



MesaLabs

TERMS AND CONDITIONS FOR SALE OF INSTRUMENT PRODUCTS

1. DEFINITIONS

1.1. In these Terms and Conditions:

“**Company**” means [*Mesa Canada Inc. /Mesa Laboratories, Inc.*];

“**Conditions**” means the terms and conditions set out herein;

“**Customer**” means the person or firm who purchases the Products from the Company;

“**Delivery**” means the Company making the Products available to the designated carrier as provided in Section 4.1 of these Conditions;

“**Due Date**” means the date for payment for the Products stated in Section 3.5 of these Conditions;

“**Party**” means the Company or the Customer individually, and “**Parties**” means both of them collectively; and

“**PO**” means a written purchase order for Products which is issued by the Customer and accepted by the Company.

“**Products**” means any one of the following products or services:

- Cold Chain Packaging supplies (components, materials, etc.);
- Calibration or Validation or Process Validation Equipment and NIST Traceable Solutions for Lab, process or in-field use;
- Medical Devices;
- Process and Product Continuous Monitoring Equipment.

2. CONTENT OF CONDITIONS

2.1. Unless otherwise agreed in a writing executed by the Parties, every sale of Products by the Company to the Customer shall be governed by these Conditions.

2.2. No modification, change or amendment to these Conditions shall have effect unless expressly agreed to in a separate writing executed by the Parties, specifically referencing these Conditions.

2.3. If there is any conflict between these Conditions and any terms or conditions contained in any quote, PO, or other document, these Conditions shall prevail.



3. BASIS OF SALE; PRICES; PAYMENT

3.1. Purchase and sale of Products hereunder shall be made only pursuant to a PO. No PO will be deemed accepted by the Company unless and until the Products are shipped by the Company to the Customer.

3.2. The prices of the Products shall be those set forth on a Company quotation ("**Quote**"). If an order is made by the Customer and accepted by the Company without a Quote being issued, then the price of the Products shall be as set forth on the Company's standard price list, as of the date the order is received by the Company.

3.3. Notwithstanding anything contained herein to the contrary, the Company is not obligated to accept any order or PO from the Customer.

3.4. Customer shall be responsible for all taxes, duties, fees or other charges of any nature (including, but not limited to consumption, import, property, sales and value added taxes).

3.5. Customer shall pay all invoiced amounts for the Products in [**Canadian**][**US**] Dollars, without set-off or deduction, within thirty (30) days from the invoice date. The time for payment shall be of the essence. The Company reserves the right at the Company's discretion to withdraw or refuse any credit facilities and require payment in advance for orders placed by the Customer.

3.6. If the Customer fails to make any payment as and when due, then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

3.6.1. suspend any further deliveries to the Customer; and/or

3.6.2. charge the Customer interest on the amount unpaid at the rate of eighteen percent (18%) per annum until payment in full is made.

3.7. Shipping and handling charges may apply in an amount to be determined by Mesa in its discretion.

4. DELIVERY; TITLE; RISK OF LOSS

4.1. The Company will ship all Products via EXW (ExWorks Incoterm 2010 definition) to the Customer's address stated in an applicable order form. For the avoidance of doubt, the Company will arrange for carriage of the Products from its place of business through a carrier designated by Customer. If Customer does not designate a carrier, then the Company will designate one. The Company fulfills its obligation to deliver the Products, and delivery is deemed made when the Products have been made available to the designated carrier at the Company's place of business ("**Delivery**").

4.2. Delivery dates and times stated by the Company are approximate, and such dates and times for Delivery shall not be deemed of the essence.



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4.3. Title and risk of loss of the Products shall pass to the Customer upon Delivery.

5. INSPECTION; ACCEPTANCE/REJECTION

5.1. It is the responsibility of the Customer to inspect the Products upon receipt. Customer shall notify the Company, within five (5) business days of receipt, of any nonconforming Products, damage to the Products, or any shortfall (or excess) in the quantity of Products delivered. If the Customer does not notify the Company within such 5-day period, then the Products shall be deemed to be in accordance with the order and accepted by the Customer.

5.2. Customer shall ship the nonconforming, damaged or excess Products (as the case may be) to the Company, contemporaneously with sending the notice referenced in Section 5.1, above. Upon receipt of such Products, the Company shall, at its option, with reasonable promptness, either repair or replace any nonconforming or damaged Products, and shall refund the price paid by the Customer, if any, for any excess quantity of Products.

5.3. With respect to the Process and Product Monitoring equipment that requires installation by Mesa, refer to the Inspection, Acceptance / Rejection terms in the Master Sales and Service Agreement.

6. RETURN/REFUND POLICY / CANCELLATION POLICY

6.1. All Products returned to the Company must be in original condition and will be accepted by the Company only after it issues a Returned Goods Authorization. The returned Products must be returned in its original packaging within thirty-days (30) after Delivery, and must be accompanied by a written certification from Customer that they had not been used and, unless they are defective, the returned Products are in salable condition. If Customer cancels a PO for Products later than 30 business days after the date of the Customer-signed PO, Customer shall be charged a cancellation fee equal to 30% of the total order value (not including shipping fees, taxes, etc.). Company will issue an invoice to Customer for such cancellation fee.

6.2. Customer shall return the Products at its own cost and expense, with all freight being prepaid.

6.3. All returned Products, except non-conforming or defective Products, shall be subject to, and Customer shall be liable for a thirty percent (30%) re-stocking fee.

6.4. Invoice charges shall include (i) applicable taxes unless a proper tax exempt certificate is provided to Company and (ii) shipping costs at applicable rates unless Customer provides Company with a Customer shipping account to be charged.

6.5. Any Company Installation and qualification charges are not refundable.



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7. SOFTWARE LICENSE

7.1. If the Product that Customer purchased has a software component in it ("**Software**"), then:

7.1.1. Customer acknowledges that the Software is proprietary to Company and Customer will not use the Software on or in connection with equipment or systems other than the Product(s). Company shall retain all title, copyright and other proprietary rights in the Software and any modifications or translations thereof. Customer shall acquire only the limited license to the Software granted under the express terms of Section 7.1.2 below.

7.1.2. Company hereby grants to Customer a fully paid up, non-transferable, non-exclusive license to the extent necessary to use, access and display the Software, solely in connection with operation of the Product(s). The license shall take effect from delivery of the Product.. The license may not be assigned or transferred by Customer, voluntarily or by operation of law (including without limitation, by transfer of ownership interests in Customer), to any party without Company's express prior written permission. Customer shall have no power to grant sub-licenses, prepare derivative works or modify the Software.

7.1.3. Customer agrees that it shall not (i) disclose the Software or source code to any third party, (ii) duplicate, reproduce or copy all or any of the Software, (iii) reverse-engineer, disassemble, decompile, decipher, analyze, extract proprietary information from, or translate the Software, or (iv) alter or modify the Software in any way or prepare derivative works of the Software or any part or parts of the Software; or (v) alter, remove or obstruct any copyright or proprietary notices from the Software, or fail to reproduce the same on any lawful copies of the Software; or otherwise attempt to derive the source code of the Software.

8. LIMITED WARRANTY

8.1. The Company warrants to Customer that the Products, excluding batteries (if any) which are not warranted by Company will be free from defects in material and workmanship, under normal use, for a period commencing upon Delivery and shall expire according to the term limits set forth below:

- Cold Chain Packaging supplies (components, materials, etc.) – 90 days;
- Calibration or Validation Equipment for Lab, process or in-field use – one year;
- New Medical Devices – one year
- Replacement Modules – 90 days;
- Process and Product Continuous Monitoring Equipment – 90 days ;
- NIST Traceable Solutions – Shelf life as noted on the Product label of unopened bottle / Shelf life as noted on the Product label of opened bottle.

8.2. If Products do not meet the above warranty, Customer shall promptly notify the Company in writing prior to the expiration of the warranty period, and shall ship the defective Products to the Company contemporaneously with sending such notice. The Company shall, at its option, either (i) repair or replace the defective Product, or (ii) refund of the purchase price paid by



Customer for the defective Product. Any repair or replacement by the Company shall not extend or renew the warranty period.

8.3. Customer acknowledges that the Products which are purchased hereunder (i) are of a design, size, quality, capacity, type and quantity designated and selected by the Customer, and (ii) are as required and suitable for Customer's purposes.

8.4. This warranty is not applicable to, and is void and of no force and effect with respect to defects or damage resulting from (i) Customer's use of the Products other than in their normal and customary manner; (ii) misuse, abuse, accident or neglect of or to the Products; (iii) normal wear and tear; (iv) modification or alteration of the Products; (v) parts, accessories, attachments, software or other devices not furnished Company; and (v) any Force Majeure event. Additionally, if applicable, this warranty is not applicable to, and is void and of no force and effect with respect to defects or damage resulting from (i) failure of, fluctuation in, or interruption of (a) commercial power, or (b) the infrastructure housing, supporting and/or operating the Product including any Customer Wi-Fi network, connectivity, servers or other hardware, and software; (ii) battery failure, and (iii) testing, installation, disassembly, removal, adjustment, relocating, tampering or any repairs, maintenance, alteration, modification or services of any kind performed or made to the Product by anyone other than Company.

8.5. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES HEREIN PROVIDED ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY AND ALL LOSSES OR DAMAGE RESULTING FROM THE COMPANY'S BREACH OF THIS WARRANTY.

9. LIMITATION OF LIABILITY; INDEMNIFICATION

9.1. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY LOSSES AND EXPENSES OF WHATEVER NATURE AND HOW SO EVER ARISING, INCLUDING WITHOUT LIMITATION, ANY DIRECT, INDIRECT, GENERAL, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, BUSINESS, INCOME, REVENUE AND PROFITS), LOSS OF OR DAMAGE TO PROPERTY, CLAIMS OF THIRD PARTIES OR OTHER LOSSES OF ANY KIND OR CHARACTER. THIS LIMITATION OF LIABILITY APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, IRRESPECTIVE OF WHETHER THE COMPANY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES ARISING OUT OF THE USE OF THE PRODUCTS.

9.2. If the Product purchased by Customer is Process or Product Continuous Monitoring Equipment:

9.2.1. Company shall not be liable for any loss or damage to, loss in value of, or loss of revenue or anticipated profits from any of Customer's products or materials (or the products or materials of any third party) stored in the facilities monitored by the Customer System, under any theory of law, even if such loss or damage is caused by failure of or defect in any Product



purchased hereunder, and whether such failure or defect arises out of Company's design, manufacture, installation or service of any Product; and

9.2.2. Company shall not be liable for the loss of use of the Cloud Hosting Software as a Service ("**SaaS**") services, provision of substitute SaaS services, the loss of, damage to, compromise or corruption of, or recreating Customer's (or third party's) data

under any theory of law.

9.3. Notwithstanding Section 9.1 and 9.2 above, in no event will Company's aggregate liability to Customer or any third-party in any matter arising from, relating to or in connection with these Conditions, and any other terms and conditions between the Parties relating to the Products, including any terms and conditions for the sale of services (including matters arising out of the Cloud Hosting Software as a Service (SaaS) Addendum) for any Product or SaaS sold or provided, exceed the amount actually paid to Company by Customer during the (6) months prior to the occurrence of the event giving rise to such liability.

9.4. Customer shall indemnify and hold the Company harmless from and against any and all loss, cost, damage and expense, including reasonable attorneys' fees ("**Loss**") suffered or incurred by the Company in connection with any claim, demand, action, suit or proceeding instituted by a third party, to the extent that such Loss arises out of (i) Customer's use of the Products other than their normal and customary use, (ii) misuse, misapplication, abuse, accident or neglect of or to the Products, (iii) normal wear and tear of the Products, or (iv) modification or alteration of the Products.

10. NOTICES

Any notice required to be given or served, shall be in writing. Notices shall be served on the Customer at the address stated on the order form. Notices shall be served on the Company at 12100 W Sixth Ave., Lakewood, CO, 80228 or customerservice@mesalabs.com.

11. FORCE MAJEURE

11.1. The Company shall not be liable for failure to fulfill its obligations hereunder, or for delays in Delivery, due to causes beyond the Company's control, including without limitation, Acts of God, natural or artificial disasters, riot, war, delay by carrier, material shortages, armed conflict, acts or threats of terrorism, epidemics, strikes or other labor disturbance, or acts or omission of any governmental authority or of the Customer.

11.2. Upon occurrence of any event described in Section 11.1, above, the Company's time for performance shall be extended, without any liability or penalty, for a period equal to the time lost as a consequence of such event.



12. EXPORT CLAUSE

The products, commodities, technology, software, and/or firmware (collectively, "Goods") manufactured and sold, transferred or conveyed by MLI, are subject to the United States Export Control laws and regulations, and may be subject to export or import regulations of other countries. Customer agrees to comply strictly with all such laws and regulations and acknowledges that it has the responsibility to obtain any and all applicable licenses and permits which may be required in order to sell, license, export, re-export, import or otherwise deal with the Goods. Diversion of the Goods contrary to any such law is strictly prohibited.

13. GENERAL

13.1. No waiver by the Company of any breach by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.2. If any of these Conditions is held invalid or unenforceable in whole or in part the validity of the remaining Conditions and the remainder of the provision in question shall not be affected.

13.3. These Conditions shall be governed by the laws of [**Ontario**][**Colorado**] and the Customer agrees to submit to the exclusive jurisdiction of the federal, state or provincial courts situate in [**Toronto, Ontario**][**Denver, Colorado**]

13.4. For the avoidance of doubt nothing in these Conditions shall confer on any third party any benefit or the right to enforce any term hereof.

13.5. The terms and conditions set out herein will be automatically incorporated into all future contracts between Customer and the Company concerning the sale of Products without express reference being made to their incorporation.

BY ACCEPTING THIS QUOTE AND ISSUING ITS PO, CUSTOMER ACKNOWLEDGES AND AGREES THAT, UNLESS OTHERWISE EXPRESSLY PROVIDED IN A WRITING SIGNED BY CUSTOMER AND COMPANY, THE SALE/PURCHASE OF PRODUCTS SHALL BE MADE UNDER AND BE GOVERNED BY THE ABOVE SALES TERMS AND CONDITIONS.