* 1. **Definitions**. The term “Product” means, individually or collectively as context requires, Hardware, Software, Consumables and/or Service deliverable(s), and/or any other products that are offered for sale or license by HTG from time‑to‑time, and purchased by Customer under these Terms. “Software” means all or part of any computer code or program, including system software, application software, scripts or otherwise. “Hardware” means machinery, equipment and/or physical components of a computer (excluding Software). “Consumable” means any component used in an assay performed manually or by the Instrumentation, including, e.g., oligonucleotide probes, enzymes, buffers, and/or universally programmable assay plates.
  2. **Delivery & Shipment**. Shipment of all Products shall be FOB HTG’s point of distribution. All shipping and handling costs shall be paid by Customer and, if prepaid by HTG, the amount thereof shall be reimbursed to HTG. HTG shall use reasonable efforts to deliver Products in accordance with a delivery date requested by Customer but failure to meet any such date shall not be a breach of these Terms. HTG reserves the right to make delivery of Products in partial shipments.
  3. **Inspection**. Customer shall be responsible for inspecting all Products promptly upon receipt. Any claims for Product shortages or damage or defect on delivery must be reported in writing to HTG no more than 10 business days after Customer’s receipt of the Product. For any valid claim made, HTG shall, at its option, repair or replace the damaged, defective or missing Product. The foregoing is Customer’s sole and exclusive remedy for Product shortages or damage or defect on delivery. Please see the warranty sections below for otherwise defective or damaged Product.
  4. **Payment**. Customer shall make payments in full no later than 30 days from date of invoice. Late payments may incur a charge at the rate of 1.5% per month, or the maximum allowed by law, whichever is less. HTG reserves the right to require C.O.D. payment terms from Customer if its account is overdue or if Customer has an unsatisfactory credit or payment record. HTG may also refuse to sell any Product(s) to Customer until overdue accounts are paid in full. Unless prohibited by law, Customer is responsible for all applicable sales, use, excise, value added or similar other taxes or fees imposed by any federal, state or local governmental authority on any transaction under these Terms.
  5. **Conveyances.** Hardware title shall pass to Customer only upon full payment for such Product as set forth in these Terms. All Products are sold or licensed subject to a non‑transferable (in whole or in part) license to use such Product only in conformance with its packaging, manuals or other written instructions provided to Customer by HTG (collectively, “Labeling”). Customer shall indemnify, defend and hold HTG, its affiliates and their directors, officers, employees, agents, successors and assigns (“HTG Group”) harmless from and against any and all losses, damages and expenses (including reasonable attorney’s fees) (collectively, “Losses”) that any of the HTG Group may incur as a result of Customer’s misuse of any Product, except to the extent such Losses result from the gross negligence or intentional misconduct of any of the HTG Group.
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  7. **Warranty.** HTG provides the following warranty for its Products, as indicated.
     1. *Hardware and Software*: For a period of one (1) year from date of installation, HTG warrants that the Hardware or the media on which Software is furnished (if any) will be free of defects in materials and workmanship under normal use, and the Hardware or Software will perform in substantial conformance with its Labeling.
     2. *Consumables*: For the expiration period set forth in its Labeling or, if none, 90 days from shipment of Product to Customer, HTG warrants that the Consumable will be free of defects in materials and workmanship under normal use; and the Consumable will perform in substantial conformance with its Labeling.
     3. Warranties do not apply to defects or failures caused by (a) repair, modification, alteration or installation by anyone other than HTG or a person authorized by HTG; (b) removal, use or maintenance in an improper, inadequate, or unapproved manner; (c) manufacture in accordance with Customer Specifications; (d) installation of software or use of a Product in combination with software or products HTG has not approved; (e) neglect or accident caused by Customer, or (f) Products or Services for which HTG has not received payment of the purchase price or license fee. All warranties claims must be made in writing to HTG no later than the expiration of the applicable warranty period, and any Product that is the subject of a warranty claim must be timely returned to HTG as instructed. For valid warranty claims, HTG will, at its option, replace or repair a Product, or re‑perform a Service, or credit or refund Customer the price actually paid for the Product or Service.
  8. **DISCLAIMER**. EXCEPT AS OTHERWISE AGREED IN WRITING BY HTG, WARRANTIES EXTEND ONLY TO THE ORIGINAL PURCHASER AND ARE NOT TRANSFERABLE. IN NO EVENT WILL HTG’S TOTAL LIABILITY FOR BREACH OF WARRANTY EXCEED THE PURCHASE PRICE OF THE PRODUCT OR SERVICE. THE ABOVE WARRANTIES ARE EXCLUSIVE, AND HTG HEREBY DISCLAIMS ANY AND ALL, AND MAKES NO OTHER, WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, FREEDOM FROM THIRD PARTY RIGHTS OR OTHER NON-INFRINGEMENT, OR CONDITION OF TITLE. ANY PRODUCT OR SERVICE NOT COVERED BY AN EXPRESS WRITTEN WARRANTY IS SOLD AND PROVIDED “AS IS” AND “WITH ALL FAULTS,” WITHOUT WARRANTY OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED.
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  10. **Intellectual Property**. Nothing in these Terms shall be deemed or construed (i) as a license or grant of any intellectual property rights owned or controlled by HTG, whether implied, by estoppel or otherwise except to the extent expressly granted herein; or (ii) to limit HTG’s rights to enforce its intellectual property rights.
  11. **Assignment**. Neither party may assign or otherwise transfer these Terms or any of its rights or obligations under these Terms, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign these Terms in connection with the transfer or sale of all or substantially all of its business to which these Terms pertains.
  12. **Force Majeure**. No liability shall result from delay in performance or nonperformance, directly or indirectly caused by circumstances beyond the control of the party affected, including, but not limited to: acts of God, acts of terrorism, fire, explosion, war, Government actions, accident, or labor, material or equipment trouble or shortage.
  13. **General Provisions**. These Terms constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes any other agreements or understanding, whether written or oral. These Terms shall control to the extent any terms or conditions of any quote, or purchase order for Products or Services subject to these Terms are inconsistent with the terms and conditions of these Terms. No amendment of these Terms shall be effective unless in writing and signed by an authorized representative of each party. All remedies are cumulative and may, to the extent permitted by law, be exercised concurrently or separately, and no failure or delay by any party hereto in exercising any right or remedy hereunder or under applicable law will operate as a waiver thereof or a waiver of a particular right or waiver of any right or remedy on any subsequent occasion. These Terms shall be governed by and construed in accordance with the laws of the State of Arizona, excluding choice of law provisions. These Terms shall be effective upon shipment of Product to customer.