

Terms and Conditions for Sale of Equipment and/or Provision of Services

1. Any contract of sale, service agreement or quotation made or accepted by or on behalf of Applied Biosystems in respect of equipment will be subject to these terms and conditions.
 2. Any quotation made by Applied Biosystems will not constitute an offer, but merely an invitation to treat on these terms and conditions, subject to which Applied Biosystems will be prepared to consider an offer from the Customer. Such an offer will take the form of an order pursuant to the quotation and, unless expressly accepted in writing, will be deemed accepted by Applied Biosystems upon it taking steps to comply with the order. The acceptance of an order is subject to the issuance of an export licence from the relevant country of.
 3. A copy of these terms and conditions shall be provided to the Customer at the same time as the quotation is given. The Customer will be deemed to have agreed to these terms and conditions upon it placing an order pursuant to a quotation.
 4. No additions, modifications or objections to these terms and conditions are allowed unless specifically agreed to in writing by both parties. These terms and conditions are subject to the laws of the country of sale, and both parties submit to the non-exclusive jurisdiction of the courts of that country.
 5. Equipment delivery schedules are approximate only, and are based on circumstances at the time of acceptance of the order. Applied Biosystems will take all reasonable steps to ensure that delivery schedules are adhered to, and it will not be held liable for any loss or damage suffered by the Customer as a result of delay or inability to deliver which arises out of unforeseen circumstances or shortages due to its voluntary or mandatory compliance with any government act, regulation or request, or any other thing beyond Applied Biosystems reasonable control.
 6. Equipment shall be packed for shipment in the method chosen by Applied Biosystems. Title to and risk of loss or damage to equipment will pass from Applied Biosystems to the Customer or its nominated agent at the time of delivery to the Customer's nominated place of destination.
 7. The Customer will inspect the shipment for accuracy and completeness immediately upon delivery and has 5 working days from the date of delivery in which to notify Applied Biosystems in writing if the equipment does not conform to the order. If the Customer does not so notify Applied Biosystems, the Customer will be deemed to have accepted delivery of the equipment and will be bound to pay the associated invoice in accordance with Paragraph 27 below.
 8. Partial deliveries of equipment shall be accepted by the Customer and paid for in accordance with the prices in the quotation upon the maturity of the associated invoice. The Customer will remain bound by the original order and Applied Biosystems will complete same as soon as practicable.
 9. If equipment is delivered which the Customer believes does not comply with an order, the Customer will remain bound by the original order. To the extent that Applied Biosystems in its reasonable opinion agrees that any or all of the delivered equipment does not comply with the order, it will replace such non-compliant equipment as soon as practicable.
 10. Limited Warranty
 - a. Basic Warranty. Notwithstanding any other provision of these terms and conditions, Applied Biosystems warrants that the equipment corresponds with all applicable specifications, is free from defects in material and workmanship, and will remain so for a period of 12 months (or 24 months for GeneAmp PCR Systems) from the date of completion of installation (see clause 29 below), or 15 months (or 27 months for GeneAmp PCR Systems) from the date of delivery, whichever shall come first. Except as required by law, any parts not of Applied Biosystems own manufacture and incorporated into the equipment, or sold by Applied Biosystems, carry their manufacturers warranty, if any, only.
 - b. Exclusions and limitations. The Customer acknowledges that certain parts of equipment, such as, but not limited to, tubes, detectors, sources, absorption cells, and parts that come into contact with liquids or solutions, such as seals, filters and gaskets, by their nature, may not function for the basic 12 month (or 24 month for GeneAmp PCR Systems) warranty period. If such parts fail to function for a reasonable period of time, as determined by Applied Biosystems reasonable opinion, Applied Biosystems will repair or replace them at no charge to the Customer. Otherwise, such parts will be repaired or replaced at Applied Biosystems' then prevailing rates for service and parts charges.
 - c. TO THE FULL EXTENT PERMITTED BY LAW, ALL CONDITIONS, WARRANTIES AND REPRESENTATIONS IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, IN RELATION TO THE EQUIPMENT OR SERVICES PROVIDED BY APPLIED BIOSYSTEMS TO THE CUSTOMER ARE HEREBY EXCLUDED.
 11. Any warranty claim by the Customer must be in writing, containing full particulars, and submitted to Applied Biosystems within 15 days of when the cause of the claim first came to the Customer's attention. The relevant equipment must be held intact by the Customer so as to be available for inspection by Applied Biosystems staff, agents or representatives.
 12. Equipment returned to Applied Biosystems subject to a warranty claim will be accepted on the condition that should Applied Biosystems, in its reasonable opinion, reject the claim, all costs directly incurred by Applied Biosystems (including the cost of transport to and from the premises of Applied Biosystems and inspection) will be paid by the Customer.
 13. The decision to repair or replace any parts of the equipment will be made by Applied Biosystems on the basis of which approach will provide the Customer with the best service.
 14. The liability of Applied Biosystems for a breach of any express warranty in these terms and conditions, or any implied warranty, condition or representation that is not permitted by law to be excluded, is limited to (the choice of which is at the discretion of Applied Biosystems):
 - a. in the case of equipment;
 - i. replace the equipment or provide similar equipment;
 - ii. repair the equipment;
 - iii. pay to the Customer the reasonable cost of replacing the equipment or acquiring equivalent equipment; or
 - iv. pay to the Customer the reasonable cost of having the equipment repaired; or
 - v. accept return of the instrument and refund the purchase price; and
 - b. in the case of services;
 - i. provide the services again; or
 - ii. pay to the Customer the reasonable cost of having the services provided again.
 15. To the full extent permitted by law, Applied Biosystems will not be held liable for any defects in the equipment which are the result of;
 - a. Improper use or mismanagement of the equipment by the Customer;
 - b. Operation of the equipment other than in accordance with the operating manual or official user supplements and bulletins supplied by Applied Biosystems;
 - c. use of the equipment in a manner which is not reasonably contemplated by Applied Biosystems;
 - d. use of the equipment with parts or reagents which have not been approved for use by Applied Biosystems;
 - e. modification of the equipment not authorized by Applied Biosystems;
 - f. subjection of the equipment to unusual or unrecommended physical, environmental or electrical stress;
 - g. reinstallation or moving of the equipment by a person other than Applied Biosystems or an approved third party;
 - h. the Customer's failure to comply with any of these terms and conditions; or
 - i. the Customer's failure or refusal to install engineering changes or enhancements to the equipment if recommended by Applied Biosystems.
16. Notwithstanding any other provision of these terms and conditions, to the full extent permitted by law, Applied Biosystems will not be liable to the Customer for any indirect, consequential, incidental, punitive or special loss (including, without limitation, loss of profits, business, interest or anticipated savings) howsoever arising and whether or not caused by the negligence of Applied Biosystems, its employees, agents or contractors.
 17. Applied Biosystems retains ownership of all dies, tools and fixtures, whether mechanical, electrical, electronic or optical in nature, which are created for the purposes of providing equipment or services to the Customer. Further, Applied Biosystems retains ownership of all intellectual property rights to such dies, tools and fixtures and any equipment provided to the Customer which is of Applied Biosystems' own manufacture.
 18. The Customer hereby indemnifies Applied Biosystems from and against all loss or damage suffered by it as a result of any claim for infringement of third party intellectual property rights in equipment manufactured, either in whole or part, by Applied Biosystems to the Customer's specifications.
 19. Applied Biosystems will use reasonable efforts under the circumstances to provide services as soon as practicable. The services will be scheduled at a time mutually agreed upon by the Customer and Applied Biosystems. Unless otherwise agreed, services will be provided during normal business hours (i.e. 9.00am to 6.00pm, Monday to Friday, excluding public holidays).
 20. After installation and during the warranty period, any repair or service performed on the equipment which does not relate to a proven defect in material or workmanship, such as realignment, readjustment, recleaning or recalibration, will be carried out at the Customer's expense at Applied Biosystems' then prevailing rates for service.
 21. Responsibility for warranty, installation, commissioning, training and technical support for designated third-party supplied equipment listed in a quotation will be undertaken by the supplier of such equipment. Applied Biosystems cannot be held responsible for warranty, installation, commissioning, training and technical support for such designated third-party supplied equipment.
 22. Where a quotation for the provision of services, such as a Service Agreement or similar, specifies a fixed period of time during which such services will be provided, either party may terminate the provision of these services before the expiry of the fixed period by giving at least 30 days written notice. Such termination will be effective 30 days after the receipt of such notice, or at a later date if one is so specified in the notice ("Termination Date"). Termination cannot be made effective prior to 30 days after the notice is received. Applied Biosystems will cease performance of the relevant services on the Termination Date unless the Customer specifies an alternative earlier date in writing ("Cessation Date"). In that event, Applied Biosystems will cease performance of the relevant services on the Cessation Date.
 23. In the event of termination under clause 22, Applied Biosystems will calculate, in its reasonable opinion, the total price of services actually performed and expenses actually and reasonably incurred in providing the relevant services up to the Termination Date. The Customer's total payment obligation to Applied Biosystems will equal:
 - a. The amount so calculated; or
 - b. The prorated price of providing the services up to the Termination Date, whichever is greater.
 24. Any payments made by the Customer to Applied Biosystems in excess of the amount derived under clause 23 shall be credited to the Customer's account within 30 days of the Termination Date or Cessation Date as the case may be. Any unpaid portion of this amount will be due within 30 days upon the Customer's receipt of an invoice from Applied Biosystems.
 25. The Customer is ultimately responsible for the payment of all taxes that may be assessed or levied on or on account of any equipment, parts or services provided to the Customer. Prices are subject to change due to any Federal or State laws taxing raw or processed materials or governing the working hours or compensation of labour.
 26. Package prices listed on quotations are only applicable on the purchase of all itemized part numbers listed on the quotation.
 27. The Customer will pay Applied Biosystems' invoices within 30 days of their date. There is no cash discount.
 28. Unless otherwise agreed, quoted prices for the provision of equipment include installation, installation training (as defined in Clause 30) and are CIP (carriage and insurance paid to the named place of destination) excluding duties and taxes.
 29. Installation of equipment is deemed to be complete after the successful completion of the published installation specifications by Applied Biosystems staff, their agents or representatives, and does not include the training of the Customer in operation of the equipment.
 30. Unless otherwise agreed, quoted prices for the provision of equipment include one (only) installation training course per individual equipment type. Unless otherwise stated, operator training will take place after the installation specifications are met, and delays in the training due to any circumstances, unforeseen or otherwise, will not delay the commencement of the warranty period. Installation operator training must take place during the warranty period, otherwise the training will be charged for at Applied Biosystems' then prevailing rates for training.