

TERMS & CONDITIONS
BlueCatBio MA Inc.

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

A. General / Scope of Application

The following terms and conditions are a component of every offer from BlueCatBio MA Inc. (“BCB”) and apply to all contracts into which we enter and all deliveries and services that we perform for all purchasers (“Buyer”).

Any provisions contained in any document issued by Buyer are expressly rejected by BCB. Buyer’s receipt of BCB’s products or BCB’s commencement of any services provided hereunder will constitute Buyer’s acceptance of this Agreement.

No waiver, consent, modification, amendment or changes to the terms contained herein shall be binding unless in writing and signed by BCB.

B. Products, Demonstration Models

Our products described in this agreement (“Products”) are exclusively intended for laboratory and research purposes.

Demonstration models are available for testing purposes. Buyer acknowledges that these are to be used as nonbinding inspection devices whose properties and performance do not constitute specific results.

C. Price

All prices published by BCB or quoted by BCB’s representatives may be changed at any time without notice. All prices for the products will be as specified by BCB in our quotation to the Buyer, if no price has been specified or quoted it will be BCB’s price in effect at time of shipping.

D. Payment Terms

All payment shall be in U/S. dollars and shall be net 30 days after invoicing. Net 45/60 terms are available upon request and carry a 0.75%/1.5% surcharge added to the sum total of the invoice. If Buyer fails to pay any amounts when due BCB may charge interest from the due date until date paid at the rate of one and one-half percent (1.5%) per month, together with all costs and fees incurred (including reasonable attorney fees and court costs). Interest charged herein is in addition to all other rights of BCB for enforcing the terms herein and collecting payment.

E. Delivery, Transport, Transfer of Risk

The Products will be shipped to the destination specified by Buyer, F.O.B. BCB's shipping point. BCB will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. BCB reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to BCB when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and BCB will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond BCB's reasonable control. In the event of a delay due to any cause beyond BCB's reasonable control, BCB reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by BCB at Buyer's risk and expense and for Buyer's account. Orders in process may be canceled only with BCB's written consent and upon payment of BCB's cancellation charges. Orders in process may not be changed except with BCB's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefore. Credit will not be allowed for Products returned without the prior written consent of BCB.

F. Warranty

BCB warrants that the Products will operate or perform substantially in conformance with BCB's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the product documentation, published specifications or package inserts. If a period of time is not specified in BCB's product documentation, published specifications or package inserts, the warranty period shall be one (1) year from the date of shipment to Buyer for equipment and ninety (90) days for all other products (the "Warranty Period"). BCB agrees during the Warranty Period, to repair or replace, at BCB's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that Buyer shall promptly notify BCB in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim. Replacement parts may be new or refurbished, at the election of BCB. All replaced parts shall become the property of BCB. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions of these Terms and Conditions. Consumables are expressly excluded from this warranty.

Notwithstanding the foregoing, Products supplied by BCB that are obtained by BCB from an original manufacturer or third party supplier are not warranted by BCB, but BCB agrees to assign to Buyer any warranty rights in such Product that BCB may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

In no event shall BCB have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by BCB. If BCB determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse BCB for all costs of investigating and responding to such request at BCB's then prevailing time and materials rates. If BCB provides repair services or replacement parts that are not covered by this warranty, Buyer shall pay BCB therefor at BCB's then prevailing time and materials rates.

ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN BCB WITHOUT BCB'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY BCB, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, BCB DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. BCB DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

G. Indemnification

BCB agrees to indemnify, defend and save Buyer, its officer, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) ("Indemnified Items") for (i) injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of BCB, its employees, agents or representatives or contractors in connection with the performance of services at Buyer's premises under this Agreement and (ii) claims that a Product infringes any valid United States patent, copyright or trade secret; provided, however, BCB shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of

a Product in combination with equipment or software not supplied by BCB where the Product would not itself be infringing, (iv) compliance with Buyer's designs, specifications or instructions, (v) use of the Product in an application or environment for which it was not designed or (vi) modifications of the Product by anyone other than BCB without BCB's prior written approval. Buyer shall provide BCB prompt written notice of any third party claim covered by BCB's indemnification obligations hereunder. BCB shall have the right to assume exclusive control of the defense of such claim or, at the option of the BCB, to settle the same. Buyer agrees to cooperate reasonably with BCB in connection with the performance by BCB of its obligations in this Section.

Notwithstanding the above, BCB's infringement related indemnification obligations shall be extinguished and relieved if BCB, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES BCB'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN.

H. Limitation of Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF BCB UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF BCB FOR BREACH OF WARRANTY SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL PURCHASE THERETOFORE PAID BY BUYER TO BCB WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL BCB BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER BCB HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR IS NEGLIGENT.

I. Data Protection.

BCB represents and warrants that its collection, access, use, storage, disposal and disclosure of all customer data complies with all applicable federal, state and foreign privacy and data protection laws, as well as all other applicable regulations and directives.

J. Software

With respect to any software products incorporated in or forming a part of the Products hereunder, BCB and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, BCB or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

BCB hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Buyer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without BCB's prior written consent. BCB will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, immediately to return to BCB all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by BCB may be owned by one or more third parties and licensed to BCB. Accordingly, BCB and Buyer agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

K. Miscellaneous

The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts of the Commonwealth of Massachusetts, in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise. In the event of any legal proceeding between BCB and Buyer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. Any action arising under this Agreement must be brought within one (1) year from the date that the cause of action arose.

If individual provisions of these terms and conditions or parts thereof become completely or partially invalid, this shall not affect the validity of the remaining provisions contained herein.