

# Terms of sale

- 1. General. Entire Agreement.** The sale of product(s) by ProteinSimple ("Seller") to the party receiving the products("Buyer") shall be governed by these terms and conditions. Seller's offer to sell the Products to Buyer is expressly limited to Buyer's acceptance to these terms and conditions. Any of the following constitutes Buyer's unqualified acceptance of these terms and conditions: (i) Issuance or assignment of a purchase order for the Products, (ii) Acceptance of any Product under the purchase order, or (iii) Payment for any of the Products under the purchase order. Additional or different terms or conditions proposed by Buyer (including any additional or different terms provided in a purchase order) shall be void and of no effect unless specifically accepted in writing by Seller. Any resulting purchase order shall be the exclusive agreement between the parties for the Products, subject to the terms and conditions herein. Any prior or contemporaneous understandings, agreements, and representations, oral or written, are superseded by these terms and conditions. No modification to these terms and conditions shall be valid unless in writing and signed by Seller. Agents and sales representatives of Seller have no authority to make any representations not included herein, and any such representations should not be relied on by Buyer.
- 2. License.** Buyer acknowledges that any software programs included in the Products (the "Software") are licensed to Buyer under the terms and conditions of the click-through license agreement provided with the Software and that title to the Software (or any copies thereof) is not transferred to Buyer. As used herein, the term "sale" or "sold" in connection with the Software means sale of a license to use the Software.
- 3. Price.** Prices do not include sales, excise, use or other taxes now in effect or hereafter levied by reason of this transaction. Buyer will pay and indemnify and hold Seller harmless from all such taxes.
- 4. Payment Terms.** Payment terms are net thirty (30) days from date of invoice. Seller reserves the right to require alternative payment terms, including, without limitation, site draft, letter of credit or payment in advance. If payment is not received by the due date, a late charge will be added at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per year) or the maximum legal rate, whichever is less, to unpaid invoices from the due date thereof. If Buyer

is delinquent in paying any amount owed to Seller by more than ten (10) days, then without limiting any other rights and remedies available to Seller under the law, in equity, or under the contract, Seller may (i) suspend production, shipment and/or deliveries of any or all products purchased by Buyer, or (ii) by notice to Buyer, treat such delinquency as a repudiation by Buyer of the portion of the contract not then fully performed, whereupon Seller may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable. If Seller retains a collection agency and/or attorney to collect overdue amounts, all collection costs, including attorney's fees, shall be payable by Buyer. Buyer hereby represents to Seller that Buyer is now solvent and agrees that each acceptance of delivery of the Products sold hereunder shall constitute reaffirmation of this representation at such time.

5. **Purchase Money Security Interest.** Seller reserves a purchase money security interest in the Products in the amount of the purchase price of such Products to secure Buyer's obligations hereunder. Buyer appoints Seller as its agent and attorney-in-fact to execute any financing statements under the Uniform Commercial Code and any appropriate amendments thereto on Buyer's behalf which Seller deems necessary to protect Seller's interest in the Products.
6. **Shipment.** Seller will ship by the method it deems most advantageous. Seller may make delivery in installments and may render a separate invoice for each installment. Each installment shall be deemed a separate sale. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept delivery of remaining installments. Any delivery not in dispute shall be paid for on the due date, as provided in this contract, without any offset, regardless of controversies relating to other delivery or undelivered products.
7. **Title, Risk Of Loss, Insurance.** Unless stated otherwise by Seller, all shipments will be EXW (Ex Works) (as defined in Incoterms 2010) Seller's shipping facility, if destination of delivery is outside the United States and F.O.B. (Free on Board) (as defined in U.C.C. Section 2-319) Seller's shipping facility, if destination of delivery is within the United States. Title to each shipment of the Products sold hereunder and risk of loss thereon shall pass to Buyer when Seller or its agent tenders such shipment to the carrier, but such shipment shall remain subject to Seller's rights of stoppage in transit and of reclamation.
8. **Acceptance.** Buyer or Buyer's agent may inspect the Products at Seller's place of manufacture. Buyer shall accept any tender of the Products by Seller which substantially conforms to the description of the Products set forth herein. Buyer

shall be deemed to have irrevocably accepted any Product and, subject to Section 12, Buyer's right to reject such Product shall cease, unless Buyer gives to Seller notice of rejection in writing: (a) in the case of defects discoverable through inspection, within ten (10) days after delivery to the destination specified in Buyer's purchase order or (b) in the case of defects not discoverable through inspection, within twenty (20) days after delivery to the destination specified in Buyer's purchase order. Buyer's notice must specify the nature and grounds of the rejection in reasonable detail. In the event of a Seller approved return of a Product to the Seller due to no fault of the Seller, Buyer shall be assessed a 15% restocking fee. Buyer's right to inspect and reject any defective product as described in this Section 8 does not apply to any service parts.

9. **Force Majeure.** Seller shall not be liable, directly or indirectly, for any delay or failure in performance of any obligation under this contract, including any delivery obligation, where such delay or failure arises or results from a cause beyond Seller's reasonable control, or beyond the reasonable control of Seller's suppliers or contractors, including, but not limited to strike, boycott or other labor disputes, embargo, governmental regulation, inability or delay in obtaining materials, acts of God, war, earthquake, fire, or flood. In the event of such force majeure, the time for delivery or other performance will be extended for a period equal to the duration of the delay caused thereby, provided that Seller notifies Buyer of the nature and duration of such force majeure event.
10. **Limitation of Liability.** IN NO EVENT WILL SELLER BE RESPONSIBLE OR LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOST PROFITS, OR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR CONTINGENT DAMAGES ARISING FROM OR RELATING TO THIS CONTRACT, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS CONTRACT, INCLUDING FOR ANY LIABILITY ON ACCOUNT OF A CLAIMED DEFECT IN ANY PRODUCT DELIVERED BY SELLER, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCT PAID BY BUYER ON WHICH THE CLAIM IS BASED.
11. **Choice Of Law, Venue, and Attorney's Fees.** This contract is made in, governed by, and shall be construed in accordance with the laws of the State of California, without regard to any conflicts of law principles that would result in application of laws of any other jurisdiction. The United Nations Convention on Contracts for the

International Sale of Goods does not apply to this contract. Any legal action or other legal proceeding relating to this contract or the enforcement of any provision of this contract must be brought in any state or federal court located in Santa Clara county, California. Buyer and Seller expressly and irrevocably consents and submits to the jurisdiction of such courts. The prevailing party in any legal action brought by one party against the other shall be entitled, in addition to any rights and remedies it may have, to reimbursement for its expenses incurred thereby, including court costs and reasonable attorney's fees.

12. **Instrument Warranty.** Seller warrants that the instrument purchased from Seller (the "Instrument") will be free from defects in materials and workmanship during the applicable warranty period, provided that the Instrument has been operated at all times in accordance with the instruction manual and user guide by or under the direct supervision of a certified operator who has attended Seller's training course for the Instrument. The warranty period for the Instrument terminates twelve (12) months after date of shipment.
13. **Service Parts Warranty.** Seller warrants that the service parts purchased from Seller will be free of defects in materials and workmanship, only if such parts are installed by Seller Representative. The warranty period for the service parts are the greater of (i) the remaining warranty period of the Instrument, or (ii) ninety (90) days from the date of installation of the service part.
14. **Warranty Exclusion.** The warranties provided above and the remedies provided below will not apply to any Product if: (i) Seller determines that a problem is caused by accident, abuse, misuse, negligence, misapplication, fire, earthquake, flood, other force majeure event, failure of electrical power, the use of unauthorized parts or reagents, or unauthorized repairs or modifications; (ii) Seller determines that a problem is caused during or as a result of shipment or relocation; (iii) Seller's serial number has been removed or defaced from the Product; or (iv) a problem arises from or is based on Seller's compliance with Buyer's specifications. For any breach of the warranties, Seller will, at its own expense and option, and as its sole obligation, and as Buyer's exclusive remedy, (a) repair or replace any defective Product if Buyer notifies Seller during the applicable warranty period and Seller determines that the Product is defective and is covered by the warranty; or (b) if Seller determines that it is unable to repair or replace the defective Product, refund the purchase price paid by Buyer for the defective Product. Seller is not required to repair, replace or refund any defective Product if Buyer has not returned a signed clearance certification provided by Seller, which requires Buyer to certify that the

Product has been appropriately decontaminated and cleaned and is safe for handling by Seller personnel. The warranty period for the repaired or replaced Product will not exceed the warranty period for the defective Product. The warranty period for any replacement parts, which may be new or reconditioned at Seller's sole discretion, will not exceed the warranty period for the defective Product.

15. **Warranty Disclaimer.** THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE PRODUCTS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

16. **Additional Disclaimer.** Any sample or model used in connection with this contract is for illustrative purposes only, is not part of the basis of the bargain, and is not to be construed as a warranty that the Products will conform to the sample or model. No affirmation of fact or promise made by Seller, whether or not in this contract, shall constitute a warranty that the Products will conform to the affirmation or the promise.

17. **Assignment.** This contract and Buyer's rights hereunder may not be assigned to any third party by Buyer except with the prior written approval of Seller. Any assignment of this contract or any rights hereunder in violation of this Section will be null and void.

18. **Waiver.** Waiver by Seller of any provision of this contract or breach by Buyer on any provision of this contract shall not be deemed a waiver of future compliance with this contract, and such provision, as well as all other provisions of this contract, shall remain in full force and effect.

19. **Compliance with Law.**

- A. Buyer agrees to comply with all applicable foreign, U.S., state, and local laws, rules, and regulations relating to this contract and the Products including the laws, rules, and regulations of the United States which restrict the export and re-export of commodities and technical data of United States origin, including the Products.
- B. Furthermore, Buyer shall not resell any Product, and Seller shall have no obligation to sell any Product to Buyer, to or for use of any ultimate purchaser with which Seller could not deal under the laws and regulations of the United States, including, without limitation, the regulations of the United States

Departments of Commerce, Defense, State and Treasury, and specifically the Federal Corruption Practices Act (FCPA). Buyer further agrees to immediately transmit to Seller any information which may come to its attention concerning violation of such regulations by Buyer's customers.

- C. Buyer will defend, indemnify, and hold harmless Seller from and against any violation of any laws, rules or regulations by Buyer or any of its agents, officers, directors, or employees in violation of this Section.

Updated: March 24, 2014