

Seegene USA Inc.

Standard Terms and Conditions for the Sale of Goods

1. **Applicability**

- 1.1. These terms and conditions of sale ("Terms") are the only terms which govern the sale of diagnostic reagents, consumables and instruments ("Goods") by Seegene USA ("SGUS") a Delaware corporation, and the Buyer ("Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- 1.2. These Terms are applicable to all transactions between Buyer and SGUS, including those which represent the implementation of any standard or specialized solution utilizing the Goods for throughput, assay, or other clinical or laboratory function ("SGUS Solution"). A SGUS Solution is not a specific part number, but rather is a process utilizing the Goods. As such, the specific parts listed within the purchase order may require substitution, addition, or subtraction of specified parts. You hereby acknowledge and agree that SGUS has the authority to make such changes to the line items within the Purchase Order necessary to implement the SGUS Solution.
- 1.3. Buyer hereby acknowledges that in some cases SGUS supplies diagnostic reagents to Buyer hereunder for Research Use Only (RUO) and not for use in diagnostic procedures, as that term is used in 21 CFR § 809.10(c)(2)(i). RUO Goods will be labeled as such by SGUS.

2. **Purchase Order**

- 2.1. All Goods shall be ordered by submitting a purchase order, which shall be binding upon acceptance by SGUS. Buyer shall set forth in the purchase order a desired delivery date in accordance with these terms and conditions. All purchase orders shall be consistent with these terms and conditions, which shall control in the event of an inconsistency with any purchase order.
- 2.2. Upon receipt and acceptance of a purchase order, SGUS will send Buyer a Sales Invoice, confirming the sale price and tax for the Goods.
- 2.3. The Sales Invoice and these terms and conditions (collectively, the "Sales Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

3. **Delivery**

- 3.1. The Goods will be delivered within a reasonable time after payment of the Sales Invoice, subject to availability of finished Goods. Seller shall not be liable for any delays, loss, or damage in transit. In some cases, Seller may require payment prior to delivery of goods.
- 3.2. The delivery time of an instrument will be dependent upon multiple factors such as current resource workload, third party item delivery times, custom hardware creation times and custom software application development time. Compliance with the delivery time is conditional upon the customer fulfilling their contractual obligations, e.g. notification of all essential technical specifications, availability of samples, import permits, down payments, letters of credit etc.
- 3.3. The delivery time is reasonably extended if one of the cases applies:
 - 3.3.1. The information required by SGUS for performance of the contract is not received in time, or if the customer subsequently changes the contract thereby causing a delivery delay of the Goods. All contract changes requested by the customer require a revised Purchase Order from the customer.
 - 3.3.2. Hindrances occur which prevent SGUS from performing the contract by force majeure. Hindrances include epidemics, mobilization, war, revolution, serious breakdowns in the works, accidents, labor conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, official actions or omissions by any state authorities or public bodies, and natural catastrophes.
- 3.4. If the customer claims damages for delayed delivery, it must be proved that the delay has been caused through SGUS's fault and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to claim any delay damages. Any delayed delivery does not entitle the customer to any rights and claims other than those expressly stipulated herein.
- 3.5. Delivery shall be made F.O.B. SGUS. Title and risk of loss passes to Buyer upon delivery of the Goods to the common carrier.
- 3.6. When assistance from third party riggers is required to assist with instrument placement the expense will be included in (added to) the freight charges. Disposal of all packaging and packing materials is the customers responsibility.

4. **Acceptance.** Unless otherwise agreed upon, acceptance shall be affected immediately after receipt of Goods, or for instruments after receipt and installation, at the customer's premises. The customer shall inspect the Goods within a reasonable period and shall immediately notify SGUS in writing of any deficiencies. If the customer fails to do so, the Goods shall be deemed to have been accepted. In no event shall any period of time greater than thirty (30) calendar days be considered a "reasonable period" as set forth above. In addition, acceptance shall also be deemed completed when: SGUS has satisfied its standard installation qualification to show performance to manufacturer's specification or exceptional conditions agreed upon in writing with the customer prior to acknowledgement of the Purchase Order by SGUS; or as soon as the customer uses the Goods in a non-acceptance test mode. If the customer delays acceptance, the outstanding amounts are due 30 days after delivery.

5. **Inspection and Rejection of Nonconforming Goods**

- 5.1. Buyer shall inspect the Goods within five (5) business days after receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies SGUS in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by SGUS. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
- 5.2. If Buyer timely notifies SGUS of any Nonconforming Goods, SGUS shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the purchase price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods, in their original packaging, to SGUS's facility located at 325 N. Wiget Lane, Suite 140, Walnut Creek, CA 94598. If SGUS exercises its option to replace Nonconforming Goods, SGUS shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Buyer at their location.
- 5.3. Buyer acknowledges and agrees that the remedies set forth in Section 5.2 are Buyer's exclusive remedies for the delivery of Nonconforming Goods.

6. **Security Interest.** In order to secure payment for the Goods and as collateral security for the payment of the purchase price of the Goods and any other current or future obligations of the Buyer to SGUS, Buyer hereby grants to SGUS a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code. This security interest will terminate only on the discharge in full of all the payment obligations for purchase of the Goods and all such other obligations of Buyer to SGUS.

7. **Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

8. **Price**

- 8.1. Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in Seller's published price list in force as of the date that Seller accepts Buyer's purchase order. If the Prices should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased price[s] were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased prices.
- 8.2. **Taxes and Fees.** Buyer will pay, when due, all taxes, including sales, use, privilege, excise, personal property, value added, and other taxes, but not federal or state income or franchise taxes imposed on SGUS, and all other governmental charges, assessments, fees and any related interest or penalties imposed with respect to the Goods or the transactions contemplated by this Sales Agreement. If Buyer fails to pay any such amount when due, SGUS may elect to pay it and Buyer will promptly reimburse SGUS for such payment, together with interest from the date paid at the Short Term Quarterly Applicable Federal Rate. If SGUS is required to obtain any local permit or license to enable it to install the Goods or perform any services for Buyer, Buyer shall reimburse SGUS for such related fees and charges.

9. **Payment Terms**

- 9.1. **Standard Payment Terms** Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. If Buyer fails to timely pay an invoice, SGUS may terminate the Sales Agreement at its discretion. Buyer shall make all payments hereunder by wire transfer or check and in US dollars.
- 9.2. **Instrument Payment Terms** - For instruments, Buyer shall pay 30% upon acceptance of purchase order, 50% paid upon shipment NET 10 days after receipt of notification of shipment and 20% due NET 30 days after installation and acceptance.
- 9.3. **Late Payment** - Buyer shall pay interest on all late payments at the lesser of the rate of two percent 2% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse SGUS for all costs incurred in collecting any late payments, including, without limitation, attorney fees and costs. In addition to all other remedies available under these Terms or at law (which SGUS does not waive by the exercise of any rights hereunder), SGUS shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for five (5) business days following written notice thereof.
- 9.4. **No Withholding** - Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with SGUS, whether relating to SGUS's breach, bankruptcy, or otherwise.

- 9.5. *Payment Under Protest* - Should an invoiced payment be disputed by the customer, customer shall have the opportunity to pay the dispute in full under protest in order to avoid the application of penalties and interest as set out above in Section 8 above. Should the dispute be determined and resolved in favor of the customer, customer shall be entitled to reimbursement of the disputed amount including interest computed at the rate set forth above. Where the dispute is resolved in customer's favor, accrued interest shall inure to the customer from the time of payment under protest to the final determination on the invoice is made. Where the dispute is resolved in favor of SGUS, accrued interest shall inure to SGUS from the date that payment was due until resolution of the dispute, and the purchaser shall be liable for all such amounts.
10. **Customer Returned Goods.** If a customer decides to return Goods a 20% restocking fee will be charged to the customer with the assumption that the original packaging is intact and used or optional custom approved packaging is used to return the product to the SGUS. If the original packaging or custom approved packaging is not utilized, the SGUS has the right not to issue credit for the unit until a damage assessment is completed. No credit will be given returned customized products, expired products, third party equipment or other non-recoverable costs such as method development, training, project management, or application support.
11. **Limited Warranty**
- 11.1. **Instrument Warranty.** The warranty period is twelve (12) months from the installation date. The Installation Date shall be that point in time after the Goods are installed and installation qualification to show performance to manufacturer's specification has been met. The warranty period begins on the earlier of the first day of after installation or after acceptance. If installation or acceptance is delayed due to reasons beyond the control of the SGUS, the warranty period shall end not later than 18 months after shipment of the Goods from the SGUS. Upon written request from the customer, SGUS shall quickly repair or replace, at its option, all parts which become defective or unserviceable if determined to be due to bad material, faulty design or poor workmanship. All returned parts which are replaced become the property of the SGUS. SGUS is responsible only for the cost of repair or replacement of defective parts. The warranty expressly does not cover consumable parts, damage caused by normal wear, faulty maintenance performed by a third party, failure to observe the operating instructions, and installation not carried out by SGUS as well as due to other reasons for which SGUS is not responsible.
- 11.2. Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are warranted by their manufacturer and are not covered by the warranty in this Section.
- 11.3. For Goods or essential components manufactured by a third party and not authorized by SGUS, there is no warranty.
- SGUS MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING BUT NOT LIMITED TO ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
- 11.4. SGUS shall not be liable for a breach of the warranty set forth in this Section if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow SGUS's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of SGUS.
- 11.5. THE REMEDIES SET FORTH IN SECTION 11.1 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SGUS'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.1.
12. **Limitation of Liability**
- 12.1. IN NO EVENT SHALL SGUS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 12.2. IN NO EVENT SHALL SGUS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SALES AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SGUS FOR THE GOODS SOLD HEREUNDER.
- 12.3. The limitation of liability set forth in Section 12 above shall not apply to (i) liability resulting from SGUS's gross negligence or willful misconduct and (ii) death or bodily injury resulting from SGUS's gross negligent or willful acts or omissions.
13. **Technical data and documents.** Technical documents such as drawings, descriptions, illustrations and data on dimensions, performance and weight are for information purposes only and shall not imply any warranties. SGUS reserves the right to make any necessary changes. All technical documentation and technical data remain the property of the SGUS and may neither be used for production purposes nor be made available to third parties.
14. **Software License Agreement.** The computer software programs remain the property of SGUS. SGUS grants to customer a non-exclusive license to use the proprietary software programs with the equipment specified in the Sales Agreement and under the Terms specified herein. SGUS may declare parts of the software programs as "public" and which parts will be free of restrictions. SGUS is not liable for the functionality of third party components. SGUS is not aware of the rights of any third parties that would oppose the utilization purposes of the licensed software programs. SGUS guarantees the operability of the software programs with the equipment and for the purpose as set forth in the specifications of the Sales Agreement under normal conditions of operation and that the software programs have been written following the accepted rules of programming. SGUS shall not be liable for delays, errors or failures in performance due to causes beyond its control or operation by unqualified personal. SGUS warranty expires immediately if changes in the setup of the equipment or the exchange of equipment the licensed software programs are operating take place without written confirmation of SGUS. In case of software program defects limiting the usability of the software programs, SGUS will deliver corrections free-of-charge during the warranty period. After expiry of the warranty period SGUS will provide error maintenance and other support only if the customer agreed upon and entered into maintenance and service contract. SGUS will provide the appropriate support during the installation and for the configuration of the software programs if the customer provides SGUS access to the hardware and software. After installation, SGUS will provide education and consulting services according to its current schedule of charges. The customer will perform backup operations to protect himself from loss of data due to any error conditions.
15. **Application Specific IP.** Buyer's use of Goods may require that it obtain from third parties additional rights or licenses. SGUS does not guarantee or warrant that Buyer's intended use will not infringe third party IP. Buyer, not SGUS, is responsible for identifying and ensuring that it has rights or licenses to all IP that is required for Buyer to use the Goods as intended by the Buyer.
16. **Intellectual Property.** Nothing in the Sales Agreement will be interpreted to affect the ownership or control of any Intellectual Property of either Party. Buyer will retain all right, title and interest in and to all Intellectual Property owned or acquired by Buyer. SGUS will retain all right, title and interest in and to (1) all Intellectual Property owned or acquired by SGUS and Seegene, Inc. (Seoul, Korea) and (2) all Intellectual Property owned or acquired by SGUS in connection with the Reagents. Any Intellectual Property that is conceived, developed, reduced to practice, or generated during the Term by either Party will be and remain the sole and exclusive Intellectual Property of that Party, except to the extent that Buyer alone or jointly with SGUS, makes any modifications, derivatives, or improvements to any Reagent, then all right, title and interest in and to any Intellectual Property in connection therewith shall be owned by SGUS and Buyer hereby assigns such Intellectual Property rights to SGUS. For the purposes of the Sales Agreement, "Intellectual Property" means inventions (patentable or otherwise), proprietary rights, discoveries, developments, improvements, information, data, compounds, formula, know-how, trade secrets, or other intellectual property rights.
17. **Reverse Engineering.** Buyer agrees not to reverse engineer, or cause or permit a third party to reverse engineer, the Goods or any components thereof for any purpose other than to perform the assays in the laboratory and comply with applicable laws and regulations.
18. **Compliance with Law.** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Sales Agreement.
19. **Termination.** In addition to any remedies that may be provided under these Terms, SGUS may terminate this Sales Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Sales Agreement and such failure continues for three (3) business days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
20. **Waiver.** No waiver by SGUS of any of the provisions of this Sales Agreement is effective unless explicitly set forth in writing and signed by SGUS. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Sales Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
21. **Attorney Fees.** Should either party hereto, or any heir, personal representative, successor or assign of either party hereto, resort to litigation to enforce this Sales Agreement, other than as expressly set forth in Section 13 above relating to third party patent infringement claims, the parties shall be responsible for their own attorney's and accountant's fees associated with the costs of litigation, and in no event shall the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorneys' fees and costs in such litigation from the party against whom enforcement was sought.
22. **Confidential Information.** All non-public, confidential or proprietary information of SGUS, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by SGUS to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Sales Agreement is confidential, solely for the use of performing this Sales Agreement and may not be disclosed or copied unless authorized in advance by SGUS in writing. Upon SGUS's request, Buyer shall promptly return all documents and other materials received from SGUS. SGUS shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c)

rightfully obtained by Buyer on a non-confidential basis from a third party.

23. **Force Majeure.** The SGUS shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Sales Agreement, for any failure or delay in fulfilling or performing any term of this Sales Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of SGUS including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.
24. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Sales Agreement without the prior written consent of SGUS. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Sales Agreement.
25. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Sales Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
26. **No Third-Party Beneficiaries.** This Sales Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
27. **Governing Law.** All matters arising out of or relating to this Sales Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.
28. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Sales Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the City of Walnut Creek and County of Contra Costa, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
29. **Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the sales confirmation, invoice, or purchase order, or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Sales Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
30. **Severability.** If any term or provision of this Sales Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Sales Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
31. **Survival.** Provisions of these Terms which by their nature should apply beyond their term will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Section 18 Compliance with Law, Section 22 Confidential Information, Section 27 Governing Law, Section 28 Submission to Jurisdiction, and Section 31 Survival.
32. **Representation Of Authority.** Each person signing this Sales Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Sales Agreement. Each party represents and warrants to the other that the execution and delivery of this Sales Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Sales Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
33. **Headings.** The headings in this Sales Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Sales Agreement nor affect any of the rights or obligations of the parties to this Sales Agreement.
34. **Ambiguities.** Each party has participated fully in the review and revision of this Sales Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Sales Agreement. The language in this Sales Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.