



Terms & Conditions of Sale for Lufft USA Inc. Products and Services (April 2017)

This document sets forth the Terms & Conditions of Sale for goods manufactured and/or supplied, and services provided, by Lufft USA Inc. of Carpinteria, California ("Lufft") and sold to the original purchaser thereof ("Buyer"). Unless otherwise specifically stated in a previously-executed written purchase agreement signed by authorized representatives of Lufft and Buyer, these Terms & Conditions of Sale establish the rights, obligations and remedies of Lufft and Buyer which apply to this offer and any resulting order or contract for the sale of Lufft's goods and/or services ("Products").

1. APPLICABLE TERMS & CONDITIONS

These Terms & Conditions of Sale are contained directly and/or by reference in Lufft offer, order acknowledgment, and invoice documents. The first of the following acts constitutes an acceptance of Lufft offer and not a counteroffer and creates a contract of sale ("Contract") in accordance with these Terms & Conditions: (i) Buyer's issuance of a purchase order document against Lufft offer; (ii) acknowledgement of Buyer's order by Lufft; or (iii) commencement of any performance by Lufft pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract from the provisions of these Terms & Conditions of Sale are not a part of the Contract.

2. CANCELLATION

Buyer may cancel goods orders subject to fair charges for Lufft expenses including handling, inspection, restocking, freight and invoicing charges as applicable, provided that Buyer returns such goods to Lufft at Buyer's expense within 30 days of delivery and in the same condition as received. Buyer may cancel service orders on ninety (90) day's prior written notice, and refunds will be prorated based on the duration of the service plan. Inspections and reinstatement fees may apply upon cancellation or expiration of service programs. Seller may cancel all or part of any order prior to delivery without liability if the order includes any Products that Seller determines may not comply with export, safety, local certification, or other applicable compliance requirements.

3. DELIVERY

Delivery terms are Ex Works Lufft point of shipment (Incoterms 2010). Legal title and risk of loss or damage pass to Buyer upon transfer to the first carrier. Lufft will use commercially reasonable efforts to deliver the Products ordered herein within the time specified on the face of this Contract or, if no time is specified, within Lufft normal lead-time necessary for Lufft to deliver the Products sold hereunder. Upon prior agreement with Buyer and for an additional charge, Lufft will deliver the Products on an expedited basis. Standard Service delivery hours are 8 am – 5 pm Monday through Friday, excluding holidays.

4. INSPECTION

Buyer will promptly inspect and accept any Products delivered pursuant to this Contract after receipt of such Products. In the event the Products do not conform to any applicable specifications, Buyer will promptly notify Lufft of such nonconformance in writing. Lufft will have a reasonable opportunity to repair or replace the nonconforming Product at its option. Buyer will be deemed to have accepted any Products delivered hereunder and to have waived any such nonconformance in the event such a written notification is not received by Lufft within thirty (30) days of delivery.

5. PRICES & ORDER SIZES

All prices are in U.S. dollars and are based on delivery as stated above unless otherwise quoted by Lufft. Prices do not include any charges for services such as insurance; brokerage fees; sales, use, inventory or excise taxes; import or export duties; special financing fees; VAT, income or royalty taxes imposed outside the U.S.; consular fees; special permits or licenses; or other charges imposed upon the production, sale, distribution, or delivery of Products. Buyer will either pay any and all such charges or provide Lufft with acceptable exemption certificates, which obligation survives

performance under this Contract. Lufft reserves the right to establish minimum order sizes and will advise Buyer accordingly.

6. PAYMENTS

All payments must be made in U.S. dollars unless otherwise quoted by Lufft. Lufft may require cash or credit card payment ARO. To the extent that Lufft extends any credit, invoices for all orders are due and payable NET 30 DAYS from date of the invoice without regard to delays for inspection or transportation, with payments to be made by check to Lufft at the Lufft address indicated or by wire transfer to the account stated on the front of Lufft's invoice. In the event payments are not made or not made in a timely manner, Lufft may, in addition to all other remedies provided at law, either: (a) declare Buyer's performance in breach and terminate this Contract for default; (b) withhold future shipments until delinquent payments are made; (c) deliver future shipments on a cash-with-order or cash-in-advance basis even after the delinquency is cured; (d) charge interest on the delinquency at a rate of 1-1/2% per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges and/or inventory carrying charges; (e) repossess the Products for which payment has not been made; (f) recover all costs of collection including reasonable attorney's fees; or (g) combine any of the above rights and remedies as is practicable and permitted by law. Buyer is prohibited from setting off any and all monies owed under this paragraph from any other sums, whether liquidated or not, that are or may be due Buyer, which arise out of a different transaction with Lufft or any of its affiliates. Should Buyer's financial responsibility become unsatisfactory to Lufft, in its reasonable discretion, Lufft may require cash payment or other security. If Buyer fails to meet these requirements, Lufft may treat such failure as reasonable grounds for repudiation of this Contract, in which case reasonable cancellation charges shall be due Lufft. Buyer grants Lufft a security interest in the Products to secure payment in full, which payment releases the security interest but only if such payments could not be considered an avoidable transfer under the U.S. Bankruptcy Code or other applicable laws. Buyer's insolvency, bankruptcy, assignment for the benefit of creditors, or dissolution or termination of the existence of Buyer, constitutes a default under this Contract and affords Lufft all the remedies of a secured party under the U.C.C., as well as the remedies stated above for late payment or non-payment. See ¶22 for further wire transfer requirements.

7. LIMITED WARRANTY

Lufft warrants that Products sold hereunder will be free from defects in material and workmanship and will, when used in accordance with the manufacturer's operating and maintenance instructions, conform to any express written warranty pertaining to the specific goods purchased, which for most Lufft instruments is for a period of twenty four (24) months from delivery. Lufft warrants that services furnished hereunder will be free from defects in workmanship for a period of ninety (90) days from the completion of the services. Parts provided by Lufft in the performance of services may be new or refurbished parts functioning equivalent to new parts. Any non-functioning parts that are repaired by Lufft shall become the property of Lufft. No warranties are extended to consumable items such as, without limitation, reagents, batteries, mercury cells, and light bulbs. All other guarantees, warranties, conditions and representations, either express or implied, whether arising under any statute, law, commercial usage or otherwise, including implied warranties of merchantability and fitness for a particular purpose, are hereby excluded. The sole remedy for Products not meeting this Limited Warranty is at Lufft option: repair, replacement, or credit or refund of the purchase price. This remedy will not be deemed to have failed of its essential purpose so long as Lufft is willing to provide such replacement, credit or refund.

8. INDEMNIFICATION

Indemnification applies to a party and to such party's successors-in-interest, assignees, affiliates, directors, officers, and employees ("Indemnified Parties"). Lufft is responsible for and will defend, indemnify and hold harmless the Buyer Indemnified Parties against all



Terms & Conditions of Sale for Lufft USA Inc. Products and Services (April 2017)

losses, claims, expenses or damages which may result from accident, injury, damage, or death due to Lufft's breach of the Limited Warranty. This indemnification is provided on the condition that the Buyer is likewise responsible for and will defend, indemnify and hold harmless the Lufft Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to the negligence or misuse or misapplication of any goods or services by the Buyer or any third party affiliated or in privity with Buyer.

9. PATENT PROTECTION

Subject to all limitations of liability provided herein, Lufft will, with respect to any Products of Lufft's design or manufacture, indemnify Buyer from any and all damages and costs as finally determined by a court of competent jurisdiction in any suit for infringement of any U.S. patent (or European patent for Products that Lufft sells to Buyer for end use in a member state of the E.U.) that has issued as of the delivery date, solely by reason of the sale or normal use of any Products sold to Buyer hereunder and from reasonable expenses incurred by Buyer in defense of such suit if Lufft does not undertake the defense thereof, provided that Buyer promptly notifies Lufft of such suit and offers Lufft either (i) full and exclusive control of the defense of such suit when Products of Lufft only are involved, or (ii) the right to participate in the defense of such suit when products other than those of Lufft are also involved. Lufft's warranty as to use patents only applies to infringement arising solely out of the inherent operation of the Products according to their applications as envisioned by Lufft's specifications. In case the Products are in such suit held to constitute infringement and the use of the Products is enjoined, Lufft will, at its own expense and at its option, either procure for Buyer the right to continue using such Products or replace them with non-infringing products, or modify them so they become non-infringing, or remove the Products and refund the purchase price (prorated for depreciation) and the transportation costs thereof. The foregoing states the entire liability of Lufft for patent infringement by the Products. Further, to the same extent as set forth in Lufft's above obligation to Buyer, Buyer agrees to defend, indemnify and hold harmless Lufft for patent infringement related to (a) any goods manufactured to the Buyer's design, (b) services provided in accordance with the Buyer's instructions, or (c) Lufft's Products when used in combination with any other devices, parts or software not provided by Lufft hereunder.

10. TRADEMARKS AND OTHER LABELS

Buyer agrees not to remove or alter any indicia of manufacturing origin or patent numbers contained on or within the Products, including without limitation the serial numbers or trademarks on nameplates or cast, molded or machined components.

11. SOFTWARE

All licenses to Lufft's separately-provided software products are subject to the separate software license agreement(s) accompanying the software media or quoted by Lufft or otherwise agreed by Buyer. In the absence of such terms and for all other software, Lufft grants Buyer only a personal, non-exclusive license to access and use the software provided by Lufft with Products purchased hereunder solely as necessary for Buyer to enjoy the benefit of the Products. A portion of the software may contain or consist of open source software, which Buyer may use under the terms and conditions of the specific license under which the open source software is distributed. Buyer agrees that it will be bound by any and all such license agreements. Title to software remains with the applicable licensor(s). All "MARWIS" data remains the property of Lufft, subject to a personal, non-exclusive license to access and use the MARWIS data provided by MARWIS Products purchased hereunder.

12. NONDISCLOSURE AND NON-USE OF PROPRIETARY INFORMATION

"Proprietary Information" means any information, technical data or know-how in whatever form, including, but not limited to, documented information, machine readable or interpreted information, information

contained in physical components, mask works and artwork, which Lufft considers proprietary or Proprietary, including but not limited to Lufft's service and maintenance manuals. Buyer and its customers, employees and agents will keep confidential all such Proprietary Information obtained directly or indirectly from Lufft and will not transfer or disclose it without Lufft's prior written consent, or use it for the manufacture, procurement, servicing or calibration of Products or any similar products, or cause such products to be manufactured, serviced or calibrated by or procured from any other source, or reproduce or otherwise appropriate it without Lufft's prior written consent. All such Proprietary Information remains property of Lufft. No right or license is granted hereby to Buyer or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent, patent application or other proprietary right of Lufft, except for the limited use licenses implied by law.

13. CHANGES AND ADDITIONAL CHARGES

Lufft reserves the right to make design changes or improvements to any products of the same general class as Products being delivered hereunder without liability or obligation to incorporate such changes, or improvements to Products ordered by Buyer unless agreed upon in writing before the Products' delivery date. Services which must be performed as a result of any of the following conditions are subject to additional charges for labor, travel and parts: (a) equipment alterations not authorized in writing by Lufft; (b) damage resulting from improper use or handling, accident, neglect, power surge, or operation in an environment or manner in which the instrument is not designed to operate or is not in accordance with Lufft's operating manuals; (c) the use of parts or accessories not provided by Lufft; (d) damage resulting from acts of war, terrorism or nature; (e) services outside standard business hours; (f) site prework not complete per proposal; or (g) any repairs required to ensure equipment meets manufacturer's specifications upon activation of a service agreement.

14. SITE ACCESS / PREPARATION / WORKER SAFETY / ENVIRONMENTAL COMPLIANCE

In connection with services provided by Lufft, Buyer agrees to permit prompt access to equipment. Buyer assumes full responsibility to back-up or otherwise protect its data against loss, damage or destruction before services are performed. Buyer is the operator and in full control of its premises, including those areas where Lufft employees or contractors are performing service, repair, and maintenance activities. Buyer will ensure that all necessary measures are taken for safety and security of working conditions, sites, and installations during the performance of services. Buyer is the generator of any resulting wastes, including without limitation hazardous wastes. Buyer is solely responsible to arrange for the disposal of any wastes at its own expense. Buyer will, at its own expense, provide Lufft employees and contractors working on Buyer's premises with all information and training required under applicable safety compliance regulations and Buyer's policies. If the instrument to be serviced is in a Confined Space, as that term is defined under OSHA regulations, Buyer is solely responsible to make it available to be serviced in an unconfined space. Lufft service technicians will not work in Confined Spaces. In the event that a Buyer requires Lufft employees or contractors to attend safety or compliance training programs provided by Buyer, Buyer will pay Lufft the standard hourly rate and expense reimbursement for such training attended. The attendance at or completion of such training does not create or expand any warranty or obligation of Lufft and does not serve to alter, amend, limit or supersede any part of this Contract.

15. LIMITATIONS ON USE

Buyer will not use any Products for any purpose other than those identified in Lufft's catalogs and literature as intended uses. Unless Lufft has advised the Buyer in writing, in no event will Buyer use any Products in drugs, food additives, food or cosmetics, or medical applications for humans or animals. In no event will Buyer use in any application any Product that requires FDA 510(k) clearance unless and only to the extent the Product has such clearance. Any warranty



Terms & Conditions of Sale for Lufft USA Inc. Products and Services (April 2017)

granted by Lufft is void if any goods covered by such warranty are used for any purpose not permitted hereunder.

16. EXPORT AND IMPORT LICENSES AND COMPLIANCE WITH LAWS AND RELATED COMPANY POLICIES

Unless otherwise specified in this Contract, Buyer is responsible for obtaining any required export or import licenses. Lufft represents that all Products delivered hereunder will be produced and supplied in compliance with all applicable laws and regulations. Buyer will comply with all laws and regulations applicable to the installation or use of all Products, including applicable import and export control laws and regulations of the U.S., E.U., and any other country having proper jurisdiction, and will obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder. Buyer will not sell, transfer, export or re-export any Lufft Products or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Lufft Products or technology in any facility which engages in activities relating to such weapons. Buyer will comply with all local, national, and other laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Buyer's business activities in connection with this Contract, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). Buyer agrees that no payment of money or provision of anything of value will be offered, promised, paid or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Buyer or for Lufft, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of Buyer's activities related to this Contract. Lufft asks Buyer to "Speak Up!" if aware of any violation of law, regulation or our Standards of Conduct ("SOC") in relation to this Contract. See <http://danaher.com/integrity-and-compliance> and www.danaherintegrity.com for a copy of the SOC and for access to our Helpline portal.

17. FORCE MAJEURE

Lufft is excused from performance of its obligations under this Contract to the extent caused by acts or omissions that are beyond its control, including but not limited to Government embargoes, blockages, seizures or freeze of assets, delays or refusals to grant an export or import license or the suspension or revocation thereof, or any other acts of any Government; fires, floods, severe weather conditions, or any other acts of God; quarantines; labor strikes or lockouts; riots; strife; insurrections; civil disobedience or acts of criminals or terrorists; war; material shortages or delays in deliveries to Lufft by third parties. In the event of the existence of any force majeure circumstances, the period of time for delivery, payment terms and payments under any letters of credit will be extended for a period of time equal to the period of delay. If the force majeure circumstances extend for six months, Lufft may, at its option, terminate this Contract without penalty and without being deemed in default or in breach thereof.

18. NON-ASSIGNMENT AND WAIVER

Buyer will not transfer or assign this Contract or any rights or interests hereunder without Lufft's prior written consent. Failure of either party to insist upon strict performance of any provision of this Contract, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Contract will not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same will continue and remain in force and effect as if no waiver had occurred.

19. LIMITATION OF LIABILITY

None of the Lufft Indemnified Parties will be liable to Buyer under any circumstances for any special, treble, incidental or consequential damages, including without limitation, damage to or loss of property other than for the Products purchased hereunder; damages incurred in installation, repair or replacement; lost profits, revenue or opportunity; loss of use; losses resulting from or related to downtime of the products or inaccurate measurements or reporting; the cost of substitute products; or claims of Buyer's customers for such damages, howsoever caused, and whether based on warranty, contract, and/or tort (including negligence, strict liability or otherwise). The total liability of the Lufft Indemnified Parties arising out of the performance or nonperformance hereunder or Lufft's obligations in connection with the design, manufacture, sale, delivery, and/or use of Products will in no circumstance exceed in the aggregate a sum equal to twice the amount actually paid to Lufft for Products delivered hereunder.

20. APPLICABLE LAW AND DISPUTE RESOLUTION

The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of California, without regard to its principles or laws regarding conflicts of laws. If any provision of this Contract violates any Federal, State or local statutes or regulations of any countries having jurisdiction of this transaction, or is illegal for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions. Unless otherwise specifically agreed upon in writing between Lufft and Buyer, any dispute relating to this Contract which is not resolved by the parties shall be adjudicated in order of preference by a court of competent jurisdiction (i) in the State of California, U.S.A. if Buyer has minimum contacts with Delaware and the U.S., (ii) elsewhere in the U.S. if Buyer has minimum contacts with the U.S. but not Delaware, or (iii) in a neutral location if Buyer does not have minimum contacts with the United States.

21. ENTIRE AGREEMENT & MODIFICATION

These Terms & Conditions of Sale constitute the entire agreement between the parties and supersede any prior agreements or representations, whether oral or written. No change to or modification of these Terms & Conditions shall be binding upon Lufft unless in a written instrument specifically referencing that it is amending these Terms & Conditions of Sale and signed by an authorized representative of Lufft. Lufft rejects any additional or inconsistent Terms & Conditions of Sale offered by Buyer at any time, whether or not such terms or conditions materially alter the Terms & Conditions herein and irrespective of Lufft's acceptance of Buyer's order for the described goods and services.

22. WIRE TRANSFERS

Buyer and Lufft both recognize that there is a risk of wire fraud when individuals impersonating a business demand immediate payment under new wire transfer instructions. To avoid this risk, Buyer must verbally confirm any new or changed wire transfer instructions by calling Lufft at +1 (888) 519-8443 and speaking with Lufft's Credit Manager before transferring any monies using the new wire instructions. Both parties agree that they will not institute wire transfer instruction changes and require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any wire transfer instruction changes before any outstanding payments are due using the new instructions.

* * * * *