

Terms & Conditions of Sale (Canada)

For a downloadable PDF of our Terms and Conditions, please click [here](#).

The following provisions set forth the terms and conditions on which Quidel Canada, ULC, directly or indirectly through its subsidiaries, including without limitation Quidel Corporation or Diagnostic Hybrids, Inc., hereinafter referred to as “Quidel,” sells its Sofia[®], QuickVue[®], Triage[®], Solana[®], Lyra[®], AdenoPlus[®], InflammDry[®], DHI products, and other Quidel products.

1. Applicability of Standard Terms and Conditions. All purchases by customer, owner or its agent (“Customer”) are expressly limited and conditioned upon acceptance of the following terms and conditions, and placement of an order indicates Customer’s full acceptance and agreement of the terms and conditions stated herein. Notwithstanding the foregoing, if Quidel and Customer have executed a formal written contract which is in full force and effect, the terms and conditions of that contract will apply and govern, to the exclusion of any inconsistent terms and conditions set forth herein. In addition, products purchased by Customer through distributors will be at the prices set by those distributors and subject to the terms and conditions of sale of the distributor and any agreement with such distributor.

2. Terms of Sale. Purchase of any products sold by Quidel shall be subject to and expressly limited by the terms and conditions stated herein. No changes to, waiver of, or addition to any of these terms and conditions shall be effective unless agreed to in writing and signed by Quidel. Customer acknowledges and agrees that these terms and conditions supersede the terms and conditions of any purchase order or other documentation used by Customer and, except for delivery and billing addresses and quantities, prices and items ordered, any conflicting or additional terms are void and have no effect. Customer may place orders by use of such purchase orders and other documentation for its convenience purposes only. Additional special terms and conditions of Quidel may be applicable with respect to certain products. Notwithstanding the foregoing, Quidel reserves the right at any time to amend these terms and conditions, and Customer shall be deemed to accept such amended terms and conditions by ordering products after the date of such amendment.

3. Order Placement.

a. **Purchase Orders.** Customer must submit firm written purchase orders for products to Quidel. Quidel accepts standing orders, blanket orders and one-time orders. No verbal orders, changes or corrections will be accepted. Customer shall be responsible to Quidel for the accuracy of all orders. Customer may place or confirm a purchase order anytime via Quidel’s Customer Service by fax to 437.700.9633, e-mail to intcs@quidel.com or by mail. Customer agrees to submit purchase orders in an efficient and orderly manner (e.g., generally aggregating Customer’s internal orders for products throughout any weekly period and then submitting a purchase order to Quidel for such products on a once per week basis to the extent practicable). To the extent applicable, Quidel retains the right to require purchases to be made in case quantities. All orders must include Customer’s account name, Quidel account reference number (if known), product name and number, quantity, price, shipping instructions, Customer contact name and telephone/fax numbers. For questions regarding placed orders, Customer may contact Quidel’s Customer Service by e-mail (above), or by phone at 437.266.1704 (prompt 1) or 888.415.8764 (prompt 1), Monday through Friday (except holidays) during regular business hours.

b. **Order Acceptance.** No order shall be binding upon Quidel unless and until accepted by Quidel in writing.

c. **Order Cancellation.** Customer shall not be entitled to revoke, reschedule or cancel any purchase order after acceptance by Quidel without Quidel’s written consent, which consent shall not

be unreasonably withheld, conditioned or delayed. Quidel may cancel or terminate all or part of any order immediately if (i) Customer is materially delinquent on any of its obligations hereunder or under any other order or transaction with Quidel, (ii) Customer becomes insolvent, enters into receivership or bankruptcy proceedings under applicable law, deemed by a court of competent jurisdiction, (iii) Customer suspends or terminates business or makes an assignment for the benefit of creditors, or (iv) any event occurs, whether or not similar to the foregoing, which in Quidel's good faith belief materially impairs the prospect of payment or performance by Customer hereunder. Quidel's rights to cancel or terminate any order, whether or not accepted, may be exercised by Quidel without liability.

4. Pricing and Payment Terms.

a. Pricing. All pricing quotes must be documented in writing to be valid. All prices are firm for thirty (30) days from the date quoted. Unless otherwise stated in Quidel's documentation, all prices for products: (a) are quoted and payable in Canadian Dollars, (b) are subject to change without prior notice at Quidel's discretion, and (c) do not include applicable freight, handling, packaging, transportation charges, insurance, taxes, excises, duties, levies, tariffs, or other governmental impositions or assessments which Quidel may be required to pay or collect. Unless otherwise stated in Quidel's documentation, any applicable freight, handling, packaging, transportation charges, insurance, taxes, or other governmental impositions or assessments are the responsibility of Customer and, if paid by Quidel for Customer's account, shall be invoiced to Customer either with the products or separately. In the event Customer changes any order (if and when permitted by Quidel), Quidel may adjust prices accordingly.

b. Payment Terms. Terms of payment are strictly net thirty (30) days from date of invoice for pre-approved Customers. Some credit cards are accepted for payment (a transaction fee may apply). Quidel reserves the right to require pre-payment or C.O.D. for product purchases. In Quidel's sole discretion, credit terms may be extended to Customer. Customer's obligation to pay outstanding invoices and all other amounts is absolute and unconditional and is not subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever. All overdue payments shall bear interest at a rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is lower, until paid.

Any disputed amounts should be reported immediately and remitted with the undisputed amount by the payment due date. If Quidel agrees with the billing dispute, Quidel will credit Customer the amount of the agreed-upon billing dispute. All billing disputes must be made within six (6) months of the applicable invoice date or will be deemed to be waived.

Customer shall be liable for, and shall reimburse Quidel for all costs and expenses incurred by Quidel in connection with collection of any amounts owed to Quidel for enforcement of its rights, including without limitation, reasonable attorneys' fees and expenses, court costs, costs of collection, fees for repossession, repair, storage and sale of the products. Quidel reserves the right to in its sole discretion to cancel any unshipped orders and/or require all future shipments to be paid in full in advance of shipment until all overdue balances are made current. Without limitation, Quidel shall have all of the rights and remedies of a secured party under the Personal Property Security Act with respect to all products possessed by Customer that have not been purchased and paid in full.

5. Delivery and Shipment Terms. Quidel will use reasonable efforts to deliver accepted orders in accordance with its delivery schedule provided by the order acceptance, acknowledgment, confirmation or similar document, and if no such schedule is stated, promptly. However, Quidel shall not be liable for nonperformance or delays caused by a shortage of raw materials, manufacturing problems, delivery or labour problems, priorities, pandemic, government takings, government rated priority orders, acts of regulatory agencies or judicial bodies, discontinuation of a product line, acts of God or third parties, infringement claims, or other causes beyond its reasonable control. Customer

agrees that, in such events, any delay or failure to supply shall not be considered a breach of any applicable contract for such products or of these Terms and Conditions of Sale, and Quidel may allocate products among all purchasers as it deems reasonable without liability.

All products will be shipped by Quidel Delivered Duty Paid (“DDP”), Incoterms 2020, Customer’s destination. Quidel shall be responsible for all functions, taxes and duties required to clear shipments into the country. Quidel will select the mode of shipment and the carrier, but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed as an agent of Quidel.

Title to the products (subject to Quidel’s right of stoppage in transit) and risk of loss, damage and delay will pass to Customer upon Quidel’s tender of delivery of the products to Customer’s destination.

When expedited delivery, specialized service, or alternate transportation modes are requested, or if requests are inconsistent with efficient distribution practices, an additional charge to cover the premium expense will be added to the invoice. Such additional charges will be based on current common carrier rates or hourly rates. Palletized deliveries are encouraged.

Upon receipt of products, Customer shall count and inspect freight before the carrier departs. Claims by Customer for damage in transit should be made to the transit company. When damaged freight is received or when the shipment is short, a detailed notation should be made on the delivery receipt and signed by the carrier’s driver. When damage is detected after delivery, notify the carrier immediately. The shipping container must be saved until the carrier’s inspection has been made. Customer shall be responsible for filing freight claims. Assistance may be obtained by calling Quidel’s Customer Service as provided in Section 3(a). If the products are held by Quidel subject to receiving instructions from Customer, Quidel may invoice the products and Customer agrees to make payment. Products invoiced and held at any location by Quidel will be held at Customer’s risk and Quidel may charge for insurance and storage (but is not obligated to carry any insurance). Customer will accept and pay for partial deliveries. When Customer has declared or manifested an intention not to accept delivery, no tender will be necessary but Quidel may, at its option, give notice to Customer that Quidel is ready and willing to deliver and such notice will constitute a valid tender of delivery.

6. Product Inspection, Acceptance and Returned Goods Policy.

a. Product Inspection and Acceptance. Customer shall be allowed five (5) days from the date of receipt of any order to provide a written notice of rejection to Quidel of any product that (i) fails in a material way to meet the product insert specifications for such product, (ii) is damaged or has other visible defects, or (iii) is shipped in error. Customer’s notice shall state with particularity the reasons for such rejection. If Customer does not deliver such written notice to Quidel within such five (5) day period, Customer shall be deemed to have accepted the products as shipped. Products damaged in transit must be reported by Customer to the carrier for all shipments within ten (10) working days of receipt, in accordance with Section 5.

b. Returned Goods Policy. Customer’s right to return product hereunder is limited to (i) non-conforming product (i.e., product that fails in a material way to meet the product insert specifications, is damaged or has other visible defects); (ii) returns for breach of the warranty set forth in Section 7; or (iii) suspended or recalled product. PRIOR TO RETURNING ANY PRODUCT, CUSTOMER MUST REQUEST A RETURN GOODS AUTHORIZATION NUMBER FROM QUIDEL (THE “RGA NUMBER”). UNLESS QUIDEL HAS AUTHORIZED IN WRITING THE RETURN OF ANY PRODUCT, QUIDEL WILL NOT BE OBLIGATED TO ACCEPT, MAKE ANY EXCHANGE, REPLACE OR PROVIDE CREDIT OR REFUND FOR ANY PRODUCT RETURNED BY CUSTOMER. Quidel will have the right to review and/or inspect any product prior to its return or destruction by Customer. All

returned products must be in the original package and display the appropriate reference to the RGA Number on outside containers.

c. As promptly as practicable after written confirmation by Quidel of properly rejected products and if Quidel desires that Customer return a product, Customer shall return the same to Quidel freight prepaid. Quidel will, in its sole discretion, either (i) issue a credit or refund of the net product price, including shipping costs, for properly rejected and authorized returned products or (ii) replace the product at Quidel's cost and expense, including shipping. Such replacement, refund or credit shall be Customer's sole and exclusive remedy with respect to defective, non-conforming or incorrect product delivered by Quidel hereunder.

7. Limited Warranty, Disclaimer and Limited Remedies.

a. Quidel warrants that disposable products, such as reagents, supplied to Customer under the terms herein shall conform substantially with the specifications set forth in the related product inserts and that such products will comply with and be manufactured, packed, sterilized (if applicable), labeled and shipped in material compliance with all applicable laws, rules, regulations and standards. Quidel warrants that non-disposable, equipment products ("Equipment") supplied to Customer under the terms herein will be materially free from defects in materials and workmanship for a period of twelve (12) months from the date of shipment. THE WARRANTY CONTAINED HEREIN IS CONTINGENT UPON CUSTOMER'S (i) PROPER USE OF THE PRODUCTS IN THE APPLICATION FOR WHICH THE PRODUCTS ARE INTENDED AND (ii) PROPER STORAGE AND HANDLING AS SPECIFIED IN THE RELEVANT PRODUCT INSERT. THE WARRANTY CONTAINED HEREIN DOES NOT APPLY TO PRODUCTS THAT HAVE BEEN MODIFIED BY CUSTOMER WITHOUT QUIDEL'S EXPRESS, PRIOR WRITTEN APPROVAL OR TO EQUIPMENT DAMAGED THROUGH ABNORMAL USE, MISUSE, MISHANDLING, NEGLIGENCE, ACCIDENT, NEGLIGENCE, TAMPERING OR UNAUTHORIZED SERVICE. ANY DEFECTIVE PRODUCT MUST BE RECEIVED BY QUIDEL NO LATER THAN THIRTY (30) DAYS AFTER THE DATE QUIDEL ISSUES AN RGA NUMBER. THIS LIMITED WARRANTY EXTENDS TO THE FIRST END-USER PURCHASER ONLY AND IS NOT ASSIGNABLE OR TRANSFERABLE.

b. THE EXPRESS WARRANTY DESCRIBED ABOVE CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO THE PRODUCTS AND THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, FOR ANY PRODUCTS FURNISHED HEREUNDER AND QUIDEL MAKES NO REPRESENTATION OR WARRANTY OF ANY OTHER KIND OR NATURE AND QUIDEL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO THE PRODUCTS, WHETHER AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, INTEROPERABILITY OR NON-INFRINGEMENT, OR THEIR EQUIVALENT UNDER ANY OTHER LEGAL SYSTEM, OR ANY OTHER MATTER. QUIDEL DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS THAT ANY PRODUCT IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. QUIDEL DOES NOT WARRANT, GUARANTEE OR MAKE ANY REPRESENTATION AS TO THE RESULTS OF ANY TEST PERFORMED USING THE PRODUCTS AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING FROM CUSTOMER'S OR ANY THIRD-PARTY'S RELIANCE THEREON.

c. IF ANY MODEL OR SAMPLE WAS SHOWN TO CUSTOMER, SUCH MODEL OR SAMPLE WAS USED MERELY TO ILLUSTRATE THE GENERAL TYPE AND QUALITY OF PRODUCTS AND NOT TO REPRESENT THAT THE PRODUCTS WOULD NECESSARILY CONFORM TO THE MODEL OR SAMPLE.

d. IN NO EVENT SHALL QUIDEL OR ITS AFFILIATES BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), QUASI-CONTRACT,

MISREPRESENTATION OR OTHERWISE, FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO DAMAGES FOR LOSS OF USE OR REVENUE, OR PROFITS IN CONNECTION WITH OR ARISING OUT OF QUIDEL'S PROVISION OF ANY PRODUCTS, OR CUSTOMER'S USE OF ANY PRODUCTS PROVIDED BY QUIDEL, OR DAMAGE TO SYSTEMS, PROGRAMS, OR DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. QUIDEL'S SOLE LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), QUASI-CONTRACT, MISREPRESENTATION OR OTHERWISE, AND CUSTOMER'S SOLE REMEDY OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY BREACH OF THIS LIMITED WARRANTY, FAILURE OR DEFICIENCY OF THE PRODUCTS OR NEGLIGENCE, WITH RESPECT TO ANY ITEM FURNISHED BY QUIDEL, OR IN RELATION TO ANY DELAY OR DEFAULT IN SUPPLYING THE PRODUCTS, OR ANY OTHER CLAIM SHALL BE LIMITED TO, AT QUIDEL'S OPTION, THE REFUND OR CREDIT OF THE NET PRODUCT PRICE FOR SUCH PRODUCT, TOGETHER WITH ANY COSTS OF FREIGHT AND INSURANCE INCURRED IN CONNECTION WITH THE SHIPMENT OF SUCH PRODUCT, OR, AT QUIDEL'S OPTION, REPAIR OR REPLACEMENT OF SUCH PRODUCT (WITH NEW AND/OR RECONDITIONED PARTS OR PRODUCTS) AT QUIDEL'S COST AND EXPENSE (INCLUDING SHIPPING). ALL REPLACED PRODUCTS, OR PARTS THEREOF, BECOME THE PROPERTY OF QUIDEL. QUIDEL'S MAXIMUM LIABILITY FOR ANY CUSTOMER CLAIM ARISING FROM THIS AGREEMENT SHALL NOT EXCEED THE NET PRODUCT PRICE PAID BY CUSTOMER. THE TERMS SET FORTH HEREIN PURSUANT TO WHICH QUIDEL AGREES TO PROVIDE PRODUCT TO CUSTOMER REFLECT THE PARTIES' AGREED UPON ALLOCATION OF RISK, AND WOULD BE DIFFERENT IF THE LIMITED WARRANTY, LIMITED REMEDY, WARRANTY EXCLUSION AND LIMITATION OF LIABILITY PROVISIONS WERE DIFFERENT. THE LIMITATIONS HEREIN SHALL APPLY EVEN IF ANY LIMITED REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

8. Grant of Software License (to the extent applicable). Quidel grants Customer a limited, non-exclusive, non-transferable license to use software ("Software") during the Term. Customer (i) shall use Software only as an integrated part of a product and shall not separate integrated Software from any product; (ii) shall not translate, disassemble, decompile, reverse engineer, alter or modify the Software; (iii) shall not make any copies of the Software except one (1) copy for back-up purposes; and (iv) shall use Software only during the Term. The Software is owned or licensed by Quidel and is protected by copyright and other laws. Customer shall not sell, assign, sublicense, transfer or disclose, or permit access to the Software to a third party.

9. Product Notices and Recall. Customer acknowledges and agrees that Quidel has the authority, in its sole and absolute discretion, to recall any product to comply with applicable laws or regulatory or governmental authorities, and Customer agrees to fully cooperate with Quidel in the case of any such recall and fully comply with the following requirements. Customer shall:

a. Act on all product field safety or product recall notices received from Quidel related to regulatory or quality matters affecting the product, ensuring that such notices are communicated to any Customer sites, and that defined product recover and replacement activities are carried out to agreed timelines in the event of a recall.

b. Inform Quidel, within forty eight (48) hours of receipt, by phone or in writing (e.g., e-mail), about any written, electronic or oral communication that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness or performance of a product, or a defect or condition which may render the product in violation of any statute or regulation or which in any way alters the specifications of the product (as set forth in the related product insert), including without limitation, product recalls and investigations. Such notification must include the product name and identification code, date and quantity of shipment to site (if applicable), lot number(s) and a detailed description of

the event/issue/complaint. If the incident has resulted, or is likely to result in a patient reaction, serious injury or death, Customer shall also immediately notify Quidel by phone and take any actions necessary in accordance with Canada's regulatory requirements and applicable laws.

10. Compliance with Laws, Export, Ethical Practices. Customer will follow and comply with all applicable laws, regulations, and orders in the use or import of any products. Customer shall be responsible for obtaining and maintaining all applicable permits, licenses or authorizations necessary for the import or use of the products in Canada at its sole expense (e.g., CITES import permits, MDEL with the applicable class designation).

Customer will not export or re-export the products except in full compliance with all applicable laws and regulations. Customer shall comply with all applicable national and international export controls, sanctions and other trade restrictions in connection with its purchases hereunder including, without limitation, laws relating to anti-boycott compliance (e.g., Export Administration Act), and laws relating to anti-bribery, anti-corruption and improper payments, including but not limited to the United States Foreign Corrupt Practices Act, as amended; the Canadian Corruption of Foreign Officials Act, as amended; the OECD Convention on Combating Bribery of Foreign Officials or any other such applicable laws in the jurisdictions where the Customer or its affiliates or agents conduct business, and any regulations implementing such laws, as well as all comparable provincial and local laws and regulations. Customer certifies that it is not on the U.S. Commerce Department's Denied Party or Entity List or the Unverified Parties List. For the avoidance of doubt, nothing in this Section 10 is intended to limit the prohibition of resale set forth in Section 12.

Customer will comply with all applicable national and international laws, regulations and guidelines relating to the protection of personal information of data subjects including, without limitation, all applicable requirements imposed by the Personal Information Protection and Electronic Documents Act ("PIPEDA"). Customer agrees to use best efforts to avoid disclosing to Quidel any personal information as described under PIPEDA.

If Customer is provided notice, correspondence, subpoena, or other contact that a governmental investigation has been initiated related to any written contract between Quidel and Customer, or these Terms and Conditions of Sale, Customer shall immediately notify Quidel in writing of the investigation or inquiry, and shall provide Quidel with all assistance reasonably requested in relation to such investigation. Each party shall bear the cost of performing their respective obligations. Customer will indemnify and hold Quidel harmless from all fees, fines, or other damages imposed on or suffered by Quidel due to Customer's failure to comply with this section.

11. Precautions. All products offered by Quidel are intended for Customer's own use by qualified professionals. Furthermore, Customer shall use any non-disposable Equipment only (i) at the Customer's "ship to" address (unless Quidel consents to moving the Equipment to another location); (ii) in the manner described in the applicable user manuals; and (iii) in accordance with all applicable laws and regulations. Customer shall not make any changes or alterations in, or attachments to, Equipment, or remove any labels, signs, symbols, trademarks, or serial numbers affixed to the Equipment. Customer acknowledges that it will comply with any instructions or directions contained in Quidel's labeling and literature concerning the products and will forward such information to its employees, agents, and contractors. Customer shall ensure that all employees, agents, and contractors use all due care with products to prevent potential hazards and are appropriately trained in the safe use, handling and disposal of the products. All clinical and medical treatment and diagnostic decisions are the responsibility of Customer and its professional healthcare providers.

12. Prohibition of Resale. Customer shall purchase the products for its own use only and shall not resell the products to any other party. Customer represents that it has evaluated the products and that they are acceptable and clinically suitable for Customer's intended purposes.

13. Permissible Variations; Substitutions and Deletions. Quidel has the right to make changes in the composition of the products which, in Quidel's opinion, do not affect the general characteristics or properties of the products or are within applicable governmental or industry standards. Quidel reserves the right from time to time to substitute a product with a product that has the same function as such product, or to delete a product from its product offering.

14. Technical Support. Technical support is provided for all products purchased directly from Quidel. Technical Support can be contacted by calling 1.888.415.8764 (prompt 2) or 1.437.266.1704 (prompt 2), Monday through Friday (except holidays) during regular business hours, or via fax 1.858.552.7905 for Sofia, QuickVue and other Quidel products, or 1.740.592.9820 for Quidel Molecular products, or e-mail at technicalsupport@quidel.com.

15. Miscellaneous.

a. Any required notices shall be given in writing, in the case of Quidel, at the address set forth below (with a copy to the Legal Department at legal@quidel.com), and in the case of Customer, at the address designated on Customer's purchase order or to such other address as either party may substitute by written notice to the other, and shall be deemed given upon electronic or facsimile delivery, personal delivery, overnight delivery or three days following deposit in the mail.

b. Except as expressly provided herein, no changes or modifications to, or waiver of, any of these terms and conditions shall be valid or binding on either party unless in writing and signed by an authorized representative of each party. Quidel's failure or delay to exercise or enforce any of its rights hereunder shall not constitute or be deemed to be a waiver of such rights or forfeiture of such rights, and Quidel may, at its option, from time to time, exercise any of its rights or remedies.

c. These terms and conditions bind Customer and its successors and permitted assigns.

d. In respect of any action, suit or other proceeding resulting from any controversy, dispute or claim arising out of these terms and conditions or the sale of products ("Claim"), these terms and conditions will be governed by, construed and enforced in accordance with the internal laws of Canada. Any disputes that arise in connection with these Terms and Conditions of Sale in which the parties are unable to settle amicably shall be exclusively and finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (the "Rules") before a single arbitrator knowledgeable in the subject matter of the dispute and appointed in accordance with the Rules. The arbitration shall be held in the city (i) which both parties agree to in writing, or (ii) where the defendant in such action is located, and all proceedings shall be in English. The arbitrator's decision and award shall be final and binding and may be entered in any court having jurisdiction thereof. If court proceedings to stay litigation or compel arbitration are necessary, the party who unsuccessfully opposes such proceedings shall pay all associated costs, expenses and attorney's fees which are reasonably incurred by the other party. The arbitrator shall have no authority to award any punitive damages or other damages excluded by the terms and conditions herein. If any Claim cannot be settled amicably between the parties, or such Claim is not otherwise resolved by arbitration, such Claim shall be brought in the province of Ontario and tried by a court and not a jury. Customer expressly and unconditionally waives its rights to a jury trial in any such Claim. Notwithstanding the foregoing, Quidel's right to institute or defend any proceeding in any jurisdiction, in or out of the United States of America, shall not be limited.

e. Customer may not change, adulterate, obscure, remove or deface trademarks, tradenames or labels appearing on any product of Quidel.

f. Customer shall not copy, decompile, modify, reverse engineer, or create derivative works out of any Quidel products or confidential information under any circumstances.

g. Any knowledge or information that Customer may disclose to Quidel shall not be deemed to be confidential or proprietary information, and shall be acquired by Quidel free from any restriction.

h. If any of the provisions of these terms and conditions are deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby.

i. ANY ERROR OR OMISSION IN THIS DOCUMENT OR ANY QUOTATION, CATALOG, SALES LITERATURE, INVOICE OR OTHER DOCUMENT ISSUED BY QUIDEL SHALL BE SUBJECT TO CORRECTION BY QUIDEL WITHOUT LIABILITY TO QUIDEL.

j. The parties have agreed that these Terms and Conditions of Sale and all documents relating to same, be drawn up in the English language only. If any applicable contract, or these Terms and Conditions of Sale, are nevertheless translated into any other language, then the English language version of this document will control in the event of any disagreement over any such translation.