

TRAJAN SCIENTIFIC AMERICAS INC. STANDARD TERMS AND CONDITIONS

1. General

All orders for products or services supplied by **Trajan Scientific Americas Inc.** ("**Trajan**") shall be subject to these terms and conditions of sale ("**Terms and Conditions of Sale**"). No modifications hereto will be binding unless agreed to in writing by Trajan. All additional or contrary printed terms and conditions printed on any document supplied by a distributor or customer are hereby rejected by Trajan unless agreed to expressly in writing.

2. Customer

The term "**Customer**" as used herein, means the person or party that purchases the Trajan products or services (the "**Products**") , or any successor in title thereto from Trajan and if the Product is intended for resale, the relevant terms hereof shall be communicated to any user of the Products.

3. Product warranty

- a) Trajan warrants, subject to section 3(b) below, that Products manufactured by Trajan will be free from defects caused by manufacture for a period of 45 days from the date of shipment for any non-perishable Products or until the expiration date (if present) on any perishable Product (the "Limited Warranty"). NO OTHER EXPRESS OR IMPLIED WARRANTY IS MADE WITH RESPECT TO THE PRODUCTS. TRAJAN EXPRESSLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. Trajan's total liability for breach of the Limited Warranty shall be limited to repairing or replacing such Product, or at Trajan's option, refunding the purchase price of same, if paid.
- b) The Limited Warranty shall not be effective with respect to loss or damage (i) caused by the use of the Products other than strictly in accordance with the terms of use of the Products, including without limitation, loss or damage caused as a result of a failure to use the Products in accordance with Trajan's instructions, or caused by rough or negligent handling of the Products; (ii) to Products that are not stored or shipped in accordance with Trajan's storage and shipping instructions; or (iii) caused by an act of God or any other cause not within Trajan's control or otherwise not related to the Products.
- c) Products returned under the Limited Warranty will incur a charge, to be fixed by Trajan, if no fault is found. The Customer bears all cost of delivery and insurance of Products returned under the Limited Warranty.

4. Delivery/Risk of loss

Trajan shall use its reasonable efforts to ship and deliver Products in accordance with the requested delivery dates; provided, however, that Trajan shall not be liable in the event of any delay, irrespective of cause or circumstance, including circumstances within or without Trajan's control. Any such delay shall not be deemed a repudiation or breach of this or any agreement.

Risk of loss on the Products sold to Customer shall pass upon delivery of such Products to Customer in accordance with

Section 9 hereto or, if earlier, as otherwise provided in Section 9 hereto. Irrespective of passing of the risk of loss, title shall remain with Trajan until payment in full has been received for the Products and, in the event of non or partial payment following any delivery, Customer shall hold all such Products for the benefit of and as a trustee for Trajan until Trajan has been paid in full.

5. Limitation of liability

- a) TRAJAN SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING THE PRODUCT.
- b) TRAJAN'S TOTAL LIABILITY AND THE CUSTOMER'S EXCLUSIVE REMEDY FOR ANY AND ALL CLAIMS, LOSSES OR DAMAGES IN CONNECTION WITH THE SALE OR FURNISHING OF THE PRODUCTS, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION OR OPERATION, IS EXPRESSLY LIMITED TO REPLACEMENT OF NON-CONFORMING PRODUCTS OR PAYMENT REIMBURSEMENT IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE NON-CONFORMING PRODUCTS COVERED BY THIS CONTRACT, PLUS TRANSPORTATION CHARGES. CUSTOMER SHALL INSPECT ALL PRODUCTS UPON RECEIPT. CUSTOMER'S RECEIPT OF PRODUCTS SHALL BE AN UNQUALIFIED ACCEPTANCE OF, AND A WAIVER BY, THE CUSTOMER OF THE RIGHT TO MAKE ANY CLAIM WITH RESPECT TO PRODUCTS UNLESS THE CUSTOMER GIVES TRAJAN NOTICE OF A CLAIM OR OF NONCONFORMANCE OF PRODUCTS WITHIN SEVEN (7) DAYS AFTER RECEIPT AND PRIOR TO APPLICATION OR USE OF PRODUCTS. IN NO EVENT SHALL TRAJAN BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFIT, DOWNTIME, OPERATING OR MAINTENANCE COSTS, EQUIPMENT DAMAGE OR PRODUCT SPOILAGE, WATER DAMAGE, LEAKAGE OR FLOODS EVEN IF TRAJAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.
- c) THE REMEDY SET FORTH ABOVE IS INTENDED SOLELY FOR THE BENEFIT OF THE CUSTOMER. ALL CLAIMS MUST BE MADE BY THE CUSTOMER AND MAY NOT BE MADE BY ANY THIRD PARTY.
- d) Any minor damages (such as scratches, spots, pressure marks), shall not entitle Customer to any warranty claim. Commercial tolerances with respect to dimensions, finish, color, weight, etc. of products and all other articles manufactured by Trajan, or minor variations from the data stated in Trajan's printed documents and descriptive literature shall neither entitle Customer to any warranty claim nor to a rejection of the Products delivered.

6. Modification of Products

Trajan reserves the right, without notice to the Customer, to (a) change the specifications of any Product, (b) modify a Product

TRAJAN SCIENTIFIC AMERICAS INC.

STANDARD TERMS AND CONDITIONS

in any manner that Trajan deems necessary or appropriate and (c) discontinue any Product. Customer may not alter the Product in any manner.

Where Trajan agrees to make any modifications, alterations or adjustments to any Product as a result of, or in reliance upon, information or instructions provided by Customer, Customer agrees to indemnify Trajan in full from and against any and all claims, demands, liabilities, losses, damages, fines, costs, and expenses (including, but not limited to, legal fees and expenses) suffered by Trajan, howsoever arising, (a) where Trajan has relied on the information or instructions provided by Customer; or (b) where any such modifications, alterations or amendments are challenged by a third party as infringing or being in breach of a third party's intellectual property rights.

7. Acceptance of orders

All purchase orders received from the Customer are subject to acceptance and confirmation by Trajan in writing and once accepted by Trajan become final and binding, except as set forth in Section 10 hereto. All such purchase orders will be subject to the ex-warehouse prices then in effect. Statements made in Trajan's order confirmation as to kind, dimensions and quality of the Products to be supplied shall be binding on Trajan if these statements have been separately agreed upon in writing. In no event shall Trajan be held liable for any incorrectly supplied Products following the seventh (7th) calendar day from the invoice date, if the Product identity as stated on any shipping documentation conforms with Trajan's order confirmation.

8. Price changes

Trajan may increase its prices for the Products from time to time without notice to the Customer. Increased prices for Products shall not apply to purchase orders accepted prior to the effective date of the price increase unless such orders provide for delivery more than fourteen (14) days after the date of acceptance of the order.

9. Delivery terms

Unless stated otherwise in Trajan's order confirmation and subject to the remainder of this Section 9, all deliveries of Products are shipped on the basis that the Customer (or its agent) is responsible for transportation from Trajan's premises and insurance from the time of delivery. Risk in Products shall pass to the Customer upon the sooner of the loading of the Products on the Customer's carrier (or a carrier nominated by the Customer) or the expiration of one month from the date upon which Trajan notifies the Customer that the Products are ready for delivery. Trajan may invoice the Customer for the costs of freight and insurance of Products up to the time of delivery.

10. Payment terms

All orders will be shipped either prepaid by the Customer, against payment in advance, an acceptable irrevocable letter of credit, made or confirmed by a U.S. Federal Reserve chartered bank or C.O.D., at Trajan's option, unless the Customer has established a previously approved credit line. If Trajan approves a credit line for the Customer, all payments shall be due within thirty (30) days of the date of the invoice. Payment shall be made in the U.S.A. in U.S. Dollars unless Trajan designates another currency or another place of

payment. If any invoice is not paid in full within such thirty (30) day period, then finance charges may be assessed at the lesser of: (a) the rate of one and one-half percent (1-1/2%) per month (eighteen percent (18%) per year), or (b) the maximum rate permitted by applicable law. Trajan may stop or withhold shipment of Products if the Customer does not fulfill its payment obligations. In any case, Trajan may require full or partial payment in advance and as a condition to the continuation of its delivery of Products.

11. Security interest

Unless and until the Products are paid in full, Trajan reserves a security interest in them to secure the unpaid balance of the purchase price. The Customer hereby grants to Trajan a power of attorney, coupled with an interest, to execute and file on behalf of the Customer all necessary financing statements and other documents required or appropriate to protect the security interest granted herein. Trajan's security interest in the Products shall include, without limitation, the right of resale, rescission, stoppage in transit and Trajan reserves the right of possession thereof until payment in full of the purchase price and any other outstanding debts to Trajan.

12. Trial application>Returns

- a) The Customer acknowledges and agrees that if Trajan notifies the Customer that the Products are sold or provided on a "trial" or "testing basis," such supply shall be for the purpose of evaluating the performance, efficacy or suitability of such Products. IN SUCH EVENT: (A) TRAJAN DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE EXPRESS WARRANTY PROVIDED IN SECTION 3 HEREOF AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (B) SHALL HAVE NO LIABILITY WHATSOEVER WITH RESPECT TO SUCH TRIAL OR TEST BASIS PRODUCTS, INCLUDING BUT NOT LIMITED TO, THE PURCHASE PRICE AND TRANSPORTATION COSTS PAID BY THE CUSTOMER FOR SAME; AND (C) THE CUSTOMER AGREES TO INDEMNIFY AND HOLD TRAJAN HARMLESS IN FULL FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, DAMAGES, LOSSES, FINES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, LEGAL FEES AND EXPENSES) ARISING OUT OF OR RELATING TO SUCH TRIAL OR TEST.
- b) The Products are not generally sold on a trial basis and are not intended to be returned to Trajan under any circumstance. Trajan may in its sole discretion accept the return of such Products under certain circumstances and according to reasonable conditions as Trajan may require (as agreed by Trajan in writing and subject to the Customer's payment to Trajan of any return freight or shipping costs and a restocking fee as determined in Trajan's sole discretion).

13. Intellectual Property Rights

The Customer acknowledges Trajan's license to use, or

TRAJAN SCIENTIFIC AMERICAS INC.

STANDARD TERMS AND CONDITIONS

ownership of, the patents, trademarks, copyrights, designs, trade secrets, and any and all other intellectual property rights related to the Products (the "Intellectual Property Rights") manufactured or supplied by Trajan. The Customer represents, warrants, and agrees: (a) that it will not acquire any rights in the Intellectual Property Rights by purchasing or using the Products or under these Terms and Conditions of Sale, (b) that it will not contest Trajan's or Trajan's licensor's ownership of any and all Intellectual Property Rights, (c) that it will not infringe any of the Intellectual Property Rights, (d) that it will protect and defend the Intellectual Property Rights from any and all violations or infringements by itself and its agents, employees and affiliates, as well as by third parties who have access to the Products through it, (e) that it will promptly notify Trajan of any actual or alleged infringement of the Intellectual Property Rights of which it becomes aware, and (f) that it will not reverse engineer or disassemble any Products,

14. Regulatory laws and standards

Customer shall be responsible for complying with all local laws relating to sale of the Products at its own cost and expense.

15. Taxes

All sales taxes, duties, value added taxes, excise or government charges imposed of each and every kind (or any increase thereof imposed after the effective date of this contract) upon the production, sale, shipment, use or value added to the Products (other than income and excess profit taxes) shall be the obligation of and shall be paid by the Customer. In the event Trajan is required to prepay any such tax, Customer will reimburse Trajan. The Customer shall provide Trajan with the properly completed exemption certificates for any tax or charge from which the Customer claims exemption.

16. Indemnities

The Customer agrees to indemnify and hold Trajan harmless from and against any and all claims, demands, liabilities, damages, losses, fines, costs and expenses, including legal fees and expenses (collectively, "**Claims**"), which may accrue or are sustained by Trajan on account of (a) any use of the Products by the Customer not in compliance with these Terms and Conditions of Sale; (b) any failure by Customer to comply with laboratory practices that are consistent with industry practice, laws, guidelines or decisions in the handling or use of the Products; (c) any violation or infringement of any patent or other proprietary rights of third parties by the Customer in the handling or use of the Products; (d) Customer's failure to comply with all applicable federal, state and local laws, ordinances, regulations, rules and orders, including, but not limited to those governing pollution, ecology, labor, health and the environment; or (e) any other use or misuse of the Products by the Customer. Customer shall have no duty to indemnify Trajan where such Claims arise out of Trajan's breach of warranty, sole negligence or willful misconduct in which event Trajan's liability shall be limited as set forth in Section 5 above.

17. Hazards

The Customer acknowledges that it understands the nature and characteristics of the Products sold hereunder, the hazards, if any, associated with such Products and that it is

familiar with the labelling and literature concerning the Products. The Customer agrees to warn all persons who may become exposed to the Products after delivery to the Customer hereunder of any hazards associated with such Product and to instruct its customers, agents and employees to safely use such Products.

18. Privacy and Data Protection

In this clause, "**Personal Information**" means any means information that can be used to directly or indirectly identify an individual.

In relation to any Personal Information which is obtained by Trajan in connection with its supply of the Goods to the Purchaser, Trajan will collect, process, use and store that Personal Information in accordance with Trajan's Privacy and Security Policy published on the Trajan website, as may be amended from time to time.

19. Waiver

Failure by Trajan to insist upon strict performance of any term, warranty or condition of this Contract shall not be deemed a waiver of any term, warranty or condition, or of any rights Trajan may have. No express waiver by Trajan will be deemed a waiver of any subsequent breach of any term, warranty or condition.

20. Force majeure

- a) Trajan will not be liable for any failure to perform because of strikes, differences with workmen, accidents, fire, floods or shutdowns of manufacturing plant or plants supplying it, order or requirements of the U.S. Government, embargoes, inability to secure transportation facilities, or other contingencies beyond the control of Trajan, including those arising out of or due to national defence activities, or emergency conditions. Customer's performance, except for the obligation to pay any amounts due and owing or becoming due and owing hereunder, shall likewise be suspended in the event that the Force Majeure events set forth herein actually and totally prevent taking delivery of the Products.
- b) Upon giving written notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under these Terms and Conditions of Sale, except for the obligation to pay any amounts due and owing or becoming due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, its cause and possible consequences. The party claiming Force Majeure shall promptly notify the other party of the termination of such event. During the period that the performance by one of the parties has been

TRAJAN SCIENTIFIC AMERICAS INC. STANDARD TERMS AND CONDITIONS

suspended by reason of an event of Force Majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable

21. Assignment

The Customer shall not be entitled to assign any of its rights or obligations under these Terms and Conditions of Sale without the prior written consent of Trajan

22. Governing law and venue

- a) This Agreement and the relationship of the parties shall be governed by the internal law of the State of Texas, excluding any conflicts-of-laws rules or principles that might refer the governance, construction, or enforcement of this Agreement to the laws of another jurisdiction.
- b) BOTH PARTIES HEREBY SUBMIT TO THE PERSONAL JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN THE STATE OF TEXAS AND AGREE THAT THE VENUE OF ANY ACTION IN CONNECTION WITH THIS AGREEMENT SHALL BE IN THE DESIGNATED FEDERAL OR STATE COURT LOCATED IN THE COUNTY IN TEXAS WHERE TRAJAN'S PRINCIPAL PLACE OF BUSINESS IS LOCATED.

23. Notices

Notices permitted or required to be given hereunder shall be deemed sufficient if given by personal delivery, telecopy or registered or certified air mail, postage prepaid, return receipt requested, addressed to the respective addresses of the parties as stated on the service order or at such other addresses as the respective parties may designate by like notice from time to time. Notices so given shall be effective on the date of receipt if sent by personal delivery or telecopy and three (3) business days after the date of dispatch if sent by registered or certified air mail.

24. Severability

Whenever possible, each provision of these Terms and Conditions of Sale will be interpreted to be valid and enforceable, but if any provision is found to be invalid or unenforceable, then such provision or portion thereof will be modified to the minimum extent necessary to make it valid and enforceable. If it is not possible to modify the provision to make it valid and enforceable, then such provisions are severable and these Terms and Conditions of Sale shall be interpreted and enforced as if such invalid or unenforceable provisions were not contained therein and partially valid and enforceable provisions shall be enforced to the extent valid and enforceable. The invalidity or unenforceability of any provisions will not affect the validity and enforceability of any other provisions, which will remain valid and enforceable.