

## **End-User License Agreement: Terms and Conditions**

### **General**

Interpretation and Completeness This document represents a final, entire agreement (the "Agreement") pertaining to the sale to the purchaser (the "Buyer") of the goods and/or services identified in this Agreement and in the accompanying product Order Confirmation (the "Products") by GeneCopoeia, Inc. (the "Seller"); any prior understandings, agreements and representations, oral or written, are superseded by this document. Agents and sales representatives of the Seller have no authority to make any representations not included in the quotation, product descriptions, or delivery schedule, and the Buyer is not entitled to rely on any other representations not contained in this Agreement. The Seller hereby rejects any different or additional terms previously or hereafter proposed by the Buyer, none of which shall be effective unless embodied in a written document signed by an authorized representative of the Seller. The prevailing party in any legal action brought by one party against the other arising out of or in connection with this Agreement shall be entitled, in addition to any rights and remedies it may have, to reimbursement for its expenses incurred thereby, including court costs and reasonable attorney's fees. This Agreement shall be interpreted under the Uniform Commercial Code and other laws of Maryland in force at the date of this Agreement.

### **Price**

The Products shall be sold and invoiced at the Seller's prices and charges in effect at the time of each shipment of Products. The Seller reserves the right to change, without notice, the published list prices. Prices are valid for the time period specified in quotations provided. Prices do not include sales, excise, use or other taxes (other than taxes based on the Seller's net income) now in effect or hereafter levied by reason of the Seller's sale of Products to the Buyer. The Buyer will pay all such taxes.

### **Payment Terms**

Payment is due in full 30 days from the date of the Seller's invoice. The Seller reserves the right to require alternative payment terms, including, without limitation, letter of credit or payment in advance.

### **Shipment**

In the absence of specific shipping instructions, the Seller will ship

by the most advantageous method. Shipments will be made FOB the Seller's facility in Fredrick, Maryland, U.S.A. Transportation charges and insurance will be included in the invoice. When special or export packaging is required, the cost of the same, if not set forth on the invoice, will be separately invoiced.

#### **Separate Agreements**

The Seller may make the delivery in installments and may render a separate invoice for each installment. Each invoice shall be paid when due, without regard to subsequent deliveries. Each installment shall be deemed a separate sale. Delay in delivery of any installment shall not relieve the Buyer of its obligation to accept delivery of remaining installments. Any delivery not in dispute shall be paid for on the due date, as provided in this Agreement, without offset defense or counterclaim, and regardless of controversies relating to other delivered or undelivered Products.

#### **Packing**

All Products shall be suitably packed for air shipment, unless otherwise requested by the Buyer and agreed to in writing by the Seller.

#### **Title, Risk of Loss, Insurance**

Title to and risk of loss of Products will pass from the Seller to the Buyer at the FOB point. Shipments shall remain subject to the Seller's rights of stoppage in transit and of reclamation.

#### **Delivery**

The Seller will use reasonable efforts to ship Products on or before the date indicated in the Seller's confirmation form. The Seller shall not be liable for any delay or failure in performance or delivery or inability to perform or deliver where such delay occurs. Failure or inability may arise from any cause beyond the Seller's control, including, but not limited to, strike, boycott or other labor disputes, embargo, governmental regulation, or delay in obtaining materials. In the event of any such delay or failure of performance, the Seller shall have additional time within which to perform its necessary obligations under those circumstances. The Seller shall also have the right, to the extent necessary in the Seller's reasonable judgment, to fairly allocate the Products then available for delivery, among its various customers in a manner

the Seller may consider equitable. If, as a result of any such contingency, the Seller is unable to deliver Products within a reasonable time, in whole or in part, then to the extent that it is unable to perform, this Agreement shall be deemed terminated without liability to either party, but shall remain in effect as to the unaffected portion of this Agreement, if any.

#### **Limited Warranty**

The Seller warrants to the Buyer that the Products will conform substantially to the Seller's published specifications for the Products for a period of 30 days from delivery by the Seller to the Buyer. The DNA sequence presented in Seller's website for each gene is only used as reference data for Buyer. The sequence of the Product may differ from that on the website due to the genetic variation and alternative splicing. The Seller shall only refund the buyer for the product contains mutation(S) that may result in Frame Shift or Stop codon within the ORF and that may be introduced in the process of ORF production.

THE SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, APPLICABLE TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

The Seller and Buyer represent that this Agreement does not, and will not, conflict with any other right or obligation provided under any other agreement or obligation that the Seller or the Buyer has with any third party.

#### **Seller's Liability**

If the Buyer notifies the Seller in writing prior to expiration of the warranty period (in which case notice shall be in writing confirmed by registered mail) of a claimed breach of warranty, the Buyer shall concurrently, in writing, offer the Seller the opportunity to investigate the claim and to inspect allegedly defective Products. If the Seller determines that the Buyer's claims are valid, the Seller may repair the nonconforming Product(s), replace the defective Product(s) with conforming Product(s) at the F.O.B. point specified in this Agreement, or refund to the Buyer the purchase price for the nonconforming Product(s). Failure to offer the Seller such opportunity shall constitute acceptance by the Buyer and waiver of all claims of defects. The Seller's total aggregate liability for damages arising out of or in connection with its sale of any Product shall in no event exceed the purchase price of the Product on which the claim is based. Specifically, and without limiting the generality of the foregoing, the Seller shall not be responsible or

liable to the Buyer or any third party for any lost profits, or incidental, consequential, indirect, special or contingent damages for any breach of warranty or other breach of the Seller's obligations under this contract. The Seller shall not be liable for damages relating to any instrument, equipment, or apparatus with which the product sold under this Agreement is used.

#### **Seller's Remedies**

If the Buyer refuses to accept the deliveries of any of the Products, or is otherwise in default under or repudiates this Agreement or any other agreement with the Seller or fails to pay when due any invoice under this Agreement, then in addition to any and all remedies allowed by law, the Seller, without notice, may: 1. Bill and declare due and payable all undelivered Products 2. Defer shipment under this or any other agreement between the Buyer and the Seller until such default, breach or repudiation is removed 3. Cancel any undelivered portion of this and/or any other agreement in whole or in part (the Buyer remaining liable for damages).

#### **Buyer's**

Use of the Products Buyer shall not sell, or otherwise provide in exchange for value, Products to any third party. Buyer will not use Products as a clinical diagnostic for human subjects and will not use the Products to provide products or services, specifically including gene expression databases or services, to third parties.

#### **Intellectual Property**

Rights Nothing in this Agreement shall be construed as conferring on the Buyer any rights to any intellectual property of the Seller or any third party or conferring on either party an express or implied license or option to license any information, discoveries, inventions, or intellectual property rights relating thereto owned or controlled by the other party. The Seller hereby disclaims any warranty that the Buyer's use of Products will be free from any claims of infringement or misappropriation of intellectual property rights.

#### **Confidentiality**

The Seller will keep confidential and not disclose or otherwise use (except by written agreement by and between the Seller and Buyer) any

confidential or proprietary information or material received from the Buyer in connection with the performance of Services covered in this contract. Any unused portion of the Buyer's material provided to the Seller will, at the Seller's option, be returned to the Buyer, or destroyed.

**Notwithstanding**

the foregoing, the Seller retains the right to undertake research and development programs or establish collaborations with third parties in any research area, including, but not limited to services, which may utilize similar material as provided by the Buyer, and the Seller retains all its rights to any intellectual property resulting there from.

**U.S. Government Contracts**

If the products to be furnished under this contract are to be used in the performance of a U.S. Government contract or subcontract and a U.S. Government contract number shall appear on the Buyer's order, those clauses of the applicable U.S. Government procurement regulation which are mandatory required by Federal Statute to be included in U.S. Government subcontracts shall be incorporated herein by reference.