Element Biosciences
Terms & Conditions of Sale

1. **Definitions**: “Agreement” means the applicable Quote (if any), these Element Biosciences Terms and Conditions of Sale and any applicable Supplemental Terms. "Buyer" means the person or entity purchasing the Products from Seller. “Products" means all articles, materials, products, work, or services to be furnished pursuant to a Purchase Order. “Purchase Order” means a purchase order provided by Buyer to Seller for the purchase of Products from Seller. “Quote” means the quote provided by Seller for the purchase of Products from Seller. "Seller" means Element Biosciences, Inc. and its affiliates. “Specifications” means Seller’s specifications for a Product set forth on Seller’s website or in Seller’s product documentation. “Supplemental Terms” means additional software licenses, limited use label licenses or other additional terms that apply to the Products and that are listed on the applicable Quote, Seller’s website, Product label, or in the documentation that accompanies the Product.
2. **Acceptance**: This Agreement is an offer to sell and when a Purchase Order is accepted by Seller, this Agreement becomes the exclusive agreement between the parties relating to Products. In the event of a conflict with the documents constituting this Agreement, said documents will be given the following order of precedence: (i) the applicable Quote; (ii) any applicable Supplemental Terms; and (iii) these Element Biosciences Terms and Conditions of Sale. Any Buyer terms of purchase and/or terms or conditions in Buyer’s Purchase Order and/or other similar documents that are inconsistent with, in addition to, or that alter in any way the provisions of this Agreement are hereby expressly rejected and will not apply to any Products. Following Seller’s acceptance of a Purchase Order, Seller will notify Buyer indicating the estimated lead time for manufacture and delivery of the requested Products, which may be made in installments.
3. **Cancellation**: Purchase Orders cannot be canceled or changed following acceptance by Seller without Seller’s written consent. Seller will use commercially reasonable efforts to accommodate Buyer’s reasonable requests to amend its Purchase Order to increase the number of Products.
4. **Price**: The purchase price for Products is the price listed on the applicable valid Quote. Prices listed on any Quote are valid for 30 days, unless otherwise agreed to in writing by Seller. If there is no valid Quote or price listed on the applicable Quote, then the price will be Seller’s standard retail list price for said Products at the time Seller accepts Buyer’s Purchase Order. All Product prices are exclusive of all shipping and handling charges and any sales, value added, or other taxes and duties imposed with respect to the sale, delivery, or use of any Products and such items, if applicable, will be added to the invoice. If Buyer claims any tax exemption, Buyer must provide Seller with a valid, signed certificate or letter of exemption for each respective jurisdiction.
5. **Invoice and Payment**: Seller will provide Buyer with invoices upon shipment of Products and said invoice will contain the description of Products, quantities, shipping costs, and total price. Seller, in its discretion, may make partial shipments of Products and invoice each shipment separately. Invoiced amounts are payable in the currency and to the address specified in Seller’s invoice. Buyer will pay said invoice within 30 days of Buyer’s receipt of said invoice, unless Seller has agreed otherwise in writing. Each Purchase Order is a separate transaction and Buyer may not off-set payments from other Purchase Orders or other transactions with Seller. Any amount not paid when due will accrue interest until paid at the rate of 1.5% per month or the maximum amount allowed by law, whichever is less, and Buyer will be responsible for any reasonable costs of collection (including collection agency fees and attorneys’ fees) incurred by Seller. Where invoices for Products are not timely paid, subsequent shipments may be canceled or delayed or subject to prepayment until overdue amounts are paid.
6. **Shipping**: Seller will package the Products in containers designed to protect the Products from damage in the ordinary course of delivery. Shipment will be made (a) DAP (Incoterms 2020) where shipment is made by Seller’s carrier with title and risk of loss or damage to the Products transferred to Buyer upon delivery of Products to Buyer’s address, and (b) FCA (Incoterms 2020) at Seller’s shipping point where Seller agrees, in its sole discretion, to use Buyer’s carrier with title and risk of loss or damage to the Products transferred to Buyer as soon as the Products are shipped (i.e., delivered into the custody of the carrier); provided, however, that Seller or its licensors will retain ownership and title to any software contained or incorporated in the Products. Any shipment of Products may be postponed or terminated, as required by law.

7. **Inspection**: Buyer will have five (5) days from receipt of each delivery of Products to inspect said Products and notify Seller of any shortfall or visible defects in Product packaging. If Buyer does not provide any said notice within said timeframe, then Buyer is deemed to have accepted the Products. For purposes of clarification, Buyer's acceptance of Products does not negate any Product warranties provided by Seller.
8. **Limited Warranty for Consumables**: Seller warrants to Buyer that Products that are consumables will conform to the applicable Specifications for a period of the later of three (3) months from the date of shipment or the expiration date on the Product, but in no event to exceed twelve (12) months from the date of shipment. For the avoidance of doubt, shelf-life or use-by information printed on the Products or product literature is provided for informational purposes only and is not deemed a period of warranty.
9. **Limited Warranty for Instruments and Spare Parts**: Seller warrants to Buyer that Products that are instruments will conform to the applicable Specifications for a period of twelve (12) months from installation; provided, however, that in no event will the foregoing warranty exceed thirteen (13) months from the date of shipment ("Manufacturer Warranty"). If Buyer purchases a warranty service plan from Seller prior to the expiration of the Manufacturer Warranty or the then-current warranty service plan, then the warranty period will be extended per the Specifications of the applicable warranty service plan purchased by Buyer. Seller warrants that Products that are spare instrument parts will meet the applicable Specifications for a period of three months or until the end of the warranty period of the applicable instrument in which it is installed, whichever is longer.
10. **Warranty Exclusions and Limitations**: Seller's warranties do not apply to the extent any Product failure to meet Specifications is the result of (i) abuse, negligence, or improper use, storage, or handling; (ii) accident, power failure, electrical power surge, or force majeure event; (iii) installation, removal, maintenance, alterations, disassembly, or repair by Buyer or a third party other than Seller; and/or (iv) use with any third party product. All warranties provided are personal to Buyer and may not be transferred to assigned to a third party, including Buyer's affiliate. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS OF SALE, SELLER MAKES NO, AND HEREBY DISCLAIMS ANY AND ALL, REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR OTHER SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.
11. **Warranty Remedies**: If a Product fails to meet the applicable warranty, Seller will, at Seller's election, repair or replace said Product with new or reconditioned Products or components, at Seller's discretion and expense; provided, that Buyer has first provided written notice to Seller with details of said failure and Seller is reasonably able to confirm said failure. The warranty period for any repaired or replaced Product will be the original Product warranty. Any warranty claim must be submitted by Buyer prior to the expiration of the applicable warranty period. At Seller's request and expense, Buyer will ship back the non-conforming Products and/or parts. The remedies set forth in this Section 11 and Seller's indemnification obligations under Section 14 are the sole remedies for any breach by Seller of a representation or warranty under this Agreement.
12. **Intellectual Property**: Seller retains ownership of all intellectual property rights contained in and relating to the Products. Upon transfer and payment of Products purchased under this Agreement, Seller hereby grants Buyer a limited, non-exclusive, non-transferrable right under Seller's intellectual property to use the Products, including software contained in any Products, for use in accordance with this Agreement. Except for the license granted in this Section 12, nothing in this Agreement will be construed as conferring explicitly or by implication, estoppel or otherwise any license, right or immunity under any Seller intellectual property rights. Buyer will use Products in accordance with the terms and conditions of this Agreement, any product documentation provided by Seller, and all applicable laws and regulations.
13. **Product use**: Buyer acknowledges and agrees that Products are research products and intended for research use only unless otherwise specified in Supplemental Terms. Buyer will use Products in accordance with the terms and conditions of this Agreement, any product documentation provided by Seller, and all applicable laws and regulations. Buyer will not transfer, resell, reverse engineer, decompile, disassemble, or distribute the Products or any of their components. Buyer is solely responsible for obtaining any third party intellectual property rights necessary for Buyer's use of the Products.

14. **Indemnification**: Seller will defend, indemnify, and hold harmless Buyer, its officers, employees, agents, and representatives, from and against any and all losses, liabilities, costs, damages, claims, fines, penalties and expenses (including, without limitation, costs of defense or settlement and reasonable attorneys', consultants', and experts' fees) resulting from any claims, demands, actions or other proceedings ("Claims") made or instituted by a third party to the extent arising out of or resulting from (i) any actual or alleged infringement or misappropriation of a third party intellectual property right in Seller's manufacture and sale of the Products; (ii) Seller's breach of any representation, warranty, or obligations under this Agreement; and/or (iii) Seller's gross negligence or willful misconduct. Buyer will defend, indemnify, and hold harmless Seller, its officers, employees, agents, and representatives, from and against any and all losses, liabilities, costs, damages, claims, fines, penalties and expenses (including, without limitation, costs of defense or settlement and reasonable attorneys', consultants', and experts' fees) resulting from any Claims made or instituted by a third party to the extent arising out of or resulting from (i) any actual or alleged infringement or misappropriation of a third party intellectual property right in Buyer's use of the Products; (ii) Buyer's breach of any representation, warranty, or obligation under this Agreement; and/or (iii) Buyer's gross negligence or willful misconduct. This provision will survive expiration or termination of this Agreement.
15. **Limitation of Liability**: EXCEPT AS PURSUANT TO AN EXPRESS INDEMNITY OBLIGATION IN SECTION 14, IN NO EVENT WILL EITHER PARTY AND ITS AFFILIATES BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF DATA OR LOSS OF USE DAMAGES) THAT THE OTHER PARTY MIGHT INCUR OT THAT MAY ARISE IN CONNECTION WITH THIS AGREEMENT, EVEN IF SAID AND/OR ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SAID DAMAGES OR LOSSES. EXCEPT AS PURSUANT TO AN EXPRESS INDEMNITY OBLIGATION IN SECTION 14, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE TOTAL LIABILITY OF EITHER PARTY AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID AND PAYABLE BY BUYER TO SELLER FOR THE PRODUCTS PURCHASED UNDER THE APPLICABLE PURCHASE ORDER.
16. **Compliance with Law**: Buyer acknowledges that Products provided under this Agreement may be subject to U.S. and applicable foreign export laws and regulations. Specifically, Buyer agrees that it will not export, re-export, distribute, transfer, release or use the Products in violation of U.S. export laws or regulations or the import laws and regulations of applicable foreign states.
17. **Assignment**: This Agreement may not be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign, without consent, its rights and obligations hereunder to any successor to all or substantially all of its business that concerns this Agreement (whether by sale of stock or assets, merger, consolidation or otherwise); provided, however, that the assigning party provides written notice of said assignment to the other party and said successor agrees in writing to be bound by the terms of this Agreement. Any attempted assignment contrary to this Agreement is null and void. This Agreement will be binding upon and inure to the benefit of the successors, representatives, and permitted assigns of the parties.
18. **Governing Law**: This Agreement and performance of the parties hereunder will be governed by and interpreted in accordance with the laws of the United States and the State of Delaware, without reference to choice of law provisions. The parties agree that any application of the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded and will NOT apply to this Agreement. Any dispute, controversy or claim arising out of or relating to this Agreement or to a breach hereof, including without limitation its interpretation, performance or termination, and the determination of the scope or applicability of this agreement to arbitrate, will be finally resolved by arbitration in San Diego, California before one arbitrator. The arbitration will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules, unless the claim is for less than $100,000, in which case the arbitration will be pursuant to JAMS' Streamlined Arbitration Rules and Procedures. The parties will keep confidential: (i) the fact that any arbitration occurred; (ii) any awards awarded in the arbitration; (iii) all materials used, or created for use in the arbitration; and (iv) all other documents produced in the arbitration and not otherwise in the public domain, except, with respect to each of the foregoing, to the extent that disclosure

may be legally required (including to protect or pursue a legal right) or necessary to enforce or challenge an arbitration award before a court or other judicial authority. The arbitrator(s) will award to the prevailing party, if any, its costs and expenses, including its attorneys' fees. The prevailing party will also be entitled to its attorneys' fees and costs in any action to confirm and/or enforce any arbitration award in any judicial proceedings. Judgment on the award may be entered in any court having jurisdiction. Nothing in the Agreement will prevent either party from seeking provisional relief, and any such request will not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. The parties agree that the exclusive jurisdiction for such relief will be the state or federal courts located in San Diego, California.

19. **Notices**: Any and all notices, requests, demands, or other communications that relate to the other party's failure to perform or which otherwise affect either party's rights under this Agreement will be deemed properly given when furnished by receipted hand-delivery to the other party, deposited with an express courier, or deposited with the postal service (postage prepaid, certified mail, return receipt requested). Except in situations involving hand-delivery, the sender will address all notices, requests, demands or other communications to the address located on the Purchase Order and/or Quote, as applicable.
20. **Publicity**: Except as required by law or deemed necessary under applicable federal or state securities laws or regulations, Buyer will not use the name of Seller, nor the name of any member of Seller's staff, in connection with any publicity without the prior written approval of Seller.
21. **Force Majeure**: Except for payment obligations, each party will be relieved of its obligations under this Agreement to the extent that fulfillment of said obligations is prevented by acts of war, labor difficulties, riots, fire, flood, hurricane, windstorm, acts or defaults of common carrier, governmental laws, acts or regulations (including the inability to obtain any necessary permits), pandemics, epidemics, shortages of materials or any other occurrences, whether or not similar to the foregoing, beyond the reasonable control of the affected party; provided, however, that said relief will only continue for so long as the force majeure condition exists.
22. **General**: This Agreement is the final, complete, and exclusive statement of the understanding between the Seller and Buyer with respect to the subject matter hereof. No terms, conditions, usages of trade, courses of dealing or agreements purporting to modify, vary, explain, or supplement this Agreement will be binding. This Agreement may not be waived, amended, or otherwise modified except by a writing signed by both Seller and Buyer. If any provision of this Agreement is held invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to give effect to the intent of the parties, and the remainder of this Agreement will continue in full force and effect. The relationship of the parties is that of independent contractors, and nothing herein will be construed as establishing one party or any of its employees as the agent, legal representative, joint venturer, partner, employee, or servant of the other. There are no third party beneficiaries to this Agreement. No remedy herein provided will be deemed exclusive of any other remedy allowed by law or in equity. All rights and obligations of the parties set forth herein that expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement until they are satisfied or by their nature expire and will bind the parties and their legal representatives, successors, and permitted assigns.