

TERMS AND CONDITIONS

Last updated:

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1) CONTRACT: These TERMS AND CONDITIONS (“T&Cs”) are between Purigen Biosystems Inc. (“Purigen”) and the customer (“Customer”) and apply to all sales of Products (defined below) or Work (defined below) by Purigen to/for Customer, unless agreed to by both Purigen and Customer. These T&C’s are considered part of any quote, proposal, statement of work or the like (“Quote”) provided by Purigen to Customer, as well as any subsequent purchase order from Customer to Purigen for the Quote. Purigen will provide its instruments and related equipment, software upgrades, supplies and consumables (“Products”) and/or specifically defined services (“Work”) specified in the Quote to Customer, subject to the following T&C’s.

2) ORDERS AND SUPPLY OF PRODUCTS: Customer shall place orders for Products or Work using purchase orders or service agreements with approved Statements of Work (“Customer Order”). Unless specifically approved by Purigen, these T&C’s shall take precedence over conflicting terms in a Customer Order.

Products: Purigen supplied Products that are instruments must only be used with Purigen’s cartridges and supplied reagents. Purigen’s Products that are cartridges and supplied reagents must only be used in Purigen supplied instruments. Using non-Purigen cartridges or non-Purigen supplied reagents in a Purigen instrument voids the warranty. Purigen will deliver Products to Customer in accordance with the delivery terms set out in Attachment 1 to these T&Cs. Purigen will manufacture Products and/or have Products manufactured in accordance with all applicable laws, rules and regulations, and with the terms and requirements set forth in these T&C’s. Purigen will pack Products in a manner consistent with normal industry practice that allows for the shipment of Products to Customer’s designated location without damage to Products, acting reasonably

Work: Purigen will perform the Work as an independent contractor, using methods, materials, equipment, and/or related intellectual property owned or controlled by it or its affiliates (“Purigen Technology”) to provide Customer with data and/or materials produced by Purigen as a direct result of the Work, as specified in the proposal or statement of work (“Deliverables”). Deliverables may include data or materials that result from the use of materials supplied by Customer (“Customer Materials”). Purigen will make a good faith effort to start and complete all Work on time, and will notify Customer if substantial delays are likely. Purigen will comply with all applicable laws and regulations to Work, and with any specific regulatory framework agreed in the proposal or statement of work. Purigen’s Work will be on a best efforts basis. Unless otherwise expressly agreed in the proposal or statement of work, the Deliverables are not produced in accordance with United States Food and Drug Administration (FDA) good manufacturing practices or good laboratory practices or in accordance with any other similar laws or regulations in other jurisdictions. Purigen may delegate performance of the Work, or portion thereof, to an affiliate or authorized subcontractor, provided that all Work will be performed in accordance with the proposal or statement of work. Unless expressly agreed in writing, all Work is provided on a non-exclusive basis, and Purigen reserves all rights for Purigen and its affiliates to provide third parties with deliverables that are identical or similar to Deliverables.

3) CUSTOMER MATERIALS: Customer will provide Purigen with Customer Materials as specified in the proposal or statement of work, in compliance with applicable laws and regulations and in sufficient amounts, as well as relevant safety information and other characteristics of Customer Materials that Purigen needs to perform the Work, including without limitation any certification or documentation of Customer Materials Purigen reasonably requests. The Customer Materials, and all information about Customer Materials, whether provided by Customer or generated by Purigen in the performance of Work (“Data”), shall be subject to the confidentiality and non-use requirements as stated below. Purigen will use Customer Materials and Data only in accordance with the proposal or statement of work, and will not modify nor reverse engineer Customer Materials except as agreed therein. Unless otherwise specified in the proposal or statement of work or agreed in writing, any Customer Materials not consumed in the Work or required for additional Work will be destroyed after completion of Work. Purigen will not transfer Customer Materials, in whole or in part, to any third party, other than a subcontractor, without prior written approval.

- 4) ORDER OF PRECEDENCE:** In the event of a conflict in terms, the order of precedence will be as follows: (i) first, these T&Cs, (ii) second, the Quote, unless explicitly stated otherwise in any such document and (iii) the Customer PO, unless explicitly stated otherwise in any such document and agreed to by Purigen.
- 5) PROPRIETARY RIGHTS AND PRODUCT RESTRICTIONS:** Nothing contained in these T&Cs will be construed as an assignment to Customer of any of Purigen's patent, copyright, trade secret, trademark or any other intellectual property rights ("Intellectual Property Rights") in or to the Products, Purigen Technology, Deliverables and Data. All Intellectual Property Rights in or to the Products, Purigen Technology, Deliverables and Data are and will remain the sole and exclusive property of Purigen and are reserved by Purigen. Purigen hereby grants to Customer a non-exclusive, nontransferable, and non-assignable license to use the Products, Deliverables and Data solely for the purposes of DNA or RNA extraction or use of Deliverable and Data for conducting Customer's internal activities and Customer may share Deliverables and Data with its Affiliates (the "Permitted Purpose"). For purposes hereof, "Affiliate" means any corporation or other entity that, as of the relevant time, controls, is controlled by, or is under common control with, Customer, and for purposes of this definition, "control" means ownership of: (i) at least fifty percent (50%) of the outstanding voting securities of such entity; or (ii) at least fifty percent (50%) of the decision-making authority of such entity. Customer guarantees the compliance by each of its Affiliates and collaborators with all of the terms and conditions of these T&Cs, and Customer will be liable for failure by its Affiliates or collaborators to comply with all of the terms and conditions of these T&C's. Customer will not, without Purigen's prior written consent, (i) use the Products or Deliverables for any purpose other than the Permitted Purpose; (ii) provide or make available the Products themselves to any third party person, firm, corporation, or other entity regardless of any affiliation or relationship with Customer (including any Affiliates); (iii) reverse engineer, manufacture, or sell such Products; (iv) reverse engineer, manufacture, or sell any device incorporating such Products, or any process that accompanies Purigen's Isotachopheresis technology ("ITP"); or (v) modify such Products or use such Products or Purigen's proprietary or confidential information as the basis for design or creation of any new device, or any process that accompanies Purigen's ITP technology.
- 6) PRICE:** Customer will purchase Products and Work at the prices and on the payment terms set out in the Quote, or if not so set out, within thirty (30) days from Purigen's invoice date and any overdue amounts will be charged interest at 2% per month (equivalent to 24% per annum). Prices exclude applicable sales and value added taxes. To the extent any such taxes are applicable and Purigen has the legal obligation to collect such taxes, Purigen will be entitled to add to the relevant invoice the amount of such taxes, and Customer will pay such amount unless Customer provides Purigen with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold taxes on amounts payable to Purigen under these T&Cs, it will pay to Purigen such additional amount as may be necessary in order that the net amount received by Purigen after such withholdings will not be less than the amount Purigen would have been entitled to receive in the absence of any such withholdings.
- 7) INITIAL PRODUCT WARRANTY AND EXTENDED WARRANTY AND SERVICE PLANS:** Included in the purchase price of Products, Purigen warrants that systems will meet the relevant specifications and be free of defects in workmanship and materials under normal application, installation, operation, use and service conditions ("Warranty"). Systems are warranted for a period of twelve (12) months unless specifically agreed to by Purigen on the Quote. Consumables are warranted for three (3) months. The Warranty commences at the date of invoicing. At the time of initial system purchase the Customer may purchase an extended warranty ("Extended Warranty") for coverage after expiration of the Warranty. A Customer may only purchase an Extended Warranty at the time of initial purchase. Post system purchase, if offered by Purigen, a Customer may purchase a service plan for coverage after the Warranty ("Service Plan"). Coverage for the Service Plan is defined in the Quote. Use of non-Purigen cartridges or non-Purigen supplied reagents in a Purigen instrument voids the Warranty, Extended Warranty and Service Plan. The Warranty, Extended Warranty and Service Plan are non-transferable and apply only to systems installed by an authorized Purigen representative. Usage of the system under Warranty, Extended Warranty and Service Plan in biological safety level containment facilities greater than BSL-2 may, at Purigen's discretion, void the stated Warranty, Extended Warranty and Service Plan. Customer shall not assign Purigen personnel to work in bio-safety level 3 or level 4 laboratories without prior written notice to Purigen and Purigen's written consent for any service. Purigen may require a completed Hazardous Material Declaration and Certificate of Decontamination, or transfer of an instrument to a suitable, safe and secure location reasonably determined by Purigen, as a condition to servicing any instrument. Customer warrants that any instrument or component to be serviced will be fully decontaminated of radioactive, biological, toxic or other dangerous materials or substances prior to servicing so that the service technician will not be exposed to any such materials. Repairs and services required as a result of misuse, improper use, instrument modification or unauthorized repair attempts during the Warranty, Extended Warranty and Service Plan will not be covered and will be billed at current rates for parts, labor and travel. All on-site work will be performed between normal working hours 8:00 a.m. and 5:00 p.m. in the local time zone. Monday through Friday excluding holidays. Any service requested outside of these hours may at Purigen's sole decision be billable to Customer. Purigen shall not be held responsible for any lost time, products, materials, other costs or profits as a result of malfunctioning equipment, servicing or availability of parts.

- 8) RETURN POLICY:** Customer must obtain a return material authorization (“RMA”) from Purigen prior to returning any Product. Purigen’s issuance of an RMA will not be unreasonably withheld or delayed. A Product return will not be accepted unless accompanied by a valid RMA.
- 9) INDEMNIFICATION; LIMITATION OF LIABILITY:** Customer will defend, indemnify and hold harmless Purigen, its officers, directors, employees, consultants and agents (collectively, the “Purigen indemnities”) from and against all losses, damages, liabilities, expenses and costs, including reasonable legal expense and attorneys’ fees (“Losses”), to which any such Purigen Indemnitee may become subject as a result of any claim, demand, action or other proceeding by any third party to the extent such Losses arise out of Customer’s use of the Products except, in each case, to the extent such Losses result from the gross negligence or willful misconduct of any Purigen Indemnitee or the breach by Purigen of these T&C’s. TO THE FULLEST EXTENT ALLOWED BY LAW, NEITHER PURIGEN NOR ITS SUPPLIERS WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF SAVINGS, BUSINESS LOSSES, BUSINESS INTERRUPTION, WORK STOPPAGE, LOSS OF DATA, LOSS OF GOODWILL, AND ANY OF THE LIKE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PURIGEN’S (INCLUDING ITS SUPPLIERS) CUMULATIVE LIABILITY TO CUSTOMER UNDER, ARISING OUT OF, OR IN ANY WAY RELATED TO THESE T&CS AND THE QUOTE, WILL NOT EXCEED THE AMOUNT ACTUALLY PAID TO PURIGEN UNDER THE QUOTE IN WHICH THE EVENT GIVING RISE TO THE LIABILITY OCCURRED. THESE LIMITATIONS OF LIABILITY WILL APPLY TO ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE
- 10) CONFIDENTIALITY:** These T&Cs and the Quote are subject to any separate confidentiality or nondisclosure agreement (“NDA”) entered into between Purigen and Customer, and, for the purposes of these T&Cs, performance of these T&Cs and the Quote will be deemed to be part of the purpose of such NDA.
- 11) MISCELLANEOUS:**
- a. Governing Law and Venue:** T&Cs are governed by and will be construed in accordance with the law of the State of California applicable therein, excluding any conflict-of-laws or principles that would apply a different body of law. The United Nations Convention on Contracts for the International Sale of Goods will not apply in any way to these T&Cs or to the transactions contemplated by these T&Cs. Except with respect to a party seeking interlocutory, interim or equitable relief to preserve the status quo or prevent irreparable harm such as an injunction or specific performance (which may be brought before any court of competent jurisdiction), each party hereby consents to the exclusive jurisdiction of the courts sitting in the State of California in any action on a claim arising in respect of these T&Cs or the transactions contemplated thereby.
 - b. Force Majeure.** Neither party will be responsible for any failure to perform hereunder due to unforeseen circumstances or due to causes beyond the non-performing party’s reasonable control. This Section does not apply to excuse a failure to make payments when due.
 - c. Construction:** These T&Cs (including all Quotes) set forth the entire understanding between the parties and supersede all prior agreements, proposals, representations, warranties and all other communications between the parties relating to the subject matter hereof. Other than as specifically provided in these T&Cs, there are no oral or written conditions, representations, warranties, undertakings or agreements between the parties. No modification to these T&Cs and no waiver of any provision of these T&Cs will be binding unless executed in writing by the parties. No waiver of any provision of these T&Cs will be construed as a waiver of any other provision hereof nor will such a waiver be construed as a continuing waiver. Each of the rights and remedies of the parties hereunder are separate, non exclusive, cumulative and without limitation of each other and the rights or remedies available under the law. If any clause or provision of these T&Cs is declared invalid or unenforceable, the remainder of these T&Cs will remain in full force and effect. Headings used in these T&Cs are for reference purposes only and will not be deemed to be a part of these T&Cs. These T&Cs will not be construed as creating a partnership, joint venture or agency relationship between the parties or any other form of legal association which would impose liability upon one party for any act or failure to act by the other party.
 - d. Assignment:** Neither party will assign any rights or obligations under these T&Cs or any Quote without the prior written consent of the other party and any attempted assignment in violation of the foregoing will be null and void, except that a party may assign these T&Cs (including all Quotes) without such consent to its successor or acquirer by way of merger, combination, acquisition or sale of all or substantially all of its assets. Subject to the restrictions on transfer set out herein, these T&Cs (including all Quotes) will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

ATTACHMENT 1

All shipments will be delivered FCA (Incoterms) Purigen's warehouse (Ex Works) without insurance. Customer may request insurance for a shipment by indicating this on the Purchase Order, in which case Purigen will add the insurance cost to the invoice at the time of shipment. If not otherwise specified, the shipment is insured for \$100. Actual shipping charges will be determined and added to the invoice at the time of shipping, whether or not estimated on Quote.

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