

# ACS DIAGNOSTICS

## TERMS & CONDITIONS

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### INCORPORATION OF TERMS & CONDITIONS (page 1 of 2)

**INCORPORATION OF TERMS & CONDITIONS:** The following provisions constitute Terms and Conditions upon which the sale of the Equipment, Parts, Components and/or Accessories identified in the purchase agreement are sold by ACS Diagnostics, Inc. (ACSD) to the Buyer(s) or provided by ACSD to the Lessee(s) and they are by this reference made a part of said purchase agreement or finance lease proposal as if fully set out in such purchase or finance agreement. Buyer adopts and approves each and every provision hereof and agrees to be bound by these provisions to the same extent as if they were printed on the face of the purchase agreement instrument above Buyer's signature. Acceptance use or delivery of the equipment, parts, components or accessories to or by the Buyer also constitutes Buyer's adoption of these terms and conditions.

**PAYMENT:** Payment in full of the price including shipping, handling and sales taxes if applicable is due upon receipt of invoice unless other payment terms are stated thereon, in which event the payment terms stated on the invoice control. Payment is due in full in funds of the United States. Remittances should be made to ACS Diagnostics, Inc. and sent by first class mail to: 1 Hughes, Irvine, CA 92618.

Any installment purchase of ACSD equipment is expressly subject to the understanding of the parties that failure to make timely payment of any installment when due may result in the loss of use of the equipment until the defaulted payment is paid. Should any installment payment be refused or returned by the customer's bank, all future installment payments must be paid by electronic or ACE transfer or other means acceptable to ACSD.

**DEPOSITS:** All deposits given as part of any purchase and/or to achieve an order position are non-refundable. At the option of ACSD, a deposit amount may be treated as liquidated damages in lieu of actual damages.

**DELIVERY ACCEPTANCE:** Delivery is deemed completed when substantially all components of the equipment are on hand at the regular and usual business of the buyer. In the event Buyer fails to notify ACSD in writing within ten (10) days after delivery of the equipment, setting forth in such writing the absence of any part, component, accessory or other missing item, buyer shall be deemed to have conclusively accepted the equipment, its parts, components and accessories as complete and conforming, as ordered. Buyer shall bear the risk of loss or damage to the equipment while in transit and until the equipment has been delivered to the buyer. **ALL SALES ARE FINAL.**

**TRAINING:** ACSD provides one initial training session with the purchase of new instrumentation unless otherwise specified. Additional training can be provided for a subsequent fee to be paid in full by the Buyer. Cost may include, but is not limited to, travel portal to portal (airfare, car rental fee, fuel), accommodations, and per diem fee (not to exceed \$30.00 per day) for each dispatched employee(s). Additional training beyond the initial installation is not included with the 1-Year Limited Warranty. In some instances, training may be arranged and included in an Extended Warranty Agreement. ACSD does not provide onsite training for "software only" purchases. Payment for the instrument is expected upon delivery of the equipment and is not contingent upon training.

**WARRANTY/DISCLAIMER OF CLAIMS:** Except as provided herein, ACSD makes no warranty express or implied as to the merchantability of the equipment or its fitness or suitability for any particular purpose. ACSD renounces the implied warranty of merchantability and the implied warranty of fitness for a particular purpose. In substitution of such implied warranties, ACSD warrants to buyer exclusively, and to none other, that the equipment is manufactured in a good and workmanlike manner, using only original materials and parts. ACSD will repair or replace at its exclusive choice, any defective part or component of the equipment or accessory at any time during one year (12 months) from the date of delivery of the equipment to Buyer. Thereafter the warranty stated herein shall expire and be of no further force or effect. Buyer's only remedy against ACSD should the equipment fail to function in the manner represented by ACSD shall be limited to the cost of any defective part or component plus the cost of labor to replace or install the same, and in no event shall the Buyer have or enforce any claim of consequential or incidental damages against ACSD. The maximum amount of any enforceable claim against ACSD relating to the operation, function or use of the equipment shall not exceed the sales price of the equipment sold and delivered to the Buyer. All claims of Buyer against ACSD shall be in writing and delivered personally or by first class mail to the Corporate Offices of ACSD in Irvine, California.

**RETURN POLICY:** All sales of conforming goods are final. In the event the equipment performs to specification and ACSD management grants equipment return approval, in writing, the Buyer may return the equipment as provided in the approval notice. In the event the Buyer should return the equipment within the first ninety (90) days from the date of delivery, Buyer shall be subject to the following provisions: If the date of return is sixty (60) days or less from the date of delivery to Buyer, the Buyer may return the merchandise and agrees to pay all shipping and handling charges from ACSD in Irvine, California to the Buyer's facility, as well as all shipping and handling charges from the Buyer's facility to ACSD. In addition, the Buyer agrees to pay a 25% restocking fee based upon the initial purchase agreement. From sixty (60) to ninety days (90), the Buyer may return the merchandise and agrees to pay all shipping and handling charges from ACSD in Irvine, California to the Buyer's facility, as well as all shipping and handling charges from the Buyer's facility to ACSD. In addition, the Buyer agrees to pay a 50% restocking fee based upon the initial purchase agreement. No equipment may be returned after ninety (90) days from the date of delivery.

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### INCORPORATION OF TERMS & CONDITIONS (page 2 of 2)

**DEFAULT/REMEDIES:** In the event the Buyer shall default in the terms of the purchase agreement, or fail to make any payment to ACSD when due, then the entire amount of the transaction shall accelerate and become immediately due and payable in full to ACSD. All payments are due in the Corporate Offices of ACSD in Irvine, California. Interest shall begin to accrue on all unpaid amounts at the rate of twelve (12%) percent per year compounded annually. Such compound interest shall be added to the principal at the anniversary date of the delivery of the equipment to Buyer, shall thereafter earn interest as principal. In the event that any action at law or equity is necessary or desirable to enforce the recovery of any sum due to ACSD, then the party deemed by the court to be the prevailing party therein shall recover in addition to all other sums, its actual attorney's fees and other actual costs of such recovery, the costs of court and expenses of investigation related thereto.

**CHOICE OF LAW/CONSENT TO VENUE:** The purchase agreement shall be interpreted under and pursuant to the procedural and substantive laws of the State of California. Buyer hereby irrevocably consents to the jurisdiction of the Superior Courts of California County of Orange California and agrees that such courts shall be the exclusive place where jurisdiction and venue shall exist for the resolution of all disputes between the parties. Buyer and ACSD waive any right to trial by jury.

**SOFTWARE:** The equipment referred to in the purchase agreement may include certain software (the software) which is proprietary to ACSD. Buyer is granted by ACSD, an exclusive right to use software in the usual and ordinary course and conduct of Buyer's business. Buyer shall not copy, upload, download or otherwise remove, transfer, sell, license or loan the software from the equipment or sell, offer to sell, license, rent, or make available the software to any person not the buyer, without the prior written approval of ACSD management.

**AUTHORITY OF ACSD AGENTS/EMPLOYEES:** No employee, representative or agent of ACSD has any authority to bind ACSD to any affirmation, representation or warranty concerning any equipment, part, component or accessory sold by ACSD and/or concerning the equipment, parts, components and/or accessories sold to Buyer. Unless an affirmation, representation or warranty is made to Buyer in writing, and signed by vice-president, president, regional or national sales manager of ACSD, such affirmation, representation or warranty shall not be deemed to be part of the basis of the sale to the Buyer and shall not be enforceable against ACSD.

**MODIFICATIONS:** The purchase agreement between ACSD and Buyer can only be modified by a writing signed by both the Buyer and ACSD, which is executed by an authorized representative of both parties.

**ASSIGNMENT/DELEGATION:** Until such time as the purchase price is paid to ACSD in full, Buyer shall not assign any right which it may acquire as to the equipment resulting from the purchase agreement to any person or entity in which the principals of Buyer have less than a 55% equity interest without the prior written consent of ACSD.

**NOTICES:** All notices required or permitted under the purchase agreement shall be in writing and personally delivered or delivered by first class mail with full postage prepaid by sender. If notice is to ACSD it shall be addressed to ACS Diagnostics, Inc. - Customer Service Department - 1 Hughes, Irvine, CA 92618. Notices sent to Buyer shall be by personal delivery or by first class mail with full postage prepaid by sender and addressed to Buyer at the address which appears on Buyer's invoice, purchase agreement, customer account information or other address as the Buyer shall direct in writing. Delivery of any notice sent by First Class Mail, shall be deemed to have been delivered five business days after the date of postmark.

**LIMITATIONS OF ACTIONS:** No action at law or equity shall be maintained by Buyer against ACSD unless written notice of any claim alleged to exist has been delivered by Buyer to ACSD within not more than ten (10) days after the date on which the event complained of first becomes known to Buyer. ACSD shall have a reasonable opportunity to repair, replace or remedy any equipment, part, component or accessory alleged to have been a direct and proximate cause of any event giving rise to any claim by Buyer. In no event shall any action at law or equity be commenced by Buyer or anyone claiming under Buyer against ACSD after expiration of twelve (12) months from the first date on which the event complained of became known to Buyer.

**INTEGRATION OF AGREEMENTS:** The purchase agreement and these terms and conditions constitute the entire agreement between Buyer and ACSD concerning the purchase of the equipment, parts, components and/or accessories identified in the purchase agreement and/or invoice, and do supersede all prior agreements or negotiations between Buyer and ACSD.