

PICKERING LABORATORIES INC GENERAL TERMS AND CONDITIONS OF SALE

1. Controlling Document. These Terms and Conditions ("T & C") and only these T & Cs apply to all products sold and services provided by Pickering Laboratories, Inc ("Seller") to Buyer. By the placement of Buyer's purchase order, Buyer consents to these T & Cs and no others and shall supersede any T & C provided to Seller by Buyer.

2. Terms of Payment. All payments are due and payable thirty (30) days from the date of the invoice unless otherwise indicated on the invoice. A service charge of 1 1/2% per month shall apply to all invoices not paid within 30 days.

3. Security Agreement.

(a) As security for Buyer's payment, Buyer grants Seller a purchase money security interest in the specific products for which payment is due. Seller has the right to file a financing statement evidencing this security interest.

(b) This security interest shall terminate upon receipt by Seller of payment for the specific products.

4. Delivery, Title, and Risk of Loss. Title to products and risk of loss of products shall pass to Buyer when Seller delivers such products to a common carrier or Buyer's agent. Delivery shall be EX Works Seller's Factory. Delivery dates and freight cost estimates agreed to by Seller are approximate only. Seller shall not be liable for, nor shall Seller be in breach of its obligations to the Buyer because of any delivery made within a reasonable time after the stated delivery date. Seller may, by written notice to Buyer, change any delivery date, and such date shall become the agreed upon delivery date unless Buyer objects to such date in writing delivered to Seller at Buyer's sole expense within ten (10) days of receipt of Seller's notice.

5. Force Majeure. Seller shall not be liable for any failure to deliver, or delay in the delivery of, any products or services due to any cause beyond its control, including but not limited to natural phenomena, pandemic, virus, government actions, fires, labor disputes, or inability to obtain components, energy, materials, manufacturing facilities, or transportation. In the event of such delay, the date of delivery or performance hereunder shall be extended by a period equal to the time lost by reason of such delay. In the event Seller's production is curtailed for any of the above reasons, Seller may allocate its production to its various Buyers. This section shall not apply to performing payment obligations.

6. Seller's Liability. Buyer shall inspect all products upon arrival and shall give written notice to Seller, within five (5) business days of arrival of any claim for shortage or other nonconformance with the terms of Buyer's order ("Defect"). If Buyer fails to give timely notice, all products shall be deemed to conform to the terms of Buyer's invoice. If Buyer notifies Seller within 5 days after the date of invoice of a claimed Defect, Buyer shall offer Seller an opportunity to investigate the claim and to inspect allegedly defective products. Failure to offer Seller such opportunity shall constitute acceptance by Buyer and a waiver of all claims for defects. If Seller determines that Buyer's claim is valid, in its sole discretion, Seller may repair the defective products or replace the defective products with conforming products at the Seller's facility at its sole option. Replacement or repair of defective products will be made only upon return of the defective product paid for at Seller's sole expense.

7. Seller's Remedies. If Buyer fails, with or without cause, to furnish Seller with specifications and/or instructions for, or refuses to accept deliveries of, any of the products sold under this contract, or is otherwise in default under or repudiates this contract or any other contract with Seller or fails to pay when due any invoice under this contract, then in addition to any and all remedies allowed by law, Seller without notice **(1)** may deter shipment under this or any contract between Buyer and Seller until such default, breach or repudiation is removed and/or **(2)** may cancel any undelivered portion of this and/or any other contract in whole or in part, Buyer remaining liable for damages.

8. Patent Indemnity. The Buyer shall, at its own expense, indemnify and hold Seller harmless from and against any expense or loss resulting from any infringement of any patent, trademark, or copyright arising as a result of Seller's compliance with any of the Buyer's designs, specifications, or instructions, and shall defend at its own expense including attorney and expert fees and costs, any suit brought against Seller alleging any such infringements provided that Seller (i) gives the Buyer immediate notice of any such suit and permits the Buyer through counsel of its choice, to defend such suit, and (ii) gives Buyer all needed information, assistance, and authority, at the Buyer's expense, necessary for the Buyer to defend any such suit.

9. Order Cancellation.

(a) Custom products and/or services may not be cancelled once ordered.

(b) Non-custom products and/or services may be cancelled only by paying 15% of the purchase price.

10. Product Returns. Custom products cannot be returned. Non-custom products can be returned if unopened, in their original condition and with at least 3 months' shelf life remaining, calculated as of delivery date to Seller. A restocking fee of 15% of list price will be applied. Before returning a product for any reason, please: (1) Phone or email requesting a Returned Goods Authorization Number; (2) Package the product so that it will arrive undamaged. Use the original packaging if possible. If in doubt, please call. Pickering Laboratories does not assume responsibility for products which arrive damaged in shipment. Seller shall inspect all returns within 5 business days of arrival and advise Buyer if all criteria for a return of a product have been met.

11. Warranty and Limitation of Liability. **(1)** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM SELLER'S PERFORMANCE OR FAILURE TO PERFORM HEREUNDER OR THE FURNISHING, PERFORMANCE, OR USE OF ANY PRODUCTS OR SERVICES SOLD PURSUANT HERETO. **(2)** IN NO EVENT SHALL THE AMOUNT OF SELLER'S LIABILITY EXCEED THE AMOUNTS PAYABLE BY BUYER HEREUNDER. **(3)** IN NO EVENT SHALL SELLER BE LIABLE FOR DAMAGES RELATING TO ANY INSTRUMENT, EQUIPMENT OR APPARATUS WITH WHICH THE PRODUCTS SOLD HEREUNDER ARE USED. **(4)** SELLER EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY WARRANTY, EXPRESS, IMPLIED OR STATUTORY, INCLUDED BUT NOT LIMITED TO WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USE OF TRADE, EXCEPT SUCH WARRANTIES EXPRESSLY IDENTIFIED AS WARRANTIES AS ARE SET FORTH IN SELLER'S CURRENT OPERATING MANUAL, CATALOG OR OTHER WRITTEN GUARANTY COVERING THE PRODUCT, IF APPLICABLE.

12. GENERAL

a. The sale of products shall be governed by Uniform Commercial Code and other laws of the State of California and Santa Clara County, California shall be the appropriate venue and jurisdiction for the resolution of disputes hereunder.

b. The Buyer may not assign its rights or obligations under this acknowledgement without the prior written consent of Seller, and any purported assignment without such consent shall have no force or effect.

c. Any waiver by Seller of any default by the Buyer hereunder shall not be deemed to be a continuing waiver of such default or a waiver of any other default or any of these T & Cs.

d. These T & Cs may not be superseded, modified, or amended except in writing stating that there is such a modification and signed by an authorized representative of each party hereto, provided, however that Seller may modify the specifications of the products sold hereunder if such modification does not change the form, fit, or function of such products.

e. This document constitutes the entire terms and conditions agreement between the Buyer and Seller with regard to the products or services purchased or provided and expressly supersedes and replaces any prior or contemporaneous agreements, written or oral relating to such products or services.

f. **Any lawsuit, sounding either in contract or tort, must be filed within a year from the date of delivery of the products/services to the Buyer.**

g. The relationship between the parties is that of independent contractors. Nothing contained in these T & Cs shall be construed as creating any agency, partnership, joint venture, employment, or other relationship between the parties and neither shall have the authority to contract for or bind the other party in any manner whatsoever.

13. Arbitration. Any dispute, claim or controversy arising out of or relating these T & Cs or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Santa Clara County before one arbitrator. The arbitration shall be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

PICKERING LABORATORIES, INC
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