

# ORANGE PHOTONICS

## STANDARD PURCHASE AGREEMENT

This Standard Purchase Agreement (the "Agreement") include and incorporate the Ordering Document, Quotation Form as well as these Terms and Conditions of Sale, as applicable, which include, among other things, warranty disclaimers, liability limitations and use limitations. There will be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof. Each party's acceptance of this Agreement was and is expressly conditional upon the other's acceptance of the terms contained in this Agreement to the exclusion of all other terms.

### ORANGE PHOTONICS TERMS AND CONDITIONS OF SALE

1. DEFINITIONS. As used herein:

"Seller" means Orange Photonics, Inc.

"Buyer" means the party or parties purchasing, leasing, renting or taking possession of the Goods and any agent, officer, servant, employee or subcontractor of such party or parties.

"Goods" means all items, including, without limitation, the Product, modules, test kits, setups, solvents, and instrumentation, described in the Ordering Document for Buyer's contemplated use.

"Product" means the LightLab Analyzer as described on Seller's website and in the Ordering Document.

2. ACCEPTANCE. These Terms and Conditions of Sale ("Terms") accompany the Seller's quotation, order acknowledgement, invoice or similar document (each, an "Ordering Document") and become binding when accepted and are expressly conditioned on Buyer's acceptance without addition or alteration and shall apply to all goods sold by Seller to Buyer in connection with an Ordering Document to which these Terms are attached. No modification of these Terms shall be of any force or effect unless in writing and signed by Seller. Seller rejects any additional or different terms that Buyer proposes or attempts to impose, and Seller's acknowledgment or acceptance of any purchase order or any other Buyer forms stipulating different conditions shall not modify these Terms. These terms and conditions shall apply to all future sales of goods by Seller to Buyer as described in clauses (i) through (iii) above unless otherwise agreed upon by the parties in writing.

3. END USE. Buyer has the sole responsibility to determine the suitability of the Goods described in the Ordering Document for Buyer's contemplated use. Buyer assumes all risk and liability for loss, damage, or injury to Buyer's property or person arising out of the use or possession of the Goods furnished hereunder.

4. DEVICE DATA. Buyer acknowledges and agrees that the Goods purchased hereunder record and log usage data, including, without limitation: raw instrument data, analysis, results and timestamp, cultivar, sample ID, operator and other Buyer entered information (including, without limitation, Buyer's notes) (collectively, "Device Data"). Data Device is associated with Buyer's unique Product serial number. Device Data may be transmitted automatically to Seller via remote means (such as via Internet) and is stored on Seller's servers and onboard on the Products via an onboard memory card. Seller will have access to Device Data stored on its servers. Seller will only use the Device Data to provide Buyer with services offered or performed by Seller, for its internal business purposes, to understand Product usage characteristics, to improve and provide support for its Products, and to offer additional products and services to Buyers

related to its Product(s). Seller may use certain Device Data and aggregate it with information collected from other users or sources to attempt to improve the quality and value of Seller's products and services. It will only share Device Data with third parties in aggregate, except that Seller may engage third parties to assist Seller in its internal business research, development and support activities, in which Seller may share Device Data with those third parties solely as necessary for them to assist Seller in performing services offered by Seller or requested by Buyer or to assist Seller in offering additional services and products to Buyers.

5. SHIPPING TERMS. Buyer shall pay all freight and transportation costs FOB point of shipment to Buyer. Seller shall select routing and carrier. Buyer is solely responsible for filing timely and proper claims against carriers if Goods are lost or damaged in transit. Buyer assumes and shall bear all risk of loss or damage to any purchased Goods sold under this order once the purchased Goods are delivered to the carrier. Seller assumes no responsibility for damage in transit.

6. SUPPORT SERVICES. Provided Buyer is in compliance with these Terms and has paid applicable fees in the Ordering Document, Seller may provide technical support services to (a) troubleshoot, identify and repair an error with the Product's system, (b) install software updates to the Product's system, and (c) assist Buyer in the use of or provide guidance on the Product, the Product's system and its functions and features (collectively, "Support Services"). Support Services may be provided by Seller's technical support provider via telephone or email, depending on the model of the Product purchased, Buyer may allow such technical support provider to remote in to access the Product's system. In order to provide the Support Services, Seller may need to access the Product's system, which may include accessing and using Buyer's data or information, such as, information about the sample and any diagnostic data, internal instrument temperature, systems performance, calibration, and software version, as well as any additional operator or information about the sample, if inputted by Buyer. Buyer hereby grants Seller and its technical support providers the right to access Buyer's Product's system and such data and information for the limited purpose of providing Support Services. Seller shall use commercially reasonable efforts to provide Support Services during the period of 9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, excluding federal holidays, and Seller will make its technical support providers available by phone, or email and will use commercially reasonable efforts to acknowledge requests for support within one business day. Seller shall not be obligated to repair any errors if Seller believes that the error is a result of causes not attributable to the Seller's Product, its systems or software, including, but not limited to: (a) modifications made by or at the direction of Buyer, other than modifications made by Seller, to

the Product, its system, software or any other hardware, (b) any alterations or additions to the Product, its system or software not performed by Seller, (c) failures in operation of the Product, its system, or software that are not reproducible in standalone form, (d) the Product or its system or software otherwise operated in violation of these Terms or other than in accordance with the documentation therefor; (e) failures which are caused by Buyer's software, hardware, or other products not licensed hereunder, (f) failures in Buyer's software, hardware or products not licensed hereunder; or (g) Buyer's misuse of the Product or its system. To the extent repair is not feasible, Seller's sole obligation and Buyer's sole remedy with respect to Support Services will be re-performance of such services.

7. **TAXES.** In addition to the price quoted or invoiced, Buyer shall pay any tax, duty, custom, or other fee that any Federal, State or local governmental authority imposes on this transaction. Buyer shall promptly reimburse Seller if Seller is required to prepay such monies.

8. **FORCE MAJEURE.** Seller shall have no liability for any delays or nonperformance caused by circumstances beyond Seller's control including, but not limited to, fire, flood, war, riot, civil commotion, government action, accident, labor trouble or shortage, energy shortage, inability to obtain material, equipment or transportation delays, or acts of God.

9. **TERMS OF PAYMENT.** Buyer agrees to promptly pay all sums agreed to be paid as set forth on the Ordering Document, together with all costs incurred in the collection of any amount due by suit, or otherwise, including reasonable attorneys' fees. Unless otherwise noted on the face of the Ordering Document, terms are net cash or check thirty (30) days from date of invoice. If Buyer fails to fulfill the terms of payment, or if Seller shall ever have any doubt as to Buyer's financial responsibility, Seller may, at its option, and without limitation, (i) require full or partial payment in advance, (ii) demand payment and suspend deliveries until payment is received, or (iii) decline to make further deliveries except upon receipt of cash or satisfactory security. Buyer's failure to furnish payment upon demand shall constitute a repudiation of this Agreement, and Seller shall be entitled to receive reimbursement for its reasonable cancellation charges. Seller shall not be liable for any of Buyer's costs or expenses arising out of the exercise of any of Seller's rights hereunder. Shipments and deliveries hereunder shall at all times be subject to the approval of Seller's credit department. Seller's published prices, extras and payment terms are subject to change without notice and those in effect at time of shipment shall apply. Seller reserves the right to divide an order into separate shipments and separately invoice such shipments, in which case each shipment shall be deemed a separate contract and payment therefore shall be due in accordance with these terms and conditions hereunder. Buyers taking possession of the Goods as a demonstration or demo, will be charged a demo fee. When the term ends Goods will be returned to the Seller. If they are not returned to the seller at the end of the term, the Buyer will assume ownership of the Goods and be billed full retail price for the Goods.

10. **CANCELLATION.** Accepted orders cannot be canceled, in whole or in part, without Seller's written consent. If Buyer requests cancellation of orders, such cancellation shall be at Seller's option. Seller's failure to meet estimated ship dates will not be sufficient cause for cancellation of orders.

11. **LIMITED WARRANTY.** Seller warrants that Goods supplied hereunder shall, at the time of delivery to Purchaser (a) conform to the published specifications of Seller, as set forth on Seller's website (as amended from time to time), and (b) be free from defects in material and workmanship under normal use and service, as determined by Seller in its sole and absolute discretion. Buyer's exclusive remedy and Seller's sole obligation and liability under this warranty is limited to the repair or replacement at its factory, at Seller's option. If any such Good is found to be defective in material or workmanship by Seller's inspection within one (1) year after the date of original shipment from Seller's factory. Buyer may purchase, at its option, an extended warranty for an additional year. For the avoidance of doubt, no warranty term may exceed two (2) years from the date of original shipment.

Any warranty claim for any Good must be made in writing prior to the end of the warranty period. Seller is and shall not be responsible for any Good's failures due, in whole or in part, to Buyer's sample collection or handling, sample quality, sample contamination, or sample or product storage environment or conditions. Service for hardware after the warranty period has expired shall be provided only pursuant to a duly executed written agreement for such services by and between Seller and Buyer.

Seller offers a calibration service for a fee, as set forth Seller's website, after one thousand (1,000) tests or one (1) year of use, whichever occurs earlier (the "Calibration Service"). In connection with the Calibration Service, Seller warrants that such service shall be performed in a professional and workmanlike manner by individuals with suitable skills and abilities, as determined by Seller in its sole discretion. The Calibration Service will be deemed accepted when performed. Any warranty claim for the Calibration Service must be made in writing within thirty (30) days after performance of the non-conforming Calibration Service. Seller's sole obligation and Buyer's sole obligation shall be re-performance of the nonconforming Calibration Service.

**12. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.**

SELLER MAKES NO OTHER TERM, CONDITION, REPRESENTATION, OR WARRANTY (STATUTORY, EXPRESS, IMPLIED OR OTHERWISE) OF THE PRODUCT, GOODS, SERVICES AND SUPPORT SERVICES SUPPLIED HEREUNDER, INCLUDING, WITHOUT LIMITATION, AS TO QUALITY, CONDITION, DESCRIPTION, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SELLER HEREBY EXPRESSLY DISCLAIMS THAT ANY TESTS AND ANALYSES OFFERED OR PERFORMED MEET THE REQUIREMENTS OF APPLICABLE LAWS AND SELLER SHALL NOT BE RESPONSIBLE FOR ANY CLAIMS THAT MAY ARISE FROM BUYER'S USE OF ITS PRODUCT(S), GOODS, OR SERVICES OR BUYER'S RELIANCE ON RESULTS RESULTING FROM SUCH USE. BUYER IS SOLELY RESPONSIBLE FOR ENSURING THAT ITS USE OF THE

PRODUCT, GOODS, AND SERVICES IS SUITABLE FOR BUYER'S REQUIREMENTS, AND BUYER MUST USE THE PRODUCT, GOODS, AND SERVICES IN ACCORDANCE WITH INSTRUCTIONS PROVIDED THEREWITH.

SELLER SHALL HAVE NO LIABILITY TO BUYER OR ANY OTHER PERSON OR ENTITY FOR LOSS OF PROFITS OR USE, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE OR MULTIPLE DAMAGES INCLUDING WITHOUT LIMITATION FOR LOSS OF GOODWILL, DATA OR SAMPLES, OR FOR BUSINESS INTERRUPTION ARISING OUT OF THE SUPPLY OR USE OF SELLER'S PRODUCTS, GOODS, SERVICES, OR SUPPORT SERVICES OR FAILURE OR DELAY IN DELIVERING SUCH PRODUCTS, GOODS OR SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, FAULT OR OTHERWISE, EVEN IF SELLER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER'S ENTIRE LIABILITY FOR ANY PRODUCT, GOODS OR SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, FAULT OR OTHERWISE, SHALL NOT EXCEED IN THE AGGREGATE, THE AMOUNT THAT BUYER PAID FOR SUCH PRODUCT, GOOD OR SERVICE. SELLER HEREBY EXPRESSLY DISCLAIMS, AND BUYER HEREBY EXPRESSLY WAIVES ANY CLAIM OF LIABILITY FOR THE PURPOSES FOR WHICH BUYER USES SELLER'S PRODUCT, GOODS, SERVICES, OR SUPPORT SERVICES, INCLUDING WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS.

**13. BUYER'S INDEMNIFICATION.** To the extent permitted by applicable law, Buyer agrees to indemnify, defend and hold harmless Seller, and its affiliates, and their respective officers, directors, employees and agents (each, an "Indemnitee") from and against any and all costs, damages and expenses (including reasonable attorneys' fees) incurred or suffered by any Indemnitee arising directly or indirectly from any third party claims relating to: (a) the breach by Buyer of any of Buyer's covenants, agreements, representations, warranties or other obligations in these Terms; (b) fraud, gross negligence or intentional or willful misconduct by Buyer or Buyer's representatives in connection with these Terms; or (c) any misuse or unintended use of the Goods.

**14. OWNERSHIP.** All of the intellectual property rights in the Goods will remain with Seller. All patents, trademarks, service marks, trade names, logos, know-how, techniques, designs, devices, improvements, derivative works, data, specifications, software, algorithms, discoveries or inventions, (whether or not reduced to practice), shall remain the property of Seller and/or its licensors. Any user license that may be granted to Buyer whether under these Terms or under any document incorporated into the Agreement shall be non-transferable, non-sublicensable and non-exclusive and shall only be used for Buyer's own internal business purposes of operating the Goods to which it pertains. Any such license shall terminate automatically on the termination or expiry of the Agreement between Seller and Buyer.

**15. RESTRICTIONS ON USE AND PROHIBITED USES.** Buyer recognizes and agrees that the Goods provided hereunder are subject to use restrictions that are a condition of purchase. Buyer agrees to comply with all such restrictions as may be set forth in these Terms, in Seller's printed materials or website, on its Goods, or in documentation or on labels provided, or as otherwise provided in writing to Buyer, as well as with any applicable regulatory requirements. Buyer agrees not to make any disposition by way of transshipment, re-export, diversion or otherwise, of U.S. origin goods and technical data (including computer software, if applicable), or the direct product thereof, supplied by Seller hereunder.

Buyer also agrees not to export Seller's Products, Goods or equipment or any information or documents provided hereunder outside of the country of delivery without the requisite export license from the relevant body of the United Nations or other similar organization, the United States Government, the European Union, the country of origin or the original country of export. If such export is contemplated, Buyer agrees to furnish Seller with copies of all documents relating to such export with reasonable advance notice.

**16. COMPLIANCE AND USE OBLIGATIONS.** Buyer agrees to comply with all requirements for Goods that are published, and which may be updated from time to time, on the Seller's website or otherwise made known to Buyer. In connection with its purchase or use of the Goods, Buyer shall (a) maintain adequate security, safety, utilities, and environmental standards; and (b) exercise reasonable care and caution in the storing, using, or transporting of Goods provided under these Terms. Products shall not be tampered with or opened, repaired or modified without written authorization from the Seller.

**17. RETURNS.** No Goods can be accepted for credit unless Seller has previously authorized the return. Goods must be returned freight prepaid within thirty (30) days of receipt. Returns are subject to \$1000 restocking fee. The Buyer must notify Seller to request an RMA # before returning the Goods. A reasonable description of the reason for the return is required.

**18. SEVERABILITY.** The provisions of these Terms are severable and if any provision is invalid, void, or unenforceable in whole or in part for any reason, the remaining provisions shall remain in full force and effect.

**19. NON-WAIVER.** Seller's failure or refusal to insist upon strict performance of any provisions of these Terms shall not be deemed a waiver of Seller's rights or remedies, or a waiver by Seller of any subsequent default by Buyer in the performance of or compliance with the terms of these Terms.

**20. CAPTIONS; HEADINGS.** The captions or headings in these Terms are included for convenience and general reference only and shall not be construed to describe define or limit the scope or intent of the provisions of these Terms.

**21. ASSIGNMENT.** Buyer may not assign these Terms, in whole or in part, and any attempted assignment shall be void and of no effect.

**22. ENTIRE AGREEMENT.** These Terms constitute the entire agreement and understanding of the parties and supersedes all prior agreements and understandings relating to the subject matter hereof. No agreements, understandings, restrictions,

warranties, or representations exist between or among the parties other than those expressly set forth.

**23. CLAIMS.** Claims for errors, shortages, defective Goods and any other claims of Buyer relating to the Goods must be made in writing within thirty (30) days after receipt of the Goods and must refer to the date and order number. Seller shall have a reasonable opportunity to investigate all claims.

**24. APPLICABLE LAW AND JURISDICTION.** Buyer and Seller agree that interpretation of and performance under these Terms, as well as all other aspects of the transaction contemplated by these Terms, shall be governed by the laws of the Commonwealth of Massachusetts without regard to that state's conflict or choice of law rules. Buyer and Seller further agree that any action at law, suit in equity or other judicial proceeding with respect thereto must be brought and maintained in the federal or state courts of record situated in the Commonwealth of Massachusetts.

**25. LATE PAYMENT AND COLLECTION COSTS.** If Seller decides to place Buyer's account for collection, Buyer shall pay all costs and expenses thereof, including reasonable attorneys' fees. Should Buyer fail to pay any amount that Buyer is required to pay to Seller, Buyer shall pay to Seller interest on the delinquent payment from the due date thereof until paid at the rate of 1.5% per month (18% APR), but in any case, not to exceed the maximum lawful rate under any applicable law.

**26. GOVERNMENTAL REQUIREMENTS.** Any provisions required to be included in a contract of this type by any applicable federal, state or local law, ordinance or governmental rule, regulation, order or other governmental requirement shall be deemed incorporated herein as if fully set out. Notwithstanding anything else, Buyer may not provide to any person or export or re-export or allow the export or re-export of the Goods purchased hereunder or any software or anything related thereto (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing, Buyer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Acceptance pursuant to Section 2 is representation and warranty that Buyer is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National