Coy Laboratory Products, Inc. Terms and Conditions of Sale

These Terms and Conditions of Sale ("Terms and Conditions") apply to all equipment and other goods ("Products") manufactured and sold by Coy Laboratory Products, Inc. ("Coy") and are incorporated into each and every Quotation ("Quotation") issued by Coy.

1. QUOTATIONS. The Quotation constitutes Coy's offer to the customer identified in the Quotation ("Customer") to sell the Products identified in the Quotation and otherwise to enter into the agreement the Quotation describes and the Quotation shall be the complete and exclusive statement of such offer and agreement. The Quotation, including pricing and delivery information are valid for 60 days from the date of issuance unless noted differently in the specific quote. Coy will adjust the Quotation if the Customer requests engineering changes, if additional features are added to the Products, or if any other design change is made.

2. ACCEPTANCE. A contract is formed when Customer accepts the Quotation by written acknowledgement or by the issuance to Coy of a purchase order or other acceptance document for the Products. Purchase orders and other acceptance documents submitted to Coy must have a complete invoice address, shipping address. Unless specified all shipments are sent through Coy Labs chosen freight service on a Pre-paid basis and added to the invoice. If requesting special shipping requirements it must be included with the order along with specific account number and freight company to be used. Customer's purchase order must state exactly what Customer wants to purchase from Coy. Acceptance is expressly limited to these Terms and Conditions and the terms and conditions on the face of the Quotation. Notwithstanding any contrary provision in Customer's purchase order or other acceptance document, delivery of Products or commencement of production by Coy shall not constitute acceptance of Customer's terms and conditions to the extent any such terms or conditions are inconsistent with or in addition to the terms and conditions contained in the Quotation. Any such inconsistent or additional terms and conditions shall be void.

Alteration or cancellation of the purchase order will result in additional charges, penalties or restocking fees to be determined by Coy based upon the specific circumstances presented by the alteration or cancellation. A typical cancellation will result in a 30 percent restocking charge minimum with the unit returned in like new condition at the expense of the Customer. Returns will not be accepted past 30 days from invoice. Coy will not be responsible for items ordered incorrectly, or for errors made by Customer in an order.

3. PAYMENT. Terms of payment for Coy equipment are net 30 days from date of invoice unless otherwise expressly agreed to in writing by Coy. Customers wishing to pay by letter of credit must notify Coy of this intent upon submission of the purchase order. Coy will furnish such Customers with additional terms and conditions specific to the issuance of the letter of credit. Late payments are subject to an additional charge of 1.5% per month or the maximum rate permitted by law, from the date on which payment is due.

In the event Customer defaults under its payment terms or Coy otherwise deems itself insecure for any reason, Coy may, without notice, cancel all credit available to Customer, require that any invoices outstanding be immediately due and payable in full, and refuse to make any further credit advances. Customer is prohibited from and shall not setoff against or recoup from any invoiced amounts due or to become due from Customer or its affiliates any amounts due or to become due to Coy or its affiliates, whether arising under the Quotation, any related purchase order or under any other agreement.

Web Site: www.coylab.com • E-Mail: sales@coylab.com
4. **PRICES.** Unless otherwise expressly stated in the Quotation, prices for Products specified in the Quotation do not include storage, handling, packaging or transportation charges or any applicable federal, state, local or foreign duties or taxes. Coy reserves the right to increase Product prices in the event of increases in its raw material or component costs or other costs or expenses arising after the date of the Quotation.

5. **TAXES.** Taxes related to the sale of merchandise by Coy will be invoiced where applicable. If Coy does not charge sales tax and you are obligated to pay, you will be responsible to pay such taxes direct to your state.

6. **SHIPPING AND DELIVERY.** The delivery date indicated on the Quotation is in business days (unless otherwise indicated) and is estimated from the date of receipt of the Customer's purchase order. Coy will not be held responsible if the delivery date is extended beyond the date set forth in the Quotation for any reason, including due to design, alterations and approval requirements and delay in receipt of complete information from Customer allowing Coy to proceed with production of the Product(s).

All sales of Products are F.O.B. Coy's facility. Responsibility of Coy shall cease upon delivery to and receipt of the Products by a common carrier at which point Customer will bear all risk of loss for the Products. Premium shipping expenses and/or other related expenses necessary to meet Customer’s accelerated delivery schedules shall be the responsibility of Customer. Deliveries of orders placed by Customer may be changed, deferred or canceled only upon specific agreement in writing by Coy and Coy may condition such agreement upon Customer’s assumption of liability and payment to Coy for: (a) all completed work at the order price, (b) a sum equal to the costs of work in process including costs accrued for labor and material, (c) any amount for which Coy is liable by reason of commitments made by Coy to its suppliers, and (d) any other loss, cost or expense of Coy as a result of such change, deferment or cancellation.

7. **WARRANTY.** Except for custom or special made equipment, Coy warrants to Customer that for one year from the date of shipment to Customer the Products will be free from defects in material and workmanship. Disposable items such as catalyst, gloves of any kind, desiccant, tape, etc. are not covered by the warranty. Any warranty claim for incorrect unit relative to corresponding purchase order or shortage in count, shall be presented to Coy by Customer in writing within thirty (30) days from the date of receipt of the Product by Customer. Failure by Customer to provide Coy with written notice of any defect or shortage in count within such thirty (30) days time period shall be deemed an absolute and unconditional waiver of Customer’s claim for such defects or shortage in count. The repair or replacement of an item will be at the discretion of Coy. In matters of components returned to Coy for warranty claims, shipping charges are to be prepaid. Coy, at its election, will make an allowance, repair, or replace such Product(s) as shall prove to be defective or short in count. Customer shall hold and make available for inspection and testing by Coy all Products claimed by Customer to be defective. Any claim for defective workmanship must be verified by Coy and, in such a case, Coy’s liability shall be limited to the replacement or repair, at Coy’s election, of such part of the Product in question as Coy may determine is defective after receipt by Coy of full payment by Customer of the purchase price for such Products. Any component or system that is altered, modified, misused or improperly maintained according to its set purpose will void the warranty. Coy shall not be responsible for damages due to shipping. Damages incurred in shipping are the responsibility of the Customer. Claims for shipping related damages should be directed to the delivering carrier. Customers are advised to scrutinize the equipment upon delivery and to note any sign of physical disturbance to the shipment.
IMPORTANT: CUSTOM OR SPECIAL MADE EQUIPMENT IS NONREFUNDABLE AND NONRETURNABLE, AND WILL BE WARRANTED FOR WORKMANSHIP ONLY. COY CANNOT GUARANTEE THAT CUSTOM OR SPECIAL MADE EQUIPMENT WILL WORK FOR CUSTOMERS PARTICULAR PURPOSE OR NEEDS. CUSTOMER IS RESPONSIBLE FOR, AND WILL INDEMNIFY AND HOLD COY HARMLESS FROM ANY THIRD PARTY CLAIMS TO THE EXTENT SUCH CLAIMS ARE BASED ON SPECIAL OR CUSTOM EQUIPMENT.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND COY MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COY SPECIFICALLY, BUT NOT BY WAY OF LIMITATION, DISCLAIMS ANY AND ALL LIABILITY FOR THE USE OR PERFORMANCE OF THE PRODUCTS IN THE APPLICATION(S) SELECTED BY CUSTOMER AND ITS CUSTOMERS. COY FURTHER DISCLAIMS ANY AND ALL LIABILITY FOR PRODUCTS THAT ARE FURTHER PROCESSED BY CUSTOMER OR ANY THIRD PARTY OR IN ANY WAY CHANGED BY CUSTOMER OR ANY THIRD PARTY FROM THE PRODUCTS DELIVERED BY COY.

8. LIABILITY LIMITATION. Specific performance shall not be available to Customer as a remedy in connection with Coy’s providing of the Products. Monetary damages against Coy shall be limited to the dollar amount charged to Customer for the most recent order placed by Customer and accepted by Coy for any of the Products alleged to be the cause of any loss or damage, whether founded in contract, tort (including negligence), strict liability or otherwise, arising out of, or resulting from, (a) any order placed by Customer and accepted by Coy or Coy’s performance or breach, or (b) the design, manufacture, delivery, sale, repair, replacement or use of any such Products. IN NO EVENT SHALL COY BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL) ARISING OUT OF OR RELATING TO THE QUOTATION, ANY RELATED CUSTOMER ORDER, OR THE PRODUCTS. ANY AGREEMENT VARYING OR EXTENDING THE REMEDIES SPECIFICALLY STATED HEREIN WILL BE BINDING ON COY ONLY WHEN SPECIFICALLY AGREED TO IN WRITING BY COY.

9. PROPRIETARY MATERIALS. Coy shall have and retain all rights, title and interest, including all intellectual property rights, in and to all Products and associated materials, including, without limitation, all related reports, specifications, drawings, designs, computer programs and any other property, tangible or intangible, furnished by Coy in connection with or under the Quotation or any related purchase order (“Proprietary Materials”). No Proprietary Materials created by Coy in connection with or pursuant to the Quotation or any related purchase order shall be considered “works made for hire” as that term is used in connection with the U.S. Copyright Act.

10. CONFIDENTIALITY. Customer shall maintain the confidentiality of all technical, business or financial information of Coy or its customers (“Confidential Information”) in the same manner in which it protects its own confidential information of like kind, but in no event shall Customer take less than reasonable precautions to prevent the unauthorized disclosure, publication, dissemination or use of the Confidential Information. Upon termination of the Quotation and all related purchase orders, Customer shall return the Confidential Information and shall not use the Confidential Information for its own, or any third party’s, benefit.

11. TERMINATION. In the event that either party fails to perform any of its obligations under the Quotation or any related purchase order and fails to cure such breach within 10 days after receipt of written notice from the other party specifying such breach, the non-breaching party may at its option immediately terminate the Quotation and/or any related purchase orders. Upon any such termination by either party, (a) Coy shall be relieved of any
12. ASSIGNMENT. The Quotation and/or all related purchase orders shall not be assigned in whole or in part by either party without the prior written consent of the other party, except that Coy may assign its rights, liabilities and obligations arising out of the Quotation and/or any related purchase order to any parent, subsidiary, affiliate or any corporation with which Coy may merge or consolidate or to which Coy may sell, transfer or assign all or substantially all of its assets or that portion of its business to which the Quotation and/or any related purchase order pertains without prior consent of Customer.

13. EXPORT AND IMPORT LICENSES. Customer shall be solely responsible for required compliance with the export and import laws of the United States of America and those of any other jurisdiction or country that may be applicable. Coy has no obligation to furnish or obtain any export or import license or similar authorization and is not in any way responsible for the issuance or continuance in force of any such license or authorization.

14. FORCE MAJEURE. Coy shall not be liable for any delay or failure to perform if such delay or failure to perform is caused by circumstances beyond its reasonable control, including without limitation acts of God or public authority, riots or other public disturbances, labor disputes of any kind, power failures, failure of Customer to provide required information, failure of Customer to provide adequate containers, or the change in cost or availability of raw materials, components or services based on market conditions, supplier actions or contract disputes. During any such delay or failure to perform by Coy, Coy's obligations under the Quotation and any related purchase order shall be suspended and Coy shall not have any obligation to provide Customer with Products from other sources or to pay or reimburse Customer for any additional costs to Customer of obtaining substitute Products. Coy may, during any period of shortage due to any of the above circumstances allocate its available supply of Products among itself and its customers in any manner that Coy deems fair and reasonable in its sole discretion.

15. WAIVER. Waiver by Coy of any of the terms or conditions of the Quotation shall be effective only if in writing and signed by Coy, and shall not constitute a waiver of such terms as to any subsequent events or conditions, whether similar or dissimilar. No course of dealing or custom in the trade shall constitute a modification or waiver by Coy of any right.

16. SURVIVAL. These Terms and Conditions shall survive and continue in full force and effect following the expiration, cancellation or termination of a Quotation and any related purchase order.

17. ENTIRE AGREEMENT. The Quotation, including these Terms and Conditions and any other attachments, exhibits or supplements specifically referenced in the Quotation, constitutes the entire agreement between Coy and Customer with respect to the matters contained in the Quotation and supersedes all prior oral or written representations and agreements. Except as otherwise provided in these Terms and Conditions, the Quotation may only be modified by a written agreement signed by Coy.
18. GOVERNING LAW AND JURISDICTION. Each Quotation shall be governed by the internal laws of the State of Michigan without regard to any applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded. Customer consents to the exclusive jurisdiction of the appropriate federal court in the U.S. District Court for the Eastern District of Michigan, Southern Division or of the state courts in Jackson County, Michigan for any legal or equitable action or proceeding arising out of, or in connection with, each Quotation. Customer specifically waives any and all objections to venue in such courts.
ADDENDUM
By and Between
Coy Laboratory Products, Inc.
&
Texas A&M University

This addendum ("Addendum") amends and supplements the Terms and Conditions of Sale ("Agreement") between Coy Laboratory Products, Inc. ("Coy"), and Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas ("TAMU"). All terms used herein and not otherwise defined shall have the meaning as in the Agreement. In the event of any conflict in the terms of the Agreement and the terms of this Addendum, the terms of this Addendum shall in all aspects govern and control. Both parties agree that the Agreement is hereby amended and supplemented as follows:

1. For clarification, Texas A&M University is entering into this Agreement as a member of The Texas A&M University System, an agency of the State of Texas.

2. In section 5, the following is added: "As an agency of the State of Texas, TAMU is tax exempt."

3. Section 6 is deleted in its entirety and replaced with the following: "Freight charges are to be FOB destination, Texas A&M University - College Station, Texas 77843-3255. Freight charges are to be prepaid and added to the invoice. All equipment must be fully insured against loss and damage during shipping by Coy."

4. In section 7, the 11th, 12th, and 13th sentences are deleted in their entirety.

5. TAMU agrees to section 8 to the extent permitted by the Constitution and laws of the State of Texas.

6. In section 11, subsections (b), (c) and (d) are deleted and replaced with the following: "(b) In no event shall such termination by TAMU as provided for under this Section give rise to any liability on the part of TAMU, but not limited to, claims of Coy for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing. TAMU's sole obligation hereunder it to pay Coy for products and/or services ordered and received prior to the date of termination."

7. In section 14, the following is added: "Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome."

8. Section 18 is deleted in its entirety and replaced with the following: "The validity of this Agreement and all matters pertaining to this Agreement including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas. Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against TAMU shall be in Brazos County, Texas."

9. The following language is incorporated into the Agreement:

State Contracting Requirements:

Delinquent Child Support Obligations. Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Payment of Debt or Delinquency to the State. Pursuant to Section 2252.903, Texas Government Code, Coy agrees that any payments owing to Coy under this Agreement may be applied directly toward certain debts or delinquencies that Coy owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Franchise Tax Certification. If Coy is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Coy certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Coy is exempt from the payment of franchise (margin) taxes.

Prohibited Bids and Agreements. Under Section 2155.004, Texas Government Code, Coy certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

Public Information.
(a) Coy acknowledges that TAMU is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

(b) Upon TAMU's written request, Coy will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to TAMU in a non-proprietary format acceptable to TAMU. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which TAMU has a right of access.

(c) Coy acknowledges that TAMU may be required to post a copy of this fully executed Agreement on its Internet website in compliance with Section 2251.253(a)(1), Texas Government Code.

Loss of Funding. Performance by TAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TAMU will issue written notice to Coy and TAMU may terminate this Agreement without further duty or obligation hereunder. Coy acknowledges that appropriation of funds is beyond the control of TAMU.

State Auditor’s Office. Coy understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor’s Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Coy agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Coy will include this provision in all contracts with permitted subcontractors.

Dispute Resolution. Coy must use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute arising under this Agreement and is a required prerequisite to suit in accordance with Chapter 107, Texas Civil Practice and Remedies Code. Coy must submit written notice of a claim of breach of contract to the University Contracts Officer, TAMU.

Conflict of Interest. By executing and/or accepting this Agreement, Coy and each person signing on behalf of Coy certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System (TAMUS) or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part TAMU or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

Non-Waiver. Coy expressly acknowledges that TAMU is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU of its right to claim such exemptions, privileges, and immunities as may be provided by law.

ACCEPTED & AGREED:

Coy Laboratory Products, Inc.

[Signature]

Name & Title: [Signature]

Date: [Signature]

Robert C. Bounds  Director, Procurement Services

Name & Title: [Signature]

Date: [Signature]

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