

# PHASE DIAGNOSTICS CONDITIONS OF SALE

*United States*

These Conditions of Sale ("Conditions") govern every sale of products by Phase Diagnostics, Inc. ("Phase"). Phase does not accept, expressly or impliedly, and Phase hereby rejects, any additional or conflicting terms or conditions, except as expressly agreed by Phase in writing. By ordering, accepting, or retaining any products from Phase after receipt of these Conditions or a notice that sales are subject to these Conditions, the lab, end customer, distributor, reseller or other customer ("Purchaser") agrees to be legally bound by these Conditions.

## **IF YOU DO NOT AGREE, NOTIFY PHASE IMMEDIATELY AND DO NOT GO FORWARD WITH THE TRANSACTION.**

**Price and Product Changes:** Prices and products are subject to change at any time unless and until Phase, at its sole discretion, accepts an order specifying certain prices and products.

**Orders:** Phase reserves the right to reject any orders at its sole discretion. Orders are not accepted, until Phase sends Purchaser a written order acceptance or actually delivers the ordered products provided that delivery constitutes acceptance only to the extent Phase actually delivers. Phase accepts orders on a one-off basis only under these Conditions. Purchaser is not appointed as a reseller or distributor and not entitled to any future supplies.

**Late Payment/Title Retention:** Phase requires prepayment. Amounts not paid within 30 days of Purchaser's receipt of Phase's invoice are subject to late charges at the lesser rate of (1) 1.5% per month, or (2) the maximum amount permitted under applicable law. Purchaser shall also pay all costs of collection, including reasonable attorney fees and costs. Taxes, customs, and other charges are not included in prices and must be paid or reimbursed by Purchaser separately. Until Phase has received full payment for all products supplied to Purchaser, Phase shall retain title (or a purchase money security interest where title retention is not enforceable) in all products delivered to Purchaser and any resale proceeds, to the extent legally permissible under applicable law.

**Delivery:** Phase delivers in the United States, Ex Works (Cal. Commercial Code) Phase's premises in California, USA. Purchaser understands and agrees that Products sold under these Conditions are for use or resale in the United States only and if Purchaser intends to export or use products in other jurisdictions, Purchaser is solely responsible for compliance with all export, import and other laws and to verify that Products may be lawfully imported or used in other jurisdictions. All delivery dates are non-binding targets; Phase shall not be liable for any delays.

**Sold "As Is":** PHASE DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. PHASE DOES NOT EXTEND ANY EXPRESS WARRANTIES OR REPRESENTATIONS REGARDING THE PRODUCTS.

**Returns, Repairs and Replacements:** If Phase receives a notice from Purchaser within 10 days of delivery that any consumables

were deteriorated at the time of delivery, or any products were damaged at the time of delivery, Phase may, at its sole discretion, repair, replace or refund the affected units. If Phase receives a request from customer for additional vials within 90 days of delivery, because consumables have evaporated, Phase will provide additional vials up to 1% of the total number contained in a particular delivery free of charge to Purchaser to account for product limitations. Purchaser shall have no other rights or remedies with respect to products that Purchaser considers non-conforming, deficient or unfit for purpose.

**Limitation of Liability:** PHASE'S TOTAL LIABILITY TO PURCHASER SHALL BE LIMITED TO THE GREATER OF (A) THE INVOICE AMOUNT FOR THE ORDER MOST CLOSELY RELATED TO PURCHASER'S DAMAGES, OR (B) U.S. \$10,000. IN NO EVENT SHALL PHASE BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, OR LOST DATA. THESE LIMITATIONS SHALL APPLY WHETHER OR NOT PHASE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, REGARDLESS OF ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN, AND REGARDLESS WHETHER CLAIMS ARE BASED ON BREACH OF CONTRACT, TORT, STATUTE, OR ANY OTHER LEGAL OR EQUITABLE THEORY.

**Compliance:** Purchaser shall (1) comply with all applicable laws, (2) not export, re-export or otherwise transfer any Phase product, except in accordance with U.S. export control laws, (3) comply with all laws regarding importation, deployment and use relating to the Products in other jurisdictions, and (4) indemnify Phase from any damages and costs caused by Purchaser's failure to comply with applicable laws.

**Governing Law; Disputes:** These Conditions and any disputes arising out of or in connection with these Conditions ("Disputes") shall be governed by California laws without regard to conflict of laws principles and excluding the UN Convention on Contracts for the International Sale of Goods (CISG). All Disputes are subject to the exclusive jurisdiction of courts in California, with the sole exception that either party may also be sued at its places of business. The prevailing party in any Disputes shall be entitled to reimbursement of all legal fees including reasonable attorneys' fees from the other party.