

1. Definitions

- 1.1. "Agreement" means an Order and these Terms and Conditions.
- 1.2. "Customer" means the person or organization named and described in the Order.
- 1.3. "Deliverables" means information or other data and/or materials that KromaTiD generates under a SOW.
- 1.4. "Order" means an order by the Customer in the form required by KromaTiD, Inc. (KromaTiD) for the supply of Products or Services by KromaTiD to Customer.
- 1.5. "Product" means any product supplied by KromaTiD, including any information or material supplied with any product.
- 1.6. "Services" means any services provided by KromaTiD, pursuant to the Order.
- 1.7. "Statement of Work" or "SOW" is the detailed written description of work to be performed by KromaTiD as per the Order for Services.
- 1.8. "Warranty" Period means 30 days from the date of delivery of Product or Deliverables pursuant to the Order.

2. Products and Deliverables

- 2.1. All Products and Deliverables are supplied for internal scientific research purposes only and are not intended for i) human consumption, including, but not limited to, foods or pharmaceuticals, ii) diagnostic purpose including, but not limited to, human or veterinary *in vivo* or *in vitro* diagnostics, or use in cosmetics or other goods. Research purposes means *in vitro* laboratory studies or *in vivo* use in laboratory organisms only.
- 2.2. KromaTiD does not represent or warrant that:
 - 2.2.1. The Products or Services Deliverables are correct, sufficient or safe for the Customer's intended use or any other use; or
 - 2.2.2. The Customer's use of the Products or Deliverables will not infringe any person's intellectual property rights.
- 2.3. Products and Deliverables are supplied for the Customer's personal research activities and noncommercial use. Products and Deliverables must not be sold or otherwise re-distributed without KromaTiD's consent.
- 2.4. KromaTiD retains rights to use of deidentified image data generated during performance of an SOW for business and platform development purposes.

3. Quotations & Orders

- 3.1. No quotation or Order is binding upon KromaTiD until accepted by KromaTiD.
- 3.2. Description of Products and Services are for identification only.
- 3.3. Orders are subject to Product and Service availability.
- 3.4. All prices are in U.S dollars and are exclusive of sales or other taxes imposed on the sale transaction. All taxes are the responsibility of the Customer, whether or not collected by KromaTiD.
- 3.5. Changes to accepted orders, including changes in pricing or scope, will be implemented through KromaTiD's change control process.
- 3.6. Orders cannot be cancelled once accepted by KromaTiD.

4. Shipping and delivery

- 4.1. Any date for delivery is an estimate only and KromaTiD will not be liable for late delivery.

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- 4.2. Unless otherwise agreed in writing, Orders shall be delivered EX Works (Incoterms 2010) KromaTiD's facilities. The Customer will be responsible for all shipping and freight costs.

5. Title to Products Sold

- 5.1. Unless otherwise specified, KromaTiD Products and Services, including any Deliverables, under this Agreement are sold for research use only.
- 5.2. Products and Deliverables will be at the Customer's risk from the time of delivery of the Product or Deliverable.

6. Customer Obligations

- 6.1. The Customer will, in addition to any other obligations set out in this Agreement: (a) satisfy itself that the Product or Service is appropriate, adequate, and sufficient for the Customer's individual circumstances and intended use; and
 - 6.1.1. Comply with all applicable laws and regulations in relation to the purchase, import, storage, use and disposal of the Products, Deliverables, or Services.
- 6.2. The Customer's use of the Products or Services Deliverables is at its own risk and the Customer indemnifies KromaTiD for all loss or damage resulting directly or indirectly from use of the Products or Deliverables, or any breach of this Agreement.

7. Warranty Period

- 7.1. Upon delivery the Customer must inspect the Products and Service Deliverables to determine:
 - 7.1.1. Short supply; or
 - 7.1.2. Defective Products or Service Deliverables; or Products or Services Deliverables that do not conform with the Order, and immediately notify KromaTiD.
 - 7.1.3. This warranty lasts from the time we ship the Products or Services Deliverable until the earlier of: (a) the Product's or "use by" date; and (b) its specified number of uses. If we do not specify the expiry date, the number of uses, or a different warranty period, the warranty will last for six (6) months from the date we ship the product. For Service and Service Deliverables our sole warranty for the performance of Work is that the Work will be performed using due care in accordance with the Custom Agreement, including the respective SOW.
- 7.2. Subject to section 7.3 and 7.4, KromaTiD will, as soon as practicable after notification, replace the Product or reperform the Service at its sole cost and expense.
- 7.3. KromaTiD will have no obligation to replace any Product or reperform any Service if:
 - 7.3.1. The Product or Deliverable is lost or damaged in transit, or rendered unusable due to delayed delivery by the Courier;
 - 7.3.2. The failure to conform to the Order is caused by the Customer providing insufficient or incorrect information in the Order.
- 7.4. Subject to section 11, KromaTiD's liability and obligation to replace any Product ceases upon expiry of the Warranty Period.

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8. How to Pay

- 8.1. KromaTiD will provide the Customer with invoices in accordance with the price and payment schedule set out in the Order.
- 8.2. Payment is due upon receipt of invoice. KromaTiD may charge a late payment fee of 1.5% interest per month upon any payments not received within 30 days of receipt of invoice. Remit to: Accounts Payable, KromaTiD, Inc., 1880 Industrial Circle, Suite A, Longmont CO 80501 or use the wiring instructions contained on the invoice.
- 8.3. Unless otherwise agreed in writing, payment for Products supplied or Services performed must be made without deduction, upon delivery of the Products or Services.

9. Confidentiality

- 9.1. All information disclosed by a party to this Agreement (i.e. KromaTiD or Customer) in connection with a Quotation, in support of a Product, or in the performance of a Service, shall be confidential information, unless such information is (i) already known to the receiving party, as evidenced by written records; (ii) independently developed or discovered by the receiving party without the use of the disclosing party's confidential information, as evidenced by written records; (iii) in the public domain, other than through the fault of the receiving party; or (iv) disclosed to the receiving party by a third party not in breach of a duty of confidentiality owed to the disclosing party. Neither party shall, without the other party's prior written consent, use the confidential information of the other party or disclose such information except (a) to provide to employees of the receiving party or its affiliated entities who require such information to perform such party's obligations under this Quotation, or (b) as required to be disclosed by law, or court or administrative order; provided that the receiving party first gives prompt written notice thereof to the disclosing party. This undertaking shall survive for 7 years following the date of this Quotation.

10. Implied Terms

- 10.1. Other than as set out in this Agreement, and to the extent permitted by law, all implied and express warranties in respect of the Products and Services are hereby excluded.

11. Liability

- 11.1. KromaTiD will only be liable to the Customer:
 - 11.1.1. Where the law implies a term into this Agreement which cannot be excluded and KromaTiD breaches that term. However, in all other cases KromaTiD's liability is limited, at its option, to replacing, repairing or re-supplying the relevant goods or re-performing the relevant services; and/or
 - 11.1.2. If the claim arises from or in connection with any breach of this Agreement or fraud by KromaTiD but subject always to sections 11.2 and 11.3.
- 11.2. Subject to section 11.1, and except to the extent that liability cannot be excluded, KromaTiD's liability to the Customer for claims arising out of or in connection with this Agreement whether arising in tort (including negligence), indemnity, strict liability, breach of warranty or statute is limited to the amount paid for the Product or Service for which liability has arisen.

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- 11.3. In no event will KromaTiD be liable to the Customer for loss of use, production, profit, revenue, business, contract, or anticipated savings, for delay, for any financing costs, for increase in operating costs, for any economic loss, or for any indirect or consequential loss or damage.
- 11.4. For the purposes of this section 11, the term KromaTiD will mean KromaTiD, its officers, employees, contractors and agents, whether individually or collectively.
- 11.5. This section 11 will survive the expiration or termination of this Agreement.

12. Intellectual Property

- 12.1. For purposes hereof, "Customer IP" means all inventions, discoveries, improvements, data, know how, or other results "Intellectual Property" that are owned or licensed to Customer, or developed by Customer; "KromaTiD IP" means all Intellectual Property owned or licensed to KromaTiD, or developed by KromaTiD.
- 12.1. No right to Customer IP is granted to KromaTiD under this Agreement except for use in performing a SOW under an Order for Services. No right to KromaTiD IP is granted to Customer except for use of Products or Deliverables for Customer's internal research purposes. The research use limitation, however, shall not preclude Customer's use of (i) Deliverables in their lawful research and development of commercial products or services, provided that such product or service does not require the practice of KromaTiD Intellectual Property, or (ii) any data Deliverable for the regulatory approval of Customer's products or services. For the sake of clarity, no rights to KromaTiD intellectual Property are provided herein for Customer's commercial products or services.
- 12.2. KromaTiD IP includes as representative examples, but is not limited to, the directional Genomic Hybridization technology, which also includes Pinpoint FISH, buffer, or reagent compositions, bioinformatic design algorithms, and detailed sequence information and modifications of any probes designed under the Agreement, whether or not for unique Customer-supplied target sequences. KromaTiD IP further includes any methods that it uses to perform a Service or to manufacture a Product. Customer IP includes any materials provided by Customer at the specific request of KromaTiD to perform a Service that were not KromaTiD IP before receipt by KromaTiD.
- 12.3. Customer will not reverse engineer, disassemble or otherwise attempt to derive the composition, techniques, processes, algorithms, know-how or other proprietary information of the Product(s), Service(s), or Deliverable(s) provided or performed under an Agreement (collectively, "Reverse Engineering") or permit or induce any third party to Reverse Engineer any KromaTiD Product(s), Service(s), or Deliverable(s).

13. Use of Customer Name

- 13.1. KromaTiD may place or disseminate advertising and promotional material using Customer name without the prior written approval of the Customer.

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14. Miscellaneous

- 14.1. Force Majeure: Neither party will be liable for any failure to perform or for delay in performance resulting from any cause beyond its reasonable control, including without limitation acts of God, fires, floods or weather, strikes or lockouts, factory shutdowns, embargoes, wars, hostilities or riots, or shortages in transportation. If the cause continues unabated for 90 days, then both parties shall meet to discuss and negotiate in good faith what modifications to this Agreement should result from such cause.
- 14.2. Precedence: In the event of any conflict between an Order and these terms and conditions these terms and condition will prevail to the extent of the inconsistency.
- 14.3. Severance: A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.
- 14.4. Sub-contract: KromaTiD may sub-contract the performance of any part of its obligations under this Agreement to third parties.
- 14.5. Governing law: This Agreement is governed by the laws of the State of Delaware and each part submits to the exclusive jurisdiction of the federal and state courts in that state.

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