

## GENERAL TERMS AND CONDITIONS OF SALE

**1. Payment Terms.** Payment terms shall be net thirty (30) days from date of invoice. GenMark reserves the right to require C.O.D. payment terms if Customer's account is overdue for a period of more than fifteen (15) days or if it has an unsatisfactory credit or payment record. GenMark may also refuse to sell to Customer until overdue accounts are paid in full. Customer is responsible for all applicable taxes, customs, duties and fees imposed upon this transaction by any federal, state or local governmental authority, unless Customer provides GenMark appropriate evidence of exemption. GenMark reserves the right to increase any pricing or fee by five percent (5%) on January 1<sup>st</sup> of each year. Payments past due shall bear interest at the rate of eighteen percent (18%) or the maximum rate permitted by law, whichever is less. A 2.5% processing fee will apply to all credit card payments.

**2. Reagent Kit Price Adjustments.** Kit prices are based on agreed upon test volume requirements. If, during the Agreement, Customer's Annual Test Volume purchased is deemed non-compliant (failure to average or exceed the agreed upon volume as indicated in the Reagent Kit Description and Pricing Table), GenMark may adjust the prices to reflect the appropriate discounts based on actual volume of tests purchased. If the Agreement is modified (i.e., extended or abbreviated), volume discount pricing will be adjusted to meet the new Test volume purchased. In the event of early termination of this Agreement by Customer, Customer shall purchase all remaining Tests set forth in the Reagent Kit Description and Pricing Table that Customer committed to purchase during the term of this Agreement.

**3. Purchase Orders.** Customer shall submit Purchase Orders for Products, specifying: (a) Products ordered; (b) the quantity desired; (c) the desired shipping or delivery instructions; and (d) invoice information. Purchase Orders will be subject to GenMark's acceptance in its discretion. Each Purchase Order shall be governed by the terms of this Agreement and in the event of a conflict between the provisions of such Purchase Order or acknowledgment and this Agreement, this Agreement shall control. Products include without limitation, Kits, Instruments, software, documentation and related accessories.

**4. Delivery, Inspection, Title.** Delivery terms shall be F.O.B. Origin at which time risk of loss and title to the Products shall pass to Customer. All shipment, handling and insurance costs shall be paid by Customer and if prepaid by GenMark, shall be reimbursed to GenMark. GenMark will make reasonable efforts to ship the Products or provide services in accordance with mutually agreed upon delivery dates, provided that GenMark shall not be liable for any delay in delivery. Customer shall be responsible for inspecting all Products delivered or installed upon receipt of such Products. GenMark, in its sole discretion, shall replace or remedy rejected Products. Customer shall maintain the Instruments in proper working order. Customer shall at all times be responsible for any damage or loss to the Instrument.

**5. License.** The Customer is hereby granted a limited, non-exclusive, non-sublicensable, non-transferable license to use the GenMark software loaded on the Instruments as delivered to the Customer or that is otherwise provided to the Customer under this Agreement solely for Customer's internal use. The Customer shall not modify, alter, copy, create derivative works, decompile, disassemble, translate or reverse engineer such software, or attempt to do any of the foregoing.

**6. Warranty and Remedy.** GenMark warrants that each Product sold or provided to the Customer under this Agreement will perform in accordance with its Product specifications (per the package insert or user manual, as applicable) for: (i) Instruments, one (1) year from the date of installation; and (ii) Kits, 60 days from the date of shipment. GenMark reserves the right to change the specifications of its Products at any time without notice. Customer's sole remedy under GenMark's warranty shall be to repair or replace the Product or component which failed to conform to the warranty. GenMark reserves the right, in its sole discretion, to exchange, upgrade, or substitute an Instrument provided to Customer under a rental agreement. The warranties provided in this Agreement shall be void if the Product is improperly used, stored or handled, is accidentally damaged or is subjected to abuse or neglect, or is modified or altered where the modification or alteration was not provided by or expressly authorized by GenMark. In the event that a claim that a Product or Customer's use thereof infringes any patent or violates or any proprietary right of a third party, and Customer's use is enjoined, GenMark shall use its best efforts to: (i) procure for Customer the right to continue using the Product; or (ii) modify or replace the Product so as to render it non-infringing while remaining functionally equivalent to the original Product, at no additional charge to Customer. If none of these alternatives appear to be reasonably feasible, then Customer may terminate this Agreement with respect to the affected Product and any specific volume commitment schedules will be reduced thereby. The foregoing obligations of GenMark do not apply to any claim or loss to the extent it results from: (i) any modification or alteration to the Product where the modification or alteration was not provided by or expressly authorized by GenMark; (ii) use of the Product in a way not provided for or described in the applicable documentation; (iii) use of the Product in combination with any other product not supplied or authorized by GenMark which causes the Product to become infringing. Customer shall indemnify, defend and hold harmless GenMark from and against any and all claims and losses to the extent such claims and losses are excluded from GenMark's infringement obligations. GenMark's obligations hereunder are conditioned upon promptly notifying GenMark in reasonable detail of any claim or loss. This Section 6 states Customer's exclusive remedy with respect to any claim or loss for breach of warranty or infringement. GENMARK MAKES NO OTHER

WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND GENMARK DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**7. Limitations.** GENMARK SHALL NOT BE LIABLE FOR ANY LOST REVENUE, LOST PROFITS, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, SUSTAINED BY CUSTOMER RELATED TO THE SALE, PERFORMANCE OR USE OF THE PRODUCTS OR SERVICES PROVIDED OR FOR ANY AMOUNTS IN EXCESS OF THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT.

**8. Default.** Any of the following events or conditions constitute a default by Customer under this Agreement: (a) the failure of Customer to fully comply with and perform any and all terms and conditions including to make payments when due, which failure remains uncured for a period of thirty (30) days after written notice thereof; (b) the making of assignment for the benefit of creditors by Customer; (c) the institution of bankruptcy, reorganization, liquidation, or receivership proceedings by or against Customer or impairment of the credit of Customer.

**9. Remedies.** Upon the occurrence of any default of Customer, GenMark in its sole discretion shall have the right to exercise any one or more of the following remedies: (a) to terminate this Agreement; (b) to declare and have the remaining unpaid balance for Products and volume commitments, and all other charges, taxes and assessments otherwise owing under this Agreement become due; (c) adjust the Term, prices or volume commitment to reflect actual test volumes; (d) with or without notice, demand or legal process, to retake possession of the Products (and Customer authorizes and empowers GenMark to enter upon the premises wherever Products may be found) and (i) retain such Products and all payments made under this Agreement, and (ii) resell the Products and recover from the Customer any amount owing to GenMark hereunder; or (d) to pursue any other remedy available to GenMark at law or in equity. Without limitation, GenMark shall have all of the rights and remedies of a secured party under the California Uniform Commercial Code. Customer also agrees to pay all costs of collection, including without limitation, court costs, reasonable attorneys' fees, and fees for repossession, repair, storage and sale of the Products.

**10. Confidentiality.** Each party agrees that it will keep in confidence all information and documentation disclosed by the other party which relates to any confidential information or trade secrets, including without limitation, proprietary processes of manufacture, know-how, methods of carrying on business including the terms of this Agreement, or information which is designated by a party as confidential ("Confidential Information") and that it will not directly or indirectly use, copy or disclose to any third party any Confidential Information it receives from the other party, except that access shall be permitted to an employee, attorney, auditor or contractor requiring access to same in connection with performance under this Agreement and who are bound by confidentiality obligations at least as stringent as those contained herein. Confidential Information shall not include any information which is: (i) known by the receiving party at the time of disclosure by the other party, free of any obligation to keep it confidential; (ii) publicly available or hereafter becomes publicly available through authorized disclosure; or (iii) rightfully obtained by the receiving party from a third party who has the right to disclose such information; or (iv) independently developed by the receiving party.

**11. Restrictions on Product Use, Compliance with Laws.** In performing under this Agreement, both parties shall comply with all applicable laws, rules and regulations of all governmental and regulatory bodies, including fraud and anti-kickback laws, and Medicare and Medicaid regulations. Product labeled IVD is intended for in vitro diagnostic use in accordance with the label claims stated in the Package Insert accompanying the Product. Products labeled Research Use Only (RUO) are intended for research purposes only and not for use in or with any diagnostic or clinical procedure and shall not be used in or with any diagnostic procedure. Customer warrants that it shall not use RUO Products for diagnostic or clinical purposes and shall indemnify, defend and hold harmless GenMark from and against any and all claims and losses to the extent such claims and losses arise from a breach of this warranty.

**12. Assignment.** The terms of this Agreement and the benefits and rights provided to Customer hereunder are confidential and personal to Customer and its site as set forth in this Agreement. Customer may not assign or transfer this Agreement or grant the right to purchase Products at the pricing and terms and conditions identified herein or disclose the same to any other entity or site, including, but not limited to, any existing or future affiliate, site of Customer, or other affiliated entity without GenMark's prior written consent. For the avoidance of doubt, in no event shall any other entity, organization or Customer site location have the right to purchase Products from GenMark directly on the terms and conditions contained herein, nor shall Customer have the right to purchase Products on the terms and conditions contained herein as an agent for the benefit of its affiliates, other site locations, or member organizations.

**13. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding choice of law provisions.

**14. Entire Agreement, Waiver.** This Agreement contains the entire understanding of the parties and supersedes any and all previous agreements, communications and understandings between the parties concerning the subject matter hereof. No amendment of this Agreement

shall be effective unless in writing and signed by both parties. The Agreement shall supersede all other quotations, agreements, understandings, warranties and representations (whether written or oral) between the Parties with respect to the subject matter set forth in the Agreement. Any Customer documentation (including Customer's purchase order terms and conditions) that conflicts with or attempts to modify the Agreement in any way is hereby rejected and of no effect unless specifically agreed to in writing and signed by the Parties. No failure or delay by any party hereto in exercising any right or remedy hereunder or under applicable law will operate as a waiver thereof, or a waiver of a particular right or waiver of any right or remedy on any subsequent occasion.

**15. Force Majeure.** GenMark shall not be responsible for any failure to perform its obligations under this Agreement during the period that such failure is caused by acts of God, civil or military unrest, acts of terrorism, riots, war, fire, explosion, flood, earthquake, laws or governmental regulations or other causes that are beyond its reasonable control. . During such period, Products affected hereby may be excluded from this Agreement without liability of either party and GenMark shall not be obligated to provide substitute products for Customer.

**16. Equal Opportunity.** This Agreement shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These various regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment qualified protected veterans, individuals with disabilities or other individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

**17. Other.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original agreement, and all of which taken together shall constitute one and the same instrument. A facsimile or electronic copy of this Agreement bearing authorized signatures shall be taken as an original. No expiration or termination of this Agreement shall relieve Customer of any payment or other obligations accrued at the time of such expiration or termination. Further, any and all rights and obligations set forth in this Agreement which by their nature and context are intended to survive such expiration or termination shall so survive.