

VIZGEN, INC.

VENDOR TERMS AND CONDITIONS OF PURCHASE

1. **ACCEPTANCE OF PURCHASE ORDER.** Vizgen, Inc. is the buyer. **"Seller"** means the person or entity identified in an Order. **"Product"** means all articles, materials, products, work, and services identified in and to be furnished pursuant to an Order. An **"Order"** is a written offer by Vizgen to purchase identified Product of Seller according to these Vendor Terms and Conditions of Purchase (these **"Terms"**) and when accepted by Seller becomes the exclusive agreement between Vizgen and Seller for the Product. Seller's unqualified acceptance of an Order includes (i) written acknowledgement, (ii) furnishing of any Product pursuant to an Order, (iii) commencement of performance pursuant to an Order; (iv) acceptance of any payment for Product, or (v) any other conduct by Seller that recognizes the existence of a contract pertaining to the subject matter hereof. Vizgen hereby expressly objects to any terms proposed by Seller that add to, differ from, or conflict with these Terms and any such proposed terms are void. If an Order has been issued by Vizgen in response to an offer by Seller and if any of these Terms add to, differ from, or conflict with any terms of such offer, then Vizgen's issuance of the Order constitutes an acceptance of such offer by Seller subject to the express conditions that Seller assent to such additional, different or conflicting terms of the Order and acknowledge that the Order constitutes the entire agreement between Vizgen and Seller with respect to the subject matter hereof and the subject matter of such offer, and Seller is considered to have assented and acknowledged unless Seller notifies Vizgen to the contrary in writing within ten (10) days of receipt of the Order. These Terms may be modified only by written instrument executed by an authorized representative of Vizgen and Seller.
2. **DELIVERY.** The terms of delivery are as stated on the face of an Order, as previously negotiated with Vizgen personnel if using Vizgen carriers, or if not so stated, delivery of Product in the United States is Free on Board (F.O.B.) Vizgen's location and delivery of Product internationally is DDP (Incoterms® 2020), and no delivery is complete until Product have actually been received and accepted by Vizgen. Notwithstanding any agreement to pay freight, Seller bears all risk of loss or damage to Product in transit. The obligations of Seller to meet the delivery dates, specifications, and quantities are of the essence of an Order. Deliveries are to be made both in quantities and at times specified in an Order and, if not, such quantities and times as are specified pursuant to Vizgen's written instructions. Shipments in greater or lesser quantity than ordered may be returned at Seller's expense and risk unless written authorization is issued by Vizgen. If Seller's deliveries fail to meet schedule, Vizgen, without limiting its other rights and remedies, may either direct expedited routing or charge Seller excess costs incurred by Vizgen or cancel all or part of an Order in accordance with the Cancellation or Termination provision hereof. Product delivered in advance of schedule is delivered at the risk of Seller and may, at Vizgen's option, be returned at Seller's expense for proper delivery and have payment therefore withheld by Vizgen until the date that the Product is actually scheduled for delivery.
3. **PACKING AND SHIPPING INSTRUCTIONS.** Seller agrees to ensure that shipments are properly packed and described in accordance with good commercial practices, industry, and applicable regulatory requirements, Vizgen's specifications and applicable carrier regulations. Shipments will be made via arrangements acceptable to Vizgen. Seller will provide a packing list to accompany each shipment, referencing the appropriate Order number. The bill of lading also will reference the Order number.
4. **INSPECTION.** All Product delivered is subject to Vizgen's right of inspection and rejection. Payment for Product delivered does not constitute acceptance thereof. At Vizgen's option, inspection may be performed on a statistical sampling basis. If defects are revealed in a sampling, Vizgen may elect, in its discretion, either to reject the entire shipment on the basis of the sampling or to inspect the entire shipment. Product rejected as defective may be returned to Seller, at Seller's risk and expense, for full credit or replacement, at Vizgen's option, and, in addition to Vizgen's other rights, Vizgen may charge Seller all expenses of unpacking, examining, repacking, and reshipping such Product. Seller shall provide replacement

Product freight prepaid at Seller's risk and expense, and Seller shall use expedited delivery if required by Vizgen. If Vizgen receives Product whose defects or nonconformities are not apparent on initial examination (including, but not limited to, breach of warranty), Vizgen may subsequently reject such Product within a reasonable period of time after such defects or nonconformities become apparent. The facilities at which Product is manufactured are subject to inspection and approval by Vizgen from time to time. Seller shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. If any Product or any components thereof, are manufactured by subcontractor(s), Seller shall require such subcontractors to comply with this provision.

5. **PRICE.** The price shown on the face of this order is the total amount Vizgen will pay for the Product. Seller shall not add additional amounts for taxes, packing, shipping, or anything else unless specifically agreed in writing by Vizgen. If there is no price stated on the front, the price is the amount last quoted to Vizgen, last paid by Vizgen, or the prevailing market price, whichever is lower. Seller warrants that the price for Product sold to Vizgen under this purchase order is not greater than the price for comparable Product sold in comparable quantities to any other purchaser.
6. **CHANGE ORDERS.** From time to time, Vizgen may change any of the drawings, specifications, or instructions for work covered by an Order, or the methods of shipment or packing or the schedule or place for delivery of Product, and Seller agrees to comply with such changes. Vizgen shall give Seller notice of such changes in writing signed by a duly authorized representative of Vizgen. If a change results in a decrease or increase in Seller's cost or in the time for performance, an appropriate adjustment to the price or the time for performance will be made by Vizgen and the Seller in writing. Unless Seller provides Vizgen with an itemized statement of adjustment to the cost and/or time for performance within 30 days after Seller's receipt of Vizgen's change notice, the parties agree that Seller is conclusively considered to have waived all claims against Vizgen with respect thereto.

7. **CANCELLATION OR TERMINATION.** Vizgen reserves the right to cancel or suspend all or, from time to time, any undelivered or unexecuted portion of an Order (a) for cause, if Seller fails to make any delivery or to perform any work as scheduled or breaches any of the other terms of an Order, and (b) without cause upon written notice to Seller. Upon cancellation or termination without cause, Vizgen shall reimburse Seller for incurred, non-cancellable expenses (which shall not include lost profits) related to the affected portion(s) of the Order, provided that such amount shall not exceed the lesser of (i) a pro rata portion of the contract price or (ii) the cost of finished Product to be delivered within 30 days after such cancellation or termination, 30 days of work in progress, and 30 days of raw materials that Seller demonstrates cannot be diverted to other uses. The foregoing states Vizgen's entire liability and Seller's exclusive remedy for any cancellation or termination of all or any part of an Order. Any alleged claim by Seller under this paragraph must be asserted in writing, including the amount of the claim, within 30 days after Vizgen's notice of cancellation or termination.
8. **COUNTERFEIT GOODS.** Seller shall not provide any Counterfeit Goods to Vizgen. "**Counterfeit Goods**" means any goods delivered to Vizgen (including any separately identifiable parts or components thereof) that do not comply in all respects with the original equipment manufacturer's (OEM) specifications or contain false or misleading markings or supporting documentation purporting to be those of the OEM. Seller shall have in place a Counterfeit Goods prevention plan satisfactory to the needs and requirements of Vizgen and in no case less stringent than accepted industry practices. Notwithstanding and additional to any remedy available to Vizgen elsewhere in the applicable Order or at law, if Seller provides Counterfeit Goods to Vizgen, Seller shall immediately provide conforming Product at its risk and expense and is liable to Vizgen for any and all costs, liabilities, damages, expenses, fines, or penalties incurred by Vizgen as a result of Seller providing Counterfeit Goods. Vizgen may, at its option, destroy any Counterfeit Goods with no liability to Seller.
9. **PRODUCT WARRANTIES.** Seller warrants that all Product for the later of a period of 15 months from



the date Vizgen receives the Product or 12 months from the date the Product becomes useable by the end user:

- a. is of good quality and workmanship and free from patent and latent defects in material or workmanship;
- b. conforms to all specifications, performance standards, drawings, and samples or descriptions of Seller or Vizgen;
- c. is manufactured, packaged, labeled, marketed, delivered and otherwise provided in compliance with all applicable laws and regulations;
- d. manufactured in accordance with generally accepted good manufacturing practices (including, but not limited to, cGMP, if applicable) and quality practices
- e. if software or contains a software component, is the most current release generally available at the time of delivery, free from virus or similar software designed to permit unauthorized access, to disable, erase or otherwise harm the software, associated hardware, data content or to perform any other similar destructive actions;
- f. is merchantable and fit for their intended purpose;
- g. does not infringe the patent, copyright, or other intellectual property rights of any third party;
- h. is free of any claim of any third party; and,
- i. does not contain any Counterfeit Goods.

These warranties are in addition to all other express warranties and legal rights. No remedy available to Vizgen for a breach of any of the warranties may be limited except to the extent and in the manner expressly agreed to by Vizgen in a separate agreement signed by an authorized representative of Vizgen. Vizgen's inspection or acceptance of, or payment for, any Product does not constitute a waiver by Seller of any warranties. Vizgen's approval of any sample or acceptance of any Product shall not relieve Seller from responsibility to deliver Product conforming to specifications, drawings, and descriptions.

- 10. **NON-DEBARMENT.** Seller represents and warrants that it is not, nor its affiliates', suppliers', subcontractors' or its/their owners, directors, officers, employees, or agents are not, designated as a "Restricted Party", and that no Restricted Party has been used in any capacity in connection with the providing the Product. **"Restricted Party"** means any individual or entity placed on lists of

restricted, sanctioned, or debarred parties maintained by an applicable governmental authority of the United States of America, including, but not limited to, those established under the Food, Drug, and Cosmetic Act, and the U.S. Foreign Assets Control Regulations.

- 11. **COMPLIANCE WITH LAW.** Seller represents and warrants that its performance of its obligations under these Terms is in a manner consistent with both the requirements of all applicable U.S. and foreign laws and regulations, including the Foreign Corrupt Practices Act and Anti-boycott laws, as well as Vizgen's Supplier Code of Conduct (available upon request). Upon request by Vizgen, Seller shall furnish Buyer with a certificate of compliance. Additionally, Seller shall provide Buyer any and all information or material required for either Buyer or Buyer's customers to comply with all laws, regulations, rules, guides, ordinances and/or standards, including, but not limited to, Safety Data Sheets. Seller acknowledges that Products provided under these Terms and Conditions may be subject to U.S. and applicable foreign export laws and regulations and will perform its obligations under these Terms and Conditions in a manner consistent with the requirements of all applicable U.S. and foreign laws and regulations, the Foreign Corrupt Practices Act and Anti-boycott laws. Specifically, Seller agrees that the shipment or provision of Products, and any related technical data or information, will not violate U.S. export laws or regulations or the import laws and regulations of applicable foreign states. Seller will be responsible for obtaining, recording, filing and maintaining all export and import documentation including all licenses and permits, as well as for the payment of associated fees. Seller shall appropriately label containers of all Products which are known to constitute a health, poison, fire, environmental, safety or explosion hazard.

- 12. **INDEMNIFICATION AND INSURANCE.** Seller shall defend and indemnify Vizgen, its officers, employees, agents, representatives, customers, or affiliates from any claim and against all damages, liability, losses and expenses (including attorneys' fees) arising out of or resulting in any way from any actual or alleged:
 - a. Seller's performance of an Order;
 - b. the Product;



- c. infringement of any patent, trademark, copyright, or other intellectual property right of any third party by any Product (except to the extent that an infringement arises solely as the result of a design furnished by Vizgen); or
- d. act or omission of Seller, its officers, employees, agents, representatives, affiliates, or subcontractors.

Seller shall maintain public liability insurance including products liability, completed operations, contractors' liability and protective liability, automobile liability (including non-owned automobile liability), and workers' compensation, employers' liability, and infringement insurance in amounts that will adequately protect Vizgen against such claims, damage, liabilities, losses, and expenses (including attorney's fees). Seller agrees to submit certificates of insurance, evidencing coverage in accordance with this paragraph, when requested by Vizgen. Seller's obligations under this paragraph survive the cancellation, termination, or completion of the applicable Order.

- 13. **CONFIDENTIAL INFORMATION.** Seller shall keep secret and confidential, and not share with any third party, the fact that Vizgen is the buyer, the terms of an Order, the nature of the products and services being procured, and all commercial and technical information and materials provided to Seller by Vizgen and reproductions thereof. Seller shall only disclose Vizgen's confidential information to its employees who need to know in connection with fulfilling the applicable Order. Unless otherwise agreed in writing according to these Terms, no commercial or technical information disclosed in any manner or at any time by Seller to Vizgen is considered secret or confidential and Seller shall have no rights against Vizgen with respect thereto, except as may exist under any applicable patent law. The obligations under this paragraph shall survive the cancellation, termination, or completion of the applicable Order. Upon Vizgen request and instruction, Seller shall immediately return or destroy Vizgen's confidential information. It is understood that no license (express or implied) is hereby granted by Vizgen under any of Vizgen's confidential information.
- 14. **INTELLECTUAL PROPERTY.** Seller hereby grants a perpetual, paid-up license relating to any software or other embodiment of intellectual property

embedded in the Product, and all associated copyright, patent, trade secret, trademark, or other intellectual property rights in the Product, as necessary for Vizgen's purchase, use, maintenance, and sale of Product. Seller expressly warrants that all copyrightable works of original authorship (including but not limited to computer programs, technical specifications, documentation and manuals), ideas, inventions (whether patentable, patented or not), know-how, processes, compilations of information, trademarks and other intellectual property (collectively, "**Deliverables**") (i) are original to Seller and shall not incorporate any intellectual property (including copyright, patent, trade secret, or trademark rights) of any third party or, (ii) are not original to Seller on the condition that Seller has obtained all rights, licenses and permissions for Vizgen to use the Deliverables and any intellectual property rights embodied therein. All Deliverables that are created in the course of performing any Order (separately or as part of any Products) and using or incorporating Vizgen confidential information ("**Custom Deliverables**"), and all intellectual property rights therein, are owned by Vizgen and not by Seller. Seller agrees that all Custom Deliverables in connection with each Order are "works made for hire" as that term is used in connection with the U.S. Copyright Act. To the extent that, by operation of law, Seller owns any intellectual property rights in the Custom Deliverables, Seller hereby assigns to Vizgen all rights, title and interest, including copyrights and patent rights, in such Custom Deliverables.

- 15. **USE OF VIZGEN'S NAME.** Seller shall not use the name, marks, or images of Vizgen in any publication or marketing piece without advance written approval from a Vizgen officer. Vizgen retains the right to seek an injunction or otherwise prevent Seller from violating the terms of this provision and retains the right to seek damages for any improper use of Vizgen's name or marks. The obligations under this paragraph survive the cancellation, termination, or completion of the applicable Order.
- 16. **INDEPENDENT CONTRACTOR.** Seller and Vizgen are independent contractors and neither party has any authority to obligate or bind the other party by contract or otherwise. When work of any description is performed in furtherance of Seller's





obligations under an Order on the premises of Vizgen or any of Vizgen's customers, Seller shall provide all safeguards and take all necessary precautions to prevent the occurrence of any accident, injury, death or loss to any person or property and is solely responsible therefore.

default of Seller will impair that right or remedy or be construed as a waiver of any breach or default.

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- 17. **FORCE MAJEURE.** Vizgen may delay delivery and/or acceptance under this purchase order if such delivery and/or acceptance is made impossible or impractical by causes beyond Vizgen's control.
- 18. **REMEDIES.** Vizgen's remedies are cumulative. Remedies specified in an Order do not exclude any remedies available at law or in equity. Waiver of any breach on any one occasion does not constitute a waiver of the same or any other breach on any other occasion. Acceptance of any items or payment therefore does not waive any breach.
- 19. **ASSIGNMENT AND SUBCONTRACTING.** Seller may not assign or transfer an Order or its right or obligations under an Order without Vizgen's prior written approval by a Vizgen officer. Any attempted assignment or transfer is void ab initio.
- 20. **SETOFF.** All claims for monies due or to become due from Vizgen under this purchase order are subject to deduction by Vizgen for any setoff or counterclaim that Vizgen may have against Seller.
- 21. **APPLICABLE LAW AND FORUM.** The terms of an Order will be interpreted and enforced in accordance with the laws of Commonwealth of Massachusetts, without regard to any choice of law principals that would result in the application of the laws of another jurisdiction. The UN Convention on Contracts for the International Sale of Goods does not apply. Vizgen and Seller shall bring any action involving this matter in the federal or state courts located in the Commonwealth of Massachusetts. Seller hereby irrevocably consents to such jurisdiction.
- 22. **SEVERABILITY; WAIVER.** If any provision of these Terms is held to be invalid, illegal, or unenforceable, the remaining provisions will not be affected or impaired. No delay or omission to exercise any right or remedy accruing to Vizgen upon any breach or

