

## **Terms and Conditions of Sale**

The following 3dbiosurfaces Technologies, LLC. (“3DBIO”) terms and conditions of sale and those appearing in 3DBIO’s quotations and order confirmations (collectively the “Terms of Sale”) are exclusive and in lieu of all other terms and conditions appearing on Customer’s purchase order or elsewhere and apply to all quotations made and all orders accepted by 3DBIO for 3DBIO products (“Products”). Customer agrees that 3DBIO’s acceptance of Customer’s order is limited to 3DBIO’s Terms of Sale. Customer shall be deemed to have accepted 3DBIO’s Terms of Sale unless written notice of objection is given by Customer to 3DBIO within 24 hours of receipt of 3DBIO’s order confirmation. Neither 3DBIO’s commencement of performance nor delivery of Products shall be deemed or constitute acceptance of any Customer additional or different terms and conditions. 3DBIO’s failure to object to provisions contained in any order or other writing of Customer shall not be construed as a waiver by 3DBIO of its Terms of Sale or an acceptance of any terms and conditions of Customer, which are hereby rejected by 3DBIO.

**1. Performance.** Performance of any order received by 3DBIO is expressly conditioned upon acceptance by 3DBIO management.

**2. Product Use.** Products are to be used only for research and development. Use of products for diagnostic purposes is expressly forbidden without specific written approval of 3DBIO and additional Terms and Conditions of Sale that require full indemnification from all liabilities and costs including but not restricted to product liability, direct or indirect punitive damages, and attorney fees.

### **3. Orders and Cancellations.**

a. All orders placed with 3DBIO must be in writing by Customer or in electronic form. All orders should include shipping address, requested delivery dates, quantities and complete description of Products being purchased, as well as Customer's name, contact name, address, email address, telephone number and fax number. Orders will be a binding contract only when received and accepted by confirmation in writing or in electronic form by 3DBIO.

b. Customer shall have 24 hours from receipt of 3DBIO's order confirmation to make any corrections or changes. Failure to do so shall constitute acceptance of 3DBIO's order confirmation.

c. Delivery dates may not be rescheduled without 3DBIO's written approval.

d. Customer may not cancel any Product order in whole or in part without the written agreement of 3DBIO and on condition of Customer's payment of 3DBIO's cancellation charges.

e. If 3DBIO agrees to cancel Customer's order, 3DBIO may assess Customer cancellation charges of 20% of the contract price for cancellation of any order or part thereof for (i) standard Products that can readily be resold to 3DBIO's other customers, or (ii) for custom or specially made Products, only if the order is cancelled before 3DBIO begins performance. Once 3DBIO begins performance on a custom or specially made Customer order, 3DBIO's cancellation charges may include: the contract price for all completed Products; and with respect to non completed Products, an equitable charge as determined by 3DBIO based upon all costs (including but not limited to cost of materials purchased, labor, storage charges, handling, freight, duties and, taxes, and any destruction or recycling costs) incurred by 3DBIO in performance of Customer's order to the date of cancellation and that 3DBIO will thereafter reasonably incur

as a result of such cancellation, plus a cancellation fee of 20% of the contract price for such Products, not to exceed in total the contract price. Customer shall pay all cancellation charges due within thirty (30) days of invoicing by 3DBIO.

f. 3DBIO's cancellation charges shall not be deemed 3DBIO's exclusive remedies in the event of an unauthorized order cancellation by Customer.

#### **4. Prices.**

a. Unless otherwise stated in writing by 3DBIO, all prices shall be exclusive of transportation, insurance, taxes or other government charges, customs fees, duties and other charges related thereto, and the Customer shall report and pay any and all such charges and hold 3DBIO harmless there from.

b. The prices of the Products are those specified on 3DBIO's quotation or confirmation of Customer's order or, if no price is so specified, those in 3DBIO's Price List current at the time of 3DBIO's acceptance of an order. All prices printed in 3DBIO's price list or quoted to individual Customers are subject to change without notice.

c. Prices include standard packaging. Extra charges will be added for special packaging and/or for expediting delivery.

d. Prices for Products do not include a license to any intellectual property, industrial property or patent rights of any kind.

#### **5. Payment.**

a. Payment will be charged to the Customer's credit card or bank account unless payment terms are granted by 3DBIO in writing.

b. If payment terms are granted, payment shall be due ten (10) business days after the date of the invoice unless otherwise specified in 3DBIO's quotation or order confirmation. For orders with multiple delivery dates, 3DBIO

may invoice Customer and Customer shall pay for each delivery separately and each delivery shall be considered a separate and individual contract.

c. 3DBIO may charge Customer interest for all late payments computed on a daily basis from the due date until paid in full at the rate of one and one-half percent (1 1/2%) per month or the maximum rate permitted by law, whichever is less.

d. 3DBIO reserves the right to establish and/or change credit and payment terms extended to Customer when, in 3DBIO's sole opinion, Customer's financial condition or previous payment record warrants that action. Further, on the delinquent account, 3DBIO shall not be obligated to continue performance under any agreement with Customer.

e. 3DBIO retains a security interest in the Products delivered to Customer, and in their accessories, replacements, accessions, proceeds and products, including customer accounts receivable (collectively, the "Collateral"), to secure payment of all amounts due under this Agreement. If Customer fails to pay any amount when due, 3DBIO shall have the right to repossess and remove all or any part of the Collateral from Customer but not from Customer's customers. Any repossession or removal shall be without prejudice to any other remedy of 3DBIO hereunder, at law or in equity. Customer agrees, from time to time, to take any act and execute and deliver any document (including, without limitation, financing statements) reasonably requested by 3DBIO to transfer, create, perfect, preserve, protect and enforce this security interest.

f. Customer is responsible for and shall pay all costs, fees and expenses, including reasonable attorneys' fees and the fees of collection agencies, incurred by 3DBIO in enforcing any of the terms, conditions or provisions hereof or in protecting 3DBIO's rights herein or with respect to past due Customer accounts.

## **6. Shipments.**

- a. Unless otherwise agreed to in writing by 3DBIO, all prices quoted or printed in 3DBIO's Price List are F.O.B. 3DBIO's premises or those of 3DBIO's supplier or, with respect to imported goods, F.O.B. United States point of shipment.
- b. Customer agrees that all freight, express and delivery charges shall be paid by Customer and shall not be subject to discount.
- c. If 3DBIO has agreed with Customer to arrange for shipping of Products, 3DBIO will select the carrier in the absence of specific instructions by Customer and all shipments shall be freight collect, unless otherwise negotiated.
- d. In no event shall 3DBIO be liable for any delay in delivery nor shall the carrier be deemed an agent of 3DBIO.
- e. Delivery will be deemed complete and risk of loss or damage to the Products will pass to Customer upon delivery to the carrier.

## **7. Inspection and Acceptance; Returns.**

- a. Customer shall have the right to inspect the Products at the time and place of delivery before paying for or accepting them.
- b. The Products shall be deemed accepted by Customer unless notice of defect or shortage is received within thirty (30) days of shipping and defective Product is returned to 3DBIO within sixty (60) days of shipping.
- c. Products must be in their original packaging and be in new condition. No Products may be returned to 3DBIO without 3DBIO's prior written authorization.
- d. In the event that Customer claims that Products do not conform to contract specifications and after inspecting the Products 3DBIO determines that the Products do not conform to the contract, 3DBIO's sole obligations and Customer's exclusive remedies with respect to a non-

conforming Product shall be, at 3DBIO's option, repair or replacement of the Product or refund to Customer of the purchase price paid for the Product.

e. Customer shall be responsible for all costs associated with the return of Products if the Products are found to be within specification. Otherwise 3DBIO will bear the return cost.

f. Customer shall be responsible for any damage to returned Products resulting from handling by Customer with less than due care.

**8. No license granted.** 3DBIO's supply of Products to Customer does not in any way convey or grant to Customer any license or right to make, have made or use the Products or any additional products (whether or not identical to the Products supplied by 3DBIO) coming within past or future patents and/or inventions owned, made or controlled by 3DBIO.

**9. Warranty.**

a. 3DBIO warrants to Customer that at the time of delivery all Products will conform to and perform in accordance with the applicable current specifications issued by 3DBIO.

b. Any Products sold by 3DBIO with any additional express warranties shall be subject to the specific terms and conditions of those warranties. The duration of any Products warranty given by 3DBIO shall be limited to the applicable warranty duration stated by 3DBIO. If no warranty duration is specified by 3DBIO then the warranty duration shall be six (6) months from the date of shipping to Customer.

c. Unless otherwise agreed to in writing by 3DBIO, no warranty shall extend to or be for the benefit of any third party.

d. No warranty shall apply to any Product that is subject to misuse, abuse, accident, disaster, or repair by anyone other

than 3DBIO, or that has been used contrary to current instructions.

e. 3DBIO'S ENTIRE RESPONSIBILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY IS LIMITED, AT 3DBIO'S OPTION, TO REPAIR OR REPLACEMENT OF THE PRODUCTS OR REFUND OF THE PURCHASE PRICE PAID FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE WARRANTY CLAIM.

f. Customer will be deemed to have waived any warranty claim unless written notice of such claim is given to 3DBIO promptly but in no event later than thirty (30) days from date of discovery of such breach of warranty.

g. THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY 3DBIO IN CONNECTION WITH THE PRODUCTS, AND 3DBIO DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

**10. Assignment.** Customer's purchase order shall not be assigned in whole or in part by either party without the written consent of the other party, except that 3DBIO may assign its rights, liabilities and obligations arising out of Customer's purchase order to one or more of its subsidiary or affiliated companies.

**11. Statute of Limitations.** No claim or cause of action by Customer arising from this Agreement may be brought at any time more than twelve (12) months after the facts occurred upon which the claim or cause of action arose.

**12. Export Control.** Customer shall comply with all applicable U.S. export laws, regulations and treaties relating

to export or re export of the Products. Customer will defend, indemnify and hold 3DBIO harmless for any claims, penalties, fines, damages or costs to 3DBIO arising from Customer's failure to comply with this provision.

**13. Limitations of Liability.** 3DBIO'S ENTIRE AND AGGREGATE LIABILITY FOR ALL CLAIMS ARISING UNDER THIS AGREEMENT, WHETHER FOR INFRINGEMENT, BREACH OF EXPRESS OR IMPLIED WARRANTIES OR CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), OR OTHERWISE SHALL NOT EXCEED THE PURCHASE PRICE TO 3DBIO FOR THE PRODUCTS PURCHASED UNDER THIS AGREEMENT THAT CREATE SUCH LIABILITY. 3DBIO SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES FOR ANY CLAIM MADE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, THE PRODUCTS, OR THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE OR NON-PERFORMANCE OF THE PRODUCTS, OR OTHERWISE.

**14. Governing Law.** The construction, interpretation and performance of this Agreement and all transactions under it shall be governed by the laws of the State of Delaware excluding any of its conflict of laws provisions. 3DBIO and Customer specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement.

**15. Choice of Forum.** Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and



judgement on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

16. Injunctive Relief. Notwithstanding the foregoing, either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

17. **Force Majeure.** Except for the payment of money due and owing, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent that delay or failure is caused by causes beyond its reasonable control ("Force Majeure Conditions"), including, but not limited to, fire, flood, explosion, war, terrorism, strike, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes and, with respect to 3DBIO, inability to reasonably obtain necessary labor, materials, components or manufacturing facilities. If any Force Majeure Condition occurs, the party delayed or unable to perform ("Delayed Party") shall give immediate notice to the other party ("Affected Party"), and the Delayed Party, upon giving prompt notice to the Affected Party, shall be excused from performance under this Agreement for the duration of the Force Majeure Condition; provided, however, that the Delayed Party shall take all reasonable steps and cooperate with the Affected Party to avoid or remove the cause of nonperformance and shall resume performance hereunder with dispatch when the cause is removed. If the Delayed

Party cannot within sixty (60) days remove the cause of nonperformance, the Affected Party may terminate this Agreement. If Force Majeure Conditions cause shortages in 3DBIO's supply of Products or materials necessary to produce the Products, 3DBIO may, without obligation to obtain similar products or such materials from other sources, first satisfy its own requirements and the requirements of its divisions, subsidiaries and affiliates for such materials and Products and then allocate the remainder among its customers in a manner and amount that, in 3DBIO's sole discretion, is fair and reasonable.

**18. Non-Waiver.** No course of dealing or failure of either party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of that term, right or condition.

**19. Entire Agreement.** 3DBIO's Terms of Sale shall constitute the entire agreement (the "Agreement") between the parties with respect to the sale of the Products and shall not be modified or rescinded, except by a writing signed by 3DBIO and Customer. The provisions of this Agreement supersede all prior oral and written communications, agreements, and understandings of the parties with respect to the subject matter of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable by a court or other body of competent jurisdiction, such invalidity of unenforceability shall not affect the validity or enforceability of this Agreement or of any other provision of this Agreement and the invalid or unenforceable provision shall be replaced by a legally valid and enforceable provision coming closest to achieving the same result (to the maximum legal extent) as the invalid or unenforceable provision.