

BIT MedTech, BIT C2D, BIT Analytical Instruments and Source Scientific, LLC
Terms and Conditions of Purchase – North America
Effective as of August 2011

1. Applicability.
 - 1.1. These Terms and Conditions of Purchase set forth the terms and conditions that apply to the purchase of goods and services in North America by BIT MedTech, BIT C2D, BIT Analytical Instruments, Inc., BIT Analytical Instruments GmbH or Source Scientific, LLC ("Buyer") from Seller as described on the face of any purchase order issued by Buyer to Seller (each, a "PO").
 - 1.2. Seller agrees to perform the services ("Services") and/or provide the goods or deliverables (collectively, "Goods") described in the PO, in accordance with the terms and conditions set forth herein and in the PO, including any statements of work or other documents attached to or specifically incorporated into the PO by reference (collectively, this "Agreement"). Upon acceptance of a PO, shipment of Goods or commencement of Services, Seller shall be bound by the terms of this Agreement, whether Seller acknowledges or otherwise signs this Agreement, unless Buyer and Seller otherwise agree in writing prior to Seller shipping Goods or commencing Services. This Agreement does not constitute a firm offer and may be revoked at any time prior to acceptance; Buyer reserves the right to cancel this Agreement at any time prior to shipment of the Goods or commencement of any Services and Buyer shall not be subject to any charges or other fees as a result of such cancellation. Any terms or conditions contained in any acknowledgement, invoice, or other communication of Seller are hereby rejected, and in no event shall Buyer's failure to object to such terms or conditions be deemed acceptance thereof. To the extent this Agreement might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms hereof and shipment of the Goods or commencement of Services by Seller shall constitute such assent.
2. Quotations. Any quotation prepared by Seller in response to an inquiry from Buyer shall conform exactly to such inquiry and the terms thereof except to the extent such quotation clearly and expressly deviates therefrom. All such quotations shall be prepared free of charge.
3. Order and order confirmation. Only orders set forth in written, signed POs shall be binding on Buyer. Orders in any other form shall only become binding if confirmed in a written, signed PO. This Agreement may not be added to, modified, superseded, or otherwise altered, except by a writing signed by an authorized representative of Buyer.
4. Delivery period.
 - 4.1. Time is of the essence for all Goods and Services covered by this Agreement. Delivery of Goods shall be made pursuant to the schedule specified on the applicable PO. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of transportation by land or sea. Early delivery may only be made with the prior written consent of Buyer and shall not affect the agreed upon payment schedule.
 - 4.2. If Seller determines that it will not be able to meet the agreed upon delivery schedule it shall immediately notify Buyer of such determination and the reasons therefor, so that Buyer can make timely alternative arrangements. Such notice shall not affect Seller's obligation to meet the agreed upon delivery schedule.
 - 4.3. Seller may only rely on the absence of documentation to be provided by Buyer as a defense against a claim for late delivery if and to the extent that Seller has requested such documentation in writing and not received it promptly thereafter.
 - 4.4. If notice of delayed delivery is given promptly, Buyer shall, solely to the extent not inconsistent with its business needs, grant Seller a grace period. If such grace period shall expire before delivery is made, Buyer shall be entitled to cancel the applicable PO in whole or in part, cover, require payment of damages or pursue any other remedy available at law or equity.
 - 4.5. If, as a result of a delay by Seller, a delivery is no longer of interest to Buyer, Buyer shall be entitled, with or without granting a grace period, to cancel the applicable PO in whole or in part and require payment of damages and pursue any other remedies available at law or equity.
 - 4.6. Acceptance of delayed deliveries by Buyer shall not constitute a waiver, or otherwise affect, Buyer's right to require payment of damages.
5. Acceptance. Goods that are to be installed in Buyer's facilities shall be deemed accepted when installation has been completed upon the agreed terms and successful acceptance testing shall have been performed.
6. Deficiencies.
 - 6.1. Seller warrants that all Goods provided will be of good material and workmanship, new, and free from all liens or encumbrances. Seller further warrants that for a period of two years from the date of Buyer's acceptance of the Goods, or, if sooner, three years from delivery of the Goods to the agreed upon delivery site, all Goods shall be free from all defects, shall conform to the specifications, drawings, samples, data or other descriptions furnished to or by Buyer and the requirements of this Agreement and shall be fit and sufficient for the purpose(s) intended. If Goods are used in a building and cause a defect in such building, the warranty period described above shall be extended to five years from the date of Buyer's acceptance of the Goods, or, if sooner, six years from delivery of the Goods to the agreed upon delivery site. Notwithstanding the foregoing, in the event that a longer warranty period is required by law, such longer warranty period shall apply.
 - 6.2. Any statutory inspection and re-inspection periods shall begin on delivery of the Goods to the agreed upon delivery site. Buyer shall, as soon as reasonably practicable, inspect the Goods and report patent defects to Seller within 14 days of discovery. Any defects that are only discoverable through processing or use, as well as any other latent defects, shall be reported to Seller within 14 days of discovery. Notwithstanding the foregoing, to the extent that longer inspection or re-inspection periods are provided for by law or in the applicable PO, such longer periods shall apply.
 - 6.3. If Goods fail to pass inspection, fail to meet applicable specifications or otherwise contain warranty defects, Buyer may, at its option, demand repair or replacement of such Goods within a reasonable time period.
 - 6.4. Notwithstanding any earlier expiration otherwise provided for herein, the warranty period shall remain in effect from such time as Buyer gives Seller notice of any defects until such time as Seller declares the completion of its response to such defects and/or refuses to make a further response.

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- 6.5. In the event Seller fails to repair or replace defective Goods within a reasonable period of time, or in Buyer's opinion Seller will not be able to repair or replace within such period of time, Buyer shall be entitled, in each case at Seller's expense, to effect repairs either itself or through a third party, or to cover. Such remedies of Buyer shall be in addition to, and not in lieu of, other remedies available to Buyer, including without limitation the right to rescind the purchase, reduce the purchase price and seek other damages.
- 6.6. All costs arising out of the rejection and return of Goods shall be borne by Seller.
- 6.7. This Agreement shall also apply with respect to all repaired and replacement Goods. Buyer reserves all rights and remedies of Buyer with respect to defects and breaches. Seller shall bear the burden of proving that it is not responsible for any defects or damages.
7. Intellectual Property Rights; Indemnification. Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses, and expenses, including attorneys' fees and court costs arising out of or in any way connected with the Goods or Services, including, without limitation, (i) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean-up costs, (ii) Seller failing to satisfy I.R.S. or other applicable guidelines for an independent contractor, (iii) any claim based on the negligence, omissions, or willful misconduct of Seller or any of its personnel, and (iv) any claim by a third party against Buyer alleging that the Goods or Services, the results of such Services, or any other products or processes provided pursuant to this Agreement, or the use of any of the foregoing, infringe any patent, copyright, trademark, trade secret, or other proprietary right of a third party, except to the extent such infringement is found to result from Buyer's combination of Goods with other materials not provided by Seller or from any drawing or other specification supplied by Seller. Seller shall not settle any such suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including attorneys' fees. Without limiting the foregoing, should the use of any Goods or Services by Buyer or its customers be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either (a) substitute fully equivalent non-infringing Goods or Services, (b) modify the Goods or Services so that they no longer infringe but remain fully equivalent in functionality, (c) obtain for the benefit of Buyer and its customers the right to continue using the Goods or Services, or (d) if none of the foregoing is possible, at Buyer's option, refund all amounts paid for any affected Goods or Services.
8. Safety precautions. Seller shall fill each order in compliance with all applicable safety and accident prevention regulations and provide all necessary safety devices. In the case of installation or assembly, Seller shall further comply with all applicable factory regulations. Seller shall familiarize itself with all such regulations before beginning installation or assembly. If potentially necessary safety devices are not included in the total price for the applicable order, Seller shall give Buyer express notice thereof.
9. Invoice and payment terms. Invoices shall not be included with shipments, but shall be submitted separately in duplicate form, with order numbers, by mail. Buyer shall pay, at its election, (a) within 30 days with a 3% discount, (b) within 60 days with a 2% discount or (c) within 90 days net, after receipt of the invoice and shipment of the Goods or performance of the Services. Method of payment (e.g. wire transfer, check) shall be at the election of Buyer. Rights to receive payment from Buyer may only be transferred to third parties with the prior written consent of Buyer.
10. Ordering documents.
- 10.1. At the request of Buyer, Seller shall provide plans, specifications, technical drawings, calculations etc. to Buyer for review and approval and, after such approval, shall provide such items to Buyer in such number as Buyer shall request. At the request of Buyer, Seller shall also deliver technical drawings and specifications for spare parts in sufficient detail to enable Buyer to procure spare parts. Buyer shall only disclose such items to third parties to the extent necessary in connection with replacements, improvements, repairs or resales of the Goods.
- 10.2. Documents, models, forms and tools of Buyer – including without limitation any such items that were manufactured by Seller for Buyer – shall be the sole and exclusive property of Buyer, and Seller shall return all such items to Buyer, in usable condition, no later than upon the final delivery of Goods or Services. Seller shall not disclose or grant access to such items to any third parties, nor use any such items for any purpose other than fulfilling the applicable PO. Seller shall exercise due care in keeping all such items, and shall maintain such items in usable condition at all times. For purposes hereof, "third parties" shall include, without limitation, any distributors of Buyer's products.
- 10.3. These terms and conditions shall also apply with respect to products, models or documents that were created jointly by Buyer and Seller or that were modified at the suggestion, or with the cooperation, of Seller.
11. Shipment.
- 11.1. Seller shall pack and ship all Goods free of charge to the delivery site specified by Buyer.
- 11.2. Shipping documents (waybill, dispatch form, bill of lading etc.) shall clearly indicate the labeling, number and order date as well as delivery site. The delivery address provided by Buyer shall be strictly observed.
- 11.3. Each shipment shall be accompanied by a bill of delivery indicating the order number. Each order shall be indicated separately in all delivery documents. In case of delivery by any means other than rail, the shipping documents and invoice shall indicate the name of the shipper (shipping company, airline, carrier), vessel or other vehicle and, if applicable, the name of the captain or driver.
- 11.4. In the case of bulk goods, express shipments, shipments by mail and combined shipments, each individual item shall be labeled with a sticker or identification tag indicating labeling, number and date of order as well as delivery site. In the case of truckloads containing only Goods subject to a PO, the placing of such an identification on the truck will suffice.
- 11.5. Except as otherwise agreed, weights and fixed prices shall be determined in accordance with applicable law. Tools and equipment shall not be shipped together with Goods, and any reshipment costs arising out of any such shipment of tools or equipment shall be borne by Seller. Actual shipping weights shall be within $\pm 5\%$ of the weights quoted by Seller.
- 11.6. In no event shall Buyer be responsible for costs associated with late partial deliveries, or for costs arising out of the use of expedited transport to reduce the extent of a delay in shipment.
12. Risk of loss. Risk of loss shall pass to Buyer only upon receipt at the delivery site designated by Buyer.

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13. Transport Insurance. Seller shall bear the risk of transport and obtain transport insurance for the delivery of the Goods to the applicable delivery site.
14. Termination. Upon a Default by Seller (as defined below), Buyer shall be entitled to terminate this Agreement, in whole or in part, or to require performance by Seller at a later date at no additional charge. For purposes hereof, a Default shall mean Seller's breach of any material provision hereof, the voluntary or involuntary commencement of bankruptcy or other insolvency proceedings with respect to Seller, stoppage of payments with respect to Seller and any other event reasonably likely to result in a delay or default by Seller, including without limitation strikes, lock-outs or other labor or operational disturbances.
15. Remedies. If Seller breaches this Agreement, Buyer shall have all remedies available at law and in equity. For the purchase of Goods, Seller's sole remedy in the event of breach of this Agreement by Buyer shall be the right to recover damages equal to the difference between market price at the time of breach and the purchase price specified in this Agreement. Seller acknowledges and agrees that the obligations and promises of Seller under this Agreement are of a unique, personal nature giving them particular value. Seller's breach of any of the promises contained in this Agreement will result in irreparable and continuing damage to Buyer for which there will be no adequate remedy at law and, in the event of such breach, Buyer will be entitled to seek injunctive relief, or a decree of specific performance. No failure by Buyer at any time to enforce any of the provisions hereof shall be construed as a waiver of such provision or Buyer's right to enforce any provision hereof.
16. Governing Law; Forum; Attorneys' Fees. This Agreement shall be governed by the laws of the State of California, without regard to the choice of law rules thereof. The U.N. Convention of Contracts for the International Sale of Goods will not apply to this Agreement. The federal and state courts in Orange County, California shall have exclusive jurisdiction to hear and determine any action arising out of or relating to this Agreement and the parties hereby irrevocably waive any right to object to such forum and venue on any basis. Any service of process may be made by notice sent pursuant to §22. In any action to enforce this Agreement, the prevailing party shall be entitled to recover all court costs and expenses and reasonable attorneys' fees, in addition to any other relief to which it may be entitled.
17. Severability. If any provision of this Agreement is deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
18. Assignment; Sub-Contracting. Seller may not assign or transfer this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of Buyer. Any assignment or transfer without such written consent shall be null and void. Seller shall not without Buyer's prior written consent delegate or subcontract any of its obligations hereunder to any other party.
19. Limitation of Liability. IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER'S TOTAL LIABILITY IN RESPECT OF ANY PO SHALL IN NO EVENT EXCEED THE TOTAL AMOUNTS DUE OR PAID UNDER THAT PO.
20. Confidentiality and Intellectual Property Rights. Each party's obligations with respect to the other party's confidential information shall be as set forth in a separate non-disclosure or similar agreement. Each party shall retain ownership of its own pre-existing intellectual property rights, except that Buyer shall be deemed automatically to have been granted a worldwide, royalty-free, fully-paid, perpetual and irrevocable license under any patents or other intellectual property rights of Seller included in or necessary for the use of any Goods. Seller shall be responsible for obtaining, at its sole expense, all licenses to third party intellectual property rights necessary to meet its obligations hereunder and to allow Buyer to use, dispose of and otherwise exploit the Goods as contemplated by this Agreement.
21. Relationship of the Parties. Seller is and shall perform the Services and provide the Goods as an independent contractor of Buyer. Nothing contained in this Agreement or elsewhere shall be construed to create an agency, joint venture, partnership or similar relationship.
22. Notices. Except for POs which may be sent by local mail, facsimile transmission or electronically transmitted, all notices required or permitted under this Agreement must be in writing addressed to the authorized representative(s) of the other party. Notice will be deemed given (a) when delivered personally, (b) when sent by confirmed facsimile, (c) one day after having been sent by commercial overnight carrier specifying next-day delivery with written verification of receipt, and (d) three days after having been sent by first class or certified mail, postage prepaid.
23. Other Insurance. Seller shall maintain adequate health, auto, worker's compensation, unemployment compensation, disability, liability, and other insurance, as required by law or as is the common practice in Seller's trades or businesses, whichever affords greater coverage. Upon request, Seller shall provide Buyer with certificates of insurance evidencing coverage.
24. Entire Agreement. This Agreement is the complete, final, and exclusive statement of the terms of the agreement between the parties and supersedes any and all prior and contemporaneous negotiations and agreements between them relating to the subject matter hereof.

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