

## **General Terms and Conditions of Sale**

### **1. General.**

- 1.1. These General Terms and Conditions of Sale ("Terms of Sale") exclusively govern the sale by Seller of any Opentrons Labworks Inc. ("Opentrons") machines, robots, components, consumables, or other products, alone or in combination with any related software, basic support services, training, programming, maintenance, engineering, repair, or remanufacturing services (collectively referred to as the "Opentrons Products") and products manufactured by third parties for use with or in support of Opentrons Products ("Opentrons Partner Products") (collectively the "Products").
- 1.2. No addition or modification to these Terms of Sale will be binding on Seller unless agreed to in writing signed by an authorized representative of Seller. Seller objects to and rejects all other terms and conditions that may be proposed by Buyer or that appear on or are referenced in any of Buyer's purchase orders or requisitions that are in addition to or inconsistent with the terms and conditions set forth herein.
- 1.3. Buyer agrees, at the time of the order, to comply with these Terms of Sale. Buyer's receipt or acceptance of delivery of any of the Products ordered and purchased hereunder will constitute its acceptance of these Terms of Sale.
- 1.4. Subject to any additional terms and conditions agreed to in writing between Seller and Buyer, these Terms of Sale together with any written attachments and the written quotation or Order Form from Seller (if any) shall comprise in their entirety the terms and conditions of the contract entered into between Seller and Buyer.

### **2. Payment Terms.**

- 2.1. Unless explicitly amended by an attachment or other amendment hereto, all payments are due thirty (30) days after the date of any invoice. All payments shall be made by Buyer without any set-off, deduction, or withholding.
- 2.2. If Buyer fails to pay any amount due under these Terms of Sale, Seller shall be entitled to charge Buyer interest on such overdue amount at a rate of eight percent (8%) per annum above the prime rate of the principal bankers of Seller (or the maximum rate permitted by applicable law, if lower), until such time as Buyer pays the overdue amount and any accrued interest.
- 2.3. Seller may issue partial invoices and require progressive payments. Seller reserves the right to issue invoices electronically and to receive payment by way of electronic funds transfer.

### **3. Delivery, Risk of Loss, Title.**

- 3.1. Delivery of Products shall be made FCA (Incoterms, 2020) Seller's origin, unless otherwise mutually agreed. Title and risk of loss or of damage to the Products remains with Seller until the Products are loaded onto the Buyer-selected carrier's vehicle by Seller for shipment at Seller's origin, at which time title and risk of loss or damage transfers to Buyer. If Buyer has not designated a freight

carrier within twenty-four (24) hours after receiving notice that the Products are ready to ship, Seller will designate a freight-carrier on Buyer's behalf.

4. **Termination.**

- 4.1. If Buyer fails to materially perform any of its obligations under these Terms of Sale or if Seller reasonably believes that Buyer is or will become unable to pay its debts as they fall due, Seller may, at its discretion, terminate the sale of Products by written notice to Buyer.
- 4.2. Seller may repossess any Products held by Buyer for which payment in full has not been received.
- 4.3. Seller may demand immediate payment of all outstanding invoices and recover any unpaid invoices as liquidated damages.

5. **Warranty.**

- 5.1. **Warranty on Opentrons Products.** All Opentrons Products provided by Seller under these Terms of Sale are warranted to be free from defects in material and workmanship. This warranty period begins on the first day after acceptance and is limited to one (1) year from delivery of the Products when subjected to normal, proper, and intended usage to the extent permitted by law. This warranty applies only to the extent such failure to meet the warranty is due solely to a failure of the Products (as opposed to the integration into a Buyer system). If Buyer determines that a found defect is due solely to a failure of the Products, during the warranty period, it will promptly make a warranty claim to Seller. No warranty claims shall be admissible unless submitted in writing to Seller within five days after the time of discovery of the defect or after the defect should have been discovered, whichever time comes first, it being understood that the Buyer shall take reasonable care to discover any defect of whatever nature as soon as possible after taking delivery. Upon written request from the Buyer, Seller shall repair or replace, all parts which become defective if determined to be due to bad material, faulty design or poor workmanship. Seller is responsible only for the cost of repair or replacement of defective parts. All returned parts which are replaced shall become the property of Seller. Buyer's exclusive remedy and Seller's sole obligation for non-conforming Products during the warranty period is limited to repairing or replacing the non-conforming Product(s), or providing Buyer a refund for the non-conforming Products, at Seller's sole option. This warranty extends only to the original Buyer of the Opentrons Products, and is not transferable to any subsequent owner or purchaser of the Products, except as explicitly agreed to in writing by Opentrons.
- 5.2. **Limitation of Warranty on Opentrons Products.** The Opentrons Products warranty expressly does not cover consumable parts, damage caused by normal wear, faulty maintenance performed, failure to observe the operating instructions, and due to other reasons for which Seller is not responsible. The Opentrons warranty and associated Opentrons Products performance specifications shall be voided if: (i) the Opentrons Products are used with non-Opentrons tips; (ii) Buyer makes any further use of the Products after giving notice of a warranty claim; (iii) a defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning,

use or maintenance of the Opentrons Products; (iv) Buyer sells, assigns, loans, leases, or otherwise transfers the Opentrons Products or any rights to use the Opentrons Products to a third party unless explicitly approved in writing by Opentrons prior to the transfer; or (v) Buyer disassembles or alters the Opentrons Products outside of conducting routine maintenance as per Seller's instruction, without approval or instruction by Seller.

5.3. Warranty on Opentrons Partner Products. Opentrons Partner Products are limited to the warranty offered by their manufacturer and are not covered by this warranty.

5.4. Disclaimer of Warranty on Products. EXCEPT AS OTHERWISE STATED HEREIN, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

6. **Returns.**

6.1. Returns of Opentrons Products are governed by the Seller's return policy. Seller will not accept any returns unless Buyer follows all Seller return policy requirement and Seller instructions. Products returned for credit or refund may be subject to restocking charges and other conditions of return.

6.2. Returned Products must be properly packed and shipped to a Seller-specified location. Seller reserves the right to charge Buyer additional fees or to void the warranty for damage caused to Products due to improper packaging by Buyer.

6.3. Contaminated Products, including Products that have been exposed to radiation, are not eligible for return to Seller.

7. **Order Cancellation.**

7.1. Cancellation by Buyer prior to shipment is permitted only if agreed to by Seller in writing and only upon payment of reasonable cancellation and restocking charges, including reimbursement for direct costs.

7.2. No cancellation by Buyer of an order for cause will be effective unless and until Seller has failed to correct such alleged breach or default within forty-five (45) days after receipt of Buyer's written notice specifying such breach or default.

7.3. Seller has the right to cancel an order for cause at any time by written notice to Buyer, and Seller will be entitled to payment of cancellation and restocking charges from Buyer.

8. **Mutual Indemnification.**

8.1. Buyer and Seller (each, as applicable, an "Indemnifying Party") will indemnify and defend the other party, its respective affiliates, and each its and their respective directors, officers, employees, independent contractors and agents and their respective successors and assigns (collectively, the "Indemnified Party(ies)") from all third-party claims for death or bodily injury of any persons or

damage or destruction of real or tangible personal property, in any way resulting from the negligent or willful acts or omissions of the Indemnifying Party, its affiliates or any of its and their respective employees, subcontractors, agents or representatives. The Indemnifying Party will pay all agreed to settlements or finally awarded damages in connection with any such claims.

9. **Intellectual Property Indemnification.**

9.1. If a third party claims that any of the Opentrons Products provided to Buyer under these Terms of Sale infringe upon that party's United States patent or copyright, Seller will defend Buyer against that claim at Seller's expense, and pay all costs and damages that a court finally awards or are agreed upon in settlement, provided that Buyer (a) promptly notifies Seller in writing of the claim, and (b) allows Seller to control, and cooperates with Seller in, the defense of such claim and any related settlement negotiations. If such a claim is made or appears likely to be made, Seller agrees to use commercially reasonable efforts to secure the right for Buyer to continue to use the Opentrons Products, or to modify the Opentrons Products, or to replace the Opentrons Products with equivalents. In the event that none of the alternatives is reasonably available, Buyer agrees to return the Opentrons Products to Seller. Seller will give Buyer a refund of the amounts paid for the Opentrons Products that are returned to Seller under this section. This represents Seller's entire obligation to Buyer and Buyer's sole and exclusive remedy regarding any third-party claim of infringement.

9.2. Seller has no obligation regarding any claim of infringement which is based upon: (i) a claim covering any combination of equipment and/or software in which the Products are solely an element and such element by itself does not form a basis for the claim; (ii) a claim arising from any Product or Service not provided by Seller, including, but not limited to, Buyer's systems, or other systems including any portions thereof manufactured by a third party other than Opentrons; (iii) a claim arising from use of components manufactured, developed, or programmed at Buyer's request to Buyer's product specifications to the extent permitted by law; (iv) a claim arising from use of the Products in a manner or for a purpose not contemplated by these Terms of Sale; (v) a claim arising from those portions of the Products that are modified after shipment by any party other than Seller, if the alleged infringement relates to such modification, or directly or indirectly combined with any non-Opentrons equipment, products, processes, or materials where the alleged infringement relates to such combination; (vi) a claim where the alleged infringing activity continues after Seller has notified Buyer thereof or after Seller has informed Buyer of modifications that would have avoided the alleged infringement; or (vii) a claim arising from an Opentrons Partner Product.

10. **Restrictions on Opentrons Flex Absorbance Plate Reader.** Currently, the Opentrons Flex Absorbance Plate Reader ("Plate Rader") may not be offered, used or put on the market in any of the Contracting States of the European Patent Convention (e.g. the E.U., Iceland, Norway, UK, Switzerland), due to a third-party patent application (EP 4078144) and German Patent DE102019134846. Buyer shall not import, use, or put the Plate Reader on the market in any European Patent

Convention States. Buyer will be solely liable and will indemnify Seller for any third-party claims that arise from such actions.

11. **Limitation of Liability.**

- 11.1. Except as set forth in this Section 10, Seller shall not be liable to Buyer for any cumulative direct damages under these Terms of Sale in excess of the aggregate payments for Products received by Seller from Buyer hereunder.
- 11.2. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, COMMERCIAL LOSS, LOSS OF BUSINESS, LOST PROFITS OR LOST REVENUES), OUT OF OR IN CONNECTION WITH THESE TERMS OF SALE REGARDLESS OF THE THEORY OF LIABILITY AND EVEN IF A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.3. These limitations of liability apply even if any remedy specified herein is found to have failed of its essential purpose.

12. **Publicity.**

- 12.1. Buyer consents to Opentrons's use of Buyer's name and mark as an Opentrons customer for marketing purposes.

13. **Governing Law and Venue.**

- 13.1. These Terms of Sale shall be construed and governed by the laws of the State of New York without regard to any conflicts of law provisions or rules. Claims arising under or related to the Terms of Sale or the Products must be brought in the initiating party's individual capacity, not as a plaintiff or class member in any class action or similar proceeding. The Parties hereby agree and submit to the exclusive jurisdiction of the state or federal court in New York County of the State of New York, USA, where there is proper venue, for any and all disputes, controversies, and/or claims arising out of or relating to this Agreement or the transactions contemplated herein.

14. **Assignment and Resale.**

- 14.1. The rights and obligations derived from these Terms of Sale are personal to the parties, and neither party may assign these Terms of Sale or any of its licenses, rights, interests, claims or obligations under these Terms of Sale without the prior written consent of the other party. Notwithstanding the forgoing, each party may assign these Terms of Sale or their rights, interests, claims or obligations hereunder to a successor in interest to all or substantially all of its business assets, provided that such successor shall expressly assume in writing the obligation to perform in accordance with these Terms of Sale. These Terms of Sale shall be binding upon and shall inure to the benefit of the parties and their respective successors, representatives, and permitted assigns.
- 14.2. Buyer may not resell, assign, loan, lease, or otherwise transfer Opentrons Products without written consent from Opentrons.

15. **Waiver.**

15.1. No waiver by either party, or any failure by the other party, to keep or perform any provision, covenant or condition set forth in these Terms of Sale shall be deemed to be a waiver of any preceding or succeeding breach of the same or of any other provision, covenant, or condition. Any waiver to be granted by either party shall not be effective unless it is set forth in a written instrument signed by the party granting the waiver.

**16. Force Majeure.**

16.1. Seller shall not be liable for any loss, damage or delay arising out of its failure (or that of its subcontractors) to perform hereunder due to causes beyond its reasonable control, including without limitation, acts of God, war or terrorism, pandemics, shortage of power or materials, or any law or actions of any federal, state, or local government. If Seller ceases to perform its obligations under these Terms of Sale for any such event, Seller shall promptly notify Buyer of the event and take all reasonable steps to re-commence performance of its obligations as soon as possible.