

**Contractual Terms for Purchases Made from
Hummingbird Scientific, LLC**

Effective March 2007

PLEASE READ THIS AGREEMENT BEFORE USING ANY HUMMINGBIRD SCIENTIFIC, LLC PRODUCTS. KEEP A COPY OF IT IN A SAFE PLACE. READ AND KEEP A COPY OF ANY ADDITIONAL HUMMINGBIRD DOCUMENTS GIVEN OR SENT TO YOU. ANY HUMMINGBIRD DOCUMENTS THAT SAY THEY BECOME PART OF YOUR HUMMINGBIRD AGREEMENT ARE PART OF THIS AGREEMENT IF YOU ACCEPT ANY OF THE SERVICES THEY DESCRIBE.

These contractual Terms apply to all Hummingbird Scientific, LLC Products.

1. SALE OF PRODUCTS/ SCOPE

- a. The sale of products, equipment, machinery, supplies, accessories, or services, including maintenance services (collectively "Product" or "Products") from Hummingbird Scientific, LLC ("Hummingbird") to original purchase ("Buyer"), its subsidiaries and divisions, and any entity controlling, controlled by, or under common control with it (collectively "Buyer") will be governed by these general terms and conditions of sale (the "Terms"). The Terms are the only agreement binding on Hummingbird, and the Terms expressly supersede and exclude the application of Buyer's general terms of purchase as well as any documents, quotations, acknowledgment or acceptance of purchase order forms, invoices, shipping papers, or other documents containing other or different terms, or any other agreements, whether in writing or oral, issued previously, now, or in the future by Buyer in relation, directly or indirectly, to the Product/s, unless specifically agreed upon in writing by Hummingbird. No course of dealing or usage of trade is applicable unless expressly incorporated in the Terms. Buyer's written acknowledgement, issuance of purchase order, acceptance of an offer of sale by Hummingbird, or delivery of Product/s, whichever occurs first, is acceptance of these Terms. Any proposal for additional or different Terms or any attempt by Buyer to vary in any degree any of the Terms is rejected. All such proposals are considered a material alteration of the Terms, and any additional, inconsistent, and/or different Terms will not become part of the contract between the parties. No modification or waiver of the Terms will be binding upon Hummingbird unless approved in writing by Hummingbird's president. Hummingbird's waiver of any breach or failure to enforce any of the Terms of this agreement at any time shall in no way affect, limit, or waive its rights hereafter to enforce strict compliance with this agreement of prior or subsequent rights.
- b. Hummingbird Products are not intended for resale.
- c. Any stenographic or clerical error may be corrected by Hummingbird.

2. LIMITED WARRANTY

- a. Subject to the limitations in these Terms, Hummingbird warrants to the Buyer (original purchaser), and not Buyer's buyers or any other third parties, that Hummingbird Products, will be free from significant operational defects in material and workmanship for a period of one (1) year from the date of sale as shown on the invoice unless otherwise specified. Hummingbird conveys only such right or title as it may have in the Product/s.
- b. Hummingbird's obligation under this warranty is limited to, at our option, repair, replace, or cause any necessary repairs to be made to, any defective part or parts, which shall be returned to us. See RETURN POLICY. A Warranty replacement or repair of a claimed defective Product shall not have the effect of extending this Limited Warranty period.
- c. This Limited Warranty is valid only if 1) purchaser notifies Hummingbird in writing within 10 days from discovery of any alleged nonconformity; 2) the Product/s are returned to Hummingbird for inspection and testing under a valid return authorization request; 3) Hummingbird's inspection discloses to its satisfaction that any alleged nonconformance is material and has not been caused by misuse, neglect, negligence, abuse, intentional torts, wear and tear, Buyer's improper installation, unsuitable storage, unauthorized repair, unauthorized alteration, accident, abuse, or alteration or modification of Product/s from the original configuration; 4) the Product/s were installed, maintained, and operated in accordance with Hummingbird instructions, if any; and 5) Buyer kept an accurate log of care and maintenance of Product/s.
- d. In case of shipping damage, the Limited Warranty does not apply.
- e. The Hummingbird Limited Warranty is subject to change without notice.

3. DISCLAIMER OF WARRANTIES

- a. **The Limited Warranty is made expressly in lieu of any and all other warranties, expressed or implied, including without limitation, any warranties of merchantability, fitness for a particular purpose, course of dealing, course of performance, usage of trade, specifications standard in the industry, accuracy, timeliness, completeness, description, quality, productiveness, or any other matter – said warranties being expressly disclaimed. All other such warranties not included in the Limited Warranty are specifically and expressly excluded. There are no warranties which extend beyond the description contained within the Limited Warranty.**
- b. Hummingbird's obligation shall not extend to defects that do not impair service.
- c. Hummingbird does not warrant that Product/s can be used for any particular purpose or with any particular process.
- d. Hummingbird does not warrant Product/s and assumes no liability, under the Limited Warranty, for Product/s resulting from misuse, neglect, negligence, abuse, intentional torts, wear and tear, Buyer's improper installation, unsuitable storage, unauthorized repair, unauthorized alteration or modification, accident, improper operation, or improper maintenance.
- e. Hummingbird is not responsible for any errors or omissions or for any loss or damage resulting from reliance on catalogues, samples, models, brochures, price lists, or other information provided to Buyer from Hummingbird, including without limitations to descriptions, shipping specifications, technical advice, illustrations, representations as to quality or capabilities (whether oral or in writing), or any other information unless otherwise set forth in these Terms.
- f. In addition, Hummingbird shall not be responsible to the original purchaser or any other party or parties for bodily damage, property loss, other damages, or injuries of any kind or nature through either direct or indirect use of the Product/s.
- g. Hummingbird is not responsible for any damages resulting from human or calibration error.
- h. Hummingbird does not warrant that Buyer shall be free from any rightful claim of third persons for Patent Infringement, by reason of the manufacture and sale of Product/s hereunder according to Buyer's specifications or by reason of Buyer's use of Product/s made to Buyer's specifications.
- i. Sale of Product/s, or any parts thereof, hereunder confers on Buyer no license under any patent rights of Hummingbird covering or relating to (i) the structure of any devices to which the Product/s or parts may be applied, or (ii) a process or machine in connection with which the Product/s may be used.
- j. These limitations of liability apply not only to the original purchaser (Buyer), but to anyone using the Product/s, to anyone making a claim on the original Buyer's behalf, and to any claims made by family, employees, purchasers, or others arising out of or relating to use of the Product/s.
- k. Non-payment, delinquent payment, or default of payment annuls any and all warranties.
- l. Under no circumstances shall Hummingbird be held responsible for the performance of Product/s to standards specific to the country of import which were not specifically noted on a written document from Buyer to Hummingbird and which were not accepted in writing by Hummingbird.

4. LIMITATION OF REMEDIES/ TIME FOR ACTION

- a. The remedies set forth in these Terms will be exclusive. Hummingbird will not be liable for any claims of any kind greater in amount than the purchase price of the Product/s from which the claims are made. In no event will Hummingbird be liable for costs associated with the purchase of substitute goods by the Buyer. Additionally, in no event, whether as a result of breach of contract or warranty, negligence, gross negligence, tort, or otherwise, shall Hummingbird be liable for any consequential, incidental, indirect, punitive, treble, special, punitive, or exemplary damage, including, without limitation, any and all costs, expenses, legal fees, losses (including without limitation economic loss, property damage, personal injury, death, anticipated or lost profits or revenues, loss of use of any equipment or goods, downtime costs, late or incomplete delivery costs), or any infringement of any copyright, patent, trademark, or design or the like (whether or not registered) based on the manufacture, use, or sale of any of the Product/s or components with regard to the Buyer or to any third party.
- b. Without limiting the generality of the foregoing, Buyer assumes all risk and liability for the results obtained by the use of any Product/s delivered hereunder in combination with other articles or materials or in the practice of any process, whether in terms of operating costs, general effectiveness, success or failure, and regardless of any oral or written statements made by Hummingbird, by way of technical advice or otherwise, with respect to the use of such Product/s. Any proceeding by Buyer for breach of Terms cannot be filed or maintained unless it is commenced within one year after the cause has accrued, Buyer has provided written notice to Hummingbird as provided in these Terms, and Buyer has paid in full all amounts owing to Hummingbird under these Terms.

5. INDEMNIFICATION

Buyer shall indemnify, defend, and hold harmless Hummingbird, its directors, officers, employees, agents, successors, and assigns from all losses, damages, costs, suits, claims, liens, or expenses (including reasonable attorneys' fees) of any kind incurred as a result of, or arising or resulting from: a) the use or disclosure of Hummingbird's confidential, technical, or proprietary information by Buyer or its contractors; b) advice furnished by Hummingbird to, and relied on by Buyer; c) trademark infringement, unfair competition, or patent infringement (whether direct or indirect) based on Buyer's furnished specifications or Buyer's use of the Product/s in an overall process or as an element in an overall combination; d) the use, storage, sale, processing, or other disposition of the Product/s, supplies, or materials used in connection with the Product/s, or parts manufactured with the Product/s, if the action or inaction of the Buyer, or its employees, customers, or agents, or the Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Hummingbird; e) damage done by Product/s to other equipment, property, or personnel; f) negligence of Buyer; g) any and all collection fees, legal fees, and costs which may be required in order to collect any overdue balances.

6. PRICE

The purchase price for Hummingbird Product/s will be the price for the Product/s in effect on the quotation issued most closely to the time of shipment, unless otherwise agreed upon in writing by the parties. Hummingbird may change prices and specifications without notice. Prices contained in Hummingbird issued quotations or proposals expire 30 days from the date of quotations and are subject to change or termination by notice during this period. Incorrect prices due to typographical errors are not binding on Hummingbird. Installation of Product/s is not included in the specified price.

7. PAYMENT TERMS/TITLE

- a. Invoices are payable to Hummingbird at the address set forth on the face hereof or as specified on the invoice. Any exchange charges or any charges for no-par clearance of checks will be charged to Buyer's account.
- b. Each shipment shall be considered a separate independent transaction, and payment therefore shall be made accordingly.
- c. Hummingbird may require Buyer to pay a good faith deposit of up to 90% of the total price of the Product/s (including services) or provide an irrevocable letter of credit in favor of Hummingbird in an amount determined by Hummingbird and from a bank approved by Hummingbird payable upon presentation of commercial invoice, packing list, or a bill of lading indicating delivery to carrier.
- d. The amount of any credit extended by Hummingbird to Buyer may be changed, and Hummingbird may withdraw such credit, at any time.
- e. Buyer is responsible for payment of all applicable sales and use taxes, excises, fees, applicable custom fees, duties, and charges in addition to any amounts that Hummingbird may be required to pay to any government (foreign, national, state, or local) with respect to the sale or transportation of any Product, except where the law expressly provides otherwise. Such amounts will appear as separate additional terms on the invoice as required by law to be billed and collected. If Buyer provides a valid tax exemption certificate, such tax will not be charged to Buyer.
- f. Invoices are payable upon receipt in US funds, in no event greater than 30 days from date of invoice, subject to credit approval.
- g. Hummingbird retains title to all purchased goods and equipment until the sale invoice is paid in full, at which time title will convey to the Buyer. Invoices are pro forma and do not convey title until paid.
- h. Hummingbird will not accept any obligation to re-bill or otherwise change mode of billing or responsibility for payment. This includes leasing companies or other parties who may wish to gain title to the goods or equipment.
- i. No installment or payment plans are expressed or implied.
- j. Buyer will be in default if it fails to pay any sum due to Hummingbird within payment terms granted or fails to timely perform any other obligation owing to Hummingbird. All amounts due to Hummingbird may be accelerated immediately upon Buyer's failure to pay invoices as required, and shipment of Product/s may be suspended or cancelled for such reasons. All costs related to past due collections including attorneys and/or court fees will be due from the Buyer. Interest may be charged by Hummingbird at the highest rate allowable by law until Hummingbird recovers all amounts due.
- k. In the event of bankruptcy or insolvency of Buyer or in the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Hummingbird shall be entitled to: (i) stop in transit or divert to itself any shipment in transit, (ii) cancel any order then outstanding, and (iii) in addition to any other remedies under law, receive reimbursement for its cancellation charges.
- l. Terms of payment are subject to change by Hummingbird at any time and from time to time.

8. SHIPPING TERMS

- a. Product/s will be delivered F.O.B. Hummingbird's facility.
- b. Unless otherwise agreed to in writing by Hummingbird, Buyer will be liable for payment of all freight, storage, cartage, handling, packaging, insurance, other similar charges, and installation charges. Buyer is liable for shipping costs both ways if Product is returned.
- c. Risk of loss or damage passes to Buyer upon the provision of the Product/s to the carrier, such carrier acting as Buyer's agent.
- d. Buyer is responsible for all loss, theft, mysterious disappearance, and damage due to fire, flood, wind, or any other cause while equipment is in Buyer's possession or in transit via any common or special carrier.
- e. All shipments will be insured for full new, replacement value of the Product/s purchased. Unless otherwise agreed to in writing,
- f. Loss by theft must be reported to the local police department and Hummingbird within 24 hours of occurrence, and a copy of the police report should be forwarded to Hummingbird immediately.
- g. In case of shipping damage, the Express Warranty does not apply. It is Buyer's responsibility to contact freight provider promptly and register a claim.
- h. All shipping dates are approximate. Hummingbird will attempt to fill and ship all orders to Buyer at the requested time of delivery, subject to Hummingbird's choice of transport and further subject to Hummingbird's present engineering and manufacturing capacity and scheduling. Hummingbird may revise delivery schedules at any time without liability and at Buyer's cost.
- i. In the event of any default by Buyer, Hummingbird may decline to make further shipments without in any way affecting its rights under such order. If, despite any default by Buyer, Hummingbird continues to make shipment, its action shall not constitute a waiver of any default by Buyer or in any way affect Hummingbird's legal remedies for any such default.
- j. If for any reason Buyer is not prepared to accept delivery of Product/s, Hummingbird may store the Product/s at Buyer's expense and risk in the name of Buyer, and such storage shall constitute shipment and delivery to Buyer.

9. ACCEPTANCE OF PRODUCTS

All drawings, specifications, technical documentations, samples, prototypes, and Product/s are approved and accepted by Buyer if Buyer does not provide Hummingbird a written objection and/or rejection within 5 days of receipt or other reasonable time established in writing by Hummingbird. Failure to provide written objection and/or rejection will constitute an irrevocable acceptance by the Buyer of the Product/s. All written objection and/or rejection must state with specificity all defects and non-conformities upon which Buyer will rely to support its objection and/or rejection of the Product/s. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SPECIFIED ARE WAIVED BY BUYER. If Buyer rejects the Product/s, Buyer will return the Product/s (in compliance with the Return Policy) to Hummingbird at Buyer's cost, within 10 days following authorization for return, or Buyer will have irrevocably accepted the Product/s. Hummingbird has a reasonable period of time to cure any non-conformity. In the event the Buyer returns the Product/s, Buyer is NOT relieved of any obligation or liability until Hummingbird evaluates the Product/s and/or validates the Buyer's claim(s). Hummingbird does not deliver replacement Product/s prior to evaluation and validation of non-accepted Product/s. No attempted revocation following acceptance will be effective, and Buyer will be limited to any available remedies specifically provided in the Terms of breach of warranty.

10. RETURN/REPAIR POLICY

- a. Products not authorized for return for refund include:
 1. Products not in completely resalable condition (including Products with damaged, missing, or defaced labeling or packaging) due to Buyer's fault.
 2. Products that have been used or are without the original labeling and operating manuals.
 3. Products purchased on a Special Order Basis.
 4. Products not purchased from Hummingbird.
 5. Discontinued Products.
- b. On occasion, it may be necessary to return to Hummingbird a Product/s or component for repair, exchange, replacement, or refund. And such return orders MUST be authorized by Hummingbird and received back by Hummingbird within 10 days of authorization.
- c. For return, a detailed description of problem or work required should accompany all Product/s.

- d. The Buyer must return all Product/s, manuals, and accessories prepaid to Hummingbird. Unless otherwise agreed to in writing by Hummingbird, Buyer will be liable for payment of all freight, storage, handling, packaging, insurance, or similar charges. Buyer assumes all liability for shipping damage due to improper handling, packaging, and or loss of Product/s by any special carrier. It is Buyer's responsibility to contact freight provider promptly and register a claim.
- e. Any used item MUST have a Decontamination Certificate completed and faxed to Hummingbird before authorization for return will be granted. Hummingbird will email you the form upon your request.
- f. Preparing Product/s or Component for Return Hummingbird