

InDevR Sale Terms & Conditions

1. THE AGREEMENT

1.1. The following terms and conditions apply to all Products sold by InDevR, Inc., unless InDevR and a customer have each agreed to a separate signed contract. Customer and InDevR agree that purchases are made under these terms and conditions, and that InDevR shall not be bound by any provisions contained in any purchase order, acknowledgement, or other document from Customer. By issuing a payment or a purchase order, Customer is deemed to have accepted the following terms and conditions and does not have a right to resell Products unless given written authorization

2. PRICES

2.1. Prices are subject to change without notice. Pricing contained in a written quotation originating from an InDevR representative shall be valid for the period specified on the quotation, however this pricing can be adjusted based on market conditions, inflation, or other factors.

2.2. Product prices do not include any shipping costs, sales and use taxes, duties, import fees, customs fees or other assessments. Customer shall be solely responsible for any and all such taxes, duties, or other assessments.

2.3. All orders are subject to acceptance by InDevR. InDevR's issuance of an order confirmation shall constitute its acceptance of an order. InDevR reserves the right to cancel an order by giving notice to the Customer and returning any prepaid funds.

3. PAYMENT

3.1. InDevR reserves the right to make inquiries regarding the customer's credit standing. Standard payment terms for InDevR customers may be Net 30 days for customers with approved credit terms or prepayment by wire transfer or letter of credit.

3.2. A finance charge of 2% per month may be assessed on any amounts outstanding beyond the payment terms stated on the invoice.

3.3. At any time InDevR may change terms of payment, suspend credit, or require partial or full payment in advance.

4. TITLE; RISK OF LOSS; SHIPPING

4.1. InDevR retains a security interest and right of possession in the Products until Customer makes full payment.

4.2. All shipments are freight on board (FOB) shipping point. InDevR is not liable for any loss or damage during shipment.

4.3. Shipping fees will be prepaid and added to the invoice amount.

4.4. If the order is for more than one Product, the Products may be shipped in a single lot, or in several lots, and each such shipment may be paid for separately. Each shipment and delivery shall constitute a separate sale under these terms and conditions and Customer agrees to accept each shipment and delivery and pay each invoice in full when due.

5. TAXES

5.1. All deliveries to States other than Colorado may be subject to sales and use taxes as mentioned in Section 2. As State and local taxes vary widely, we cannot anticipate what the charges will be and are not responsible for any taxes outside of our local taxing municipality. If the delivery is made within the State of Colorado, sales tax will be collected unless the Customer provides InDevR with an appropriate exemption certificate for the delivery destination acceptable to the applicable taxing authorities. All deliveries to other countries may be subject to taxes, duties, import fees and custom fees as mentioned in Section 2.

6. CANCELLATION/RETURN POLICY

6.1. Once InDevR has accepted and sent an order confirmation for Buyer's purchase order for any Product, the Buyer may not cancel that order and/or return that Product for refund or credit.

7. TESTING SERVICES

7.1. Testing Service Plan: InDevR and Customer shall agree upon a Testing Service Plan in advance of testing. The Testing Service plan will be outlined in the quote for the Testing Services and issuance of a Purchase Order from the Customer shall indicate acceptance of the Testing Service Plan.

7.2. Storage and Handling: InDevR may receive Customer property such as items to be serviced, raw materials, components, samples or other materials. InDevR assumes responsibility for maintaining materials for testing services in a manner that is consistent with maintaining the integrity of any product, material or item stored. Customer property is received and properly identified according to an established Sample Receipt protocol. Records relating to Customer property are maintained when appropriate to show proper storage conditions (i.e. temperature requirements) were met. Customer property is stored in dedicated staging areas pending short-term utilization. Product retained for longer periods of time is stored in the designated storage areas, pending its utilization. If material is lost, damaged or determined otherwise unsuitable for use, InDevR will contact the Customer for disposition or

replacement. Customer shall bear the risk of loss of, or damage to, any Customer property received by InDevR hereunder unless such loss or damage is caused by the negligence or willful misconduct of InDevR or any of its personnel.

7.3. For international shipments, it is recommended to ship via a courier service that will ensure the materials are kept at the appropriate temperature during shipment and throughout the customs process. InDevR is not liable for any loss or damage during the course of shipment.

7.4. Left-Over Material: Customer shall notify InDevR in writing regarding preferred disposition of any left-over material, including disposal or storage, and if no notification is provided, leftover material may be utilized by InDevR exclusively for internal purposes.

7.5. Reporting and Results: Testing generally commences within fourteen (14) days of sample receipt. Experimental protocols are agreed upon prior to the order confirmation and approved by both the Customer and InDevR upon acceptance of a Purchase Order. InDevR shall provide Customer with such written reports, records and documents relating to the Testing Service as are customary for such work and/or as reasonably requested by Customer. A Testing Results Report is typically provided to the Customer within fourteen days (14) after testing concludes. Testing dates are approximate and may vary depending on the nature and magnitude of testing. InDevR shall attempt in good faith to meet estimated testing and report dates. InDevR shall notify Customer promptly of any significant delay, and shall specify the revised delivery date as soon as practical. Customer shall own all rights in all results of the Testing Service, including all discoveries, inventions, developments, innovations, improvements and technology relating to Customer property or information, that are conceived, discovered, invented, developed, or reduced to practice by InDevR in performing the Testing Service, and other data and information developed by InDevR for the Customer (collectively, the "Results"), whether or not protectable under state, federal, or foreign patent, trademark, copyright or similar laws, and Customer shall be free to use such Results for any purpose without restriction. All Results shall be promptly provided to Customer as described herein. InDevR agrees to execute such documents as may be reasonably requested by the Customer to protect its rights in the Results. InDevR shall keep the Results confidential and shall not disclose the Results to any third party without Customer's prior written consent.

8. CONFIDENTIALITY & USE

8.1. Confidentiality: Customer material, Intellectual Property and any information disclosed by Customer shall be kept confidential by InDevR and shall not be transferred or disclosed to any third party without Customer's prior written approval; provided, however, that the foregoing shall not apply to (a) any information which is or becomes publicly available through no fault of InDevR; (b) information disclosed to InDevR by Customer which InDevR can establish by written records was already in its possession at the time of disclosure; or (c) information which is rightfully disclosed to InDevR by a third party who did not receive such information under an obligation of confidentiality.

8.2. Permitted Use: Customer material and confidential information shall be used only for the purpose of the Testing Service Plan. For the avoidance of doubt, no modification or reverse engineering, combination or formulation of material or use other than specified in the Testing Service Plan is permitted.

8.3. Standard of Performance / Compliance with Laws: InDevR uses commercially reasonable efforts and all due diligence in performing the Testing Service and complies with all relevant laws, statutes, regulations and guidelines, including without limitation those applicable to the receipt, use, handling, disposal (including without limitation those governing disposal or destruction of hazardous materials) and storage of Customer's material. InDevR will also comply with any instructions from Customer that are not inconsistent with such laws, statutes, regulations and guidelines. InDevR represents and warrants that it has obtained and shall maintain all relevant permits, licenses or other approvals required by governmental authorities.

8.4. Use of All Names: InDevR shall not use Customer's name or trademarks without the Customer's prior written consent, nor disclose to any other person or party details of the testing service, or the nature or content of negotiations leading to such terms.

9. LIMITED WARRANTY

9.1. General Product Warranty: InDevR warrants that at time of shipment all products sold by InDevR to be free from defects in workmanship or material and conform to specifications, if applicable. InDevR, at its sole discretion agrees to replace or repair non-conforming product if notified within thirty (30) days of product receipt.

9.2. Equipment Warranty: InDevR warrants that at time of shipment all Equipment sold by InDevR to be free from defects in workmanship or material and conform to specifications, if applicable, for one year, under normal use and service. After the one year warranty period, if there is no Service Agreement, customer will be billed for service at prevailing prices. If efforts to correct problems remotely are unsuccessful, InDevR will request that the instrument be returned for service at which time the technical support representative shall perform all necessary repair service for the

instrument or otherwise correct any material failure or malfunction. A failure or malfunction shall be considered "material" if it represents a substantial nonconformity with InDevR's published specifications for the instrument. InDevR will provide all parts required to affect a repair covered under its service obligation, except for consumables and subject to the limitations contained below. All defective parts become the property of InDevR.

9.3. Testing Services Warranty: InDevR represents and warrants that (i) it has the necessary facilities, equipment, tools, capacity, expertise and other resources needed to conduct the Testing Service, without resort to subcontractors; (ii) it has the full right to enter into this engagement and that it is not subject to any conflicting obligation or legal impediment that might preclude or interfere with the performance of its obligations hereunder, or that might impair the acceptance of the resulting data by regulatory or health authorities; and (iii) neither it, nor any of its agents, employees or other personnel who will participate in the performance of the Testing Service Plan have been, are currently, or are the subject of a proceeding that could lead to their or such employees or agents becoming debarred by the FDA under Article 306 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 335(a). InDevR shall immediately notify Customer in writing in the event that any of the foregoing statements becomes untrue.

9.4. Service Warranty: The warranty period for service parts and labor is the greater of (a) the remaining warranty period or service contract of the instrument, or (b) 90 days from the completed service date when parts were installed or work was performed.

9.5. Warranty Limitations:

(a) Only the original Customer of InDevR may enforce this warranty and this warranty only applies to Products purchased directly from an authorized InDevR representative. The warranty period begins the day the Product is shipped. Liability under this warranty is limited to repair or replacement of any parts which prove to be defective within the warranty period.

(b) InDevR shall not be obligated under this warranty to replace or repair damaged or malfunctioning parts or instruments resulting from:

1. transportation to the customer's facility. Customer should examine boxes upon receipt for evidence of damage caused in transit but should not unpack the Products unless instructed otherwise. If damage is found, Customer must notify InDevR and the carrier immediately. Keep all packages, materials and documents, including the freight bill, invoice and packing list.
2. attempts by personnel other than InDevR representatives to repair or service Products or Equipment except for routine operational maintenance as set forth in the operation manual or as directed by an InDevR representative;
3. improper use or connection to incompatible equipment, software or peripherals;
4. the use of non-InDevR supplies or consumables, or supplies or consumables not specified for use with the Product or Equipment;
5. modification of Product or Equipment or integration of the Product or Equipment with other products when the effect of such modification or integration increases the time or difficulty of servicing the instrument, or degrades performance or reliability;
6. the use of the Product or Equipment in a manner not meeting the environmental, electrical or operating specifications set forth in the operations manual;
7. incorrect voltages, improper external inputs, externally caused short circuits;
8. acts of God or nature, acts of terrorism, explosion, flood, fire, earthquake, war, and riots;
9. Customer neglect or misuse, improper operation, or the failure to perform routine operational maintenance;
10. routine wear of parts, such as lamps, unless failure occurred prior to expected lifetime of parts.

(c) Customer shall reimburse InDevR at current service fees, including all parts and labor charges, for all work of InDevR or its Representative incurred in investigating any failure or malfunction that InDevR reasonably determines to not be included in the warranty.

(d) InDevR warrants that its proprietary software will function on the internal computer provided the operating system or hardware is not modified or changed in any way. InDevR does not warrant that the functions contained in the software will meet Customer requirements, or that the operation of the software will be uninterrupted and error-free, or that all defects in the software will be corrected.

10. NO OTHER WARRANTIES:

10.1 Except as expressly set forth above, Products and Equipment are provided "As Is" without warranty of any kind, and no other warranties, either expressed or implied, are made with respect to Products or Equipment, including but not limited to any implied warranties of merchantability, fitness for a particular purpose, title or non-infringement or any other warranties. InDevR does not warrant, guarantee, or make any representations regarding the use of or the results of the use of Products or Equipment in terms of correctness, accuracy, reliability, and does not warrant that the operation of

Equipment will be uninterrupted or error free. InDevR expressly disclaims any warranties not stated herein.

11. LIMITATION OF LIABILITY

11.1. InDevR's liability is limited to the repair or replacement of Products. In no event shall the liability of InDevR for damages arising out of or connected with Products or Equipment, or the performance thereof, or the design, manufacture, sale, resale, delivery, use, operation, maintenance, or repair of the Products or Equipment, whether in contract, tort (including negligence), strict liability or otherwise, exceed the purchase price of such Products. In no event shall InDevR be liable for incidental, consequential, special or other direct or indirect damages, including, but not limited to, property damage, lost time, loss of profit, or any other damages resulting from the use of Products, Products breakdown or delay in service. The Customer shall be solely responsible for decisions regarding Product use, application or results.

12. SOFTWARE LICENSE

12.1. When purchasing some Products, the Customer has purchased a license to use the associated software, not the software itself. Because title to the software remains with InDevR, the Customer may not sell, distribute or otherwise transfer the software. InDevR's software is protected by United States Copyright Law and by International Copyright Treaties. The Customer may not copy the software or any part of it for any other purposes, and Customer may not decompile, reverse engineer, modify, disassemble, or reduce the software. InDevR may terminate this license if Customer fails to comply with these terms and conditions. All software revisions and upgrades are subject to these same license terms and conditions. Customers will be required to accept Software License Agreement prior to installation of software.

13. PRODUCT AND EQUIPMENT USE LIMITATION

13.1. InDevR sells Products and Equipment for research use only. The Products and Equipment are not designed for nor are they intended for use in diagnostic or therapeutic procedures or patient-connected applications and accordingly have not been submitted for FDA approval. InDevR is not liable for misuse of any Product or Equipment.

14. ILLEGAL EXPORT

14.1. Buyer agrees to comply strictly and fully with all export controls imposed on the Products and Equipment by any country or organization of nations within whose jurisdiction Buyer operates or does business, including all legal requirements established under the U.S. Export Administration Regulation. Buyer agrees not to export, re-export, divert, transfer, or disclose, directly or indirectly, any Products, Equipment or Services or related technical information, document, or material or direct products thereof to any country restricted by the U.S. Export Administration Regulations, as modified from time to time, or to any national or resident thereof, unless Buyer has obtained the prior written authorization of InDevR and the U.S. Commerce Department and any relevant local governmental authority.

15. SAFETY

15.1. InDevR represents that to the best of its knowledge and belief the Products and Equipment sold hereunder meet, at this date, any existing standards promulgated under OSHA but only when properly operated in accordance with InDevR's recommendations. Compliance with OSHA is an employer responsibility which embraces appropriate protocols and procedures which are outside the control of InDevR and for which InDevR can accept no responsibility.

16. ACKNOWLEDGEMENT/GOVERNING LAW

16.1. Customer acknowledges reading these Terms and Conditions, understands them and agrees to be bound by them. A waiver of any provision of this agreement shall not be construed as a waiver or modification of any other terms hereof. Disputes arising in connection with these Terms and Conditions of Sale shall be governed by the laws of the State of Colorado.