to Buyer within thirty (30) days prior to the date hereof. Seller may ship in one or more lots, at Seller's sole election, in which case each lot shall be deemed a separate sale, and Seller shall not be liable for any failure or delay in shipping. Seller shall have the right, in its reasonable judgment, to apportion fairly among its various customers in such manner as Seller deems equitable, the Products then available for delivery. Any proceeds of insurance on the Products shall be paid to Seller and applied against any loss or damage to the Products.

### 4. TITLE AND RISK OF LOSS

Effective as of Seller's receipt of the purchase price and subject to the terms and conditions herein, Seller shall, and hereby does, sell, transfer and assign to Buyer, free and clear of any liens or encumbrances of any kind or nature created by or through Seller, good and marketable title in and to the Products (except that title to Software shall at all times remain in Seller, subject only to the end user license rights granted to Buyer under Section 8 below). Seller shall retain all risks of loss or

damage to the Products until tender of delivery to Buyer at Delivery Point. From and after the time of tender of delivery of the Products at the Delivery Point, (a) Buyer shall store Assays in accordance with Seller's storage and handling instructions delivered with the Assays (or, absent such instructions, in accordance with industry customs and standards), including all temperature and climate control standards, and (b) Buyer shall be and is responsible for all risk of loss or destruction of or damage to the Products and no such loss or damage shall relieve Buyer from its payment obligations under this Agreement.

### 5. ACCEPTANCE AND REJECTION

Instruments may be returned for full credit within 30 calendar days of Buyer's receipt of the instrument, provided that Buyer has not allowed the instrument to become damaged. Assays may not be returned except in the event that Seller has breached its limited warranty at Section 13(c). Instruments shall be deemed accepted if not rejected in writing received by Seller within the above-stated time period or, if earlier, upon Buyer's written acceptance. Products other than instruments or Assays shall be deemed accepted if not rejected in writing received by Seller within five business days of receipt or, if earlier, upon Buyer's written acceptance. Any claims for defective, damaged or missing Products, or to return Products based on Permitted Use limitations, must be reported to Seller in writing within the applicable time period and Buyer must promptly return rejected Products to Seller C.O.D. accompanied by a valid return authorization number obtained from Seller. Seller may refuse any Product not timely rejected or sought to be returned without a valid return authorization number. For any valid claim timely made, at Seller's option, Seller may elect to repair or to replace the Product with a comparable Product or to refund the purchase price of the Product. These are Buyer's sole and exclusive remedies for defective, damaged or missing Product(s).

### 6. PERMITTED USES

Buyer represents and warrants that the Products are purchased solely for Permitted Uses and Buyer covenants and agrees that Buyer shall not use the Products for any purpose other than the Permitted Uses, unless Buyer has the right to do so pursuant to Third Party Licenses.



## 7. PURCHASE PRICE

In exchange for the Products, Buyer shall pay to Seller the purchase price plus applicable sales and use taxes, value added taxes, excise taxes (including but not limited to medical device excise taxes) and similar taxes or assessments, if any, and shipping and insurance costs to the extent of Buyer's responsibility for such costs under Section 3 above. The purchase price shall be due and payable no later than thirty (30) calendar days after the date of Seller's invoice. Seller reserves the right to require other payment terms, including without limitation, payment in advance and/or letters of credit. All foreign shipments require prepayment prior to shipping, unless otherwise specified by the Company. Buyer is not entitled to abate or reduce such payments, or to offset any amounts or charges against the amounts due to Seller under this Agreement. Payments are deemed made by Buyer when received by Seller. Interest shall accrue on any unpaid balances due to Seller at a rate of 1.5% per month (or the maximum legal interest rate allowed by applicable law, if less) from and after the due date.

## 8. SOFTWARE

All Software, other than Software owned, developed, controlled or licensed by any party other than Seller ("Third Party Software"), provided to Buyer shall be licensed subject to the terms set forth in any "shrink-wrapped" license packed with the Products or "click-wrap" license visually displayed upon installation or execution of the Software (the "End-User License Agreement"). In the absence of any such End-User License Agreement for a particular Software Product, Seller grants upon delivery to Buyer and Buyer shall accept a non-exclusive license to use the Software (other than Third Party Software) solely in conjunction with the Products, subject to the following terms and conditions: (a) all title to, ownership of and all proprietary rights (including but not limited to patent rights, copyrights, trade secrets and other intellectual property rights) in and to the Software, other than the limited rights expressly granted to Buyer herein, shall remain vested in Seller; (b) Buyer shall not sell, transfer, assign, lease, loan, rent, sublicense, reproduce, duplicate or distribute the Software or any rights under the Software license granted hereunder; (c) nothing contained in this Agreement shall obligate Seller to deliver Software source code to Buyer or any third party; (d) Buyer shall not, and shall not permit others to: copy, translate, modify, create derivative works from, reverse engineer, decompile, encumber or otherwise use the Software; and (e) all appropriate copyright and other proprietary notices and legends shall be retained on all Software. With respect to Third Party Software, Buyer's license and rights to use such Third Party Software shall be subject to the terms and conditions of use specified by the owner, developer or manufacturer thereof.

## 9. INDEMNIFICATION

Seller shall indemnify, defend and hold Buyer harmless from and against any claims, demands, causes of action or liability asserted by any third party based upon a claim that the sale or use of Products for Permitted Uses infringes or misappropriates the patent, trademark or other intellectual property rights of such third party. Buyer shall indemnify, defend and hold Seller harmless from and against any claims, demands, causes of action or liability asserted by any third party and arising from or related to (a) the use, possession or operation of the Products, (b) the conduct by Buyer of its business and operations, (c) any breach of any covenant or any representation or warranty made by Buyer in this Agreement, or (d) any claims of infringement by third parties to the extent arising from Specified Sequences provided by Buyer.

## 10. LIMITATION OF LIABILITY

Under no circumstance shall Seller have any liability to Buyer, Buyer's officers, directors, owners, agents, employees, Buyers or any third parties for any incidental, indirect, special or consequential damages arising out of or related to (a) the use, possession or operation of the Products, or (b) the conduct by Buyer of its business and operations, or for any damages based on strict or absolute tort liability, negligence or other theory of liability (except to the extent of contract liability to Buyer arising from a Seller default, if any, under this Agreement), regardless of whether Seller is advised or has knowledge of the possibility of such damages. Notwithstanding anything to the contrary in this Agreement, Seller's liability under this Agreement, if any, to Buyer or its employees, agents, Buyers or invitees, or any third party(ies), shall be, and hereby is, expressly limited to the purchase price paid by Buyer and received by Seller in connection with the specific Product(s) which are the proximate cause of any such liability.

## 11. EXPORT CONTROLS

Buyer and Seller shall comply with, and Seller's duty to export, ship or deliver Products to Buyer is subject to, applicable laws and regulations including, without limitation, the Export Administration Act of 1979, the Export Administration Regulations issued by the United States Department of Commerce, and the International Traffic in Arms Regulations (ITAR) issued by the United States Department of State.

## 12. SUPPLEMENTAL TERMS AND CONDITIONS APPLICABLE TO ASSAYS

Notwithstanding anything to the contrary in this Agreement, the following additional terms and conditions shall govern the order, design, synthesis, manufacture and sale of Assays under this Agreement:

(a) All Assays and oligonucleotide products are sold for research use only, except to the extent (i) otherwise specified in the Permitted Uses or (ii) Buyer has the right to do so pursuant to contractual agreements with third parties.

(b) Seller reserves the right, at any time, to decline or stop the design and/or synthesis of any Custom Assays requested by Buyer for any reason, in its sole discretion, including but not limited to commercial or technological impracticability or impossibility, inadequate rights or licensure, or potential infringement of the rights of third parties.

(c) The quantity of Assay components, such as oligonucleotides, primers, probes, reagents, etc., in Assays (including Custom Assays) is set forth in Seller's product and pricing lists as published from time to time.

(d) By submitting its purchase order to Seller, and by submitting any Specific Sequences to Seller, Buyer represents and warrants that (i) the execution, delivery and performance by Buyer of its purchase order will not, in any material respect, violate or be in conflict with, result in a breach of or constitute (with or without notice or the lapse of time or both) a default under any contract to which Buyer is a party or by which Buyer is bound or affected; and (ii) Buyer has the right to submit the Specified Sequences to Seller and to authorize Seller to design, synthesize and manufacture the Custom Assays for Buyer, and such actions will not directly or indirectly infringe upon or otherwise violate the rights of any third party, including by way of illustration but not limitation, the patent, trademark, copyright, trade secret or other intellectual property rights or protections of law of any third party anywhere in the world.

## 13. LIMITED WARRANTY

(a) With respect to Devices manufactured by Seller, other than Devices developed, manufactured or produced by any party other than Seller, such as but not limited to computers, monitors and printers ("Third Party Devices"), Seller warrants that any such Seller Devices shall meet or exceed any specifications published by Seller in the user manual delivered with the Device and shall be free from defects in material or workmanship for a period of one (1) year from the time of tender of delivery of the Devices at the Delivery Point. Seller makes no representations or warranties of any kind or nature as to Third Party Devices.

(b) With respect to Software, other than Software developed, owned or licensed by any party other than Seller ("Third Party Software"), Seller warrants that the Seller Software, when properly installed and executed on a computer provided by the Company, shall perform substantially in accordance with its functional specifications as set forth in the user manual published by Seller in connection with that version of the Software (provided, however, that this limited warranty as to the Seller Software shall be void if the End User

License Agreement provides an express warranty with respect to the Software). Seller makes no representations or warranties of any kind or nature as to Third Party Software.

(c) With respect to Seller's commercial off-the-shelf Assays, Seller warrants that the Assays shall be merchantable and shall conform with the specifications set forth in the applicable product insert. With respect to Assays specially designed, synthesized and/or manufactured by Seller, Seller warrants that it will make commercially reasonable efforts, consistent with the standard of care then prevailing in its industry in the state in which Seller maintains its principal manufacturing facilities, to produce scientifically and technically sound results, subject in all instances to the accuracy, completeness and overall quality of any Specified Sequence or other information or materials provided by Buyer. SELLER DOES NOT WARRANT THAT ANY ASSAYS WILL AMPLIFY THE TARGET SEQUENCES OR THAT ANY CUSTOM ASSAYS WILL AMPLIFY ANY SPECIFIED SEQUENCES.

(d) In the event of any breach of this limited warranty: (i) as to Devices, Seller's sole obligation (and Buyer's sole remedy) under this limited warranty shall be for Seller to repair or replace the Devices, with new or refurbished parts, free of charge, at Seller's principal of business and (ii) as to Software or Assays, Seller's sole obligation (and Buyer's sole remedy) under this limited warranty shall be to repair, replace or correct such Software or Assays. This limited warranty specifically excludes shipping, freight and insurance charges, if any. With respect to all limited warranty claims, Buyer shall request telephone technical and troubleshooting support from Seller in accordance with Seller's normal business practices and, if and to the extent Seller is unable to resolve the problem and the problem appears to be a warranty claim hereunder, Seller shall then issue a Return Material Authorization (RMA) in accordance with its normal warranty processes.

(e) This limited warranty will apply only to problems reported to Seller during the specified warranty period. Further, this limited warranty shall not apply if (i) the Devices, Software or Assays are not used for Permitted Uses or in accordance with Seller's specifications or instructions, or (ii) to the extent the Devices, Software or Assays are modified without the prior written consent of Seller.

(f) Repairs and replacements covered by the above limited warranty are warranted to be free from defects in materials or workmanship, except that the defect must appear (i) within three (3) months from the date of repair or replacement or (ii) prior to the expiration of the original warranty period, whichever is later. Inspection and acceptance of items by Buyer and/or payment therefor shall not relieve Seller of responsibilities hereunder.

(g) Except as expressly set forth in this Section, Seller makes no further representations or warranties of any kind or nature whatsoever. Any description of the Products con-

tained on Seller's website or promotional materials is for the sole purpose of identifying them, and any such description is not a part of the basis of the bargain and does not constitute a warranty that a Product shall conform to that description. No affirmation of fact or promise made by Seller, on its website or otherwise, shall constitute a warranty that the Products will conform to the affirmation or promise. SELLER MAKES NO FURTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE PRODUCT'S FITNESS FOR A PARTICULAR PURPOSE, LACK OF INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES OR THE COMPATIBILITY OR INTEROPERABILITY OF THE DEVICES OR SOFTWARE WITH OTHER PERSONAL PROPERTY OR ACCESSORIES (OTHER THAN DEVICES SOLD OR FURNISHED HEREUNDER) WHICH BUYER USES WITH OR CONNECTS TO THE DEVICES OR SOFTWARE.

#### 14. CERTAIN LICENSING AND PATENT MATTERS

Many of Seller's Products are covered by one or more of the following U.S. patents, patents pending, or their foreign counterparts as listed at <http://biofiredefense.com/legalnotices>. Products purchased and sold hereunder are sold by Seller solely for Permitted Uses by Buyer, subject to any restrictions on Permitted Uses. Depending on Buyer's specific application(s), Buyer may need one or more additional licenses or rights to use certain of the Products. Buyer represents and warrants that it has, or will obtain, all necessary Third Party Licenses for its specific application(s), and Seller disclaims any liability or responsibility to Buyer with respect to patents or other proprietary rights owned or controlled by third parties. Notwithstanding anything to the contrary in this Agreement, nothing contained herein shall be deemed, construed or interpreted as (i) a grant, transfer or convey to Buyer or any third party, expressly or by inference, of any right, title or interest in, or license or right to use, any, all or any portions of Seller's inventions, patents, know-how, processes or procedures, technology, know-how, copyrights or trademarks, other than the right to use the Products for Permitted Use(s) only; (ii) granting Buyer any ongoing right to be supplied with, or to manufacture or to have manufactured, any quantities of Products beyond those ordered in accordance with the terms and conditions of this Agreement; or (iii) granting Buyer the right to resell or convey in any manner the Assays or any components thereof to any third party anywhere in the world.

#### 15. MISCELLANEOUS PROVISIONS

This contract is a final and complete expression of the terms and conditions between Buyer and Seller regarding the sale of the Products and other subjects covered hereby. This contract shall be legally binding upon and effective against the parties. No other terms or conditions, regardless of whether written or

verbal and regardless of whether set forth in any proposals, negotiations, credit applications, purchase orders, invoices or similar documents or statements between Buyer and Seller are part of this contract, and any prior version(s) of this contract are hereby void and superseded. This contract may be modified only by a written instrument dated subsequent to the date hereof and signed by Buyer and the President, Chief Operating Officer, Chief Financial Officer or any senior executive officer of Seller. If any provision of this contract is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others. This contract shall be deemed fully executed and performed in, and shall be governed by and construed in accordance with the laws of the state of Utah, excluding its conflicts of laws principles. Buyer hereby irrevocably submits generally and unconditionally to the jurisdiction of any court located in the state of Utah, and Buyer and Seller irrevocably waive trial by jury in action or proceeding related to or arising from this Agreement. The United Nations Convention on the International Sales of Goods shall not apply to the transactions contemplated by this Agreement. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, venue shall be exclusively vested in the courts of the state of Utah, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.