

Instrument Terms and Conditions of Sale

1. Contract Terms. These are the contract terms and conditions ("Terms") under which Promega Corporation ("Promega"), directly or through Promega's authorized distributor or subsidiary, sells the Instrument to a person or entity ("Customer"). Additional written contract terms that apply to this Instrument sale ("Additional Terms") may be found in our quotation to Customer. In the event of a conflict between the Terms and any Additional Terms, the Additional Terms will control. These Terms, together with our quotation, and any Additional Terms therein, create the contract ("Contract") between Promega and Customer for the purchase and sale of the Instrument. No quotation given by Promega shall constitute an offer to supply the Instrument. An order placed by Customer shall constitute an offer made to Promega subject to these Terms and any Additional Terms. No terms or conditions put forward or implied by Customer in an order, invoice, correspondence or elsewhere, shall be binding on Promega and such conditions or stipulations are hereby excluded and extinguished. Promega's failure to object to any such terms shall not constitute a waiver by Promega and shall not constitute acceptance by Promega of such terms and conditions. The Contract cannot be amended or modified unless agreed to in writing by both parties. All Contracts are subject to availability. Any error or omission in any quotation, catalog, sales literature, invoice or other document issued by Promega shall be subject to correction by Promega without liability to Promega.
2. Definitions.
 - a. "Documentation" means Promega's user manual, package insert and similar documentation for the Instrument in effect on the date that the Instrument ships from Promega.
 - b. "Instrument" means the Promega branded instrument sold pursuant to this Contract and listed on the applicable Promega quotation.

- c. "Software" means Promega branded software or any other software products incorporated in or forming a part of the Instrument (by way of example, and not limitation, Instrument operating software, data analysis software).
 - d. "Spare Parts" means hardware parts that Promega provides and installs, or causes to be installed, by a company Promega has certified as an authorized service provider, for use with the Instrument.
 - e. "Specifications" means Promega's written technical specifications for the Instrument or Spare Part in effect on the date that the Instrument or Spare Part ships from Promega.
3. Orders. Customer shall be responsible to Promega for the accuracy of all orders. In the event of a discrepancy between a catalog number and its description, the catalog number will be used to satisfy the order. Customer shall be responsible to Promega for all confirmation orders to be clearly marked "CONFIRMATION" to avoid duplication of an order. All Customer's orders are subject to Promega's acceptance. Promega reserves the right to make changes in the Specification of Instruments ordered that do not materially affect quality or performance of the Instrument.
4. Price. The price for the Instrument will be that as shown in Promega's valid quotation to Customer, or the price on promega.com for the applicable country, at the time the Instrument is shipped to Customer. The price is exclusive of Value Added Tax (VAT) and all other similar sales taxes, fees or charges, as applicable. If Promega is required to pay any such tax, fee or charge, Customer shall reimburse Promega or, at the time of order, Customer shall provide Promega with an exemption certificate acceptable to the relevant taxing authorities. If Customer is tax exempt, Customer shall provide to Promega a tax exemption certificate from time to time upon request by Promega.
5. Payment. Payment terms are net sixty (60) days from date of invoice. No offsets, settlement discounts or other deductions of any kind may be made against amounts due. The time for payment shall be of the essence for all Instruments. In the event of default in payment by a due date, Promega reserves the right, without prejudice to other rights, to (a) charge interest at the rate provided for by the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.* Promega reserves the right to withhold delivery of

all Instruments until payment of all outstanding amounts owed are paid. All amounts due are payable in invoiced currency unless otherwise agreed in writing.

6. Delivery and Return. Unless agreed to otherwise by Promega in writing, all shipments from Promega or Promega's affiliates are made DAP (Incoterms 2010) at the address designated by Customer at the time of ordering. In all cases, title (except for Software) and risk of loss transfers to Customer when the Instrument is delivered at the address designated by Customer. Promega reserves the right to make delivery in installments. Instruments supplied will not be accepted for return unless returned in accordance with an authorization issued by Promega.

7. Instrument Use Limitations. The purchase of an Instrument only conveys to Customer a non-exclusive, non-transferable, non-sublicensable right to use the Instrument in accordance with its intended use, as indicated on the Instrument label ("Intended Use"). Unless agreed to by Promega in writing, Customer receives no right to resell the Instrument purchased hereunder. Customer agrees that Customer's use of Instrument in any manner or for any purpose other than the Intended Uses is a breach of this Contract. Customer agrees not to, nor authorize any third party to, engage in any of the following activities: (i) disassemble, reverse-engineer, reverse-compile or reverse-assemble the Instrument; (ii) separate, extract or isolate components of this Instrument or subject this Instrument or components thereof to any analysis not expressly authorized in the Instrument's Specifications or Documentation; or (iii) gain access to or attempt to determine the methods of operation of the Instrument.

8. Regulatory. The Instrument is labeled for its Intended Use. Customer acknowledges that the Instrument is to be used in accordance with its Intended Use. Instruments labeled as Research Use Only have not been approved, cleared or licensed by the United States Food and Drug Administration or any other regulatory entity, whether foreign or domestic, for any specific intended use, whether research, commercial, diagnostic or otherwise. Customer must ensure it has any regulatory approvals that are necessary for Customer's intended uses of the Instrument. Customer further agrees to comply with all applicable laws and regulations when using, maintaining and disposing of the Instrument.

9. Software. All Software, whether provided separately, installed on or embedded in an Instrument, is licensed to Customer, not sold. Notwithstanding anything to the contrary contained herein, Promega retains all rights and interest in the Software. Promega hereby grants to Customer a royalty-free, non-exclusive, nontransferable license, non-sublicensable right to use the Software in conjunction with the Instrument solely for Customer's own internal business purposes. This license terminates when Customer's lawful possession of the Instrument provided hereunder ceases. Customer shall not modify, alter, copy or create derivative works of the Software. Customer shall not (i) disassemble, decompile or reverse engineer the Software or modify the base source code of the Software or (ii) examine the Software with tools designed to disassemble, decompile or reverse engineer the same.
10. Instrument Installation and Services. If Promega, or one of Promega's authorized service providers, installs or services an Instrument at Customer's premises, it is Customer's responsibility to ensure that the workplace where the Instrument is to be located or serviced is safe and meets the Promega documented site requirements. Promega does not install or service Instruments in Biosafety Level 3 laboratories, unless otherwise agreed to in writing in advance. Promega does not install or service Instruments in Biosafety Level 4 laboratories.
- a. Installation. Upon purchase of an Instrument comprising the Maxprep® Liquid Handler, Spectrum CE System, or Spectrum Compact CE System, Promega, or a Promega authorized service provider, shall install the Instrument at Customer's premises, subject to this Contract. All other Instruments shall be installed by Customer according to our instructions, unless otherwise agreed to in writing by Promega.
- b. Services. Promega provides to Customer a one (1) year limited Instrument warranty, as detailed in Section 11, with the purchase of an Instrument. Promega offers additional Instrument service plans for purchase. For additional details on our Instrument service plans, please contact Promega's Customer Service Department. All Instrument services, whether provided under warranty or post warranty, are subject to our Instrument Services Terms and Conditions, available at <https://www.promega.com/legal/terms-and-conditions/instrument-services-terms-and-conditions/>.

11. Warranties and Warranty Disclaimers. All warranties are personal to the Customer and may not be transferred or assigned to a third party, including an affiliate of Customer. For Instruments comprising the Maxprep® Liquid Handler, Spectrum CE System, or Spectrum Compact CE System, all warranties are valid for the site of installation only and will be considered void if the Instrument is moved to another location of Customer, unless Promega, or a Promega authorized service provider, conducts such re-location and subsequent installation. The warranties described in this Contract exclude any stand-alone goods or accessories, whether provided by a third party or Promega, that may be acquired or used with the Instrument.
- a. Limited Instrument Warranties. Promega warrants that each Instrument will meet the Specifications for a period of twelve (12) months from the date we ship the Instrument to you, or in the case of Instruments comprising the Maxprep® Liquid Handler, Spectrum CE System, or Spectrum Compact CE System, after installation at Customer's premises.
 - b. Limited Spare Parts Warranties. Promega warrants applicable Spare Parts installed on an Instrument pursuant to this Contract will meet the Specifications for twelve (12) months after installation of the Instrument at Customer's premises by Promega or a Promega authorized service provider. Promega does not warrant spare parts that Promega does not install or are installed by a company Promega has not certified as an authorized service provider.
 - c. Exclusions. The foregoing warranties do not apply to the extent a non-conformance is due to (i) abuse, misuse, neglect, negligence, accident, improper storage or use contrary to the Specifications, Documentation or Intended Uses; (ii) improper handling, installation, relocation, maintenance or repair (other than if performed by Promega or Promega's authorized service providers); (iii) unauthorized alterations; (iv) force majeure events, including but not limited to, flood, lightening, earthquake, tornado, hurricane or fire, pandemics, bombing, armed conflict, malicious mischief, sabotage or other natural or manmade disasters; or (v) use with unapproved third-party goods.
 - d. Submitting Warranty Claims. If an Instrument or Spare Part does not meet the warranty provided hereunder, Customer must notify Promega's support department during the warranty period and as soon as reasonably practicable after Customer

discovers the non-conformance. In order to be eligible for repair or replacement under this warranty, Customer must also (i) cooperate with Promega in confirming or diagnosing the non-conformance and (ii) return the Instrument or Spare Part, transportation charges prepaid, to Promega following Promega's instructions, or grant Promega's authorized repair personnel access to the Instrument or Spare Part in order to confirm the non-conformance and make repairs.

e. Limitations. THE WARRANTIES IN THIS CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, SAID WARRANTIES BEING EXPRESSLY DISCLAIMED. Customer agrees that its sole and exclusive remedy against Promega shall be limited to the repair or replacement of the Instrument or parts of the Instrument, at Promega's option. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Promega is willing and able to repair or replace the Instrument or parts of the Instrument. THIS PARAGRAPH STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY.

12. Limitations of Liability. All claims arising under this Contract shall be valid and enforceable one (1) year from the date any such claim accrues. IN NO EVENT SHALL PROMEGA BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST REVENUES AND PROFITS, EVEN IF PROMEGA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM LIABILITY, IF ANY, OF PROMEGA FOR ALL DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM PROMEGA'S BREACH OF THIS CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR TORT WITH RESPECT TO THE INSTRUMENT, OR ANY PARTS OR SERVICES IN CONNECTION WITH THE INSTRUMENT, IS LIMITED TO AN AMOUNT NOT TO EXCEED TWICE (2X) THE AMOUNT PAID FOR THE INSTRUMENT. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IS CUSTOMER'S EXCLUSIVE, ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER CONTRACTUAL REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13. Intellectual Property. Customer acknowledges that all intellectual property rights relating to the Instrument, Spare Parts, and Software are exclusively owned by Promega. Customer acknowledges that, as of the date of this Contract, Customer neither has nor is acquiring

any license, concession, rights for use (except as granted herein) or any other right, title or interest in or to any trademarks, trade names, patents, developments, specifications, techniques or other proprietary or confidential information related to the Instrument, Spare Parts, or Software. Customer acknowledges that it has no rights to resell the Instrument, Spare Parts, or Software. Customer shall be solely responsible for any third-party intellectual property that may address Customer's intended use of the Instrument.

14. Export Restrictions. The Instrument is authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s). It may not be resold, transferred or otherwise disposed of, to any other country or any other person without first obtaining an approval from Promega in writing, or as otherwise authorized by the United States law and regulations.
15. Confidentiality. Customer agrees to keep confidential any non-public technical information, commercial information (including, without limitation, prices) and instructions received from Promega as a result of discussions, negotiations and other communications between the parties in relation to the Instrument, unless disclosure is required pursuant to applicable law or court order.
16. Notice. Any legal notice or other communication required or permitted to be made or given by either party pursuant to this Contract will be in writing, in English, and will be deemed to have been duly given (a) three (3) business days after the date of mailing if sent by registered or certified United States mail, postage prepaid, with return receipt requested; (b) when transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine; or (c) when delivered if delivered personally or sent by express courier service.
17. Force Majeure. Neither Party shall be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, whether foreseen or unforeseen, including but not limited to acts of God, strikes, labor disturbances, fires, pandemics, or any other cause beyond the reasonable control of the non-performing Party. In the event of any such delay the delivery shall be deferred for a period equal to the time lost by reason of the delay.
18. Assignment. Neither party shall assign this Contract, whether by operation of law or otherwise, without the prior written consent of the other party.

19. No Waiver. No failure or delay by either Party in exercising any of its rights or remedies hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

20. Miscellaneous. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. The parties agree that any rule requiring construction of any provision of this Contract against its drafter shall not apply hereto.

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