



# Terms & Conditions – Product

These terms and conditions (the “Terms”) govern all transactions involving Products between the Parties. Unless agreed to otherwise by the Parties, the Terms take priority over any conflicting terms in another document. By placing an order related to a Sales Quote, Buyer agrees to these Terms. All additional or different terms proposed by Buyer are rejected, and null and void.

## 1. CERTAIN DEFINITIONS

- (a) “Panels” mean an FDA-cleared comprehensive test targeting an infectious disease syndrome focusing on a broad group of pathogens, currently including the FilmArray® Respiratory, Blood Culture Identification, Gastrointestinal, and Meningitis Panels.
- (b) “Buyer” refers to the entity or person(s) listed on the Sales Quote.
- (c) “Devices” mean a FilmArray® Instrument (1.5, 2.0, and Torch) and related peripherals.
- (d) “Permitted Uses” means the field of use and/or application of the Products (or specific Products or classes of Products) by end-users, as specified on Product labels and Instructions for Use.
- (e) “Products” mean Panels, Devices, Software, or other items covered by the Sales Quote and Buyer's purchase order.
- (f) “Seller” means BioFire Diagnostics, LLC.
- (g) “Software” means computer software, machine readable instructions or instruction sets owned or licensed by Seller and delivered with or installed, loaded, integrated, embedded, bundled, incorporated or read into memory on any Devices.
- (h) “Third Party Licenses” mean rights or licenses of Buyer under contractual agreements between Buyer and one or more third parties.

## 2. ORDERS

By placing an order, Buyer agrees to these Terms. Seller reserves the right to reject any purchase order for any reason, including but not limited to Buyer's credit history, product availability, etc. Seller's acceptance is established by (a) Seller delivering written acknowledgement of acceptance to Buyer, or (b) Seller delivering Products to Buyer, whichever occurs first. However, any order placed for Panels will, subject to Section 12 (“Limited Warranty”), be non-cancellable and non-refundable.

## 3. SHIPPING AND INSURANCE

Unless Buyer requests that Products be shipped under its own account, Seller will deliver the Products to a common carrier for shipping, based upon Seller's packaging, shipping and insurance practices, to the address designated by Buyer (“Delivery Point”). Seller ships all Products FOB Origin for delivery in the United States and FCA Origin (INCOTERMS 2012) for delivery outside of the United States. Buyer will bear all freight, insurance and other shipping costs to Delivery Point. Seller may ship in one or more lots, in which case each lot will be deemed a separate sale. Seller will not be liable for any failure or delay in shipping. Seller will have the right, in its judgment, to apportion Products among its customers in such manner as Seller deems equitable.

## 4. RISK OF LOSS

Risk of loss or damage passes to Buyer when Products are delivered to a carrier, at which point, Buyer is responsible for all loss or damage to the Products. No loss or damage will relieve Buyer from its payment obligations under this Agreement. Seller's warranty coverage also begins when Products are delivered to a carrier. In the event of loss or damage during shipping, Buyer may make a warranty claim to Seller. After a warranty claim for loss or damage during shipping, any proceeds from insurance on the Products will be paid to Seller.

## 5. ACCEPTANCE OF PRODUCTS

Devices may be returned for full credit within 5 calendar days of delivery, provided that Buyer has not damaged the Devices. Panels may not be returned except in the event that Buyer has a warranty claim. Devices will be deemed accepted upon Buyer's written acceptance, or if not rejected in writing received by Seller within 5 days of delivery. To make a claim for defective, damaged or missing Products, Buyer must notify Seller in writing within the noted time period, and if applicable, return Products to Seller using a valid return authorization number (RMA). Seller may refuse any Product not timely rejected or returned without a valid RMA. For any valid claim made, Seller may elect to repair or to replace the Product with a comparable Product or to refund the purchase price of the Product. These are Buyer's sole and exclusive remedies for defective, damaged or missing Product(s).

## 6. PERMITTED USES

The permitted uses for the Products are set forth in their Instructions for Use, and the licenses provided with the Products are for the Permitted Uses. Buyer agrees to comply with all applicable laws and regulations when using the Products. Buyer will store Panels in accordance with Seller's storage and handling instructions (or, absent such instructions, in accordance with industry customs and standards), including all temperature and climate control standards. Buyer will store Panels in accordance with Seller's storage and handling instructions (or, absent such instructions, in accordance with industry customs and standards), including all temperature and climate control standards.

## 7. PURCHASE PRICE



Buyer will pay for Products no later than thirty (30) days after the date of Seller's invoice which will include all applicable taxes, shipping and insurance costs to the extent of Buyer's responsibility for such costs under Section 3. If Buyer is tax-exempt, Buyer will provide Seller with certification of its status. Payments are deemed made by Buyer when received by Seller. Interest will accrue on any unpaid balances due to Seller at a rate of 1.5% per month (or the maximum legal interest rate allowed by applicable law, if less) from and after the due date. New customers are subject to credit approval. Seller accepts Visa, MasterCard and American Express. Seller reserves the right to require other payment terms, including without limitation, payment in advance and/or letters of credit. All foreign shipments require prepayment prior to shipping, unless otherwise specified by Seller. Buyer is not entitled to abate or reduce payments, or to offset any amounts or charges against the amounts due to Seller under this Agreement.

## 8. SOFTWARE

All Software, other than Software owned, developed, controlled or licensed by a party other than Seller ("Third Party Software"), provided to Buyer will be licensed subject to the terms set forth in any "shrink-wrapped" license packed with the Products or "click-wrapped" license visually displayed upon installation or execution of the Software (the "End-User License Agreement"). In the absence of any such End-User License Agreement for a particular Software Product, Seller grants upon delivery to Buyer, a non-exclusive license to use the Software (other than Third Party Software) solely in conjunction with the Products, subject to the following terms and conditions: (a) all title to, ownership of and all proprietary rights (including but not limited to patent rights, copy- rights, trade secrets and other intellectual property rights) in and to the Software, other than the limited rights expressly granted to Buyer herein, remain vested in Seller; (b) Buyer will not sell, transfer, assign, lease, loan, rent, sublicense, reproduce, duplicate or distribute the Software or any rights under the Software license granted; (c) nothing contained in this Agreement will obligate Seller to deliver Software source code to Buyer or any third party; (d) Buyer will not, and will not permit others to: copy, translate, modify, create derivative works from, reverse engineer, decompile, encumber or otherwise use the Software; and (e) all appropriate copyright and other proprietary notices and legends will be retained on all Software. With respect to Third Party Software, Buyer's license and rights to use such Third Party Software will be subject to the terms and conditions of use specified by the owner, developer or manufacturer.

## 9. INDEMNIFICATION

Buyer will indemnify, defend and hold Seller harmless from and against any claim, demands, causes of action or liability asserted by any third party and arising from or related to (a) the use, possession or operation of the Products inconsistent with their Instructions for Use, (b) the conduct by Buyer of its business and operations, or (c) any breach of any covenant or any representation or warranty made by Buyer in this Agreement. Seller will indemnify, defend and hold harmless Buyer harmless from and against any claims, demands, causes of action or liability asserted by any third party and arising from or related to (a) the design or manufacture of the Products, (b) the alleged infringement of any proprietary right related to the design of the Products, or (c) any breach of any covenant or any representation or warranty made by Seller in this Agreement.

## 10. LIMITATION OF LIABILITY

Under no circumstance will Seller have any liability to Buyer, Buyer's officers, directors, owners, agents, employees, Buyers or any third parties for any incidental, indirect, special or consequential damages arising out of or related to (a) the use, possession or operation of the Products, or (b) the conduct by Buyer of its business and operations, or for any damages based on strict or absolute tort liability, negligence or other theory of liability (except to the extent of contract liability to Buyer arising from a Seller default, if any, under this Agreement), regardless of whether Seller is advised or has knowledge of the possibility of such damages. Notwithstanding anything to the contrary in this Agreement, Seller's liability under this Agreement, if any, to Buyer or its employees, agents, Buyers or invitees, or any third party(ies), is expressly limited to the purchase price paid by Buyer in connection with the specific Product(s) which are the proximate cause of any such liability.

## 11. EXPORT CONTROLS

Buyer and Seller will comply with, and Seller's duty to export, ship or deliver Products to Buyer is subject to, applicable laws and regulations including, without limitation, the Export Administration Act of 1979, the Export Administration Regulations issued by the United States Department of Commerce, and the International Traffic in Arms Regulations (ITAR) issued by the United States Department of State.

## 12. LIMITED WARRANTY

Other than as set forth in Seller's Standard Limited Warranty and Extended Warranty (if purchased by Buyer), Seller makes no other or further representations or warranties of any kind or nature whatsoever.

Seller's sole obligation (and Buyer's sole remedy) under Seller's warranties will be for Seller to repair or replace the Products. With respect to all warranty claims, Buyer will contact Seller's customer support team for technical and troubleshooting assistance and if Seller is unable to resolve the problem and Seller concludes that it is a warranty claim, Seller will issue a RMA. Seller's standard limited warranty becomes effective when Products are tendered to a carrier for shipping.

**SELLER MAKES NO FURTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE PRODUCT'S FITNESS FOR A PARTICULAR PURPOSE, LACK OF INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES OR THE COMPATIBILITY OR INTEROPERABILITY OF THE DEVICES OR SOFTWARE WITH OTHER PERSONAL PROPERTY OR ACCESSORIES (OTHER THAN DEVICES SOLD OR FURNISHED HEREUNDER) WHICH BUYER USES WITH OR CONNECTS TO THE DEVICES OR SOFTWARE.**

## 13. CERTAIN LICENSING AND PATENT MATTERS

Many of Seller's Products are covered by U.S. patents, patents pending, or their foreign counterparts, owned or licensed by BioFire Diagnostics, LLC which may be viewed at [www.biofiredx.com](http://www.biofiredx.com). Products purchased and sold hereunder are sold by Seller solely for Permitted Uses by Buyer, subject to any



restrictions on Permitted Uses. Depending on Buyer's specific application(s), Buyer may need one or more additional licenses or rights to use certain of the Products. Buyer represents and warrants that it has, or will obtain, all necessary Third Party Licenses for its specific application(s), and Seller disclaims any liability or responsibility to Buyer with respect to patents or other proprietary rights owned or controlled by third parties. Notwithstanding anything to the contrary in this Agreement, nothing contained herein will be deemed, construed or interpreted as (i) a grant, transfer or convey to Buyer or any third party, expressly or by inference, of any right, title or interest in, or license or right to use, any, all or any portions of Seller's inventions, patents, know-how, processes or procedures, technology, know-how, copyrights or trademarks, other than the right to use the Products for Permitted Use(s) only; (ii) granting Buyer any ongoing right to be supplied with, or to manufacture or to have manufactured, any quantities of Products beyond those ordered in accordance with the terms and conditions of this Agreement; or (iii) granting Buyer the right to resell or convey in any manner the Assays or any components thereof to any third party anywhere in the world.

#### **14. COMPLIANCE**

It is not the purpose of this Agreement to induce or encourage the referral of patients or the payment, directly or indirectly, of any remuneration by one party to the other party in violation of applicable laws, rules, or regulations. Each party agrees that no part of the remuneration provided to the other party is a payment or inducement for, and is not in any way contingent upon, the admission or referral of any patient. Seller agrees that any discounts to Seller's charges for the services and/or items provided to Buyer pursuant to this Agreement will be made and identified to Buyer in writing at the time of the sale. Buyer hereby acknowledges that it may have an obligation to report such discounts and provide, upon request by federal or state governmental payer programs, information documenting the discount received from Seller. Seller will provide Buyer with all information regarding any discount as requested by Buyer for Buyer to respond to requests by federal or state governmental payer programs. However, Buyer will be solely responsible for reporting applicable discounts on its Medicaid/Medicare cost reports.

#### **15. MISCELLANEOUS PROVISIONS**

Unless otherwise agreed to by the Parties in writing, this Agreement sets forth all of the terms governing the purchase of Products by Buyer from Seller. This agreement is binding upon the Parties. This contract may only be modified in writing signed by the Parties. If any provision of this contract is declared unenforceable, the other provisions herein will remain in full force and effect. This contract will be interpreted according to the laws of the State of Utah without application of conflict of laws principles. The United Nations Convention on the International Sales of Goods will not apply to the transactions contemplated by this Agreement. For any dispute related to this Agreement, venue will be proper before any court of competent jurisdiction. The Parties agree to waive all rights to recover punitive or exemplary damages, right to trial by jury, and any objection to jurisdiction based upon forum *non conveniens* or a similar theory.





# Sales Quote for San Mateo Public Health Lab

DATE: 3/6/2019

**QUOTE: Q-07685**

Quote Expiration Date: 8/31/2019

**Prepared for:**

<b>Ship To</b> San Mateo Public Health Lab 222 West 39th Ave San Mateo, California 94403 United States	<b>Bill To</b> San Mateo Public Health Lab 222 West 39th Ave San Mateo, California 94403 United States
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**BioFire Sales Representative:**

Kris Matsuo kris.matsuo@biofiredx.com
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## Reagents

Qty	Unit	Description	Part #	List Unit Price	Disc. %	Sales Price	Total Price
1.00	Each	ME Panel, IVD, 30 Test Kit	RFIT-ASY-0118	\$5,790.00	5.00	\$5,500.50	\$5,500.50
1.00	Each	GI Panel, IVD, 30 Test Kit	RFIT-ASY-0116	\$4,650.00	5.00	\$4,417.50	\$4,417.50
1.00	Each	RP Panel, IVD, 30 Test Kit	RFIT-ASY-0124	\$3,870.00	5.00	\$3,676.50	\$3,676.50

Reagents Total: \$13,594.50

**Quote Total: \$13,594.50****Agreement Total: \$13,594.50**

Customer agrees to purchase a minimum of 1 RP kit(s), 1 GI kit(s), 1 ME kit(s) per year for a period of 1 Year. The pricing above reflects annual totals for this agreement.



Reagent Purchase Agreement, 12 Months

**Credit Card Orders Via:**

Phone: 800 735 6544 - ext. 1502

**Submit Purchase Orders Via:**

Email: SalesOrders@biofiredx.com

or by Fax: 801 588 0507

515 Colorow Drive, Salt Lake City, Utah 84108, U.S.A.  
801 736 6354 local | 800 735 6544 toll-free | 801 588 0507 fax

www.BioFireDX.com

BioFire Diagnostics, LLC

Signature: Rachel Jones

Name (Print): Rachel Jones

Title: CCO

Effective Date: 3/8/2019

San Mateo Public Health Lab

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Effective Date: \_\_\_\_/\_\_\_\_/\_\_\_\_



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515 Colorow Drive, Salt Lake City, Utah 84108, U.S.A.  
801 736 6354 local | 800 735 6544 toll-free | 801 588 0507 fax

[www.BioFireDX.com](http://www.BioFireDX.com)