



## CODEX DNA, INC. GENERAL CODEX DNA TERMS AND CONDITIONS OF SALE

PLEASE CAREFULLY READ THESE CODEX DNA GENERAL TERMS OF SALE ("CODEX DNA GENERAL TERMS OF SALE") AND EACH OF THE ADDENDUMS ATTACHED HERETO (ALTOGETHER, THE "AGREEMENT"). THIS AGREEMENT CONTAINS THE EXCLUSIVE TERMS AND CONDITIONS UNDER WHICH CODEX DNA, INC., A DELAWARE CORPORATION (TOGETHER WITH ITS AFFILIATES, "CODEX DNA") AGREES TO PROVIDE TO YOU (TOGETHER WITH THE ENTITY FOR WHICH YOU REGISTER ON BEHALF OF "YOU" OR "CUSTOMER") PRODUCTS THROUGH THE CODEX DNA PORTAL AT [CODEXDNA.COM](https://CODEXDNA.COM) (THE "PORTAL"). BY SELECTING THE "ACCEPT" BUTTON BELOW, YOU CREATE A LEGALLY ENFORCEABLE CONTRACT AND AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT, EFFECTIVE AS OF THE DATE THE "ACCEPT" BUTTON IS SELECTED.

IF YOU CANNOT OR DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, YOU ARE PROHIBITED FROM ACCESSING, USING, AND FROM PURCHASING PRODUCTS THROUGH THE PORTAL.

CODEX DNA RESERVES THE RIGHT TO AMEND THIS AGREEMENT AT ANY TIME WITHOUT SPECIFIC NOTICE TO YOU. THE LATEST AGREEMENT WILL BE POSTED ON THE PORTAL. AS SUCH, YOU SHOULD REVIEW THE AGREEMENT PRIOR TO EACH PURCHASE OF ANY PRODUCT AND/OR SERVICE. YOUR CONTINUED USE OF ANY PART OF THE PORTAL CONSTITUTES YOUR ACCEPTANCE OF SUCH CHANGES.

### 1 ORDERING OF PRODUCTS AND SERVICES.

- 1.1 **Applicable Agreement Covering Customer's Orders** Any products or other items ordered by Customer through the Portal which are to be made available, manufactured, assembled or otherwise produced by, or on behalf of, Codex DNA or its Affiliates ("Products") shall be subject to this Agreement (including any applicable Product and/or Service Addendum attached hereto). To the extent there is a conflict between the terms of the Codex DNA General Terms and Conditions of Sale and any Product and/or Service Addendum, the Product or Services Addendum which is specifically applicable to the Product that Customer ordered shall prevail. "Affiliate(s)" shall mean any organization that directly or indirectly controls or is controlled by or under common control with any party to this Agreement; for the purposes of this definition, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such organization, whether through the ownership of voting securities, by contract or otherwise; and the terms "affiliated," "controlling" and "controlled" have meanings correlative to the foregoing.
- 1.2 **Ordering and Price.** Customer shall purchase Products from Codex DNA directly through the Portal or by submitting order forms to Codex DNA, specifying the Products requested, quantities ordered and requested delivery dates (the "**Order Forms**"). The price for Products shall be the amount set forth in the Codex DNA written quotation to Customer. Customer acknowledges that Codex DNA prices are subject to change from time to time and any written quotation provided by Codex DNA shall expire no later than twenty (20) days after the same is provided to Customer. If Codex DNA does not provide Customer with a written quotation (or the written quotation has expired), then the price shall be the list price stated on the Portal on the date Codex DNA receives the order. Any terms contained within or attached to any request for quotation which are not set forth in the Order Form or this Agreement or are inconsistent with those set forth in the Order Form or this Agreement shall be void and of no effect unless mutually agreed to in writing by the parties. The failure of Codex DNA to object to any additional terms and conditions contained in any other document from Customer shall neither be construed as the acceptance of such terms and conditions by Codex DNA, or a waiver of this Agreement. All orders are subject to acceptance by Codex DNA and the availability of any requested Products.- In the event of a direct conflict or an inconsistency between this Agreement and an Order Form mutually executed by Customer and Codex DNA, the executed Order Form shall control.
- 1.3 **Customer Information; Login Credentials.** Prior to Customer placing an order as described in Section 1.2 and Codex DNA accepting the same, Customer must register an account on the Portal. When registering, Customer agrees to provide Codex DNA with accurate and complete customer account, billing and shipping information (the "**Customer Account Information**"). In addition, Customer will be required to create a user account, including a username and password and other logon credentials (altogether, "**Login Credentials**"). Customer is solely responsible for maintaining the confidentiality of its Login Credentials, for updating its Customer Account Information and for all activities on the Portal (including purchases) that occur through the use of such Login Credentials.

- 1.4 **Fees and Payment.** Customer may pay for any Products with a valid credit card when placing an order through the Portal. Otherwise, Codex DNA shall invoice Customer for each shipment of Product (as defined in Section 3) at the time of delivery thereof (or as otherwise set forth in the applicable Product or Service Addendum). Invoices will be sent to the most recent billing address provided by Customer as part of the Customer Account Information. Customer shall pay the fees as specified in each such invoice by the date specified in such invoice and all payments shall be paid in United States Dollars. If no date is specified in an invoice, then Customer shall pay within thirty (30) days of the delivery of the Product to such invoice. Any late payments shall be subject to a service charge equal to 1.5% of the amount due (calculated on a monthly basis) or the maximum amount allowed by law, whichever is less. If Codex DNA, in its sole discretion, finds it necessary to employ an attorney or collection agency to collect any past due sum owed hereunder, it may collect, in addition to any other sum owed hereunder, all applicable attorney's or collection agency's fees and costs.
- 1.5 **Taxes.** Except as specified in a price quote, fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on the net U.S. income of Codex DNA. If Codex DNA has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 1.5, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Codex DNA with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer agrees and accepts full responsibility and liability for any penalties, interest or other tax liability arising from any failure by Customer to pay any applicable Taxes.

## **2 CUSTOMER RESPONSIBILITIES.**

Customer acknowledges and agrees that Customer is solely responsible for: (i) ensuring that the Products are suitable for Customer's particular use; (ii) testing and using the Products hereunder in accordance with the practices of a technically qualified individual and in strict compliance with the documentation therefor, and not misusing the Products (iii) researching and warning Customer's clients, employees and any auxiliary personnel of any risks or hazards involved in using or handling the Products; (iv) ensuring Customer's use of the Products complies with all applicable laws, regulations and governmental policies, now and hereinafter enacted and (v) obtaining all necessary approvals, intellectual property rights, licenses and permissions necessary for any particular use or application. Without limiting the foregoing, Customer assumes responsibility for ensuring that the Products are approved for use under the Toxic Substances Control Act, if applicable. Customer acknowledges that Codex DNA provides Material Safety Data Sheets ("MSDS") for certain of its Products, and that they are available upon request.

## **3 DELIVERY.**

After acceptance of an Order Form, including through the Portal, Codex DNA shall use commercially reasonable efforts to deliver the Product as applicable. Codex DNA reserves the right to make changes to the specifications for any ordered Products that do not materially affect the quality or performance of the Products. Customer shall pay all delivery and shipment costs incurred by Codex DNA hereunder. Codex DNA shall select the method of shipment of, and the carrier for the Products. Customer acknowledges that any delivery and/or shipment cost set forth on any price quote is an estimate only. Codex DNA may, in its sole discretion, without liability or penalty, make partial shipments of an accepted order to Customer. Each shipment will constitute a separate sale and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of an accepted order. Unless otherwise agreed to by the parties in writing, Codex DNA shall deliver the Products to the Customer's address provided in the Customer Account Information or any other address provided through the Portal and approved in writing by Codex DNA, using Codex DNA standard methods for packaging and shipping Products and/or Service Deliverables. Any time quoted by Codex DNA for delivery in a quote is an estimate only. Codex DNA is not liable for or in respect of any loss or damage arising from any delay in filling any accepted order, failure to deliver or delay in delivery. No delay in the shipment or delivery of any Products relieves Customer of its obligations under this Agreement, including without limitation accepting delivery of any remaining installment(s) of Products. Except as otherwise set forth in an applicable Product or Service Addendum, title and risk of loss for any Products shall pass to Customer upon delivery to the carrier (provided that Customer acknowledges it only receives a license to any software provided hereunder and title to such software remains with Codex DNA). If Customer requests that Codex DNA hold and/or store any Products ordered by Customer which are ready for shipment, Customer shall reimburse Codex DNA for all costs associated with the same. Special packaging requirements, if agreed to in writing by Codex DNA, shall be at Customer's expense. Customer will be responsible for inspecting all Products shipped hereunder, and Customer will give Codex DNA written notice of non-conforming or damaged Products within ten (10) days following receipt. If Customer fails to notify Codex DNA of non-conformance within such 10-day period, the Product will be deemed accepted by the Customer. However, such acceptance will not be considered a waiver under the warranty provided in this Agreement.

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#### 4 OWNERSHIP; NO REVERSE ENGINEERING.

- 4.1 **Ownership.** Customer acknowledges that, as between Customer and Codex DNA, all intellectual property rights relating to the Products and all materials, articles, technologies, works of authorship, software, specifications, designs, plans, processes, know-how, data and other results, work products and/or information and any intellectual property rights associated therewith that are used by Codex DNA to manufacture, assemble or otherwise produce the Products (the “**Tools**”) are solely and exclusively owned by Codex DNA. To the extent Customer nonetheless obtains rights in and/or to any such Tools or any improvements thereto (including by way of providing any Feedback (as defined in Section 4.2)), Customer asserts no right, title and interest in and to the Tools and will assist Codex DNA, at the request and expense of Codex DNA, in securing and recording Codex DNA intellectual property rights in such Tools.

Notwithstanding anything in this Agreement to the contrary, Codex DNA claims no ownership interest, and the Tools shall not include, (a) any pre-existing materials, specifications, know-how, information, data or DNA sequences provided to Codex DNA by Customer (“**Customer Materials**”) or any derivatives or modifications of Customer Materials that are generated by Codex DNA or (b) any DNA sequences generated by Customer’s use of the Products and/or Service Deliverables.

Unless otherwise provided in an applicable Service and/or Product Addendum, and not including the DNA sequences generated by Customer’s use of the Products; the sale of Products by Codex DNA to Customer only grants Customer a limited, non-transferable right under such intellectual property for Customer to use the quantity of Products that Customer has bought from Codex DNA only for Customer’s research purposes. No right to resell the Products or any of their components is conveyed expressly, by implication or by estoppel. Unless Codex DNA expressly states otherwise in a Services or Product Addendum, Codex DNA provides no rights to use its Products in commercial applications of any kind including, without limitation, manufacturing, quality control or commercial services such as reporting the results of Customer’s activities for a fee or other form of consideration. If Customer needs commercial use rights to use the Products (including the right to perform fee-for-services), Customer should contact the Codex DNA licensing department at [help@codexdna.com](mailto:help@codexdna.com). To the extent that Customer’s use of the Products is outside the scope of this Agreement, it is solely Customer’s responsibility to acquire additional intellectual property rights related to such use. Nothing in the Agreement limits the ability of Codex DNA to enforce its intellectual property rights, or Customer’s rights to exploit the DNA sequences generated by Customer’s use of the Products.

- 4.2 **Feedback.** Customer acknowledges that Codex DNA may from time to time solicit from Customer feedback or comments regarding the Products, including the results of any testing or benchmarking thereof (“**Feedback**”). If Customer elects to provide any Feedback to Codex DNA (whether solicited or unsolicited) all of Customer’s Feedback shall be the sole and exclusive property of Codex DNA and Codex DNA shall have the right to use and disclose such Feedback in any manner and for any purpose in the discretion of Codex DNA without remuneration, compensation or attribution to Customer, provided that Codex DNA is under no obligation to use such Feedback.
- 4.3 **No Reverse Engineering.** Notwithstanding anything to the contrary herein, Customer shall not reverse engineer or attempt to reverse engineer or encourage any third party to reverse engineer or attempt to reverse engineer, any of the Tools or Products.

#### 5 NOTICES.

Customer shall set forth its email address for communication and notice purposes relating to this Agreement on the Portal access page. Customer agrees to accept emails from Codex DNA at the e-mail address specified under this Section 5. Any notice provided under this Agreement must be in writing and shall be deemed to have been given on the earlier of the date when actually delivered by personal delivery, e-mail, commercial courier or three (3) days after being deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, and in the case of Codex DNA, addressed as follows, unless and until Codex DNA notifies Customer of a change of address:

Codex DNA, Inc.

Attention: Legal Department

9535 Waples Street, Suite 100

San Diego, CA 92121-2993

The Codex DNA email address for notices is [help@codexdna.com](mailto:help@codexdna.com).

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## 6 CONFIDENTIALITY.

It is anticipated that in the performance of this Agreement each party is likely to disclose (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) certain information that the Disclosing Party considers valuable, proprietary and confidential. “**Confidential Information**” shall mean any information, including but not limited to data, techniques, protocols, results and regulatory, clinical, business (including but not limited to the identity of, and information relating to, each party’s customers, prospects, vendors, affiliates and employees), financial, commercial and technical information, disclosed by the Disclosing Party to the Receiving Party and is identified in writing as confidential at the time of disclosure. Customer’s Confidential Information shall include the Customer Materials. The Confidential Information of Codex DNA shall also include information and data regarding the performance, capabilities and benchmarking results from use of the Products, Services and the Tools. If such information is disclosed in non-tangible form (including without limitation orally or visually), it must be identified as confidential at the time of disclosure and summarized by the Disclosing Party with specificity in a writing marked “Confidential” and given to the Receiving Party within thirty (30) days after such disclosure; *provided, however*, Confidential Information orally disclosed by or on behalf of the Disclosing Party that a reasonable person would understand to be confidential or proprietary in nature shall be treated as Confidential Information even if such Confidential Information is not subsequently reduced to a tangible form and delivered to the Receiving Party.

The Receiving Party shall maintain Confidential Information of the Disclosing Party in strict confidence, and shall use such Confidential Information only for the purpose of this Agreement and shall disclose such Confidential Information only to its employees, agents and contractors that have a reasonable need to know such Confidential information and who are bound by obligations of confidentiality and non-use no less restrictive than those set forth herein. The Receiving Party shall protect all such Confidential Information against unauthorized disclosure to third parties using the same degree of care that it uses to protect its own confidential and proprietary information of a similar nature and importance (but in any event, no less than reasonable care).

Confidential Information shall not include information that (i) is or becomes publicly known through no fault of the Receiving Party; (ii) is learned by the Receiving Party from another entity (other than directly or indirectly by the Disclosing Party) in lawful possession of such information that is entitled to disclose it without restriction, where another entity does not include a party’s affiliates; (iii) is already known by the Receiving Party before its receipt from the Disclosing Party, as evidenced by the Receiving Party’s written records; or (iv) is independently developed by or for the Receiving Party as evidenced by the Receiving Party’s written records independently of and without reliance upon or reference to the Disclosing Party’s Confidential Information.

The Receiving Party may disclose and utilize Confidential Information of the Disclosing Party (i) to the limited extent such disclosure is reasonably necessary to prosecute or defend litigation; (ii) in connection with financing and acquisition diligence activities; *provided, however*, any third party has agreed in writing or is otherwise bound to maintain the information in confidence for the period of time specified herein and not to use such information except for such limited purposes; (iii) to comply with applicable laws, governmental regulations or court orders, the International Gene Synthesis Consortium (“**IGSC**”) Harmonized Screening Protocol, or in submitting mandatory information to tax or other governmental authorities; *provided, however*, if the Receiving Party is required to make any such disclosure, it shall give reasonable advance notice to the Disclosing Party of such disclosure and shall use its reasonable efforts to secure confidential treatment of such information in consultation with the Disclosing Party prior to its disclosure (whether through protective orders or otherwise); or (iv) to the extent necessary for advising or for receiving advice from its advisors, investors, auditors and legal counsel, all on a need to know basis and provided that any such third party has agreed in writing or is otherwise bound to maintain the information in confidence for the period of time specified herein and not to use such information except for the limited purpose of conducting audit services or providing such advice or assistance to the Receiving Party.

Upon termination or expiration of this Agreement, each party shall promptly return the other party’s Confidential Information and any copies and extracts thereof. The confidentiality obligations and restrictions in this Agreement, as they apply to Confidential Information disclosed prior to termination, shall survive any termination or expiration of this Agreement for a period of five (5) years.

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## 7 PRIVACY.

Customer's access to the Portal (or any Service thereunder) may require Customer to provide certain personal information about Customer and/or its users (hereinafter referred to as “**Personal Data**”). Such Personal Data may include Customer's Logon credentials, name, I.D. number, email address, telephone number, mailing address, organization name, employment title, payment information and/or certain technical information about the system hardware and software that is being used by Customer. Without limiting the foregoing, such Personal Data may include certain other information collected via the Codex DNA Archetype Cloud Service (as defined in the Archetype Services Addendum attached hereto) and as set forth in the Codex DNA Privacy Policy, which is available at [codexdna.com](http://codexdna.com). Codex DNA will collect, use and in certain limited circumstances disclose Customer's Personal Data (e.g., to contractors and service providers who are assisting Codex DNA in the operation or hosting of the Archetype Cloud Service) in accordance with the Codex DNA Privacy Policy. As a condition to uploading any Personal Data through the Portal and/or otherwise purchasing or using Codex DNA Products through the Portal, Customer is required to accept the terms of the Codex DNA Privacy Policy, which is incorporated herein by reference. Customer hereby acknowledges and agrees that Customer has read the current Codex DNA Privacy Policy. Customer also acknowledges and agrees that Codex DNA processes such information, including Personal Data, in its capacity as data processor and that Customer always remains the data controller of such processing. Notwithstanding anything to the contrary, in Customer's capacity as data controller, it is Customer's exclusive responsibility to obtain all necessary consents to such processing, to convey the information notices as required by applicable law, to make any necessary filings with the appropriate data protection authority(ies), to enforce and comply with any request to access and/or rectify and/or delete any Personal Data of Customer's Authorized Users. Customer agrees to be fully responsible and liable for any suits, actions, claims or proceedings, whether originating from Customer, its employees, a data protection authority and/or a third party in this respect.

## 8 WARRANTIES AND INDEMNIFICATION.

- 8.1 **Limited Warranties for Products and Service Deliverables, Generally.** Unless a different written warranty is included (or is disclaimed in its entirety) in any Service and/or Product Addendum, Codex DNA warrants that the Products provided pursuant to an accepted order shall meet the specifications set forth in the applicable documentation provided by Codex DNA (or otherwise mutually agreed upon by the parties in writing). If, through no fault or delay of Customer, the Products do not materially conform to the foregoing warranty and Customer provides Codex DNA with written notice within thirty (30) days of delivery from Codex DNA to Customer of the Products, as applicable, Customer's sole and exclusive remedy shall be for Codex DNA at its sole discretion to replace and re-deliver the Products. If Customer fails to notify Codex DNA of non-conformance within such thirty (30) day period, the Products shall be deemed accepted by the Customer.
- 8.2 **Exclusions.** Codex DNA shall have no obligation to replace or refund any Product to the extent it is the result of (i) misuse, fault or negligence of or by Customer, (ii) use of the Product and/or Service Deliverable in a manner for which it was not designed, (iii) improper storage and handling of the Product and/or Service Deliverable, (iv) alterations or modifications made to the Product and/or Service Deliverable by a party other than Codex DNA or its duly authorized service representative, (v) manufacture of the Product and/or Service Deliverable in accordance with specifications provided by Customer, (vi) normal wear and tear and (vii) external sources such as short circuits or incorrect voltages. Shipment to Customer of replacement Product and/or Service Deliverable shall be made in accordance with the applicable delivery terms set forth in this Agreement. Codex DNA shall have no liability or obligation to Customer if (x) Customer is unable to generate a DNA synthesis through use of a Product, or (y) Customer inputs a genomic sequence into a Product but is unable to achieve the correct size DNA as determined by gel electrophoresis, except in each case if the foregoing is a direct result of a Product failing to meet the specifications set forth in the applicable documentation provided by Codex DNA.
- 8.3 **Disclaimer of Warranties.** EXCEPT FOR THE WARRANTIES EXPLICITLY STATED IN SECTION 8.1 HEREOF OR ANY APPLICABLE SERVICES OR PRODUCT ADDENDUM, THE PORTAL, THE SERVICES AND ANY PRODUCTS ARE PROVIDED “AS IS” AND “AS AVAILABLE” AND CODEX DNA (FOR ITSELF, ITS LICENSORS AND SUPPLIERS) HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR AS TO THE ACCURACY OF ANY RESULTS. ANY WARRANTY GRANTED HEREUNDER IS VALID ONLY WHEN USED BY PROPERLY TRAINED INDIVIDUALS AND EXTENDS ONLY TO CUSTOMER, THE ORIGINAL PURCHASER, AND CUSTOMER CANNOT TRANSFER SUCH WARRANTY. WITHOUT LIMITING THE FOREGOING, CUSTOMER ACKNOWLEDGES THAT ANY PRODUCTS PROVIDED BY CODEX DNA ARE EXPERIMENTAL IN NATURE AND THAT CODEX DNA CANNOT GUARANTEE THE SUCCESS OF SUCH PRODUCTS NOR THAT SUCH PRODUCTS, WILL RESULT IN THE ACCOMPLISHMENT OF ANY DESIRED RESULTS. ANY FAILURE BY CODEX DNA TO MEET ANY INTENDED RESULTS SHALL NOT IN AND OF ITSELF BE DEEMED A BREACH OF THIS AGREEMENT OR CAUSE FOR NON- PAYMENT.
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- 8.4 **Codex DNA Indemnification.** Codex DNA will indemnify, defend and hold harmless Customer from and against any claims, liabilities, damages, fines and penalties finally awarded in any legal action brought by a third party against Customer to the extent that the action is based on a claim that Customer's use of a Product in the manner permitted under this Agreement infringes any patent, copyright, trademark or other intellectual property right of such third party. This indemnity does not apply to claims that arose based on (i) any products that Codex DNA made, assembled or produced in reliance upon Customer's instructions, specifications, or other directions, (ii) Customer's resale of Products, or (iii) modifications to the Products, or combinations of the Products with other items, by Customer or any third party in a manner not authorized by Codex DNA. This indemnity does not apply to products originating from third parties. THIS INDEMNITY IS THE ONLY LIABILITY OF CODEX DNA TO CUSTOMER, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS BY OR IN CONNECTION WITH ANY PRODUCT. If Codex DNA believes a Product may be subject to a claim for intellectual property infringement, then Customer will first allow Codex DNA, at the option and expense of Codex DNA, to either: (a) secure for Customer the right to continue using the Product; (b) substitute the Product with another suitable Product with similar functionality; or (c) require Customer to return the Product to us for a refund of the purchase price paid, provided that in the case of Instruments, Codex DNA will deduct a reasonable amount for the Instrument's use and damage.
- 8.5 **Customer Responsibility.** Customer shall be fully responsible and liable for any claims, liabilities, damages, losses, costs, expenses (including but not limited to settlements, judgments, court costs, and reasonable attorney's fees), fines and penalties to the extent arising out of or resulting from: (i) Customer's use of the Products; (ii) Customer's failure to secure any governmental import or export permit or authorization for the receipt of any Products; (iii) Customer's failure to comply with any applicable laws; (iv) Customer's gross negligence or willful misconduct; or (v) Customer's material breach of this Agreement.
- 8.6 **Indemnification Procedure.** As a condition to the indemnity obligations set forth in Sections 8.4 above, the party seeking indemnification "**(Indemnitee)**" must (i) notify the indemnifying party in writing, as soon as the Indemnitee becomes aware of any claim; (ii) not admit any liability or take any other action in connection with the claim that could affect the defense or settlement; (iii) allow the indemnifying party to solely control the defense or settlement of the claim; and (iv) provide reasonable information, co-operation and assistance to the indemnifying party. The indemnifying party may not settle or consent to the entry of a judgment of a claim without the Indemnitee's prior written consent, which consent shall not be unreasonably withheld or delayed.

## 9 LIMITATIONS OF LIABILITY.

- 9.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, INDEMNIFICATION, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL, LOSS OF PROFITS DUE TO INSTRUMENT DOWN TIME OR LOSS OF REVENUE) THAT THE OTHER PARTY MIGHT INCUR UNDER THE AGREEMENT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH THE PRODUCTS EVEN IF SUCH PARTY HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF CODEX DNA IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION WITH RESPECT TO ANY PRODUCTS SOLD AND/OR ANY SERVICES RENDERED HEREUNDER, THE LIABILITY OF CODEX DNA UNDER ITS INDEMNIFICATION OBLIGATIONS, OR A BREACH BY CODEX DNA HEREOF OR FAILURE TO PERFORM IN CONTRACT, TORT, WARRANTY, OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES CUSTOMER ACTUALLY PAID TO CODEX DNA FOR THE SPECIFIC PRODUCT THAT GAVE RISE TO THE APPLICABLE CLAIM(S). THE CUSTOMER ACKNOWLEDGES THAT THESE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT CODEX DNA WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.
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- 9.2 DELIVERY DATES AND TIMES ARE ESTIMATES ONLY AND CODEX DNA WILL NOT BE LIABLE (IN CONTRACT, DELICT, TORT OR OTHERWISE) FOR ANY LOSSES, EXPENSES, CLAIMS OR DAMAGES CAUSED BY A LATE DELIVERY.

## 10 INDEPENDENT CONTRACTOR.

The relationship between Codex DNA and Customer pursuant to this Agreement shall be that of an independent contractor. Neither party shall have any authority to bind the other, to assume or create any obligation, to enter into any agreements, or to make any warranties or representations on behalf of the other. Nothing in this Agreement shall be deemed to create any agency, partnership or joint venture relationship between the parties, although Codex DNA reserves the right to name Customer as a user of the Products. Codex DNA reserves the right to use third parties (who have agreed in writing to confidentiality provisions with Codex DNA that are no less protective of Customer than those in this Agreement), including, but not limited to, offshore subcontractors to assist with the Products.

## 11 PERMITS/AUTHORIZATIONS.

Customer acknowledges that it may require a permit, approval or other authorization from relevant government entities in order to import or export the Products. Customer shall obtain all permits, authorizations and/or approvals necessary to receive the Products in accordance with all applicable laws related to the importing and exporting of Products (and upon request from Codex DNA shall provide sufficient evidence to demonstrate that it has obtained such permits, authorizations and approvals). Codex DNA shall not be responsible for obtaining any such permits, authorizations, and/or approvals on behalf of Customer and no amounts shall be refunded to Customer.

## 12 TERMINATION.

- 12.1 **Termination for Cause.** Except as otherwise provided in this Agreement, in the event that Customer breaches any of the terms, obligations, conditions or undertakings of this Agreement and fails to cure such breach within sixty (60) days (or ten (10) days for non-payment) after receiving written notice of such breach, Codex DNA, at its option, may by written notice to Customer, terminate this Agreement. Such termination shall be effective upon Customer's receipt of the termination notice.
- 12.2 **Termination for Insolvency.** Codex DNA may terminate this Agreement immediately by providing written notice to Customer if Customer becomes insolvent, if a petition in voluntary or involuntary bankruptcy is filed by or against the other party under any chapter of the United States bankruptcy laws and not bonded or discharged within thirty (30) days of the date a receiver or trustee is appointed, or if Customer makes an assignment for the benefit of creditors.
- 12.3 **Obligations upon Termination or Expiration.** The termination or expiration of this Agreement will not relieve either party from any obligation that accrues pursuant to this Agreement before the effective date of the termination or expiration nor will it release the parties from any obligation that may have been incurred as a result of operations conducted under this Agreement.

## 13 GENERAL PROVISIONS.

- 13.1 **Entire Agreement.** This Agreement together with the applicable Services and Product Addendum and any accepted orders, constitute the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersede all proposals, oral or written, all negotiations, conversations, memoranda, or discussions, whether written or oral, between or among parties relating to the subject matter of this Agreement and all past dealing or industry custom. Under no circumstances shall the terms, conditions or provisions of any order, accepted order, invoice or other administrative document issued by Customer or Codex DNA in connection with this Agreement be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Codex DNA or Customer, respectively, to object to such terms, provisions, or conditions. This Agreement shall not be modified or amended, except as expressly set forth in writing and signed or accepted electronically by authorized representatives of both parties.
- 13.2 **Invalidity/Waiver.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement shall be unimpaired, and the invalid or unenforceable provision shall be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. A waiver of any breach under this Agreement should not constitute a waiver of any other breach or future breach. Either party's failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.
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- 13.3 **Assignment.** This Agreement may not be assigned by Customer to a third party whether by operation of law or otherwise. Codex DNA shall have the right to assign this Agreement to one or more affiliates or related entities. In addition, Codex DNA shall have the right to assign this Agreement in its entirety to the successor of all or substantially all its business or assets to which this Agreement relates. Any assignment not expressly permitted by this Section 13.3 shall be null and void.
- 13.4 **Governing Law.** This Agreement shall be governed in accordance with the internal laws of the State of Delaware (without regard to any conflicts of laws principles) and any controlling U.S. federal law. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement (or the Products) shall be subject to the exclusive jurisdiction of the state and federal courts located in Delaware. In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretations, its performance, or the like, the prevailing party shall be entitled to seek reasonable attorneys' fees and/or costs.
- 13.5 **Third Parties.** There are no third-party beneficiaries to this Agreement. This Agreement shall not limit in any manner Customer's ability to use other third parties to provide services like those contemplated by this Agreement. Codex DNA may subcontract any or all its obligations hereunder to an affiliate or employees or contractors of an affiliate; *provided, however,* Codex DNA shall remain solely liable for its obligations hereunder. Notwithstanding anything to the contrary herein, neither party shall be liable for failing to meet any obligations set forth herein if such obligation is contingent upon the acts of the other party and such other party has failed to satisfy such contingency.
- 13.6 **Publicity.** Neither party shall use the other party's name in any publicity, advertising or press announcement without prior written approval from such other party. This shall not prohibit any legally required disclosure by either party that identifies the existence of the Agreement.
- 13.7 **Data Errors and Omissions.** Codex DNA makes every effort to ensure the accuracy of the information published in its catalogs, by its distributors and on its Portal. The documents and graphics published may be outdated or contain technical inaccuracies or other errors. Codex DNA makes no representations about the information and graphics presented. All such documents and graphics are provided "as-is" and "as-available" without warranty of any kind.
- 13.8 **Force Majeure.** Neither party shall be liable for any loss or delay resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage, internet service provider failures or delays, civil unrest, war or military hostilities, criminal acts of third parties, pandemics, government orders or any other event beyond the reasonable control of such affected party, the party's performance shall be extended to the extent of any delay resulting from any force majeure event.
- 13.9 **Headings and Construction.** The headings of the articles and paragraphs of this Agreement are for convenience only and in no way limit or affect the terms or conditions of this Agreement. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "herein", "hereof" and "hereunder" and words of similar import refer to this Agreement (including the applicable Services and Product Addendum) in its entirety and not to any part hereof unless the context shall otherwise require.
- 13.10 **Survival.** Sections 1.4, 1.5, 2, 4, 5, 6 (for the period specified therein), 7, 8, 9, 10, 11 and 13 of this Agreement shall survive the termination or expiration of this Agreement. This Agreement may be executed in counterparts and/or by facsimile or electronic signature and if so executed, shall be equally binding as an original copy of this Agreement executed in ink by both parties.
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