

TOSOH BIOSCIENCE, INC.

TERMS AND CONDITIONS OF SALE

(also available at <https://www.diagnostics.us.tosohbioscience.com/company/legal/sales-terms-and-conditions>)

IF TOSOH BIOSCIENCE, INC. AND THE CUSTOMER HAVE SIGNED A DISTRIBUTION, REAGENT RENTAL, SYSTEM RENTAL, PURCHASE OR SERVICE AGREEMENT, THE TERMS AND PROVISIONS OF THAT SIGNED AGREEMENT SHALL SUPERSEDE THE TERMS AND CONDITIONS OF SALE STATED BELOW.

1. **Acceptance.** BY ORDERING, PAYING FOR OR ACCEPTING ANY PRODUCT SOLD BY TOSOH BIOSCIENCE, INC. ("TOSOH"), THE CUSTOMER NAMED IN TOSOH'S QUOTATION AND/OR ORDER ACKNOWLEDGEMENT ("CUSTOMER") AGREES TO ALL THE TERMS AND CONDITIONS STATED BELOW. Acknowledgement, acceptance or receipt by any Tosoh employee or agent of Customer's purchase order or other document containing pre-printed or customized terms that are contrary or additional to the terms of this Agreement (defined below) shall not vary this Agreement. Nor shall contrary or additional representations or statements, whether made in writing or verbally, by a Tosoh employee or agent vary this Agreement. All such contrary and additional terms, representations and statements are rejected. This Agreement may be changed only by a writing signed by an authorized representative of Tosoh stating that it is modifying this Agreement. The term "Agreement" means, collectively, (i) Tosoh's quotation, if one is issued, (ii) Customer's written purchase order accepted by Tosoh, but only with respect to identification and quantity of the Products (defined below) ordered, (iii) Tosoh's acknowledgement or acceptance of Customer's order, and (iv) these Terms and Conditions of Sale. All orders are subject to acceptance by Tosoh. Tosoh may accept an order either in writing or by delivery of a portion of the Products covered by a purchase order; provided, however, an acceptance by Tosoh making delivery shall be deemed to be acceptance only of the part of such order relating to the Products delivered.

2. **Pricing.** Pricing for the Products shall be as stated on Tosoh's order acknowledgement and invoice.

3. **Taxes; Customs.** Customer will reimburse Tosoh for all taxes, customs, duties, excises, tariffs, brokerage fees or other charges (collectively, "Taxes") which Tosoh may be required to pay to any government (foreign, national or local) and which are levied directly upon, or measured directly by, the sale, production, transportation, import and/or export of the Tosoh instruments/analyzers ("Instruments"), Tosoh reagents ("Reagents"), spare parts for use with an Instrument ("Spare Parts") and/or consumables for use with an Instrument ("Consumables") sold hereunder, whether the Taxes are levied or imposed at the time of Tosoh's acceptance of Customer's purchase order or subsequent thereto. (The Instruments, Reagents, Spare Parts and Consumables shall be referred to herein from time to time as the "Products.")

4. **Shipment Discrepancies; Acceptance.** Any errors in shipment must be reported immediately to Tosoh. Requests for adjustments on concealed shortages involving packages and cartons received intact must be made to Tosoh within five days of the date of receipt of the shipment. With respect to an Instrument, Tosoh or its designee shall effectuate its installation as called for by its Operator's Manual within 30 days after the delivery date. Failure by Customer to notify Tosoh of any operational issue of an Instrument within five days following installation shall constitute Customer's unqualified acceptance of the Instrument.

5. **Shipping Charges.** Tosoh shall ship the Products EXW (Incoterms 2020) Tosoh's designated shipping point. Transportation and in-transit insurance costs will be prepaid and such costs together with any applicable handling charges will be added to the invoice. Any order requiring next day delivery will be subject to a \$75 expediting charge. Requests for Saturday delivery will be assessed a \$125 expedite fee in addition to the standard charges. The method of transportation and carrier will be selected by Tosoh. Title and risk of loss shall pass to Customer upon Tosoh's tender of delivery of the Products to the selected carrier at Tosoh's designated shipping point.

6. **Returns.** All Products are sold without return privileges. Any returns will be at Tosoh's sole discretion and will require prior authorization by Tosoh (including any return material authorization form that Tosoh may require) and shipping in accordance with instructions provided by Tosoh. When contacting Tosoh for return authorization, Customer must provide the invoice number and date of shipment by Tosoh. Except where Products are damaged in transit, returns must be in clean factory packaging. All returns must be made by prepaid transportation unless otherwise specified by Tosoh. The credit for authorized return will be the price on Tosoh's original invoice or Tosoh's current price, whichever is less. Where Tosoh acknowledges responsibility for an error in shipment, the price on the original invoice will be the basis for credit.

7. **Payment Terms.** Payment by Customer for purchase of the Products or for any other sum owed by Customer to Tosoh under this Agreement shall be due within 30 days of the date of Tosoh's invoice or other written notice without any reduction, setoff or abatement for any reason. Any extension of such 30-day payment term must be in writing issued by Tosoh. If Customer fails to make payment when due, Customer shall pay Tosoh interest for each month or any part thereof during which such payment is overdue at a monthly rate of one percent (1.0%), up to the maximum rate of interest permitted by applicable law, computed from the due date until such payment and the interest thereon are paid in full. In

addition, if payment is not made in accordance with the terms hereof or if Customer's credit standing has been impaired at any time, Tosoh may withhold further delivery of Products or service until satisfactory cash or credit arrangements have been made, and may demand in writing that Customer provide adequate assurance of its ability to make payments under such terms. Tosoh retains, and Customer hereby grants, a security interest (or charge, lien, or similar right under applicable local law) in each Product and proceeds thereof until Customer has made payment in full for the Products. Customer will, upon request by Tosoh, provide all cooperation required by Tosoh to perfect such security interest. Tosoh reserves the right to repossess the Products if Customer failed to make full payment for the Products.

8. **Training.** Tosoh provides free of charge initial training on the use and operation of the Instruments. Details on the number of trainees, length of training and prices for additional training are available from Tosoh's System Sales Specialists.

9. **Warranties.** Warranty on an Instrument is as set forth in the Operator's Manual for the Instrument issued by Tosoh. If an Instrument fails to meet the warranty set forth in the Operator's Manual during the warranty period, Tosoh's sole liability and Customer's exclusive remedy shall be limited to, at Tosoh's option, either the repair or replacement of the Instrument, provided Tosoh's investigation and inspection disclose that such defect or non-conformity developed under normal and proper use (including use of only Tosoh authorized Reagents) and all other conditions of use set forth in the Operator's Manual are met when the defect or non-conformity developed. Warranty on Reagents is that they shall perform as specified in the U.S. instructions for use issued by Tosoh, provided such warranty shall not apply to the extent that nonconformities result from improper or unauthorized use of the Reagents or use in a manner contrary to Tosoh's instructions. During the warranty period on an Instrument, warranty on Parts is available as set forth in the Operator's Manual. RESALE OF A PRODUCT SHALL VOID THE WARRANTY STATED HEREIN FOR THE PRODUCT.

10. **Exclusive Warranties.** THE WARRANTIES SET FORTH IN SECTION 9 ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED FOR THE PRODUCTS. EXCEPT FOR SUCH WARRANTIES, TOSOH MAKES NO AND DISCLAIMS ALL OTHER REPRESENTATIONS, GUARANTIES, CONDITIONS AND WARRANTIES OF ANY KIND WHATSOEVER, WHETHER DIRECT OR INDIRECT, EXPRESS OR IMPLIED, OR ARISING UNDER ANY STATUTE, ORDINANCE, COMMERCIAL USAGE OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OR REPRESENTATION AS TO SUITABILITY, DURABILITY, DESIGN, OPERATION, OR CONDITION OF THE PRODUCTS (OR ANY PART THEREOF), OR THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. SPECIFICALLY, TOSOH DOES NOT WARRANT THAT THE PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS. IF ANY IMPLIED WARRANTIES APPLY AS A MATTER OF LAW, THEY ARE LIMITED IN DURATION TO THE LENGTH OF THE APPLICABLE WARRANTY SET FORTH IN SECTION 9.

11. **In Warranty Service.** Should warranty repair or service of the Instrument or any component thereof be necessary, it must be provided by Tosoh authorized repair and service personnel. Tosoh or its designated contractor shall provide all warranty service after installation during Tosoh's normal working hours (8:00 am to 5:00 pm local time), Monday through Friday exclusive of Tosoh designated holidays, at no additional charge. Technical support by telephone is available at 1-800-248-6764, 24/7. Should Customer desire in person service during after hours, Saturday, Sunday or a Tosoh designated holiday, Tosoh will attempt to provide such service, but Customer shall be invoiced and must pay for any such labor and travel at the then effective overtime rates. Any required repair parts will be supplied at no charge, except for consumables used in completing such service. At Tosoh's option, certain of the Instruments may be exchanged or replaced rather than repaired on-site.

12. **Post Warranty Service.** Customer may choose to purchase a Service Contract for repair or service after an Instrument's warranty period. Details are available from Tosoh's System Sales Specialists and Field Service Engineers. The option is available to purchase a Service Contract at the time of Instrument purchase for a discount. This contract would be in effect after the warranty period.

13. **Use.** Customer agrees to use the Instruments solely in conjunction with Reagents or other supplies expressly authorized by Tosoh. Tosoh provides 24/7 telephone technical support at 1-800-248-6764 and will provide troubleshooting and support for Customer's product use issues based on information provided by Customer. In addition, Tosoh must report certain product performance issues to the Federal Food and Drug Administration. Accordingly, if Customer suspects any Tosoh product performance issue, Customer must contact Tosoh's Technical Support Group at the same telephone number to report same.

14. **Intellectual Property Infringement.** In the event a third party brings a lawsuit or claim against Customer due to the infringement or alleged infringement by a Product of (i) a U.S. issued patent, or (ii) a trademark, copyright or other intellectual right ("Infringement Claim"), Customer will give prompt notice of same to Tosoh. Tosoh shall defend Customer in such Infringement Claim and Tosoh shall be responsible for the legal and related costs and expenses of such defense as well as the costs and expenses of any settlement or compromise of such Infringement Claim, provided Customer shall give Tosoh full and complete authority, information and assistance (at Tosoh's expense) for such defense and no settlement or compromise shall be made without Tosoh's prior written consent. Concurrent with defending the

Infringement Claim and/or in the event a Product is held to constitute infringement, Tosoh, at its option in its sole discretion, shall have the right to do any one or more of the following: (a) retain the right for Customer to continue using the Product; (b) modify the Product so that it becomes non-infringing; or (c) remove it, grant Customer a credit for the purchase price thereof, and cease further supply of like Products. Tosoh's obligations do not extend to lawsuits or claims of infringement arising from (1) Customer's improper use of a Product, (2) Customer's use of a Product in combination with an item or product not authorized by Tosoh, (3) a combination of the Instrument with any other product, including any incorporation of another product, software or technology into the Instrument, (4) any use or application of an Instrument in a manner that is different from the conditions recommended in the Operator's Manual, (5) any modification of an Instrument made by other than Tosoh's employees or authorized agents, or made in accordance with Customer's specifications or instructions (any circumstance listed in clauses (1) - (5), an "Exception"). The foregoing remedy is exclusive and constitutes Tosoh's sole obligation for any claims of intellectual property rights infringement. Customer shall defend Tosoh in any lawsuit or claim of intellectual property infringement arising from an Exception, and Customer shall be responsible for the legal and related costs and expenses of such defense as well as the costs and expenses of any settlement or compromise of such lawsuit or claim, provided Tosoh shall give Customer full and complete authority, information and assistance (at Customer's expense) for such defense and no settlement or compromise shall be made without Customer's prior written consent.

15. **Limitation of Liabilities.** Tosoh's sole and exclusive remedy for Tosoh's negligence, breach of warranty, breach of contract or for any other liability in any way connected with or arising out of this Agreement, the Products or warranty service furnished on the Instruments shall be the repair or replacement of non-conforming Products, or, if Tosoh is unable or chooses not to repair or replace non-conforming Products, the crediting to Customer's account of the price that has been paid for the non-conforming Products and the cancellation of any obligation to pay the unpaid portions of the price of the non-conforming Products. Tosoh's liability to Customer hereunder with respect to a Product shall in no event exceed the amount paid by Customer hereunder for such Product. Tosoh's total aggregate liability to Customer arising out of or relating to this Agreement, the Products and warranty service furnished on the Instruments shall in no event exceed the total amount paid by Customer hereunder. IN NO EVENT SHALL TOSOH BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OR PROFITS OR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE PRODUCTS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT TOSOH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH LIMITATION OF LIABILITY OR LIMITED OR EXCLUSIVE REMEDY SET FORTH IN THIS AGREEMENT IS INDEPENDENT OF ANY OTHER LIMITATION OF REMEDY AND IF ANY SUCH LIMITATION OF REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE HELD TO BE UNENFORCEABLE, THAT SHALL NOT AFFECT THE VALIDITY OF ANY OTHER SUCH LIMITATION OF REMEDY. The allocation of risk in these Terms and Conditions of Sale is material to this transaction, the limitations of liability in this Section will be given full effect, and Customer acknowledges and agrees that Tosoh would not enter into this transaction without these limitations of liability.

16. **Force Majeure.** Except for Customer's obligation to make monetary payments hereunder, neither party shall be liable in damages for any delay or default in such party's performance hereunder if such default or delay is caused by Force Majeure, which is an event beyond such party's reasonable control including, but not limited to: an act of God; regulation or law or other action of any government or agency thereof; war or insurrection; civil commotion; destruction of production facilities or materials by earthquake, fire, flood, or storm; labor disturbance; epidemic; and failure of suppliers, public utilities or common carriers.

17. **Allocation.** If, for reasons of Force Majeure or otherwise, Tosoh is unable to supply contracted quantities of Products to all its customers, Tosoh may satisfy its obligations under this Agreement by allocating to Customer in any commercially reasonable manner a share of Tosoh's available supply of Products.

18. **Indemnity.** Customer shall indemnify Tosoh (and Tosoh's suppliers, affiliates and representatives) against any and all liability, loss, cost, injury, damage, demand and expense (including, without limitation, reasonable attorney's fees) of any kind whatsoever arising out of or in connection with any use of the Products, including without limitation: (i) use contrary to or different from that prescribed in the Operator's Manuals; (ii) failure to follow the procedures for operation or maintenance of the Instruments in the Operator's Manuals; (iii) failure to satisfy the installation site requirements; (iv) operation of the Instruments by other than a Tosoh trained operator or an operator supervised by a Tosoh trained operator; (v) use of the Instruments with other than Tosoh's or Tosoh approved Reagents, calibration sera or Parts; (vi) use in an altered condition; (vii) failure to follow any Tosoh informative or directive release; (viii) representing a test result to be more accurate, precise or reliable than set forth in Tosoh's published claims of performance; or (ix) incorrectly characterizing a test result. Customer's obligation to indemnify Tosoh shall not extend to a liability, loss, cost, injury, damage or expense arising solely from the gross negligence or willful misconduct of Tosoh.

19. **Export Controls.** By accepting delivery of the Products, Customer warrants and represents that Products sold under this Agreement are for ultimate use in the country of destination (ship to location) identified on Tosoh's quotation

or order acknowledgement, and Customer will not export the Products outside of such country of destination without first consulting with Tosoh regarding any export control laws that may be applicable to such export. If Tosoh determines in its reasonable judgment that export outside of the country of destination identified on Tosoh's quotation or order acknowledgement requires a license or other clearance from a governmental agency with authority over the export, Customer shall not make the export without first obtaining such required license or other clearance.

20. **Confidentiality**. The receiving party agrees to disclose the disclosing party's Confidential Information (defined below) only to its employees, affiliates, contractors and suppliers ("Representatives") who need to know that information to enable receiving party to perform the Agreement or to use the Products and who are legally required, by contract or otherwise, to maintain the confidentiality of the information in accordance with this Agreement. Notwithstanding the foregoing, Customer may not disclose any Confidential Information received or derived from Tosoh to contractors or suppliers of Customer that are in the business of designing, making or selling products competitive with the Products. Receiving party shall protect disclosing party's Confidential Information with at least the care with which it protects its own confidential information of a similar nature but in any event, not less than a reasonable standard of care, and shall be liable for any disclosure of disclosing party's Confidential Information by receiving party's Representatives that breaches this Agreement. Disclosing party's "Confidential Information" means any information or materials disclosed or made available by a party to the other party, that (i) in the case of a written or other tangible disclosure, disclosing party affixes a "Proprietary", "Confidential" or similar legend indicating the confidential nature of the information, (ii) in the case of an oral or visual disclosure, disclosing party makes an oral statement at the time of disclosure to identify the information as confidential and delivers to receiving party a written summary of the information confirming that disclosing party regards the same as Confidential Information within 30 days of disclosure, and (iii) if given the nature of the information disclosed and the circumstances of the disclosure, a reasonable person would believe such information to be the confidential information of disclosing party, such information shall be "Confidential Information" for purposes of this Agreement, regardless of whether any identification, marking, or summarization of such information set forth in clauses (i) and (ii) were made. This Agreement and the activities contemplated herein are considered Confidential Information of the parties. Confidential Information excludes information that receiving party can demonstrate (a) is generally available to the public through no breach of these terms by receiving party; (b) was already known to receiving party prior to its disclosure by disclosing party; (c) was rightfully disclosed to receiving party by a third party, subject to no restrictions of confidentiality or restricted use; or (d) was developed by receiving party without reference to or use of disclosing party's Confidential Information. Confidential Information may be disclosed by receiving party to the extent disclosure is required by law or by the order of a tribunal with jurisdiction, provided: (1) receiving party notifies disclosing party of such mandatory disclosure as soon as reasonably possible; (2) disclosing party is provided a reasonable opportunity to contest such disclosure or to seek a protective order; and (3) receiving party reasonably cooperates (at disclosing party's expense) with disclosing party's efforts to do so. Disclosing party remains the owner of the Confidential Information and disclosure only provides receiving party with the limited right to use stated above. Receiving party acknowledges that disclosure or use of Confidential Information in breach of these terms may cause irreparable harm to disclosing party, monetary damages may be an inadequate remedy for such breach, and disclosing party will have the right, in addition to all other rights and remedies, to seek injunctive relief for any breach of these terms. In the event the parties have or will enter into a non-disclosure agreement, the terms of that non-disclosure agreement shall supplement, be in addition to these terms.

21. **Entire Agreement**. This Agreement represents the entire understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements, negotiations and understandings.

22. **Governing Law & Jurisdiction**. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without application of any conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any dispute or controversy arising in connection with this Agreement, other than for Customer's failure to make timely payment of any sum due from Customer to Tosoh, shall be resolved in a state court located in Columbus, Ohio or the United States District Court for the Southern District of Ohio located in Columbus, Ohio, to which jurisdiction the parties hereto submit. Tosoh shall have the right to bring suit in any court of competent jurisdiction for Customer's failure to make timely payment of any sum due from Customer to Tosoh.

23. **Miscellaneous**. A delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights. No amendment or waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is sought to be enforced. If this Agreement or any provision hereof shall be deemed in any way invalid, illegal, or unenforceable, its validity, legality and enforceability in all other respects shall not be in any way impaired.

24. **Assignment**. Any assignment of any of the rights or obligations of Customer hereunder without prior written consent of Tosoh shall be void. Any transfer of the control or sale of all or substantially all the assets of Customer shall be construed to be an assignment hereunder.

25. **Attorney's Fees.** In the event of an action or proceeding arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to the reasonable attorney's fees and other costs and expenses incurred in connection with such action or proceeding and in connection with enforcing any judgment, award or order thereby obtained, or any appeal thereof. This attorney's fees provision shall not be deemed merged into any judgment.