

## ABIOTENIX TERMS AND CONDITIONS OF SALE

These TERMS AND CONDITIONS OF SALE (these “**Terms**”) govern the sale of Products by ABIOTENIX, INC, a Delaware corporation (“**ABIOTENIX**”) to the buyer (“**Buyer**”) stated on a mutually-agreed to Sale Confirmation. All capitalized terms not otherwise defined in the body of these Terms are defined in Section 24.

These Terms & Conditions of Sale constitute ABIOTENIX’s offer to sell products to Buyer and, are expressly limited to the terms hereof. These Terms & Conditions will become a binding contract on the terms set forth herein when it is accepted by written acknowledgement by the Buyer or by Buyer’s acceptance of Products. No revisions or modifications hereto will be valid unless in writing and signed by an authorized representative of ABIOTENIX; and no conditions stated by Buyer in accepting or acknowledging these Terms will be binding upon ABIOTENIX if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein, unless expressly accepted in writing by ABIOTENIX. In the event of a conflict in terms of Buyer’s contract proposal and ABIOTENIX’s Terms, the terms of these Terms will govern.

**These Terms contain a mandatory binding arbitration clause in Section 19.**

- 1. SALE OF PRODUCTS.** Buyer may purchase, and ABIOTENIX may sell and deliver to Buyer, Products, subject to these Terms. All purchases and sales of the Products: (a) will begin as quotes proposed by ABIOTENIX to Buyer, valid for five (5) days; and (b) will be finally documented on Sale Confirmations, which will specify, at a minimum, the quantity, price, estimated delivery date, payment terms and desired delivery locations and dates. Sale Confirmations will be considered accepted and “firm” upon written acceptance by Buyer and ABIOTENIX, which may be exchanged by email or other digital communication system or method. Each of the Parties agrees to comply with all mutually accepted Sale Confirmations.
- 2. SHIPPING.**
  - 2.1 Delivery Point.** All orders will be tendered to a carrier for shipment from ABIOTENIX’s fulfillment house or other facility (“**Seller’s Dock**”) for delivery to Buyer to the address for Buyer’s facility prescribed in the applicable Sale Confirmation (“**Delivery Point**”, with the date on which the order is tendered to the carrier at Seller’s Dock for delivery to Buyer, “**Shipment**”).
  - 2.2 Terms of Trade and Risk of Loss.** The terms of trade for all sales of Products under these Terms will be EXW Seller’s Dock (Incoterms 2010), regardless of the freight term specified for transportation purposes. Accordingly, risk of loss or damage to Products passes to, and will be borne by, Buyer upon Shipment.
  - 2.3 Shipping Rights and Responsibilities.** Unless otherwise agreed to by ABIOTENIX in writing, ABIOTENIX may choose the carrier, forwarding company, and means of transport, but Buyer will still be solely responsible for paying all shipping and insurance charges. Shipping and/or delivery dates set forth in any Sale Confirmation are based on estimates at the time issued. ABIOTENIX will use commercially reasonable efforts to ship the Products in accordance within the shipping and/or delivery dates, though such estimates are not a guaranty of compliance with the quoted shipping and/or delivery date estimates, and ABIOTENIX will not be liable for any direct or indirect costs or damages incurred by Buyer or any third party, including, without limitation, incidental or consequential damages, resulting from late deliveries.
  - 2.4 Partial Shipments.** ABIOTENIX may make partial shipments of Buyer’s orders, which shipments will be invoiced separately, without regard to subsequent shipments. Delay in shipment or delivery of any particular installment will not relieve Buyer of Buyer’s obligation to accept the remaining installments. In the event of product shortages, ABIOTENIX may allocate the available supply among its customers at its discretion. ABIOTENIX will endeavor to ship accepted orders within a reasonable time.
  - 2.5 Title.** Title to the Products will pass to Buyer on Shipment or when Buyer has fully paid for the Products, whichever occurs later.

- 2.6 **Acceptance.** Subject to Buyer's right of inspection contained herein, any Products produced hereunder will be deemed accepted by Buyer upon Shipment. If for any reason Buyer fails to take possession of Products on the same date when shipping records indicate those Products have been delivered to Buyer at the Delivery Point, or if shipper is unable to deliver the Products at the Delivery Point because Buyer has not provided appropriate instructions, personnel, documents, licenses or authorizations: (a) the Products will be deemed to have been delivered; and (b) ABIOTENIX may store the Products until Buyer picks them up, and Buyer will reimburse ABIOTENIX for all related costs and expenses, including without limitation, handling, storage, shipping and insurance.
3. **RETURNS.** Buyer acknowledges and agrees that except as provided under Section 4.1 (Nonconforming Products) and Section 7.1 (Limited Warranty), all sales of Products to Buyer are final, and Buyer has no right to return Products purchased under these Terms.
4. **INSPECTION.** Buyer will have ten (10) days after the Products are delivered to the Delivery Point (such 10-day period, the "**Inspection Period**") in which to inspect and test the Products and notify ABIOTENIX of any defect or nonconformance.
- 4.1 **Nonconforming Products.** If Buyer determines in good faith that Products are Nonconforming Products, then Buyer will notify ABIOTENIX during the Inspection Period. If Buyer notifies ABIOTENIX of Nonconforming Products during the Inspection Period, and Buyer then provides ABIOTENIX with evidence satisfactory to ABIOTENIX of Nonconformance, ABIOTENIX will, in its sole discretion, either replace such Nonconforming Products with conforming Products, or credit or refund the purchase price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith in accordance with Section 7.3 (Product Remedy). At ABIOTENIX's request, Buyer will ship, at Sellers expense and risk of loss, the Nonconforming Products to ABIOTENIX at ABIOTENIX's designated address. Buyer acknowledges and agrees that the remedies set forth in Section 7.3 (Product Remedy) are Buyer's exclusive remedies for the delivery of Nonconforming Products.
- 4.2 **5% Allowance.** Subject to Section 2.4 (Partial Shipments), if ABIOTENIX delivers to Buyer Product units up to 5% more or less than the quantity prescribed in the applicable Sale Confirmation, Buyer may not reject or return all or any part of the order, provided that the purchase price is adjusted downward so that Buyer does not pay for more Product units than it received.
- 4.3 **Number of Products.** The number of Products recorded by ABIOTENIX on dispatch from Seller's Dock will constitute prima facie evidence of the quantity received by Buyer on delivery unless Buyer can prove otherwise with reasonable evidence.
5. **PURCHASE PRICE AND PAYMENT TERMS.**
- 5.1 **Prices.** The purchase prices of each shipment of Products will be the price specified therefor in the applicable Sale Confirmation accepted by ABIOTENIX and Buyer.
- 5.2 **Taxes.** All prices specified herein are exclusive of any costs of any sales, use, value added, excise, gross receipts, business and occupation or similar present or future taxes imposed by any governmental body on the sale, delivery, use or other handling of the Products or in connection with any related or contemplated transactions ("**Taxes**"). Buyer will be responsible for reporting and payment of all Taxes as the same may become due.
- 5.3 **Payment.** Buyer will pay the purchase price for each Product order set forth in its Sale Confirmation in two (2) installments as follows: (a) fifty percent (50%) of the order purchase price within three (3) days of the mutual acceptance of the Sale Confirmation; and (b) fifty percent (50%) of the order purchase price within thirty (30) days of Shipment, unless different payment terms are listed on the invoice applicable to the Sale Confirmation. Buyer will make payment for each order of Products by ACH, bank wire transfer, credit card or check. Buyer agrees to make all payments for Products when due hereunder and under each Sale Confirmation. Any defaulted, returned or uncollected amounts due hereunder will bear interest at the greater of (i) ten percent (10%) per annum or (ii) five percent (5%) per annum plus the prime rate

established by the Federal Reserve Bank of New York as of the execution date of the applicable invoice (or the maximum amount permitted by law). In addition to all other remedies available under these Terms or at law (which ABIAGENIX does not waive by the exercise of any rights hereunder), ABIAGENIX will be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder and such failure continues for five (5) days following written notice thereof. Buyer will reimburse ABIAGENIX for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees and costs.

- 5.4 **No Withholding Payment.** Buyer will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with ABIAGENIX, whether relating to ABIAGENIX's breach, bankruptcy or otherwise.
- 5.5 **Costs and Expenses.** Except as expressly provided herein, all expenses incurred in relation to, in performance of or in connection with these Terms will be borne solely by the Party that incurred it.
- 5.6 **Grant of Security Interest.** As security for the payment and performance of Buyer's obligations under these Terms, Buyer hereby grants to ABIAGENIX a security interest in the Products sold to Buyer; such security interest will expire for each Product when title to such Product passes to Buyer in accordance with Section 2.5 (Title). Buyer hereby expressly authorizes ABIAGENIX, its agents or assigns, to prepare, execute and file all necessary financing statements and security instruments.

## 6. CONFIDENTIALITY AND PROPRIETARY INFORMATION.

- 6.1 **Obligations.** The Parties agree that any Confidential Information exchanged between them in connection with or related to the subject matter of these Terms, whether written, documentary, electronically held or oral, will be kept strictly confidential using the highest degree of care, diligence and protection and will not be disclosed or given to any third party by the Party receiving the Confidential Information (the "**Receiving Party**") without the prior written consent of the Party that supplied the information (the "**Disclosing Party**"), except that the Receiving Party is required to disclose or provide the Confidential Information to a third party in the course of exercising its rights or performing its obligations under these Terms and the third party receiving the Confidential Information has agreed to keep the Confidential Information confidential. The Parties further agree that neither will analyze the component parts of or reverse-engineer the other Party's Confidential Information. The term "**Confidential Information**" means all business or technical information, data or know-how, whether oral, written, electronic or physical, considered proprietary or confidential by the Disclosing Party. Confidential Information will include, without limitation, patents, copyrights, trademarks, trade secrets, techniques, sketches, drawings, models, prototypes, inventions, know-how, processes, apparatus, equipment, software programs and software source documents, related to the current, future and proposed products and services of the Disclosing Party. The Parties acknowledge that this Section 6.1 will not limit any prior confidentiality or non-disclosure agreements entered into and currently in effect between the Parties.
- 6.2 **Exclusions.** Confidential Information will not include: (a) information which is already known to or obtained by independent means by the Receiving Party; (b) information within the public domain other than as a result of a breach of these Terms; or (c) information which is required to be disclosed pursuant to law or an order of court or tribunal or the direction of a regulatory authority, provided that the Receiving Party will first wherever possible obtain the Disclosing Party's prior written consent to the content of such disclosure before making such disclosure.

## 7. WARRANTY. THIS SECTION 7 SETS FORTH BUYER'S SOLE REMEDY AND ABIAGENIX'S ENTIRE LIABILITY FOR ANY BREACH OF ANY WARRANTY OR NONCONFORMANCE RELATING TO THE PRODUCTS.

- 7.1 **Limited Warranty.** ABIAGENIX warrants solely to Buyer that, for a period of ten (10) days after their delivery to the Delivery Point (the "**Warranty Period**"): the Products will be free from significant defects in material and workmanship and design.
- 7.2 **Exclusions.** Buyer must notify ABIAGENIX, in good faith, of Defective Products or Nonconforming Products within the Warranty Period, and Buyer's failure to give notice of any claim within the applicable time period

will be deemed an absolute and unconditional waiver of such claim. The liability of ABIOTENIX under the limited product warranty set forth herein will not extend to Buyer's or any user's failure to prepare and use products in accordance with their Instructions for Use or any Products that are abused, altered, improperly stored, or misused by Buyer or any other persons or entities or that become Defective Products or Nonconforming Products through the actions or inaction of Buyer or any other persons or entities, including through the combination with other chemicals or products. Buyer will have the obligation of substantiating the chain of custody of the Products following delivery of the Products to Buyer. Buyer agrees that ABIOTENIX will not accept any returns, warranty claims, Nonconformance claims, changes or cancellations because of market forces or location of similar products or different pricing after acceptance of a Sale Confirmation. All formulae, drawings, illustrations, descriptive matter, and particulars contained in ABIOTENIX's catalogs, website, and marketing materials, and any technical advice or other statements given by ABIOTENIX or its representatives with respect to the use of the Products or any results that may be obtained therefrom, are indicative only and do not form a part of these Terms and are not representations and warranties of any kind.

- 7.3 **Product Remedy.** At ABIOTENIX's request, Buyer will promptly forward to ABIOTENIX any allegedly Defective Product or Nonconforming Product or a representative sample thereof, as specified by ABIOTENIX. If any Product warranted hereunder proves to be a Defective Product or Nonconforming Product, as determined by ABIOTENIX in its sole reasonable discretion, ABIOTENIX's sole and exclusive obligation and Buyer's sole and exclusive remedy hereunder will be for ABIOTENIX, at ABIOTENIX's option, to: (i) replace at no cost to Buyer, any such Defective Product or Nonconforming Product with a non-defective or conforming Product; or (ii) in the event a return is authorized, credit Buyer's account for all amounts paid with respect to the Defective Product or Nonconforming Product upon ABIOTENIX's receipt of, and opportunity to evaluate, the Defective Product or Nonconforming Product; or (iii) repair or have repaired (including, through re-working or re-processing, as applicable) a Defective Product or Nonconforming Product. In the event of replacement, the replacement Product will be warranted for a new Warranty Period beginning with their delivery to the Delivery Point. For purposes of these Terms, a **"Defective Product"** means a Product that does not meet the limited product warranties set forth in Section 7.1, and excludes Products that fail to meet any fitness of use by Buyer or any unique Buyer operating conditions or applications.
- 7.4 **Intellectual Property Warranty.** ABIOTENIX represents and warrants to Buyer that, to its knowledge, any Products delivered and provided to Buyer will not infringe any patent, copyrights, trademarks or trade secret of any third party. If Buyer's use of the Products is enjoined due to a breach of this intellectual property warranty, ABIOTENIX will, at its own expense, (i) procure for Buyer the right to continue using the Products; (ii) modify the Products so that they are no longer infringing, provided that such modification does not degrade the performance or quality of the Products; or (iii) replace the infringing Products with non-infringing substantially similar Products reasonably acceptable to Buyer. If none of the foregoing is possible, then ABIOTENIX shall refund to Buyer the full purchase price for such Products.
- 7.5 **Disclaimer.** OTHER THAN THE WARRANTY SET FORTH IN SECTION 7.1 (LIMITED WARRANTY) OR SECTION 7.4 (INTELLECTUAL PROPERTY WARRANTY) OR NONCONFORMANCE (SECTION 4.1), ABIOTENIX HEREBY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, OR GUARANTEES WITH RESPECT TO THE SUBJECT MATTER OF THESE TERMS, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY (i) WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, SUITABILITY, SUSTAINABILITY, OR FITNESS FOR A PARTICULAR PURPOSE; (ii) WARRANTY ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (iii) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS.

## 8. BUYER'S OBLIGATIONS, PRODUCTS.

- 8.1 **Expertise.** Buyer represents and warrants that it has evaluated the Products and that they are acceptable and clinically suitable for its intended purposes; and it is familiar with the characteristics, qualities and uses of the Products that it is purchasing from ABIOTENIX and acknowledges that there may be hazards

associated with the use of the Products. Buyer is responsible for instructing and warning its employees and all other persons who may come into contact with the Products regarding such hazards. Buyer is solely responsible for conducting all necessary testing and verification, including for fitness for the intended purpose, prior to the use of Product(s) purchased from ABIOTENIX.

- 8.2 **Prohibition of Resale.** Buyer will purchase the Products for its own use only, and will not resell the Products to any other party.
- 8.3 **Use.** Notwithstanding the foregoing, Buyer agrees that it is be responsible to ensure that its employees and other personnel prepare and use Products in accordance with the Instructions for Use and prevailing medical practices.
- 8.4 **Withdrawal of Products.** If ABIOTENIX determines that any Products sold to Buyer may be Defective Product or Nonconforming Product, at ABIOTENIX's request, Buyer will withdraw all similar Products from sale and, at ABIOTENIX's option, either return such Products to ABIOTENIX's place of business at ABIOTENIX's cost or destroy the Products and provide ABIOTENIX with written certification of such destruction. If Buyer returns all withdrawn Products or destroys all withdrawn Products and provides ABIOTENIX with written certification of such destruction within ten (10) days following ABIOTENIX's withdrawal request, in either case consistent with ABIOTENIX's instructions, ABIOTENIX will (a) repair or replace all such returned Products or (b) replace such destroyed Products. Buyer's remedy hereunder is not available if (i) the defect arises because Buyer failed to follow ABIOTENIX's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (ii) Buyer alters or repairs such Products without the prior written consent of ABIOTENIX. THIS SECTION SETS FORTH BUYER'S SOLE REMEDY AND ABIOTENIX'S ENTIRE LIABILITY FOR ANY PRODUCTS THAT ARE WITHDRAWN PURSUANT TO THIS SECTION.

## 9. INDEMNIFICATION.

- 9.1 **Indemnity.** Except as otherwise set forth in these Terms, each Party will indemnify and hold the other Party and its successors, assigns, affiliates, employees, officers, directors, agents and representatives harmless from and against any and all claims, demands, lawsuits, liabilities, losses, damages, judgments, fines, settlements and expenses (collectively, "**Claims**") (including, without limitation, reasonable attorney's fees) to the extent directly arising out of or relating to (i) the breach by the indemnifying party of any of its representations, warranties, covenants or obligations under these Terms or (ii) the indemnifying party's gross negligence or willful misconduct in connection with its activities pursuant to these Terms. The foregoing indemnification obligations will apply whether the claim, suit or action is founded, stated or asserted in negligence, strict liability in tort, breach of contract or warranty or any other legal theory. The foregoing indemnification obligations will not be interpreted as waiving or negating any limitation of liability for work-related injuries to the indemnifying party's own employees. The provisions of this Section will survive any termination or expiration of these Terms.
- 9.2 **Procedure.** The indemnified party will provide prompt written notice to the indemnifying party upon becoming aware of a claim, and information and reasonable assistance, at the indemnifying party's expense, for the defense or settlement thereof. The indemnifying party will have sole control of the defense and settlement of any claim giving rise to an indemnification obligation hereunder, provided that the indemnifying party will not settle such claim or related action in a manner that imposes any obligation on or admits liability by the indemnified party without the prior written consent of the indemnified party (which consent will not be unreasonably withheld or delayed). The indemnified party will be entitled to engage counsel at its sole expense to consult with the indemnifying party with respect to the defense of the claim and related action; provided, however, that the failure by the indemnified party to provide such notice will reduce the indemnifying party's indemnification obligations hereunder only to the extent that the indemnifying party is materially prejudiced thereby.
- 9.3 **Limitation of Liability.** IRRESPECTIVE OF ANY FAULT OR NEGLIGENCE, NO PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT

LIMITATION DAMAGES FROM HARM TO BUSINESS, LOST REVENUES, LOST SALES, LOST SAVINGS, LOST PROFITS (ANTICIPATED OR ACTUAL), LOSS OF USE, DOWNTIME AND CLAIMS OF THIRD PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND, WHETHER ACTIVE OR PASSIVE), OR ANY OTHER LEGAL OR EQUITABLE THEORY, ALL WHETHER OR NOT A PARTY HAS BEEN APPRISED OR NOTIFIED THAT SUCH DAMAGES OR LOSSES ARE POSSIBLE OR LIKELY, AND WHETHER OR NOT ANY PERMITTED REMEDY HAS FAILED ITS ESSENTIAL PURPOSE. Furthermore, notwithstanding any other provision of these Terms, except in respect of claims for indemnification under Section 9.1, the liability of any party to the other parties arising out of these Terms, whether under warranty, contract, tort (including negligent or willful acts), strict liability or otherwise will not in any case exceed the original invoiced cost of the Products with respect to that portion of the Products giving rise to the claim.

- 10. MUTUAL REPRESENTATIONS.** Each party represents and warrants that it: (i) is authorized to enter into these Terms and that in so doing it is not in violation of the terms or conditions of any contract or other agreement to which it may be a party; and (ii) has or will obtain all appropriate consents or permissions to perform its obligations under these Terms and to disclose any information to the other Party. Buyer further represents and warrants that it: (i) will comply with all applicable laws, rules, and regulations (including, without limitation, permitting and licensing requirements) related to its performance hereunder and in the receipt, handling, storage, possession, transport, disposal, purchase or use of any Product. The Products provided by ABIOTENIX are intended for purchase and use by persons or entities acting in a professional, business, or trade capacity (each, a “**Commercial Buyer**”), and are not intended for purchase or use by consumers for personal, family, or household purposes. By ordering Products, Buyer represents and warrants that it is a Commercial Buyer engaging in a commercial transaction.

**11. INTELLECTUAL PROPERTY.**

**11.1 Restrictions.** Buyer will not, and will not authorize or permit any of its personnel to: (a) use or deploy any of the Products (i) in violation of applicable laws, rules or regulations; (ii) for commercial exploitation; or (iii) for any reason other than for the Products’ intended end use; or (b) copy all or any portion of the Products; (c) modify or create any derivative works based upon any of the Products; (d) reverse engineer, reverse assemble, decompile or otherwise attempt to recreate any of the Products or any part thereof; (e) distribute, disclose, market, rent lease, assign, sublicense, pledge or otherwise transfer any of the Products; or (f) use any of the Products other than in accordance with these Terms. Buyer acknowledges and agrees that it will be responsible for violations of this Section 11.1 (Restrictions) committed by its personnel.

**11.2 Ownership Rights.** Without limiting the foregoing, ABIOTENIX is and will remain the sole and exclusive owner of all right, title and interest in and to its intellectual property rights in Products. Buyer agrees to respect all such rights, and to take or permit to be taken no actions which would infringe upon such rights, including removing any branding, labels or other indicia that ABIOTENIX is the source and manufacturer of a Product.

**11.3 Limited Use of Buyer Marks.** Buyer grants ABIOTENIX the limited, non-exclusive, worldwide right to use Buyer’s trade name and registered or common law trademarks for the limited purposes of stating, announcing or otherwise disclosing, in connection with ABIOTENIX’s marketing practices, that ABIOTENIX has supplied Buyer with Products, including without limitation the right to make such statements or announcements on ABIOTENIX’s website.

**11.4 No Other Intellectual Property Rights.** With the exception of those licenses expressly granted herein or otherwise agreed by the Parties in writing, no Party obtains any right or license under any copyrights, inventions, trade secrets, patents or other intellectual property rights now or hereafter owned or controlled by the other Party.

- 12. ANTI-CORRUPTION.** Each of the Parties represents and warrants that: (i) it is familiar with and understands the terms of the U.S. Foreign Corrupt Practices Act of 1977 (“**U.S. FCPA**”), and that it will comply with the U.S. FCPA and all other applicable anti-bribery or anti-corruption laws or regulations of any other country or jurisdiction

that are applicable to the parties' business activities hereunder; and (ii) it has not and will not offer, pay, give, or promise to pay or give, directly or indirectly (including through a third party or intermediary) any payment or gift of any money or thing of value 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 or political office (each, a **"Government Official"**) to influence any acts or decisions of such Government Official or to induce such official to use his or her influence with the local government to effect or influence the decision of such government in order to assist either ABIOTENIX or Buyer in its performance of their obligations under these Terms or to benefit ABIOTENIX. Failure by a Party to comply with this section will be deemed a material breach of a material provision of these Terms.

### 13. REGULATORY MATTERS.

**13.1 Approvals.** Each Party will, at its own expense, obtain any and all approvals, fulfill all of the requirements and carry out all procedures related to these Terms which are or may be provided for under any law or regulation now or hereafter existing to enable such Party to exercise, enforce and enjoy all the rights and obligations contained in these Terms.

**13.2 Anti-kickback Compliance.** To the extent that ABIOTENIX provides a price reduction to Buyer pursuant to these Terms, ABIOTENIX shall comply with the safe harbor for discounts set forth in 42 C.F.R. § 1001.952(h)(2) promulgated under the federal health care anti-kickback statute 42 U.S.C. § 1320a-7b(b).

**13.3 Protection of Health and Personal Information.** The parties do not anticipate that ABIOTENIX will receive any 'protected health information' ('PHI', as defined in 45 C.F.R. 160.103), 'individually identifiable health information' (as defined in 42 U.S.C. 1320d), or 'personal information' from or on behalf of Buyer in connection with these Terms.

**14. RELATIONSHIP BETWEEN THE PARTIES.** Each Party is and will remain at all times an independent party. No Party is authorized to or will, whether through its employees, agents or representatives, at any time act or attempt to act on behalf of the other Party to bind the other Party to any obligations. No Party or its employees, agents or representatives may engage in any act which may lead any representative of the other Party to believe that such Party is an employee, agent or representative of the other Party. Each Party will be fully responsible for its personnel, agents, and actions.

**15. AMENDMENTS.** No change, modification, alteration or addition to any provision, or waiver of any provision of these Terms will be valid unless set forth in writing and signed by each Party.

**16. ASSIGNMENTS; TRANSFERS.** These Terms and all the provisions hereof will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, provided that neither these Terms nor any of the rights, interests or obligations hereunder will be assigned or transferred by any Party without the prior written consent of the other Party, which consent will not be unreasonably withheld and any attempted assignment or transfer in violation of this Section will be void.

**17. FORCE MAJEURE.** Notwithstanding any provisions in these Terms, no Party will be liable for any failure to fulfill an obligation under these Terms if such fulfillment is delayed, prevented, restricted or interfered with for any reason as a result of a Force Majeure event. As used herein, **"Force Majeure"** means the occurrence of an event that is beyond the reasonable control of the Parties, including without limitation acts of God, fire, flood, storms, earthquake, typhoon, tidal wave, plague or other epidemics, governmental laws, orders, regulations, sanctions or restrictions, war (whether declared or not).

**18. GOVERNING LAW.** Any actions arising out of, or in any manner affecting the interpretation of, these Terms or any other service or product related to us whether under these Terms or otherwise will be governed solely by, and construed solely in accordance with, the laws of the United States and State of Delaware, excluding (a) conflict of laws principles; (b) the United Nations Convention on Contracts for the International Sale of Goods; (c) the 1974 Convention on the Limitation Period in the International Sale of Goods; and (iv) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980.

- 19. DISPUTE RESOLUTION.** Any dispute, controversy or claim arising out of, relating to, or in connection with these Terms, or the breach, termination, or validity thereof ("**Dispute**"), will be resolved, to the extent possible, within forty-five (45) days through discussions held in good faith between appropriate representatives of the Parties. If the Dispute has not been resolved after the 45-day discussion period, the Dispute will only be further adjudicated by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The Parties agree to refer any such Dispute to arbitration and not to any court or other tribunal. ANY SUCH DISPUTE WILL BE ARBITRATED ON AN INDIVIDUAL BASIS. THE PARTIES AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. AN ARBITRATOR CAN AWARD ON AN INDIVIDUAL BASIS THE SAME DAMAGES AND RELIEF AS A COURT (INCLUDING INJUNCTIVE AND DECLARATORY RELIEF OR STATUTORY DAMAGES). Claims will be heard by a single arbitrator, unless the claim amount exceeds \$250,000, in which case the dispute will be heard by a panel of three arbitrators. The place of arbitration will be SAN FRANCISCO, CALIFORNIA. The arbitration and any proceedings conducted hereunder will be governed by the laws of the State of DELAWARE, Title 9 (Arbitration) of the United States Code and by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958. Hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in person hearings, though hearings may be conducted virtually with the prior written consent of both parties. Time is of the essence for any arbitration under these Terms and arbitration hearings will take place within 90 days of filing and awards rendered within 120 days. Arbitrator(s) will agree to these limits prior to accepting appointment. Each party will bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. Except as may be required by law, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties. The Parties agree that failure or refusal of a Party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that Party to present evidence or cross-examine witness. In such event, the other Party will be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Notwithstanding any language to the contrary in the contract documents, the Parties hereby agree that the arbitrator's decision will be final and nonappealable. The arbitrator's decision may be entered in any court having jurisdiction thereof.
- 20. NOTICES.** All notices, requests, consents and communications under these Terms will be in writing, addressed to the receiving Party's address in the most recent Sale Confirmation or, if no Sale Confirmation during the prior year, to its principal place of business, and deemed given (a) if by email, either when the recipient thereof personally acknowledges receipt in writing or by emailed reply or when the recipient opens the email, as evidenced by an accurate electronic tracking program or the recipient's express or tacit admission; (b) if by other electronic messaging system or platform (such as Slack or DocuSign) as evidenced by the automatically generated read or reply records of such system or platform; (c) if by overnight courier, on the Business Day after the day such notice is delivered to the courier service; or (d) if by registered mail, on the fifth Business Day following the day such mailing is made.
- 21. EXPORT LAWS.** The laws and regulations of the United States government regulate the export of products, services and technical data. Buyer agrees that ABIAGENIX's obligation to grant rights and to disclose information to Buyer is subject to the applicable laws and regulations of the United States; and Buyer will comply with such laws insofar as they affect its right to manufacture, use and sell the Products. Buyer also agrees that it will neither disclose any information received from ABIAGENIX, nor transfer possession of any product incorporating any of ABIAGENIX's information, to a third party in violation of such laws and regulations.
- 22. REASONABLENESS OF RESTRICTIONS.** Each of the Parties agrees that all restrictions in these Terms are reasonable and valid, and all defenses to the strict enforcement thereof are hereby waived by both parties, including without limitation to the reasonableness of the time, activity and geographical restrictions contained herein.
- 23. GENERAL.**



- 23.1 No Third-Party Beneficiary Rights.** These Terms are not intended to and will not be construed to give any third party any interest or rights (including, without limitation, any third-party beneficiary rights) with respect to or in connection with the subject matter of these Terms, except as otherwise expressly provided for in these Terms.
- 23.2 No Waiver.** Any failure, delay, relaxation or indulgence by a Party in exercising any power or right conferred on that Party by these Terms does not operate as a waiver of that power or right unless expressed in writing to be a waiver.
- 23.3 No Reliance.** In entering into these Terms, the Parties have not relied on any representations or warranties about its subject matter except as provided in these Terms.
- 23.4 Counterparts.** These Terms may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument.
- 23.5 Survival.** In addition to the provisions that will survive the termination or expiration of these Terms as provided herein, any provisions of these Terms which by their nature may survive the termination or expiration of these Terms, and any obligations in relation to any antecedent breach of these Terms, will survive the termination or expiration of these Terms.
- 23.6 Entire Agreement.** These Terms, together with all Sale Confirmations and all other schedules and exhibits hereto and thereto, which are hereby incorporated herein and made a part hereof, comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevails over any of Buyer's purchase order terms and/or conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms or conditions. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. These Terms are the only agreement which governs the sale of Products by ABIAGENIX to Buyer.
- 23.7 Headings.** The headings to the Sections and Schedules are inserted for convenience of reference only and will be ignored in the interpretation of these Terms.
- 23.8 Construction.** In these Terms, unless the context otherwise requires: (a) references to Sections, exhibits, attachments and schedules are to those in, of and to these Terms; (b) words importing the plural will include the singular, and vice versa; (c) references to a "person" will be construed as including references to an individual, company, enterprise, firm, partnership, joint venture, association or organization, whether or not having separate legal personality; (d) use of the word 'will' as an action attributable to a Party means the Party agrees to, will, promises to and covenants to take the actions following or connected to the use of the word 'will;' (e) use of the word 'may' as an action attributable to a Party means that Party has the right, but not the obligation, to take the action following or connected to use of the word 'may;' and (f) references to "it," "its," "they," "their," and "them," will be construed as including any generic, omni-gender pronoun such as she, hers, her, he, his, him, it, its, they, their and them.

## 24. DEFINITIONS.

The following words and expressions will have the meanings given them below when used in these Terms:

**"ABIAGENIX"** means ABIAGENIX, INC., a Delaware corporation.

**"Business Day"** means any day in which the United States banks are open for business.

**"Buyer"** has the meaning ascribed to it in the banner of these Terms.

**"Claims"** has the meaning given in Section 9.1.

**"Commercial Buyer"** has the meaning given in Section 10.

**"Confidential Information"** has the meaning given in Section 6.1.

**“Defective Product”** has the meaning given in Section 7.3.

**“Delivery Point”** has the meaning given in Section 2.1.

**“Disclosing Party”** has the meaning given in Section 6.1.

**“Dispute”** has the meaning given in Section 19.

**“Force Majeure”** has the meaning given in Section 17.

**“Government Official”** has the meaning given in Section 12.

**“Inspection Period”** has the meaning given in Section 4.

**“Nonconforming Products”** or **“Nonconformance”** means only the following: (i) a Product shipped is different than identified in its Sale Confirmation; or (ii) a Product’s label or packaging incorrectly identifies its contents.

**“Party”** or **“Parties”** means the Buyer and/or ABIOTENIX.

**“person”** has the meaning given in Section **Error! Reference source not found..**

**“Products”** means Abiotenix’s proprietary FAST Spiral Nasopharyngeal Swab, a Class I, 510(k) Exempt medical device, registered with the U.S. FDA, to be supplied by ABIOTENIX to Buyer pursuant to these Terms, as listed in a Sale Confirmation which is mutually agreed to by both Parties.

**“Receiving Party”** has the meaning given in Section 6.1.

**“Sale Confirmation”** means the terms of a particular sales order of Product, including at a minimum, quantity, price, delivery destination, payment terms and estimated delivery date, memorialized and presented or agreed to by ABIOTENIX. Such terms may be presented as a ‘quote’ or other sale confirmation.

**“Seller’s Dock”** has the meaning given in Section 2.1.

**“Shipment”** has the meaning given in Section 2.1.

**“Taxes”** has the meaning given in Section 5.2.

**“Terms”** has the meaning given in the Preamble.

**“U.S. FCPA”** has the meaning given in Section 12.

**“UCC”** means the Uniform Commercial Code as in effect in the state of California.

**“US”** or **“United States”** means the United States of America; and **“US \$”** or **“US Dollar”** means United States dollars, the lawful currency of the United States of America.

**“Warranty Period”** has the meaning given in Section 7.1.