

Terms and Conditions of Sale

All products sold by **AgaMatrix Inc.** (hereinafter "Seller") are sold in accordance with, and subject to, the following terms & conditions:

TERMS OF PURCHASE ORDER ACCEPTANCE AND COMPLETE AGREEMENT. Buyer's order for product(s) is binding only when accepted by an authorized representative of Seller and is accepted subject to the following terms and conditions, which constitute the complete agreement between the parties, any terms to the contrary, are expressly disclaimed. Buyer's acceptance of product delivery evidences Buyer's acceptance of these terms and conditions. This Agreement may not be altered or modified except in writing duly executed by both parties. Except as set forth herein, the parties agree there are no other contracts or agreements between them, oral or written, with respect to the products sold hereunder (including any made or implied from past dealings). No additional or different terms and conditions stated in or attached to Buyer's communications to Seller, including but not limited to Buyer's purchase orders, are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these terms and conditions.

SHIPPING DATES. Shipping dates are estimates and are not guaranteed. Seller will use commercially reasonable efforts to make shipments as scheduled and reserves the right to make partial shipments. The completion of the order is subject to acts of God or public enemy, fires, severe weather, delays caused by governments (including government priority, preference or allocation), delays of suppliers in furnishing materials or services, and any causes beyond Seller's control.

INSPECTION. All products must be inspected within five (5) calendar days of receipt. If any damage is discovered, Buyer is responsible for filing any and all claim(s) with the carrier.

EXPORTATION. Seller's products may be subject to the export laws and regulations of the United States and other countries. If the products are to be exported, the quoted shipping dates are subject to receipt of all export documents and authorizations. Buyer represents and warrants it shall comply with all applicable laws and regulations in the transfer, export or re-export of product(s) obtained from the Seller, and will secure licensing for items, end uses and end users of control under US exporting regulations and present said license to Seller, if required. Unless otherwise stated in writing, prices quoted are based on packing for domestic shipment, regardless of ultimate destination.

PRICES. Unless expressly stated and agreed to in writing by Seller, all prices are Ex Works (Incoterms 2000) Seller's facility and do not include shipping and handling charges, sales, use, excise, VAT or similar taxes or duties. Buyer shall pay these taxes directly if the law permits or will reimburse Seller if Seller is required to collect and pay them. If applicable, Buyer will provide certificates of tax exemption in advance, or will provide evidence of tax payment upon request. All payments are due in US Dollars unless otherwise agreed by the Seller in writing.

TITLE AND RISK OF LOSS. Title to and risk of loss for the products shall pass to Buyer Ex Works (Incoterms 2000) Seller's facility unless otherwise expressly agreed to in writing by an authorized officer of Seller.

PAYMENT. Payment terms are net thirty (30) days from date of invoice subject to approved credit and Seller's credit terms. Where credit is not established or at Seller's reasonable discretion, Seller reserves the right to require payment or the issuance of an irrevocable letter of credit prior to shipment. Any amounts not paid when due shall bear interest at the lesser rate of (i) 1 1/2% per month or (ii) at the highest rate permitted by law; from the date of shipment until paid. Seller reserves a purchase money security interest in each product shipped that will be satisfied by payment in full. Seller has the right to file a copy of this document as a financing statement, and Buyer hereby authorizes Seller to execute any and all documents necessary to secure and perfect its interest.

CANCELLATION. Orders placed with and accepted by Seller may not be canceled prior to shipment except upon Seller's written consent, and subject to Buyer's acceptance of Seller's cancellation and/or restocking charges that shall protect Seller against applicable costs and losses. Seller reserves the right to cancel any sale hereunder without liability to Buyer (except for refund of monies already paid), if the manufacture or sale of the products is or becomes technically or economically impractical. No product may be returned except under

warranty and with the prior written approval of Seller as evidenced by a Return Materials Authorization (RMA).

MANUFACTURE. Seller reserves the right to discontinue the manufacture of, or to change or modify the design or construction of the products sold, without incurring any obligation to Buyer.

WARRANTY. At the time of shipment to Buyer, all products manufactured by and purchased from Seller are warranted to be substantially free from defects in material and workmanship and to conform to Seller's specifications applicable to the product. Unless otherwise stated in writing, the warranty period is one year, for meters and until the expiry date on the strip box for strips and commences from the date of manufacture, subject to proper storage and handling. No warranty is given for products or components which have been subject to misuse, improper storage including exposure to heat, cold and humidity, been disassembled, modified or repaired by unauthorized persons. Seller must receive written notice of defect within the warranty period. Seller's liability is limited solely to the repair or replacement of any product returned to the factory for that purpose, including replacing any defective parts therein or, at Seller's option, refunding to Buyer the purchase price allocable to the nonconforming product. Buyer must pay packing, crating and transportation costs to and from the factory. If Seller determines fault has been caused by improper installation, maintenance or use, or by abnormal conditions of operation, Seller may bill repairs at Seller's normal rates.

If any fault arises, the following steps must be taken:

A. Notify Seller of the product model, serial number, lot number and details of the warranty claim. On receipt of this information, Buyer will be given service data or shipping/return instructions. Return instructions related to certain products and/or enduses may include biohazard decontamination procedures and other product-specific handling instructions. Seller may refuse to provide warranty services if return instructions are not followed.

B. On receipt of Seller's return instructions, forward the product prepaid. If the product or the fault is not covered by warranty, an estimate of charges will be furnished before further action is taken.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, SUCH AS WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. SELLER DISCLAIMS ALL WARRANTIES REGARDING ANY ANCILLARY SERVICES RENDERED. IN NO EVENT DOES SELLER MAKE ANY WARRANTY OF ITS PRODUCT FOR USE IN LIFE SUPPORT EQUIPMENT.

REGULATORY. For regulatory purposes, Seller shall be deemed the manufacturer of the products and shall comply with all U.S. FDA and CE regulatory requirements. With respect to any local regulatory requirements, the Buyer shall comply with such requirements. The Buyer must comply with the Seller's quality agreement.

DRAWINGS AND ILLUSTRATIONS. Any drawings, illustrations, photographs, descriptions, specifications, drawings, and particulars of weights and dimensions provided are only to show the general style, arrangement, and approximate dimensions of the products offered. No work is to be based on drawings unless the drawings are certified and agreed to by an authorized representative of Seller. In no event will manufacturing or proprietary drawings be supplied nor may the provision of drawings and illustrations be construed as a sale of technology unless expressly agreed in writing by both parties.

CONFIDENTIALITY. Buyer agrees that all models, prototypes, drawings, written communications, prints and any other material that Seller provides to Buyer, whether prepared by Seller or by third parties under contract to Seller, may contain data that embody trade secrets and confidential know-how of commercial value to Seller or third parties under contract to Seller. Buyer agrees (a) to keep such information confidential; (b) that it will not disclose such information to any other person, corporate division or entity; (c) will not use such information except in connection with the products supplied hereunder; and (d) will not sell, lease, loan or permit any other person, corporate division or entity to use such information for any purpose, without Seller's prior written consent. Nothing herein shall restrict the use of information available to the general public.

NON-CIRCUMVENTION. Buyer agrees not to, and to use its reasonable business efforts so that its distributors,

consultants and agents do not contact, buy products directly from or establish a business relationship with Seller's first tier suppliers, unless such a business relationship existed prior to Buyer's purchase hereunder, and such relationship can be verified in writing.

NON-USE AND NON-DISCLOSURE. Buyer not to open, disassemble, reverse engineer or decompile any Products, including Meters and Strips, and shall not open the Meter housing or break the safety seal on the Meter for any reason.

PATENT INDEMNITY. If a product manufactured by Seller and furnished to Buyer becomes or, in Seller's opinion, may become the subject of any claim, suit or proceeding for infringement of any United States patent, Seller may at its option and expense (i) obtain for Buyer the right to use, lease or sell the product, (ii) replace the product, (iii) modify the product, or (iv) remove the product and refund the purchase price paid by Buyer less a reasonable amount for use or obsolescence. Seller will not be liable for any infringement arising from the combination of products or from the use of a product in a process. Seller's total liability to Buyer will not, under any circumstances exceed the purchase price paid for the allegedly infringing product. Buyer agrees, at its expense, to protect and defend Seller against any claim of patent infringement arising from compliance with Buyer's designs, specifications or instructions and to hold Seller harmless from damages, costs and expenses attributable to any such claim.

INDEMNITY & INSURANCE. Buyer agrees to defend, indemnify and hold the Seller (and its agents, representatives, employees, officers, related companies, affiliates, successors and assigns, and customers) harmless from all claims, demands, actions, damages, and liabilities (including attorney's fees and consequential and incidental damages) arising out of any injury (including death) to any person or damage to any property in any way connected with any act or omission of Buyer, its agents, employees, or subcontractors. Buyer agrees to maintain Workmen's Compensation and Comprehensive General Liability insurance, including property damage coverage, in an amount and form satisfactory to Seller. Upon request, Buyer agrees to provide Seller with certificates evidencing that such insurance is being maintained.

LIMITATION OF DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE, IN CONTRACT, TORT, STRICT LIABILITY, OR UNDER ANY OTHER LEGAL THEORY, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL AND/OR PUNITIVE DAMAGES OR FOR LOSS OF PROFIT, REVENUE OR DATA, REGARDLESS OF WHETHER IT WAS INFORMED ABOUT THE POSSIBILITY OF SUCH DAMAGES, AND IN NO EVENT SHALL SELLER'S TOTAL LIABILITY EXCEED AN AMOUNT EQUAL TO THE SALES PRICE.

SOLVENCY. Buyer's order represents that Buyer is solvent and able to pay for products ordered. If Buyer fails to make payment when due or makes an assignment for the benefit of creditors or if bankruptcy or insolvency proceedings are instituted by or against Buyer, Buyer will be deemed to be in default and Seller will have the right to terminate its obligations by written notice to Buyer, but such termination will not affect Buyer's obligation to pay for products delivered and works in progress.

WAIVER. No failure or delay by Seller in exercising any right hereunder will operate as a waiver thereof nor will any single or partial exercise of any right hereunder preclude further exercise of the same.

JURISDICTION AND DISPUTES. These terms and conditions shall be governed by the laws of the Commonwealth of New Hampshire, without regard to conflict of law provisions. Unless otherwise agreed by both parties, disputes related to the sale of products hereunder shall be resolved by the courts located in New Hampshire and the parties hereby consent to such jurisdiction, agree to accept service process by mail, and hereby waive any jurisdiction or venue defenses otherwise available.

VALIDITY OF PROVISIONS. In the event any provision or portion of any provision of these terms and conditions shall be held invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.

NO MAIL ORDER RESALE. Buyer agrees that it will not resell any products purchased hereunder directly to consumers, via mail order direct-to-consumer residence.