

## 2nd Sight Terms & Conditions

**Please Note:** The prices shown 2<sup>nd</sup> Sight's estimates are in USD and are exclusive of any applicable taxes, customs duties, or freight. Any customer order issued orally or in writing in response to a quotation is governed solely by these terms and conditions unless customer and 2nd Sight have entered into a negotiated and signed written agreement applicable to the purchase of products contained in a quote. 2<sup>nd</sup> Sight does not accept any additional or contradictory terms and conditions in customer's order or other customer document. 2nd Sight standard order acknowledgement form or invoice shall not be deemed to accept additional or contradictory terms and conditions. If a conflict between 2<sup>nd</sup> Sight's estimate and the following Terms and Conditions exists, the estimate takes precedence.

1. **Acceptance:** (a) Acceptance of the quotation ("Offer") and the terms and conditions listed herein ("Terms and Conditions") constitute the final and complete contract between 2<sup>nd</sup> Sight Bioscience ("Seller") and Buyer with respect to products (the "Product(s)") listed in the Offer. These Terms and Conditions will be deemed accepted upon Buyer's order, whether or not in writing, notwithstanding any Buyer Terms and Conditions to the contrary. (b) Seller, at its discretion, may reject any Buyer order or portion thereof for any cause including, but not limited to: (i) Buyer's order lists Product(s) no longer available or Product(s) with specifications different from those in the Offer; (ii) Buyer's order contains any term or condition inconsistent with these Terms and Conditions. (c) THIS AGREEMENT SUPERCEDES ANY CONFLICTING TERMS OR CONDITIONS BUYER PROPOSES INDEPENDENT OF THE ORDER IN WHICH RECEIVED.
2. **Quotation:** The Offer is valid for thirty (30) days from the date of issue, unless otherwise specified in writing.
3. **Prices & Taxes:** (a) All prices are firm for the Offer's effective period. Seller reserves the right to change the prices and specifications of its Product(s), at any time without notice. (b) Buyer shall pay any tax, sales tax, duty, custom or other fee on this transaction imposed by a governmental authority in addition to the prices quoted or invoiced, unless Buyer provides written proof of exemption in advance of purchase. Should Seller prepay any such tax, fee, or charge, on the sale, Buyer shall reimburse Seller in full upon receipt of invoice (NET30) for the tax, fee, or charge, regardless of whether invoiced with the Product(s) or separately.
4. **Delivery & Shipment:** (a) Delivery terms shall be FCA Origin. Title, liability and risk of loss transfer to Buyer upon shipment, notwithstanding any laws, regulations, treaties or conventions to the contrary. Unless Seller receives and has accepted written instructions from Buyer before Seller tenders Product(s) to a carrier, Seller will exercise its own commercially reasonable discretion with respect to the manner of shipment, amount of insurance coverage, and carrier, without any additional liability. (b) Buyer will pay all shipping costs regardless of when invoiced. If Seller prepays shipping costs, Buyer will be invoiced accordingly. Seller reserves the right to make partial deliveries, and, unless Seller otherwise specifies, all partial deliveries will be invoiced separately and paid for when due, regardless of later deliveries. (c) Seller will make reasonable efforts to ship the Product(s) or provide services by the quoted delivery dates. However, unless indicated as "firm" on quotation, all delivery dates are estimates. Seller also reserves the right to deliver in advance of estimated or firm delivery date. (d) SELLER ACCEPTS NO LIABILITY FOR GENERAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES DUE TO DELIVERY DELAYS.
5. **Payment:** Payment terms are NET30 from invoice date, unless otherwise stated in writing. All quoted prices are in U.S. dollars (USD) unless otherwise specified, and Buyer will make all payments in USD, unless Seller otherwise pre-approves payment in another currency, to Seller in US dollars in cash or other method agreed upon in advance by Seller. An interest charge of 1½% per month (18% per year), or the maximum allowed by law, may be added to invoices overdue beyond sixty (60) days. Payment of late charge will not cure or excuse any Buyer default, and Seller's acceptance of such late charge will not be deemed Seller's waiver of Buyer's responsibility to pay. Buyer will pay all reasonable fees Seller incurs for collecting any overdue payments, including attorneys' fees and costs. If invoices are overdue beyond sixty (60) days, the Buyer's online Customer Portal account will be deactivated as will any user accounts associated with the customer's software license. Customer will no longer have access to the Customer Portal ("Portal"), and the customer's device will no longer function properly. To reactivate a Portal account within twelve (12) months of deactivation, Customers must send a written notice regarding reactivating their account(s) to info@2ndsightbio.com. To reactivate, Customer agrees to pre-pay a \$250 reactivation fee. 2nd Sight will maintain and store data from a customer's Portal account for twelve (12) months. Should the customer not reactivate its Portal account within twelve (12) months of deactivation, the customer's Portal account and all data associated with that account will be permanently deleted.
6. **Cancellation of Custom Orders:** If Buyer cancels any order for custom Product(s), Buyer will pay Seller the unit selling price for completed work allocated to Buyer's order, all Seller's documented direct and indirect costs for work in progress, all Seller's costs from cancellation, and a reasonable profit thereon, all as determined by Seller at its commercially reasonable discretion.
7. **Installation:** Unless otherwise specified in writing, installation services are not included in the Product(s) purchase price. Installation services are available and will be agreed upon through quotation and charged to Buyer. Buyer will provide Seller with reasonable facilities and assistance to accomplish installation.
8. **Ownership and Modifications:** (a) Seller retains all rights, title and interest in and to any intellectual property, including but not limited to, any patents, copyrights, trademarks, trade names or the like, associated with the Product(s) ("Technology"). Sale of the Product(s) to any third party does not transfer ownership or title in the Technology to that third party. Any and all modifications, enhancements, improvements, error corrections and bug fixes Seller makes to the Technology shall be the Seller's sole end exclusive property. In consideration for the rights granted herein, Buyer assigns to Seller any and all rights in all modifications, enhancements, improvements, error corrections and bug fixes to the Product(s) or Technology made or conceived by Buyer prior to payment in full to Seller. (b) Buyer shall not reverse engineer, reverse compile or reverse assemble the Product(s), in whole or in part, and may be liable to Seller for damages should Buyer do so. Any and all concepts, creative ideas, information, data, drawings, computer software, renditions, mock-ups, prototypes or other materials Buyer develops on its own after making payment in full to Seller, or to the extent Buyer makes any modifications, enhancements, improvements to the Product(s) after payment in full to Seller, shall be the Buyer's sole and exclusive property. (c) Notwithstanding the foregoing, Seller grants Buyer a fully-paid license to use any software that is embedded in and provided by Seller with the Product(s), provided (i) that Buyer only uses the software as part of the Product(s), and (ii) Buyer complies with all restrictions on the use of Seller's Technology as provided elsewhere in these Terms and Conditions. This restricted license will transfer to any purchaser or transferee of the Buyer's Product(s), provided that any such transferee accepts and complies with the use restrictions contained in this document.
9. **Patents:** The sale of any Product(s) does not grant Buyer or any third party any license or other right to (a) apparatus, software, or circuits

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in which the Product(s) or its parts may be used, (b) any process or machine in connection with which they may be used, or (c) the process for their manufacture. The only license granted here is set forth herein or in the Product documentation and is limited to use of Product(s) as specified.

10. **Software and Product Warranties:** (a) **Media Defects:** The media upon which any software Seller distributes ("Software") shall be free of defects in material and workmanship. If such defects are present upon Buyer's receipt, Seller shall replace such media at no cost to Buyer. Such replacement shall constitute the Seller's sole liability with respect to any such defect. (b) **Product Defects:** (i) Seller warrants that for a period of one (1) year from the final Invoice date for the Product(s), ("Warranty Period"), Seller shall, at no additional charge to Buyer and at Seller's discretion, repair or replace Product(s), with respect to any defects in material or workmanship. Seller shall not repair or replace any consumable purchase (RFID cards) with respect to any defects in material or workmanship if the consumable was used in the field. In all cases, Buyer's remedy for such defects is limited to Seller's repair or replacement of the Product(s). (c) **Service:** Seller warrants that any services performed on Product(s) quoted here shall be rendered in a professional and workmanlike manner and such services will be performed in accordance with generally accepted standards applicable to the industry, or, when such protocols exist, in accordance with 2nd Sight service protocols.
11. **No Implied Warranties:** The Product(s) shall conform to the terms of the Offer, these Terms and Conditions, and any applicable Seller standard warranty. THE FOREGOING WARRANTIES ARE INCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. 2<sup>ND</sup> SIGHT GIVES NO IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.
12. **Not Covered by Warranty:** 2nd Sight Bioscience does not warrant damages or defects with respect to Product(s) as follows: (a) damages or defects caused by failure to provide suitable environmental conditions; (b) damages caused by using Product(s) in a manner or for purposes other than those for which designed; (c) damages caused by disasters or acts of God; (d) damages caused by unauthorized attachments or modifications; (e) damages caused by any Buyer negligence, abuse, or misuse; (f) damages occurring because Product(s) were not used in accordance with any printed instructions; or (g) any repairs, changes or modifications made by anyone other than a 2nd Sight-designated technician.
13. **Returns:** (a) After shipment, all sales of Product(s) purchased as a result of this Offer are final. Seller may, at its sole discretion, authorize Product(s) returns, subject to such conditions as Seller may specify. (b) In the case of an authorized return, Buyer must comply with Seller's current Return Material Authorization ("RMA") procedures. Such procedures shall be reasonably consistent with the industry's standard return procedures and shall not conflict with any provisions of these Terms and Conditions.
14. **Limitations of Liability:** SELLERS' LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR BREACH OF THESE TERMS AND CONDITIONS SHALL BE LIMITED TO REPLACEMENT OF PRODUCT(S), \$10,000, OR THE AMOUNT OF THE PURCHASE PRICE OF THE PRODUCT(S), WHICHEVER IS LESS. IN NO EVENT SHALL SELLER BE LIABLE FOR BUYER'S PROCUREMENT COSTS FOR SUBSTITUTE GOODS. MOREOVER, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR ANY OTHER INDIRECT DAMAGES RESULTING FROM ANY ECONOMIC LOSS OR PROPERTY DAMAGE BUYER SUSTAINS DUE TO ITS USE OF SELLER'S PRODUCT(S), HOWEVER CAUSED, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
15. **Termination:** If Buyer (i) becomes involved, in any manner, in a petition for bankruptcy; (ii) does not pay its bills or becomes insolvent, (iii) makes a general assignment for creditors' benefit; or (iv) has a receiver appointed for it, Seller may, at its option and without prejudice to any other of its rights or remedies provided herein or by law, terminate Buyer's order(s) and refuse to make future deliveries. If either party breaches any material provision of these Terms and Conditions and does not cure said breach within thirty (30) days' notice, the other party may, at its option and without prejudice to any other of its rights or remedies provided herein or by law, terminate the Offer and/or purchase agreement. Buyer's failure to make any payment shall constitute a material breach, and Buyer shall forfeit any payments made before termination. In the case of Seller's breach, Buyer's remedy upon termination shall be the difference between any amounts Buyer paid and actual charges applicable to Product(s) Seller provided. Such difference will be refunded to Buyer within 45 days.
16. **Force Majeure:** Seller's ability to fill Buyer's orders is dependent on third party suppliers' timely and complete performance. Seller's ability to furnish Product(s) is further subject to unavoidable technical failures that occur from time to time without warning. Accordingly, Seller, at its reasonable discretion, will have the right to allot its production among its Buyers, and Seller will not be liable for any delay in delivery or non-delivery of Product(s) or for any damages Buyer suffers or suffered due to a yield delay or other technical failure; shortage or absence of raw materials, labor, power, fuel, tools, dies, or equipment; any act of a judicial body or government, or agency thereof; act of God; fire; riot; war or terrorism; embargo; epidemic; flood; unusually severe weather; or any other cause, contingency, or circumstance beyond Seller's reasonable control. Seller will notify Buyer of any such event or circumstances within a reasonable time after Seller acquires knowledge of same.
17. **No Waiver:** Delay by either party in exercising any right or remedy provided hereunder or by law do not constitutes a waiver of these Terms and Conditions, and no waiver by either party will be construed as a waiver of any preceding or succeeding breach of the same or any other term or condition.
18. **Governing Law and Jurisdiction:** All purchase agreements will be governed by and construed exclusively in accordance with the laws of the State of Washington as they apply to contracts. Buyer agrees to submit to the jurisdiction of any appropriate court in the State of Washington. Moreover, 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply.
19. **Notices:** Any and all notices or other communications required or permitted by these Terms and Conditions or by law to be served on or given by either Seller or Buyer to the other will be in writing and will be transmitted by registered or certified mail, postage prepaid, by facsimile transmission, or by e-mail to the parties hereto at their respective addresses specified in the Offer, subject to the right of either party to change its address by written notice.
20. **Successors:** These Terms and Conditions will be binding upon and will inure to the parties' benefit and their respective representatives, heirs, administrators, successors and assigns, except as may be otherwise provided herein.
21. **Integration:** These Terms and Conditions and the Offer constitute the entire agreement of Seller and Buyer with regard to the subject matter hereof and supersede all prior negotiations and agreements, whether written or oral unless otherwise changed, modified or supplemented.