

SELLER. The term "Seller" represents Synovis Micro Companies Alliance, Inc.

ACCEPTANCE. If the Terms and Conditions ("Terms") of this order acknowledgement differ from the terms of the Buyer's purchase order or inquiry, this quote or acknowledgment shall be considered as a "COUNTEROFFER" subject to acceptance by the Buyer and shall not be an acceptance of any of Buyer's terms which conflict herewith. The Terms contained herein are the complete and exclusive statement of the terms of acknowledgement between the parties. The Buyer's acceptance of the goods or services sold hereunder will manifest the Buyer's assent to the Terms hereof. Any reference to Buyer's purchase order or inquiry noted herein shall not affect or limit the applicability of the Terms. NO addition to or modification of these Terms will be effective unless made in writing and signed by an authorized representative of Seller.

CREDIT AND PAYMENT. Unless otherwise agreed upon in writing between Seller and Buyer, all invoices are payable in US dollars within net 30 days from the date of invoice without abatement, reduction, set-off, defense, counterclaim or recoupment for any reason, including, without limitation, any past, present, or future claims which Buyer may have against Seller. If Buyer contends that any invoice is incorrect, Buyer shall so notify Seller's accounting department, in writing within fourteen (14) days after receipt of such invoice and specify the reason for such contention. If Buyer does not so notify Seller, Buyer forever waives the right to further dispute such invoice and Buyer agrees to the accuracy of such invoice. Seller may assess Buyer a 1.5% (one and one-half percent) per month service charge on any past due balances. If the Buyer becomes delinquent in payments, Seller has the right, in addition to any other remedy to which it may be entitled in law or equity, to (I) cancel the sales/purchase order, (II) refuse to make further deliveries, or (III) declare due and payable immediately all unpaid amounts for goods or services previously provided to the Buyer and/or in process. Buyer shall reimburse Seller for any expenses, including attorney's fees incurred in the collection of any delinquent account or enforcing its rights under the Terms.

DISCOUNTS. Buyer and Seller intend that this Agreement shall be administered in accordance with the provisions of the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)). To the extent that any discounts and/or rebates are issued by Seller and received by Buyer with respect to products or services under this Agreement, such discounts and/or rebates may be considered "discounts or other reductions in price" under the Anti-Kickback Statute [42 U.S.C. § 1320a-7b(b)(3)(A)]. To the extent required by the Anti-Kickback Statute or the Discount Safe Harbor regulations, 42 C.F.R. § 1001.952(h) et seq., Buyer shall fully and accurately disclose such discounts and other reductions in price according to state or federal cost reporting requirements, including, without limitation, disclosing and accurately reflecting as appropriate, to the applicable reimbursement methodology.

TAXES AND OTHER CHARGES. The Buyer will pay, or reimburse Seller if it pays, any and all taxes or tariffs or any other similar charges imposed upon this contract, the goods or services covered hereby, the delivery or use thereof, or upon any act done or document, title or instrument used in connection with the transaction, and any and all taxes, tariffs or charges imposed upon or measured by the sales contemplated herein or the purchase price payable hereunder.

DELIVERIES. The Seller shall be under no liability for failure to make deliveries where such failure to deliver may be due to fires, strikes, accidents, terrorist actions, acts of God, labor or transportation difficulties. Inability to obtain delivery of materials, action of a state, federal, or local government, or other causes beyond Seller's reasonable control. All shipments are made F.O.B. Seller's shipping dock (unless otherwise agreed upon in writing) and risk of loss or damage shall pass to Buyer upon the Seller's delivery to a common carrier. Buyer agrees to accept any delayed shipment where such delay may be due to such events beyond Seller's reasonable control. The Seller also reserves the right to make deliveries in installments, and delay in delivery or other default of any installment shall not relieve materials and /or parts, otherwise Seller may deny such claims. Buyer represents that it is able to pay its obligations in the ordinary course of business. Notwithstanding anything contained herein to the contrary, Buyer acknowledges and agrees that Seller retains a security interest in the goods to secure payment of the purchase price and all other indebtedness now and in the future owing by Buyer to Seller. Buyer agrees that Seller may file a financing statement in order to protect the security interest granted herein. If a default occurs hereunder, Buyer hereby consents and acknowledges that Seller may exercise in addition to the rights and remedies contained herein, all rights and remedies of a secured party under the Uniform Commercial Code or any other applicable law.

RETURNED GOODS. No goods, product, or parts may be returned by Buyer to Seller without first obtaining Seller's permission which will not be unreasonably withheld and with written consent of the Seller's Returned Goods Authorization ("RGA"). Whether an RGA is authorized or not, the Buyer holds the Seller harmless for any loss, suit, claim, costs including without limitation attorneys' fees and court costs, or damage arising from the use of materials received from the Seller pursuant to this contract. No returns will be accepted after 30 days from date of receipt by Buyer. A 30% restock fee will be incurred by Buyer on all approved returns. No credit will be granted.

WAIVER. Waiver by Seller of any breach of any of the Terms shall not be construed as a waiver of any other breach, and the failure of Seller to exercise any right arising from any default of Buyer hereunder shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time. The invalidity in whole or in part of any provision of the Terms shall not affect the validity of any other provisions.

LIMITED WARRANTY. The sole and exclusive warranties given by Seller with respect to the goods or services sold hereunder are that it has title to goods sold free and clear from any lien or encumbrance and that such goods shall conform to the description and specifications set forth on the product packaging. THE FOREGOING WARRANTIES APPLY ONLY TO BUYER AND ARE THE SOLE AND EXCLUSIVE WARRANTIES OF SELLER AND SELLER GIVES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. In particular, and without limiting the foregoing disclaimer, Seller makes no representation or warranty as to the appropriateness, suitability or performance with regard to the design and any use of the goods or services whether or not known by Seller, and whether used along or in connection with other products or materials and Buyer shall not rely upon any statements by Seller's employees, agents or representative to the contrary. Buyer acknowledges that it alone has determined that the goods or services purchased hereunder will suitably meet the requirements of their intended use. Every warranty claim from any cause shall be deemed waived by the Buyer unless made in writing within ninety (90) days of the receipt by the Buyer of the goods or services to which such claim relates. No legal proceeding shall be brought for any breach of these Terms more than one (1) year after the accrual of the cause of action therefore. Seller shall have no obligation for any nonconforming Product caused by misuse, mishandling, neglect, accident or abuse by Buyer.

WARRANTY REMEDY. In the event that any goods or services supplied hereunder are claimed by Buyer to not conform to the above limited and exclusive warranty during the applicable limited warranty period and Seller determines the goods or services do not conform to said warranty. Seller shall have the following options, at its sole discretion: (1) provide replacement goods or services to Buyer; (2) make whatever repairs or modifications that Seller deems necessary or desirable to enable the goods or services to meet the descriptions and specifications set forth on the product packaging; or (3) credit Buyer's account for the price paid by Buyer regarding the non-conforming goods or services. THE CORRECTION OF SUCH NON-CONFORMITIES BY REPAIR, MODIFICATION, REPLACEMENT, PROVISION OF ADDITIONAL GOODS OR SERVICES, OR CREDITING BUYER'S ACCOUNT FOR THE COST OF THE NONCONFORMING GOODS OR SERVICES IN THE MANNER SET FORTH ABOVE SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES FOR BUYER AND SHALL CONSTITUTE FULFILLMENT OF THE OBLIGATIONS OF SELLER WITH RESPECT TO THE LIMITED WARRANTY GIVEN HEREIN.

LIMITATION OF LIABILITY. Except as expressly provided otherwise herein, Seller shall not indemnify nor be liable to Buyer, Buyer's customers, or to any other person or entity for any claims, losses, expenses or judgments arising out of or resulting in any way from the goods or services supplied hereunder or sale or use thereof, where liability is premised upon any theory including, but not limited to warranty, negligence or strict liability. Except as expressly otherwise provided, Seller's total, complete and exclusive liability shall be limited as provided herein. SELLER SHALL NOT BE LIABLE FOR PRODUCTION LOSSES, LOST PROFITS, DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR ANY OTHER DAMAGES UNDER THESE TERMS OR FROM ANY CAUSE WHATSOEVER.

SOFTWARE. With respect to any software products incorporated in or forming a part of any goods or services supplied hereunder ("Software"), Seller and Buyer expressly agree that such Software is being licensed and not sold and that the words "purchase," "sell," or similar or derivative words are understood and agreed to mean "license," and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee." Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in Software provided hereunder.

Buyer shall hold in confidence and not sell, transfer, license, loan, or otherwise make available in any form to third parties the Software and related documentation provided hereunder. Buyer may not disassemble, decompile, or reverse engineer, copy, modify, enhance, or otherwise change or supplement the Software provided hereunder without Seller's prior written consent. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer shall, upon termination of this license, immediately return to Seller all Software and related documentation provided hereunder and all copies and portions thereof.

Certain of the Software provided by Seller may be owned by one or more third parties and licensed to Seller. Accordingly, Seller and Buyer expressly agree that such third parties retain ownership of and title to such Software. The warranty provisions set forth herein shall not apply to Software owned by third parties and provided hereunder.

The Software may incorporate multiple layers of encryption and authentication technologies and/or other security controls (e.g., passwords, security logging, and/or certificates). These technologies and/or controls may be able to be configured (or reconfigured) by Buyer to provide the level of security Buyer deems appropriate. For example, Buyer may be able to configure such security technologies and/or controls by choosing not to use some or all such security technologies and/or controls, to leave such security technologies and/or controls in their default settings, to leave ports open unnecessarily, or to apply or not apply available updates and upgrades to the Software that affect its security. Buyer acknowledges that how Buyer configures (including any configuration that fails to use) such security technologies and controls could impact the operation of the Software, or the security, confidentiality, integrity, or availability of the Software and/or data. Notwithstanding anything herein to the contrary, Buyer assumes all risks associated with, and liability resulting from, Buyer's configuration of such security technologies and/or security controls. Further, to the maximum extent permitted by law, Buyer bears all responsibility associated with, and liability resulting from, security incidents arising from Buyer's use of the Software, except solely to the extent such security incident arises from the failure of the security technologies and/or security controls implemented by Buyer to perform in accordance with their specifications.

Further, Buyer assumes all risks and full responsibility for maintaining the physical security of the Software, including with respect to preventing physical tampering that would enable the compromise of security technologies and/or controls, ensuring that only authorized personnel of Buyer have access to the Software.

ASSIGNABILITY. Any commitments by Seller to provide goods or services are not assignable by Buyer without the prior written consent of the Seller.

APPLICABLE LAW. These Terms shall be considered to have been made in the State of Alabama. All questions arising in connection with the quotation, any order submitted in connection therewith the acknowledgement or counter-offer made in response to any such order, or the sale of the goods or services covered by these Terms, shall be governed by and interpreted according to Alabama law. Any action by Buyer against Seller arising out of or relating to the Terms or the products shall be brought in any state or federal court in Birmingham, Alabama and Buyer irrevocable consents to the exclusive jurisdiction of such court and waives any objection that such court is an inconvenient forum.

COMPLETE AGREEMENT. These Terms contain the entire agreement between Buyer and Seller with respect to the subject matter hereof and supersede all prior discussions, agreements and understanding.

NO THIRD PARTY BENEFICIARIES. The sales of the products pursuant to these Terms are for the benefit of Buyer and Seller only. These Terms do not confer any rights to any other party as a third party beneficiary or otherwise.

SEVERABILITY. Should any revision of these Terms be illegal or unenforceable the validity of the remaining provisions of these Terms shall not be affected thereby. If any provision of these Terms is determined to be overbroad as written that provision should be considered to be amended to narrow its application to the extent necessary to make the provision enforceable according to applicable law and enforced as amended.

439 Industrial Lane | Birmingham, AL 35211 USA | Tel 205.941.0111 | Fax 205.941.1522 | [synovismicro.com](http://synovismicro.com)  
A subsidiary of Baxter International Inc.