



CODEX DNA, INC.
GENERAL TERMS AND CONDITIONS OF SALE

Last Updated: September 21, 2021

PLEASE CAREFULLY READ THESE CODEX DNA GENERAL TERMS AND CONDITIONS OF SALE AND EACH OF THE ADDENDUMS ATTACHED HERETO (ALTOGETHER, THE “**AGREEMENT**”). THIS AGREEMENT CONTAINS THE EXCLUSIVE TERMS AND CONDITIONS UNDER WHICH CODEX DNA, INC., A DELAWARE CORPORATION (TOGETHER WITH ITS AFFILIATES, “**CODEX DNA**”) WILL SELL CERTAIN PRODUCTS AND SERVICES TO YOU (TOGETHER WITH THE ENTITY FOR WHICH YOU REGISTER ON BEHALF OF “**YOU**” OR “**CUSTOMER**”), AND THEY WILL GOVERN ALL YOUR PRODUCT ORDERS, INSTRUMENT ORDERS, SERVICE REQUESTS, AND PURCHASES FROM CODEX DNA.

IF YOU CANNOT OR DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, YOU ARE PROHIBITED FROM ACCESSING, USING, AND FROM PURCHASING PRODUCTS FROM CODEX DNA.

CODEX DNA RESERVES THE RIGHT TO AMEND THIS AGREEMENT AT ANY TIME WITHOUT SPECIFIC NOTICE TO YOU. THE CHANGES WILL NOT BE RETROACTIVE, AND THE MOST CURRENT VERSION OF THE TERMS, WHICH WILL ALWAYS BE AT CODEXDNA.COM, WILL GOVERN OUR RELATIONSHIP WITH YOU DETERMINED BASED ON THE POSTED “LAST UPDATED” DATE. BY CONTINUING TO ACCESS OR USE THE PRODUCTS OR SERVICES AFTER THOSE REVISIONS BECOME EFFECTIVE, YOU AGREE TO BE BOUND BY THE REVISED TERMS.

1. ORDERING OF PRODUCTS AND SERVICES.

1.1 Applicable Agreement Covering Customer’s Orders. Any products, Instruments (as defined in the Instrument Terms and Conditions Addendum), services, or other items ordered by Customer which are to be made available, manufactured, assembled or otherwise produced by, or on behalf of, Codex DNA or its Affiliates (“**Products**”) shall be subject to this Agreement (including any and all applicable Product and/or Service Addendum attached hereto). To the extent there is a conflict between the terms of the Codex DNA General Terms and Conditions of Sale and any Product and/or Service Addendum, the Product and/or Services Addendum which is specifically applicable to the Product that Customer ordered shall prevail with respect to the conflict.

1.2 Ordering and Price. Customer shall purchase Products from Codex DNA directly through Codex DNA’s web portal (“**Portal**”) or by submitting order forms to Codex DNA, specifying the Products requested, planned use of the Products, quantities, and requested delivery dates (the “**Order Forms**”). The price for Products shall be the amount set forth in the Codex DNA written quotation to Customer. Customer acknowledges that Codex DNA prices are subject to change from time to time and any written quotation provided by Codex DNA shall expire no later than twenty (20) days after the same is provided to Customer. If Codex DNA does not provide Customer with a written quotation (or the written quotation has expired), then the price shall be the list price stated on the Portal on the date Codex DNA receives the order. The failure of Codex DNA to object to any additional terms and conditions contained in any other document from Customer shall neither be construed as the acceptance of such terms and conditions by Codex DNA, or a waiver of this Agreement. All orders are subject to acceptance by Codex DNA and the availability of any requested Products.

1.3 Customer Information; Login Credentials. Prior to Customer placing an order as described in Section 1.2 and Codex DNA accepting the same, Customer must register an account on the Portal. When registering, Customer agrees to provide Codex DNA with accurate and complete customer account, billing and shipping information (the “**Customer Account Information**”). In addition, Customer will be required to create a user account, including a username and password and other login credentials (altogether, “**Login Credentials**”). Customer is solely responsible for maintaining the confidentiality of its Login Credentials, for updating its Customer Account Information and for all activities on the Portal (including purchases) that occur through the use of such Login Credentials. Customer shall promptly (and in any event within twenty-four (24) hours) notify Codex DNA in the event it reasonably believes or suspects that its Login Credentials have been compromised.

1.4 Fees and Payment. Customer may pay for any Products when placing an order through the Portal. Otherwise, Codex DNA shall invoice Customer for each Product at the time of shipment thereof. Customer shall pay the fees as specified in each such invoice by the date specified in such invoice and all payments shall be paid in United States Dollars. If no date is specified in an invoice, then Customer shall pay all invoiced fees within thirty (30) days of the receipt of such invoice. Any late payments shall be subject to a service charge equal to 1.5% of the amount due (calculated on a monthly basis) or the maximum amount allowed by law, whichever is less. If Customer is late in making a payment of any invoiced fees, without affecting our other rights, Codex DNA may suspend delivery or cancel the order or Agreement and reject your future orders. If Codex DNA, in its sole discretion, finds it necessary to employ an attorney or collection agency to collect any past due sum owed hereunder, it may collect, in addition to any other sum owed hereunder, all applicable attorney’s or collection agency’s fees and costs.

1.5 Taxes. Except as specified in a price quote, fees do not include any local, state, federal or foreign taxes, levies or duties of any nature



("Taxes"). Customer is responsible for paying all Taxes, excluding only taxes based on the net U.S. income of Codex DNA. If Codex DNA has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 1.5, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Codex DNA with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer agrees and accepts full responsibility and liability for any penalties, interest or other tax liability arising from any failure by Customer to pay any applicable Taxes.

2. CUSTOMER RESPONSIBILITIES.

2.1 Customer acknowledges and agrees that Customer is solely responsible for: (i) ensuring that the Products are suitable for Customer's particular use; (ii) testing and using the Products hereunder in accordance with the practices of a technically qualified individual and in strict compliance with the documentation therefor; (iii) not misusing the Products (iv) researching and warning Customer's clients, employees and any auxiliary personnel of any risks or hazards involved in using or handling the Products; (v) ensuring Customer's use of the Products complies with all applicable laws, regulations and governmental policies, now and hereinafter enacted, and (vi) obtaining all necessary approvals, intellectual property rights, licenses and permissions necessary for any particular use or application. Without limiting the foregoing, Customer assumes responsibility for ensuring that the Products are approved for use under the Toxic Substances Control Act, if applicable. Customer acknowledges that Codex DNA provides Material Safety Data Sheets ("MSDS") for certain of its Products, and that they are available upon request.

3. DELIVERY.

3.1 After acceptance of an Order Form, including through the Portal, Codex DNA shall use commercially reasonable efforts to deliver the Product to Customer. Codex DNA reserves the right to make changes to the specifications for any ordered Products that do not materially affect the quality or performance of the Products. Customer shall pay all delivery and shipment costs incurred by Codex DNA hereunder. Codex DNA shall select the method of shipment of, and the carrier for the Products. Customer acknowledges that any delivery and/or shipment cost set forth on any price quote is an estimate only. Codex DNA may, in its sole discretion, without liability or penalty, make partial shipments of an accepted order to Customer. Each shipment will constitute a separate sale and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of an accepted order. Codex DNA is not liable for or in respect of any loss or damage arising from any delay in filling any accepted order, failure to deliver or delay in delivery. No delay in the shipment or delivery of any Products relieves Customer of its obligations under this Agreement, including without limitation accepting delivery of any remaining installment(s) of Products or Instruments. Except as otherwise set forth in an applicable Product and/or Service Addendum, title and risk of loss for any Products shall pass to Customer upon shipment (FOB Shipping Point for US deliveries and Ex Works for international deliveries). If Customer requests that Codex DNA hold and/or store any Products ordered by Customer which are ready for shipment, Customer shall reimburse Codex DNA for all costs associated with the same. Special packaging requirements, if agreed to in writing by Codex DNA, shall be at Customer's expense. Customer will be responsible for inspecting all Products shipped hereunder, and Customer will give Codex DNA written notice of non-conforming or damaged Products within ten (10) days following receipt. If Customer fails to notify Codex DNA of non-conformance within such 10-day period, the Product will be deemed accepted by the Customer. However, such acceptance will not be considered a waiver under the warranty provided in this Agreement.

4. OWNERSHIP; NO REVERSE ENGINEERING.

4.1 **Ownership.** Customer acknowledges that, as between Customer and Codex DNA, all intellectual property rights relating to the platform, Products, and all materials, articles, technologies, works of authorship, software (embedded in the Products or otherwise), specifications, designs, plans, processes, know-how, data and other results, work products and/or information and any intellectual property rights associated therewith that are used by Codex DNA to manufacture, assemble or otherwise produce or manufacture the Products (collectively, the "Tools") are solely and exclusively owned by Codex DNA. To the extent Customer nonetheless obtains rights in and/or to any such Tools or any improvements thereto (including by way of providing any Feedback (as defined in Section 4.2)), Customer asserts no right, title and interest in and to the Tools and will assist Codex DNA, at the request and expense of Codex DNA, in securing and recording Codex DNA intellectual property rights in such Tools.

4.2 **Research Use Limited License.** Subject to these terms and conditions and the specific exclusions contained herein, Customer is granted only a non-exclusive, non-transferable, personal, right under Codex DNA intellectual property to use the Products in accordance with the Product's specifications for internal RESEARCH USE ONLY. Codex DNA grants no rights to use Products in or to derive any product, substance or material from Products for use in any commercial application, including manufacturing, quality control, commercial services, in vitro diagnostic uses, ex vivo or in vivo therapeutic uses, or any type of consumption by or application to humans or animals. If you need commercial use rights in respect of the Products (including the right to perform fee-for services), please contact Codex DNA directly. Where your use of our product is outside the scope of the Agreement, it is solely your responsibility to acquire additional rights. Related to the Vmax Cell Products, Customer may not use the Vmax Cell Product to support the filing of a patent application in any country in the world that contains claims directed to the Vmax Cell Products or their uses. Nothing in the Agreement limits the ability of Codex DNA to enforce its intellectual property rights.

4.3 **Feedback.** Customer acknowledges that Codex DNA may from time to time solicit from Customer feedback or comments regarding the

Products, including the results of any testing or benchmarking thereof ("**Feedback**"). If Customer elects to provide any Feedback to Codex DNA (whether solicited or unsolicited) all of Customer's Feedback shall be the sole and exclusive property of Codex DNA and Codex DNA shall have the right to use and disclose such Feedback in any manner and for any purpose in the discretion of Codex DNA without remuneration, compensation or attribution to Customer. Codex DNA is under no obligation to use such Feedback.

4.4 No Reverse Engineering and Restrictions. Notwithstanding anything to the contrary herein, Customer shall not (i) reverse engineer or attempt to reverse engineer or encourage any third party to reverse engineer or attempt to reverse engineer, any of the Tools or Products, (ii) market, sell, distribute, sublicense, use, modify, translate, reproduce, create derivative works from, dispose of, rent, lease, or authorize or permit access or use of any portion of the Tools (including the Platform) or Products, except as expressly permitted in this Agreement; (iii) export or use the Tools or Products in violation of U.S. law, including Department of Commerce export administration regulations; (iv) remove any copyright and other proprietary notices contained in the Tools or Products; (v) use the Tools or Products to cause annoyance, inconvenience or needless anxiety whether to Codex DNA, any other Portal user or any other person by any means, including using the Portal for persistently sending requests for information without a corresponding level of transaction, generating unacceptable levels of data import or failing to monitor and respond to communications; (vi) use the Tools other than in accordance with the acceptable use policies of any connected networks, or in a manner, whether knowingly, which would impair the operation of the Portal; or (v) otherwise access and use the use the Tools or Products in any manner that is inconsistent with this Agreement.

4.5 Product Use and Restrictions for Sars-CoV-2 Genome Services. Customer may request that Codex DNA perform a project pursuant to which Codex DNA shall construct and/or modify a Sars-CoV-2 genome, including genome variants or custom RNA controls (collectively, the "**Sars-CoV-2 genome Services**"). Before commencing any such project, Customer shall complete a biosecurity screening form describing Customer's planned use of the services product and any potential collaborators on its project. After performing biosecurity screening of customer's proposed project per International Gene Synthesis Consortium (IGSC) requirements, Codex DNA will prepare a written quotation or statement of work (a "**Quotation**") describing the Sars-CoV-2 genome Services to be performed by Codex DNA, the fees, and the projected timeline. Customer must adhere strictly to the intended uses described by Customer on the biosecurity screening form that Customer submitted. Customer shall provide any information and/or materials identified in a Quotation or otherwise reasonably required in order for Codex DNA to perform the Sars-CoV-2 Genome Services, including, without limitation, any data, designs, programs, specifications, management decisions, approvals, access to systems, feedback, biological materials and chemical materials (collectively "**Customer Materials**"). Codex DNA shall use Customer Materials solely to perform the Sars-CoV-2 Genome Services. Without prior authorization of Codex DNA, Customer may not make modifications to the Sars-CoV-2 genome services product or RNA controls received and may not use such products for applications that have not been reviewed by Codex DNA. Customer retains all rights, title and interest in and to the Customer Materials, except Codex DNA has the limited right to use the Customer Materials solely for the purpose of performing Sars-CoV-2 Genome Services under this Agreement. Codex DNA shall not transfer or distribute any of the Customer Materials to any third party except as otherwise expressly authorized in writing by Customer or permitted under the Terms and any Quotation. Unless otherwise expressly stated in a written agreement between the parties, any use rights for the Sars-CoV-2 Genome Service product conveyed to Customer are non-exclusive. Codex DNA shall retain the right to use the Sars-CoV-2 Genome Service product and commercialize the same or similar product for itself or for other parties, commercialize the same or similar product in its catalogue or as a service, or utilize any information generated by itself or other parties for promotional purposes.

5. NOTICES.

Any notice required or permitted shall be in writing and shall be served by personal service or by mail or overnight express courier at the address of the receiving party set forth in this Agreement or Order Form (or at such different address as may be designated by such party by written notice to the other party). All notices shall be deemed delivered (i) when delivered personally; (ii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or 10 days for international mail); or (iii) one day after deposit with a commercial express courier that provides written verification of receipt. Notwithstanding the foregoing, all notices to Codex DNA shall be sent to Codex DNA, ATTN: Legal Department, 9535 Waples Street, Suite 100, San Diego, CA 92121.

6. CONFIDENTIALITY.

6.1 Definition of Confidential and Proprietary Information. "**Confidential Information**" means all information published or unpublished, oral, written or electronic (including but not limited to server-based, internet-based, CD-ROM, DVD, and email) and conveyed in any form or media by a party (the "**Disclosing Party**") that relates in any way to its past, present, and future business practices, operations, financial and investor information, business plans and development or customer opportunities, factory, customer, consultant, and other business contacts, patents, copyrights, trademarks, know-how, trade secrets, or other intellectual property, chemical formulas, chemical compositions, manufacturing, techniques, protocols, results and regulatory, clinical, business and application, processes and techniques, samples, drawings, blueprints, designs, specifications, diagrams, flowcharts, software and complete or partial coding, contracts, equipment, machinery, chemical processes, business methodologies, and technology of any type which has been disclosed either prior to or subsequent to the date of this Agreement directly or indirectly to the other party (the "**Receiving Party**") as part of this Agreement. Confidential Information includes information generated by either party or generated on its behalf by third parties regarding its Confidential Information, such as reports, communications, and evaluations. For the purposes indicated below, the exchange of ALL information between the parties regarding Codex DNA's Products, Tools, and business activities shall be considered the Confidential Information of Codex DNA (regardless of whether it is or is not stamped or marked "confidential"), unless otherwise mutually agreed.

- 6.2 Both parties acknowledge and agree that the Confidential Information of the Disclosing Party is of significant value and that the Receiving Party shall not, without the Disclosing Party's express prior written permission, use the Disclosing Party's Confidential Information or any part thereof, either directly or indirectly, for any purpose whatsoever other than for performing its obligations under the Agreement. .
- 6.3 Each Receiving Party hereby agrees to retain in strict confidence the Disclosing Party's Confidential Information, and to take all commercially reasonable precautions to prevent disclosure of the Confidential Information to any third parties, including affiliated companies, individuals, consultants, and agents and to only disclose Confidential Information to such third parties to extent reasonably necessary to perform its obligations under the Agreement, provided those third parties have previously executed a Confidentiality Agreement with the Receiving Party with substantially the same terms as this Agreement covering the Confidential Information. At all times, the Confidential Information shall remain solely owned by the Disclosing Party.
- 6.4 Upon termination or expiration of this Agreement, each party shall promptly return the other party's Confidential Information and any copies and extracts thereof. The confidentiality obligations and restrictions in this Agreement, as they apply to Confidential Information disclosed prior to termination, shall survive any termination or expiration of this Agreement for a period of five (5) years; provided that with respect to Confidential Information that constitutes a trade secret under applicable law, such confidentiality obligations and restrictions will survive such expiration until, if ever, such Confidential Information ceases to be a trade secret under applicable law, other than due to an act or omission of Receiving Party.

7. PRIVACY.

Codex DNA is committed to protecting your privacy. The Codex DNA Privacy Policy sets forth how Codex DNA will collect, retain, and use any and personal information provided by Customer to Codex DNA (including Customer Account Information).. By using or accessing our Products or Tools (including the Codex DNA Portal), Customer hereby agrees that Codex DNA may collect, retain, and use such personal information in accordance with the Codex DNA's Privacy Policy. The Codex DNA Privacy Policy is available at codexdna.com and is hereby incorporated into and forms an integral part of this Agreement.

Codex DNA is constantly reviewing our systems and data to ensure the best possible services to our customers. Government authorities have created specific offences for unauthorized actions against computer systems and data. Codex DNA will investigate such actions with a view to bringing legal action and/or civil action for damages against those responsible. Customer hereby agrees to our website Terms of Use [<https://codexdna.com/terms-of-use/>], which are hereby incorporated into, and form an integral part of, this Agreement.

8. WARRANTIES AND INDEMNIFICATION.

- 8.1 **Limited Warranties for Products and Service.** Unless a different written warranty is included (or is disclaimed in its entirety) in any Product and/or Service Addendum, Codex DNA warrants that the Products provided pursuant to an accepted order shall meet the specifications set forth in the applicable documentation provided by Codex DNA (or otherwise mutually agreed upon by the parties in writing). If, through no fault or delay of Customer, the Products do not materially conform to the foregoing warranty and Customer provides Codex DNA with written notice within thirty (30) days of delivery from Codex DNA to Customer of the Products, as applicable, Customer's sole and exclusive remedy shall be for Codex DNA at its sole discretion to replace and re-deliver the Products. If Customer fails to notify Codex DNA of non-conformance within such thirty (30) day period, the Products shall be deemed accepted by the Customer. Codex DNA warrants that any professional services will be performed in a professional manner consistent with applicable industry standards, and Customer's exclusive remedy and Codex DNA's sole liability for breach of the same, Codex DNA will, at its sole option and expense, promptly re-perform the professional services that fail to meet this limited warranty or refund to Customer the fees paid for the non-conforming portion of the professional services.
- 8.2 **Exclusions.** Codex DNA shall have no obligation to replace any Product to the extent it is the result of (i) misuse, fault or negligence of or by Customer, (ii) use of the Product in a manner for which it was not designed, (iii) improper storage and handling of the Product, (iv) alterations or modifications made to the Product by a party other than Codex DNA or its duly authorized service representative, (v) manufacture of the Product in accordance with specifications provided by Customer, (vi) normal wear and tear and (vii) external sources such as short circuits or incorrect voltages. Shipment to Customer of replacement Product shall be made in accordance with the applicable delivery terms set forth in this Agreement. Codex DNA shall have no liability or obligation to Customer if (x) Customer is unable to generate a DNA synthesis through use of a Product, or (y) Customer inputs a genomic sequence into a Product but is unable to achieve the correct size DNA as determined by gel electrophoresis, except in each case if the foregoing is a direct result of a Product failing to meet the specifications set forth in the applicable documentation provided by Codex DNA.
- 8.3 **Disclaimer of Warranties.** ALL PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND CODEX DNA (FOR ITSELF, ITS LICENSORS AND SUPPLIERS) HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR AS TO THE ACCURACY OF ANY RESULTS. ANY WARRANTY GRANTED HEREUNDER IS VALID ONLY WHEN USED BY PROPERLY TRAINED INDIVIDUALS AND EXTENDS ONLY TO CUSTOMER AND CUSTOMER CANNOT TRANSFER SUCH WARRANTY. WITHOUT LIMITING THE FOREGOING, CUSTOMER ACKNOWLEDGES THAT ANY PRODUCTS PROVIDED BY CODEX DNA ARE EXPERIMENTAL IN NATURE AND THAT CODEX DNA CANNOT GUARANTEE THE SUCCESS OF SUCH PRODUCTS NOR THAT SUCH PRODUCTS, WILL RESULT IN THE ACCOMPLISHMENT OF ANY DESIRED RESULTS. ANY FAILURE BY CODEX DNA TO MEET ANY INTENDED RESULTS SHALL NOT IN AND OF ITSELF BE DEEMED A BREACH OF THIS AGREEMENT OR CAUSE FOR NON- PAYMENT.
- 8.4 **Limited Warranty for Reagents.** If any Product or Service is a reagent, then this Section 8.4 applies. Reagents provided pursuant to an

accepted order are warranted to be consistent with the reagent requested by Customer pursuant to such order (the “**Reagent**”), up to the date of expiration of such Reagent (which can be found at the Codex DNA website at codexdna.com) following the applicable date of shipment. If, through no fault or delay of Customer, the Reagent does not conform to the foregoing warranty, Customer’s sole and exclusive remedy shall be, at sole discretion of Codex DNA, the replacement of such nonconforming Reagent or refund of the purchase price of the Reagent, provided that such notice of the material non-conformity is received by Codex DNA within the warranty period specified above and the Codex DNA inspection reveals the Reagent to be nonconforming within the terms of this warranty. The warranty provided herein is valid only when used by properly trained individuals and does not extend to anyone other than Customer. ANY WARRANTY GRANTED HEREUNDER EXTENDS ONLY TO CUSTOMER, THE ORIGINAL PURCHASER, AND CUSTOMER CANNOT TRANSFER SUCH WARRANTY.

8.5 Limited Warranty for Samples. If Customer request a Product sample (“**Sample**”), Codex DNA is only making the Sample available to you on the condition that you agree that by ordering, accepting and/or subsequently using the Sample, you are hereby bound by the provisions Agreement. Customer further agrees that TO THE MAXIMUM EXTENT PERMITTED BY LAW, CODEX DNA AND ITS AUTHORIZED DISTRIBUTORS EXPRESSLY DISCLAIM ANY WARRANTY FOR THE SAMPLE. THE SAMPLE IS PROVIDED “AS IS”, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SAMPLE, OR ANY SYSTEMS CUSTOMER DESIGNS USING THE SAMPLE (IF ANY). NOTHING HEREIN MAY BE CONSTRUED AS A WARRANTY OR REPRESENTATION BY CODEX DNA OR ITS AUTHORIZED DISTRIBUTORS THAT THE SAMPLE OR ANY SYSTEM DEVELOPED WITH OR INCORPORATING THE SAMPLE WILL BE FREE FROM INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. IN NO EVENT WILL CODEX DNA OR ITS AUTHORIZED DISTRIBUTORS BE LIABLE, WHETHER IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, OR LOST PROFITS, SAVINGS, OR REVENUES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.

8.6 Codex DNA Indemnification. Codex DNA will indemnify, defend and hold harmless Customer from and against any claims, liabilities, damages, fines and penalties finally awarded in any legal action brought by a third party against Customer to the extent that the action is based on a claim that Customer’s use of a Product in the manner permitted under this Agreement infringes any U.S. patent, copyright, trademark or other intellectual property right of such third party (“**IP Claims**”). This indemnity does not apply to claims that arose based on (i) any products that Codex DNA made, assembled or produced in reliance upon Customer’s instructions, specifications, or other directions, (ii) Customer’s resale of Products, or (iii) modifications to the Products, or combinations of the Products with other items, by Customer or any third party in a manner not authorized by Codex DNA. This indemnity does not apply to products originating from third parties. THIS INDEMNITY IS THE ONLY LIABILITY OF CODEX DNA TO CUSTOMER, AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS BY OR IN CONNECTION WITH ANY PRODUCT. If Codex DNA believes a Product may be subject to a claim for intellectual property infringement, then Customer will first allow Codex DNA, at the option and expense of Codex DNA, to either: (a) secure for Customer the right to continue using the Product; (b) substitute the Product with another suitable Product with similar functionality; or (c) require Customer to return the Product to us for a refund of the purchase price paid, provided that in the case of Instruments, Codex DNA will deduct a reasonable amount for the Instrument’s use and damage. The remedies set forth in this Section 8.6 are Customer’s sole and exclusive remedies with respect to IP Claims.

8.7 Customer Indemnification. Customer shall indemnify, defend and hold harmless Codex DNA and its affiliates, and its and their directors, officers, employees and agents (collectively, with Codex DNA, “**Codex DNA Indemnitees**”), from and against any and all losses, damages, liabilities, reasonable attorney fees, court costs, and expenses (collectively “**Codex DNA Losses**”) arising from any actions, proceedings, investigations or litigation arising from any third party claims, actions, proceedings, investigations or litigation to the extent arising from or in connection with the following by any Customer Indemnitee: (a) breach or violation of the terms or obligations of this Agreement or any Quotation; (b) gross negligence or willful intentional misconduct; (c) Customer’s use of a Product; and (d) the actual or alleged infringement, misappropriation or violation of a third party’s intellectual property arising from Codex DNA’s use of the any materials or information provided by Customer.

8.8 Customer Responsibility. Customer shall be fully responsible and liable for any claims, liabilities, damages, losses, costs, expenses (including but not limited to settlements, judgments, court costs, and reasonable attorney’s fees), fines and penalties to the extent arising out of or resulting from: (i) Customer’s use of the Products; (ii) Customer’s failure to secure any governmental import or export permit or authorization for the receipt of any Products; (iii) Customer’s failure to comply with any applicable laws, statutes, and regulations; (iv) Customer’s gross negligence or willful misconduct; or (v) Customer’s material breach of this Agreement.

8.9 Indemnification Procedure. As a condition to the indemnity obligations set forth in this Sections 8, the party seeking indemnification (“**Indemnitee**”) must (i) notify the indemnifying party in writing, as soon as the Indemnitee becomes aware of any claim; (ii) not admit any liability or take any other action in connection with the claim that could affect the defense or settlement; (iii) allow the indemnifying party to solely control the defense or settlement of the claim; and (iv) provide reasonable information, co-operation and assistance to the indemnifying party. The indemnifying party may not settle or consent to the entry of a judgment of a claim without the Indemnitee’s prior written consent, which consent shall not be unreasonably withheld or delayed.

9. LIMITATIONS OF LIABILITY.

9.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, INDEMNIFICATION, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL, LOSS OF PROFITS DUE TO PRODUCTS (INCLUDING INSTRUMENTS) DOWN TIME OR LOSS OF REVENUE) THAT THE OTHER PARTY MIGHT INCUR UNDER THE AGREEMENT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH THE PRODUCTS EVEN IF SUCH PARTY HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF CODEX DNA IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION WITH RESPECT TO ANY PRODUCTS SOLD AND/OR ANY SERVICES RENDERED HEREUNDER, THE LIABILITY OF CODEX DNA UNDER ITS INDEMNIFICATION OBLIGATIONS, OR A BREACH BY CODEX DNA HEREOF OR FAILURE TO PERFORM IN CONTRACT, TORT, WARRANTY, OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES CUSTOMER ACTUALLY PAID TO CODEX DNA FOR THE SPECIFIC PRODUCT OR SERVICE THAT GAVE RISE TO THE APPLICABLE CLAIM(S). THE CUSTOMER ACKNOWLEDGES THAT THESE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT CODEX DNA WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. DELIVERY DATES AND TIMES ARE ESTIMATES ONLY AND CODEX DNA WILL NOT BE LIABLE (IN CONTRACT, DELICT, TORT OR OTHERWISE) FOR ANY LOSSES, EXPENSES, CLAIMS OR DAMAGES CAUSED BY A LATE DELIVERY.

10. TERM AND TERMINATION.

10.1 **Term.** The term of this Agreement is effective upon the earlier to occur of the date you place your first Order Form, your first use of any Product, or upon your receipt of any Services from Codex DNA, and will continue unless or until earlier terminated in accordance with the terms set forth herein.

10.2 **Termination for Cause.** Except as otherwise provided in this Agreement, in the event that Customer breaches any of the terms, obligations, conditions or undertakings of this Agreement and fails to cure such breach within sixty (60) days (or ten (10) days for non-payment) after receiving written notice of such breach, Codex DNA, at its option, may by written notice to Customer, terminate this Agreement. Such termination shall be effective upon Customer's receipt of the termination notice in accordance with Section 5 (Notices) of this Agreement.

10.3 **Termination for Insolvency.** Codex DNA may terminate this Agreement immediately by providing written notice to Customer if Customer becomes insolvent, if a petition in voluntary or involuntary bankruptcy is filed by or against the other party under any chapter of the United States bankruptcy laws and not bonded or discharged within thirty (60) days of the date a receiver or trustee is appointed, or if Customer makes an assignment for the benefit of creditors.

10.4 **Obligations upon Termination or Expiration.** The termination of this Agreement will not relieve either party from any obligation that accrues pursuant to this Agreement before the effective date of the termination nor will it release the parties from any obligation that may have been incurred as a result of operations conducted under this Agreement.

11. GENERAL PROVISIONS.

11.1 **Entire Agreement; Independent Contractor; Headings.** This Agreement together with the applicable Addendum, constitute the entire agreement and understanding between the parties relating to the subject matter of this Agreement. Codex DNA objects to and rejects any additional or different terms proposed by you, including those contained in your purchase order, acceptance or website. For the avoidance of doubt, the failure of Codex DNA to separately object to any additional terms proposed by you shall neither be construed as the acceptance of such terms by Codex DNA, or a waiver of this Agreement. The relationship between Codex DNA and Customer pursuant to this Agreement shall be that of an independent contractor. The Article and Section headings used in this Agreement are for reference and convenience only and shall not enter into the interpretation hereof.

11.2 **Invalidity/Waiver.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement shall be unimpaired, and the invalid or unenforceable provision shall be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. A waiver of any breach under this Agreement should not constitute a waiver of any other breach or future breach. Either party's failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

11.3 **Assignment.** This Agreement may not be assigned by Customer to a third party whether by operation of law or otherwise. Codex DNA shall have the right to assign this Agreement to one or more affiliates or related entities. In addition, Codex DNA shall have the right to assign this Agreement in its entirety to the successor of all or substantially all its business or assets to which this Agreement relates. Any assignment not expressly permitted by this Section 13.3 shall be null and void.

11.4 **Governing Law.** This Agreement shall be governed in accordance with the internal laws of the State of California (without regard to any conflicts of laws principles) and any controlling U.S. federal law. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement (or the Products) shall be subject to the exclusive jurisdiction of the state and federal courts located in

California, County of U.S. Each party hereby agrees to submit to personal jurisdiction and venue in the State of California, County of San Diego.

In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretations, its performance, or the like, the prevailing party shall be entitled to seek reasonable attorneys' fees and/or costs.

- 11.5 **Third Parties.** There are no third-party beneficiaries to this Agreement. This Agreement shall not limit in any manner Customer's ability to use other third parties to provide services like those contemplated by this Agreement. Codex DNA may subcontract any or all its obligations hereunder to an affiliate or employees or contractors of an affiliate; provided, however, Codex DNA shall remain solely liable for its obligations hereunder. Notwithstanding anything to the contrary herein, neither party shall be liable for failing to meet any obligations set forth herein if such obligation is contingent upon the acts of the other party and such other party has failed to satisfy such contingency.
- 11.6 **Publicity.** Neither party shall use the other party's name in any publicity, advertising or press announcement without prior written approval from such other party. This shall not prohibit any legally required disclosure by either party that identifies the existence of the Agreement.
- 11.7 **Data Errors and Omissions.** Codex DNA makes every effort to ensure the accuracy of the information published in its catalogs, by its distributors and on its Portal. The documents and graphics published may be outdated or contain technical inaccuracies or other errors. Codex DNA makes no representations about the information and graphics presented. All such documents and graphics are provided "as-is" and "as-available" without warranty of any kind.
- 11.8 **Force Majeure.** Neither party shall be liable for any loss or delay resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage, internet service provider failures or delays, civil unrest, war or military hostilities, criminal acts of third parties, pandemics, government orders or any other event beyond the reasonable control of such affected party, the party's performance shall be extended to the extent of any delay resulting from any force majeure event.
- 11.9 **Survival.** Sections 1.4, 1.5, 2, 4, 5, 6 (for the period specified therein), 7, 8, 9, 10, 11 and 13 of this Agreement shall survive the termination or expiration of this Agreement.
- 11.10 **Contact Us.** If you have any questions about these Terms, please contact us at corpdev@codexdna.com.