

Purchase Order Terms & Conditions

1. General The following terms and conditions, together with such terms as are set forth in the Purchase Order Form ("Form"), with such plans, specifications or other documents as are incorporated by reference, as amended in any subsequent authorized writing from Buyer, shall constitute the entire contract (the "Purchase Order") between Beckon Scientific ("Buyer") and XXXXX ("Supplier"). For purposes of this document, "Parties" will mean the "Supplier" and the "Purchaser". If bid documents, performance specifications, technical product descriptions or other similar descriptive materials submitted by Supplier in connection with the Purchase Order, or Supplier's proposal, have been incorporated by reference, these shall not be deemed to supersede any contrary requirements of Buyer, but to the extent that such materials are not inconsistent with Buyer's requirements, they shall constitute a part of the basis of this agreement. If this Purchase Order is construed as an offer, this offer expressly limits acceptance to the terms of this offer and notice of objection to any different or additional terms in any response to this offer is hereby given. If this Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the offeror's assent to any different or additional terms contained or referenced in this Purchase Order. If this Purchase Order is construed as a confirmation of an existing contract, the parties agree that this confirmation states the exclusive terms of any contract between the parties. This Purchase Order shall be deemed to have been accepted by the Supplier upon receipt by the Buyer of any writing, including a writing transmitted by fax or other means of electronic transmission, indicating acceptance, or by any of the following: (i) shipment of the goods or any portion thereof, (ii) commencement of any work on site or (iii) performance of any services hereunder.

2. **Electronic/Facsimile Transmission** If this Purchase Order is transmitted by fax or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to the Supplier, but only if the Transmit Terminal Identification on the Form includes the notation "Beckon Scientific Purchasing Services."

3. **Payment** Initial invoice shall be paid in accordance with XXXXX's payment policy; The payment terms shall follow the recommended terms of XXXX as under: Payment by T/T, 15% of Proforma Invoice in advance to issue the Order (within 5 working days from receipt of Proforma Invoice), 15% upon successful quality inspection review and on receipt and acceptance on initial packaging template review by both Parties (within 5 working days from Acceptance of initial packaging template and successful quality review), and balance (70%) of the Commercial Invoice upon transfer of title and final inspection by Beckon Scientific or the 3rd party (within 7 working days from receipt of Commercial Invoice). Subsequent invoices shall be paid in accordance with XXXXX's payment policy; The payment terms shall follow the recommended terms of XXXX as under: Payment by T/T, 30% of Proforma Invoice in advance to issue the Order (within 5 working days from receipt of Proforma Invoice), with balance (70%) of the Commercial Invoice upon transfer of title and final inspection by Beckon Scientific or 3rd Party (within 7 working days from receipt of Commercial Invoice).

4. **Time** If delivery or completion dates cannot be met, Supplier shall inform Buyer immediately in accordance with the Manufacture Supply Agreement between the Parties. Such notice shall not, however, constitute a change to the delivery or completion terms of this Purchase Order unless Buyer modifies this Purchase Order in writing. If any item is not received or if any element of the work is not completed by the date specified, the Buyer, at Buyer's option and without prior notice to Supplier, may either approve a revised date or may cancel this Purchase Order and may obtain such goods or work elsewhere and in either event the Supplier shall be

liable to the Buyer for any resulting loss incurred by the Buyer. Supplier's sole remedy for a delay caused by Buyer shall be an extension in the time for Supplier's performance equal to the duration of Buyer's delay. Supplier shall not be liable for damages resulting from Supplier's failure to deliver or complete, or for delays in delivery or completion, caused solely by strikes not caused by or within the control of Supplier, lock-outs not caused by or within the control of Supplier, fires, war or acts of God. TIMING OF DELIVERY AND/OR PERFORMANCE OF THE WORK IS OF THE ESSENCE OF THIS PURCHASE ORDER.

5. Improper Performance and Disputes In addition to other remedies provided by law, Buyer reserves the right to reject any goods or to revoke any previous acceptance and to cancel all or any part of the Purchase Order if Supplier fails to deliver all or any part of the goods or perform any of the work in accordance with the terms and conditions of this Purchase Order upon mutual agreement in accordance with the Manufacture Supply Agreement between the Parties. Acceptance of any part of the Purchase Order shall not bind the Buyer to accept any future shipments or work, nor deprive it of the right to return goods already accepted. At Buyer's option, if Buyer so elects in its sole discretion with regard to any particular dispute, any dispute arising in connection with this Purchase Order shall be resolved by Rules of the Hong Kong International Arbitration Centre ("Rules") by three (3) impartial arbitrators appointed in accordance with its Rules in accordance with the Manufacture Supply Agreement between the Parties; and all disputes shall otherwise be resolved in and only in the Arbitration Court in Hong Kong. BUYER AND SELLER WAIVE THEIR RIGHT TO A JURY TRIAL WITH REGARD TO ANY DISPUTE ARISING IN CONNECTION WITH THIS PURCHASE ORDER.

6. Warranty Supplier expressly warrants all (i) goods delivered under this Purchase Order to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered and (ii) work performed under this Purchase Order to be in conformity with all plans, specifications and other data incorporated as part of this Purchase Order. Notwithstanding any limitation of warranty, Supplier further represents and warrants that the supply, quality and fitness for the purpose of the goods or services will not be impaired, disrupted or interrupted in whole or in part by the occurrence of any leap year. These express warranties shall not be waived by reason of acceptance or payment by the Buyer. This Purchase Order incorporates by reference all terms of the Uniform Commercial Code as adopted in the State of Florida (the "UCC") providing any protection to Buyer for goods, including but not limited to all warranty protection (express or implied) and all of Buyer's remedies under the UCC. All goods and work shall also be subject to any stricter warranties specified in the Purchase Order or in other materials incorporated by reference.

7. Risk of Loss Unless the Purchase Order expressly states otherwise, all goods shall be shipped EXW. Risk of loss shall not pass to Buyer until goods and title have passed called for in this Purchase Order as stated in the Manufacture Supply Agreement between the Parties and specified herein. Supplier assumes full responsibility for packing, crating, marking, preparation for transport, liability for loss and/or damage until title has passed in accordance with Manufacture Supply Agreement between the Parties even if Buyer has agreed to pay freight, express or other transportation charges.

8. Indemnity and Hold Harmless From and after the date of this Purchase Order, the Supplier agrees to indemnify, defend and hold harmless the Buyer from any and all claims and liabilities, regardless of by whom such claim or liability may be asserted, for personal injury (including death), or loss or damage to property, or otherwise that may result directly or indirectly from the use, possession or ownership of the goods or from the services provided by Supplier pursuant to this Purchase Order. With regard to Supplier's obligation to defend, the Buyer shall have the right to select the legal counsel whom Supplier shall provide to defend any Indemnified Party, subject to Supplier's approval of the qualifications of such legal counsel and the reasonableness of counsel's hourly rates as compared to the rates of attorneys with similar experience and qualifications in the relevant area of legal expertise and in the jurisdiction where the claim will be adjudicated. If the Buyer elects, in its sole discretion, to retain separate legal counsel, in addition

to or in lieu of the counsel to be provided by Supplier, then all costs and expenses incurred by the Buyer for such separate counsel shall be borne by the Buyer and the Supplier shall reasonably cooperate with the Buyer and its separate legal counsel in the investigation and defense of any such claim or action. Supplier shall not settle or compromise any claim or action giving rise to Claims in a manner that imposes any restrictions or obligations on Buyer without Buyer's prior written consent. If the Buyer elects to require that Supplier defend a Claim pursuant to this paragraph, and Supplier fails or declines to assume the defense of such Claim within thirty (30) days after notice thereof, the Buyer may assume the defense of such Claim for the account and at the risk of Supplier, and any Liabilities related thereto shall be conclusively deemed a liability of Supplier. The indemnification rights of the Indemnified Parties contained herein are in addition to all other rights which such Indemnified Party may have at law or in equity or otherwise.

9. Assignment/Subcontracting Neither party shall have any right to assign this Purchase Order or any benefits arising from this Purchase Order without prior written consent of the other and, unless otherwise agreed upon in writing, the rights of any assignee shall be subject to all set-offs, counterclaims, and other comparable rights arising hereunder. Supplier shall not, except in the case of raw materials, castings, forgings or rough welded structures, or standard commercial goods, or except as otherwise agreed in writing by the Buyer, delegate or subcontract the work on any item of material or service to be delivered or performed under this Purchase Order.

10. Insurance In connection with the Purchase Order, Supplier, at its own cost and expense, shall obtain and maintain in force during the term of this Purchase Order, the following insurance coverage: A policy of workers' compensation insurance, in amounts required by law, covering all officers and employees of Supplier who are in any way engaged in or connected with the Purchase Order, and employer's liability insurance in an amount of not less than Five Hundred Thousand Dollars (\$500,000). Supplier shall require its agents, sub-suppliers and subcontractors, who are in any way engaged in or connected with the Purchase Order to maintain the same insurance as required herein of Supplier. A policy of commercial general liability insurance with broad form property damage endorsement, personal injury and products completed operations coverage, affording protection in an amount of not less than Two Million Dollars (\$2,000,000) per incident and in the aggregate, with respect to personal injury, death, or damage to property. If this Purchase Order contemplates professional services, a policy of professional liability insurance, including errors and omissions, affording protection of not less than One Million Dollars (\$1,000,000) per incident and One Million Dollars (\$1,000,000) in the aggregate. A policy of comprehensive automobile liability insurance covering the operation of all motor vehicles used by Supplier or its agents in connection with this Purchase Order, affording protection in an amount of not less than One Million Dollars (\$1,000,000) combined single limit with respect to personal injury, death, or damage to property.

All of these insurance policies shall be issued by insurance companies with an AM Best rating of "A" or higher and a financial strength rating of VII or higher, or equivalent ratings provided by a disinterested, generally recognized rating agency, which companies shall be licensed or permitted to conduct business in the Commonwealth of Pennsylvania. The commercial general liability policy shall name The Trustees of the University of Pennsylvania as an additional insured, and shall be written as primary coverage and not contributing with or in excess of any coverage that the Buyer may carry. Upon request, Supplier shall furnish to Buyer a current certificate of insurance for each of the policies required above. Insurance coverage(s) provided under this Purchase Order shall not limit or restrict in any way the liability of Supplier arising under or in connection with this Purchase Order. Such insurance shall not be canceled or terminated without ten (10) days prior written notice of any cancellation or termination.

11. Examination of Records The Supplier agrees that Buyer, and any Federal agency providing funding for this Purchase Order and the Comptroller General of the United States or any of their duly authorized representatives, shall have access to and the right to examine any

pertinent books, documents, papers and records of the Supplier involving transactions related to this Purchase Order to the extent necessary to verify the nature and extent of costs incurred under this Purchase Order until the expiration of three (3) years after final payment under this Purchase Order. Nothing in this Purchase Order shall be deemed to preclude an audit by the U.S. General Accounting Office of any transaction under this Purchase Order. The preceding two sentences shall not apply if this Purchase Order does not involve a sum in excess of One Thousand Dollars (\$1,000), or if this is an agreement for public utility services at rates established for uniform applicability to the general public, or if this is an agreement for general inventory goods not specifically identifiable with work under the Buyer's contract with the government.

12. Non-Discrimination in Employment In connection with the performance of work under this Purchase Order, the Supplier agrees as follows: The nondiscrimination clause and reporting requirements contained in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin and the implementing rules and regulations prescribed by the U.S. Secretary of Labor, are incorporated herein. Additionally, the conditions and regulations applicable in the Vietnam Era Veterans Readjustment Act of 1972 and the Rehabilitation Act of 1973 (Employment of the Handicapped) are likewise incorporated.

- a. The Supplier will furnish all information and reports required by Executive Order No. 11246 as amended, and by the rules, regulations, and orders of the U.S. Secretary of Labor, or pursuant thereto, and will permit access to Supplier's books, records, and accounts by the contracting agency and the U.S. Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- b. In the event of the Supplier's non-compliance with the non-discrimination clauses of this Purchase Order or with any of the said rules, regulations, or orders, this Purchase Order may be cancelled, terminated or suspended in whole or in part and the Supplier may be declared ineligible for further Government contracts as provided by law.

13. Compliance with Laws and Regulations The Supplier agrees to comply with all applicable international, federal, state, and local laws and regulations.

14. Termination Without CauseTermination for Default: If either party is in default as to any material term or condition of this Agreement and, within ninety (90) days of written notice from the non-defaulting party ("Cure Period"), the defaulting party has not effected a complete cure in all material aspects, then the non-defaulting party shall have, in addition to all other remedies available at law or in equity, the right to terminate this Agreement in its entirety, upon delivery of ten (10) days prior written notice of termination to the defaulting party; provided that: such termination shall only relieve the Parties of obligations which would have arisen under this Agreement after the effective date of termination and shall in no way relieve the Parties from any obligations existing on the date of such termination; and, the failure of the non-defaulting party to terminate this Agreement for any cause shall not constitute a waiver of such right in the future as to any subsequent default for the same or similar cause.. Immediate Termination - The following events shall constitute a default under this Agreement for which the non-defaulting party may terminate this Agreement immediately, such notice being effective simultaneous with the defaulting party's receipt of the non-defaulting party's notice of default :a receiver is appointed for a party or its property ;a party makes, or attempts to make, an assignment of this Agreement for the benefit of its creditors ;any proceedings are commenced by a court or law or other relevant government entity under any bankruptcy, insolvency, or applicable debtor's relief law; or a party liquidates or dissolves, or attempts to liquidate or dissolve, except by way of merger. Unreasonable Delay - BECKON SCIENTIFIC may terminate this Agreement by written notice, effective immediately upon receipt, if there is a pattern of ten (10) or more consecutive shipments, each of which is delivered more than fifteen (15) days later than the Agreed Delivery Date or for one shipment later for ninety (90) days than the

Agreed Delivery Date, XXXXX shall indemnify Beckon Scientific against any and all losses arising from such delay. Termination by XXXXX and Liquidated Damages: If BECKON SCIENTIFIC defaults in the performance of any of its contractual obligations, fails to cure such default within the Cure Period and XXXXX terminates this Agreement, XXXXX shall propose payments owed by Beckon Scientific. Both Parties will mutually agree to the payment and terms. Once agreed, BECKON SCIENTIFIC agrees to pay as liquidated damages to XXXXX the amount of any outstanding Purchase Orders and any remaining R&D Fee balances owed. Purchase Order Survival- All Purchase Orders placed by BECKON SCIENTIFIC prior to the expiration or non-renewal of any term of this Agreement shall be honored by XXXXX in accordance with the terms of manufacture, sale, delivery, and support provided by this Agreement, unless the Parties agree to different terms in writing. Notwithstanding the foregoing, in the event this Agreement is terminated by either party in accordance with this Section, the terminating party may cancel all outstanding Purchase Orders not yet manufactured. Either Party may terminate this agreement at any time without cause, by giving written notice to the other Party, provided such written notice is given to the other Party at least ninety (90) days prior to the proposed termination. Termination of this Agreement shall not affect the right of any Party against the other in respect of obligations assumed within the term of this Agreement up to the date of termination.