



Determina Rep. **157** / 2022 – Prot. **1140** del **11/05/2022**

Affidamento della fornitura di consumabili specifici, ai sensi dell'art.1, comma 2, lett.a) del D. L. 76/2020 convertito in Legge n. 120/2020 e modificato dal D. L. 77/2021 e convertito in Legge n. 108/2021. (Allegato 1)

CIG: ZB6364E213

CUP: J94I20000200006

IL DIRETTORE DEL DIPARTIMENTO DI SCIENZE CHIMICHE E FARMACEUTICHE

VISTO il decreto legislativo 18 aprile 2016, n. 50, ed in particolare il comma 2 dell'art. 32, il quale prevede che, prima dell'avvio delle procedure di affidamento dei contratti pubblici, le stazioni appaltanti, in conformità ai propri ordinamenti, decretino o determinino di contrarre, individuando gli elementi essenziali del contratto e i criteri di selezione degli operatori economici;

CONSIDERATO che nella procedura di affidamento diretto, la stazione appaltante può procedere ad affidamento diretto tramite determina a contrarre, o atto equivalente, che contenga, in modo semplificato, l'oggetto dell'affidamento, l'importo, il fornitore, le ragioni della scelta del fornitore, il possesso da parte sua dei requisiti di carattere generale, nonché il possesso dei requisiti tecnico-professionali, ove richiesti;

VISTA la necessità di procedere alla fornitura di consumabili specifici per le esigenze di ricerca di cui al progetto PRATO-GRAPHENECORE3;

CONSIDERATO che, nel rispetto del principio di rotazione degli inviti e degli affidamenti, si è proceduto alla richiesta di preventivo nei confronti delle Ditte

- 1) Fisher Scientific corrente in Rodano (MI) alla Strada Rivoltana kn 4 che non può fornire il prodotto ricercato con le caratteristiche tecniche di cui si necessita; (Allegato 2 e 3)
- 2) Merck Life Science corrente in Milano alla Via Monte Rosa 93 che non può fornire il prodotto ricercato con le caratteristiche tecniche di cui si necessita; (Allegato 2 e 4)
- 3) Repligen Europe BV corrente in Breda (NL) alla Via P.O. Box 3262 che ha offerto per la fornitura di cui trattasi l'importo di Euro 516,00 IVA esclusa; (Allegati 2 e 5)

CONSIDERATO che l'importo più congruo per l'Amministrazione è quello fornito dalla Ditta Repligen Europe BV pari a € 516,00 IVA; (Allegato 5)



RILEVATO che, in ogni caso, è possibile procedere ad affidamento diretto per forniture e servizi fino all'importo di € 139.000,00 IVA esclusa, ai sensi dell'art.1, comma 2, lett.a) del D. L. 76/2020 convertito con modificazioni dalla Legge 11 settembre 2020, n. 120 e modificato dall'art. 52 del D. L. 77/2021 pubblicato sulla Gazzetta Ufficiale n. 129 del 31 maggio 2021 ed entrato in vigore il 1° giugno 2021 e convertito in Legge n. 108/2021;

VISTO l'art.4 del D. L. 29 ottobre 2019 n. 126 convertito in Legge 20 dicembre 2019 n. 159 ai sensi del quale: «*Non si applicano alle università statali, agli enti pubblici di Ricerca e alle istituzioni di alta formazione artistica, musicale e coreutica, per l'acquisto di beni e servizi funzionalmente destinati all'attività di ricerca, trasferimento tecnologico e terza missione:*

a) le disposizioni di cui all'articolo 1, commi 449, 450 e 452, della legge 27 dicembre 2006, n. 296, in materia di ricorso alle convenzioni-quadro e al mercato elettronico delle pubbliche amministrazioni e di utilizzo della rete telematica;

b) le disposizioni di cui all'articolo 1, commi da 512 a 516, della legge 28 dicembre 2015, n. 208, in materia di ricorso agli strumenti di acquisto e negoziazione della Consip S.p.a. per gli acquisti di beni e servizi informatici e di connettività».

RITENUTO di poter procedere all'affidamento della fornitura di cui sopra per le motivazioni sopra evidenziate;

CONSIDERATO che per tutte le procedure sotto soglia comunitaria ivi comprese quelle relative all'affidamento diretto, le Linee Guida n. 4 dell'ANAC "Procedure per l'affidamento dei contratti pubblici di importo inferiore alle soglie di rilevanza comunitaria, indagini di mercato e formazione e gestione degli elenchi di operatori economici" aggiornate con delibera numero 636 del 10 luglio 2019;

CONSIDERATO che le Linee Guida n. 4 di cui sopra sono meri atti di indirizzo come tali non vincolanti per le Pubbliche Amministrazioni;

CONSIDERATO, inoltre, come ribadito dalla costante giurisprudenza, che le stesse Linee Guida n. 4 dell'ANAC rappresentano degli atti avente natura amministrativa e meramente interpretativa della superiore norma di legge;

TENUTO CONTO che la stessa ANAC, con specifico riferimento alle Linee Guida n. 4, ha evidenziato che non può interferire nella sfera di discrezionalità delle singole stazioni appaltanti;

CONSIDERATO, in ogni caso, che questa Amministrazione procederà ad effettuare controlli a campione sulle autodichiarazioni rese dagli operatori economici;



CONSIDERATO inoltre, che lo stipulando contratto con la Ditta affidataria conterrà, in ogni caso, la seguente clausola: *“In caso di successivo accertamento del difetto del possesso dei requisiti autodichiarati, il contratto di acquisto si intenderà risolto di diritto ed il corrispettivo pattuito sarà pagato solo con riferimento alle prestazioni già eseguite e nei limiti dell’utilità ricevuta. La stazione appaltante procederà, altresì, all’applicazione della penale del 10% del valore del contratto”*;

CONSIDERATO che si è proceduto nel rispetto dei principi di cui all’art.30, comma 1, 34 e 42 del Codice nonché, come sopra evidenziato, nel rispetto del principio di rotazione;

CONSIDERATO che la spesa presunta per il bene/servizio di cui trattasi, graverà, sulla voce del bilancio di previsione dell’esercizio finanziario 2022 materiali di consumo e sul progetto PRATO-GRAPHENECORE3;

CONSIDERATO che per espressa previsione dell’art.32, comma 10, lett. b) del D. Lgs. 50/2016 s.m.i., al presente affidamento non si applica il termine dilatorio di stand still per la stipula del contratto;

SENTITO il Responsabile Unico del Procedimento;

VISTI

- Il D. Lgs. 18 aprile 2016 n. 50 e s.m.i. – Codice dei Contratti Pubblici;
- Il D. L. 16 luglio 2020, n. 76 convertito, con modificazioni, dalla Legge 11 settembre 2020, n. 120 e modificato dal D.L. 77/2021 e convertito, con modificazioni, dalla Legge 29 luglio 2021, n. 108;
- Le Linee Guida n. 4 intitolate *“Procedure per l’affidamento dei contratti pubblici di importo inferiore alle soglie di rilevanza comunitaria, indagine di mercato e formazione e gestione degli elenchi di operatori economici”* aggiornate al D. Lgs. n. 56/2017 con delibera n. 2016 del Consiglio dell’Autorità Nazionale Anticorruzione in data 1° marzo 2018 e pubblicate sulla Gazzetta Ufficiale n. 69 del 23 marzo 2018 per quanto applicabili;
- La delibera ANAC n. 1096 del 26 ottobre 2016: Linee Guida n. 3 intitolate *“Nomina, ruolo e compiti del responsabile unico del procedimento per l’affidamento di appalti e concessioni”*, aggiornate al d.lgs. 56 del 19/4/2017 con deliberazione del Consiglio n. 1007 dell’11 ottobre 2017;
- L’art.26 della legge 488/1999 circa l’obbligo di aderire alle convenzioni CONSIP;
- L’art.1 della Legge 296/2006 comma 450 circa l’obbligo di ricorso al mercato elettronico della Pubblica Amministrazione per gli acquisti di beni e servizi d’importo pari o superiore a € 5.000,00 e inferiore alle soglie di rilievo comunitario;
- La Legge 30 dicembre 2018, n. 145;



Dipartimento di Scienze Chimiche e Farmaceutiche

- Il D.P.R. 28 dicembre 2000, n. 445;
- L'art.37 del D. Lgs.33/2013 e l'articolo 1, comma 32, della Legge n. 190/2012 e le successive modifiche ed integrazioni in materia rispettivamente di "Amministrazione Trasparente" e "Norme di contrasto alla corruzione";

CONSIDERATO che la presente determina, in ossequio al principio di trasparenza e fatto salvo quanto previsto dall'art.1, comma 32, della Legge 190/212 e dal D. Lgs. 33/2013, è pubblicata, ai sensi dell'art.29 del D. Lgs. 50/2016 s.m.i., nel proprio sito web, liberamente scaricabile sul sito internet – "Amministrazione Trasparente" - "Bandi Gara e Contratti" –

DETERMINA

Per le motivazioni indicate in premessa:

- 1) Ai sensi dell'art.1, comma 2, lett. a) del D. L. 76/2020, convertito in Legge 11 settembre 2020, n.120 e modificato dal D. L. 77/2021 convertito in Legge n. 108/202, affidare alla Ditta Repligen Europe BV corrente in Breda (NL) alla Via P.O. Box 3262 la fornitura di consumabili specifici per un importo di € 516,00 IVA esclusa;
- 2) La spesa, pari a € 516,00 IVA esclusa, graverà sulla voce "materiali di consumo" del bilancio di previsione del corrente esercizio finanziario e sul progetto PRATO-GRAPHENECORE3;
- 3) Disporre che il pagamento verrà effettuato a seguito degli accertamenti in materia di pagamenti della PA ed al rispetto degli obblighi di cui all'art.3 della Legge 136/2010, e comunque previa presentazione di fatture debitamente controllate e vistate in ordine alla regolarità e rispondenza formale e fiscale.
- 4) Provvedere, ai sensi dell'art. 29, comma 1, del d.lgs 50/2016, alla pubblicazione sul sito internet dell'Università degli Studi di Trieste, nella sezione "Amministrazione Trasparente" – "Bandi di gara e contratti".



**UNIVERSITÀ
DEGLI STUDI
DI TRIESTE**

Dipartimento di Scienze Chimiche e Farmaceutiche

Il Responsabile del Procedimento accerterà la regolare esecuzione del servizio.

Il Direttore
del Dipartimento di Scienze Chimiche e Farmaceutiche
prof. Paolo Tecilla

Paolo Tecilla

Allegati:

- 1) Elenco fornitura
- 2) Richiesta di offerta a Fisher Scientific, Merck Life Science, Repligen Europe BV
- 3) Risposta Fisher Scientific
- 4) Risposta Merck Life Science
- 5) Offerta Repligen Europe BV



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DEGLI STUDI DI TRIESTE

Dipartimento di Scienze Chimiche e Farmaceutiche

All. 1

Trieste, 05/05/2022

Descrizione	Quantità
Biotech CE Dialysis Tubing 500-1000D, 10MM, 10M	1
Dialysis Clos Universal 50MM BK 10PK	1

Università degli Studi di Trieste

Dipartimento di Scienze Chimiche e Farmaceutiche
sedi: - via Licio Giorgieri, 1 (amministrazione)
- piazzale Europa, 1
34127 Trieste

dipdscf@units.it
tel +39 040 558 3902
tel +39 040 574181-5587943

www.dscf.units.it
fax +39 040 558 3903
fax +39 040 52572

31.2

Richiesta preventivo Thermofisher:

Sent 20/04/2022 11:23| Subject: Re: URGENTE - Ordine 550 - Float a Lyzer - Novembre 2021 1180068493: From: Maria João Leitão (mjrlleitao@gmail.com); To: (it.fisher@thermofisher.com);

Buongiorno,

grazie per la risposta. Purtroppo il tempo di attesa è ancora lungo.

Restiamo in attesa della consegna dell'ordine pero vorremmo ordinare un'alternativa che forse arriva prima dell'altra consegna

Questo prodotto sarebbe disponibile per una consegna a breve?

----- Forwarded e-mail -----



Biotech CE Dialysis Tubing 500-1000D 10MM 10M

Repligen

131004

\$389.00

SKU	Part #	Length	Quantity
500-1000D	10mm	10m	1

Avremmo anche bisogno dell'articolo seguente:



Biotech CE Dialysis Trial Kit, 500-1000D, 10MM, 1M

Repligen

131084T

\$133.00

SKU	Part #	Length	Quantity
500-1000D	10mm	1m	1

In attesa di un suo gentile riscontro

Grazie mille,
Maria Leitao

Richiesta preventivo Merck:

Richiesta preventivo - Dialysis Tubing >



Maria João Leitão <mjrlleitao@gmail.com>
to Michael >

1 16 PM (1 minute ago) ☆ ↵ ⋮

Gentile Michael,

Le scrivo per chiedere gentilmente un preventivo per un prodotto con queste caratteristiche in caso di disponibilità di consegna a breve

- **Biotech CE Dialysis Tubing 500-1000D, 10MM, 10M**

Grazie per l'attenzione

Cordiali saluti

Maria

Maria João Leitão | Project and Lab Manager
Department of Chemical and Pharmaceutical Sciences
University of Trieste
Via L. Giorgieri 1 - 34127 Trieste (Italy)

Richiesta preventivo Repligen:

Maria João Leitão <mjrlleitao@gmail.com>
to Customer >

1 01 PM (42 minutes ago)

Dear Mabel,

as the lead time is estimated 4 to 6 weeks we would be very interested in having your best quote for the article

- **Biotech CE Dialysis Tubing 500-1000D, 10MM, 10M**

I would like to ask if this kit includes clips to close the tubes or should we buy them separately?

I thank you very much in advance

Kind regards,
Maria

Al.3

Risposta Thermofischer – prodotto che non ci serve



Maria João Leitão <mjleitao@gmail.com>

Re: URGENTE - Ordine 550 - Float a Lyzer - Novembre 2021 1180068493

it.fisher@thermofischer.com <it.fisher@thermofischer.com>
To: mjleitao@gmail.com
Cc: cristian.rosso@units.it, GIUSEPPE.GENTILE@phd.units.it, MARTINA.MAMONE@phd.units.it

Fri Apr 22, 2022 at 11:34 AM

Buongiorno,

Abbiamo questi due codici alternativi, pero non disponibili a stock :

11415939
11570940

Resto a disposizione,

Cordiali Saluti,

Aldo Molisani
Servizio Clienti

Fisher Scientific, part of Thermo Fisher Scientific
Strada Rivoltana Km 4 | 20090 Rodano (MI), Italy
Telefono: +39 0 295 059 478
www.it.fishersci.com

M. L.



Maria João Leitão <mjrleitao@gmail.com>

Richiesta preventivo - Dialysis Tubing

Michael Ongaro <michael.ongaro@merckgroup.com>
To: Maria João Leitão <mjrleitao@gmail.com>

Thu, May 5, 2022 at 3:28 PM

Buongiorno,

potrebbe valutare il seguente prodotto:

D2272-10FT
<https://www.sigmaaldrich.com/IT/it/product/sigma/d2272>

Grazie,

Michael Ongaro

Account Manager

Merck Life Science S.r.l. | via Monte Rosa, 93 | 20149 Milan | Italy

Mobile: +39 348 2314158 | E-mail: michael.ongaro@merckgroup.com



Da: Maria João Leitão <mjrleitao@gmail.com>
Inviato: martedì 3 maggio 2022 13:17
A: Michael Ongaro <michael.ongaro@merckgroup.com>
Oggetto: Richiesta preventivo - Dialysis Tubing

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[Quoted text hidden]

06/05/22, 12:30

Gmail - Richiesta preventivo - Dialysis Tubing

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file.5



Quotation

Repligen Europe B.V.
P.O. Box 3262
4800 DG Breda, The Netherlands

Created Date 5/5/2022
Quote Number 00037406
Expiration Date 6/30/2022

To Place an Order:
Phone: +31 (0) 76 5719 419
Fax: +31 (0) 76 5719 772

Please send your PO to: CustomerServiceEU@repligen.com

Terms

Terms Net 30 Shipping Terms FOB - Origin, Freight Prepaid & Add

Repligen Sales Person

Prepared By Brian Liang Email bliang@repligen.com

Customer Information

Contact Name Maria João Leitão
Email mjrlleitao@gmail.com
Ship To Name University of Trieste
Bill To Name University of Trieste
Bill To via Licio Giorgieri 1
34127 Trieste
Italy

Product Code	Product Description	Quantity	UOM	Sales Price	Total Price
142156	DIALYSIS CLOS UNIVERSAL 50MM BK 10PK	1.00	EA	EUR 97.00	EUR 97.00
142154	DIALYSIS CLOS UNIVERSAL 50MM BL 10PK	1.00	EA	EUR 97.00	EUR 97.00
142155	DIALYSIS CLOS UNIVERSAL 50MM GR 10PK	1.00	EA	EUR 97.00	EUR 97.00
142152	DIALYSIS CLOS UNIVERSAL 50MM RD 10PK	1.00	EA	EUR 97.00	EUR 97.00
142150	DIALYSIS CLOS UNIVERSAL 50MM WH 10PK	1.00	EA	EUR 97.00	EUR 97.00
142153	DIALYSIS CLOS UNIVERSAL 50MM VL 10PK	1.00	EA	EUR 97.00	EUR 97.00
131084	DIALYSIS TBG BIOTECH-CE .5-1K 10MM 10M	1.00	EA	EUR 419.00	EUR 419.00
				Subtotal	EUR 1,001.00
				Grand Total	EUR 1,001.00

Repligen Corporation Terms and Conditions of Sale

Ver. 28APR2020

1. Entire Agreement and Acceptance.

Thank you for your interest!
If you have any questions about this quotation, please contact
Repligen Europe B.V. +31 (0) 76 5719 419 or email: CustomerServiceEU@repligen.com

- These Terms and Conditions of Sale ("Terms") will constitute the final, complete and exclusive statement of the terms governing the purchase and sale of Repligen Corporation including its subsidiaries and affiliates (collectively "Seller") products and services (collectively "Products") to your company ("Buyer").
- Seller's offer to sell Products to Buyer is expressly conditioned on Buyer's acceptance of these Terms. If applicable to a Product, Seller's end user software license, available with the Product or online, is incorporated in these Terms.
- Any of the following constitutes Buyer's unqualified acceptance of these Terms: (1) written acknowledgement of these Terms; (2) issuance of a purchase order for any Products; (3) acceptance of any shipment of Products or performance of installation, maintenance, training or repair services ("Services"), (4) payment for any Products; or (5) any other act or expression, in writing, of acceptance by Buyer.
- THESE TERMS WILL SUPERSEDE ANY CONFLICTING TERMS CONTAINED ON BUYER'S PURCHASE ORDER OR ANY DOCUMENT SUBMITTED BY BUYER, INCLUDING WITHOUT LIMITATION ANY ACKNOWLEDGEMENT WHETHER OR NOT SIGNED BY SELLER. Seller's failure to object to any provisions contained in any purchase order, acknowledgement or other document from Buyer will not be construed as a waiver of these Terms nor an acceptance of any such provisions. In the event of a conflict, a quotation issued to Buyer by Seller takes precedence over these Terms, and a written contract duly executed by both parties takes precedence over a quotation, these Terms and any provisions contained in any purchase order, acknowledgement or other document from Buyer.

2. Prices, Taxes and Payment.

- Prices specified in a written quotation from Seller to Buyer for Products will be honored for thirty (30) days. Seller expressly rejects any and all requests by Buyer for a preferred status regarding pricing compared to other customers' pricing, including, but not limited to, requests for "most favored nation" and "competitive pricing."
- Any tax, duty, custom, bank, VAT or other fee imposed upon this transaction by any federal, state or local government authority will be paid by Buyer in addition to the price quoted or invoiced. If Seller is required to prepay any such tax, duty, custom or other fee, Buyer will reimburse Seller. Buyer shall have sole responsibility to submit a resale or tax exempt certificate to claim an exemption. Once a resale or tax exempt certificate has been submitted, Seller will maintain a copy of the certificate on file for future reference.
- Payment terms are net thirty (30) days after invoice date in the currency specified in the Seller quotation, without right of set-off. Seller will issue invoices on or after date of shipment. Seller reserves the right to: (1) impose a service charge on amounts that are not paid when due of 1.5% per month (18% simple interest per annum) from the due date on the outstanding principal balance; (2) require pre-payment terms from any Buyer whose account is overdue for a period of more than 60 days or who has an unsatisfactory credit or payment record; and/or (3) refuse to sell to any Buyer until overdue accounts are paid in full. Buyer is responsible for all collection costs on past due accounts. Seller reserves any other remedies at law or equity.

3. Orders, Delivery and Shipment.

- All orders are firm after acceptance of purchase order by Seller either by acknowledgement or shipment. Changes to, or cancellation of, an accepted purchase order shall be at Seller's sole discretion. In the event of a rejection of Buyer's purchase order, Seller will use good faith efforts to notify Buyer of the rejection within ten (10) business days after receipt of Buyer's purchase order. For Custom Made-to-Order ("CMTO") Products (see Section 4), Seller acceptance will occur on mutual written agreement of product specifications, delivery schedule and production and testing techniques.
- Seller will use reasonable efforts to ship Products or provide Services in accordance with the requested delivery date indicated on Buyer's purchase order; however, in the absence of a special express written agreement, any dates or

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deadlines provided by Seller are non-binding. Seller accepts no liability for any losses or damages arising out of delays in delivery or performance.

- Shipment of all Products will be FCA shipping point (Incoterms 2010) or as set forth on the applicable purchase order accepted by Seller. Buyer shall provide customs broker information to Seller prior to shipment. In the event Buyer does not have a customs broker, Seller will assist Buyer with identifying a customs broker to advance clearance of the shipment through customs. Shipment will not be expedited unless otherwise agreed upon by the parties.
- Delivery of Products to the carrier will be deemed satisfactory delivery, and title and risk of loss of Products will pass to Buyer upon such delivery. Buyer shall not have title to software included with a Product, but rather has a limited, revocable, non-transferable, royalty-free license to use such software in connection with the Product. Seller retains all other rights, title and interest in Product software.
- All shipment costs will be paid by Buyer. Shipment will be by air freight unless otherwise mutually agreed. Products shipped with dry ice are subject to a handling charge, which is prepaid by Seller and added to the invoice.
- Unless otherwise agreed to by the parties that a "Complete Shipment" is required, Seller may, in its sole discretion, without liability or penalty, make partial shipments of Product to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
- Seller shall not be liable or in breach for any failure or delay in performance under the PO to the extent the failure or delay in performance is caused by a force majeure event, i.e., an event outside its reasonable control, including, but not limited to, pandemics, war, riots, fire, flood, hurricane, typhoon, earthquake, lightning, explosion, strikes, lockouts, slowdowns, prolonged shortage of supplies, and acts of state or governmental action prohibiting or impeding Seller from performing its respective obligations.

4. Custom Made-to-Order Products.

- Buyer may not cancel or change accepted purchase orders for CMTO Products.
- Seller may define certain Products as CMTO. Buyer must provide Seller with a purchase order containing the mutually agreed product specifications and delivery schedule prior to the start of manufacturing of a CMTO Product. Seller and Buyer must agree to all production and testing techniques prior to the start of manufacturing of a CMTO product.
- Any inventions, discoveries, know-how, processes, software, data and modifications relating to Products made by Seller, or jointly by Seller and Buyer, in the design or manufacture of a CMTO Product are owned by Seller. Buyer hereby assigns and agrees to assign all right, title and interest therein to Seller.

5. Inspection.

- Seller encourages Buyer to inspect the Products upon receipt. Buyer must notify Seller's Customer Service Department of any discrepancies between the Products received and the Buyer's purchase order within five (5) business days after receipt.
- If Buyer does not notify Seller in writing of any discrepancy within the five-day period, the Products will be deemed accepted by Buyer. Buyer's Warranty rights will continue to apply.

6. Seller's Standard Warranty ("Warranty").

- Seller warrants to Buyer that at the time of delivery: (1) Products will meet the applicable published specifications when used in accordance with the applicable instructions or, in the case of CMTO Products, will conform to the mutually agreed product specifications, in each case for a period of twelve (12) months from shipment of the Products unless otherwise

Thank you for your interest!

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specified in writing, and (2) Services will be performed with the customary care required in published standards for the bioprocessing equipment industry ("Warranty"). When allowed under the statute, any statutory warranty periods are expressly rejected and the terms herein shall apply.

- SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED. THERE IS NO WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR AS TO RESULTS OBTAINED THROUGH USE OF ANY PRODUCT OR SERVICE, WHETHER ARISING BY LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.
- The Warranty will not apply if Seller determines, in its sole discretion, that Buyer has altered or misused the Products or has failed to use or store Products in accordance with instructions furnished by Seller or that the failure was due to external causes, repair by other than Seller, or acts of nature.
- The Warranty and the applicable published specifications for the Products may not be altered except by express written agreement signed by an authorized representative of Seller. Representations, oral or written, which are inconsistent with this Warranty or the published specifications will not be binding on Seller unless agreed to in writing by an authorized representative of Seller.
- In the event of a breach of the Warranty for a Product, Buyer must return the Product to Seller for inspection, with shipping to be reimbursed by Seller if there has been a breach of the Warranty. If Seller reasonably agrees that there has been a breach of the Warranty, Seller's sole obligation, and Buyer's sole remedy, will be to repair or replace, at Seller's option, the applicable Product or part thereof, provided Buyer notifies Seller promptly of any breach. If after exercising reasonable efforts, Seller is unable to repair or replace the Product, then Seller will refund to Buyer the amount paid for the applicable Product or part, pro rata based on straight-line depreciation from shipment until the date of Warranty expiration.
- If there is a breach of the Warranty for Services, Buyer must notify Seller within ninety (90) days after completion of Services. If Seller reasonably agrees that there has been a breach of the Warranty, Seller's sole obligation, and Buyer's sole remedy, will be at Seller's option to re-perform the Services or refund the amount paid by Buyer for the applicable Services.
- Where Seller manufactures CMTO Products for Buyer based on instructions, specifications, or other directions provided by Buyer, Seller is not liable for the lack of sufficiency, fitness for purpose or quality of the Products to the extent attributable to such instructions, specifications, or other directions.
- Seller does not warrant third party products or parts purchased through Seller sales channels. Buyer's remedies will be solely from the third party manufacturer.

7. Intellectual Property.

- If the intended use as set forth in the applicable Product documentation of any Product sold by Seller to Buyer becomes the subject of a third party suit alleging that such use infringes a valid patent in the country of manufacture or sale or constitutes a misappropriation of a trade secret ("Infringement Claim"), Buyer must promptly notify Seller in writing, permit Seller the sole right to defend, and, at Seller's request and expense, reasonably cooperate with Seller.
- If Buyer notifies Seller of an Infringement Claim, or if in Seller's opinion the intended use of the Seller Product may become the subject of an Infringement Claim, Seller may take any action or no action as Seller deems appropriate in its sole discretion, including without limitation: (1) procuring for Buyer the right to continue practicing the intended use of the Product; (2) replacing or modifying any Product so that the intended use becomes non-infringing; or (3) requiring Buyer to return any Product that is the subject of the Infringement Claim and upon return, refund to Buyer the price actually paid by Buyer for the returned Product, pro rata based on the period of time from receipt of the Product by Buyer to return using three-year straight-line depreciation.

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- Seller will have no obligation under this Section 7 for any Infringement Claim based upon, arising from or caused by: (a) the use of any Product in combination with any system, media or material not provided by Seller or not intended for use with the applicable Products, or any modification to any Product made by Buyer or a third party, or made by Seller at the request or direction of Buyer, if such Infringement Claim would not have occurred but for such combination or modification; (b) any use of any Product other than for the express use for which the Product is sold by Seller as set forth in these Terms or applicable Product documentation; or (c) Buyer's continued use of any Product after Buyer's receipt of notice of an Infringement Claim.
- THE FOREGOING STATES THE ENTIRE LIABILITY OF SELLER, AND THE EXCLUSIVE REMEDY OF BUYER, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT, OR MISAPPROPRIATION OR CLAIMED MISAPPROPRIATION OF ANY TRADE SECRET, BY ANY AND ALL PRODUCTS OR ANY PART THEREOF OR USE THEREOF.
- Buyer agrees to be responsible for any liability or loss incurred by Seller as a result of Seller's manufacture of a CMTO Product based on Buyer's product specifications, Buyer's modification or use of any Product other than as specified in the applicable Product documentation and/or for any use requiring third party permission.

8. Limitation of Liability.

- TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SELLER BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR: (I) ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF BUSINESS, LOSS OF GOODWILL, REPLACEMENT COSTS OR LOSS OF USE) SUSTAINED BY BUYER UNDER THESE TERMS OR FROM THE USE OF PRODUCTS OR SELLER'S PERFORMANCE OF SERVICES, EVEN IF SELLER WAS NOTIFIED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, OR (II) ANY DAMAGES IN EXCESS OF AN AMOUNT EQUAL TO THE AMOUNT PAID BY BUYER FOR THE PRODUCT OR SERVICES AT ISSUE.
- Seller will not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Seller's reasonable control, including without limitation failure of suppliers.

9. Authorized Use.

- The purchase of Seller Products conveys to Buyer the right to use such Products in compliance with the intended use statement specified in the Product documentation that accompanies each Product.
- Each Product also may be accompanied by limited use information or limited use label licenses. Unless otherwise expressly stated in the Product documentation, the Products have not been tested for safety or efficacy.
- Buyer will be solely responsible for:
 1. obtaining any necessary intellectual property permissions for Buyer's use,
 2. compliance with any and all applicable laws and regulatory requirements,
 3. determining that the Product is suitable for Buyer's purposes, and
 4. conducting all necessary testing required for applicable Buyer processes.

10. Use Restrictions.

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- Buyer agrees that Products are intended solely for: (a) generation of a finished product manufactured by Buyer, (b) incorporation into a finished product manufactured by Buyer, or (c) Buyer's research purposes. Products are not intended for diagnostic or therapeutic use or for use in vivo with humans or animals.
- Unless expressly stated, Products are not manufactured under GMP standards or GMP certified.
- Buyer shall not use Products in any manner that does not comply with all applicable laws.
- Buyer's warranty rights with respect to a Product shall be deemed null and void if such Product is used for any purpose not permitted in this Section or permitted as indicated in Seller documentation accompanying the Product, or in violation of a use restriction set forth in this Section.
- Buyer agrees to indemnify Seller and hold Seller harmless from and against any and all claims, damages, losses, costs, expenses and liability arising from use not permitted under this Section or violation of a use restriction set forth in this Section.

11. Returned Products.

- Products may be returned only with the express prior written authorization of Seller.

12. Installation or Technical Assistance.

- When Buyer purchases a Product, Seller may provide installation, training, maintenance, repairs or other services as may be expressly agreed on by Seller and Buyer. For details, please contact Repligen Customer Service.
- If Seller installs or services a Product on Buyer's premises, Buyer is responsible for ensuring that the workplace where the Product is to be located or serviced is safe. It is the Buyer's responsibility to place the Product (removed from its packaging) at the installation site, to avoid any additional manual handling.

13. Compliance with Laws and Regulations.

- Seller certifies that, to its knowledge, the Products are produced in material compliance with applicable federal, state, and local laws and regulations, including applicable requirements of the Fair Labor Standards Act of 1938, as amended.
- Buyer understands and acknowledges that Seller is a United States corporation and subject to the provisions of the Foreign Corrupt Practices Act of 1977 of the United States of America, 91 Statutes at Large, Sections 1495 et seq. and the laws of the foreign countries in which Seller does business, including the UK Bribery Act and similar anti-corruption laws of other nations (each and collectively, "Anti-Corruption Laws"), which prohibits the making of corrupt payments.
- Under the Anti-Corruption Laws, it is unlawful to pay or to offer to pay anything of value to foreign government officials, or employees, or political parties or candidates, or to persons or entities who will offer or give such payments to any of the foregoing in order to obtain or retain business or to secure an improper commercial advantage. Buyer further understands and acknowledges that the Anti-Corruption Laws applies to all Seller's offices, operating segments, divisions, subsidiaries, and affiliates worldwide, and also applies to third parties that represent Seller, including without limitation consultants, sales agents, joint-venture partners, representatives, distributors, contractors, and other business partners.
- Buyer further understands and acknowledges that it has an obligation to abide by the Anti-Corruption Laws and that it is familiar with the provisions of Anti-Corruption Laws. Buyer hereby agrees that it will not take or permit any action that will either constitute a violation under, or cause Seller to be in violation of, the provisions of Anti-Corruption Laws, including without limitation, that Buyer, its affiliates and their respective employees and agents shall not directly or indirectly make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any government (including a decision not to act) or inducing such an official to use his/her influence to affect any such governmental act or decision in order to assist Buyer in obtaining, retaining or directing any business relating to Seller's Products. Buyer shall run appropriate anti-money laundering and other checks to prevent illegal transactions occurring in relation to Seller Products and in any event, no less than is required by applicable law and regulation. Buyer shall not make any sales of Products to persons or entities that fail such checks.
- In addition to all other contractual, legal and equitable remedies, Seller has the right to instruct Buyer to stop marketing, offering to sell, selling, distributing and otherwise supplying Seller Products on notice from Seller if Seller or any its

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licensors, after performing reasonable diligence, provides reasonable written documentation in reasonable detail to Buyer demonstrating that the Buyer or any Buyer affiliate or any of their respective employees or agents is not complying with Anti-Corruption Laws.

- Notwithstanding any other provision of this Agreement, if Seller becomes aware of what it determines in good faith to be a breach of this Section 13 with regard to Anti-Corruption Laws, Seller is entitled to terminate this Agreement, and any other agreement between the parties, with immediate effect and without liability to Buyer.
- Buyer agrees to comply with all export laws and restrictions and regulations of the United States Department of Commerce or other United States or other sovereign agency or authority, and not to export, or allow the export or re-export to any countries, or release to a national of a restricted country, of any technical data or any direct product thereof in violation of any such restrictions, laws or regulations, or unless and until all required licenses and authorizations are obtained to the countries specified in the applicable U.S. Export Administration Regulations (or any successor supplement or regulations). Certain Seller Products are export-controlled, and Buyer will require US export licenses to export same to certain countries and must restrict access to permitted users.
- Seller is an Equal Opportunity Employer. It does not discriminate in any phase of the employment process against any person because of race, color, creed, religion, national origin, sex, sexual orientation, age, veteran or handicapped status.
- Seller certifies that it complies with the European General Data Protection Regulation (GDPR), California Consumer Privacy Act (CCPA) and Nevada Privacy Law, when applicable.

14. Dispute Resolution.

- Any and all disputes arising out of, resulting from or relating to these Terms or the sale or performance of the Products will be first escalated to senior management for resolution. If senior management does not resolve the dispute within sixty (60) days after written notice of a dispute by either party, either party may initiate mediation.
- Each party commits to attending at least one mediation session and participating in good faith in the mediation process for a period of sixty (60) days; however, each party reserves the right to initiate court proceedings at any time to seek injunctive or other temporary relief.
- If a party initiates mediation, the parties will engage in non-binding mediation before a sole mediator ("Mediator") selected from Judicial Arbitration and Mediation Services, Inc., or its successor ("JAMS"), with such mediation to be held in the neutral location determined by the Mediator. A representative of each party with authority to resolve the dispute will participate in the mediation. The parties will share the costs of the Mediator and mediation equally, except that each party will pay its own attorneys' fees and expenses.
- If the representatives of the parties have not been able to resolve the dispute within such sixty-day period: (1) for end users located in the United States, the parties hereby consent to the exclusive jurisdiction of the state and federal courts in Boston, Massachusetts regarding any disputes arising out of, relating to or resulting from this Agreement, and (2) for end users located outside the United States, any dispute will be resolved by final and binding arbitration under the then current procedural Commercial Arbitration Rules of the International Chamber of Commerce. The place of arbitration will be London, England, and the language of the arbitration proceeding will be English. Any award rendered in such arbitration may be enforced by either party in any court of competent jurisdiction, to whose jurisdiction for such purposes each party hereby irrevocably consents and submits. The arbitrators' decision will be final and nonappealable, except as provided in the appeal procedures under the Commercial Arbitration Rules or applicable law. Notwithstanding anything to the contrary in this Agreement, either party may apply to a court of competent jurisdiction for a preliminary injunction or other equitable relief at any time.

15. Governing Law.

- For customers in the United States, these Terms will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, but without giving effect to its conflict of laws provisions.
- For customers in the United Kingdom, these Terms will be governed by and construed in accordance with the laws of England, but without giving effect to its conflict of laws provisions.
- For customers in Europe, these Terms will be governed by and construed in accordance with the laws of Switzerland, but without giving effect to its conflict of laws provisions.
- The United Nations Convention on Contracts for the International Sale of Goods will not apply.

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16. General.

- Orders are not assignable or transferable, in whole or in part, without the express prior written consent of Seller.
- Nothing in this document is intended to create any rights in third parties against Seller.
- These Terms may be modified and any breach may be waived, but only in writing and signed by the party against whom enforcement thereof is sought. The waiver by either party of any provision of these Terms will not operate as a waiver of such provision at any other time.
- If any provision of these Terms is held illegal, invalid or unenforceable, such provision will be deemed revised to the maximum extent lawfully permissible, and the remainder of these Terms will remain in full force and effect.
- In these Terms, words in the singular include the plural and vice versa. The headings are only for convenience.
- Clerical or computer errors on the face of any Seller invoice will be subject to correction by Seller.

17. Specific Terms for Service.

- Fees. Buyer shall pay Seller the amount set forth in the applicable purchase order properly accepted by Seller, plus any applicable sales tax.
- Normal Business Hours. During the term of the Agreement, Seller will provide service calls between regular business hours (i.e., 8:00 a.m. and 5:00 p.m. local time, Monday through Friday, excluding Seller holidays) at no additional charge. In the event, Buyer requests Services, including service travel, outside of Seller's normal business hours or on Seller holidays, Buyer will be billed at one and a half (1.5) of Seller's standard hourly rate with a minimum of eight (8) hours assessed per field service engineer ("FSE").
- Equipment Availability. In the event a FSE is at the Buyer site and the equipment is unavailable for servicing which causes a delay in excess of four (4) hours and consequently prevents the timely completion of the Services, Seller, in its sole discretion, may charge Buyer for "waiting time" at the standard hourly rate quoted in the current Seller Services price list.
- No Fault Found. In the event that during Services performed in response to Buyer's request, the FSE ascertains there is "no fault found," meaning the system is functionally operating in accordance with the manufacturer's documentation accompanying the system when it was delivered, Seller, in its sole discretion, may charge Buyer for travel and labor at the standard rates quoted in the current Seller Services price list.
- Failure of Ancillary Services. In the event that during Services performed in response to Buyer's request, the FSE ascertains the fault condition has been caused by a failure of a supporting system connected to the Seller equipment (including, but not limited to, electrical power supply, compressed air supply, etc.), Seller, in its sole discretion, may charge Buyer for travel and labor at the standard rates quoted in the current Seller Services price list. Seller will provide Buyer a quotation detailing the required Services and cost to repair the system prior to such Services being performed.
- Negligent or Wilful Damage. Damage caused by the Buyer's or a third party's negligent or wilful actions is not covered under the Agreement. In the event that during Services performed in response to Buyer's request, the FSE ascertains there is "negligent or wilful damage," Seller, in its sole discretion, may charge Buyer for travel and labor at the standard rates quoted in the current Seller Services price list. Seller will provide Buyer a quotation detailing the required Services and cost to repair the system prior to any Services being performed.
- Misuse. In the event that during Services performed in response to Buyer's request, the FSE ascertains the fault condition has been caused by operation outside of the operating parameters of the equipment in accordance with the Use Restrictions set forth in Seller's terms and conditions, Seller, in its sole discretion, may charge Buyer for travel and labor at the standard rates quoted in the current Seller Services price list. Seller will provide Buyer a quotation detailing the required Services and cost to repair the system prior to any Services being performed.
- Relocation. Relocation of the system from site of original delivery is not covered by the terms of the Agreement. Relocation Services will be charged at the standard rates quoted in the current Seller Services price list. Seller will provide Buyer a quotation detailing the cost to relocate the system prior to such Services being performed.
- Expired Warranty. In the event the system is no longer under manufacturer's warranty, Buyer shall be charged for replacement parts at the standard prices quoted in the current Seller Services price list.
- Expired Agreement. In the event the Agreement is no longer in effect (i.e., terminated or expired), Buyer, in Seller's sole discretion, may be charged Seller's standard hourly rate for labor, standard prices quoted in the current Seller Services price list for replacement parts and any travel and living expenses required to provide Services requested by Buyer.

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- **Additional Capability.** Parts, software and labor providing additional functionality to the system are not covered by the terms of the Agreement. Seller will provide Buyer a quotation detailing the cost of any required parts, software and/or labor required to provide additional functionality to the system prior to such parts and/or software being provided and/or Services being performed.
- **Corrective Repairs Expenses.** Reasonable corrective repair costs including spare parts, labor, travel and living expenses are covered by the Agreement.
- **Unscheduled Request for Services.** In the event Buyer requests unscheduled corrective repair services due to the system not functionally operating in accordance with the manufacturer's documentation accompanying the system when it was delivered, Seller will endeavor to provide such Services within five (5) business days after being notified by Buyer of the need of an unscheduled corrective repair call. Due to the urgent and typically unknown nature of the request for Services, Seller shall not be obligated to provide Buyer a quotation detailing the cost of Services prior to such service call. Seller, in its sole discretion, may charge Buyer reasonable spare parts, labor, travel and living expenses required to address the extent of Buyer's urgency for the Services.
- **Seller's Obligation.** When providing Services, Seller shall use commercially reasonable efforts to restore the system so that it is fully functional and operating in accordance with the manufacturer's documentation accompanying the system when it was delivered.

18. Planned Preventative Maintenance ("PPM") Services Plan.

In addition to the terms and conditions set forth in Section 17, the following terms and conditions shall apply to a PPM purchased by Buyer:

- Seller will perform one (1) PPM service call on-site annually for each system under the Agreement for the term of the Agreement.
- Seller and Buyer shall endeavor to consolidate such PPM service calls so that as many systems as possible are serviced during an on-site call.
- Seller will perform all applicable preventative maintenance required in accordance with manufacturer's recommendations and Standard Operating Procedures.
- Seller will schedule PPM calls with Buyer.
- Spare parts, labor, travel and living expenses required to provide PPM Services are covered by the Agreement.
- In the event Buyer cancels or reschedules less than fourteen (14) days from the date of a scheduled PPM service call, Seller may, in its sole discretion, charge Buyer a cancellation or rescheduling penalty equal to Seller's costs incurred due to the cancelled or rescheduled PPM service call.

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