

Tosoh Bioscience, Inc.
Terms and Conditions of Sale

IF TOSOH BIOSCIENCE, INC. AND THE CUSTOMER HAVE SIGNED A DISTRIBUTION, REAGENT OR SYSTEM RENTAL, PURCHASE OR SERVICE AGREEMENT, THE TERMS AND PROVISIONS OF THAT SIGNED AGREEMENT SHALL SUPERSEDE THE TERMS AND CONDITIONS STATED BELOW.

1. **Trademarks** - All sales are made with the understanding that the trademarks, trade names and trade dress of Tosoh Bioscience, Inc. ("Tosoh") will not be altered or misused.

2. **Acceptance of Orders** - All orders are subject to acceptance by Tosoh. Tosoh may accept an order either in writing or by delivery of a portion of the Products covered by a purchase order; provided, however, that acceptance by delivery shall be deemed to be acceptance only of the part of such order relating to the Products delivered. If at any time it becomes necessary to allocate shipments, Tosoh will take whatever action that in its sole judgment is fair and equitable.

3. **Taxes** - Customer will pay any and all taxes, excise or other charges which may arise from the sale of the Tosoh instruments ("Instruments"), Tosoh reagents ("Reagents"), spare parts for use with an Instrument ("Spare Parts") and/or consumables for use with an Instrument ("Consumables") sold hereunder. (The Instruments, Reagents, Spare Parts and Consumables shall be referred to herein from time to time as the "Products.")

4. **Shipment Discrepancies & Acceptance** - Any errors in shipment must be reported immediately to Tosoh. Requests for adjustments on concealed shortages involving packages and cartons received intact must be made to Tosoh within five (5) days of the date of receipt of the shipment. With respect to Instruments, Tosoh, or its designee, shall provide for installation of the Instrument as called for by the appropriate Operator's Manual within thirty (30) days after the delivery date. Failure by Customer to notify Tosoh of any operational issue within five (5) days following installation shall constitute Customer's unqualified acceptance of the Instrument.

5. **Shipping Charges** - Tosoh shall ship Products and all risk of loss or damage shall pass to Customer FOB Tosoh's designated facility. Transportation costs will be prepaid and such transportation costs together with any applicable handling charges will be added to the invoice. Any order requiring next day delivery will be subject to a seventy-five dollars (\$75) expediting charge. Requests for Saturday delivery will be assessed a one hundred twenty-five dollars (\$125) expedite fee in addition to the standard charges. The method of transportation and carrier will be selected by Tosoh.

6. **Returns** - All Products are sold without return privileges. Any returns will be at Tosoh's sole discretion and will require prior authorization by Tosoh (including any return material authorization form that Tosoh may require) and shipping in accordance with instructions provided by Tosoh. When contacting Tosoh for return authorization, Customer must provide the invoice number and date of shipment by Tosoh. Except where Products are damaged in transit, returns must be in clean factory packaging. All returns must be made by prepaid transportation unless otherwise specified by Tosoh. The credit for authorized return will be the price on Tosoh's original invoice or Tosoh's current price, whichever is less. Where Tosoh acknowledges responsibility for an error in shipment, the price on the original invoice will be the basis for credit.

7. **Payment Terms** - Payment by Customer for purchase of the Products or for any other sum owed by Customer to Tosoh under this Agreement shall be due within 30 days of the date of Tosoh's invoice or other written notice without any reduction, setoff or abatement for any reason. Any extension of such 30-day payment term must be in writing issued by Tosoh. If Customer fails to make payment when due, Customer shall pay Tosoh interest for each month or any part thereof during which such payment is overdue at a monthly rate of one percent (1%), or the maximum rate permitted by law if such maximum legal rate is lower, computed from the due date until such payment and the interest thereon are paid in full. In addition, if payment is not made in accordance with the terms hereof or if Customer's credit standing has been impaired at any time, Tosoh may withhold further delivery of Products or service until satisfactory cash arrangements or credit arrangements have been made, and may demand in writing that Customer provide adequate assurances of its ability to make payments under such terms.

8. **Training** - Tosoh provides free of charge initial training on the use and operation of the Instruments. Details on the number of trainees, length of training and prices for additional training are available from Tosoh's System Sales Specialists.

9. **Warranties** - Warranty on an Instrument is as set forth in the applicable Operator's Manual issued by Tosoh for the Instrument. If an Instrument fails to meet the warranty set forth in the applicable Operator's Manual during the warranty period, Tosoh's sole liability and Customer's exclusive remedy shall be limited to, at Tosoh's option, either the repair or replacement of the Instrument, provided that Tosoh's investigation and inspection disclose that (i) such defect or non-conformity developed under normal and proper use (including use of only Tosoh authorized Reagents) and (ii) the Instrument is covered under the warranty set forth in the applicable Operator's Manual. Warranty on Reagents is that they shall perform as specified in the U.S. instructions for use issued by Tosoh for the applicable Instrument, provided such warranty shall not apply to the extent that nonconformities result from improper or unauthorized use of the Reagents or use in a manner contrary to Tosoh's instructions. During the warranty period on an Instrument, warranty on Parts is available as set forth in the applicable Operator's Manual issued by Tosoh for the Instrument. Resale of the Product shall void the warranty stated herein for the Product.

10. **Exclusive Warranties** - THE WARRANTIES SET FORTH IN SECTION 9 ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED FOR THE PRODUCTS. EXCEPT FOR SUCH WARRANTIES, TOSOH MAKES NO AND DISCLAIMS ALL OTHER REPRESENTATIONS, GUARANTIES, CONDITIONS AND WARRANTIES OF ANY KIND WHATSOEVER, WHETHER DIRECT OR INDIRECT, EXPRESS OR IMPLIED, OR ARISING UNDER ANY STATUTE, ORDINANCE, COMMERCIAL USAGE OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OR REPRESENTATION AS TO SUITABILITY, DURABILITY, DESIGN, OPERATION, OR CONDITION OF THE PRODUCTS (OR ANY PART THEREOF), OR THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY. SPECIFICALLY, TOSOH DOES NOT WARRANT THAT THE PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS. IF ANY IMPLIED WARRANTIES APPLY AS A MATTER OF LAW, THEY ARE LIMITED IN DURATION TO THE LENGTH OF THE APPLICABLE WARRANTY SET FORTH IN SECTION 9.

11. **In Warranty Service** - Should warranty repair or service of the Instrument or any component thereof be necessary, it must be provided by Tosoh authorized repair and service personnel. Tosoh or its designated contractor shall provide all warranty service after installation during Tosoh's normal working hours (8:00 am to 5:00 pm local time), Monday through Friday exclusive of Tosoh designated holidays, at no additional charge. Technical support by telephone shall be provided at 1-800-248-6764, 24 hours daily. Should Customer desire after hours, Saturday, Sunday or Tosoh designated holiday service, Tosoh will attempt to provide such service, but Customer shall be invoiced and must pay for any such labor and travel at the then effective overtime rates. For in warranty service, any required repair parts will be supplied at no charge, except for consumables

used in completing such service. At Tosoh's option, certain of the Instruments may be exchanged or replaced rather than repaired on-site.

12. **Post Warranty Service** - Customer may choose to purchase a Service Contract for repair after an Instrument's warranty period. Details are available from Tosoh's System Sales Specialists and Field Service Engineers. The option is available to purchase a Service Contract at the time of Instrument purchase for a discount. This contract would be in effect after the warranty period.

13. **Use** - Customer agrees to use the Instruments solely in conjunction with Reagents or other supplies expressly authorized by Tosoh. Tosoh provides 24/7 telephone technical support at 1-800-248-6764 and will provide troubleshooting and support for Customer's product use issues based on information provided by Customer. In addition, Tosoh must report certain product performance issues to the Federal Food and Drug Administration. Accordingly, if Customer suspects any Tosoh product performance issue, Customer must contact Tosoh's Technical Support Group at the same telephone number to report same.

14. **Limitation of Liabilities** - Tosoh's sole and exclusive remedy for Tosoh's negligence, breach of warranty, breach of contract or for any other liability in any way connected with or arising out of this Agreement, the Products or warranty service furnished on the Instruments shall be the repair or replacement of non-conforming Products, or, if Tosoh is unable or chooses not to repair or replace non-conforming Products, the crediting to Customer's account of the price that has been paid for the non-conforming Products and the cancellation of any obligation to pay the unpaid portions of the price of the non-conforming Products. Tosoh's liability to Customer hereunder with respect to any Product shall in no event exceed the amount paid by Customer hereunder for such Product. Tosoh's total aggregate liability to Customer arising out of or relating to this Agreement, the Products and warranty service furnished on the Instruments shall in no event exceed the total amount paid by Customer hereunder. IN NO EVENT SHALL TOSOH BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OR PROFITS OR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE PRODUCTS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT TOSOH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH LIMITATION OF LIABILITY OR LIMITED OR EXCLUSIVE REMEDY SET FORTH IN THIS AGREEMENT IS INDEPENDENT OF ANY OTHER LIMITATION OF REMEDY AND IF ANY SUCH LIMITATION OF REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE HELD TO BE UNENFORCEABLE, THAT SHALL NOT AFFECT THE VALIDITY OF ANY OTHER SUCH LIMITATION OF REMEDY.

15. **Force Majeure** - Except for Customer's obligation to make monetary payments hereunder, neither party shall be liable in damages for any delay or default in such party's performance hereunder if such default or delay is caused by events beyond such party's reasonable control including, but not limited to: acts of God; regulation or law or other action of any government or agency thereof; war or insurrections; civil commotion; destruction of production facilities or materials by earthquake, fire, flood, or storm; labor disturbance; epidemic; and failure of suppliers, public utilities or common carriers.

16. **Indemnity** - Customer shall indemnify Tosoh (and Tosoh's suppliers, affiliates and representatives) against any and all liability, loss, cost, injury, damage, demand and expense (including, without limitation, reasonable attorney's fees) of any kind whatsoever arising out of or in connection with any use of the Products, including without limitation: use contrary to or different from that prescribed in the Operator's Manuals; failure to follow the procedures for operation or maintenance of the Instruments in the Operator's Manuals; failure to satisfy the installation site requirements; operation of the Instruments by other than a Tosoh trained operator or an operator supervised by a Tosoh trained operator; use of the Instruments with other than Tosoh's or Tosoh approved Reagents, calibration sera or Parts; use in an altered condition; failure to follow any Tosoh informative or directive release; representing a test result to be more accurate, precise or reliable than set forth in Tosoh's published claims of performance; or incorrectly characterizing a test result. Customer's obligation to indemnify Tosoh shall not extend to a liability, loss, cost, injury, damage or expense arising solely from the gross negligence or willful misconduct of Tosoh.

17. **Entire Agreement** - This Agreement represents the entire understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements, negotiations and understandings. BY ORDERING FOR DELIVERY, PAYING FOR OR ACCEPTING ANY PRODUCT UNDER THIS AGREEMENT CUSTOMER AGREES TO ALL THE TERMS AND CONDITIONS CONTAINED HEREIN.

18. **Governing Law & Jurisdiction** - This Agreement shall be governed by and construed in accordance with the laws of the State of California without application of any conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any dispute or controversy arising in connection with this Agreement, other than for Customer's failure to make timely payment of any sum due from Customer to Tosoh, shall be resolved in a court located in the State of California, to which jurisdiction the parties hereto submit. Tosoh shall have the right to bring suit in any court of competent jurisdiction for Customer's failure to make timely payment of any sum due from Customer to Tosoh.

19. **Miscellaneous** - A delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights. No amendment or waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is sought to be enforced. If this Agreement or any provision hereof shall be deemed in any way invalid, illegal, or unenforceable, its validity, legality and enforceability in all other respects shall not be in any way impaired.

20. **Assignment** - Any assignment of any of the rights or obligations of Customer hereunder shall be void without prior written consent of Tosoh. Any transfer of the control or sale of all or substantially all the assets of Customer shall be construed to be an assignment hereunder.

21. **Attorney's Fees** - In the event of an action or proceeding arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to the reasonable attorney's fees and other costs and expenses incurred in connection with such action or proceeding and in connection with enforcing any judgment, award or order thereby obtained, or any appeal thereof. This attorney's fees provision shall not be deemed merged into any judgment.