

## Advanced Instruments, LLC - Terms and Conditions of Sale for Artel Products

These Terms and Conditions of Sale ("Terms and Conditions") set forth the provisions for your purchase of Artel product(s) of any kind including software and systems ("Products"). By executing an order form for any Artel Products, you are entering into a contract with Advanced Instruments, LLC ("Vendor"), and you are agreeing, individually and on behalf of the Company or other legal entity that has purchased the Artel Products ("Company" or "you"), to be bound by the following provisions.

By accepting these Terms and Conditions, you represent and warrant that you are acting on behalf of the Company, and that you have authority to bind the Company and its affiliates to these Terms and Conditions. "You" refers to you both (i) as an individual user and (ii) as an authorized representative of the company you represent.

### 1. PAYMENT AND SHIPPING.

#### 1.1. Fees:

Company shall pay all fees specified in order forms. Except as otherwise specified herein, payment obligations are non-cancelable and fees paid are non-refundable.

#### 1.2. Invoicing and Payment:

Company must provide Vendor with valid and updated credit card information or with a valid purchase order or alternative document reasonably acceptable to Vendor. If you provide credit card information, you authorize Vendor to charge such credit card for all fees specified in the order form. If your registration specified that payment will be by a method other than a credit card, Vendor will invoice Company in advance. Unless otherwise stated, invoiced charges are due NET 30 DAYS FROM THE INVOICE DATE. Company is responsible for providing complete and accurate billing and contact information to Vendor and notifying Vendor of any changes to such information.

#### 1.3. Overdue Charges:

If any invoiced amount is not received by Vendor by the due date, then without limiting our rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

#### 1.4. Taxes:

Vendor fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Company is responsible for paying all Taxes associated with the purchase, license or use of the Products by the Company and its Authorized Users. If Vendor is legally obligated to pay or collect Taxes for which Company is responsible under this Section, Vendor will invoice Company and Company must pay that amount unless Company provides Vendor with a valid tax exemption certificate authorized by the appropriate taxing authority.

#### 1.5. Shipping - Inside the United States, Canada, Mexico:

Vendor's standard shipping terms in the United States, Canada, and Mexico are: a) FOB Origin, Freight Prepaid and Chargeback, or b) FOB Origin, Freight Collect.

#### 1.6. Shipping - Outside the United States, Canada, Mexico:

Vendor's standard shipping terms for locations outside the United States, Canada, and Mexico are INCOTERMS 2010, FCA, Westbrook, Maine, USA. Title passes to Company at Vendor's dock.

### 2. INDEMNIFICATION.

#### 2.1. Infringement:

Vendor agrees to defend or, at its option, to settle, any claim brought against Company for infringement of any United States patent, copyright, trade secret or trademark by the Products as delivered and to indemnify Company against all damages and costs finally assessed by a court of competent jurisdiction against Company under any such claim or action. Company agrees that Vendor shall be released from the foregoing obligation unless Company has taken reasonable steps to mitigate any potential expenses and provides Vendor with: (i) prompt written notice of any such claim or action, or possibility thereof; (ii) sole control and authority over the defense or settlement of such claim or action; and (iii) proper and full information and assistance to settle and/or defend any such claim or action. Company shall have the right to employ separate counsel and participate in the defense at its own expense; provided that Vendor shall remain in control of the defense. In addition, Vendor may, at its sole option and expense, either: (a) procure for Company the right to use the Products; (b) replace the Products with non-infringing, functionally equivalent Products; (c) modify the allegedly infringing elements of the Products so that it is not infringing; or (d) cease to provide the Products and refund any fees paid by Company for the Products, prorated on the basis of a five-year useful life thereof. Upon exercise of option (d) in the previous sentence, Vendor shall have no further obligations or liability to Company with respect to the allegedly infringing Products. Except as specified above, Vendor will not be liable for any costs or expenses incurred without its prior written authorization. THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF VENDOR TO COMPANY WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE SOFTWARE, THE SYSTEM, OR ANY PART THEREOF.

#### 2.2.

Company shall indemnify, defend and hold harmless Vendor and its directors, officers, members, managers and employees from and against all claims, actions, liabilities, losses, expenses, damages and costs (including reasonable attorneys' fees), that may at any time be incurred by reason of any third party claim arising out of or relating to Company's use of the Products, excluding only claims described in Section 2.1. Vendor shall have the right to employ

separate counsel and participate in the defense at its own expense.

### **3. LIMITATION OF LIABILITY.**

#### **3.1. Limitation of Liability:**

VENDOR'S LIABILITY TO COMPANY FOR DAMAGES WITH RESPECT TO THE PRODUCTS SHALL NOT EXCEED THE FEES ACTUALLY PAID BY COMPANY TO VENDOR PURSUANT TO THE ORDER FORM.

#### **3.2. No Consequential Damages:**

NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, AND IRRESPECTIVE OF ANY FAULT OR NEGLIGENCE, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SALES, LOST SAVINGS, LOST PROFITS (ANTICIPATED OR ACTUAL), LOSS OF USE, DOWNTIME, INJURY TO PERSONS OR DAMAGE TO PROPERTY AND CLAIMS OF THIRD PARTIES), HOWSOEVER CAUSED, ARISING OUT OF OR RELATED TO THE PRODUCTS, WHETHER OR NOT SUCH PARTY HAS BEEN APPRISED OR NOTIFIED THAT ANY SUCH DAMAGES OR LOSSES ARE POSSIBLE OR LIKELY, AND WHETHER OR NOT ANY PERMITTED REMEDY HAS FAILED ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

#### **3.3. Conditions:**

The Parties agree that the above limitations of liability of Section 3. shall apply regardless of the form of action, whether in contract, warranty, strict liability or tort (including, without limitation, negligence of any kind, whether active or passive) or any other legal or equitable theory, but shall not apply to fees owed to Vendor by Company.

### **4. ADDITIONAL TERMS AND CONDITIONS.**

#### **4.1. Notices:**

Except as otherwise specified herein, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). All notices to the Company shall be addressed to the address on the order form submitted from Company to Vendor or such address thereafter provided by a Company Authorized User.

#### **4.2. U.S. Government Licenses:**

Vendor provides the Products, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Products include only those rights customarily provided to the public as defined in these Terms and Conditions. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Vendor to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

#### **4.3. Export Restrictions:**

The Products, other technology Vendor makes available, and derivatives thereof may be subject to export laws and regulations of the United States. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Authorized Users to access or use the Products or any content in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

#### **4.4 Miscellaneous:**

##### **4.4.1.**

Neither these Terms and Conditions nor any rights under these Terms and Conditions may be transferred or assigned by Company without the prior written consent of Vendor.

##### **4.4.2.**

These Terms and Conditions shall be interpreted and construed in accordance with the laws of the State of Maine, without regard to its internal conflict of law principles. In connection with any dispute arising hereunder or litigation relating hereto, the parties hereby consent and subject themselves exclusively to, and agree to waive any objections to, the jurisdiction of the federal and state courts located in Portland, Maine.

##### **4.4.3.**

In the event that any provision of these Terms and Conditions is held invalid, the remaining provisions of these Terms and Conditions shall remain in full force and effect.

##### **4.4.4.**

The failure of either party to enforce any of the provisions of these Terms and Conditions shall not be deemed to be a waiver of the right of either party thereafter to enforce any such provisions.

##### **4.4.5.**

Except for the Company's obligation to make payments to Vendor, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, blackouts, governmental acts or orders or restrictions, or acts of God or terrorism, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

#### 4.4.6.

These Terms and Conditions constitute the entire, final, complete and exclusive agreement between the parties regarding the subject matter hereof and supersede all previous agreements, intentions, or representations, oral or written, relating to the subject matter of these Terms and Conditions. Any representation or warranty not expressly contained in these Terms and Conditions will not be enforceable.

#### 4.4.7.

Any agreement entered into under these Terms and Conditions, including the Warranty and Software Subscription Agreement may be assigned to a Vendor affiliate without your consent, including all rights, obligations and responsibilities.

**THESE TERMS AND CONDITIONS ARE A LEGAL CONTRACT THAT WILL BIND YOU AND YOUR COMPANY. YOU MAY ACCESS AND USE THE PRODUCTS ONLY IF YOU AFFIRM THAT YOU HAVE READ THESE TERMS AND CONDITIONS AND AGREE TO ALL OF THE PROVISIONS SET FORTH HEREIN. BY EXECUTING AN ORDER FORM FOR THE PRODUCTS, YOU ARE AGREEING TO THE TERMS AND CONDITIONS SET FORTH HEREIN. YOU MAY NOT ACCESS OR USE THE PRODUCTS IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS.**

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### Warranty and Software Subscription Agreement –ArtelWare

This Agreement sets forth the warranty terms and conditions for the purchase of the MVS Multichannel Verification System/PCS Pipette Calibration System (“System”), and software subscription terms governing access to and use of the ArtelWare software (“Software”). Agreement to these terms and conditions is required for use of the Software. By executing an order form for the System, the purchaser is entering into a contract with Advanced Instruments, LLC (“Vendor”) for access to the System and the Software and agreeing on behalf of the company or other legal entity that has licensed the Software (“Customer”), to be bound by the following terms and conditions.

#### 1. EQUIPMENT WARRANTY.

All new equipment (meaning physical implements, such as the MVS plate reader, PCS instrument, Calibration Plate, and Calibration Kit, but excluding Software and reagents, included in the MVS Multichannel Verification System/PCS Pipette Calibration System, collectively, the “Equipment”) is warranted to perform as described in its labeling and in the applicable User Guide, when used in accordance with its instructions, for a period of one year from the Date of Shipment. All certified pre-owned Equipment is warranted to perform as described in its labeling and in the applicable User Guide, when used in accordance with its instructions, for a period of six months from the Date of Shipment. The MVS plate reader lamp is expressly excluded from this warranty.

VENDOR MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING THE EQUIPMENT, AND DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

Vendor's sole obligation and Customer's exclusive remedy for breach of this warranty, at Vendor's option, shall be to repair or replace the defective Equipment, provided Customer notifies Vendor promptly, and in any event, within fifteen (15) days of the date the defect first arose.

This warranty is voided by misuse, alteration, repair or modification of the Equipment, or any component thereof, by any party other than Vendor, except for maintenance procedures performed by Vendor or Customer as shown in the instructions.

#### 2. ADDITIONAL TERMS APPLICABLE TO EQUIPMENT WARRANTY.

##### 2.1 Loaner Equipment (U.S.A. and Canada only):

At request of Customer during the term of the warranty, a free-of-charge loaner for the covered component will be shipped for use (if available) while the covered component is under repair.

##### 2.2 Return Shipment:

To return Equipment to Vendor for warranty repair, non-warranty repair or re-certification, contact the Advanced Instruments Technical Services Department. A Service Order Number (SRO) or Return Merchandise Authorization (RMA) will be issued for all returns.

Toll Free (U.S. & Canada): (800) 225-4034

Outside US & Canada: +1 (781) 320-9000

Email: [ArtelSupport@aicompanies.com](mailto:ArtelSupport@aicompanies.com)

Ship to: Advanced Instruments  
25 Bradley Drive  
Westbrook, ME 04092-2013 U.S.A.

##### 2.3 Shipping Packaging:

To ensure protection of the Equipment during shipment, the original packaging should be used. Vendor is not responsible for any damage to Equipment incurred during shipment to Vendor. If original packaging is unavailable, please contact Vendor for replacement packaging.

## **2.4 Shipping & Insurance Charges:**

### **Inside the U.S.A., Canada and Mexico:**

While the Equipment is covered under warranty, Vendor will pay shipping and insurance costs for Customer-owned and loaner Equipment. Shipping is at Vendor's discretion. Unless by special arrangement with Vendor, shipping charges via a Customer-specified service or carrier will be the responsibility of Customer. Canadian and Mexican Customers are responsible for all customs duties and taxes. Vendor's shipping terms for any non-warranty return to Customers are FOB Destination, Freight Prepaid and Chargeback.

### **Outside the U.S.A., Canada and Mexico:**

While the Equipment is covered under any warranty program, the Customer will prepay shipping and insurance costs to and from Vendor. Any out-of-warranty claims may also be repaired, but will result in repair, shipping and insurance charges to the Customer. All international Customers are responsible for all customs duties and taxes. Vendor's shipping terms for any non-warranty return to Customers are INCOTERMS 2020, FCA, Westbrook, Maine, USA.

## **2.5 Repairs Not Under Warranty Coverage:**

If repairs which do not fall under warranty coverage are required, Vendor will notify Customer of the cost of these, and secure a purchase order from Customer before proceeding. These repair requirements may be the result of transit damage or misuse and may require additional time.

## **2.6 Turnaround Time:**

Equipment will be returned to Customer as quickly as reasonably practical. Please contact Vendor to discuss any specific requirements.

## **3. REAGENT WARRANTY.**

MVS Reagents are warranted to meet the specifications described on their labeling, when used in accordance with their instructions, for a period of twenty-four (24) months from the date of manufacture, provided they remain sealed until the date of use, and are stored as described in the associated product documentation.

PCS Reagents are warranted to meet the specifications described on their labeling, when used in accordance with their instructions, for a period of twelve (12) months from the date of shipment, provided they remain sealed until the date of use, and are stored as described in the associated product documentation.

**VENDOR MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING THE REAGENTS, AND DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.**

This warranty is voided by tampering with the seal, misuse, alteration, or modification of the Reagents.

Vendor's sole obligation and Customer's exclusive remedy for breach of this warranty, at Vendor's option, shall be to replace the Reagent, provided Customer notifies Vendor promptly.

## **4. SOFTWARE SUBSCRIPTION.**

The Software is owned by Vendor and is licensed to Customer for use according to the number of System components purchased. Each purchase of an MVS Calibration Plate Activation Code or a PCS Calibration Kit Activation Code entitles Customer to a subscription to the Software for the duration of the one-year expiration period of the MVS Calibration Plate or PCS Calibration Kit (the "Subscription Period"), or in special cases, conditions agreed to under a separate agreement may apply. Vendor grants Customer a non-exclusive license to use the Software during the Subscription Period with the activated MVS Calibration Plate or PCS Calibration Kit, as applicable. In order to use the Software during the Subscription Period, Customer may be required to scan the bar code on the Calibration Plate or Calibration Kit periodically. Once the Subscription Period expires, access to certain functions of the Software will be disabled without an MVS Calibration Plate Recertification with new Activation Code, or new PCS Calibration Kit with new Activation Code.

The Software is copyright protected by Advanced Instruments, LLC with all rights reserved. No part of the Software may be copied, in whole or in part without written consent from Vendor except to make a backup copy for normal use. Customer is allowed to install an unlimited number of Software Client Applications for each software instance (one instance per Calibration Plate or Calibration Kit) granted to Customer for the purposes of administration, configuration, data review, and maintenance.

The User Guide and Validation Guide and any other product documentation are copyright protected by Advanced Instruments, LLC with all rights reserved. No part of these manuals may be copied, in whole or in part without written consent from Vendor except to make a backup copy for normal use.

Customer shall not use, reproduce, distribute, transfer, copy, sublicense, broadcast, or commercially exploit the Software or any component thereof, except for its own internal business purposes. Without limiting the foregoing, Customer expressly agrees that it shall not, and shall not authorize any other person or entity to, translate, decompile, or create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software, nor adapt the Software, or any component thereof, in any way or use it to create a derivative work.

Vendor warrants the Software against material defects in workmanship for a period of one (1) year from the Date of Shipment. In the event that the Software shall prove defective in workmanship, Customer's sole remedy shall be the replacement of the Software. THIS IS THE ONLY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, THAT IS MADE BY VENDOR ON THE SOFTWARE. The information furnished in the Software, the User Guide, or any other product documentation is believed to be accurate and reliable. However, Vendor assumes no responsibility for its use.

During the Subscription Period, Vendor shall provide to Customer updates, upgrades, new versions, bug-fixes or other modifications to the Software or the manual. Customer acknowledges and agrees that its purchase of the System and subscription to the Software are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public or private statements made by Vendor regarding future functionality or features.

All Customer Data, whether or not processed through the Software, is and shall remain the property of Customer. Customer will retain access to Customer Data during and after the Subscription Period. Customer is solely responsible for backing up Customer Data. Vendor makes no claims, warranties or representations with regard to any data processed by the Software or the results obtained. Customer agrees that the Software will not be used to store Protected Health Information (PHI), Payment Card Information (PCI), and that Personal Identifiable Information (PII) entered into the Software will be limited in scope to the details appropriate for the use of the Software and the System within its organization and the regulations to which Customer is subject. The Software can be used in configurations where no PII is required and maintaining the confidentiality, security, and appropriate scope of this data is solely the responsibility of Customer and its employees and agents. Customer agrees not to share any sensitive PII with Vendor.

The Software Subscription includes maintenance of the Software, including updates, as described above, but does not include training, installation, validation, revalidation, data backup, data security, or maintenance of other equipment. Technical Support for the Software will be available through the Subscription Period in accordance with Vendor company policy. The Software Subscription does not include access to Vendor's APIs, SDKs, Schemas, add-ons, or other developer tools.

IN NO EVENT SHALL VENDOR BE LIABLE TO CUSTOMER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT LOSS OR DAMAGE. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL VENDOR BE LIABLE TO CUSTOMER, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO THIS AGREEMENT OR FROM ANY FAILURE OF PERFORMANCE RELATED HERETO, REGARDLESS OF THE CAUSE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, FOR ANY AMOUNT IN EXCESS OF THE AMOUNT CUSTOMER HAS ACTUALLY PAID TO VENDOR HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.

The Software and other technology Vendor makes available, and derivatives thereof, may be subject to export laws and regulations of the United States. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit any of its users to access or use the Software or any content in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

Vendor provides the Software for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Software include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data - Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Vendor to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

In the event that any provision of this Agreement is held invalid, the remaining terms and conditions of this agreement shall remain in full force and effect.

This Agreement shall be interpreted and construed in accordance with the laws of the State of Maine, without regard to its internal conflict of laws principles. In connection with any dispute arising hereunder or litigation relating hereto, the parties hereby consent and subject themselves exclusively to, and agree to waive any objections to, the jurisdiction of the federal and state courts located in Portland, Maine.

This Warranty and Software Subscription Agreement constitutes the entire, final, complete and exclusive agreement between the parties regarding the subject matter hereof and supersedes all previous agreements, intentions, or representations, oral or written, relating to the subject matter of this agreement. Any representation or warranty not expressly contained in this Agreement will not be enforceable. Vendor reserves the right to modify the terms and conditions of this Warranty and Software Subscription Agreement, including related policies, from time to time, with notice to Customer or by posting the modified terms and policies to the Vendor website. Vendor may modify our policies to take effect during the then-current Subscription Period in order to respond to changes in our products, our business, or laws. In this case, unless required by law, Vendor agrees not to make modifications to our policies that, considered as a whole, would substantially diminish our obligations during the current Subscription Period. Modifications to Vendor policies will take effect automatically as of the effective date specified for the updated policies.

**THIS AGREEMENT IS A LEGAL CONTRACT THAT WILL BIND THE CUSTOMER. BY EXECUTING AN ORDER FORM FOR THE SYSTEM, THE CUSTOMER IS AGREEING TO THE TERMS AND CONDITIONS SET FORTH HEREIN. CUSTOMER USERS SHALL NOT ACCESS THE SOFTWARE OR USE THE SYSTEM IF THE CUSTOMER HAS NOT AGREED TO ALL OF THE TERMS AND CONDITIONS.**