

TERMS AND CONDITIONS OF SALE

ALL TRANSACTIONS ARE GOVERNED BY THESE TERMS AND CONDITIONS OF SALE (THE “**TERMS AND CONDITIONS**” OR THE “**AGREEMENT**”). ANY PROPOSAL THAT INCLUDES DIFFERENT OR ADDITIONAL TERMS THAT VARY FROM THESE TERMS AND CONDITIONS ARE OBJECTED TO AND DISALLOWED.

NOTWITHSTANDING THE FOREGOING, ANY SUCH COUNTERPROPOSALS BY BUYER SHALL NOT OPERATE AS A REJECTION OF THE CONTRACT OF SALE, BUT AS A REJECTION OF THE ADDITIONAL OR DIFFERENT TERM(S).

1. **Defined Terms.** As used in these Terms and Conditions, the following terms shall have the meanings set forth below.
 - (a) “**Buyer**” means the buyer of the Products, as identified in the Order.
 - (b) “**Order**” means the purchase order or other contractual document submitted by Buyer, identifying the Products to be purchased.
 - (c) “**Parties**” means the Buyer and the Seller, collectively, which are each individually referred to as a “**Party**.”
 - (d) “**Product**” or “**Products**” means any and all goods, of any type, purchased from Seller by the Buyer, which are identified in the Order.
 - (e) “**Seller**” means Welkin Sciences, LLC, and its successors and assigns.

2. **Formation of Contract.** An Order is deemed by Seller to be an offer to purchase, which Seller may accept or reject in its sole discretion. Seller’s acceptance of an offer to purchase is binding on Seller only if made by Seller in written instrument or, if not by written instrument, by shipment of the Products ordered (and acceptance by shipment shall only be binding as to the portion of the order actually shipped by Seller). Seller’s acceptance is subject to these Terms and Conditions.

3. **Payment**
 - (a) **Prices.** Unless otherwise agreed to in writing, prices for Products identified under a firm Order shall remain effective for the period covered by the Order. Any difference in quantity specified therein, additional Products, or additions/modifications to the Order will be billed at the price prevailing at time of shipment. If there is any delay in completion or shipment of an Order due to any change requested by Buyer, or as a result of any delay on Buyer’s part in furnishing information required for completion or shipment of the Order, the price for Products is subject to change.
 - (b) **Payment.** Payment for each invoice shall be made according to terms net 30 days. For Products with a lead time of greater than sixty (60) days, fifty (50) percent of the total purchase price shall be invoiced at the time of order, with the remaining fifty (50) percent invoiced upon delivery. For Products with a lead time of less than sixty (60) days, Seller shall submit invoices to Buyer stating amounts due. Payment shall be made to Seller by check or direct deposit.

- (c) **Credit.** Seller may, but shall not be obligated to, grant credit terms to Buyer. Acceptance of any order is subject to final credit approval by Seller. Seller reserves the right to cancel any sale if Seller deems Buyer unable to pay for any Products. Seller reserves the right, in its sole discretion and without prior notice, to deny, change or limit the amount or duration of credit to be allowed Buyer, either generally or with respect to a particular Order, and may require cash payments in advance or security satisfactory to Seller.
- (d) **Cost of Delivery, Taxes and Other Charges.** Buyer shall pay the costs of delivery of the Products. Buyer shall pay all sales, use, excise or similar taxes, or other charges, which Seller is required to pay, or to collect and remit, to any Government (national, state, or local) and which are imposed on or measured by the sale (excluding taxes based on Seller's net income), unless Buyer presents an exemption certificate acceptable to Seller and the applicable taxing authorities.

4. Delivery, Shipping.

- (a) **Delivery.** Seller will deliver or make available the Products within a reasonable amount of time after receiving Buyer's Order, subject to their availability. The stated delivery date provided by Seller to Buyer is approximate and delivery of any Products ordered from Seller under this Agreement may be delayed for a period of time sufficient to allow Seller to manufacture and assemble or otherwise acquire the Products for Buyer. The Parties further agree that Seller shall not be held liable to Buyer or any other party for any losses, damages, penalties, or expenses for any delay in delivery of the Products.
- (b) **Shipping.** Unless otherwise agreed in writing by the parties, Seller will deliver the Products, EXW (Incoterms 2020) Seller's facility, using Seller's standard methods for packaging and shipping same. Claims for loss or damage to Products in transit must be made to the carrier and not to Seller. If the Products ordered are to be exported from the United States, the quoted shipping dates are subject to all export documents and authorizations. Regardless of ultimate destination, the prices quoted are based on packing for domestic shipment unless otherwise stated in writing. Buyer agrees to provide Seller in writing with the ultimate destination, end-use, and identity of the end-user at the time the order is placed if the Products are to be exported. Buyer acknowledges and agrees that it shall be responsible for compliance with any registration or importation requirements of any country into which it seeks to import the Products. Buyer is solely responsible for complying with applicable U.S. export laws. Seller shall not be the importer of record and is not responsible for compliance with importation requirements of any country to which the Products are shipped.

- 5. **Cost of Delivery, Taxes and Other Charges.** Buyer shall pay the costs of delivery of the Products. Buyer shall pay all sales, use, excise or similar taxes, or other charges, which Seller is required to pay, or to collect and remit, to any Government (national, state, or local) and which are imposed on or measured by the sale.

6. **Transfer of Property and Risk of Loss.** Seller retains the right and title to the Products sold to Buyer until Seller is paid in full for the Products. Buyer shall obtain the right and title to the Products upon payment to Seller of the purchase price and any taxes, excise, or other charges. The risk of loss, including, but not limited to the risk of loss, theft, damage or destruction of the Products, transfers to Buyer upon Seller's delivery of the Product(s) to the carrier.
7. **No Set-Off.** Buyer shall have no right of set-off or withholding, and no deduction of any amounts due from Buyer to Seller shall be made without Seller's prior, express written approval.
8. **Patents.** Seller reserves the right to discontinue deliveries of any Products, the manufacture, sale, or use of which would, in Seller's opinion, infringe upon any U.S. patent, trademark, or design now or hereinafter issued, registered, or existing and under which Seller is not licensed.
9. **Changes.** Seller reserves the right to alter, modify, redesign, or discontinue the Products or any component(s) of the Products and change its service, warranty, support, or other policies, without notice and without any obligation to Buyer.

10. Inspection.

- (a) As used in this section, "**Nonconforming Products**" means only the following: (i) the items shipped are different from those identified in Buyer's Order; or (ii) the labels or packaging of the items incorrectly identifies them. Buyer shall inspect the Products within thirty (30) days following receipt thereof (the "**Inspection Period**"). The Products will be deemed accepted at the end of the Inspection Period unless Buyer notifies Seller in writing of any Nonconforming Products and furnishes Seller with written evidence or other documentation reasonably requested by seller.
- (b) If Buyer notifies Seller of any Nonconforming Products prior to expiration of the Inspection Period, then Seller will, in its sole discretion, (i) replace the Nonconforming Products with conforming Products; or (ii) credit or refund the purchase price for the Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer. At Seller's request and direction, Buyer will return the Nonconforming Products at Seller's expense. Upon receipt of the Nonconforming Products, Seller will promptly refund the monies owed or ship the replacement Products.
- (c) Buyer acknowledges and agrees that the remedies set forth in this section are Buyer's exclusive remedies and Seller's sole liability for the delivery of Nonconforming Products, and except as set forth in this section, Buyer has no right to return the Products to Seller without Seller's written authorization.

11. Limited Warranty.

- (a) **Generally:** Unless otherwise specified by Seller in a separate written product warranty (in which case such other product warranty term shall control), Seller warrants to Buyer that the Products will be free from defects in material and workmanship for one (1) year from the original delivery date of the Products from Seller to Buyer (the “**Warranty Period**”). If, prior to the expiration of the Warranty Period, the Products fail to conform to this Limited Warranty and Buyer informs Seller in writing of such nonconformance, then Seller will either (i) repair or replace the defective Products, or (ii) in Seller’s sole and exclusive discretion, refund that portion of the amount received by Seller attributable to the defective Products, which amount shall be pro-rated for Warranty Periods greater than one (1) year. Repair or replacement may be made with new or refurbished Products or component parts (at Seller’s option) or, if Seller no longer sells the applicable Products, with a similar Product of like function. Buyer shall bear the costs of access, deinstallation, reinstallation, and transportation of the Products to Seller and back to Buyer. Any repair or replacement pursuant to this Limited Warranty shall not extend the Warranty Period.
- (b) **Conditions to Limited Warranty.** This Limited Warranty and remedy are expressly conditioned upon: (i) Buyer’s proof of payment of the purchase price in full; and (ii) Buyer giving written notice of the defect, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or ought to have discovered the defect.
- (c) **Exclusions.** This Limited Warranty does not cover the following: (i) consumable Products and components (e.g., batteries, filters, belts, and kits); (ii) Products subjected to misuse, neglect, accident, or improper installation; (iii) Products damaged by disaster (e.g., fire, flood, wind, earthquake, or lightning) or other causes beyond the control of Seller (e.g., excessive voltage, mechanical shock, or water damage); (iv) Products whose defect has been caused by alteration or repair by anyone except Seller or Seller’s authorized representatives; (v) normal wear and tear; (vi) any Products manufactured or customized according to Buyer’s specifications; (vii) Products purchased other than through a Seller-authorized channel; (viii) any software (any such software being warranted under the terms of the end user License Agreement defined below); and (ix) any Products that is subject to a separate written warranty.
- (d) **Warranty Claims.** Buyer must notify Seller of any warranty claims and request a Return Material Authorization (“**RMA**”) by contacting Seller. Returned Products will only be accepted if the RMA is included with the returned Products, and Products returned without a proper RMA will be returned to Buyer at Buyer’s expense. If Seller provides services that are incidental to the sale of the Products, such as installation, training, and start-up (“**Services**”), Seller warrants to Buyer that it will perform the Service in a professional, workman-like manner. Seller will re-perform any non-conforming Services for no charge, as long as Buyer provides written notice to Seller within five (5) days following completion of the Services. The limited remedies described herein are the sole and exclusive remedy and Seller’s sole responsibility under this Limited Warranty.

- 12. Disclaimer of Warranties.** THE WARRANTIES SET FORTH HEREIN OR IN SELLER'S WARRANTY DOCUMENTS WITH RESPECT TO A PRODUCT ARE THE ONLY WARRANTIES MADE BY SELLER IN CONNECTION WITH THE PRODUCTS AND THE TRANSACTIONS CONTEMPLATED AS A RESULT OF THIS SALE. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS TO BUYER OR ANY OTHER PERSON OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND SELLER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. PRODUCTS SOLD HEREUNDER ARE SOLD ONLY TO THE SPECIFICATIONS SPECIFICALLY SET FORTH BY THE SELLER IN WRITING. SELLER'S SOLE OBLIGATION FOR A REMEDY TO BUYER SHALL BE REPAIR OR REPLACEMENT OF NON-CONFORMING PRODUCTS. BUYER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF PRODUCTS PURCHASED, WHETHER USED ALONE OR IN COMBINATION WITH OTHER PRODUCTS OR SUBSTANCES.
- 13. Limitation of Liability.** No claim by Buyer of any kind including, but not limited to, claims for indemnification, whether as to quality or amount of product delivered or non-delivery, shall be greater in amount than the purchase price for the products in respect of which damages are claimed. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOSS OF BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, OR LOSS OF DATA, ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, SERVICING, USE, OR LOSS OF THE PRODUCTS SOLD HEREUNDER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.
- 14. Excuses for Non-Performance.** If the manufacture, transfer, or receipt by either Party of any Products covered hereby is prevented, restricted, or interfered with by reason of any event beyond the reasonable control of the Party so affected, such Party shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference, and neither Party shall be liable to the other for default or delay in performing, except with respect to Buyer's payment obligations.
- 15. Seller's Rights.** If Buyer should fail in any manner to fulfill the terms and conditions hereof, Seller may defer further shipments until such default is cured. Remedies provided herein shall be in addition to, and not in lieu of, other remedies that may be available to Seller. If for any reason, the quantities of the products covered hereby or of any materials used in the production of the products reasonably available to Seller shall be less than Seller's total needs for its own use and for sale, Seller may allocate its available supply of products among its existing or prospective purchasers and/or its own departments, divisions, and affiliates in

such manner as Seller deems proper in Seller's sole discretion, without thereby incurring liability on account of the method of allocation determined or its implementation or for failure to perform this Agreement.

- 16. Confidentiality.** All non-public, confidential, or proprietary information of Seller, including but not limited to trade secrets, intellectual property, business information, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, that is disclosed by or on behalf of Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with these Terms and Conditions is strictly confidential, is provided solely for the use of performing these Terms and Conditions, and may not be disclosed to any person, corporate division, or entity, or copied, unless authorized in advance by Seller in writing. Upon Seller's written request, Buyer will promptly return all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation of this Section, without having to post bond or establish the insufficiency of a remedy at law. This Section does not apply to information that is: (a) in the public domain, through no fault of Buyer, at or subsequent to the time such confidential information was disclosed to Buyer by Seller; (b) rightfully known by Buyer free of any obligation of confidence at the time of disclosure to Buyer by Seller; or (c) rightfully obtained by Buyer from a third party without similar restriction from such third party and the disclosure of which from such third party does not constitute a violation of any obligation by such third party to Seller.
- 17. Intellectual Property.** Buyer acknowledges Seller and its affiliates, if applicable, are the owners or licensors of brands, trademarks, designs, patents, copyrights, and other intellectual property relating to Seller's Products, and that no right or license is conveyed by Seller to Buyer to manufacture, have manufactured, modify, import, or copy such Products. Buyer agrees that it will reference brands of Seller or its affiliates only in connection with the use or sale of Products delivered to Buyer hereunder, and not in connection with the sale of any other Product, except as separately authorized by Seller in writing. Buyer further agrees that it will not, directly or through intermediaries, reverse engineer, decompile, or disassemble any software (including firmware) comprising or contained within a Product, except and only to the extent such activity may be expressly permitted, notwithstanding this limitation, either by applicable law or, in the case of open source software, the applicable open source license.
- 18. Governing Law.** This Agreement shall be construed, and the respective rights and duties of Buyer and Seller shall be determined, according to the laws of the State of Colorado, without giving effect to its principles of conflicts of laws. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 19. Dispute Resolution.** Any dispute, controversy, or claim arising out of or related in any way to these Terms and Conditions and/or any sale and purchase of products hereunder or any transaction contemplated hereby which cannot be amicably resolved by the parties shall be solely and finally settled by arbitration administered by the American Arbitration Association

in accordance with its commercial arbitration rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place before a panel of three (3) arbitrators sitting in El Paso County, Colorado. The language of the arbitration shall be English. The arbitrators will be bound to adjudicate all disputes in accordance with the laws of the State of Colorado. The decision of the arbitrators shall be in writing with written findings of fact and shall be final and binding on the parties. The arbitrator shall be empowered to award money damages, but shall not be empowered to award incidental damages, consequential damages, indirect damages, statutory damages, special damages, exemplary damages, punitive damages, or specific performance. Each Party shall bear its own costs relating to the arbitration proceedings irrespective of its outcome. This section provides the sole recourse for the settlement of any disputes arising out of, in connection with, or related to this Agreement.

20. No Assignment. This contract between Buyer and Seller is not transferable by either Party without the prior written consent of the other Party, except that Seller may assign this Agreement without Buyer's consent if the assignment is to an affiliate or if the assignment is carried out as part of a merger, restructuring, or reorganization, or sale or transfer of all or substantially all of Seller's assets.

21. Compliance with Laws; Export Laws. Both Parties shall comply with all applicable international, national, state, regional, and local laws and regulations with respect to their performance of this Agreement, including without limitation the following: 22 USC 2751-2796, the Arms Export Control Act; 22 Code of Federal Regulations 120-130, the International Traffic in Arms Regulations (“**ITAR**”); 50 USC 2401-2420, the Export Administration Act; 15 CFR 768-799, the Export Administration Regulations; along with their supplemental laws and regulations, the “**Export Laws and Regulations.**” Buyer represents and warrants that for all ITAR-controlled Products, it is a U.S. Person as that term is defined in the Export Laws and Regulations. Buyer shall comply with any and all Export Laws and Regulations and any license(s) issued thereunder. Each Party agrees to immediately notify the other Party if the notifying Party is listed on any denied parties list or if the notifying Party's export privileges are otherwise denied, suspended, or revoked in whole or in part by any government entity or agency.

22. License Agreement. If the Products sold under these Terms and Conditions include software, on a stand-alone basis or as object code and/or firmware contained in a hardware product, Buyer agrees that (i) such software is licensed and not sold; and (ii) the software may only be used in accordance with the terms of the Company's standard end user license agreement that accompanies the software (the “**License Agreement**”), which terms shall apply and shall be deemed incorporated into and made part of these Terms and Conditions. In the event that Buyer fails to timely pay any license or other fees in respect of software when due, then the applicable License Agreement shall expire without notice and be of no further force or effect. In the event of any disagreement between these Terms and Conditions and the terms of the License Agreement, the terms of the License Agreement shall govern.

23. Cancellation and Termination.

- (a) No Products may be returned without prior written approval of Seller. Orders placed with and accepted by Seller may not be canceled except with Seller's written consent prior to shipment and Buyer's acceptance of Seller's cancellation charges, which shall protect Seller against all costs and losses.
- (b) In addition to any other remedies that Seller may have, Seller may, in its sole discretion, refuse, cancel, or delay any shipment to Buyer, or terminate these Terms and Conditions with immediate effect upon written notice to Buyer, if Seller reasonably believes that sale of the Products to Buyer is prohibited by applicable U.S. law or regulation, or if Buyer: (i) fails to pay any amount when due under these Terms and Conditions and the failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms and Conditions, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

24. Information of Buyer. Buyer shall not provide any of Buyer's proprietary information to Seller without execution by both Parties of a non-disclosure agreement that expressly covers the subject matter of the Order.

25. Relationship of the Parties. The relationship of the Parties hereto is that of vendor and purchaser. Nothing in this Agreement, and no course of dealing between the Parties, shall be construed to create or imply an employment or agency relationship or a partnership or joint venture relationship between the Parties or between one Party and the other Party's employees or agents. Accordingly, Buyer shall not be empowered to bind Seller in any way, to incur any liability, make any statements, representations, warranties, or commitments, or otherwise act on behalf of the Seller. Each Party shall be solely responsible for payment of its employees' salaries (including withholding of income taxes and social security), workers compensation, and all other employment benefits.

26. Miscellaneous. These Terms and Conditions are the sole and exclusive statement of the parties' understanding and agreement with respect to the transactions contemplated by this sale, notwithstanding any other terms that might be contained in any Order or other document received from Buyer or submitted to Seller. These Terms and Conditions constitute the entire agreement between the parties regarding the subject matter hereof and can only be modified or changed in writing and signed by authorized representatives of both parties. No waiver by Seller of any of these Terms and Conditions or any breach hereof shall constitute or be deemed to be a waiver of any such term or any such breach in any other case. No waiver shall be deemed to occur as a result of the failure to enforce any term or condition of these Terms and Conditions of. If any clause or portion hereof shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining clauses or portions shall remain in full force and effect. The paragraph headings are for convenience only and shall not be used in interpreting or construing these Terms and Conditions.