

**1. Application of these Standard Terms and Conditions of Sale**

1.1 In these Standard Terms and Conditions of Sale (“**Terms and Conditions**”):

- (a) “**Customer**” means the entity named in the quote, tender or other written offer (“**Quote**”) and any successor in title to those Goods;
- (b) “**Goods**” means the laboratory automation solutions and associated software products described in a Quote;
- (c) “**Order**” means any order placed by Customer for the Goods described in the Quote;
- (d) “**Trajan**” means Trajan Scientific Americas, Inc.

1.2 Unless otherwise agreed in writing by Trajan:

- (a) Quotes are valid for 30 days from the date of the Quote;
- (b) any Quote provided by Trajan and any Order placed by Customer and accepted by Trajan shall be conclusively deemed to be subject to these Terms and Conditions; and
- (c) any terms offered by Customer which are additional or contrary to a Quote or these Terms and Conditions, including any terms on Customer’s Order, shall in no circumstance prevail.

1.3 Customer is not authorized to resell or resupply the Goods to third parties other than with Trajan’s prior written consent and subject to such terms and conditions regarding distribution of the Goods as may be separately agreed in writing.

**2. Acceptance of Orders and Cancellations**

2.1 An Order is only binding once Trajan has accepted the Order by providing written confirmation of acceptance or otherwise taking steps to satisfy the Order. Upon acceptance of an Order, Trajan and Customer enter into a contract on these Terms and Conditions.

2.2 Any Order which has been accepted by Trajan may not be cancelled by Customer except with the written agreement of Trajan (which Trajan may give or withhold in its sole discretion). If an Order is cancelled by Customer in accordance with this clause, Trajan will retain any deposit or other amount paid for the Goods and/or may require payment of a reasonable cancellation fee to cover Trajan’s costs associated with the cancellation.

2.3 Trajan can cancel an Order at any time in its sole discretion. Trajan will provide Customer with written notice of any such cancellation. Trajan will not be liable to Customer for any costs, losses or damages arising from such cancellation.

**3. Price and Payment**

3.1 Unless otherwise stated in the Quote or agreed in writing by Trajan:

- (a) the price for the Goods (“**Price**”) excludes applicable tax (such as sales tax or value added tax);
- (b) the Price includes transportation and insurance costs to deliver the Goods to Customer’s delivery address (“**Delivery Address**”);
- (c) the Price is payable according to the following schedule:
  - (i) a 50% non-refundable deposit (the “**Production Deposit**”) will be invoiced on Order acceptance (payable Net 15). Trajan will not ship the Goods until the Production Deposit has been paid by Customer;
  - (ii) a further 40% of the Price will be invoiced on delivery of the Goods to the Delivery Address (payable Net 30); and
  - (iii) the final 10% of the Price will be invoiced on Installation Acceptance (as defined in clause 5.6 below) (payable Net 30), and,

(d) Trajan may issue additional invoices to the Customer as provided by clause 5.2 below.

- 3.2 Where an invoice is not paid in full by the due date, Trajan has the right to charge interest on the outstanding balance of that invoice at a rate of 5% per month or, the maximum amount allowed by law, together with any collection agency fees and legal fees.
- 3.3 Where Trajan has shipped the Goods following payment by Customer of the Production Deposit and Customer has then failed to pay an invoice for payment (ii) or (iii) as described in clause 3.1(c) above by the due date, Customer will be taken to have requested cancellation of the Order and Trajan has the right to agree to such cancellation in accordance with clause 2.2. If Trajan confirms the cancellation of the Order in such circumstances, Customer must follow Trajan's directions to return the Goods to Trajan's nominated return address at Customer's cost. If Customer fails to return the Goods in accordance with Trajan's directions, Customer agrees that Trajan has the right to enter the Customer's premises and remove the Goods at Customer's cost.

#### **4. Delivery, Risk and Title**

- 4.1 Unless otherwise agreed in writing between Trajan and Customer:
- (a) Trajan will be responsible for arranging delivery of the Goods to the Delivery Address (using Trajan's preferred carrier);
  - (b) for shipments within the United States, FOB (Destination) (Incoterms 2020) will apply; and
  - (c) for shipments outside the United States, DPU (Incoterms 2020) will apply.
- 4.2 Trajan will use reasonable endeavours to deliver the Goods to the Delivery Address within the delivery timeframe stated in the Quote. At the appropriate time, Trajan will notify Customer of the scheduled delivery date. Customer acknowledges and agrees that delivery timeframes are estimates only. Trajan will not be liable for any late delivery of the Goods, irrespective of cause or circumstance.
- 4.3 Customer is responsible for complying with all applicable laws and regulations governing importation of the Goods into the country or region in which Customer will receive the Goods from Trajan. Customer is responsible for all local taxes and any customs or import duties payable in connection with the importation of the Goods.
- 4.4 Other than software supplied by Trajan (which Trajan or its licensors continue to own at all times), title to the Goods transfers to Customer on payment of the Price in full.

#### **5. Installation**

- 5.1 Customer agrees that prior to shipment of the Goods, Customer will be required to provide Trajan with information relevant to delivery and installation, including details regarding Customer's proposed use of the Goods and the site where the Goods will be installed and used (which may or may not be at the Delivery Address) (the "**Installation Site**").
- 5.2 Trajan and Customer will work cooperatively to reach agreement on the date for installation of the Goods at the Installation Site ("**Installation Date**") (which must occur within 60 days of delivery of the Goods to the Delivery Address, unless Trajan otherwise agrees in writing and subject to any conditions that Trajan may reasonably require). If installation is not commenced or completed within 60 days due to factors outside Trajan's direct control Trajan may, in its sole discretion:
- 5.2.1 where installation of the Goods has not commenced, choose not to commence installation of the Goods in which case:
    - 5.2.1.1 Trajan will be relieved of any responsibility to commence or complete installation of the Goods until such time as the parties reach agreement on an alternative installation timeframe; and
    - 5.2.1.2 Notwithstanding whether agreement is reached as described in clause 5.2.1.1 above Trajan may issue an invoice pursuant to clause 3.1(d) above for any fees or charges already incurred by Trajan in preparation for installation of the Goods; or
  - 5.2.2 where installation of the Goods has commenced but is not yet complete, choose to:

- 5.2.2.1 continue with and complete installation of the Goods and then send an invoice for such installation pursuant to clause 3.1(c)(iii); or
  - 5.2.2.2 cease installation activities and send an invoice pursuant to clause 3.1(d) above for any fees or charges in relation to the partially completed installation of the Goods.
- 5.3 Customer may request a change to the Installation Date provided such request is made at least 2 weeks prior to the scheduled Installation Date. If Customer reschedules installation within 2 weeks of the Installation Date (including any rescheduling that occurs after Trajan personnel travelled to the Installation Site), Trajan reserves the right to charge Customer for Trajan's costs arising directly from the rescheduling (including travel-related costs).
- 5.4 On the agreed Installation Date, Trajan will provide an appropriately qualified service and application engineer (the "**Trajan Technician**") to install the Goods at the Installation Site and provide basic training to Customer in the set-up, use and maintenance of the Goods. Unless otherwise state in the Quote, basic training does not include training or assistance in using the Goods for any specific application or method development.
- 5.5 Where the Trajan Technician is attending the Installation Site to install the Goods or provide any other related services, Customer must ensure a safe and lawful working environment for the Trajan Technician.
- 5.6 After the Trajan Technician has completed the installation of the Goods:
  - (a) the Trajan Technician and Customer representative will work cooperatively to follow Trajan's standard processes to evaluate the Goods and verify whether installation has been successfully completed and the Goods are operating in accordance with the specifications ("**Site Acceptance Testing**");
  - (b) If the Trajan Technician and Customer representative agree that the Site Acceptance Testing confirms that installation has been successfully completed and the Goods are operating in accordance with the specifications, the Customer representative will provide written confirmation of acceptance of the Goods on behalf of Customer ("**Installation Acceptance**") by completing Trajan's site acceptance documentation;
  - (c) If the Trajan Technician or Customer representative identify issues during Site Acceptance Testing such that installation of the Goods is not able to be completed or the Goods are operating in accordance with the specifications ("**Installation Issues**"), the Trajan Technician and Customer representative will cooperate and use commercially reasonable efforts to resolve the Installation Issues. Customer acknowledges and agrees that:
    - (i) depending on the nature of the Installation Issues, resolution may require the Trajan Technician to procure additional parts and/or to schedule a later date to return to the Installation Site to complete the work; and
    - (ii) Trajan will not be liable for any delays in connection with resolving Installation Issues, irrespective of cause or circumstance; and
  - (d) Once the Trajan Technician considers that the Installation Issues have been resolved, the parties will repeat the steps set out in clause 5.6 (a) to (d) as applicable).
- 5.7 If Installation Issues referred to in clause 5.6(c) are due to the Customer's fault (such as because the Installation Site is not ready on the scheduled date for Installation) Trajan reserves the right to charge Customer for additional costs incurred by Trajan arising from such Installation Issues such as travel or labor related costs.
- 6. Warranty**
- 6.1 Trajan warrants that the Goods will meet Trajan's specifications for the Goods and will be free from defects in materials and workmanship for the Warranty Period referred to in clause 6.2 or 6.3 as applicable (the "**Warranty**").

- 6.2 Unless otherwise stated on the Quote or agreed in writing, the Warranty Period is 12 months from the date of Installation Acceptance. Customer acknowledges that if the Goods are preowned, refurbished or otherwise not new, the Warranty Period will be stated on the Quote.
- 6.3 Unless otherwise stated by Trajan, the Warranty Period for any parts that are repaired or replaced under the Warranty is 6 months from the date of delivery of the repaired or replacement parts to the Delivery Address. All parts returned to Trajan for replacement become the property of Trajan.
- 6.4 The Warranty does not include any parts exposed directly to liquids, such as valves, valve rotors or other valve components, tubing or syringes. The Warranty does not cover any parts not supplied by Trajan.
- 6.5 The Warranty shall not apply in respect of loss or damage caused by:
- (a) a failure to store, operate, maintain, handle or use the Goods in accordance with Trajan's instructions or recommendations (including as set out in any user manuals or other instructions provided or made available to Customer);
  - (b) use of the Goods with any parts or software not supplied or recommended by Trajan;
  - (c) normal wear and tear;
  - (d) disassembly or modification of the Goods (unless authorised in writing by Trajan) or inappropriate, rough or negligent handling or misuse of the Goods;
  - (e) moving the Goods from one location to another (including within the same premises) after installation by Trajan;
  - (f) maintenance or servicing of the Goods other than performed by Trajan or its delegate; or
  - (g) an act of God, interference with work, power failures or surges, accident, explosion, fire, earthquake, flood or any other cause not within Trajan's control or otherwise not related to the Goods.
- 6.6 The Warranty does not exclude any warranty, guarantee or condition implied by applicable laws or regulations that cannot be excluded.
- 6.7 To the fullest extent permitted under applicable laws and regulations, Trajan's liability for breach of the Warranty or any other warranty, guarantee or condition implied by law that cannot be excluded, shall be limited to (at the sole discretion of Trajan):
- (a) repair or replacement of the Goods; or
  - (b) refund of the Price paid by Customer.
- 6.8 Customer has no right to return the Goods to Trajan, nor to expect Trajan to collect the Goods from the Customer, except as expressly provided in clause 6.7(a) above.
- 6.9 Customer may purchase an extended service contract on separate terms and conditions which will apply once the Warranty ends.

## **7. Limitation of Liability**

- 7.1 TRAJAN'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS, LOSSES OR DAMAGES OF ANY KIND, HOWSOEVER CAUSED (WHETHER DUE TO TRAJAN'S NEGLIGENCE, BREACH OF CONTRACT, BREACH OF LAW OR EQUITY OR OTHERWISE) IN CONNECTION WITH THE SALE OR SUPPLY OF GOODS UNDER THESE TERMS AND CONDITIONS SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER IN RESPECT OF THE RELEVANT GOODS. TRAJAN SHALL NOT BE LIABLE FOR LOSS OF PROFITS OR SPECIAL, CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE OR THIRD PARTY CLAIMS.
- 7.2 SAVE FOR THE EXPRESS WARRANTIES CONTAINED HEREIN, ALL OTHER WARRANTIES (WHETHER AS TO QUALITY, MERCHANTABILITY, FITNESS FOR PURPOSE, NON-INFRINGEMENT OR ANY OTHER MATTER) EXPRESSED OR IMPLIED BY STATUTE, COMMON LAW, EQUITY, TRADE CUSTOM, USAGE OR OTHERWISE ARE HEREBY EXPRESSLY EXCLUDED PROVIDED THAT NOTHING IN THESE

TERMS AND CONDITIONS SHALL EXCLUDE OR LIMIT THE LIABILITY OF ANY BREACH OF A TERM OR CONDITION IMPLIED BY LAW, THE EXCLUSION OR LIMITATION OF WHICH IS NOT PERMITTED.

**8. Customer Indemnity**

- 8.1 Customer indemnifies and holds Trajan harmless from and against any and all claims, demands, liabilities, losses, damages, fines, costs and expenses (including legal costs and expenses) suffered or incurred by Trajan, in any way relating to Customer's breach of these Terms and Conditions or any unlawful, negligent or willful acts or omissions by Customer.

**9. Software**

- 9.1 With respect to any software products incorporated in or supplied with the Goods (the "**Software**"), Customer acknowledges and agrees that Trajan is licensing such Software to Customer as the licensee, and the words "purchase", "sell" or similar are understood and agreed to mean "license". Trajan, or its licensor, as applicable, retains all rights and interests (including copyright) in the Software supplied to Customer.
- 9.2 Trajan hereby grants Customer a non-exclusive, non-transferable license to use the Software and any related documentation (such as any user manual or other materials) solely for Customer's own internal business purposes including where relevant in connection with the operation of the Goods supplied by Trajan to Customer.
- 9.3 Customer acknowledges that under clause 9.2 it is licensing the specific version of the Software which it receives as part of the Goods under these Terms and Conditions, and any upgrades or new versions of that Software must be purchased separately.
- 9.4 The Software may be supplied with a hardware or software-based key which prevents its execution on a computer other than the computer for which it is licensed. Where this applies, Customer must not enable the execution of the Software on a computer for which no license key was provided.
- 9.5 Customer must not sell, distribute, transfer, sub-license, loan or otherwise make available in any form to third parties the Software (including any hardware or software-based key) and related documentation supplied by Trajan. Customer may not copy, reproduce, disassemble, decompile or reverse engineer, modify, enhance, create derivative works or otherwise change or supplement the Software provided hereunder without Trajan's prior written consent.
- 9.6 Without limiting clause 6 or 7 of these Terms and Conditions, to the maximum extent permitted by applicable law, Trajan provides Software "as is" and does not give any warranties or guarantees that the Software is free from errors or viruses, malware or other malicious code or vulnerability risks or that it will operate without interruption.
- 9.7 The license granted in clause 9.2 will remain in effect until such time as it is terminated as provided in these Terms and Conditions. Trajan may terminate the license if Customer is in breach of these Terms and Conditions. Following the termination of the licence granted in clause 9.2, Customer must cease all use of the Software and related documentation and remove all copies of the Software from the relevant computers.
- 9.8 Customer acknowledges that Customer may also be required to accept the terms and conditions of a separate End User License Agreement ("**EULA**") presented to the Customer at the time of installation of the software product. In the event of any conflict between the terms of the EULA and these Terms and Conditions, the EULA will apply to the software products to the extent of the conflict.

**10. Customer Acknowledgements**

- 10.1 Customer must store, handle and use the Goods in compliance with Trajan's directions (if any), applicable laws and regulations and good laboratory practices. Customer must follow Trajan's user manual and any other instructions or guidelines provided by Trajan for the Goods (as may be updated by Trajan from time to time). In connection with its use of the Goods, Customer is solely responsible (and Trajan shall have no liability) in relation to its specific applications or methods and for all data and results that are generated. Customer must ensure that its use of the Goods does not infringe any third party rights including intellectual property rights.

## **11. Confidentiality**

- 11.1 For the purposes of this clause, "**Confidential Information**" means information or data (in any form) howsoever disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**") which is either marked or stated to be confidential, or is by its nature or method of disclosure intended to be confidential, but excludes information that:
- (a) is or becomes public knowledge;
  - (b) is lawfully known to or in the possession or control of Receiving Party, other than as a result of a breach of confidentiality or this Agreement;
  - (c) is independently developed by Receiving Party without the use of Disclosing Party's Confidential Information; or
  - (d) is required to be disclosed by law.
- 11.2 Receiving Party agrees to use all Confidential Information received from Disclosing Party solely for purposes in connection with this Agreement.
- 11.3 Receiving Party must keep the Confidential Information confidential and may only disclose the Confidential Information of Disclosing Party to those of its employees, officers, contractors and advisors (including those of its affiliates) who have a need to know and are aware that the Confidential Information must be kept confidential ("**Authorized Persons**"). Receiving Party will be liable for any breaches of this clause by Authorized Persons.
- 11.4 On the written request of Disclosing Party, Receiving Party will promptly return or destroy (at Disclosing Party's option) all materials containing or embodying any of Disclosing Party's Confidential Information, provided that Receiving Party will be authorised to retain one copy of the Confidential Information for legal and archival purposes and Receiving Party will not be required to destroy or delete electronic copies that have become embedded in its electronic storage systems through routine backup processes.

## **12. Intellectual Property**

- 12.1 Customer acknowledges Trajan's ownership or licence to use the patents, trade marks, copyright, designs and any other intellectual property rights (whether registered or unregistered) in or relating to the Goods manufactured or supplied by Trajan (the "**Trajan IP**"). Customer acknowledges that, other than the limited licensing rights as are needed in connection with the use of the Goods under these Terms and Conditions, Customer will not acquire any rights or interests in respect of the Trajan IP unless otherwise agreed in writing.
- 12.2 Customer warrants and agrees that it and its agents, employees, contractors and affiliates: (a) will not contest Trajan's or Trajan's licensor's ownership of any Trajan IP; (b) will not infringe any Trajan IP; and (c) will promptly notify Trajan of any actual or alleged infringement of the Trajan IP of which it becomes aware.

## **13. General**

- 13.1 Customer acknowledges that Trajan is permitted to assign or subcontract its rights and obligations under these Terms and Conditions (including to affiliated entities).
- 13.2 A failure or delay by a party to insist upon performance of any term, warranty or condition shall not be deemed a waiver. A waiver of any right or remedy under these Terms and Conditions is not

effective unless such waiver is in writing and signed by an authorised representative of the relevant party.

- 13.3 If any provisions of the Terms and Conditions shall become void or unenforceable for any reason, such void or unenforceable provisions or part thereof shall be deleted and the remaining provisions shall continue in full force and effect.
- 13.4 The Terms and Conditions are subject to the laws of the State of Texas, USA, and the parties submit to the exclusive jurisdiction of the Courts of the State of Texas.