

Terms and Conditions for the Sale and Supply of Goods and Services ("Conditions")



1. INTERPRETATION

For the purposes of these Terms and Conditions of Sale and Supply ("Conditions"):

- "Buyer" the person, firm or company which places an order for purchase of Products and/or Services as identified in any such order or Quotation as the case may be.
- "Conditions" these terms and conditions of sale and supply as from time to time varied by Supplier.
- "Contract" the agreement between Supplier and Buyer arising as a result of Buyer's submission of an order for Supplier's Products and Supplier's written acceptance and/or, in the case of Services, an agreement between such parties for the provision of Services by Supplier, as initiated by a Quotation. Such Contract shall be deemed to incorporate and be governed by these Conditions.
- "Products" goods as agreed to be supplied by Supplier to Buyer under any Contract including, Software if any.
- "Quotation" a document provided by Supplier describing Products and/or Services offered to Buyer, subject to these Conditions.
- "Services" means any services which Supplier has agreed to provide using reasonable care and skill under any Quotation or Contract, as applicable.
- "Supplier" Malvern Panalytical B.V. or any of its Affiliates as named in any Quotation. In this context, an "Affiliate" means any other entity directly or indirectly controlled by Spectris Plc.

2. BASIS OF SALE

THESE CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN BUYER'S ORDER.

No term or condition of Buyer's order additional to or different from these Conditions shall become part of any Contract unless explicitly agreed to in writing by Supplier. Retention by Buyer of any Products delivered by Supplier, receipt by Buyer of any Services performed by Supplier or payment by Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Conditions. Supplier's failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Conditions nor as an acceptance of any such provision.

3. QUOTATIONS

Prices, specifications and delivery date referenced in Supplier's Quotations are for information only and shall not be binding on Supplier until all technical requirements have been agreed and Supplier has accepted Buyer's order. Quotations terminate if Buyer does not place an order with Supplier within any express period indicated by Supplier or after 60 days, whichever comes first.

4. ORDERS

By submitting an order to Supplier, Buyer agrees to be subject to these Conditions in their entirety. No order, whether or not

submitted in response to a quotation by Supplier, shall be binding upon Supplier until accepted in writing by Supplier.

5. PRICES AND TAXES

The prices for Products and Services will be as set out in the Quotation or as otherwise agreed between the parties in writing. As and when applicable to the Products sold and/or Services supplied under any Contract, prices do not include taxes, transport charges, insurance and export and/or import charges or duties, including without limitation sales, value added tax, use or excise taxes, which taxes and other charges may, in Supplier's discretion, be added by Supplier to the price or billed separately and which taxes and other charges shall be paid by Buyer unless Buyer provides Supplier with any necessary tax exemption certificate. Buyer shall pay for taxes, transport charges, insurance, export/import charges and duties unless agreed otherwise in writing.

6. SHIPMENT AND DELIVERY

- 6.1 Unless otherwise agreed by both parties in writing, Supplier shall arrange for delivery of Products Free Carrier (FCA Incoterms 2010) to Supplier's manufacturing facility (or an (international) airport close to Supplier's manufacturing facility) as agreed between the parties. Any dates quoted or agreed for delivery of Products or provision of Services are approximate only and Supplier shall not be liable for any delay howsoever caused and time is not of the essence.
- 6.2 Supplier reserves the right to make delivery of Products and provision of Services by instalments and to issue a separate invoice in respect of each instalment. When delivery is to be by instalments or Supplier exercises its right to deliver by instalments or if there is delay in the delivery of any one or more instalments for whatever reason Buyer shall not be entitled to treat the Contract as a whole as repudiated.

7. RISK AND PASSING OF TITLE

Title to, and risk of loss and damage to the Products shall pass to Buyer on delivery in accordance with Section 6 unless agreed otherwise by the parties in writing. Any claims for loss, damage or misdelivery shall be filed with the carrier and notified to Supplier within 5 days of the date of delivery. If installation is a requirement of the Contract and such installation is delayed by more than 90 days from the agreed delivery date for reasons not attributable to Supplier, then, to the extent allowed by applicable law, the Products shall be deemed accepted and Supplier shall be entitled to invoice the remaining balance of the Contract in full. Invoicing the remaining balance does not relieve Supplier from its installation obligations in accordance with the applicable term in the Contract.

8. SERVICES

- 8.1 Supplier shall provide Services in accordance with these Conditions and the terms of the relevant Contract.
- 8.2 Buyer shall, upon Supplier's reasonable request and otherwise as required, provide Supplier with all necessary information and materials to enable Supplier to provide Services in accordance with the terms of any relevant contract. Buyer will be responsible for the completeness and accuracy of all such information and materials provided, and will ensure that it is

and remains entitled to provide the same to Supplier for use in connection with provision of the Services.

9. TERMS OF PAYMENT

- 9.1 Each shipment of Products shall be a separate transaction and Buyer will be invoiced on delivery. Notwithstanding the foregoing, if the Products are to be installed by Supplier or a third party acting on its behalf, Buyer may (at Supplier's discretion) be invoiced in accordance with the following payment scheme:
- 60% of the price upon Buyer's receipt of Supplier's order confirmation;
 - 30% of the price upon delivery of the Products in accordance with Section 6;
 - 10% of the price after acceptance of the Products in accordance with Section 11.
- 9.2 In the event of a delay in the delivery or acceptance that is not attributable to Supplier, the payment scheme shall not be affected and Buyer shall pay the installments based upon the initially agreed upon delivery or acceptance date.
- 9.3 Supplier shall be entitled to invoice Buyer, in respect of Services, yearly or monthly in advance. Terms of payment shall be net thirty (30) days from date of invoice for Products and Services unless agreed otherwise.
- 9.4 All amounts due under a Contract shall be paid in full by Buyer without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law.
- 9.5 Supplier may, in its sole discretion, determine at any time that Buyer's financial condition requires full or partial payment in advance or the provision of security for payment by Buyer in a form satisfactory to Supplier.
- 9.6 If Buyer fails to make any payment when due then, without prejudice to any other rights and remedies available to Supplier, Supplier shall (at its option) be entitled: (i) to treat the Contract as repudiated by Buyer, to suspend or cancel further delivery of Products and/or the provision of Services or any part thereof under that Contract or any other Contract between them and claim damages and/or receive reasonable cancellation fees; (ii) to affirm the Contract and claim damages from Buyer; and (iii) to recover, in addition to the payment, compensation of the statutory interest (as it applies to trade agreements) with respect to the outstanding amount, until payment in full is made. Such interest shall be calculated daily.

10. PRODUCTS

- 10.1 Supplier may modify specifications provided the modifications do not adversely affect the performance of the Products. In addition, Supplier may furnish suitable substitutes for materials used.
- 10.2 All descriptions, illustrations and any other information relating to the Products contained in Supplier's catalogues, brochures, price lists, advertising material and any sales or other particulars or literature are made by way of general description, are approximate only and for the general guidance and information of Buyer. They shall not constitute warranties or

representations by Supplier nor shall they form part of any Contract.

11. INSTALLATION AND MAINTENANCE OF THE PRODUCTS

- 11.1 In the event of installation of the Products or the provision of maintenance, the following conditions shall apply and Supplier's price and provision of installation or maintenance are subject to the fulfilment of the following conditions at the expense and responsibility of Buyer:
- i. safe and secure climate controlled on-site storage so that Products and Supplier's tools (as applicable) are protected against theft and any damage or deterioration; any item lost or damaged during the storage period shall be repaired or replaced at Buyer's sole expense;
 - ii. the timely and sufficient execution and completion of the preparatory works in accordance with all applicable safety, electrical and building codes as well as with Supplier's requirements;
 - iii. the availability of Buyer's site to Supplier without obstacles in due time to enable Supplier to start installation or maintenance at the scheduled date;
 - iv. the availability of the manpower and equipment necessary to place the Products in their final location or to provide the scheduled maintenance;
 - v. the acquisition of all permits, licenses, rights of way, etc. of the pertinent authorities required for or in connection with installation or maintenance to be performed; and
 - vi. the availability of all visas or any other permits necessary for Supplier's personnel and for the import and export of tools, equipment, and materials necessary for installation or maintenance to be performed.
- 11.2 In case any or all of the above conditions are not, not properly or not timely complied with, or Supplier has to interrupt its installation or maintenance works, subsequent testing for reasons not attributable to Supplier, the period of completion shall be extended accordingly and any and all additional costs resulting therefrom shall be for Buyer's account.
- 11.3 Supplier neither assumes liability nor offers any warranty for the fitness or adequacy of the premises or the utilities available at the premises in which the Products are to be installed, used or stored.

12. ACCEPTANCE OF INSTALLATION

- 12.1 In case of installation of the Products, Supplier shall notify Buyer when the Products installed will be ready for testing and acceptance, inviting Buyer to attend Supplier's standard tests or such tests as may have been agreed upon in the Contract to demonstrate compliance with the agreed specifications and/or to inspect the installation work.
- 12.2 If Buyer fails to attend the testing on the date notified, Supplier will commence with the tests according to Supplier's standard test procedures and these tests shall be considered performed in the presence of Buyer and acceptance shall in such case take place on the basis of the results stated in the test certificate signed by Supplier.

- 12.3 In case Buyer rejects the Products installed it should submit to Supplier the reasons for such rejection in detail and in writing within 10 days after completion of the acceptance tests concerned. If, within Supplier's reasonable opinion, the rejection is justified, Supplier shall as a sole remedy correct the shortcomings as soon as possible and the relevant parts of the acceptance test shall be repeated within a reasonable period of time in conformity with the procedures outlined above.
- 12.4 Upon acceptance of the Products, Buyer will sign the acceptance certificate. If within 10 days after completion of the acceptance test Supplier shall not have received the acceptance certificate signed by Buyer or a report with a justified rejection, the Products installed shall then be considered as having been accepted by Buyer.
- 12.5 Minor defects or deviations not affecting the operational use of the Products installed shall be stated in the acceptance certificate, but shall not obstruct or suspend acceptance. Supplier undertakes to remedy such defects as soon as reasonably possible.

13. WARRANTIES

- 13.1 Supplier warrants that all Products shall be free from defects in material and workmanship under normal use for a period of (twelve) 12 months from delivery. In the event of installation this warranty period shall be for (twelve) 12 months from installation or eighteen (18) months from dispatch, whichever comes first, save that Supplier does not warrant that operation of the Software (defined in Section 15) will be uninterrupted or error free or that all program errors will be corrected. This warranty does not include any consumables such as filaments, lamps, fuses or other parts, which fail as a result of normal usage. Buyer shall be responsible for determining that the Product is suitable for Buyer's use and that such use complies with any applicable law. Provided that Buyer notifies Supplier in writing of any claimed defect in the Product immediately upon discovery and any such Product is returned at Buyer's risk to Supplier, transportation charges prepaid, within the warranty period in accordance with Section 13.1 and upon examination Supplier determines to its satisfaction, after a reasonable period to inspect such Products, that such Product is defective in material or workmanship, Supplier shall, at its option, repair or replace the Products, shipment to Buyer prepaid.
- 13.2 Supplier shall have a reasonable time to make such repairs or to replace such Product. Any repair or replacement of Products shall not extend the period of warranty. The warranty is limited to a period in accordance with Section 13.1, without regard to whether any claimed defects were discoverable or latent on delivery.
- 13.3 Supplier shall not be liable for any breach of the warranty or payment of damages in respect of Products supplied if: (i) Buyer makes further use of such Products after giving the notice required in Section 13.1; (ii) the defect or failure arises from Buyer's own fault; (iii) the defect arises from any drawing, design or specification supplied by Buyer or from other materials or other property supplied by Buyer or from any parts or items that have not been completely manufactured by Supplier; (iv) the defect arises other than out of manufacture, including without limitation improper installation, misuse by

Buyer or a third party, neglect or accident; (v) the defect arises out of the use of the Products in conjunction with products or materials not reasonably contemplated by Supplier; (vi) the failure or defect results from Buyer's unauthorised addition to or modification of, or failure to comply with Supplier's written instructions relating to, the Products or Services; and (vii) the failure or defect arises out of any breach by Buyer of its obligations to provide information to Supplier under these Conditions or Contract.

- 13.4 If Buyer fails to pay when due any portion of any payment due from Buyer to Supplier under a Contract or otherwise, all warranties and remedies granted under this Section may, at Supplier's option, be terminated.
- 13.5 The foregoing warranties are exclusive and exclude all other warranties, terms and conditions, express or implied by statute or otherwise, to the extent permitted by law, including without limitation warranties of quality or fitness for a particular purpose. Supplier's sole and exclusive liability, and Buyer's sole and exclusive remedy for breach of the warranties in this Section 13 shall be as set forth in Section 13.1.

14. LIABILITY

- 14.1 Nothing in these Conditions or Contract shall exclude or limit Supplier's liability for fraud or death or personal injury caused by its negligence or any other liability to the extent that the same may not be excluded or limited as a matter of law.
- 14.2 Supplier shall be liable to Buyer for loss of or damage to the physical property of Buyer caused by Supplier's intentional or grossly negligent damage to such property. For the avoidance of doubt, neither damage to nor loss or corruption of data shall constitute loss of or damage to physical property.
- 14.3 Subject to Sections 14.1 and 14.2, in relation to Products, Supplier's maximum aggregate liability under or arising out of any Contract, whether arising in contract, tort (including negligence) or otherwise, shall in no event exceed 100 % of the total amount payable by Buyer in respect of Products under that Contract.
- 14.4 Subject to Section 14.1 and 14.2 in relation to Services, Supplier's maximum aggregate liability under or in connection with the supply, non-supply or purported supply of Services under any Contract, whether arising in contract, tort (including negligence) or otherwise, shall in no event exceed 100% of the total amount payable by Buyer in respect of Services under that Contract and in respect of Services continuing beyond one year, shall in no event exceed in any year 100% of the total amount payable by Buyer in respect of Services in that year.
- 14.5 Subject to Section 14.1, Supplier shall be under no liability to Buyer for any loss of profit, loss of income, loss of use, loss of business, loss of revenue, loss of goodwill, or for any indirect or consequential loss or damage of any kind, in each case, howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in tort (including negligence), contract or otherwise.
- 14.6 Any claim arising out of or in connection with a Contract must be commenced against Supplier within one year from the date upon which Buyer became aware of or should have become aware of Supplier's infringement of Buyer's rights, unless otherwise specified under applicable law.

15. SOFTWARE

Supplier or its suppliers (as the case may be) shall at all times have and retain title and full ownership of all software, firmware, programming routines, and documentation relating to such software supplied by Supplier for use with the Products, and of all copies made by Buyer or the end user of the Products (collectively "Software"). A non-exclusive, non-transferable and non-sublicensable licence to use such Software will be granted to the end user solely for use with the Products.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Notwithstanding delivery of and the passing of title in any Products and subject to section 15 and 16.3, nothing in these Conditions or any Contract shall have the effect of granting or transferring to, or vesting in, Buyer any intellectual property rights in or to any Products and/or Services.
- 16.2 Buyer acknowledges and agrees that all property, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by Supplier under or in the course of provision of any Services (the "Works"), wherever in the world enforceable, including without limitations all right title and interest in and to the Services and all documents, data, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, scripts and other items relating thereto shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of Supplier and Buyer shall acquire no right, title or interest in or to the same except as expressly stated in these Conditions.
- 16.3 The Supplier grants to the Buyer a non-exclusive, non-transferable and non-sublicensable licence to use such of the Works as are necessary, and to the extent necessary, for the end user to obtain and utilise the intended benefit of the Services.
- 16.4 If any claim is made against Buyer that the Products or Services infringe the patent, copyright or other intellectual property rights of any third party, Supplier shall indemnify Buyer against all losses, damages, costs and expenses awarded against, or incurred by, Buyer in connection with the claim or paid, or agreed to be paid, by Buyer in settlement of the claim provided that: (i) Supplier is given full control of any proceedings or negotiations in connection with any such claim; (ii) Buyer shall not make any admission of liability and shall give Supplier all reasonable assistance for the purposes of any such proceedings or negotiations; (iii) except pursuant to a final award, Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of Supplier; (iv) Buyer shall do nothing which would or might vitiate any insurance policy or cover which Buyer may have in relation to such infringement and shall use its best endeavours to recover any sums due thereunder and this indemnity shall not apply to the extent that Buyer recovers any sums under any such policy or cover; (v) Supplier shall be entitled to the benefit of, and Buyer shall accordingly account to Supplier for, all damages and costs (if any) awarded in favour of Buyer which are payable by, or agreed with the consent of Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and (vi) without prejudice to any duty of

Buyer, Supplier shall be entitled to require Buyer to take such steps as Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which Supplier is liable to indemnify Buyer under this section 16.4, which steps may include (at Supplier's option) terminating use of the Product or Service, accepting from Supplier non-infringing, modified or replacement Products or Services.

- 16.5 Supplier shall have no obligation or liability under Section 16.4 insofar as the infringement arises from: (i) any additions or modifications made to the Products and/or Services in question, otherwise than by Supplier or with its prior written consent; (ii) any information provided by Buyer to Supplier including without limitation any specification; (iii) performance by Supplier of any work required to any Products, or performance of any Services, in compliance with Buyer's requirements or specification; (iv) a combination with or an addition to equipment not manufactured or developed by Supplier; or (v) the use of Products beyond that scope established by Supplier or approved in writing by Supplier.
- 16.6 Without prejudice to Section 14.1, this Section 16 states the entire liability of Supplier and the exclusive remedy of Buyer with respect to any alleged infringement of intellectual property rights belonging to a third party arising out of or in connection with the performance of any Contract. This Section 16 shall be subject to the limits of liability in Sections 14.2.

17. FORCE MAJEURE

Notwithstanding anything to the contrary in these Conditions, Supplier shall not be liable to Buyer for any loss or damage which may be suffered by Buyer as a direct or indirect result of the supply of Products or Services being prevented, delayed or rendered uneconomic by reason of circumstances or events beyond Supplier's reasonable control. If due to such circumstances or events Supplier has insufficient stocks to meet all its commitments Supplier may apportion available stocks between its customers at its sole discretion.

18. CONFIDENTIAL INFORMATION

Each party undertakes to keep confidential, not use for its own purposes outside the agreed scope and not without the prior written consent of the other party disclose to any third party, any information of a confidential nature belonging or relating to the other party which may become known to it unless such information is or becomes public knowledge (other than by breach of this Section) or is required to be disclosed by order of a competent authority.

19. CANCELLATION, RESCHEDULING AND TERMINATION

- 19.1 Orders for Products accepted by Supplier may be cancelled or rescheduled by Buyer only with the written consent of Supplier (which consent Supplier may withhold for any reason) and Buyer shall indemnify Supplier against the cost of all labour and materials used in connection with the order so cancelled or varied and against all loss, damage cost, charges and expenses suffered or incurred by Supplier as a result of that cancellation or variation. Contracts for Services shall commence on the commencement date identified in the relevant Contract and, subject to earlier termination in accordance with Section 19.2, shall continue in force for the initial term as prescribed in such

Contract and thereafter for any renewal period (if any) set out in the Contract and thereafter without limit of period unless or until terminated by either party in accordance with 19.2.

- 19.2 Either party may terminate a Contract for Services immediately at any time by written notice to the other party if the other party commits a material breach of the Contract for Services which is incapable of remedy or which fails to be remedied. Notwithstanding the foregoing, either party may terminate a Contract for Services by giving ninety (90) days written notice to the other party.
- 19.3 Upon termination or expiry of any Contract, for Services, each party shall except to the extent permitted or required to exercise or perform its continuing rights, or obligations hereunder, return to the other party all property of the other party then in its possession, custody or control and shall not retain any copies of the same.
- 19.4 Termination of any Contract in accordance with these Conditions shall not affect the accrued rights or liabilities of the parties at the date of termination.

20. INSOLVENCY OF BUYER

If: (i) Buyer becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or carries out or undergoes any analogous act or proceedings under an applicable foreign law; or (ii) Buyer ceases, or threatens to cease to carry on business then, without prejudice to any other right or remedy available to Supplier, Supplier may treat any Contract as repudiated and/or withhold any further supply of Products and/or Services without any liability to Buyer and, if any Products and/or Services have been supplied but not paid for, the price or fees shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

21. EXPORT CONTROL

- 21.1 Buyer understands that where Supplier's obligations under the Contract to supply any Products or Services are subject to governmental export control laws and regulations, the performance of this Contract and Buyer's use or export of any Products delivered by Supplier shall be conditional upon the grant of all necessary permits or licences. Buyer shall provide all information and documentation, including where necessary end user certification, not in Supplier's possession and required by the relevant application procedure to enable Supplier to make the necessary applications for permits or licences required for deliveries to Buyer. Supplier shall be relieved from its obligations to Buyer to supply any Products or Services to the extent that applications for permits or licenses for the same are refused by a relevant governmental authority. To the fullest extent permitted by law, Buyer shall have no right to claim compensation for damages, loss of business or otherwise arising from such a refusal or Contract termination.

- 21.2 Buyer shall not, directly or indirectly, sell, provide access to, export, re-export, transfer, divert, loan, lease, consign, tranship (including stop in port), transport, or otherwise dispose of any Supplier's Product, material, Software (including source code) or technology to, via, or for: (i) any entity known to be headquartered in, or owned or controlled by a national of, any country or region subject to comprehensive sanctions at any time; (ii) any other individual or entity identified on a denied or restricted party list; or (iii) any activity or end-use restricted by applicable laws without first obtaining all required government authorisations.
- 21.3 Supplier shall have the right, at its option, to suspend performance under or terminate any Contract if: (i) applicable comprehensive sanctions are imposed; (ii) the Buyer is designated as or determined to be a denied or restricted party under applicable law; or (iii) where the Supplier's obligations under these Conditions or any Contract to supply items or Services are subject to governmental export control laws and regulations, the performance of any Contract and Buyer's use or export of any item delivered by Supplier shall be conditional upon the grant of all necessary permits or licences.

22. GENERAL

- 22.1 These Conditions and any Contract shall be governed by the laws of the Netherlands. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Conditions. The parties shall agree to settle any claims or disputes arising out of or in connection with these Conditions or any Contract by amicable negotiations. If no settlement can be reached through negotiations within sixty (60) days after either party has served written notice to the other requesting such negotiations, then the dispute shall be submitted to the exclusive jurisdiction of the courts in the Netherlands, but Supplier shall be entitled to bring a claim against Buyer in court of competent jurisdiction.
- 22.2 Failure by Supplier to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right.
- 22.3 If any Conditions are found to be invalid, this shall not affect the rest of the Contract, which shall remain in full force and effect.
- 22.4 Buyer may not assign, transfer, novate or otherwise dispose of all or any of its rights or obligations, in whole or in part without the written consent of Supplier.
- 22.5 These Conditions constitutes the entire agreement and supersedes any prior agreement, understanding, representations or arrangements between the parties with respect to its subject matter.
- 22.6 Variation to any Contract must be in writing and signed by the parties.
- 22.7 All notices given under these Conditions shall be sent to the address of the other party set forth in the Quotation or in Contract. Notice shall be regarded as properly given if sent in writing and shall be deemed to have been served on the next working day from delivery if sent by email or fax, and on the day of receipt if sent by express courier or by registered mail.

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