



## Terms and Conditions of Sale to U.S. End Users of Acumen Detection, LLC Products

1. **Acceptance of Terms** — By purchasing and accepting delivery of products (“Products”) supplied by Acumen Detection, LLC (“Acumen Detection”) you agree to be bound by these terms and conditions (the “Terms”) and the terms of the accompanying sales confirmation (the Sales Confirmation), which constitute the entire agreement between the parties. Terms or conditions contained in any order form or other document submitted by you which are inconsistent with, or in addition to, these Terms are rejected, objected to and shall be deemed void and of no force or effect.
2. **Changes** — Once submitted, any change(s) to your order(s) may be made only with advance written approval of Acumen Detection and such changes may require different terms, including a change in the price and/or time of delivery. Once submitted, any cancellation must be expressly approved by Acumen Detection in writing, which approval may be contingent on your payment of the greater of a thirty percent (30%) re-stocking fee or Acumen Detection’s costs or other charges, including, but not limited to, storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on Acumen Detection by its suppliers, and any other costs resulting from cancellation. A verified bill of costs issued by an officer or other authorized representative of Acumen Detection shall be conclusive as to the amount of such costs. Acumen Detection reserves the right to cancel any order, in whole or in part, upon your breach of these Terms or your bankruptcy, insolvency, dissolution, receivership proceedings, or upon any event leading Acumen Detection to reasonably question your willingness or ability to perform.
3. **Delivery** — All sales will be delivered FOB Origin at Acumen Detection’s shipping point unless otherwise noted on the face of the Sales Confirmation. If shipping and handling charges are quoted or invoiced, they will include any charges in addition to actual freight costs. Delivery of Products to the carrier at Acumen Detection’s shipping point shall constitute delivery of title to you and you shall bear all risk of loss or damage in transit. Acumen Detection reserves the right, in its sole discretion, to determine the exact method of shipment for any particular shipment. Acumen Detection reserves the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve you of your obligations to accept remaining deliveries.
4. **Inspection** — Immediately upon your receipt of any Products shipped hereunder, you shall inspect the same and shall notify Acumen Detection in writing of any claims for shortages, defects or damages (Nonconforming Products) and shall hold such Nonconforming Products for Acumen Detection’s written instructions concerning disposition. If you fail to so notify Acumen Detection within five (5) days after the Products have been received by you, such Products shall conclusively be deemed to conform and to have been irrevocably accepted by you. If you timely notify Acumen Detection of any Nonconforming Goods, Acumen Detection shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the Price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by you in connection therewith. You shall ship, at your expense and risk of loss, the Nonconforming Products to Acumen Detection’s facility. If Acumen Detection exercises its option to replace Nonconforming Products, Acumen Detection shall, after receiving your shipment of Nonconforming Products, ship conforming Products to you, at Acumen Detection’s expense and risk of loss. You acknowledge and agree that the remedies set forth herein are your exclusive remedies for the delivery of Nonconforming Goods.
5. **Delays** — Any specified delivery dates are estimates only and do not represent a promise by Acumen Detection to deliver Products at a date certain. Acumen Detection shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Acumen Detection’s reasonable control, including, without limitation, governmental act, or regulation affecting the conduct of Acumen Detection’s business, fire, explosion, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, lightning, blizzard, windstorm or other acts of God, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies or power at current prices. If any such event continues for longer than 180 days, either party may terminate your order and you will pay Acumen Detection for work performed prior to termination and all reasonable expenses incurred by Acumen Detection as a result of termination. In the event of delays in delivery or performance caused by force majeure or by you, the date of delivery or performance shall be extended by the period of time Acumen Detection is actually delayed or as mutually agreed. If, for reasons other than the foregoing, Acumen Detection should default or delay or not deliver Products, your sole remedy against Acumen Detection is an option to cancel your purchase order, through prior written notice to Acumen Detection.
6. **Allocation of Products** — If Acumen Detection is unable for any reason to supply the total demands for Products specified in your order, Acumen Detection may allocate its viable supply among any or all customers (including Acumen Detection’s distributors) on such basis as Acumen Detection may deem fair and practical, without liability for any failure of performance which may result therefrom.
7. **Payment and Interest** — Unless otherwise stated, payment in full shall be made within 30 days of invoice in US dollars without set-off or deduction of any kind. Acumen Detection reserves the right to require an advance deposit of up to 100% of the purchase price at the time of order or any time prior to delivery as a condition of performance. If for any reason Acumen Detection, in its sole discretion, deems the ultimate collectability of the purchase price to be in doubt, Acumen Detection may delay or postpone the delivery of the Products and may, at its option, change the terms of payment to payment in full or in part in advance, with respect to the entire undelivered balance of Products. In the event of default by you in the payment of the purchase price or otherwise, Acumen Detection, at its option, without prejudice to any other of Acumen Detection’s lawful remedies, may defer delivery, cancel your order and any other order of you, or sell any undelivered products on hand for the account of you and apply such proceeds as a credit, against the agreed upon purchase price, and you agree to pay the balance then due to Acumen Detection on demand. You agree to pay all costs, including, but not limited to, reasonable attorney and accounting fees and other expenses of collection resulting from any default by you in any of the terms hereof. Invoices remaining unpaid after their due date will be subject to an interest charge of 1.5% per month or the maximum rate allowed by law. You must pay all costs of collection on unpaid amounts, including, without limitation, attorneys’ fees and related costs.
8. **Taxes and Other Charges** — Acumen Detection shall not be responsible for the payment of any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or

charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between, with the exception of any sales taxes invoiced and collected from you by Acumen Detection and any taxes on Acumen Detection's net revenues. All other such charges (if any) must be paid by you separately and in addition to the prices quoted or invoiced. In the event Acumen Detection is required to pay any such tax, fee or charge, you shall reimburse Acumen Detection therefore; or, in lieu of such payment, you shall provide Acumen Detection at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

9. **Pricing** — Any quotation provided by Acumen Detection is firm only if you place a corresponding order within the time specified on the quote or, if no time period is mentioned, within 30 days. You must request shipment of the entire quantity of Products ordered within 6 months from the date of order, otherwise, Acumen Detection's standard prices at time of shipment may apply to future deliveries, at Acumen Detection's option.
10. **Price Changes** — Shipment will be made promptly even if prices have been nominally increased. Price changes will be automatically applied to your invoice. Notwithstanding any price quotation or prices listed by Acumen Detection, if at any time prior to delivery Acumen Detection's costs of materials have increased by 10% or more, then Acumen Detection may cancel any accepted but undelivered orders or condition the continuance of any order on your agreement to a corresponding increase in price.
11. **Limited Warranty and Limitation of Liability** — Acumen Detection warrants that its products, inclusive of any third-party components, shall, at the time of delivery, conform to the description of such products as provided to you by Acumen Detection through Acumen Detection's product directory, analytical data or other then-current literature and be free from non-cosmetic manufacturing defects within twelve (12) months of shipment.

THIS WARRANTY IS EXCLUSIVE, AND ACUMEN DETECTION MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY THIRD-PARTY PATENT OR INTELLECTUAL PROPERTY RIGHTS.

Acumen Detection's warranties made in connection with this sale shall not be effective if Acumen Detection has determined, in its sole discretion, that you have misused the Products in any manner, have failed to use the Products in accordance with industry standards and practices, or have failed to use the Products in accordance with instructions, if any, furnished by Acumen Detection.

ACUMEN DETECTION'S SOLE AND EXCLUSIVE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO PRODUCTS PROVED TO ACUMEN DETECTION'S SATISFACTION TO BE DEFECTIVE OR NONCONFORMING SHALL BE REPLACEMENT OR REPAIR OF SUCH PRODUCTS WITHOUT CHARGE OR REFUND OF THE PURCHASE PRICE, IN ACUMEN DETECTION'S SOLE DISCRETION, UPON THE RETURN OF SUCH PRODUCTS IN ACCORDANCE WITH ACUMEN DETECTION'S INSTRUCTIONS. ACUMEN DETECTION SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND RESULTING FROM ANY USE OR FAILURE OF THE PRODUCTS, EVEN IF ACUMEN DETECTION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, COST OF CAPITAL, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, ANY LIABILITY OF YOU TO A THIRD PARTY, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY OR PROPERTY DAMAGE UNLESS SUCH PERSONAL INJURY

OR PROPERTY DAMAGE IS CAUSED BY ACUMEN DETECTION'S GROSS NEGLIGENCE. THE EXCLUSION OF SUCH DAMAGES AND/OR CLAIMS SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY ARISING FROM THE PURCHASE AND/OR THESE TERMS. ACUMEN DETECTION'S LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO CASE EXCEED THE CONTRACT PRICE FOR THE SPECIFIC PRODUCTS THAT GIVE RISE TO THE BREACH. THESE EXCLUSIONS AND LIMITATIONS ON DAMAGES SHALL APPLY REGARDLESS OF HOW THE LOSS OR DAMAGE MAY BE CAUSED AND AGAINST ANY THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY. ALL CLAIMS MUST BE POSTMARKED TO, OR RECEIVED BY, ACUMEN DETECTION WITHIN SIX (6) MONTHS OF SHIPMENT, REGARDLESS OF THEIR NATURE.

12. **Your Use of Products** — Acumen Detection's Products are not, except as stated by Acumen Detection in the applicable product literature, intended to be used for purposes including but not limited to, in human in-vitro diagnostics, food, drug, medical device or cosmetic use or for other unintended commercial purposes. You acknowledge that the Products have not been tested by Acumen Detection for safety and efficacy in food, drug, medical device, cosmetic, commercial or any other use, unless otherwise stated in Acumen Detection's literature furnished to you. You expressly represent and warrant to Acumen Detection that you will properly test, use, manufacture and market any Products purchased from Acumen Detection's and/or materials produced with Products purchased from Acumen Detection in accordance with the practices of a reasonable person who is an expert in the field and in strict compliance with all applicable laws and regulations, now and hereinafter enacted. You shall comply with all applicable laws or regulations and maintain in effect any licenses, permissions, authorizations, consents and permits needed to place Acumen Detection's products into use.
13. **Resale, Distribution and Export Prohibited** — You warrant to Acumen Detection that you will use the Products directly and as permitted by Section 12 above, that you are not listed by the United States Government's Consolidated Screening List, and you further agree that the Products may not be marketed, distributed, resold or exported outside the United States for any purpose.
14. **Returns** — Products may be returned for credit only with Acumen Detection's permission, and in strict compliance with Acumen Detection's return shipment instructions. You must obtain advance written authorization from Acumen Detection and a written return authorization document, in the form then in use by Acumen Detection, prior to returning any Products. Certain items and quantities may not be returned for credit or under any circumstances. These items include, but are not limited to: diagnostic reagents, refrigerated or frozen products; reagents and standards which have passed their expiration dates; custom products or special orders; products missing labels, parts, or instruction manuals; and books, computer software and equipment removed from their original packaging. Any returned items may be subject to a 30% re-stocking fee and must be returned within 90 days of purchase.
15. **Technical Assistance** — At your request, Acumen Detection may, in Acumen Detection's sole and absolute discretion, furnish technical assistance and information with respect to Acumen Detection's Products.

ACUMEN DETECTION MAKES NO WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO TECHNICAL ASSISTANCE OR INFORMATION PROVIDED BY ACUMEN DETECTION OR ITS PERSONNEL. ANY SUGGESTIONS BY ACUMEN DETECTION REGARDING USE, SELECTION, APPLICATION OR

SUITABILITY OF THE PRODUCTS SHALL NOT BE CONSTRUED AS AN EXPRESS WARRANTY UNLESS SPECIFICALLY DESIGNATED AS SUCH IN A WRITING SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF ACUMEN DETECTION.

16. **Miscellaneous** — Acumen Detection’s failure to strictly enforce any particular term or condition contained herein or to exercise any right with respect to your order shall not constitute a waiver of Acumen Detection’s right to strictly enforce such terms or conditions or exercise such right thereafter. All rights and remedies are cumulative and are in addition to any other rights and remedies Acumen Detection may have at law or in equity. You shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Acumen Detection. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves you of any of its obligations under this Agreement. Any waiver of a default by you shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. If any of these terms shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. The section headings herein are for convenience only; they form no part of the Terms and shall not affect their interpretation. These Terms shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, successors and assigns.
17. **Governing Law, Disputes** — All disputes allegedly arising from the legality, interpretation, application, or performance of your order, the Products or any of these Terms shall be governed by the laws of the State of New York including its conflict of laws principles. Notwithstanding the foregoing, nothing in this section shall prevent Acumen Detection from bringing a claim in any court having jurisdiction over you to enjoin infringement of Acumen Detection’s trademark, patent or other intellectual property rights, or to prevent irreparable harm to Acumen Detection. The parties agree to waive, to the fullest extent permitted by law, any and all rights to a trial by jury in connection with any dispute.
18. **Indemnity** — You shall indemnify and hold Acumen Detection, its affiliates, employees and representatives harmless from and against any and all claims, damages, losses, costs or expenses (including reasonable attorney’s fees) resulting from your (a) sale or misuse of the Products, (b) breach of the provisions and representations contained in the Terms or (c) negligence, recklessness or misconduct.
19. **Representations and Warranties for Services** — If you are purchasing services from Acumen Detection, the following provisions shall exclusively apply in relation to representations and warranties for services and services only. Services may be provided by Acumen Detection at the equipment site, Acumen Detection site or an Acumen Detection authorized third party site. In the event that the purchased services shall be provided at an Acumen Detection or an Acumen Detection authorized third party site, equipment will need to be returned to such site for repair or replacement and you shall be responsible for all shipping and transportation costs, including any insurance costs. In the event that the purchased services are to be provided at the equipment site, you shall (i) make available to Acumen Detection a qualified employee who is familiar with the equipment. Such employee must be present during the call to assist as may be necessary in the performance of the services and (ii) provide Acumen Detection service representatives with (a) access to its facilities to the extent necessary for such representatives to perform services, (b) a satisfactory and safe work area, and (c) adequate electrical power. Acumen Detection’s obligation to provide purchased services and its Service Warranty (as defined below) shall not extend to any equipment failure or defect resulting directly or indirectly from the following:

- (a) Non-compliance with specifications;

- (b) Any misuse, theft, water flow-back, or neglect by you or its employees, contractors or agents or a wrongful act by such persons;
- (c) Accidents or shipping related damage;
- (d) Electrical failure unrelated to the product;
- (e) Damage due to vandalism, explosion, flood or fire, weather or environmental conditions; and
- (f) Any installation, repairs, modifications, upgrades, maintenance or other servicing by a third party that is not approved by Acumen Detection;

Such circumstances shall entitle Acumen Detection to charge you a reasonable compensation for any non-reimbursable travel costs, any time of Acumen Detection’s employee, contractor or agent (at list rate), and for similar losses.

Acumen Detection warrants that it shall provide services in a professional and workmanlike manner, consistent with average standards of workmanship and materials then prevailing in the trade (the “Service Warranty”) for ninety (90) days from completion by Acumen Detection of the portion of services at issue. You agree that Acumen Detection, in its sole discretion, may provide services through appropriately trained and qualified third party representatives.

In the case of a breach of the Service Warranty, the parties agree that the sole remedy available under the agreement shall be repeat performance by Acumen Detection of the portion of such services that constitutes or gives rise to the breach. If in its reasonable opinion Acumen Detection is unable to repeat the performance of such services, the parties agree that the sole remedy in such a case is for Acumen Detection to refund to you all sums paid for the portion of such services.

THE PARTIES AGREE THAT ACUMEN DETECTION SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC OR SPECIAL LOSS OR LOSS TO PROPERTY CAUSED BY ANY SERVICE OR PART THEREOF SUPPLIED UNDER THIS AGREEMENT OR SUBJECT TO ANY PENALTY, BY LATE DELIVERY OF ANY SUCH SERVICE OR PART THEREOF, WHETHER OR NOT THE AFOREMENTIONED LOSS IS DUE TO THE NEGLIGENCE OF ACUMEN DETECTION. IN ANY CASE, THE MAXIMUM AGGREGATE LIABILITY THAT CAN BE ATTRIBUTED TO ACUMEN DETECTION UNDER THIS AGREEMENT IS EXPRESSLY LIMITED TO AN AMOUNT EQUAL TO THE SUMS EFFECTIVELY PAID TO ACUMEN DETECTION BY THE PURCHASER FOR SERVICES UNDER THIS AGREEMENT; PROVIDED THAT ANY LIABILITY FOR PURCHASER’S PRODUCTS IN PROCESS SHALL BE EXCLUDED. ACUMEN DETECTION MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY.

Acumen Detection will not be in breach of this agreement or otherwise liable to you for any delay in performance or any non-performance of any obligations under this agreement (and the time for performance will be extended accordingly) of and to the extent that the delay or non-performance is owing to Force Majeure.

In the event that you are purchasing services on behalf of a third party, or in relation to products owned by a third party or located at the premises of a third party, you represent and warrant that you have proper legal authority to purchase such services with respect to such third party. You shall indemnify and hold Acumen Detection, its corporate affiliates including Acumen Detection and any entity under majority control of Acumen Detection, agents, employees, and representatives, harmless from and against any and all claims, damages, losses, costs or expenses (including attorney’s fees) caused by or resulting from any third party claim relating to the provision of any services by Acumen Detection.

20. **Software License Terms** — If you are licensing software from Acumen Detection, including software licensed in connection with the purchase of any products and any and all other software or firmware embedded in, loaded on, or otherwise associated with the purchased products (the software on such media and such other software or firmware being referred to hereinafter together as the “Software”), the following additional provisions shall apply.
- (a) Acumen Detection grants you the right and license to use the copy of the Software in object form that is on the readable computer media provided to you by Acumen Detection.
  - (b) The Software and related copyrights are owned by Acumen Detection, by an affiliated company of Acumen Detection, and/or by certain suppliers of Acumen Detection and its affiliated companies, and title to the Software in general or respective copyrights shall not pass to you as a result of your use of the Software. The license rights granted herein may not be transferred to another party without the written permission of Acumen Detection, which may not be withheld if you sell your copy of the Software to a third party provided that (i) you do not rent out the Software, (ii) prior to selling the copy you delete any and all copies of the Software and (iii) the third party agrees to comply with the license terms.
  - (c) The Software is protected by the respective national copyright laws and international treaties and you shall not copy it or allow it to be copied except that you have the right to (i) make such copies that are necessary for the use of the Software by you in accordance with its intended purpose, including for error correction, (ii) to duplicate the Software for backup or archival purposes and to transfer the Software to a backup computer in the event of computer malfunction, or (iii) observe, study or test the functioning of the Software in order to determine the ideas and principles which underlie any element of Software if you do so while performing any of the acts of loading, displaying, running, transmitting or storing the Software which you are entitled to do.
  - (d) You shall not (i) use the Software other than with the purchased products or for any purpose outside the scope of the application for which it is being provided, (ii) cause or permit the reverse engineering, disassembly, decompilation, modification or adaptation of the Software or the combination of the Software with any other software unless, but only to the extent, indispensable to obtain the information necessary to achieve the interoperability of the Software with other programs provided the information necessary to achieve interoperability has not previously been readily available to you, nor (iii) move the Software to any country in violation of United States Foreign Asset Control Regulations or other applicable import or export control regulations.
  - (e) You further understand that use of the Software shall be subject to the terms of any third party license agreements or notices that are provided to you by Acumen Detection and to the rights of any other third-party owners or providers of software or firmware included in the Software, and you shall comply with the terms of such third-party license agreements and rights provided by Acumen Detection in advance.
  - (f) The Software is covered by the limited warranties set forth in our product warranty clause and by no other warranties, express or implied.
  - (g) Failure to comply with any of the terms of this subsection terminates your right to use the Software. Upon termination of such right, you must return the disk provided by Acumen Detection, and any and all copies thereof or of any other Software to Acumen Detection.

Any replacements, fixes or upgrades of the Software which you may hereafter receive from Acumen Detection or an affiliated company

of Acumen Detection, shall be provided subject to the same restrictions and other provisions contained in this subsection, regardless of whether subsection or these Terms are specifically referenced when you received such replacement, fix or upgrade, unless such replacement, fix or upgrade is provided with a separate license agreement which by its terms specifically supersedes these Terms. The warranty term for any upgrades shall be one (1) year from the date of its delivery to you. Any such replacements, fixes or upgrades shall be provided at prices and payment terms as agreed at the time they are provided.

21. **Notices** – All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
22. **Survival** – Provisions of these Terms which by their nature should survive shall remain in force after any termination or expiration of this Agreement including, but not limited to, Sections 11, 12, 13, 16, 17, 18, and 21.