

# Terms and Conditions

World – Lonza Rockland, Inc. / Lonza Walkersville, Inc. / Lonza Sales Ltd

## Definitions

These Terms and Conditions apply to Lonza Rockland, Inc., Lonza Walkersville, Inc. and Lonza Sales Ltd, as the case may be, herein referred to as "Seller" and to all products ordered from the Lonza Catalog 2018: Advancing Research with Biologically Relevant Solutions.

## Pricing and Terms

Visa®, American Express®, and MasterCard® credit cards are accepted. Prices and conditions are subject to change without notice. The price applicable to any order accepted by Seller shall be the price in effect on the date of shipment. Payment is due within 30 days following the invoice date. There is a minimum \$50 order requirement for all orders. All claims by purchaser shall be made by written notice to Seller in accordance with these Terms and Conditions, and no offset or deduction from any invoice is permitted. Acceptance by Seller of bank draft, check, or other media of payment is subject to immediate collection of the full face amount thereof.

If at any time the financial responsibility of purchaser, or the credit risk involved, shall become unsatisfactory to Seller, Seller may require cash or satisfactory security prior to subsequent shipments or deliveries hereunder. The election by Seller to require such cash or security shall not affect the obligation of purchaser to take and pay for the contracted materials. Purchaser agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in the collection of any sum payable by purchaser to Seller.

If purchaser breaches any term of the Terms and Conditions or any other contractual obligation in favor of Seller, (a) Seller may choose to defer any or all further shipments or other performance of any other contractual obligation in favor of purchaser until purchaser cures its breach, and (b) Seller may, by delivery of written notice to purchaser describing the breach, immediately terminate any other contractual obligation to purchaser; provided that purchaser shall have ten (10) days after receipt of the written notice to reinstate any terminated contractual obligations by curing the breach. In the event of a termination, all outstanding payment obligations or other indebtedness of purchaser to Seller shall be due and payable no later than fifteen (15) days after delivery of notice of termination, subject to the right of reinstatement.

Notwithstanding any provision in these Terms and Conditions, Seller shall have no obligation to pay any rebate, issue any credit or make any other payment of any kind to purchaser unless purchaser is fully in compliance with its payment and other obligations under the purchase and any other contractual obligation in favor of Seller. In addition, in the event that purchaser fails to make any payment when due, Seller shall have the right to offset any and all outstanding payment obligations or other indebtedness of purchaser to Seller against any outstanding payment obligations or other indebtedness that Seller or any of its affiliates may owe purchaser.

## Pricing and Terms

In addition to the purchase price, purchaser shall pay Seller any and all governmental sales taxes of every kind that Seller may be required to pay with respect to the products. Purchaser shall provide Seller, on request, with properly completed exemption certificates for any tax from which purchaser claims exemption.

Seller and its assigns shall have the right to assign any right to receive payment under this contract to any person without the prior consent of purchaser.

## Shipping

All orders are shipped via Seller's recommended carriers unless an alternative agreement has been arranged with the purchaser. Applicable freight and handling charges will be added to purchaser's invoice. Refrigerated shipments will be charged a nominal fee. Please consult a Customer Service Representative for confirmed delivery dates. If another carrier is specified, a carrier account number must be provided by purchaser.

## Damaged or Missing Product

Contact a Customer Service Representative for replacement of damaged or missing product. Damage or discrepancies must be reported within 5 business days after receipt of product.

## Returns

Products may not be returned for credit without first obtaining authorization from a Scientific Support or Customer Service Representative. A restocking fee may be applied for products returned without authorization or for returns in which the purchaser is at fault. The restocking fee is \$50 or 25% of the purchase price, whichever is greater.

## Force Majeure

Failure of Seller to make, or purchaser to take, any one or more deliveries when due, if caused by (a) fire, storm, flood, strike, lockout, accident, act of war or terrorism, riot, civil commotion, embargo or similar circumstances, (b) any regulation, law, or restriction of any governmental department, commission, board, bureau, agency, court, or other instrumentality of any supranational organization of sovereign states, country, state, province, territory, commonwealth, municipality, or other political subdivision thereof (a "Governmental Authority"), any seizure or requisition of product by any Governmental Authority, or any compliance with a demand or request for such product for purposes of national or supranational defense, (c) inability of Seller to obtain any required raw material, energy source, equipment, labor or transportation, at prices and on terms deemed (by Seller) to be practicable, from Seller's usual sources of supply, or (d) any other cause or contingency beyond the reasonable control of that party (whether or not of the same kind or nature as the causes or contingencies above enumerated), shall not subject the party failing to perform to any liability to the other during the period such inability to make or take delivery shall exist. Quantities so affected may, at the option of either party, be eliminated from the purchase without liability, but the Terms and Conditions shall remain otherwise unaffected.

In the event of Seller's inability, for any reason, to supply the quantities of product contemplated by the purchase, Seller may allocate its available supply among its purchasers, including departments and divisions of Seller, on such basis as Seller may deem fair and practical without liability to purchaser for any failure of performance that may result therefrom.

## Indemnification

Seller will make available to purchaser a Material Safety Data Sheet (MSDS) for each product delivered to purchaser where required. The MSDS sets forth information concerning such product and describes precautions, if required, to be taken in the transportation, delivery, unloading, discharge, storage, handling and use of such product. Purchaser will familiarize itself with all information and precautions, including but not limited to such related to safety and health, contained in MSDSs or otherwise transmitted to purchaser by Seller at any time. Seller will instruct its employees, agents, contractors, customers or any third party which may be exposed to the product about such information and precautions and make available copies thereof to such parties. Purchaser assumes full liability and responsibility for compliance with the above-referenced information and precautions, and with all laws, statutes, ordinances and regulations of any Governmental Authority applicable to the processing, transportation, delivery, unloading, discharge, storage, handling, sale and use of each product including, without limitation, the Foreign Corrupt Practices Act and United States export control laws; in particular, without limiting the generality of the foregoing, purchaser shall not resell or ship to persons on the Denied Parties List or located within embargoed countries (in both cases as defined under the referenced export control laws). Purchaser further agrees to protect, defend and hold harmless Seller from and against all claims, demands, causes of action, damages, losses, liabilities, costs, expenses (including reasonable attorneys' fees), penalties, and judgments (each, a "Claim") associated with the processing, transportation, delivery, unloading, discharge, storage, handling, sale or use of any product after delivery which is (i) inconsistent with any information provided to purchaser or (ii) in violation of any applicable law, statute, ordinance or regulation of any Governmental Authority. Seller assumes no liability for failure of discharge or unloading implements or materials used by purchaser whether or not supplied by Seller.

Since Seller has no control over purchaser's (or others') use, disposition, subsequent processing, admixing or reaction of Seller's products with other products, chemicals or materials, purchaser assumes the entire liability and responsibility therefor and agrees to protect, defend and hold harmless Seller from and against all Claims associated therewith including, without limiting the generality of the foregoing, Claims associated with infringement of any third party's intellectual property rights, patents on processes practiced by purchaser or patents on products made by purchaser.

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## Warranty

DUE TO THE VARIOUS FACTORS AFFECTING RESEARCH TEST RESULTS, SELLER WARRANTS ONLY AND NOT FOR ANY PARTICULAR PURPOSE OF THE PURCHASES, THAT ALL PRODUCTS SOLD WILL PERFORM ACCORDING TO ESTABLISHED PRODUCT SPECIFICATIONS. PRODUCTS ARE SOLD WITH THE UNDERSTANDING THAT THE PURCHASER WILL DETERMINE IF THE PRODUCT IS SUITABLE FOR ITS APPLICATION. SELLER WILL REPLACE ANY PRODUCT, FREE OF CHARGE, THAT DOES NOT MEET SELLER'S ESTABLISHED PRODUCT RELEASE SPECIFICATIONS.

ANY TECHNICAL ADVICE FURNISHED OR RECOMMENDATION MADE BY SELLER OR ANY REPRESENTATIVE THEREOF CONCERNING ANY USE OR APPLICATION OF ANY PRODUCT IS BELIEVED TO BE RELIABLE BUT SELLER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ITS ACCURACY OR COMPLETENESS OR OF THE RESULTS TO BE OBTAINED. NO STATEMENT IS INTENDED OR SHOULD BE CONSTRUED AS A RECOMMENDATION TO INFRINGE ANY EXISTING PATENT. WITH REGARD TO ANY PROCESSING OF ANY PRODUCT, PURCHASER ASSUMES FULL RESPONSIBILITY FOR QUALITY CONTROL, TESTING AND DETERMINATION OF SUITABILITY OF PRODUCT FOR ITS INTENDED APPLICATION OR USE.

SELLER MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, BY FACT OR LAW, OTHER THAN SELLER'S (I) OBLIGATION TO DELIVER PRODUCT COMPLYING WITH SELLER'S PUBLISHED SPECIFICATIONS (OR AS OTHERWISE REFERENCED IN THE TERMS AND CONDITIONS) AND (II) IMPLIED WARRANTIES OF TITLE, FREEDOM FROM ENCUMBRANCE, AND RIGHT TO TRANSFER SAME. SELLER MAKES NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF MERCHANTABILITY OTHER THAN AS STATED HEREIN.

Seller guarantees the performance of Clonetics™ and Poietics™ Cells up to two years from purchase only if appropriate Clonetics™ or Poietics™ Media and Reagents are used exclusively, and the recommended storage and use protocols are followed. Cell and media performance is not guaranteed if any modifications are made to such cell systems.

## Limitation of Liability

SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES OR INJURY TO PERSONS OR PROPERTY ARISING FROM THE PURCHASE OR USE OF THE PRODUCT. IN ADDITION, SELLER IS NOT LIABLE FOR THE PRODUCT AFTER THE PRODUCT EXPIRATION DATE OR FOR A PRODUCT THAT HAS BEEN MISUSED OR HAS BECOME UNUSABLE DUE TO IMPROPER STORAGE OR HANDLING BY PURCHASER.

SELLER'S TOTAL LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ASSOCIATED WITH THE PURCHASE, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY IS EXPRESSLY LIMITED TO REPLACEMENT OF NONCONFORMING PRODUCT OR PAYMENT IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCT FOR WHICH DAMAGES ARE CLAIMED, AT SELLER'S OPTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OTHER DAMAGES INCLUDING, WITHOUT LIMITATION, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.

PURCHASER SHALL INSPECT THE PRODUCT SUPPLIED HEREUNDER IMMEDIATELY AFTER DELIVERY. PURCHASER'S FAILURE TO GIVE NOTICE TO SELLER OF ANY CLAIM WITHIN FIVE (5) DAYS AFTER THE DATE OF DELIVERY SHALL CONSTITUTE UNQUALIFIED ACCEPTANCE OF THE PRODUCT AND A WAIVER BY PURCHASER OF ALL CLAIMS WITH RESPECT THERETO.

## Resale

Products may be resold only by the Seller or its affiliate companies and authorized distributors. A list of authorized distributors and affiliate companies can be found in the back of this catalog or on our website, [www.lonza.com](http://www.lonza.com).

## Product Label

Please read the product label carefully for safety information and warnings related to product hazards. Some products may present flammable, toxic, or other hazards. More information regarding certain products can be obtained by reading the MSDS, available on request from Customer Service, Scientific Support or on the web at [www.lonza.com](http://www.lonza.com). The absence of a warning must not be construed as an indication that the product is safe. All possible hazards may not be known at this time. Some of our products may contain materials of animal or human origin. Products should only be handled and used by qualified personnel familiar with the potential hazards and trained in laboratory procedures. The purchaser assumes all risks of use and/or handling.

## Product Use

In general, all products listed in this catalog are "For Research Use Only" or "For Laboratory Use Only" and are not intended for use in diagnostic procedures unless otherwise noted. Such products are not to be used for diagnostic or drug purposes, or for administration to humans.

All products labeled "For Research Use Only" are intended for research purposes only and the purchaser has no rights to transfer the products, components, or materials made using these products, or use these products for Commercial Purposes. Commercial Purposes include 1) use of the products or their components in manufacturing; 2) use of the products or their components to provide a service, information or data; 3) use of the products or their components for therapeutic or diagnostic purposes; 4) resale of the products or their components. Contact Marketing at Lonza Walkersville for further information.

For the Amaxa™ brand of products the following additional terms and conditions apply:

Please note that Lonza's Amaxa™ Nucleofector™ Technology is not intended to be used for diagnostic purposes, for testing or treatment in humans.

The Nucleofector™ Technology, comprising Nucleofection Process, Nucleofector™ Device, Nucleofector™ Solutions, Nucleofector™ 96-well Shuttle™ System, and 96-well Nucleocuvette™ plates and modules is covered by patent and/or patent pending rights owned by Lonza.

Amaxa, maxFP, maxGFP, Nucleocuvette, Nucleofection, Nucleofector, pmaxCloning, and 96-well Shuttle are either registered trademarks or trademarks of Lonza in Germany and/or the U.S. and/or other countries.

The CMV promoter is covered under U.S. patent 5,385,839 and its use is permitted for research purposes only. Any other use of the CMV promoter requires a license from the University of Iowa Research Foundation, 214 Technology Innovation Center, Iowa City, IA.

Products contain a proprietary nucleic acid coding for a proprietary fluorescent protein(s) intended to be used for research purposes only. Any use of proprietary nucleic acid or fluorescent proteins coding by proprietary nucleic acid other than for research use is strictly prohibited. USE IN ANY OTHER APPLICATION REQUIRES LICENSE FROM EVROGEN. To obtain such a license, please contact Evrogen at [license@evrogen.com](mailto:license@evrogen.com).

Freedom EVO®, Freedom EVOware®, Tecan® and the Tecan logo are in major countries a registered trademark of Tecan Group Ltd., Männedorf, Switzerland.

BD FACScalibur is a trademark of Becton, Dickinson and Company.

Other product and company names mentioned herein are the trademarks of their respective owners.

## Governing Law for orders made with Lonza Walkersville, Inc. or Lonza Rockland, Inc.

The purchase and Terms and Conditions shall take effect and be construed in accordance with the laws of the State of New York, USA.

## Governing Law for orders made with Lonza Sales Ltd

The Purchase and Terms and Conditions shall take effect and be construed in accordance with the laws of Switzerland, without any reference to its conflicts of law.

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