



Nuclease Probe Technologies, Inc.
Terms and Conditions of Sale
Effective April 20, 2022

ACCEPTANCE OF TERMS: These Terms and Conditions of Sale (“Terms”) shall govern all orders for the purchase of products from Nuclease Probe Technologies, Inc. (“NPT”), and these Terms shall, other than those terms concerning the identity and number of products to be purchased and the price to be paid therefor, contain the only terms and conditions governing sales of products by NPT to the purchaser thereof (the “Buyer”). The Buyer will be deemed to have agreed to these Terms by ordering or purchasing Products from NPT. Terms or conditions contained in any order form, purchase order, or other document submitted by Buyer which are inconsistent with, or in addition to, these Terms are rejected, objected to, shall be deemed void and of no force or effect, and shall be superseded in all conflicting respects by these Terms. All orders of purchase for products are subject to acceptance by NPT.

DESCRIPTION OF GOODS: NPT offers for sale the NucAP™ products and related accessories described at <https://nptrapidtesting.com/> (each, a “Product”; collectively, “Products”). All sales of Products are subject to these Terms.

USAGE:

Veterinary Diagnostic and Research Purposes Only. Buyer shall only use the NPT Products for Buyer’s veterinary diagnostic or internal research purposes, the “Authorized Uses”). The Products have not been approved for use in any human applications such as testing services, clinical, diagnostic, or therapeutic applications and Buyer shall not use the Products for any of these purposes. Products are to be used in a safe manner and in accordance with all labeling, product inserts, and instructions provided with the Products and all applicable laws, rules, regulations, and guidelines. NPT will not be responsible or liable for any losses, costs, expenses, or any other forms of liability arising out of the unauthorized, unlicensed, or other use of the Products. By using any Product for any purpose, Buyers and users of the Products agree to indemnify, defend, and hold harmless NPT, its affiliates, and its or their officers, directors, employees, agents, or other representatives from and against any and all damages and/or liability, however characterized, related to or resulting from the unauthorized, unlicensed, or other use of the Products.

No Transfer/Resale. Buyer shall not resell or transfer any Products, materials incorporating the Products, or products manufactured using the Products to any affiliate of Buyer or third party.

Use Restrictions. Buyer shall not: (i) sequence, reverse engineer, disassemble, decompile, alter, modify, separate, or break down any Product or component thereof physically, chemically, or biologically or (ii) otherwise use any Products except for the Authorized Uses as permitted by these Terms, without NPT’s express prior written consent.

NPT Instructions. Buyer shall comply with all instructions and guidelines provided or made available by NPT with respect to the shipment, handling, storage, or use of Products.

Export Restrictions. Buyer acknowledges that each Product and any related technology, including technical information, supplied by NPT hereunder or maintained in documents with respect thereto (collectively “Items”) may be subject to export controls of the U.S. Government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the “EAR”), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not, without first obtaining the required license to do so from the appropriate U.S. Government agency; (ii) export or re-export any Item, or (iii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. Government. Buyer shall cooperate fully with NPT in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold NPT harmless from, or in connection with, any violation of this Section by Buyer, its affiliates, or its or their employees, directors, officers, agents, or representatives.

SAFETY STATEMENT: Buyer acknowledges that some of the Products may be hazardous or could otherwise present a safety risk as may be outlined in any Safety Data Sheet provided with, or made available by, NPT with respect to, the Products or any other label or document shipped with or otherwise associated with any Products. Buyer agrees to use, store and otherwise handle the Products with such care and taking such safety precautions as is necessary or appropriate in each case. In no event shall NPT be liable for any personal injury or any other damages arising from or as a result of use, handling misuse or mishandling of any Products or any breach of these Terms or failure to comply with applicable laws, rules, regulations, or guidelines.

PRICE: All prices published by NPT or quoted by NPT’s representatives may be changed at any time without notice. All prices quoted by NPT or NPT’s representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of NPT’s original price quotation.

TAXES AND OTHER CHARGES: NPT shall not be responsible for the payment of any use, sales, value added, excise, or other tax, duty, tariff, customs, inspection, or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority with respect to the sale or transfer of Products to Buyer or import or export of Products in the course of shipment to Buyer, with the sole exception of any sales taxes invoiced and collected from Buyer by NPT. All other such charges (if any) must be paid by Buyer separately and in addition to the prices quoted or invoiced. In the event NPT is required to pay any such tax, tariff, duty, fee or charge, Buyer shall reimburse NPT therefor. If Buyer claims any exemption with respect to any such tax, tariff, duty, fee or charge, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction and indemnify, defend, and hold harmless NPT with respect to any potential liability resulting from any failure to pay any such tax, tariff, duty, fee or charge.

TERMS OF PAYMENT: Payment in full shall be made within twenty-one (21) days of invoice. Payment may be made by ACH transfer or check, however, ACH transfer is the preferred method. NPT will invoice Buyer upon shipment for the full price and all other charges and amounts payable by Buyer in accordance with these Terms. If Buyer fails to pay any amounts when due, Buyer shall pay NPT interest thereon at the rate of prime (as reported in The Wall Street Journal (Eastern U.S. edition)) plus four percent (4%) or, the maximum rate allowable by law, whichever is less, together with all costs and expenses (including without limitation reasonable attorneys’ fees and disbursements and court costs) incurred by NPT in collecting such overdue amounts or otherwise enforcing NPT’s rights hereunder. All payments shall be made in U.S. Dollars.

DELIVERY: Products will be delivered to Buyer Ex Works (EXW) (INCOTERMS 2010) NPT’s facility within thirty (30) days of NPT’s written acceptance of an order therefor. Freight, insurance, handling and other charges as may be incurred will be paid by Buyer. NPT will have the right, at its election, to make partial shipments of Products and to invoice each shipment separately. NPT reserves the right to stop delivery of Products and to withhold delivery in whole or in part if Buyer fails to make any payment to NPT when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and NPT will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver. In the event of a delay due to any cause beyond NPT’s reasonable control, NPT reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer’s control may be placed in storage by NPT at Buyer’s risk and expense and for Buyer’s account.

PRODUCT AVAILABILITY: NPT makes no guarantee of Product availability, but will use commercially reasonable efforts to fill the Buyer’s orders accepted by NPT in writing in a timely fashion.

WARRANTY, LIABILITY, DISCLAIMER: Products supplied by NPT are warranted to materially comply with any specifications explicitly provided on our Products labels, documentation, published specifications or package inserts for the period specified therein and when a) stored properly under specified conditions provided on labels and specifications, b) used in accordance with industry standards and practices, c) used by properly trained personnel in Buyer’s facility. Should any Product fail to materially conform to any such applicable specifications as specified during the applicable warranty period, at NPT’s option, NPT will credit the purchase price to the Buyer’s account or replace the Product free of charge. This warranty is exclusive and limits NPT’s liability to, at NPT’s option, the replacement of the Product or full credit of the original purchase price. NPT’s warranties made in connection with this sale shall not be effective if NPT has determined, in its sole discretion, that Buyer has stored Products in improper condition, have misused the Products in any manner, have failed to use Products in accordance with industry standards and practices, have failed to use Products in accordance with instructions, if any, furnished by NPT, or have otherwise breached this Agreement.

THE WARRANTIES SET FORTH HEREIN ARE NPT’S SOLE AND EXCLUSIVE WARRANTIES FOR OR RELATING TO PRODUCTS, AND NPT HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NPT’S SOLE AND EXCLUSIVE LIABILITY TO BUYER, AND BUYER’S EXCLUSIVE REMEDY, WITH RESPECT TO PRODUCTS PROVED TO NPT’S SATISFACTION TO BE DEFECTIVE OR NONCONFORMING IN ACCORDANCE WITH THE PRECEDING PARAGRAPH SHALL BE REPLACEMENT OF SUCH PRODUCTS WITHOUT CHARGE OR REFUND OF THE PURCHASE PRICE, AS ELECTED IN NPT’S SOLE DISCRETION, UPON THE RETURN OF SUCH PRODUCTS IN ACCORDANCE WITH NPT’S INSTRUCTIONS. NPT SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES OF ANY KIND WITH RESPECT TO PRODUCTS OR THE USE OR SALE THEREOF, INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, COST OF CAPITAL, LOSS OF WORK IN PROGRESS, DOWNTIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, ANY LIABILITY OF BUYER TO A THIRD PARTY, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY OR PROPERTY DAMAGE. NPT’S TOTAL LIABILITY HEREUNDER SHALL IN NO CASE EXCEED THE PURCHASE PRICE PAID TO NPT BY BUYER FOR THE SPECIFIC PRODUCTS THAT GIVE RISE TO ANY BREACH, CLAIM OR DAMAGE. THESE EXCLUSIONS AND LIMITATIONS ON DAMAGES SHALL APPLY REGARDLESS OF HOW THE LOSS OR DAMAGE MAY BE CAUSED AND AGAINST ANY THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY. ALL CLAIMS WITH RESPECT TO NONCONFORMING PRODUCTS MUST BE BROUGHT WITHIN THIRTY (30) DAYS OF SHIPMENT, REGARDLESS OF THEIR NATURE.

INDEMNITY: Buyer shall indemnify, defend, and hold NPT, its affiliates, and its and their directors, officers, stockholders, members, managers, employees, agents, and other representatives harmless from and against any third party claims, and all losses, damages and expenses (including reasonable attorneys’ fees and other costs of defending any action) associated therewith, that NPT may incur as a result of Buyer’s use of Products or any materials manufactured using Products or the negligence, intentional misconduct, breach of these Terms, or failure to comply with applicable law, rule, or regulation on the part of Buyer, any affiliate thereof, or any of its or their directors, officers, stockholders, members, managers, employees, agents, or other representatives.

USE OF NAME AND LOGO. Except as may be permitted by law, Buyer will not use for publicity, promotion or otherwise any logo, name, trade name, service mark or trademark of NPT or its affiliates without NPT’s express prior written consent.

CONFIDENTIALITY. Buyer shall maintain as strictly confidential, and not disclose to any third party, any information provided by NPT or otherwise coming into the possession or control of Buyer concerning the Products, except to the extent such information (i) prior or after the time of disclosure or generation becomes part of the public knowledge or literature, not as a result of any inaction or action of the Buyer; (ii) is approved by NPT, in writing, for release; or (iii) Buyer is required to disclose pursuant to law, rule, regulation, or a valid order of a court or other governmental body.

INTELLECTUAL PROPERTY RIGHTS: Nothing contained in these Terms will be construed as an assignment or license to Buyer of any intellectual property rights in or to Products or their use or manufacture. All intellectual property rights in or to Products are and will remain the sole and exclusive property of NPT. Any data, information, know-how, results, discoveries, or inventions resulting from Buyer’s breach of these Terms, use of Products in any manner not authorized by these Terms, or that are generated by or on behalf of Buyer or any affiliate thereof and constitute an improvement to any Product (or any new or improved use or method of manufacture thereof), and any intellectual property rights therein, shall be exclusively owned by NPT, and Buyer shall assign, and hereby assigns, all right, title, and interest therein to NPT, free and clear of all liens, claims, and encumbrances. Buyer agrees to take, and to cause its affiliates and its and their directors, officers, stockholders, members, managers, employees, agents, and other representatives to take, any and all actions necessary or reasonably requested by NPT to effect the purposes of the foregoing.

REFUND POLICY: NPT does not accept any returns. Sales of NPT’s Products are non-refundable.

GOVERNING LAW: All disputes allegedly arising from the legality, interpretation, application, or performance of Buyer’s order, the Products or these Terms, and these Terms itself, shall be governed by and construed and enforced in accordance with the laws of the State of Massachusetts, excluding that body of law known as choice of law, and shall be binding upon the parties hereto in the United States and worldwide. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms or the purchase of Products. All disputes with respect to the subject matter hereof shall be brought and heard either in the Massachusetts state or federal courts located in Suffolk County, Massachusetts. Buyer hereby consents to the in personam jurisdiction and venue of such courts. The parties agree that service of process upon them in any such action may be made if delivered in person, by courier service, by telegram, by telefacsimile or by first class mail, and shall be deemed effectively given upon receipt.

ASSIGNMENT: Buyer may not assign these Terms or the agreement constituted hereby, in whole or in part. Any attempt by Buyer to assign or transfer any of the rights, duties or obligations of these Terms, in whole or in part, without NPT’s written consent is void.

ENTIRE AGREEMENT; REVISIONS TO TERMS: These Terms constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. These Terms may not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealing without the express written consent of NPT. If any part of these Terms is declared invalid, illegal or unenforceable, such provision shall be severed from these Terms and the other provisions shall remain in full force and effect. Any clerical errors made on this form are subject to correction by NPT. Waiver by NPT of any breach of any provision contained herein shall not constitute or be deemed to be a waiver of any other breach or of such provision. NPT may at any time revise these Terms without notice. Buyer is bound by any such revisions with respect to any purchase of Products made after any such revision and should, therefore, periodically visit <https://nptrapidtesting.com/> to review any updates to these Terms.