

# Product Terms, Conditions & Warranty

## General Terms & Conditions of Sale

### **General**

These General Terms and Conditions of Sale (the "Terms") apply to the sale of all products and rendition of all services (collectively "Products") sold by Premier Lab Supply Inc. ("Seller") to the party purchasing such Products ("Buyer"). All quotations issued by Seller and all orders placed by Buyer are subject only to these Terms, to the exclusion of any other terms, whether in verbal, written or other form.

**Basis of Sale:** THESE CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN THE BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN THE BUYER'S ORDER. No term or condition of the Buyer's order additional to or different from these Conditions shall become part of any Contract unless explicitly agreed to in writing by the Seller duly signed by its legal representative. The submission of an order by the Buyer, the retention by the Buyer of any Products delivered by the Seller, receipt by the Buyer of any Services performed by the Seller or payment by the Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Conditions. The Seller's failure to object to any provision contained in any communication from the Buyer shall not be construed as a waiver of these Conditions nor as an acceptance of any such provision.

### **Offers/Orders**

All offers made in any form remain non-obligatory. No contract for the sale of Products shall be binding on Seller until confirmed in writing to Buyer, and any order of Buyer shall only become binding on Seller once confirmed in writing by Seller. In no event will verbal promises or arrangements made by or with Seller's personnel bind Seller unless confirmed in writing by Seller.

### **Prices**

The sales price of Products is based on prices which apply at the time at which the order is accepted by Seller for immediate delivery. Unless otherwise agreed in writing between Seller and Buyer, the sales price is calculated based on delivery to Buyer's premises, and shall be calculated and paid in US Dollars. Any additional administrative costs such as, by way of example, obtaining certificates of origin, satisfying customs or duties obligations or similar documents/obligations, are at Buyer's risk of satisfaction and at Buyer's expense.

### **Catalogs**

The illustrations and drawings of Products which may appear in Seller's catalogs or website are solely intended to provide a general impression of the Product. Seller accepts no liability for any damage whatsoever arising out of any differences between data of product supplied and any illustrations and drawings of Products. Product suitability for a particular application (machine and/or material uses) are the responsibility and risk of the Buyer. Descriptions and suitable applications are to the best of Seller's knowledge and ability at the time of initial publication and Buyer is cautioned that manufacturers may amend the specifications of products without notice.

## **Delivery & Delivery Times**

Unless otherwise agreed in writing by Seller, delivery of Products is FOB Seller's place of business in St. Lucie County, Florida. Delivery dates designated by Seller are estimated dates only, and are based on the working circumstances prevailing at the time the order is approved by Seller. Seller assumes no liability for late delivery. Seller reserves the right to extend the delivery date due to changes in work circumstances, or if Buyer fails to perform any act that it has undertaken to perform or omits to perform any such act, in which case Seller will advise Buyer accordingly.

## **Fitting/Installation/Integration**

Buyer is solely responsible for the correct and safe application and use of Products purchased. In no event will Seller be held responsible or liable for any incorrect or unsafe applications or uses of the Products, including without limitation applications and uses that do not conform to all applicable instructions, laws, codes and best practice, nor for any tampering with the Products, Product label or documentation, and/or misuse of the Products. Buyer shall only purchase such products as Buyer or its agents are trained in the proper handling and application. Assuring product suitability and manner of product use is the sole responsibility and risk of the Buyer.

Products such as sample cups and thin film may be machine-specific and/or material specific and Buyer acknowledges, by ordering such Products, that Buyer is adequately informed and trained in the proper handling, application and use of such Products. Seller shall not be liable for particular results or test readings that may be obtained by use of the Products, and all such liability and responsibility arising out of the publication of any results or tests shall be assumed by Buyer and/or Buyer's agents.

Seller is not responsible for any aspects of integration of Seller Products into and with other products, including additional Seller Products. Seller's Products conform to its published specifications as tested and recorded in the conditions specified on such products' published data sheet, if any, and not integrated with additional products, or in and with atypical mechanical or chemical environments or conditions.

## **Product Warranty**

Warranty terms and conditions for all Products, to the extent applicable, are set out in a separate document "Warranty Terms and Conditions" accompanying the product, which document is hereby referenced and incorporated in these Terms. Absent another controlling document, Premier explicitly disclaims all warranties, including the warranty of merchantability and warranty of fitness for a particular purpose.

## **Payments**

Seller will specify payment terms and conditions in Seller's offers and/or invoices. Buyer shall pay all invoices in a timely manner as and when due. If payment is not made when due, Seller shall have the right to impose statutory interest on any unpaid balance. No payment due by Buyer may be postponed without the prior written agreement of Seller.

If Buyer is in arrears with payment of any amount due, Seller shall be entitled to cancel or postpone delivery of Products ordered at its sole discretion. In the event that Buyer enters dissolution or bankruptcy proceedings (whether voluntary or involuntary), or if liquidation proceedings are commenced against Buyer, all amounts due by Buyer to Seller shall

immediately become due and Seller may elect to cancel any outstanding orders.

### **Risk**

Risk of loss of or damage to Products shall transfer to Buyer upon delivery as per the above terms.

### **Cancellations and Product Returns**

Unless otherwise agreed in writing between Seller and Buyer, Buyer shall not be entitled to cancel orders for Products that have been accepted by Seller in writing or verbally.

Postponement of orders by Buyer shall only be allowed with the prior written approval of Seller. For Product return information for Products under warranty, please see the warranty terms and conditions.

### **Intellectual Property Rights**

Notwithstanding delivery of and the passing of title in any products, nothing in these conditions or any contract shall have the effect of granting or transferring to, or vesting in, the Buyer any intellectual property rights in or to any products and/or services.

Buyer acknowledges and agrees that all property, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by the Seller under or in the course of provision of any services (the "works"), wherever in the world enforceable, including without limitations all right title and interest in and to the services and all documents, data, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, scripts and other items relating thereto shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of the Seller and the Buyer shall acquire no right, title or interest in or to the same except as expressly stated in these conditions.

The Seller grants to the Buyer a non-exclusive, non-transferable license to use such of the works as are necessary, and to the extent necessary, for the Buyer to obtain and utilize the intended benefit of the services.

The Seller shall at all times have and retain title and full ownership of all software, firmware, programming routines, and documentation relating to such software supplied by the Seller for use with the Products, and of all copies made by the Buyer (collectively "Software") and where applicable (according to the relevant order or Proposal), the Seller grants the Buyer a nonexclusive and non-transferable license to use the Software solely with the Products.

Buyer agrees that the purchase of any goods, products or works (as defined herein) is solely for consumptive use and Buyer agrees that such purchases are not for other purposes, including but not limited to, reverse engineering, duplication, or infringement assessment. Buyer shall be liable for all damages incurred by Premier as a direct or indirect consequence of the breach of this provision.

### **Liability**

Except as otherwise mandated by applicable law, Seller's liability for damages and losses of any nature whatsoever is strictly limited to the amount actually received by Seller from Buyer for the specific Product delivered which Product has failed in breach of Warranty Terms and Conditions. In no event will Seller be liable for any indirect or consequential damages, or for any costs, losses or damages which may be incurred by Buyer or by any third party in connection with the replacement of faulty Products, all as detailed in the Warranty Terms and

Conditions.

**Force Majeure**

Seller shall not be liable for any delays or other inability to meet its obligations under any purchase order as a result of circumstances beyond its reasonable control (“Force Majeure”). During the period of Force Majeure, Seller has the right to either continue to perform or dissolve the affected order in whole or in part.

**Disputes**

All disputes which arise between Seller and Buyer in connection with any offer or order that cannot be amicably resolved, shall be subject to the sole and exclusive jurisdiction of the Florida state courts with venue fixed in Martin or St. Lucie counties or the Federal District Court for the Southern District of Florida. The prevailing party in any dispute resolution proceeding, whether by arbitration, court or otherwise, shall be entitled to attorney’s fees and costs of such action.

**Miscellaneous**

If any provision of these Terms is found by any court or arbitrator to be invalid, illegal or unenforceable, the remainder shall not be affected. Buyer may not assign or transfer these Terms or any rights or obligations hereunder (including pursuant to any purchase order) without Seller’s prior written consent, which may be withheld at Seller’s sole discretion.

## **Warranty**

### **Warranty Terms & Conditions (“Warranty”)**

#### **Limited Warranty**

Premier Lab Supply Inc., (“Premier”) warrants that Premier's sample cups, thin film and other XRF Spectroscopy hardware and consumables will be free from defects in materials or workmanship for a period of one (1) year. This Warranty period shall commence on the date of shipment of the relevant products from Premier. The Warranty shall only be extended to the original purchaser of the products and/or to the first purchaser who is the end user of the products. Premier is not responsible for any auxiliary equipment or third party products not supplied by Premier.

#### **Exclusions**

This Warranty shall not apply to any damages caused as a result of force majeure, misuse or improper use of the products, faulty installation, or negligence by any party other than Premier. In addition, this Warranty is not applicable to any Premier product improperly shipped, stored, installed, operated, and used, including, inter alia, shipping, storage, installation, operation and use otherwise than in accordance with Premier's specifications, including instructions and guidelines for supported use. This Warranty shall not apply if Buyer is in breach of the Terms and Conditions Agreement. Buyer contracts that as a condition for any claim for Warranty, whether by this Agreement or pursuant to law, Buyer shall retain the subject hardware and/or consumables and make same available for inspection and analysis upon written notice to Seller of such Warranty claim.

#### **Disclaimer and Limitation**

**Except as stated herein, Premier disclaims all other warranties and conditions, whether express, implied or statutory, including merchantability and fitness for a particular purpose, with respect to the foregoing products to the maximum extent permitted by applicable law.** In no event will Premier be liable to you or any third party for any indirect, consequential, special, punitive or exemplary damages, including, without limitation, damages for loss of business, loss of profits, loss of data, business interruption or damages of associated equipment, loss of use of the Premier product(s) and associated equipment, cost of substitute products, costs of removal, installation, reinstallation, testing and evaluation or shipping arising out of the use, failure of, or inability to use the products, even if Premier has been advised of the possibility of such damages. Premier's liability with respect to any claim of any kind for loss or damages arising out of or related to a breach of Warranty for a product shall in no event exceed the actual purchase price of the specific product giving rise to the claim. Warranty on hardware shall extend solely to the cost of replacement parts and, when necessary, the cost of a qualified technician installation. All other related expenses, including by not limited to costs and expenses associated with technician travel for onsite repairs will be borne by the customer.

#### **To Obtain Warranty Service**

In the event that any of the warranted products fail to comply with the Warranty during the applicable Warranty period, please contact Premier to report the non-compliance and verify Warranty coverage. Any claim for warranty under this Agreement shall require Buyer to deliver written notice to Seller within thirty (30) days of the incident giving rise to such warranty claim; such notice containing the date of the event, a description of the event, a description of the product(s) claimed under warranty, and a description of the nature of all damages in such detail as to enable a fixed dollar amount to be ascribed to such damages. Premier may, in its sole discretion, repair or replace products determined to eligible for

Warranty coverage, or may issue a credit for the purchase of replacement products.