

Item 10



Travis County Commissioners Court Agenda Request

Meeting Date: April 9, 2013

Prepared By/Phone Number: Jesse Herrera, 854-1184

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language:

APPROVE ORDER EXEMPTING THE PURCHASE OF SHIMADZU LIQUID CHROMATOGRAPH (LC) SYSTEM & SOFTWARE FROM AB SCIEX LLC FROM THE COMPETITIVE PROCUREMENT PROCESS PURSUANT TO SECTION 262.024 (a) (7) (A) OF THE COUNTY PURCHASING ACT.

Purchasing Recommendation and Comments: Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.

The Travis County Office of the Medical Examiner recommends the purchase of a Liquid Chromatograph (LC) System & Software for the Medical Examiners toxicology laboratory and has requested this sole source exemption because of copyright and patents. Travis County currently has one (1) AB Sciex unit and by adding a second it will allow us to maintain a consistent analytical approach in software and hardware.

➤ **Contract-Related Information:**

Award Amount: \$34,915.28

Contract Type: Exemption

Contract Period: N/A

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

➤ **Special Contract Considerations:**

- Award has been protested; interested parties have been notified.
- Award is not to the lowest bidder; interested parties have been notified.
- Comments:

➤ **Funding Information:**

- Contract Number in SAP: 4400001384
- Funding Account(s): 520130 / SC 1000022071
- Comments:

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

**ORDER EXEMPTING
PURCHASE OF SHIMADZU LIQUID CHROMATOGRAPH (LC)
SYSTEM & SOFTWARE FROM AB SCIEX, LLC, FROM REQUIREMENTS
OF THE COUNTY PURCHASING ACT**

WHEREAS, the Commissioners Court of Travis County, Texas has received a Sole Source Justification from Travis County Sheriff's Office and an Affidavit of Single Source sworn and submitted by the Purchasing Agent in accordance with TEXAS LOCAL GOVERNMENT CODE, 262.024 (a) (7) (A) and

WHEREAS, based on the evidence presented, the Commissioners Court of Travis County, Texas finds that there is only one source available, for the purchase of specified Shimadzu Liquid Chromatograph (LC) System & Software for Travis County.

NOW, THEREFORE, the Commissioners Court of Travis County, Texas hereby orders that the purchase of specified Shimadzu Liquid Chromatograph (LC) System & Software are exempt from the requirements of the County Purchasing Act because of copyright and patents proprietary to AB Sciex LLC, and can be obtained from only one source.

Signed and entered this ____ day of _____, 2013.

Samuel T. Biscoe, County Judge
Travis County, Texas

Ron Davis
Commissioner, Precinct 1

Sarah Eckhardt
Commissioner, Precinct 2

Gerald Daugherty
Commissioner, Precinct 3

Margaret J. Gomez
Commissioner, Precinct 4.

April 9, 2013

TO: Commissioners Court
Travis County, Texas

SOLE SOURCE PURCHASE FROM AB SCIEX, LLC OF SHIMADZU LIQUID
CHROMATOGRAPH (LC) SYSTEM & SOFTWARE

I certify that the purchase of the Shimadzu Liquid Chromatograph (LC) System & Software for the Travis County Office of the Medical Examiner constitutes a sole source procurement, and is available through AB Sciex LLC. I, therefore, find that this is a sole source purchase pursuant to V.T.C.A. Local Government Code 262.024 (a) (7) (A) and is exempt from competitive bidding.

This statement is submitted pursuant to V.T.C.A. Local Government Code 262.024 and is to be entered into the Commissioners Court minutes.

Cyd V. Grimes, C.P.M., CPPO,
Travis County Purchasing Agent

APPROVED () DISAPPROVED ()

BY COMMISSIONERS COURT ON _____
(DATE)

(COUNTY JUDGE)



TRAVIS COUNTY OFFICE OF THE MEDICAL EXAMINER

1213 Sabine Street PO Box 1748 Austin, TX 78767
Tel: (512) 854-9599 Fax: (512) 854-9044
www.co.travis.tx.us/medical_examiner

DAVID DOLINAK, MD
Diplomate of American Board of Pathology
CHIEF MEDICAL EXAMINER

SATISH CHUNDRU, DO
Diplomate of American Board of Pathology
DEPUTY CHIEF MEDICAL EXAMINER

KENDALL CROWNS, MD
Diplomate of American Board of Pathology
DEPUTY MEDICAL EXAMINER

LEISHA WOOD, MD
Diplomate of American Board of Pathology
DEPUTY MEDICAL EXAMINER

VICKIE WILLOUGHBY, DO
Diplomate of American Board of Pathology
DEPUTY MEDICAL EXAMINER

DATE: January 17, 2013

TO: Cyd V. Grimes, C.P.M., Purchasing Agent

FR: Sarah Scott, Chief Administrative Officer
Brad J. Hall, Ph.D, DABFT, Chief Toxicologist
Travis County Office of the Medical Examiner

RE: Purchase of a Shimadzu Liquid Chromatograph (LC) System and
Software – FY2013

Purpose

This request will allow us to replace a malfunctioning LC and maintain sensitive/modern instrumentation for LC/MS analysis all on the same hardware/software platform as another instrument in our laboratory. The purchase will allow us to correct a quality control issue within our current system.

History

The original LC on the LC/MS system is over 10 years-old and is experiencing intermittent quality control issues. It is highly prudent that we correct this issue with a new LC system.

Instrument Evaluation and Selection

Currently we have one other LC/MS system that was purchased in FY 2010 utilizes a Shimadzu LC. Therefore, there are significant benefits in obtaining another Shimadzu instrument in order to maintain a consistent analytical approach in software and hardware. In addition, training for the laboratory staff to use the new instrument will be essentially eliminated. Repair and maintenance issues for multiple instruments can be addressed with one service call.

Recommendation

For the reasons listed above, I request a sole source purchase of the Shimadzu analytical equipment package to include the items listed on the attached quotation. I highly recommend the equipment be purchased through AB Sciex LLC due to the following reasons: 1) The LC will be coupled to our existing AB Sciex API2000 mass spectrometer, 2) the package will include an AB Sciex software upgrade to control the LC/MS system, 3) The system should be installed and certified by the manufacture to address the quality control issue.

Detailed Specifications

Please see attached quotation (20746893) in shopping cart 1000022071 for details. The quotation is within in the approved budgeted amount.

Suggested Vendor

Authorized AB Sciex LLC Sales Representative:

Karl Guetzow

AB Sciex LLX

110 Marsh Drive
Foster City, CA 94404

877/740-2129
650/627-2803 Fax

Funding

Funding in the amount of \$35,000 for this purchase has been approved within our FY 2013 budget in account 520130.

4400001384

Quotation

AB SCIEX LLC
 110 Marsh Drive
 Foster City, CA 94404 U.S.A.
 Toll Free: (877) 740-2129 Fax: (650) 627-2803
 Sales.Americas@ABSCIEX.com

PAGE 1 of 7

To: Dr. Brad Hall
 Travis County Med Examiner Office
 1213 Sabine St
 AUSTIN TX 78767

Quote No.: 20746893
Quote Valid To: 02/11/2013
Quote Date: 01/11/2013
Pay Terms: Net 30 Days
Freight Terms: FOB FACTORY - FRT
 FREE

Telephone No. 512-854-9599
 Fax No. (512) 854-9044

**Please reference Quote No.
 when placing your orders.**

| Item | Part Number | Description | QTY | Unit List Price | Unit Net Price | Total Extended Price |
|------|-------------|---|------|-----------------|----------------|----------------------|
| 0001 | 5014634 | ANALYST 1.5-1.6 ACQUISITION WORKSTN LIC Analyst 1.5-1.6 Instrument Workstation Upgrade License: Analyst Software Version 1.6 one-user Instrument Workstation Upgrade License from Analyst 1.5 (applicable to all Analyst 1.6.x software for Instrument Control and Data Processing). Only 1 instrument control upgrade license may be purchased per instrument. Also covers previous Analyst versions. Instrument serial number required. | 1.00 | 809.00 | 566.30 | 566.30 |
| 0002 | 4464373 | HPLC PUMP,LC-20AD SHIMADZU Utilizes micro-volume plungers for pulse-free HPLC solvent delivery. Ideal for LC-MS applications. | 2.00 | 6,814.00 | 5,587.48 | 11,174.96 |
| 0003 | 4464426 | DEGASSER,DGU-20A5 SHIMADZU Inline membrane degasser utilizing Teflon AF® for rapid degassing of HPLC mobile phases. Convenient 5th channel for degassing the autosampler rinse phase for optimum injection reproducibility performance. Installation included only if purchased as part of a system | 1.00 | 2,940.00 | 2,410.80 | 2,410.80 |
| 0004 | 4463846 | AUTOSAMPLR,SIL20AC W/PEEK VALVE, SHIMADZU | 1.00 | 17,010.00 | 13,948.20 | 13,948.20 |

WARRANTY INFORMATION

AB SCIEX limited product warranties are included with shipment of its products. You may visit www.absciex.com for warranty information or contact your local AB SCIEX sales representative to request a copy. AB Sciex instruments and accessories are warranted by AB SCIEX for a period of one year, unless a different period or no warranty is indicated on AB SCIEX quotation. The warranty period for AB SCIEX instruments begins on the earlier of the date of installation or 90 days from the date of shipment for instruments installed by AB SCIEX personnel. For AB SCIEX instruments installed by the buyer or anyone other than AB SCIEX, the warranty period begins on the date the instrument is delivered.

TERMS AND CONDITIONS

This quotation, including AB SCIEX's General Terms and Conditions furnished with this quotation, and, if software is included, AB SCIEX's applicable end user software license agreement, sets forth the terms on which AB SCIEX is offering to sell the product(s) listed on this quotation. AB SCIEX's end user license agreement for instrument operatinsoftware can be found on AB SCIEX website, at: <http://www.absciex.com/legal>. Licenses for stand alone software are in click wrap form. You may contact AB SCIEX for a copy at any time. By issuing a purchase order or otherwise ordering the product(s), the customer expressly agrees to these General Terms and Conditions of Sale (and operating software end user software license agreement, if applicable) to the exclusion of all others not expressly agreed to in writing by an authorized representative of AB SCIEX. If you have any questions, please call AB SCIEX's Customer Account Services at (877) 740-2129. Stenographical/clerical errors are subject to correction Most recent quotation will supersede all prior quotations. All amounts are in USD.

Sales Representative: Karl Guetzow

Prepared by: Melinda Legaspi

ACCEPTANCE OF THIS QUOTATION IS LIMITED TO THE ATTACHED TERMS

Quotation

AB SCIEX LLC
 110 Marsh Drive
 Foster City, CA 94404 U.S.A.
 Toll Free: (877) 740-2129 Fax: (650) 627-2803
 Sales.Americas@ABSCIEX.com

PAGE 2 of 7

QUOTE NO.: 20746893
QUOTE VALID TO: 02/11/2013
QUOTE DATE: 01/11/2013

To: Dr. Brad Hall
 Travis County Med Examiner Office

**Please reference Quote No.
 when placing your orders.**

| Item | Part Number | Description | QTY | Unit List Price | Unit Net Price | Total Extended Price |
|------|-------------|--|------|-----------------|----------------|----------------------|
| | | High speed, temperature controlled (4-40C), low carryover autosampler for analytical HPLC. Accommodates several vial sizes and titer plate formats for fast (10 sec.), accurate, and precise HPLC sample injection. The needle in the flow path design coupled with patented material technology virtually eliminates carryover. | | | | |
| 0005 | 4465786 | 10/100 ETHERNET SWITCH,SHIMADZU 10/100 Ethernet Network Switch used for the CBM-20A, CBM-20A Lites and the SPD-M20A UV detector. | 1.00 | 66.00 | 54.12 | 54.12 |
| 0006 | 4464311 | CONTROLLER,CBM-20A LITE, SHIMADZU 4-fibre optic port Central communication and control module accessory board for the Prominence Series. The CBM-20A Lite is installed in either a Prominence Series pump or autosampler. Modules connect via fiber optic cables for easy "plug and play" system configuration. Installation included only if purchased as part of a system | 1.00 | 2,142.00 | 1,756.44 | 1,756.44 |
| 0007 | 4465787 | CAT 5 NETWORK LAN CABLE,SHIMADZU CAT 5 Network LAN Cable used for the CBM-20A, CBM-20A Lites and the SPD-M20A UV detector. | 1.00 | 22.00 | 18.04 | 18.04 |
| 0008 | 4464381 | COLUMN OVEN,CTO-20AC SHIMADZU Full-sized oven with forced air temperature control from 10 C below ambient temperature to 85 C. Can accommodate a manual injector, mixer, and 2 switching valves. Installation included only if purchased as part of a system | 1.00 | 4,371.00 | 3,584.22 | 3,584.22 |
| 0009 | 4425925 | MIXER,228-35830-93 SHIM 100UL HP 9572 psi pressure limite. SS mixing chamber for use in semi-micro to standard analytical applications. | 1.00 | 1,071.00 | 878.22 | 878.22 |
| 0010 | 4464304 | RESERVOIR TRAY,LC-20A SHIMADZU Sturdy plastic tray that holds seven 1-L bottles. Space behind the front panel allows solvent tubing to be neatly routed to the degasser and pumps. | 1.00 | 369.00 | 302.58 | 302.58 |
| 0011 | 4465784 | SOLVENT BOTTLES,SHIMADZU (SET OF 5) | 1.00 | 70.00 | 57.40 | 57.40 |

Quotation

PAGE 3 of 7

AB SCIEX LLC
 110 Marsh Drive
 Foster City, CA 94404 U.S.A.
 Toll Free: (877) 740-2129 Fax: (650) 627-2803
 Sales.Americas@ABSCIEX.com

QUOTE NO.: 20746893
QUOTE VALID TO: 02/11/2013
QUOTE DATE: 01/11/2013

To: Dr. Brad Hall
 Travis County Med Examiner Office

**Please reference Quote No.
 when placing your orders.**

| Item | Part Number | Description | QTY | Unit List Price | Unit Net Price | Total Extended Price |
|---|-------------|---|------|-----------------|----------------|----------------------|
| | | Solvent bottles for LC - 20 and LC - 30 systems. | | | | |
| 0012 | 4465785 | SOLVENT BOTTLE CAP,SHIMADZU (INDIVIDUAL) 3 hole Reservoir Bottle Cap with plug and filter. A quantity of 5 should be purchased with new systems. | 5.00 | 40.00 | 32.80 | 164.00 |
| <p>***** QUOTATION TOTAL: \$34,915.28 *****</p> <p>Shipments are made generally within 45 days after receipt of order.</p> <p>The items quoted are being offered as a convenience to the customer and may only be purchased in conjunction with AB SCIEX products listed above.</p> <p>THE SPECIAL DISCOUNTS APPLIED TO THIS QUOTATION ARE VALID UNDER THIS QUOTATION ONLY AND IS CONTINGENT UPON RECEIPT OF YOUR PURCHASE ORDER FOR ITEMS AS QUOTED, ON OR BEFORE THE "QUOTE VALID" DATE</p> <p>All orders made in reference to this quotation must include all part numbers and quantities as listed. If you would like to modify this order, please contact your Sales Representative.</p> <p>Please review the Site Planning Guides at the following link to ensure your site is prepared and ready for installation when the order is placed: http://www.absciex.com/downloads/mass-spectrometry-user-guides</p> | | | | | | |

Quotation

AB SCIEX LLC
110 Marsh Drive
Foster City, CA 94404 U.S.A.
Toll Free: (877) 740-2129 Fax: (650) 627-2803
Sales.Americas@ABSCIEX.com

PAGE 4 of 7

To: Dr. Brad Hall
Travis County Med Examiner Office

QUOTE NO.: 20746893
QUOTE VALID TO: 02/11/2013
QUOTE DATE: 01/11/2013

**Please reference Quote No.
when placing your orders.**

| Item | Part Number | Description | QTY | Unit List Price | Unit Net Price | Total Extended Price |
|------|-------------|-------------|-----|-----------------|----------------|----------------------|
|------|-------------|-------------|-----|-----------------|----------------|----------------------|

All information provided on this quotation is confidential between our Customer and AB SCIEX.

To place your AB SCIEX INSTRUMENTS & CONSUMABLES order:

Contact Sales Administration at:

eMail: Sales.Americas@ABSCIEX.com

Phone: 1-877-740-2129

Fax: 1-650-627-2803

AB SCIEX GENERAL TERMS AND CONDITIONS OF SALE

These General Terms and Conditions of Sale ("Terms") shall govern all orders for and purchases of products and services from AB SCIEX ("ABS"), including installation of equipment, unless other terms are specifically designated by ABS to apply to a specific product or service, or ABS and buyer have entered into a master purchase agreement or other written agreement that expressly provides that its terms supersede and replace these Terms with respect to the products or services covered by the master purchase or other agreement (See Section 12, SOLE TERMS, INCONSISTENCIES, ORDER OF PRECEDENCE).

1. PRICE. The price for any product or service (hereinafter collectively "Product") shall be the price stated in ABS's quotation to buyer for the Product ("ABS's Quotation") or, if ABS has not issued a quotation, ABS's list price of the Product at the time ABS receives buyer's purchase order. ABS's quotations are valid for 30 days from the quotation date unless otherwise stated in ABS's Quotation. If ABS's price is stated by reference to a price list then the price shall be ABS's list price in the jurisdiction in which the Product is to be delivered or performed in effect at the time ABS receives buyer's purchase order. Prices stated are exclusive of all taxes, fees, licenses, duties, levies or other governmental assessments ("Taxes") and, unless otherwise stated in ABS's Quotation, shipping and handling charges, freight and insurance. All Taxes related to Product shall be paid by buyer (other than taxes assessed against ABS's net income), or in lieu thereof, buyer shall provide ABS with a tax exemption certificate acceptable to the relevant taxing authorities. Taxes and other charges payable by buyer may be billed as separate items on ABS's invoice.

2. PAYMENT TERMS; COLLECTION COSTS; SECURITY TERMS. Payment terms are net 30 days from date of ABS's invoice. If ABS deems buyer to be or to have become uncreditworthy, ABS shall have the right to require alternative payment terms, including without limitation sight draft, letter of credit, or payment in advance. Payment for partial shipments shall be based on unit or prorated prices, and payment for partial installation(s) shall be based on percentage of completion of installation, as reasonably determined by ABS. If payment is not received by the due date, ABS may assess and buyer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If ABS retains a collection agency or attorney to collect unpaid amounts, ABS may invoice buyer for, and buyer will pay, all reasonable costs of collection, including without limitation reasonable attorneys' fees. Buyer hereby grants to ABS and ABS reserves a purchase money security interest in all tangible Product purchased from ABS, and in any proceeds thereof, for all amounts owing to ABS for or related to such Product. Upon request by ABS, buyer shall sign any reasonable documents required for ABS to perfect such security interest and, to the fullest extent permitted by law, buyer hereby expressly grants ABS authority and a limited power of attorney to file financing statements and amendments thereto for and on behalf of buyer for such Product and any proceeds thereof. Payment in full of all amounts owed for and related to such Product shall release such security interest in the Product and proceeds.

3. CREDIT TERMS. ABS may, at any time and in its sole discretion, limit or cancel the credit of buyer as to time and amount, suspend shipments, demand payment in cash before delivery of Product, or demand other assurances of buyer's performance. If buyer fails to agree and comply with the different terms of payment demanded, or fails to give adequate assurances of performance, ABS may, without prejudice to any other right or remedy ABS may have: (i) by notice to buyer, treat such failure or refusal as a repudiation by buyer of that portion of buyer's order not then fully performed, whereupon ABS may cancel all further deliveries, and any amounts unpaid for non-cancelled Product shall immediately become due and payable; or (ii) make shipments under reservation of a security interest and demand payment against tender of title documents.

4. ACCEPTANCE OF ORDERS, DELIVERY, TITLE AND RISK OF LOSS, INSTALLATION. ABS may accept or reject any buyer purchase order for Product in whole or in part. If a purchase order is accepted, ABS will use reasonable efforts to ship tangible Product or perform services, including equipment installation if agreed to by ABS, subject to the purchase order within a reasonable time after ordered, or, if a shipment, service commencement or installation date is indicated in ABS's Quotation or otherwise agreed upon in writing by an authorized representative of ABS, on or before such date. ABS may make delivery in installments, and each installment shall be deemed to be a separate sale. ABS may render a separate invoice for each installment, which invoice shall be paid without regard to prior or subsequent installments. Unless indicated otherwise in ABS's Quotation, title and risk of loss with respect to all Products except Products that are software or services, and risk of loss with respect to software, shall pass from ABS to buyer upon transfer of possession of the Product to a common or other third party carrier at ABS's facility. If ABS has undertaken to install a Product, it is buyer's responsibility, at buyer's cost, to have the installation site prepared and available for installation free of hazardous or unsafe conditions and, unless ABS otherwise agrees, to move the Product, uncrated, from the buyer's delivery dock or receiving location to the table top or other place of installation. Buyer shall not assign ABS personnel to work in biosafety level 3 or level 4 laboratories without prior written notice to ABS and ABS's consent.

5. CANCELLATION AND DEFERRAL. BUYER MAY NOT CANCEL ANY PURCHASE ORDER. However, unless otherwise stated in ABS's Quotation, buyer may defer the shipment date one time for up to 60 days for instruments and other hardware, and up to 30 days for reagents, consumables and other tangible Product, by giving written notice to ABS at least 30 days before the scheduled shipment date for instruments and other hardware, and at least 10 days before the scheduled shipment date for other Product.

6. REJECTION AND RETURN OF GOODS. Any claims for damaged, missing or defective Product must be reported in writing by buyer within 15 days from the date of buyer's receipt of the Product. In addition, buyer must promptly return a rejected Product to ABS, C.O.D., unused and in a condition no worse than that delivered to buyer and in the Product's original containers and packing material, accompanied by a valid return authorization number obtained from ABS. ABS may refuse any Product not timely rejected or sought to be returned without a valid return authorization number. For any valid claim timely made, ABS, at its option, may repair the Product or replace the Product with an identical or substantially similar Product. Shipping charges will not be credited. **THESE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR DAMAGED OR MISSING PRODUCT, AND, EXCEPT FOR EXPRESS WRITTEN WARRANTY RIGHTS, FOR DEFECTIVE PRODUCT.** ABS may require that buyer sign and deliver a properly completed certificate of decontamination prior to returning any Product.

7. LIMITED WARRANTY. ABS makes only those warranties with respect to Product expressly identified as "warranties" and set forth in ABS's current operating manual or catalog, or in a specific written warranty included with and covering Product, if any. Warranties are made only to the buyer purchasing the Product directly from ABS, are not transferable and do not extend to the benefit of any other person or entity, unless otherwise expressly stated in writing by ABS. **ANY PRODUCT NOT COVERED BY AN EXPRESS WRITTEN WARRANTY IS SOLD AND PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED.** Any description of Product recited in ABS's Quotation is for the sole purpose of identifying Product, and any such description is not part of any contract between ABS and buyer and does not constitute a warranty that Product shall conform to that description. Any sample or model used in connection with ABS's Quotation is for illustrative purposes only, and is not part of any contract between ABS and buyer and does not constitute a warranty that Product will conform to the sample or model. No affirmation of fact or promise made by ABS, whether or not in ABS's

Quotation, shall constitute a warranty that Product will conform to the affirmation or promise. Unless otherwise specified in writing in documentation shipped with Product or otherwise agreed by ABS in writing, ABS does not provide service or support for custom products or other products made to buyer's specifications. **THE WARRANTIES IDENTIFIED IN THE FIRST SENTENCE OF THIS PARAGRAPH ARE ABS'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO PRODUCT AND ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, ALL OF WHICH OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS), WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE**

8. INTELLECTUAL PROPERTY AND RELATED INDEMNITY.

8.1 BY ABS. Subject to the restrictions set forth in this Section 8 and provided buyer complies with its obligations in this Section 8, ABS agrees to defend buyer, and indemnify buyer from and against any infringement damages finally awarded, in any legal action or proceeding brought by a third party against buyer to the extent that such action is based on a claim that the manufacture and sale of a Product by ABS infringes any United States or foreign patent, copyright, trademark or other intellectual property right of such third party if ABS had actual knowledge of such intellectual property right and infringement at the time of delivery of the Product to buyer. Notwithstanding the foregoing, ABS shall have no liability or obligation under this Section 8 with respect to any claim of infringement based upon: (i) modifications to any Product made by buyer or a third party; (ii) manufacture, assembly, labeling or branding of Product by ABS pursuant to specifications or designs or requests for specific labeling or branding furnished by buyer. Notwithstanding anything herein to the contrary, ABS shall have no indemnification obligations with respect to Product originating from a third party and provided under these Terms. Buyer's sole right to indemnification with respect to such third party Product shall be pursuant to the original manufacturer's or licensor's indemnification obligations, if any, to the extent provided by the original manufacturer or licensor.

8.1.1 Buyer's Obligations. Buyer must notify ABS in writing of any claim for which it may seek defense and indemnity from ABS hereunder promptly after becoming aware of such claim, make no admission of liability with respect to the claim, and cooperate with and provide reasonable assistance to ABS, at ABS's expense with respect to reasonable out of pocket expenses paid by buyer to third parties for such assistance, in the defense or settlement of such claim. ABS shall have sole authority to defend and/or settle any claim under this Section 8. ABS's obligations under this Section 8 are contingent upon buyer's compliance with all of the foregoing.

8.1.2 Remedy for Infringement, Rights of ABS, Exceptions. If any Product or portion thereof is subject to a suit or other legal proceeding claiming that the Product or such portion infringes a third party's intellectual property right, or in ABS's opinion is (are) likely to become subject of such a claim, ABS shall, at its option, have the right to either: (a) procure for buyer the right to continue using the Product; or (b) modify the Product so that it becomes non-infringing; or (c) require buyer to return the Product and upon return, refund to buyer the price actually paid by buyer for the Product, less a reasonable amount for use, damage and obsolescence; or (d) substitute for the alleged infringing Product other suitable, non-infringing Products with comparable functionality.

8.1.3 ENTIRE LIABILITY. THE FOREGOING STATES THE ENTIRE LIABILITY OF ABS, AND THE EXCLUSIVE REMEDY OF BUYER, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET OR ANY OTHER INTELLECTUAL PROPERTY RIGHT BY OR IN CONNECTION WITH ANY PRODUCT.

8.2 BY BUYER FOR BUYER'S MODIFICATIONS OR SPECIFICATIONS. If buyer modifies any Product or furnishes ABS with specifications or designs or requests for specific labeling or branding, buyer agrees to defend, indemnify and hold ABS harmless against all liabilities, damages, costs, expenses and claims arising from or based upon buyer's modifications or ABS's manufacture and sale of Product or other performance in compliance with such specifications or designs or requests for labeling or branding.

9. COMPLIANCE WITH LAWS, USE OF PRODUCT, VALIDATION. Without limiting the generality of the paragraph above entitled "LIMITED WARRANTY," unless otherwise expressly stated in writing by ABS, no claim or representation is made or intended (i) as to any clinical use of any Product (whether diagnostic, prognostic, therapeutic, blood banking or any other clinical use), (ii) that any Product has been cleared, approved, registered or otherwise qualified (collectively, "Approval") by ABS with any regulatory agency for use in any clinical procedure or for other use requiring compliance with any federal, state, provincial, European or any other governmental agency or regulatory body regulating diagnostic, therapeutic, blood or other clinical products, medical devices or similar products (collectively, "Regulatory Laws"), (iii) that any Product will satisfy the requirements of any governmental body or other organization, including, but not limited to, the United States Food and Drug Administration or the International Organization for Standardization, or (iv) that any Product or its performance is suitable or has been validated for any specific use or application. Product should not be used for any purpose that would require Approval unless proper Approval is obtained, or, in the case of use in diagnostic laboratory systems and then only to the extent permitted by law, the laboratory has validated its complete system as required by the Clinical Laboratory Improvements Act of 1988, as amended, in the United States or equivalents in other countries. Buyer agrees that if it elects to use Product for a purpose that would subject buyer, its customers or any Product to the jurisdiction of Regulatory Laws or other applicable law, buyer shall be solely responsible for obtaining any required Approvals or other approvals and otherwise ensuring that its use of any Product complies with such laws. Unless otherwise expressly stated in writing, Products have not been tested by or for ABS for any particular use or purpose, or for safety or efficacy. Buyer agrees that it is buyer's responsibility, and not ABS's, to validate the performance of Products for any specific use or application and to ensure that Products meet applicable regulatory, certification, validation or its other requirements, since the use and performance characteristics of Products have not been validated by ABS for any specific use or application, except as may be otherwise expressly set forth by ABS in writing. Product should be used in strict accordance with applicable instructions, warnings and other information in user manuals and other Product documentation.

10. FORCE MAJEURE. ABS shall not be liable for any delay or failure of performance, including without limitation failure to deliver or failure to install, where such delay or failure arises or results from any cause beyond ABS's reasonable control, including, but not limited to, flood, fire, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, plant breakdown, computer or other equipment failure, unusually severe weather, earthquake or other act of God, power loss or reduction, strike, lock-out, boycott or other labor disputes of any kind (whether relating to its own employees or others), embargo, governmental regulation or an inability or delay in obtaining materials. In the event of any such delay or failure of performance, ABS shall have such additional time within which to perform its obligations hereunder as may be reasonably necessary under the circumstances; and ABS shall also have the right, to the extent necessary in ABS's reasonable judgment, to apportion Product then available for delivery fairly among its various customers in such manner as ABS may consider equitable.

11. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL ABS BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY, OR UNDER ANY STATUTE OR ON ANY

OTHER BASIS FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES SUSTAINED BY BUYER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR CAUSED BY PRODUCT, ABS'S PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS RELATING TO THE PURCHASE OF PRODUCT OR PERFORMANCE OF SERVICES, ABS'S BREACH OF THESE TERMS, THE POSSESSION OR USE OF ANY PRODUCT, OR THE PERFORMANCE BY ABS OF ANY SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT ABS IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, DOWNTIME, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL, OR BUSINESS OR OTHER FINANCIAL LOSS.

12. SOLE TERMS; INCONSISTENCIES; ORDER OF PRECEDENCE. These Terms, together with ABS's Quotation, any applicable label license or patent statement or other written conditions of use, any other terms and conditions expressly agreed to in writing by an authorized representative of ABS (collectively, "ABS's Terms"), and buyer's statement on its purchase order (if accepted by ABS) of the name or identity of the Product(s) purchased, quantity, delivery date, bill to and ship to address and, if accurate, price (and only such information on buyer's purchase order), constitute the complete, exclusive and entire agreement between ABS and buyer with respect to purchases of Product (unless other terms and conditions are expressly designated to be applicable by ABS in writing), and ABS's offer to sell Product is expressly limited to such terms. Such terms shall take precedence over and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, and any of buyer's additional or different terms and conditions, which are hereby rejected and shall be void. Buyer's submission of a purchase order or other instrument for or regarding the purchase of Product, whether or not in response to an ABS Quotation, shall be deemed acceptance of and agreement to ABS's Terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order (except the name or identity of products purchased, quantity, delivery date, bill to and ship to address and, if accurate, price) or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in buyer's purchase order or other instrument or elsewhere. Any acceptance by ABS of any offer of buyer is expressly conditioned on buyer's assent to and acceptance of ABS's Terms to the extent they are additional or different terms from those of buyer's offer. Except as otherwise provided in these Terms, in the event of an inconsistency between these Terms and the terms appearing on ABS's Quotation or other agreement signed by an authorized representative of ABS, the terms appearing on ABS's Quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these Terms, and all other provisions of these Terms shall remain in full force and effect.

13. NO IMPLIED RIGHTS. Nothing in these Terms shall be deemed or construed (i) as a license or grant of any intellectual property rights, whether express, implied, by estoppel or otherwise; (ii) to limit ABS's rights to enforce its patent or other intellectual property rights, including, without limitation, as to use of any Product beyond that granted under any patent or other intellectual property label license or statement applicable to the Product; (iii) as granting buyer any right to be supplied with any Product or component thereof beyond those ordered by buyer and supplied by ABS in accordance with these Terms; or (iv) as a license or grant of any right to buyer to manufacture or to have manufactured any Product.

14. CHOICE OF LAW. Any contract between ABS and buyer relating to Product, including these Terms, and any disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of California, U.S.A., excluding both its choice of law provisions and the United Nations Convention on Contracts for the International Sale of Goods.

15. EXPORT CONTROLS. Buyer agrees that it will not export or transfer Product for re-export in violation of any United States laws or the laws of any other jurisdiction, or to any denied or prohibited person, entity, or embargoed country in violation of such laws.

16. MISCELLANEOUS. No amendment of ABS's Quotation or these Terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both ABS and buyer. ABS's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these Terms for any other purpose. If any provision of these Terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect.