

## **Seton Scientific, Inc. Terms of Sale Agreement**

Seton Scientific, Inc. (hereinafter "SSI" or "Seller") products are sold pursuant to the following Terms of Sale (TOS") to Buyer(s) for their own use (hereafter Buyer(s), and resale third parties and/or end-users, collectively "Buyer" or "You") order(s) SSI Product(s), You, and any resale third party(ies) and any end-user ("Seller," "Buyer(s)" the latter including third party end-users however they obtained the SSI Products unless the Buyer is identified as the "original Buyer"), and all of the above persons and/or entities shall hereinafter be referred to collectively as the "Parties") agree by the original Buyer's purchase, even if they are resale buyers or end-users, to the following terms in return for SSI's sale of product(s) to the original Buyer:

### **1. SSI Standards for Manufacturing**

SSI manufactures its products either pursuant to drawings, specifications and/or bills of material ("Spec Products") provided by the purchasing Buyer ordering the products or in the absence of such Buyer specifications, pursuant to accepted parameters of then recognized industry standards for similar products ("Non-Spec Products") (collectively hereinafter "Products").

### **2. Custom Specification Orders Not Returnable for Refund; Replacement or Credit, If Allowed, Shall Be at SSI's Discretion**

Any SSI products made as Spec Products are not automatically returnable except and unless they are being returned as an objectively clear result of a defect in manufacturing by SSI or a defect in material used by SSI in the manufacturing process. Otherwise, in the absence of such objective defects, any returns of SSI Spec Products shall be allowed only if SSI elects in its sole discretion to accept such spec product and the Buyer's sole remedy shall be replacement of the Spec Product(s) or credit.

### **3. Limitation on Liability for Damages or Replacement of Certain Product Manufacturing Defects; Incomplete Specifications on Spec Products by Buyer; and Sole Remedy for Defective Non-SpecProducts**

**As to any problems caused or resulting from the use of either Non-SpecProduct(s) and Spec Product(s), Buyer of either class of product agrees that SSI shall not be liable for any actual, consequential or special damages for defects in such SSI manufactured products if SSI properly followed the specifications provided by the Buyer including for dimensions, thicknesses, materials, grade of materials, etc. The failure of Buyer to specify a particular attribute of the product as part of their specifications for Spec Product(s) to SSI shall allow SSI to use its own judgment on the specifications for that attribute and shall not subject SSI to liability, nor to any kind of damages nor to obligatory acceptance of returns if the product is defective or not acceptable as a result. Notwithstanding the immediate foregoing sentence, at the sole discretion of SSI, SSI may choose but is not obligated to provide replacement product or a credit for such defective products whose defects are not attributable to SSI.**

### **4. Limitation on Damages on Any Products and Shipments of SSI Products**

Subject to the terms of the limitation on liability stated in paragraph numbered (3.) immediately above, SSI's liability, if any, for a defective Non-SpecProduct(s), that is a product(s) not made pursuant to Buyer's specifications, Buyer's sole remedy shall in SSI's sole discretion be strictly limited to repayment of the purchase price of the defective product(s) or of the total shipment if the entire shipment is defective, or to replacement with non-defective products of the same type, dimensions and materials.

### **5. Limited Warranty**

**SSI's limited warranty is limited as follows and is subject to the above terms for non-refundability and non-returnability of certain orders and to the damage limitations stated in paragraphs (3.) and (4.) above:**

**The limited warranty provided by SSI on the products it manufactures to Spec Products and to Non-SpecProducts which SSI manufactures to historical industry standard is limited to one (1) year from the invoice date (the date of shipment) of any and all purchase orders. Specifically, the limited warranty obligates SSI to replace or refund the purchase price of any product that is found defective as a result of an objectively clear defect in manufacturing by SSI. The SSI limited warranty does not apply to SSI product defects that are attributable to problems caused by Buyer specifications or to shipping mishaps or Buyer or resale end-user misuse, for example, in the nature of Buyer's or resale end-user's failing to follow SSI use protocols and/or product use tolerance limits, without limitation, as to the ways of misuse that might occur.**

#### **6. SSI Acceptance of a Buyer Order and Applicable Terms of Service:**

An "order" is an offer to purchase and when accepted by Seller becomes the exclusive agreement between the Parties relating to Products and any such order/agreement incorporates these TOS whether these TOS are explicitly stated on the order or not, and even if there is only a reference to the then current TOS as posted on the SSI website at [www.setonscientific.com](http://www.setonscientific.com) ("SSI Website"). As to the TOS that apply to any order/agreement, those shall be the newer of the TOS on either the order or the SSI Website ("newer" as determined by effective date stated on the TOS on the order or the TOS on the SSI Website).

Any of the following shall constitute Seller's unqualified acceptance of an order: (i) written acknowledgement; (ii) furnishing of any Products pursuant to a Buyer order; (iii) acceptance of any payment for Products; or (iv) commencement of performance pursuant to an order. Notwithstanding the foregoing, an order shall not operate as a rejection of any offer by Seller (but merely of the terms and conditions contained within such offer) unless such offer contains variances in the description, quantity, price or delivery schedule of the Products. No terms stated by Seller or Buyer in accepting or acknowledging an order shall be binding upon Seller or Buyer if inconsistent with or in addition to the terms stated herein unless accepted in writing by Buyer.

#### **7. Buyer's Right of Inspection and Rejection (Subject to the TOS):**

All Products shall be received subject to Buyer's right of inspection and rejection. Defective Products or Products not in strict conformance with an order or Buyer's or Seller's description or specifications, will be held for receipt of instructions, at Seller's risk, and if Seller so directs, will be returned, at Seller's expense. In order for Buyer to avail himself/herself/itself of the remedies provided in the TOS for nonconforming or defective Products, **the original Buyer of the Products from Seller** must notify Seller in writing of the specific aspects of nonconformance or defect within five (5) days of receipt of the Products. As to the disposition of the nonconforming or defective product, if Buyer does not receive written instructions within 45 days of Buyer's notification (no later than 50 days from Buyer's receipt of the Products), Buyer may, without liability to Seller, dispose of the Products, as it deems appropriate, in its sole discretion. Buyer may, by written notice to Seller, and in addition to other remedies provided by law, require replacement or correction of rejected Products but only to the extent consistent with Buyer's remedies provided in the applicable TOS. Payment for Products by Buyer to Seller on an order prior to inspection shall not constitute acceptance thereof or a waiver of (i.) Buyer's remedies, or (ii.) Seller's warranties as (i.) and (ii.) are provided in the applicable TOS and is without prejudice to any claim(s) or other rights of Buyer. Seller shall inspect all Products prior to shipment to ensure reasonable conformance with all requirements of an order.

#### **8. Delivery of Orders/Products; Responsibility for Shipping Costs; Allocation of Risk of Loss in Shipping**

Delivery of orders and products shall be F.O.B. Seller's location and shall not be complete until the order in total have actually been received and accepted (not rejected by Buyer by notification to Seller in writing within five (5) days of receipt) by Buyer. Notwithstanding any written agreement between the Parties on which Party as between Seller and Buyer pays for the freight, the risk of loss or damage in transit shall be upon the Seller. **Absent a writing to the contrary between the original Buyer and Seller, the responsibility for payment of freight (shipment) on the order from Seller to original Buyer shall be on the Buyer.**

#### **9. Taxes and Responsibility for Their Payment:**

**Buyer shall be responsible for and pay any and all sales and/or use tax, if any is due, of the state in which the order originates. Seller shall pay any other federal, state, local or foreign taxes or other governmental charges upon the production, transportation or sale of the Products manufactured and supplied hereunder. Unless otherwise stated, the FOB prices stated by Seller on the SSI Website and/or the Orders or in any price quotes from Seller to Buyer whether oral or in writing, do not include sales or use taxes applicable to the Products. All taxes and charges for which Buyer shall be responsible to pay as part of the order and/or shipment shall be shown separately on Seller's invoice to the original Buyer.**

#### **10. Confidential Information;**

Seller agrees to keep secret and confidential all confidential, proprietary or non-public information of Buyer so long as so marked or as identified in writing to Seller in advance, and the existence, terms and conditions of an order and any product specifications relating thereto ("confidential information"). In addition, the Seller agrees to (i) disclose the confidential information only to its employees, and to contractors (who have executed a confidentiality agreement with Seller as to buyer confidential information and who have been identified to and approved by Buyer in advance of any disclosures to such contractors by Seller) who need to know for purposes of fulfilling an order, and (ii) use the confidential information only for the purpose of manufacturing and fulfilling an order.

#### **11. Notification Requirement; Time Is if the Essence:**

If, for any reason, at any time, Seller shall refuse or be unable, or should reasonably anticipate being unable to deliver any part or all of the Products in accordance with the terms of any order, Seller shall notify Buyer in writing of such refusal or inability at the earliest possible time and by the most practical means under the circumstances. Such notification shall not be deemed to operate as a release of Seller from its obligations under an order Buyer shall have the right to replace, modify and/or cancel any delayed open orders without any liability to Seller. In the event of such a replacement or modification, Seller shall pay to Buyer (or at Buyer's option, it may offset such amount from any amount owed to Seller) promptly upon demand, an amount equal to the cost of such replacement or modification, less the amount which would have been payable to Seller for an equal quantity and quality of Products, plus any amount incurred by Buyer to effectuate such replacement or modification. Such amount is agreed to be damages for Seller's non-performance and shall not, in any event, be construed to be a penalty. Price increases or extensions of time for delivery shall not be binding upon Seller unless evidenced by a change order issued by its authorized representative.

#### **12. Intellectual Property:**

Seller hereby grants a perpetual, paid-up license relating to any embodiment of intellectual property embedded in the Products, as necessary for Buyer's purchase, use, maintenance and/or resale of Products. Seller expressly warrants that all copyrightable works of original authorship (including but not limited to computer programs, technical specifications, (documentation and manuals), ideas, inventions (whether patentable, patented or not), know-how, processes, compilations of information, trademarks and other intellectual property (collectively, "Deliverables") shall be original to Seller and shall not incorporate any intellectual property (including copyright, patent, trade secret, mask work, or trademark rights) of any third party except sublicenseable material or matters in or associated with the Products which Seller is allowed to sell as part of the Products.

All Spec Product Deliverables that are created in the course of performing any order (separately or as part of any Products), and all intellectual property rights in such Spec Order Deliverables, are owned by Buyer and not by Seller. Seller agrees that all Spec Products created by Seller in connection with any order are "works made for hire" as that term is used in connection with the U.S. Copyright Act and other applicable intellectual property laws. To the extent that, by operation of law and/or any intellectual property common law rights and/or filings with federal, state and/or international governments, Seller owns any and all intellectual property rights in the Products and Deliverables and Seller hereby assigns to Purchaser a sublicense to use and resell such rights, title and interest, including copyrights and patent rights, in such Products and Deliverables, subject to the terms of notification to third party resale buyers and third party end-users, and subject to any liability of Seller to third party resale buyers and third party end-users and to the provisions of indemnity of Seller by the original Buyer set forth herein in one or more paragraphs.

### **13. Compliance:**

Seller warrants that the Products, including all packaging thereof, shipped pursuant to an order shall have been produced in compliance with and meet the minimum standards of all applicable federal, state and local laws, regulations, ordinances and/or standards.

### **14. Assignment:**

Seller and original Buyer each agree that neither of them will either assign its rights or delegate its obligations under the TOS and/or an order without the prior written consent of the opposite party. Any attempted assignment without such prior written consent of the opposite party violates this paragraph and such assignment shall be deemed and shall be as a matter of fact and law, VOID AB INITIO as to any intellectual property and/or other rights and remedies of Buyer provided for under this Agreement, but will not remove the assignor's obligations under any paragraph(s) of this Agreement.

### **15. Governing Law, Jurisdiction and Venue:**

**Irrespective of the place of the manufacture of the Products or the performance of an order, any matter relating to an order and/or the Products covered by and/or contained therein shall be interpreted in accordance with the laws of the state of Seller's principal place of business, without reference to choice of law provisions. The Parties (Seller and Buyer including original Buyer, and third party resale buyers and end-users) hereby irrevocably consent to the exclusive jurisdiction of the state and federal courts located in the county and state of Seller's principal place of business, in any action arising out of or relating to this Agreement and hereby waives any other venue to which it may be entitled by domicile or otherwise.**

### **16. Performance, Amendment, Modification, Waiver, and Further Limitation of Remedies:**

**Performance of an order shall be in reasonable accordance with its stated terms and conditions and no change, modification, revision or waiver shall be binding unless executed by Buyer. No waiver of or failure to perform any or all of these terms/conditions shall constitute a waiver of or an excuse for non-performance as to any other part of this or any other order. Under no circumstances including in the case of nonconforming or defective Products shall Seller be obligated for consequential damages, loss of revenue or profit of Buyer, or any amount in excess of the total amount stated on the face of any order for Products. Buyer shall bear all expenses, including, without limitation, all reasonable attorneys' fees, which Seller incurs to enforce its rights with respect to an order or Products except as to those Products that are objectively (by a neutral third party expert) determined to be nonconforming to a Buyer's order or specifications, or that are defective.**

**17. Original Buyer Responsible for Notification of the TOS to Resale Buyers and Third Party End-users, and Original Buyer Liable To Seller for Indemnity for Any Damages or Consequences to Seller Resulting from Original Buyer's Failure to Inform Resale Buyers and Third Party End-users of the Applicable TOS Applying to Any Products Resold or Transferred to Third Party End-users**

By purchasing the Products and accepting receipt thereof without rejection, the original Buyer agrees to be responsible for notifying in writing any resale Buyer to whom it resells or any end-user to whom the products are transferred in any fashion, of the applicable TOS that apply to the Products. Failure of original Buyer to so notify third party resale buyers and third party end-users of the TOS or to assure that it is done, shall alone require that original buyer indemnify Seller for any damages and consequences of any kind asserted successfully or unsuccessfully by third party resale buyers and/or third party end-users against Seller including not only financial damages of any and all kinds but also any other kinds of damages and remedies found against Seller, but also indemnity for Seller's reasonable attorney's fees, expenses and costs incurred in any defense of such claims including such fees, expenses and costs incurred by Seller in any assertions by Seller of claims for indemnity against original Buyer .

**18. No Liability of Seller to Third Party Resale Buyers and/or Third Party End-users, and Original Buyer Indemnity of Seller for Any Damages and/or Consequences Associated with Products of Seller Resold by Original Buyer to Third Party Resale Buyers and Third Party End-users**

By purchasing the Products and accepting receipt thereof without rejection, the original Buyer agrees to be responsible for any and all consequences and damages to third party resale buyers from original Buyer and from end-users attributable or asserted against the Products whether or not such assertions are valid. As such, original Buyer from Seller hereby agrees to indemnify Seller for any damages and consequences of any kind asserted validly or invalidly, successfully or unsuccessfully by third party resale buyers and/or third party end-users against Seller including not only indemnity for damages of any and all kinds financial or otherwise, but also indemnity for Seller's reasonable attorney's fees, expenses and costs incurred in any defense of such claims including such fees, expenses and costs incurred by Seller in any assertions of claims for indemnity against original Buyer.

**19. Writing**

For purposes of defining the term "writing" as used in these TOS explicitly stated on an order or invoices of Seller or posted on the SSI Website, and for the purposes of any communications between Seller and Buyer, including third party resale buyers and third party end-users which shall be in writing, "writing" shall mean a communication by hard-copy delivered by physical means (USPTO, courier, hand-delivery, etc.) or scan email, or an email, including any attachments, and/or faxes.

**20. Mutual Consideration for Agreement of Seller and Buyer ("Buyer" including third party resale buyers and third party end-users) to the Terms of Sale;**

The agreement of Seller and Buyer (including in "Buyer" third party resale buyers and third party end-users) shall have as consideration on the part of Seller, without limitation, Seller's agreement to sell and/or manufacture and sell the product to Buyer at a particular price or prices, along with certain rights and privileges, on the one hand, and shall have as Buyer's consideration, the right to purchase and/or have manufactured to its specifications, the payment for the Products and orders including those Products, and to have the right through Seller to resell and/or transfer to third parties the Products including with the sublicense of Seller's intellectual property, and to use the Products consistent with the terms herewith, without limitation, on the other. Buyer's acceptance of the order and any Products therein, which is not followed by a rejection, shall operate as to all Products accepted, whether paid for or not (and non-payment shall not free Buyer of the obligation hereunder and under equity to

pay Seller for such Products accepted, and not rejected but not paid for) as full, final and irrevocable agreement to the terms of these Terms of Sale on behalf of the original Buyer, and all third party resale buyers of the Products and all third party end-users of the Products however obtained.