

General Terms and Conditions

1. The Agreement.

- a. These general terms and conditions (the "Agreement") shall be the exclusive terms governing all transactions between Customer and Diasorin Inc., Diasorin Molecular LLC or Luminex Corporation (each a "Supplier"); provided, any written agreement between Customer and Supplier shall control in the event of a conflict.
- b. Any provisions printed or otherwise contained on any website or online portal, or in any purchase order, acknowledgement, acceptance or other document from Customer purporting to govern the Equipment, Systems, Products and/or Services provided by Supplier, which are inconsistent with or in addition to these terms and conditions, shall have no force or effect and Supplier hereby rejects such inconsistent or additional terms.

2. Product Supply; Pricing.

- a. Supplier reserves the right to increase pricing with thirty (30) days' advance notice to Customer.
- b. Supplier reserves the right to cease providing Customer with any Products due to discontinuation or regulatory, legal and/or safety concerns.

3. Invoicing and Payment Terms.

- a. Supplier shall invoice Customer upon shipment. Supplier shall invoice Customer for Services performed on a time and materials basis as such Services are performed.
- b. Customer shall pay all invoices within thirty (30) days following the date the applicable invoices are provided to Customer. All overdue amounts shall accrue interest until paid at a rate equal to one and one-half percent (1.5%) per month, or the maximum rate permitted by law, whichever is lower.
- c. Supplier's extension of credit terms to Customer is subject, at all times, to Supplier's approval of Customer's financial condition. If Customer's financial condition at any time becomes unsatisfactory, as determined by Supplier in its sole discretion, Supplier may, in addition to all other rights and remedies available under the Agreement, delay or decline to make any delivery of Systems or Products to Customer, revoke any open account credit in Customer's name, cease performing Services, require prepayment of future Product orders or any combination of the above.
- d. If Customer fails to make payment when due, Supplier may, without prejudice to any other lawful remedy and without any liability to Customer, (i) suspend further performance hereunder, including the delivery of Systems and/or Products and the performance of Services, until Customer pays all past due invoices, or (ii) terminate any unaccepted or undeliverable orders, in which case Customer shall be responsible for any expense or loss sustained by Supplier in connection with the Agreement.
- e. Prices do not include local, state, or federal sales or use taxes, which will be added to the invoice, if applicable. Tax-exempt entities must provide Supplier with a certificate of tax exemption.
- f. If Customer requires a Purchase Order ("PO") number in order for Customer to process Supplier invoices, Customer shall provide Supplier with a PO promptly and shall provide Supplier thirty (30) days written notice in advance of any change or update to an existing PO. Notwithstanding the foregoing, if Customer does not promptly provide a PO to Supplier, Supplier may, in its sole discretion, proceed with invoicing Customer without a PO, and Customer shall pay such invoices as required herein.

4. Delivery.

- a. Products.
 - (i) Supplier shall deliver Products to Customer F.O.B. origin, shipping and handling charges pre-paid and added to each invoice.
 - (ii) Title to and risk of loss of Products shall pass to Customer upon delivery to the shipper.
 - (iii) Customer will inspect Products promptly upon delivery and notify Supplier in writing of any obvious or visible defect within ten (10) calendar days after delivery, giving details of the alleged defect. If Customer fails to so notify Supplier within such ten (10) day period, the Equipment will be deemed to be accepted by Customer and Customer shall make all payments as required by the Agreement, although Customer will not lose any warranty rights as set forth in Section 6.
- b. Systems.
 - (i) Supplier shall deliver Systems to Customer F.O.B. origin, shipping and handling charges pre-paid and added to each invoice.
 - (ii) title and risk of loss to purchased Systems shall pass to Customer upon delivery to shipper.
- c. Representations as to delivery dates are approximate only, unless Supplier has given an expressly binding commitment. Supplier shall use commercially reasonable efforts to deliver Systems and Products in accordance with the delivery dates set forth on Customer's purchase orders. Supplier shall not be responsible for any loss or damage of any kind or nature caused by any delay in delivery irrespective of the cause of such delay. Supplier reserves the right to allocate orders among its customers in the event of supply constraints. Customer

acknowledges that Products may arrive in partial deliveries and Customer agrees to accept each delivery and pay each applicable invoice in full when due regardless of controversies relating to other delivered or non-delivered Products.

5. Limited Warranty.

- a. Products. Supplier warrants that all Products provided hereunder will conform to the specifications provided to Customer by Supplier through the expiry date listed on the labels for such Products. The foregoing warranty shall only apply to the extent that such Products are handled and stored in accordance with Supplier's instructions and used in accordance with the directions in the applicable Product insert, except that this warranty will not cover patent defects that Customer reasonably should have noted in connection with its inspection and acceptance of Products promptly following delivery. Supplier will be given the opportunity to check all details pertaining to any reported non-conformance with respect to Product specifications. Exceptions may be accepted with written approval by both parties. In the event that Products fail to comply with the warranty set forth in this Section, Supplier shall, at Supplier's option and as Customer's sole remedy, either (i) replace the non-conforming Product or (ii) issue a credit/refund in the amount of the price allocable to the non-conforming Product.
- b. Equipment. Supplier warrants that all purchased or leased Equipment, and any Equipment placed under an LRA Option, will perform in accordance with the manufacturer's specifications for a period of twelve (12) months following delivery of such Equipment at Customer's facility (the "**Equipment Warranty Period**"). During the Equipment Warranty Period, as Customer's sole remedy for a failure of Equipment to comply with the warranty set forth in this Section, Supplier will provide preventative maintenance service in accordance with the Equipment manufacturer recommendations and will repair or replace parts or Equipment, at its discretion, that are found to be defective under normal use and maintenance. THESE WARRANTIES DO NOT APPLY, AND SUPPLIER WILL HAVE NO RESPONSIBILITY TO REPAIR OR REPLACE EQUIPMENT, IN THE FOLLOWING CIRCUMSTANCES: (i) THE EQUIPMENT HAS BEEN REPAIRED BY PERSONS NOT AUTHORIZED BY SUPPLIER; (ii) THE EQUIPMENT HAS BEEN USED, ALTERED, MODIFIED, OR ACCESSED IN A MANNER NOT AUTHORIZED IN WRITING BY SUPPLIER; (iii) DAMAGE DUE TO USE OF NON-SUPPLIER APPROVED STANDARD COMPONENTS AND CONSUMABLES IN THE EQUIPMENT; (iv) DAMAGE DUE TO SPILLAGE, IMPROPER CLEANING, DECONTAMINATION BY CUSTOMER OTHER THAN NORMAL USE AND HANDLING OF THE EQUIPMENT; OR (v) EQUIPMENT HAS NOT BEEN MAINTAINED OR USED IN ACCORDANCE WITH THE EQUIPMENT OPERATOR MANUAL.
- c. Disclaimer. CUSTOMER ACKNOWLEDGES THAT, EXCEPT FOR THE LIMITED WARRANTIES STATED IN HEREIN, SUPPLIER HAS NOT MADE, AND HEREBY DISCLAIMS, ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OR PERFORMANCE OF THE SYSTEMS OR PRODUCTS, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WITH RESPECT TO NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR THE LIKE.

6. Equipment Service. Service under this section for Equipment shall be provided during the Equipment Warranty Period.

- a. Supplier will provide preventative maintenance service in accordance with the Equipment manufacturer recommendations and will repair or replace parts or Equipment, at its discretion, that are found to be defective under normal use and maintenance.
- b. Customer will designate a key operator who will be made available to Supplier's authorized service representative (the "**Service Representative**") to describe Equipment malfunctions by telephone and who will be qualified to perform simple adjustments and corrections as requested by the Service Representative. Failure to designate a key operator or to satisfactorily act upon the reasonable instructions of the Service Representative may result in a service call invoiced by Supplier at its then-current standard rates for service, travel, labor and parts.
- c. Supplier will arrange for the provision of all labor and replacement parts Supplier deems necessary for repairing the Equipment at Supplier's cost, subject to the warranty provisions and exceptions above.
- d. If applicable, In the event the Service Representative determines the Equipment requires offsite servicing, Customer shall ship the decontaminated, malfunctioning Equipment to Supplier or Supplier's designee, at Supplier's cost using the prepaid label provided. Supplier may provide a loaner unit to Customer at no cost for Customer's use during the period of such offsite servicing. In such event, Customer will decontaminate and return the loaner unit at Supplier's cost using the prepaid label provided within five (5) business days of receiving the repaired Equipment, and will be subject to a charge of up to \$200 for each additional day until Supplier receives the returned loaner unit. Customer will pay the costs of repair required to remediate damage to the loaner unit resulting from other than normal use while in Customer's possession.

7. Indemnification.

- a. Supplier shall indemnify, defend and hold Customer harmless from and against all losses incurred by Customer (including reasonable attorneys' fees) resulting from a third party claim to the extent arising out of: (i) a claim that Customer's use of Products or Equipment in accordance with their applicable labeling and instructions infringes any intellectual property right of such third party; or (ii) damage to property or bodily injury (including death) caused by defective Products or Equipment supplied by Supplier. Supplier's indemnification obligations hereunder shall not apply to the extent that any claim is attributable to: (a) the modification of Products or Equipment by Customer; (b) Customer's failure to use Products or Equipment in accordance with their labeling and instructions; or (iii) Customer's negligence or willful misconduct.

- b. Customer shall indemnify, defend and hold Supplier harmless from and against all losses (including reasonable attorneys' fees) resulting from a third party claim to the extent arising out of: (i) Customer's use or sale of Products or Equipment for purposes not permitted by the Agreement or (ii) Customer's negligence or willful misconduct. Customer's indemnification obligations shall not apply to the extent any claim is attributable to Supplier's negligence or willful misconduct.
 - c. The indemnifying party's ("Indemnitor") obligations will be subject to (i) the indemnified party's ("Indemnitee") prompt written notification of any actions or claims that would give rise to such party's indemnification obligation hereunder; (ii) the Indemnitee, at the reasonable expense of the Indemnitor but at no compensation to the Indemnitee, reasonably cooperating with the Indemnitor in connection with the defense of such claims or causes of action; (iii) the Indemnitor having the right, at its sole discretion to select counsel and to control the defense of such claims and causes of action; (iv) the Indemnitor having the right, at its sole discretion, to settle the claims and causes of action (provided that any settlement requiring anything other than the payment of money by the Indemnitor will be subject to the Indemnitee prior written approval, not to be unreasonably withheld or delayed).
 - d. Solely with respect to infringement claims, Supplier, in its sole discretion, shall have the right to (i) modify the Products or Equipment so as to be non-infringing, (ii) replace the Products or Equipment with a non-infringing substitute, or (iii) terminate the Agreement and refund the amounts paid by the Customer for the infringing Products or Equipment.
8. Limitation of Liability
- a. EXCEPT WITH RESPECT TO EACH PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, UNDER THE AGREEMENT, WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT, OR OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND WILL SURVIVE TERMINATION OF THE AGREEMENT.
 - b. IN NO EVENT SHALL SUPPLIER'S AGGREGATE LIABILITY FOR ANY CLAIMS, LOSSES OR DAMAGES UNDER THE AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO SUPPLIER FOR THE PRODUCT OR SERVICE GIVING RISE TO SUCH CLAIMS, DAMAGES OR LOSSES.
9. General Compliance.
- Supplier and Customer shall comply with all applicable federal, state and local statutes, regulations, and rules (collectively, "**Laws**"), including, but not limited to the Anti-Kickback Statute (42 U.S.C. § 1320a-7b, as amended) and the Discount Safe-Harbor (42 C.F.R. § 1001.952(h), as amended). The parties agree that any discounts, rebates, or other price concessions on items or services provided by Supplier under the Agreement constitute a "discount or other reduction in price" of the items or services under Section 1128B(b)(3)(A) of the Social Security Act, 42 U.S.C. §1320a-7b(b)(3)(A). Customer will properly disclose actual prices paid for items or services acquired pursuant to the Agreement, including any discounts or rebates, on any Medicare, Medicaid or other Federal Health Care Program (as defined in Section 1128B(f) of the Social Security Act) cost report for the fiscal year in which earned or the following year.
10. HIPAA Compliance; Access to Books and Records.
- a. The parties acknowledge that Customer may be subject to the requirements of the Health Insurance Portability and Accountability Act of 1996, Title II, Administrative Simplification ("**HIPAA**"), including amendments signed into law under the American Recovery and Reinvestment Act of 2009 ("**ARRA**"), in particular, applicable provisions of Title XIII known as the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"), Subtitle D. Customer agrees that protected health information as defined in 45 C.F.R. 160.103 ("**PHI**") is not required for Supplier's performance of the Agreement and that Supplier is neither a "covered entity" nor a "business associate" of Customer. If in the performance of any services that are related to the provision of Products or Systems under the Agreement, Customer inadvertently provides PHI to Supplier, whether on paper, tape, diskette, CD or other tangible media, in instruments or computers, electronically displayed, or verbally disclosed, Supplier agrees that it shall comply in all respects with HIPAA, ARRA and HITECH, and specifically shall keep such PHI confidential and not further access, use or disclose it for any purposes other than as permitted by the Agreement.
 - b. To the extent that 42 U.S.C. § 1395x(v)(1)(I), as amended by Section 952 of the Omnibus Reconciliation Act of 1980 (Public Law 96-499) and the implementing regulations set forth at 42 C.F.R. §§ 420.300-.304, is found applicable to the Agreement, until the expiration of four (4) years after the furnishing of services pursuant to the Agreement, Supplier agrees to make available, upon written request by the Secretary of the Department of Health & Human Services, the Comptroller General of the United States, or to any of his or her duly authorized representatives, the Agreement, and books, documents and records of Supplier that are necessary to certify the extent of any costs of Customer arising from the Agreement.
11. Confidentiality.
- During the term that the Agreement is in effect, a party may disclose or make available directly or indirectly (the "Disclosing Party") to the other party (the "Receiving Party"), information that is specifically identified as confidential at the time of its disclosure or would reasonably be considered confidential in the industries in which the Disclosing Party operates ("Confidential Information"). Confidential Information shall include, without limitation, the terms of the Agreement, and with respect to Supplier, pricing information. For a period of five (5) years after

the termination or expiration of the Agreement, the Receiving Party shall only use the Disclosing Party's Confidential Information to perform its obligations under the Agreement and shall not disclose such Confidential Information to any third party without the written consent of the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to its and its affiliates' employees ("Representatives") who have a need to know such Confidential Information provided that such Representatives are bound by written agreements containing obligation to maintain the confidentiality of the Confidential Information consistent with the Agreement. Confidential Information shall not include any information that the Receiving Party can establish: (i) was publicly available at the time of receipt or becomes publicly available after receipt through no fault of the Receiving Party, (ii) was already in the possession of the Receiving Party (as established by written records) before its receipt from the Disclosing Party; (iii) is independently developed by the Receiving Party without use of or reference to the Confidential Information, (iv) becomes known to the Receiving Party through disclosure by sources other than the Disclosing Party which have the right to disclose such Confidential Information and which are under no obligation of confidentiality (direct or indirect) to the Disclosing Party with respect to such Confidential Information; or (v) is disclosed pursuant to a requirement of a government agency, subpoena or other legal proceeding, provided that in the event that the Receiving Party becomes compelled to disclose any of the Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of such requirement prior to such disclosure to allow the Disclosing Party to seek a protective order or other remedy and shall take reasonable and lawful actions to avoid and/or minimize such disclosure.

12. Equal Opportunity Clause.

The parties shall comply with all Federal equal employment opportunity obligations under 41 CFR 60-1.4(a), 60-300.5 (a), 60-741.5(a) and federal labor law obligations under 29 CFR part 471, appendix A to subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

13. Entire Agreement.

The Agreement represent the entire agreement between the parties with respect to the subject matter hereof. No amendment or modification of the terms of the Agreement shall be binding on either party unless in writing and signed by authorized representatives of each party.

14. Binding Effect; Assignment.

The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign or transfer the Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Supplier may assign the Agreement without such consent to (a) an affiliate or (b) a successor in ownership of all or the portion of its business to which the Agreement relates, whether through corporate reorganization, merger, consolidation, sale of assets and/or sale of stock.

15. Waiver.

The waiver by a party hereto of any breach of or default under any of the provisions of the Agreement shall not be effective unless in writing and the failure of a party to enforce any of the provisions of the Agreement or to exercise any right there under shall not be construed as a waiver of such right.

16. Severability.

If any part of the Agreement shall be invalid or unenforceable under applicable law, such part shall be ineffective only to the extent of such invalidity or unenforceability, without in any way affecting the remaining parts of the Agreement. In addition, the part that is ineffective shall be reformed in a mutually agreeable manner so as to as most closely approximate, to the extent possible, the intent of the parties hereto.

17. Survival.

The provisions of the Agreement that may reasonably be interpreted or construed as surviving the expiration or termination of the Agreement (including, without limitation, confidentiality and governing law) shall so survive for the period specified, or if no such period, for the applicable statute of limitations.

18. Force Majeure.

Except with respect to a party's indemnification obligation or to Customer's obligation to pay for Products or Systems delivered in accordance with the Agreement, the delay or non-performance of obligations under the Agreement by either party will be excused and shall not constitute a breach or grounds for termination in the event that a party is unable to perform under the Agreement due to events beyond its reasonable control, including strikes, lockouts, or other labor disturbances (legal or illegal), fires, floods or water damage, pandemics, earthquake, riots, governmental acts or orders, interruption of transportation, and inability to obtain materials upon reasonable price. In the event of any government action impacting the Products, Systems and/or Services provided to Customer, Supplier may, (i) upon thirty (30) days prior notice to Customer, revise pricing, or (ii) upon notice to Customer, cancel any portion of an order and/or Agreement (as applicable) related to the affected Products, Systems and/or Services.

19. Independent Contractors.

The parties hereto are independent contractors and nothing in the Agreement will constitute the parties to be partners, nor constitute one party the agent of the other party, nor constitute the relationship to be a joint venture. Neither party shall have, or shall represent that it has, the authority or power to act for or to undertake or create any obligation or responsibility, express or implied, on behalf of, or in the name of the other party.

20. Governing Law.

The Agreement will be governed by and construed in accordance with the laws of the State of Minnesota, excluding any provisions thereof relating to choice of law. The parties agree that any disputes between them concerning the interpretation or application of the Agreement will be resolved by binding arbitration under the commercial arbitration rules of the American Arbitration Association. All hearings in the arbitration will be held in Minnesota.

21. Termination.

- a. The Agreement, including any order, may be terminated by either party, with immediate effect, in the event of insolvency or bankruptcy of the other party, or the appointment of a receiver, trustee, liquidator, or sequestrator of the other party, for any reason.
- b. If either party breaches the Agreement (if applicable) or these terms and conditions (including, in the case of Customer, by failing to pay amounts owed), the non-breaching party may give written notice of the breach to the breaching party. If the breaching party fails to remedy the breach within thirty (30) days following receipt of such notice, the non-breaching party may:
 - i. Terminate one or more orders;
 - ii. Terminate the Agreement;
 - iii. proceed by appropriate legal action, either at law or in equity, to enforce performance by Customer or to recover damages hereunder.
- c. Termination or expiration of the Agreement will not affect any rights or obligations (including the obligation to pay amounts owing hereunder) accrued prior to the date of termination.

22. Regulatory; Resale.

Customer understands and agrees that (i) certain Supplier Products and Equipment are intended for laboratory research and evaluation purposes only and Customer will not use such Products and Equipment for any diagnostic use and/or commercial applications or purposes, including without limitation performance of testing services, unless expressly agreed to in writing by Supplier; (ii) Customer will use the Equipment only with Products authorized by Supplier; (iii) Customer will use the Products only with Equipment authorized by Supplier; (iv) Customer will properly test and use any Products purchased from Supplier in accordance with the practices of a reasonable person who is an expert in the field and in strict compliance with all applicable laws and regulations now and hereinafter enacted; (v) Customer shall comply with all instructions furnished by Supplier relating to the use of the Products and not misuse the Products in any manner; (vi) Customer will not reverse engineer, decompile, disassemble or modify the Products or create derivative works of the Software (as defined below); (vii) Customer will not market, distribute, resell, rent, lease, loan or export the Products or Equipment for any purpose; (viii) Software licenses are not transferable; and (ix) Customer will have no right to use any trademarks owned by or licensed to Supplier without the express written permission of Supplier.

23. Counterparts; Signature.

The Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which will together be deemed to constitute one agreement. In the event that any signature is delivered by electronic signature, facsimile transmission or by e-mail delivery of a ".pdf" format file, such signature will create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such electronic signature, facsimile or ".pdf" signature page were manually signed. In any proceeding arising under or relating to the Agreement, each Party hereby waives any right to raise any defense or waiver based upon execution of the Agreement by means of such electronic signatures or maintenance of the executed agreement electronically.

24. End-User Equipment Software

Supplier grants Customer a revocable, non-exclusive, non-transferable license to use all software now or hereafter installed by Supplier on the Systems as delivered, including updates and new releases (the "**Software**") solely in combination with the Systems. Customer may not, without Supplier's prior written consent, (i) sublicense, lease, or lend the Software to any third party or permit any third party to access or use the Software; (ii) make copies of the Software, except for an archive copy; or (iii) decompile, disassemble, reverse engineer or otherwise decode or derive the source code, or create derivative works of the Software. Supplier reserves all rights to the Software not expressly granted herein. Customer agrees to all third-party end-user license agreements for the software included with the Equipment. Customer agrees to facilitate updates to the Software installed in the Systems provided hereunder, at no charge to Customer, upon receipt of Supplier's reasonable request therefor. In the event Customer fails to facilitate any such Software upgrade to Systems. Supplier may, in its discretion, cease providing warranty, repair and/or maintenance services with respect to such Systems.