

## Terms and Conditions of Sale

### I. General

Sartorius is the "Seller" for all transactions contemplated herein. Any person buying or offering to buy goods from Seller is herein referred to as the "Buyer." The products and services, including replacement products, sold by Seller are hereinafter the "Products."

### II. Acceptance

These terms and conditions, together with Seller's order confirmation (where applicable), constitute the sole and exclusive agreement (the "Contract") between Seller and Buyer. These terms and conditions may not be amended except by a writing signed by authorized representatives of both Seller and Buyer. Seller expressly disclaims acceptance of any terms or conditions on any order form, purchase order or other document of Buyer that are different from or additional to these terms and conditions, and such different or additional terms and/or conditions are hereby expressly rejected and are void.

### III. Modification of Material Furnished by Seller

3.1 All catalogues, specifications, and other material of Seller are subject to modification by Seller and are not binding unless so stated in writing by Seller. Seller reserves the right to correct clerical and typographical errors at any time.

3.2 All prices listed in any catalogues, advertisements, price lists or other materials issued by Seller are subject to modification by Seller and are not binding unless so stated in writing by Seller.

### IV. Prices

4.1 Unless Seller has specified in writing that any quotation is binding for a specified period not yet expired, price quotes are subject to change at any time prior to shipment of the Products.

4.2 Unless otherwise agreed in writing by the parties, freight and insurance are not included in the price. In addition, sales, use, value added or similar taxes are not included in the price, unless otherwise agreed in writing by the parties.

4.3 Sale and prices for kSep® Equipment only are made contingent upon Buyer's agreement to purchase Disposables, spare-parts and services for kSep® Equipment exclusively from Seller. Buyer acknowledges and agrees that purchase of Disposables, spare parts or services from any third party shall constitute a material breach of this Contract and shall nullify and void the kSep® License for such kSep® Equipment only. Buyer acknowledges and agrees that all intellectual property rights in or to the kSep® Equipment and Disposables are solely owned and will at all times remain the sole property of Seller and/or its affiliates. Seller agrees to grant and hereby does grant to Buyer, a non-exclusive, fully paid-up license to use the kSep® Equipment and Disposables, without transfer or sublicense rights.

### V. Delivery

5.1 Unless otherwise agreed by the parties in writing, the delivery term is Carriage Paid To (CPT) named place of destination (INCOTERMS 2020).

5.2 Any delivery dates indicated herein or otherwise set by Seller are estimates only. They do not operate to bind Seller to the dates indicated unless specifically agreed in writing by Seller. Seller reserves the right to make partial shipments and to submit separate invoices for each such partial shipment. If Buyer defaults in its obligations in regard to any partial or prior whole shipment, Seller may suspend any additional partial or whole shipments unless and until Buyer cures such default.

5.3 Delivery dates are subject to change for any cause which interferes with Seller's production, supply or transportation of the Products (whether or not caused or contributed to by Seller's negligence or fault) including, but not limited to, any event of Force Majeure.

5.4 kSep® Equipment Site Acceptance Testing ("SAT") Only. Buyer has been presented the opportunity to purchase Site Acceptance Testing for kSep® Equipment Only. Unless Buyer has purchased SAT, the following shall NOT apply and are expressly excluded from this Contract. Within thirty (30) days of delivery of kSep® Equipment, SAT will be conducted to determine if the kSep® Equipment is able to meet performance specifications using its developed protocols. In the event that Seller's representative is not present during the SAT, then Buyer shall notify Seller of the SAT results as soon as practicable, but no later than the thirty (30) day window. The SAT results shall constitute Seller's confidential information and shall not be disclosed by Buyer without Seller's advance written consent. In the event the SAT does not pass, Buyer shall support and assist Seller to improve performance of the kSep® Equipment and Buyer shall re-perform the SAT within ninety (90) days of the delivery date.

### VI. Title/Risk of Loss/Legal Duties

Risk of loss shall pass, and the parties' respective legal obligations in regard to delivery and shipment, as defined in INCOTERMS 2020 for the relevant shipping term, whether the relevant shipment term is CPT or otherwise. Title shall pass when risk of loss passes and when the Products have been paid in full by or on behalf of Buyer.

### VII. Payment

7.1 Buyer shall pay to Seller the invoice price of the Products sold hereunder, in full and without any deduction or set-off of any kind whatsoever, within 30 days after the invoice date in the currency specified by Seller, unless otherwise agreed by the parties in writing. Milestone payments may apply where designated in Seller's quotation or other written instrument.

7.2 If the amounts owing are in the U.S. dollars, interest will be charged daily on past due amounts at a varying rate of the lesser of (i) two percentage points per annum above the prime (sometimes called base) rate of interest announced by Citibank, N.A., from time to time and (ii) the maximum rate of interest allowed by law. If the amounts owing are in a currency other than U.S. dollars, interest on past due accounts will be charged at the rate of interest customarily charged by Seller on credit sales to its customers in the currency specified.

7.3 If Seller shall conclude in its sole discretion that the financial condition of Buyer at any time jeopardizes its ability to perform its obligations hereunder, Seller may require cash payments or additional security satisfactory to Seller before further performance by Seller. Buyer's failure to

timely pay any invoice shall operate to make all other invoices of Seller immediately due and payable and, at the discretion of Seller, shall be grounds for cancellation of any further performance by Seller. The receipt by Seller of part payment shall not constitute a waiver of any of Seller's rights set forth herein or provided by law, including the right to cancel.

## **VIII. Limitation of Warranty**

8.1 Seller warrants that the Products shall be in accordance with the Seller's ratings and Seller's Specifications. If any failure to conform to the warranty is reported to Seller in writing within 90 days after the date of receipt of the Product by Buyer (or such longer period as may be specified by Seller to Buyer in writing), Seller, upon being satisfied of the existence of such non-conformity, will correct the same by repairing the Product or by delivering replacement Product to Buyer, at Seller's sole discretion. If Seller is unable to correct such non-conformity by repair or replacement, Seller may return the purchase price thereof, or, where appropriate, the unit price for such number or quantity of the non-conforming Products affected. The warranty set forth in this paragraph shall apply both to the Products and to any replacement Products. The foregoing shall be Buyer's sole and exclusive remedies, and the liability of Seller hereunder is expressly limited to the repair or replacement of nonconforming Products, or the repayment of the purchase price, as the case may be.

8.2 THIS WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE AND OTHERWISE, EXPRESS OR IMPLIED, ARE EXCLUDED.

8.3 **kSep® WARRANTY EXCLUSIONS:** BUYER REPRESENTS THAT IT HAS BEEN PRESENTED THE OPPORTUNITY TO PURCHASE A WARRANTY FOR kSep® Equipment. BUYER UNDERSTANDS AND AGREES, UNLESS BUYER HAS PURCHASED A kSep® EQUIPMENT WARRANTY WHERE SUCH kSep® EQUIPMENT WARRANTY SHALL APPEAR AS A SEPARATE LINE ITEM IN SELLERS QUOTATION, kSep® Equipment IS PROVIDED WITHOUT WARRANTY. kSep® Equipment and Disposables ARE EXPRESSLY EXCLUDED FROM THE WARRANTY IN SECTION 8.1. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR OTHERWISE AS IT RELATES TO kSep® Equipment and kSep® Disposables. THE PARTIES ACKNOWLEDGE THAT THE FOREGOING IS REFLECTED IN THE PURCHASE PRICE OF THE kSep® Equipment and kSep® Disposables.

## **IX. Returns**

9.1 All returns are subject to prior written authorization by the Seller, in its sole discretion. Requests for return may require certain supporting documentation, depending on the product. Returned product must be identified clearly with the Return Authorization (RA) number. Unauthorized or unidentified returns will be rejected or destroyed, with no credit issued. Authorized returns shall be shipped at Seller's risk and expense, freight prepaid, to such location as Seller may designate. In the event the Product is found to be conforming, shipping and return freight charges may be charged back to Buyer.

9.2 Subject to a 20% restocking fee (except for product shipped in error), Buyer may return any standard and currently-stocked product which Seller approves if: (i) it is in new condition, suitable for resale in its undamaged, unopened, unmarked original packaging and with all its original parts and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged. Non-standard and/or non-stocked products, equipment, or instruments (i.e. products made-to-order, built to customer's specifications, partly or fully customized, modified, etc.) may not be returned unless due to manufacturer non-conformance(s).

9.3 kSep® Equipment and Disposables are non-refundable once shipped.

## **X. Indemnification/Insurance**

10.1 Buyer agrees indemnify, defend and hold harmless Seller from and against any and all costs, losses, expenses, damages, claims, liabilities or fines, including, but not limited to, attorneys' fees and court costs, resulting from or arising in connection with (i) any claim of infringement of any patent or other proprietary rights of any person or party to the extent that the Product was manufactured pursuant to specifications supplied or required by Buyer; or (ii) any and all actual or alleged injuries to, or deaths of, persons and any and all damage to, or destruction of, property arising directly or indirectly from or relating to the Products sold pursuant to this Contract, or any products or items manufactured using such Products, except for such costs, losses, expenses, damages, claims, liabilities or fines which directly are caused by or result from Seller's willful misconduct or gross negligence; or (iii) the negligence and/or willful misconduct of Buyer, its employees or agents hereunder.

10.2 Buyer shall maintain, at its own cost and expense, comprehensive general liability insurance, including product liability insurance, property damage insurance, public liability insurance, completed operations insurance and contractual liability insurance, designating Seller an additional insured, and have such coverage and limits and be issued by such company as Seller shall deem reasonably adequate for its protection. Buyer shall further maintain, at its own cost an expense, workmen's compensation insurance and any other insurance required by law, in commercially reasonable amounts. Buyer shall, promptly upon Seller's written request, furnish to Seller certificates of insurance evidencing the coverages, limits and expiration dates of the respective insurance policies.

## **XI. Confidentiality**

Buyer agrees that all specifications, data and other technical information furnished by Seller to Buyer constitute the property of Seller, are furnished solely for the purpose of Seller's performance or anticipated performance hereunder, and may not be copied or made accessible to third parties without Seller's prior written consent. Buyer shall promptly return such specifications, data and other technical information and all copies thereof to Seller upon Seller's request. Such request may be made at any time prior to or after delivery of the Products. The obligations of Buyer set forth also shall survive cancellation or completion of the Contract. Buyer shall not reverse engineer the Products, including but not limited to the kSep® Equipment and kSep® Disposables, or any component thereof.

## **XII. Cancellation**

12.1 The Contract is not subject to cancellation by Buyer, other than in accordance with the terms of Paragraph 13.2.

12.2 If Buyer purports to cancel the Contract or any portion thereof in contravention of the terms of Paragraph 12.1 in respect of any Products which have been specially or custom manufactured for Buyer, Seller, in addition to all other remedies available under applicable law, shall be reimbursed by Buyer for all direct costs of labor, raw materials and parts purchased or contracted to be purchased and overhead costs incurred by Seller in the manufacture of said Products, and Seller may demand ten percent (10%) of the sales price set forth in the Contract with respect to costs of processing Buyer's order and loss of profits, notwithstanding the possibility of claiming a higher actual loss. Buyer agrees that Seller's calculation of the costs shall be accepted by the parties hereto. In addition, Seller shall have the right to complete and sell to a third party any specially manufactured Products, the order for which has been purportedly cancelled by Buyer, without any liability or off-set whatsoever to Buyer.

## **XIII. Force Majeure**

13.1 "Force Majeure" means any cause not within the reasonable control of the party affected, but no payment of monies can be excused by Force Majeure. Events of Force Majeure include, without limitation, acts of God, pandemics, epidemics, acts of terrorism, lockouts or other labor disturbances, wars, blockades, quarantine embargoes, riots, fires, explosions, failures of production facilities, shortages of fuel, transportation, utilities, or raw materials, and governmental laws and regulations.

13.2 Force Majeure shall not excuse either party from the performance of its obligations under the Contract, but shall merely suspend such performance during the Force Majeure. The party prevented from performing its obligations shall promptly notify the other party and shall provide the other party from time to time with its best estimate of the duration of such Force Majeure and with notice of the termination thereof. Upon termination of the Force Majeure the performance of any suspended obligation shall recommence. If, however, the Force Majeure prevents performance by either party for a period in excess of 90 days, then so long as such Force Majeure continues, either party may terminate the Contract at once by delivering notice of termination to the other party. Neither party shall be liable to the other party for any direct, indirect, consequential, incidental or special damages, including but not limited to lost profits, lost data, or loss of use, arising out of or relating to the suspension or termination of any of its obligations under the Contract by reason of Force Majeure.

## **XIV. Miscellaneous**

14.1 The invalidity or unenforceability of any of these terms shall not affect the validity and enforceability of the remaining terms.

14.2 The failure of either party to insist upon strict performance by the other party of any term of this Contract or to exercise any right hereunder shall not be deemed to be a modification of any term hereof or a waiver of the future performance of any such term.

14.3 This Contract shall be governed by, and construed in accordance with, the law of New York, without regard to its conflict of laws provision. The provisions of the U.N. Convention on Contracts for the International Sale of Goods are excluded in their entirety. The prevailing party in any litigation shall be entitled to reimbursement of reasonable attorneys' fees and disbursements and court costs from the losing party.

14.4 Buyer and Seller hereby unconditionally and irrevocably submit to (and waive any objection on the grounds of inconvenient forum or otherwise) the jurisdiction of the Supreme Court of the State of New York, County of Suffolk or the United States District Court for the Eastern District of New York, which courts shall have exclusive jurisdiction to adjudicate and determine any suit, action or proceeding regarding or relating to this Agreement.

14.5. BUYER AND SELLER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

14.6 Buyer may not assign, transfer or otherwise convey its rights, duties or obligations hereunder without Seller's prior written consent.

14.7 This 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 this Contract.

## **XV. No Consequential Damages**

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON, WHETHER BY WAY OF INDEMNIFICATION OR CONTRIBUTION OR OTHERWISE, FOR INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, LOST DATA, OR LOSS OF USE, WHETHER ARISING FROM DEFECTIVE WORKMANSHIP OR MATERIALS OR DESIGN, BREACH OF WARRANTY, DELAYS IN DELIVERY OR OTHER BREACH OF CONTRACT, FROM ANY OTHER CAUSE WHATSOEVER, INCLUDING THE NEGLIGENCE OR MISCONDUCT OF SELLER OR ITS AGENTS OR EMPLOYEES.

## **XVI. Limitation of Liability**

IF AND TO THE EXTENT PERMITTED BY THE APPLICABLE LAW, SELLER'S OVERALL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

## **XVII. Survival**

Payment, Limitation of Warranty, kSep® Warranty Exclusions, Returns, Indemnification/Insurance, Limitations of Liability, and Confidentiality provisions together with the sections for which survival is necessary for the interpretation or enforcement of this Contract, shall continue in full force and effect for the duration stated in such provisions or the applicable statute of limitations