

## TERMS AND CONDITIONS OF SALE – DISTRIBUTOR/DEALER

### 1 ACCEPTANCE OF TERMS

By purchasing and accepting delivery of products supplied by Cell Marque (“Products”), you agree to be bound by these terms and conditions (the “Terms and Conditions”). Terms or conditions contained in any order form or other document submitted by you which are inconsistent with, or in addition to, these Terms and Conditions are rejected, objected to and shall be deemed void and of no force or effect. You shall have the non-exclusive right during the term of this Agreement to purchase Products for resale to end users within the authorized territory only. You shall not indirectly solicit or sell any Products to customers located outside of the authorized territory or to customers issuing purchase orders outside the authorized territory or to any party whom you have reason to know will sell the Products outside of the authorized territory. You shall refer to Cell Marque all orders or inquiries for the purchase of the Products which you may receive from customers located or issuing purchase orders outside of the authorized territory. Cell Marque and its affiliates reserve the right to sell any of the Products directly to customers within the authorized territory. You have no authority to, and shall not, appoint or utilize any agent, subagent, sub-distributor, or other person to promote the sale of the Products in the authorized territory or otherwise to perform any of your obligations hereunder, without Cell Marque’s prior written approval.

### 2 CHANGES AND RETURNS

Once submitted, any change(s) to your order(s) may be made only with advance written approval of Cell Marque and such changes may require different terms, including a change in the price and/or time of delivery. Once submitted, you may not cancel any order unless cancellation is expressly approved by Cell Marque in writing, which approval may be contingent on your payment of Cell Marque’s costs or other charges, including, cancellation costs imposed on Cell Marque by its suppliers, and any other costs resulting from cancellation. A verified bill of costs issued by an officer or other authorized representative of Cell Marque shall be conclusive as to the amount of such costs. Cell Marque reserves the right to cancel any order, in whole or in part, upon your breach of these terms and conditions or your bankruptcy, insolvency, dissolution, receivership proceedings, or upon the occurrence of any event leading Cell Marque to reasonably question your willingness or ability to perform.

Products may not be returned for credit except with Cell Marque's permission, and then only in strict compliance with Cell Marque's return shipment instructions. You must obtain advance written authorization from Cell Marque and a written return authorization document in the form then in use by Cell Marque, prior to returning any Products. Certain items and quantities may not be returned for credit or under any circumstances. These items include, but are not limited to: antibodies, reagents and standards which have passed their expiration dates; custom products or special orders; products missing labels, parts, or instruction manuals, if any; and Products removed from their original packaging. Any returned items may be subject to a 25% processing fee, which is subject to change at any time and without notice, and must be returned within 90 days of purchase.

### 3 DELIVERY, CLAIMS

All sales will be delivered Ex Works Cell Marque's shipping point unless otherwise noted. If shipping and handling charges are quoted or invoiced, they will include charges in addition to actual freight costs. Delivery of Products to the carrier at Cell Marque's shipping point shall constitute delivery to you

and you shall bear all risk of loss or damage in transit. Cell Marque reserves the right, in its sole discretion, to determine the exact method of shipment for any particular shipment. Cell Marque reserves the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve you of your obligations to accept remaining deliveries. Immediately upon your receipt of any Products shipped hereunder, you shall inspect the same and shall notify Cell Marque in writing of any claims for shortages, defects or damages and shall hold Products for Cell Marque's written instructions concerning disposition. If you fail to so notify Cell Marque within fifteen (15) days after the Products have been received by you, such Products shall conclusively be deemed to conform to the terms and conditions hereof and to have been irrevocably accepted by you.

#### 4 DELAYS

Any specified delivery dates are estimates only and do not represent a promise by Cell Marque to deliver Products at a date certain. Cell Marque shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Cell Marque's reasonable control, including, without limitation, vendor supply failures, personnel changes, shortages or delays, act(s) of you, embargo or other governmental act, regulation or request affecting the conduct of Cell Marque's business, fire, explosion, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, lightning, flood, windstorm or other acts of God, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies or power at current prices. If any such event continues for longer than 180 days, either party may terminate your order. In the event of delays in delivery or performance caused by force majeure or by you, the date of delivery or performance shall be extended by the period of time Cell Marque is actually delayed or as mutually agreed. If, for reasons other than the foregoing, Cell Marque should default or delay or not deliver Products, your sole remedy against Cell Marque is an option to cancel your purchase order, through prior written notice to Cell Marque.

#### 5 ALLOCATION OF PRODUCTS

If Cell Marque is unable for any reason to supply the total demands for Products specified in your order, Cell Marque may allocate its viable supply among any or all customers (including Cell Marque's distributors) on such basis as Cell Marque may deem fair and practical, without liability for any failure of performance which may result therefrom.

#### 6 PAYMENT AND INTEREST

Unless otherwise stated, payment in full shall be made within 30 days of invoice. Cell Marque reserves the right to require an advanced deposit of up to 100% of the purchase price at the time of order or any time prior to delivery as a condition of performance. If for any reason Cell Marque, in its sole and unfettered discretion, deems the ultimate collectability of the purchase price to be in doubt, Cell Marque may, without notice to you, delay or postpone the delivery of the Products and may, at its option, change the terms of payment to payment in full or in part in advance, with respect to the entire undelivered balance of Products. In the event of default by you in the payment of the purchase price or otherwise, Cell Marque, at its option, without prejudice to any other of Cell Marque's lawful remedies, may defer delivery, cancel your order and any other order of you, or sell any undelivered products on hand for the account of you and apply such proceeds as a credit, without set-off or deduction of any kind, against the agreed upon purchase price, and you agree to pay the balance then due to Cell Marque

on demand. You agree to pay all costs, including, but not limited to, reasonable attorney and accounting fees and other expenses of collection resulting from any default by you in any of the terms hereof. Invoices remaining unpaid after their due date will be subject to an interest charge of 1.5% per month (or the maximum rate allowed by law). You must pay all costs of collection on unpaid amounts, including (without limitation) attorneys' fees and related costs.

## **7 TAXES AND OTHER CHARGES**

Cell Marque shall not be responsible for the payment of any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between the parties, with the sole exception of any sales taxes invoiced and collected from you by Cell Marque. All other such charges (if any) must be paid by you separately and in addition to the prices quoted or invoiced. In the event Cell Marque is required to pay any such tax, fee or charge, you shall reimburse Cell Marque therefore; or, in lieu of such payment, you shall provide Cell Marque at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

## **8 PRICING AND PRICE CHANGES**

Any quotation provided by Cell Marque is firm only if you place a corresponding order within the time specified on the quote or, if no time period is mentioned, within 30 days. You must request shipment of the entire quantity of Products ordered within 6 months from the date of order, otherwise, Cell Marque's standard prices at time of shipment may apply, at Cell Marque's option, to future deliveries.

Shipment will be made promptly even if prices have been nominally increased. Price changes will be automatically applied to your invoice. Prices may be subject to change at any time and without prior notice.

## **9 COMPLIANCE WITH LAWS; GOVERNMENT REGISTRATIONS; RE-EXPORT OF THE PRODUCTS**

You will comply with all laws and regulations applicable to your business, your purchase and sale of the Products pursuant to these Terms and Conditions, and the performance of your obligations under these Terms and Conditions, including, without limitation, (i) compliance with all laws and regulations governing the export of goods or technology from the United States and governing international boycotts not sanctioned by the government of the United States; (ii) the registration of this Agreement, and/or the performance of any provision hereof, with any government authorities, (iii) the requirements of ISO 13485, and the relevant requirements of US federal law with respect to quality systems. You shall provide proof of such compliance upon Cell Marque's request. You agree that you will not re-export any Products without first obtaining the written approval of Cell Marque, which approval may be withheld by Cell Marque in its sole discretion, and all necessary governmental approvals as may be required by the laws of the United States. You agree that you will not re-export any Products to any countries that are currently banned, boycotted, or sanctioned by the United States government. You agree to obtain from you customers similar assurances regarding the re-export of Products.

If any governmental body with authority over medical devices contacts you to inquire about or investigate any of the manufactured by Cell Marque and distributed hereunder, you shall provide notice of such contact to Cell Marque within forty-eight (48) hours of receipt of the contact.

You bear responsibility of maintaining records, including customer communication. You bear the responsibility of providing records according to Cell Marque's investigation timeline in compliance with applicable law and for investigating all complaints and for compliance with the reporting requirements of the applicable government agencies. You shall at your own expense provide Cell Marque, without delay, with all information about Product failures, defects, performance characteristics or safety and all other necessary information with respect to the Products under applicable laws within the authorized territory and keep appropriate records which may be of any importance with respect to possible and actual incidents, suspected incidents, possible advisory notices, complaints, correction, removal and recalls. You shall also at your own expense provide Cell Marque without delay with all information pertaining to post-market surveillance. You have to establish a system that enables you to track which Products (identified by serial number) were sold to which customer. If a complaint or report of defect originates with a customer of Cell Marque, Cell Marque shall cooperate and use its best efforts in providing information to you to enable you to fulfill your obligations under this Article. You shall promptly inform Cell Marque of the results of each investigation of a complaint or report of defect, and shall promptly provide Cell Marque with a copy of any medical device report submitted to any governing body. You shall acknowledge receipt of and comply with any and all advisory notices provided by the Manufacturer. You shall maintain all documents and records for 8 years from the date of generation.

## 10 WARRANTIES

Cell Marque warrants that its products shall, at the time of delivery, conform to the description of such products as provided to you by Cell Marque through Cell Marque's specifications as found on the Product datasheet in effect at the time of delivery. **THIS WARRANTY IS EXCLUSIVE, AND CELL MARQUE MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY THIRD-PARTY PATENT OR INTELLECTUAL PROPERTY RIGHTS.** You shall extend such warranty to its customers in connection with sales of the Products; *provided, however*, that such Products have not in any way been altered by you and provided further that such Products are used in strict conformity with Cell Marque's specifications. Cell Marque's warranties made in connection with this sale shall not be effective if Cell Marque has determined, in its sole discretion, that you have misused the Products in any manner, have failed to use the Products in accordance with industry standards and practices, or have failed to use the Products in accordance with instructions, if any, furnished by Cell Marque. You hereby agree that you shall not alter the Products (nor the parts or components thereof) without the prior written authorization of Cell Marque, nor extend any warranty nor make any representations other than those stated herein. Cell Marque shall make the final evaluation and determination as to the existence and cause of any alleged defect. Cell Marque shall have no responsibility for the failure of any Products that, in the opinion of Cell Marque, has resulted from unauthorized modification, unauthorized repair, accident, abuse, or misapplication of the Products. Any additional warranty or representation given by you or any warranty given by you with respect to the Products that have been altered without prior written authorization of Cell Marque shall be void. Pressure Cookers are sold "as is" and shall be void from all warranties. **CELL MARQUE'S SOLE AND EXCLUSIVE LIABILITY AND YOUR EXCLUSIVE REMEDY**

WITH RESPECT TO PRODUCTS PROVED TO CELL MARQUE'S SATISFACTION TO BE DEFECTIVE OR NONCONFORMING SHALL BE REPLACEMENT OF SUCH PRODUCTS WITHOUT CHARGE OR REFUND OF THE PURCHASE PRICE, IN CELL MARQUE'S SOLE DISCRETION, UPON THE RETURN OF SUCH PRODUCTS IN ACCORDANCE WITH CELL MARQUE'S INSTRUCTIONS. CELL MARQUE SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND RESULTING FROM ANY USE OR FAILURE OF THE PRODUCTS, EVEN IF CELL MARQUE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, COST OF CAPITAL, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, ANY LIABILITY OF BUYER TO A THIRD PARTY, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY OR PROPERTY DAMAGE UNLESS SUCH PERSONAL INJURY OR PROPERTY DAMAGE IS CAUSED BY CELL MARQUE'S GROSS NEGLIGENCE. THE EXCLUSION OF SUCH DAMAGES AND/OR CLAIMS SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY ARISING FROM THE PURCHASE AND/OR THESE TERMS AND CONDITIONS. CELL MARQUE'S LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO CASE EXCEED THE CONTRACT PRICE FOR THE SPECIFIC PRODUCTS THAT GIVE RISE TO THE BREACH. THESE EXCLUSIONS AND LIMITATIONS ON DAMAGES SHALL APPLY REGARDLESS OF HOW THE LOSS OR DAMAGE MAY BE CAUSED AND AGAINST ANY THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY. ALL CLAIMS MUST BE BROUGHT WITHIN ONE (1) YEAR OF SHIPMENT, REGARDLESS OF THEIR NATURE.

## 11 YOUR USE OF PRODUCTS

Cell Marque's Products are intended primarily for in vitro diagnostic purposes or as stated on the product labeling; and unless otherwise stated on product labels, in the product datasheet in effect at the time of delivery, or in other literature furnished to you by Cell Marque, are not to be used for any other purposes. You expressly represent and warrant to Cell Marque that you or your customers will properly test or use any Products purchased from Cell Marque in accordance with: (i) the published specifications as found on the Product datasheet in effect at the time of delivery, (ii) practices of a reasonable person who is an expert in the field; and (ii) in strict compliance with all applicable laws and regulations, now and hereinafter enacted.

You assume the duty to warn your customers, employees, those associated with you, and any auxiliary personnel (such as freight handlers, etc.) of any risks involved in using or handling the Products. You agree to comply with instructions, if any, furnished by Cell Marque relating to the use of the Products and not misuse the Products in any manner.

**YOU AGREE TO INDEMNIFY CELL MARQUE AND ITS AFFILIATES, SUCCESSORS, FORMER AND CURRENT OWNERS, SHAREHOLDERS AND OFFICERS, FROM AND AGAINST ALL LOSSES, CLAIMS, DAMAGES, AND DEFENSE COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS), JUDGMENTS AND OTHER EXPENSES RELATING TO OR OUT OF A BREACH OF THIS SECTION 11.**

## 12 INDEMNIFICATION

You agree to indemnify and hold Cell Marque, their affiliates, officers, directors, employees, agents, successors and assigns harmless from and against all losses, damages or expenses of whatever form or nature, including reasonable attorneys' fees and other costs of legal defense, whether direct or indirect,

that they, or any of them, may sustain or incur as a result of any of your acts or omissions or any of your directors, officers, employees or agents, including, without limitation, (i) the failure to pay any amount when due hereunder or any other breach of any of the provisions of this Agreement, (ii) negligence or similar conduct, (iii) representations or statements not specifically authorized by Cell Marque herein or otherwise in writing, or (iv) violation by you (or any of your shareholders, officers, directors, employees or agents) of any applicable law, regulation or order in any jurisdiction including, without limitation, the United States.

### **13 PATENT DISCLAIMER**

Cell Marque does not warrant that the use or sale of the Products delivered hereunder will not infringe the claims of any United States or other patents covering the product itself or the use thereof in combination with other products or in the operation of any process.

### **14 CONFIDENTIAL AND PROPRIETARY INFORMATION**

The term “Confidential Information” when used herein means and includes all know-how, designs, drawings, specifications, catalogs, data sheets, sales bulletins and all other information, whether or not reduced to writing, relating to the Products, as well as any other information relating to the business of Cell Marque that may be divulged to you and that is not generally known in the trade.

You acknowledge that the Confidential Information comprises valuable trade secrets and is proprietary to Cell Marque. You shall hold the Confidential Information in strict confidence and shall not disclose the same to any other person, firm or corporation except as reasonably required to perform your obligations under these Terms and Conditions. The foregoing obligation shall not extend to information that is or becomes public through no fault of yours. You shall not use for any purpose other than implementation of your obligations pursuant to these Terms and Conditions.

You acknowledge and agree that neither these Terms and Conditions nor your activities hereunder establish or imply any transfer or concession whatsoever of the goodwill or trademarks or other industrial and/or intellectual property rights relating to the Products and you shall have no other rights to use the trademarks and trade names of Cell Marque, and that Cell Marque shall have exclusive right of ownership of all trademarks and trade names used in connection with the Products. You shall take all actions reasonably requested by Cell Marque to protect the rights of Cell Marque and its trademarks and trade names and shall not register or seek to register any such trademarks or trade names in any jurisdiction unless authorized in writing to do so by Cell Marque. You agree not to register or have registered any trademark which is identical or confusingly similar with Cell Marque’s trademarks and trade names in the authorized territory or elsewhere.

You acknowledge that irreparable harm may result to Cell Marque, its business and properties from any breach of this Section 14, and that in addition to any other rights and remedies available, Cell Marque shall be entitled to injunctive relief to enforce the provisions set forth in this Section 14. In the event that Cell Marque must take any legal action to enforce this Section 14, you expressly agree to be

responsible for the cost of such legal action, including attorneys' fees, and/or any expenses incurred by Cell Marque relating to such enforcement.

## 15 TECHNICAL ASSISTANCE

At your request, Cell Marque may, in Cell Marque's sole and absolute discretion, furnish technical assistance and information with respect to Cell Marque's Products. CELL MARQUE MAKES NO WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO TECHNICAL ASSISTANCE OR INFORMATION PROVIDED BY CELL MARQUE OR ITS PERSONNEL. ANY SUGGESTIONS BY CELL MARQUE REGARDING USE, SELECTION, APPLICATION OR SUITABILITY OF THE PRODUCTS SHALL NOT BE CONSTRUED AS AN EXPRESS WARRANTY UNLESS SPECIFICALLY DESIGNATED AS SUCH IN A WRITING SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF CELL MARQUE.

## 16 MISCELLANEOUS

Cell Marque's failure to strictly enforce any particular term or condition contained herein or to exercise any right with respect to your order shall not constitute a waiver of Cell Marque's right to strictly enforce such terms or conditions or exercise such right thereafter. All rights and remedies are cumulative and are in addition to any other rights and remedies Cell Marque may have at law or in equity. Any waiver of a default by you shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. If any of these terms shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. The section headings herein are for convenience only; they form no part of the Terms and Conditions and shall not affect their interpretation. These Terms and Conditions shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, successors and assigns.

## 17 GOVERNING LAW, DISPUTES

All disputes allegedly arising from the legality, interpretation, application, or performance of your order, the Products or any of these Terms and Conditions shall be governed by the laws of the State of California including its conflict of laws principles. Each party agrees that any dispute arising between them which results in either party instituting court proceedings shall be litigated in the Federal District Court for the Northern District of California if a basis for federal court jurisdiction is present and otherwise in the Circuit Court for the City of Sacramento. Notwithstanding the foregoing, nothing in this section shall prevent Cell Marque from bringing a claim in any court having jurisdiction over you to enjoin infringement of Cell Marque's trademark, patent or other intellectual property rights, or to prevent irreparable harm to Cell Marque. The parties agree to waive, to the fullest extent permitted by law, any and all rights to a trial by jury in connection with any dispute.

## 18 DISCOUNT SAFE HARBOR

Both Cell Marque and you agree to comply with Section 1128B(b) of the Social Security Act, commonly known as the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b). If and to the extent any discount, credit, rebate or other purchase incentive is applied by Cell Marque with respect to the Products purchased hereunder, such discount, credit, rebate or other purchase incentive shall constitute a

“discount or other reduction in price,” as such terms are defined under the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)(3)(A)) and the regulatory discount safe harbor (42 C.F.R. § 1001.952). You acknowledge that you may have an obligation to completely and accurately report, under Medicare, Medicaid or any other state or federal healthcare program which provides cost or charge-based reimbursement for the Products purchased hereunder, or as otherwise requested or required by a state or federal governmental agency, the net cost actually paid by you.