

# **CEPHEID GENERAL TERMS OF SALES**

## **1 - GENERAL**

**1.1** Any Cepheid quotation to the Customer (the “Quotation”) includes the present General Terms of Sales and its attachments (the “Terms”) by reference. The supply of any reagent product offered by Cepheid, including any ancillary consumable product, and / or any Cepheid / GeneXpert instrument, including accessories and any services, whether associated therewith or not (collectively the “Products”), shall be subject exclusively to the provisions of the following documents, and in the following order of precedence:

- (a) Cepheid Quotation to the Customer;
- (b) the Terms;
- (c) Cepheid written Purchase Order acceptance confirmation;
- (d) the purchase order placed by the Customer (the “Purchase Order”).

The above documents shall constitute the “Agreement”.

If an agreement for distribution of Products has been signed between the Customer and Cepheid, such agreement shall prevail.

**1.2** Cepheid Quotations shall be valid for ninety (90) days from their respective dates.

**1.3** A Purchase Order cannot be considered accepted until Cepheid has issued a written Purchase Order acceptance confirmation.

Any change to the Agreement requires Cepheid written confirmation to be contractually binding.

**1.4** Under no circumstances shall Customer’s general purchasing conditions apply to the Agreement. After Customer receives the present Terms, they shall automatically apply to any subsequent purchase order by the Customer.

## **2 – DELIVERY OF PRODUCTS**

**2.1** Delivery conditions of Products are mentioned on the Quotation, Purchase Order confirmation, delivery note and / or invoice. If not, Cepheid Products are sold “Ex-Works, Cepheid warehouse, Incoterms 2020. The Customer is responsible for all transport and handling fees, assembly and insurance costs, customs duty and taxes, from the moment the Products leave Cepheid warehouse.

**2.2** Cepheid shall use reasonable efforts to effect the shipment of Products on or before quoted or estimated dates, but makes no representation, warranties or guarantees as to shipment or delivery dates. Any delay in shipment and / or delivery dates do not give the Customer the right to cancel the Purchase Order in progress, refuse any Product or claim for any compensation.

## **3 - ACCEPTANCE, CLAIMS AND RETURNED PRODUCTS**

**3.1** Upon delivery, the Customer must, in the event of loss or spoilage, take all the necessary steps and accomplish all the necessary formalities with the carrier and inform Cepheid. Reservations expressed on receipt of the Products must be communicated in writing to Cepheid within two (2) working days of delivery to be acceptable.

**3.2** Any reagent Product shipped by Cepheid in damaged packaging, or with damage to the Reagent Product's container, in each case that compromises the integrity of the Reagent Product, may be returned to Cepheid. Any Product shipped by Cepheid in error shall be purchased by Customer (unless Cepheid informs Customer that it does not agree to sell such Product to Customer) or returned to Cepheid unused, in its original packaging, and in its original condition. To reject or return a Product described in this section, Customer must notify Cepheid in writing of the reason for the rejection or return within two (2) working days of receipt of the Product, obtain a Return Material Authorization number, and promptly return the Product to Cepheid, freight collect. Except with respect to Products shipped in error, Cepheid shall promptly repair or replace the Product with conforming Product or return the purchase price of the Product (which return may be in the form of a credit). Any Products not properly and timely rejected and/or returned in accordance with this section, including Products shipped in error, shall be deemed accepted by Customer, and Customer shall be invoiced accordingly. Except as expressly set forth in this section, all sales are final, and Products are not returnable or refundable.

#### **4 – USE OF PRODUCTS**

The Customer agrees to: (i) use any Product solely for the Customer own use and not sell or redistribute any Product to a third party; (ii) maintain, use, and store the Product as provided in their manuals or labeling; (iii) not misuse or abuse any Product.

#### **5 – TITLE AND RISK OF LOSS**

Title and risk of loss with respect to all Products except software, and risk of loss with respect to software, shall pass from Cepheid to the Customer upon delivery, as defined in the applicable Incoterm.

#### **6 – PRICES – PAYMENT – TAXES**

**6.1** Products are quoted “Ex-Works” and are invoiced at the prices and rates in force as at the date the Products leave Cepheid warehouse. Prices are exclusive of all taxes and of any recycling costs and expenses of the Products, and are under standard packaging; any special packaging is invoiced in addition.

**6.2** Payment conditions are mentioned on the Quotation, order confirmation and / or invoice. If not, Products are payable net 30 days from date of invoice, with no discount, by bank transfer.

In the event of late payment or default of payment, the whole amount becomes immediately due and payable, and Cepheid reserves the right to suspend the execution of any of its obligations until the arrears have been paid, or to cancel the sale within eight days from the date of receipt by the Customer of notice to pay served by registered letter. In addition, all sums due will automatically accrue interest from the date the payment was due, fixed at three times the legal interest rate in force in France.

In the event of any dispute concerning the supply of Products, the Customer cannot use this as a pretext for suspending any payment.

**6.3** In addition to the price, the Customer must pay for all taxes and fees imposed on the provision of the Products, including without limitation any governmental charges imposed on Cepheid relating to the Products and all shipping and handling, freight, insurance, and other services. The Customer shall be responsible for and shall reimburse Cepheid for any taxes imposed by any federal, state, or local governmental jurisdiction on the Products shipped to or located at Customer's facilities, including but not limited to sales, use, excise and property taxes, and any withholding tax.

**6.4** Cepheid and the Customer both recognize that there is a risk of wire fraud when individuals impersonating a business demand immediate payment under new wire transfer instructions. To avoid this risk, both Cepheid and the Customer agree that transfer instructions provided in Cepheid invoice will apply. In the event that there is a change in the wire transfer instructions, both Parties must agree to an updated wire transfer, in writing, using the Business Contact listed in the Quotation, before any monies will be transmitted using the new wire instructions. Both Parties further agree that they will never change wire transfer instructions by email. Further, both Parties agree that they will never require an immediate payment under the new instructions. The Parties will provide for a ten (10) business day grace period to verify any wire transfer instruction changes before any outstanding payments would be due using the new instructions.

## **7 – WARRANTY – RESPONSIBILITY**

Subject to the below exceptions and conditions, Cepheid warrants to the Customer, for a period of 12 months from shipment, that the Products (except reagent Products) provided under the Agreement shall (i) be free from defects in material and workmanship, (ii) conform in all material respects with published applicable specifications and (iii) are free of liens and encumbrances when shipped.

The warranty on reagents Products are valid until the date of expiry stipulated on the Product or in the documentation.

The warranty is restricted to replacement or repair of parts, all other forms of compensation are formally excluded. Replacements under the warranty do not extend the original duration of the warranty.

Cepheid does not warrant any defects in any GeneXpert instruments caused by: (a) improper use, installation, removal, or testing; (b) Customer's failure to provide a suitable operating environment for the GeneXpert instruments; (c) use of the GeneXpert instruments for purposes other than that for which they were designed; (d) unusual physical or electrical stress; (e) modifications or repairs performed by anyone other than Cepheid or a Cepheid authorized service provider; or (f) any other abuse, misuse, or neglect of the GeneXpert instruments. It is Customer's responsibility to determine, and Customer shall assume the risk for the suitability of Products for Customer's use of the Products in compliance with all applicable laws, rules, regulations, regulatory guidance, and industry codes, including, without limitation, any Social Security regulation and abuse laws (collectively, "Applicable Law"), the Products' labeling, inserts, and manuals, and other Product-related information and materials published by Cepheid or any regulatory authority. This warranty extends to Customer only, and not to any other third party.

The warranty in this section is provided in lieu of all other warranties, express or implied, and are the Customer exclusive remedies relating to performance of the Products. Cepheid disclaims all other warranties, including without limitation, any warranty about the merchantability of the Products, or fitness for a particular purpose.

## **8 – LIMITATION OF RESPONSIBILITY**

**8.1** To the fullest extent permitted by the applicable law, in no circumstance or event shall Cepheid be liable to the Customer or to any third party for consequential damages, including without limitation, loss of : production, revenues, business, profit, use, data, software, goodwill, reputation, opportunity, anticipated savings or margin, whether direct or indirect, arising out of or in connection with the Agreement or any other related contract, or with the use of or inability to use any Product, or for any error or defect in any Product, whether such liability arises from any claim based upon contract,

warranty, tort (including negligence), strict liability, under an indemnity or otherwise, and whether or not Cepheid has been advised of the possibility of such loss or damages. The Parties have agreed that these limitations shall survive and apply even if any limited remedy specified in the Agreement is found to have not met its essential purpose.

**8.2** To the fullest extent permitted by the applicable law, in no event shall Cepheid liability to the Customer, arising out of, relating to, or in connection with the Agreement, from all causes of action and under all types of liability, exceed the actual amount paid by the Customer to Cepheid under the Agreement during the twelve months preceding the date that the claim first accrued. This liability limit is cumulative and all damages paid to the Customer under the Agreement shall be aggregated in calculating the satisfaction of Cepheid's liability limit.

**8.3** No action arising out of the Agreement or any transaction pursuant to the Agreement, may be brought by the Customer more than one year after the date the cause of action accrued.

**8.4** Nothing in the Agreement shall operate to exclude or restrict Cepheid's liability to the Customer for death or personal injury resulting from Cepheid's negligence or a person for whom it is vicariously liable, for fraud or fraudulent misrepresentation for whom Cepheid is liable, and for any matter for which it is not permitted by law to exclude or limit, or attempt to exclude or limit, its liability.

**8.5** The Customer shall indemnify Cepheid from and against all costs, expenses, liabilities, losses and damages incurred by Cepheid and / or the Customer as a result of the Customer's use or possession of the Products.

**8.6** The exclusions from, and limitations of, liability set out in this section shall be considered severally. The invalidity or unenforceability of any one sub-section or section shall not affect the validity or enforceability of any other sub-section or section and shall be considered severable from each other.

## **9 – FORCE MAJEURE**

Except for payment obligations hereunder, neither Party shall be liable for any delay or failure to perform under the Agreement due to causes beyond a Party's reasonable control, such as but not limited to acts of God, war or other hostility, acts of terrorism, civil disorder, the elements, flood, fire, pandemics or epidemics, shortage of supplies, infrastructures or transportation, power failure, equipment failure, industrial or labor dispute, embargo, law, rule, regulation or action by any governmental authority, national, regional or global emergency. In the event of any such delay or failure to perform, Cepheid shall have additional time within which to perform Cepheid's obligations under the Agreement as may be reasonably necessary under the circumstances. Despite anything to the contrary in the Agreement, Cepheid may apportion Product subject to a shortage in any manner Cepheid considers equitable.

## **10 - CONFIDENTIAL INFORMATION**

**10.1** The Customer acknowledges that in its relationship with Cepheid and/or by virtue of the performance of the Agreement, it and/or its employees, shareholders, officers, directors, principals, agents and contractors (collectively, "Representatives") will be and shall hereafter continue to be entrusted with Confidential Information, the disclosure of any of which to competitors of Cepheid or to the general public would be highly detrimental to the best interests of Cepheid. The Customer further acknowledges that the right to maintain confidential such Confidential Information constitutes a

proprietary right of Cepheid, which Cepheid is entitled to protect. Accordingly, and notwithstanding anything to the contrary herein expressed, the Customer covenants and agrees with Cepheid:

- (a) that it shall not use or copy, or permit the use or copy of any of the Confidential Information, directly or indirectly, for any purpose other than the discharge of its duties and obligations under the Agreement;
- (b) that it will maintain the absolute confidentiality of the Confidential Information and that it will not (without the prior written consent of Cepheid) either individually, or in partnership or jointly, or in conjunction with any other person, as principal, agent, shareholder, or in any manner whatsoever, disclose, reveal, release, utilize, sell, assign, supply, or transfer to any person at any time, any of the Confidential Information, except to the extent necessary to discharge its duties and obligations under the Agreement and only in the best interests of Cepheid;
- (c) that it will take all necessary action and will do all that is reasonably within its power to prevent the disclosure, release or supply of any of the Confidential Information to any person, including by any of its Representatives, except to the extent necessary to discharge its duties and obligations hereunder and only in the best interests of Cepheid;
- (d) in furtherance of the above, the Customer will advise its Representatives, and any other persons who are given access to the Confidential Information, of the confidential and proprietary nature of the Confidential Information and of the restrictions imposed by the Agreement and, if appropriate, shall require each of them to signify in writing their agreement to abide by the terms of the Agreement and maintain the confidentiality of the Confidential Information. Notwithstanding any such agreement, by any of such Representatives, the Customer acknowledges that it shall be fully responsible and liable to Cepheid for any and all damages and costs (including legal fees) suffered or incurred by it as a consequence of any breach by any of the Customer's Representatives, and/or any other persons given access to the Confidential Information, of the restrictive covenants contained herein.

The Customer acknowledges that the restrictions contained in this Section 10 are reasonable and valid and necessary for the protection of the business and operations of Cepheid and that any breach of the provisions will cause Cepheid substantial and irreparable harm which may not be adequately compensated for by monetary award of damages to Cepheid. Accordingly, it is expressly agreed by the Customer that in the event of any such breach, in addition to any other remedies which may be available to it, Cepheid shall be entitled to and may seek an order for specific performance and other injunctive and equitable relief as may be considered necessary or appropriate to restrain or enjoin the Customer from any further breach of the terms hereof and the Customer hereby waives all defenses to the strict enforcement by Cepheid of the restrictions herein.

**10.2** Cepheid may collect and process personal data of the Customer in the course of the administration and performance of the Agreement. Where Cepheid collects and processes such personal data, the Parties agree to comply with the terms set out in the Technical Support and Maintenance - Data Protection Agreement available on the Cepheid Website at this address <https://www.cepheid.com/en/systems/data-processing-agreement> (the "Data Protection Agreement"). Cepheid may, from time to time need to update the Data Protection Agreement to reflect changes in law, operational process or approach. No updates will result in adverse effects on the adequate level of data protection as prescribed by the applicable data protection laws. Where Cepheid updates the Data Protection Agreement, it shall notify the Customer in writing and such update shall become binding on the parties within [30] days of such notice. If the Customer disagrees with the updates, it can notify Cepheid in writing within the above notice period. In such a case, Cepheid will

not perform any services, maintenance or support for the Customer on any Cepheid products.

## **11 – INTELLECTUAL PROPERTY - PATENTS**

**11.1** The technical and commercial nomenclatures, recommendations, test results, catalogues, brochures, instructions for use, records at the AFSSAPS (French drug authority) and / or any other drug authority remain the property of Cepheid. Consequently, the Customer will refrain from distributing or reproducing such documents in any way without the prior written agreement of Cepheid.

**11.2** Cepheid shall settle or defend any suit or proceeding brought against Customer if and to the extent the suit or proceeding is based on a claim that any Cepheid Products as sold directly infringe any issued patent. Subject to conditions and exceptions defined hereafter, Cepheid shall pay damages and costs finally awarded against Customer on account of any actual infringement. Customer shall: (i) within ten days after receipt by Customer of a communication, notice, or other action relating to an alleged infringement, inform Cepheid in writing of the event and furnish to Cepheid a copy of any communication; and (ii) give Cepheid all authority (including the right to exclusive control of the defense of any suit or proceeding), information and assistance necessary to settle or defend the suit or proceeding. Cepheid shall not be bound in any manner by any settlement made without its prior express written consent. In the event Cepheid Products are held to constitute infringement and their use is enjoined, Cepheid may, at its option: (a) obtain for Customer the right to continue using the Cepheid Products; (b) modify the Cepheid Products so that they become non-infringing; or (iii) remove the Cepheid Products and grant Customer a credit. Cepheid has no obligations under this section if the alleged infringement arises out of: (1) Cepheid's compliance with Customer's specifications; (2) Customer's addition to or modification of a Cepheid Product; or (3) Customer's use of a Cepheid Product with products provided by parties other than Cepheid. Cepheid's obligations under this section do not apply to any alleged infringement occurring after Customer has received notice of the alleged infringement unless Cepheid subsequently gives Customer express written consent for the continuing alleged infringement. Cepheid shall not be liable for any incidental or consequential damages arising out of a patent infringement. Cepheid's liability hereunder shall not exceed the purchase price paid by Customer for the allegedly infringing Cepheid Products. The foregoing states the sole and exclusive liability of Cepheid with respect to patent infringement and is in lieu of any and all other warranties, expressed or implied, in regard thereto.

## **12 – REGULATORY REQUIREMENTS**

The Customer acknowledges its obligation to inform the Customer employees, consultants and associates who will use the Products of Cepheid's labeling literature and related notices that Cepheid provides to the Customer.

## **13 – EXPORT CONTROL**

When authorizations or formalities are required, especially concerning imports and export controls, for importing into the destination country or for the payment of the Products sold, obtaining these authorizations or accomplishing these formalities in a timely manner is the entire responsibility of the Customer.

## **14 – COMPLIANCE WITH LAWS**

Each party represents and warrants to the other party that it shall perform its obligations under the Agreement, and the activities contemplated hereunder, including any use or distribution of the Products,

in compliance with Applicable Law, the Products' labeling, inserts, and manuals, and other Product-related information and materials published by Cepheid or any regulatory authority. Customer shall indemnify and hold Cepheid from and against all losses, liabilities, and expenses (including reasonable attorneys' fees and costs) to the extent arising from any breach of the foregoing.

## **15 – APPLICABLE LEGISLATION AND LITIGATION**

**15.1** The Agreement shall be governed by and interpreted under the law of Kenya.

**15.2** If a dispute arises in relation to the Agreement the Parties shall first attempt to settle the matter by negotiation. If the Parties are unable to settle the dispute within fourteen (14) days after written notice of the dispute has been sent by either Party to the other Party, the dispute shall be settled by the competent Courts of Nairobi, Kenya.