

## TERMS AND CONDITIONS OF SALE AND PURCHASE

THE SALE AND PURCHASE OF PRODUCTS AND/OR SERVICES FROM TARGET DISCOVERY, INC. AND ANY INVOICE RESULTING THEREFROM ARE EXPRESSLY CONDITIONED UPON AND SUBJECT TO ALL OF THE FOLLOWING TERMS AND CONDITIONS:

**THE BUYER WILL BE DEEMED TO HAVE ACCEPTED ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN UPON BUYER'S WRITTEN OR ELECTRONIC CONFIRMATION OF ITS ACCEPTANCE OF THIS OFFER OF SALE AND PURCHASE, WITHOUT REQUIREMENT FOR THE ISSUANCE OF AN INVOICE OR ACCEPTANCE THEREOF BY THE BUYER.**

- 1. Acceptance** – Buyer's acceptance of the offer of sale and purchase of products and/or services made and/or provided by Target Discovery, Inc. d/b/a Target Discovery ("TDI") shall be confirmed telephonically or in writing or electronically by internet, email, fax or mail order placement and without requirement for issuance and acceptance of any invoice. Such acceptance of this offer of sale and purchase by Buyer shall create a binding contract subject to and expressly limited by the terms and conditions contained herein. ACCEPTANCE OF ANY INVOICE ISSUED BY TDI MAY ONLY BE MADE ON THE EXACT TERMS AND CONDITIONS SET FORTH HEREIN. IF ADDITIONAL OR DIFFERENT TERMS ARE PROPOSED BY BUYER, SUCH ADDITIONAL OR DIFFERENT TERMS SHALL NOT BECOME A PART OF THE CONTRACT FORMED BETWEEN BUYER AND TDI, AS DEFINED ABOVE. ACCEPTANCE BY BUYER OF THIS CONTRACT FOR PURCHASE AND SALE, AND OF ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN, SHALL BE DEEMED TO OCCUR IMMEDIATELY UPON **BUYER'S TELEPHONIC, WRITTEN OR ELECTRONIC CONFIRMATION OF ITS ACCEPTANCE OF THIS OFFER OF SALE AND PURCHASE.**
- 2. Taxes and Payment** – ANY TAX, DUTY, CUSTOM OR OTHER FEE OF ANY NATURE, INCLUDING ANY VALUE ADDED TAX (VAT), IMPOSED UPON THIS TRANSACTION BY ANY FOREIGN, FEDERAL, STATE, OR LOCAL GOVERNMENTAL AUTHORITY SHALL BE PAID BY BUYER IN ADDITION TO THE PRICE INVOICED. In the event TDI is required to prepay any such tax or fee, Buyer will reimburse TDI. Payment terms for any orders not prepaid shall be net thirty (30) days after shipment. An interest charge equal to one and one-half percent (1.5%) per month (i.e., 18% per year) will be added to invoices outstanding beyond 30 days after shipment. In addition, TDI reserves the right, in its sole discretion, to require C.O.D. payment terms from any Buyer or for any transaction. TDI may also refuse to sell to any person or entity until all prior overdue accounts are paid in full.
- 3. Delivery and Shipment** – DELIVERY TERMS SHALL BE F.O.B. TDI'S DISTRIBUTION POINT, at which time all title and risk of loss shall pass entirely to Buyer. ALL SHIPMENT COSTS SHALL BE PAID BY BUYER and, if prepaid by TDI, Buyer shall reimburse the amount thereof to TDI. TDI will make reasonable commercial efforts to ship the products or provide the services hereunder in an expeditious fashion, provided that TDI accepts no liability for any losses or for general, special or consequential damages arising out of delays in delivery.
- 4. Warranty; Limitation of Liability** – The products and/or services provided by TDI are sold strictly on a RESEARCH USE ONLY basis. While TDI will make reasonable commercial efforts to ensure the quality and consistency of its products and/or services, it is expressly agreed between Buyer and TDI, without regard to any assistance or recommendations provided by TDI, that the responsibility for determining fitness for any particular use rests solely with the Buyer. NO OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE PRODUCTS AND/OR SERVICES. TDI EXPRESSLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. Any model or sample furnished to the Buyer is merely illustrative of the general types and quality of goods and services provided by TDI and TDI does not under any circumstances represent that the actual products and services provided by TDI will conform in their entirety to the model or sample. In the event of Buyer's dissatisfaction with any product or service provided by TDI, Buyer acknowledges that TDI has no obligation to provide any remedy whatsoever, and Buyer hereby waives any and all remedies of any kind. Despite the foregoing waiver and acknowledgement, in the event that TDI elects, at TDI's sole discretion, to repair or replace the product or component or to correct the service which failed to satisfy the Buyer, Buyer acknowledges that such action shall constitute the sole, exclusive and complete remedy to the Buyer. TDI'S AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES OF ANY NATURE RELATED TO, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT AND THE PRODUCTS AND SERVICES SHALL BE LIMITED TO THE AGGREGATE AMOUNT ACTUALLY PAID BY BUYER TO TDI FOR THE PRODUCTS AND/OR SERVICES. SUBJECT TO THE LIMITATIONS ON LIABILITY SET FORTH HEREIN, TDI SHALL ONLY BE LIABLE FOR DIRECT DAMAGES TO BUYER AND SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR ANY OTHER INDIRECT DAMAGES RESULTING FROM ECONOMIC LOSS OR PROPERTY DAMAGE SUSTAINED BY BUYER FROM THE USE OF TDI'S PRODUCTS OR SERVICES.
- 5. Recall; Returned Goods** – TDI may institute product recalls and, in its sole discretion, authorize product returns in appropriate circumstances, subject to such conditions as TDI may specify. Any product recall shall be at TDI's expense. Any product return shall be subject to the express prior written authorization of TDI, which must include a return authorization code issued by TDI. In no event will returns be authorized more than sixty (60) days following the date of shipment to Buyer. Any product returns that are not accompanied by a properly issued TDI return authorization code shall be made strictly at the expense of the Buyer, and TDI shall have no obligation to provide reimbursement for any charges incurred.

6. **Technical Advice** – TDI may, at Buyer's request, furnish technical assistance, advice and information with respect to the products if and to the extent that such advice, assistance and information is conveniently available. It is expressly agreed that TDI has no obligation whatsoever to provide such advice, assistance and information, all of which shall be provided by TDI without charge. BUYER ACCEPTS ALL ADVICE, ASSISTANCE AND INFORMATION FROM TDI AT BUYER'S OWN RISK AND BUYER AGREES AND UNDERSTANDS THAT ALL SUCH ADVICE, ASSISTANCE AND INFORMATION IS PROVIDED BY TDI WITHOUT WARRANTY OF ANY KIND AND IS SUBJECT TO THE WARRANTY DISCLAIMERS AND LIMITATION OF LIABILITY SET FORTH IN PARAGRAPH 4 ABOVE.
7. **TDI's Right of Possession, etc.** – Buyer hereby grants TDI a purchase money security interest in and/or applicable lien on any products, goods and services purchased by Buyer, to secure the full and timely payment of the purchase price pursuant to the contract defined herein. In the event of default by Buyer in any payment due TDI, TDI shall have the right, in addition to any other remedies it may have at law or in equity, to withhold shipment, to recall goods in transit and retake the same, to repossess any goods and products which may be stored with TDI for Buyer's account without the necessity of TDI initiating any other proceedings. In addition, TDI shall have all of the rights and remedies of a secured party under the California Uniform Commercial Code and may exercise all such rights and remedies in accordance therewith. Buyer promptly shall execute and, as necessary, file such documents as TDI may request to effectuate the foregoing security interest.
8. **Agents, etc.** – No agent, employee or other representative has the right to modify or expand on the terms and conditions specified herein, applicable to TDI's products and/or services, or to make any representations as to the products and/or services other than those set forth in the applicable user or operator's guide delivered with the products. Any such affirmation, representation or warranty, if made, should not be relied upon by Buyer and shall not form a part of contract between TDI and Buyer for the purchase of products and/or services.
9. **Fair Labor Standards** – The products and/or services provided hereunder were produced and/or performed in compliance with the requirements of all sections of the Fair Labor Standards Act of 1938, as amended.
10. **Equal Employment** – TDI is an Equal Opportunity Employer. It does not discriminate in any phase of the employment process against any person because of race, color, creed, religion, national origin, sex, age, veteran or handicapped status.
11. **Modifications, Waiver, Termination** – The contract formed between Buyer and TDI, by the purchase and sale of products and/or services as defined herein, may be modified and any breach thereunder may be waived only through written agreement signed by the party against whom enforcement thereof is sought.
12. **Governing Law** – The contract formed as defined herein shall be governed by and construed in accordance with the laws of the State of California, U.S.A, without reference to or application of any conflict of laws principles.
13. **Export** – Buyer shall comply fully with all applicable provisions of the United States Export Control Laws as may be in effect for any of the products and shall seek, whenever required, at its own expense, export licenses from the United States Department of Commerce prior to any export of the products and shall further assure compliance with all reexport restrictions of such United States Export Control Laws.
14. **Additional Terms and Conditions** – This invoice is also subject to any TDI Special Terms and Conditions applicable to the products and/or services that may appear on the front of any invoice issued by TDI pursuant to the contract for purchase and sale defined herein, which TDI Special Terms and Conditions are and shall be incorporated into this agreement. Any variance from the terms and conditions defined herein and on the invoice, in any order or other written notification from Buyer, will be of no effect. Should Buyer order products and/or services through a TDI office located outside of the United States, the terms and conditions of the invoice issued by the office outside of the United States shall govern such order.
15. **Arbitration** – Any and all disputes or controversies arising in connection with the contract formed between Buyer and TDI, as defined herein for the sale and purchase of products and/or performance of services, shall be resolved only by final and binding arbitration in San Francisco, California, under the commercial rules of the American Arbitration Association then obtaining. The arbitration shall be conducted by one arbitrator with significant experience in the relevant technology and in commercial disputes, mutually approved by TDI and Buyer. The arbitrator shall have no power to add to or to subtract from or modify any of the terms or conditions of the contract defined herein. Any award rendered in such arbitration may be enforced by either party in either the courts of the State of California or in the United States District Court for the Northern District of California, to whose jurisdiction for such purposes TDI and Buyer each hereby irrevocably consents and submits.
16. **Software** – To the extent that there is any software included with the products and/or services provided by TDI, the software is being licensed, not sold, and all right, title and interest therein shall remain with TDI. Use of the software shall be in accordance with the applicable software license delivered with the products. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights clause at 48 CFR 52.227-19, as applicable.
17. **Force Majeure** – TDI shall have no liability for failure to perform, or delay in performance, in the delivery of any and all products manufactured or sold by TDI including instruments, supplies, components, systems, chemistry, accessories, replacement spare parts, or any and all services provided by TDI, caused by circumstances beyond its reasonable control, including, but not limited to, acts of God, acts of nature, floods, fire, explosions, war or military mobilization, United States governmental action or inaction, request of governmental authority, delays of any kind in transportation or inability to obtain material or equipment, acts of other governments, strikes, or labor disturbances.