

TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS are incorporated into, and form a part of, the NanoAffix Lead Test Kit Order Form and Agreement. Unless otherwise agreed to in a written document executed by an authorized representative of NanoAffix, any term or condition contained in any purchase order or other communication or document of Customer that adds to or is inconsistent with this Agreement is expressly rejected. If for any reason this Agreement or any quotation or order acknowledgement issued by NanoAffix is deemed to be an acceptance of a prior offer made by Customer, such acceptance is expressly conditioned on Customer's assent to only the terms and conditions contained in this Agreement.

1. DEFINITIONS. Capitalized terms have the meanings set forth or referred to in this **Section 1**, or in the section in which they first appear in this Agreement:

"Agreement" collectively means the Lead Test Kit and Order Form, to which this exhibit is attached, the Terms and Conditions stated in this Exhibit, the NanoAffix Limited Warranty at the attached **Exhibit B**, and the NanoAffix Terms of Use.

"Documentation" means all user, technical, and system administrator documentation furnished by NanoAffix to Customer.

"Good" individually means and **"Goods"** collectively mean any and all Test Kits, Sensors and other goods purchased by the Customer under this Agreement.

"Software" means all software, firmware, programs, and applications developed, designed, distributed, owned by or licensed to NanoAffix, including, without limitation, the Mobile Application.

"Mobile Application" means any Software developed, distributed or designed by NanoAffix for use with a smartphone, tablet or other wireless device in conjunction with the Test Kit.

"Result" means the test results and data generated or obtained by using the Goods together with the Mobile Application.

"Test Kit" means the pre-screening lead test kit device, and all hardware and Software associated with or embedded in the test kit device, used in conjunction with a Sensor and the Mobile Application to obtain a Result.

"Sensor" means a disposable "one-time use" sensor to be used in conjunction with the Test Kit to obtain a Result.

2. PRE-SCREENING TOOL ONLY. CUSTOMER ACKNOWLEDGES THAT THE GOODS AND MOBILE APPLICATION, AND ALL RESULTS OBTAINED THEREFROM, ARE DESIGNED ONLY TO PERFORM A PRE-SCREENING FOR THE POSSIBLE PRESENCE OF LEAD IN A WATER SAMPLE. USE OF THE GOODS, MOBILE APPLICATION, AND THE RESULTS THEREOF ARE NOT INTENDED TO BE A REPLACEMENT OR SUBSTITUTE FOR MORE COMPREHENSIVE TESTING FOR LEAD CONTAMINANTS IN WATER. ACCORDINGLY, CUSTOMER IS STRONGLY ADVISED TO VERIFY ANY POSITIVE OR NEGATIVE RESULTS FOR THE PRESENCE OF LEAD IN A WATER SAMPLE OR SOURCE WITH A QUALIFIED THIRD-PARTY TESTING SERVICE OR APPROPRIATE GOVERNMENTAL AUTHORITY.

3. PURCHASE OF GOODS.

Customer agrees to purchase from NanoAffix the Goods in accordance with the terms and conditions of this Agreement. Customer acknowledges that the Goods will be configured based on features and options

available at the time that Customer places its order and signs this Agreement, and that other options, features or hardware released after the Effective Date of this Agreement may or may not be included with or available for the Goods.

4. MOBILE APPLICATION; DEVISE SPECIFICATIONS. Customer acknowledges that Results require both the use of Goods and the downloading and use of the Mobile Application in accordance with any relevant Documentation. In connection with the Mobile Application, Customer hereby agrees to be bound by and comply with NanoAffix's Terms of Use, which set forth the terms and conditions related to the use of, and access to, the Mobile Application and are incorporated into this Agreement. The Terms of Use, as amended from time to time, will be available on the Apple App Store and Google Play and may be made available, from time to time, at www.nanoaffix.com. Customer further acknowledges that NanoAffix will use and collect personal data as described in the Privacy Policy. The Privacy Policy will be available on the Apple App Store and Google Play and may be made available, from time to time, at www.nanoaffix.com. In the event that this Agreement is signed prior to the date the Terms of Use or Privacy Policy are first published, Customer shall review the Terms of Use and Privacy Policy as available on the applicable app store. If Customer objects to the Terms of Use or Privacy Policy and therefore declines to download or use the Mobile Application, Customer may terminate this Agreement by providing notice of the objection within 10 days after the Terms of Use or Privacy Policy are initially published. Customer will therefore receive a refund upon return of the Goods to NanoAffix. Otherwise, once the Terms of Use and Privacy Policy are first published, Customer shall be responsible for monitoring the Apple App Store and Google Play and www.nanoaffix.com for any amendments to the Terms of Use or Privacy Policy and agrees to comply with such amendments. Further, the Mobile Application is only compatible with certain mobile devices. Customer should contact NanoAffix with any questions or issues relating to NanoAffix's system and compatibility requirements.

5. PRICE; TAXES. The price ("Price") for the Goods shall be as stated in the Purchase Summary table at the beginning of this Agreement; provided, however, if Customer has Pre-Ordered any Goods, then the Purchase Summary table shall contain an estimate of the final Price for the Pre-Ordered Goods. Prior to delivery, NanoAffix will calculate and provide Customer with the final Price for such Pre-Ordered Goods, which may take into account adjustments in material costs and other factors affecting the cost of the Pre-Ordered Goods. If Customer does not agree with the final Price for Pre-Ordered Goods, then Customer may terminate this Agreement and receive a refund in accordance with **Section 7** below. Customer shall be responsible for paying all foreign, federal, state or local sales, use, value-added, excise or other taxes imposed on or measured by the sale or use of the Goods (collectively, "**Taxes**"), and such Taxes shall be added to the amount due to NanoAffix under this Agreement.

6. INVOICING; PAYMENT. NanoAffix will issue an invoice to Customer prior to delivery of the Goods. Customer shall pay the invoiced amount upon receipt and prior to shipment of the Goods; provided, however, for Pre-Ordered Goods, Customer shall pay ten percent (10%) of the estimated Price for all Pre-Ordered Goods within seven (7) days following the Effective Date of this Agreement, with the balance to be paid by Customer upon receipt of the invoice for the Pre-Ordered Goods. If any payment is made by check, Customer hereby authorizes NanoAffix to process the payment as a normal check transaction or use information from the check to make a one-time electronic fund transfer from Customer's bank account, in which case Customer's bank account may reflect the payment transaction as an electronic fund transfer. If Customer is in default of this Agreement, NanoAffix may: (a) defer or suspend shipments of Goods; (b) cancel the unshipped or unperformed portion of any order; or (c) pursue any remedy available under this Agreement or at law, in equity, or otherwise.

7. TERMINATION; REFUND. Customer may cancel its order for Goods under this Agreement, any time prior to NanoAffix's first delivery of Goods, by providing a written notice of cancellation to the following email address: sales@nanoaffix.com. Upon such a cancellation, NanoAffix will refund to Customer any amounts paid for the Goods that are in excess of ten percent (10%) of the Price. Following NanoAffix's first delivery of any Good, Customer may not cancel its order for Goods under this Agreement. Further, Customer is not authorized to purchase Goods for resale or distribution to third-parties. NanoAffix may cancel Customer's order and terminate this Agreement immediately, upon written notice

to Customer, if NanoAffix determines in good faith that Customer has purchased or intends to purchase Goods with a view towards resale or distribution. Further, NanoAffix may terminate this Agreement at any time for its convenience by giving Customer a ten (10) day written notice of termination. If NanoAffix terminates this Agreement for its convenience, Customer shall be entitled to a refund of all amounts previously paid by Customer for the Goods subject to this Agreement. Finally, NanoAffix may terminate this Agreement, effective upon written notice to Customer, if Customer: (i) uses the Mobile Application for purposes not provided in the Terms of Use or (ii) breaches any of its obligations under the Terms of Use.

8. DELIVERY OF GOODS. NanoAffix shall deliver all Goods FOB (Free on Board as defined under the applicable Uniform Commercial Code) shipping point, which is NanoAffix's facility. NanoAffix will add the cost and expense of delivery of the Goods to the invoice issued pursuant to **Section 6** above. Title to and all risk of loss or damage to the Goods shall pass to Customer upon delivery of the Goods to the carrier for shipment at the dock located at NanoAffix's facility. Customer shall be responsible for all costs and charges associated with shipping and freight. If Customer wishes to insure the Goods while in transit, it shall be responsible for making such insurance arrangements, at its cost and expense. Customer acknowledges that any shipping dates listed in the Purchase Summary table at the beginning of this Agreement are estimates only, and that actual shipping and delivery dates are dependent on various factors, including materials and manufacturing availability. NanoAffix will use commercially reasonable efforts to meet any shipping or delivery dates stated in the Purchase Summary table at the beginning of this Agreement but in no event shall NanoAffix be liable for any losses or damages associated with NanoAffix's failure or inability to meet any such dates.

9. WARRANTIES. The Test Kit and Sensor are covered by the limited warranties, which can be found at www.nanoaffix.com.

10. LIMITATIONS OF LIABILITY.

(a) IN NO EVENT SHALL NANOAFFIX BE LIABLE TO CUSTOMER OR ANY THIRD-PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, ENHANCED, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES FOR LOST PROFITS OR REVENUE, DOWN TIME, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY, DIMINUTION IN VALUE), WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF NANOAFFIX HAS BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Customer.

(b) RESULTS AND DATA PROVIDED IN RELATION TO THE TEST KITS, AND ANY RESULTS FROM THE TEST KITS ARE INTENDED FOR USE ONLY AS A PRE-SCREENING TOOL, AND MAY NOT BE RELIED ON AS CONCLUSIVE CONFIRMATION OF THE ABSENCE OF LEAD IN A WATER SAMPLE OR SOURCE. IN NO EVENT WILL NANOAFFIX BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR, AND CUSTOMER AGREES TO HOLD NANOAFFIX HARMLESS FROM, ANY DAMAGES THAT RESULT FROM CUSTOMER'S USE OF ANY RESULTS OR DATA PROVIDED BY THE GOODS, INCLUDING DATA RELATED TO THE TEST KITS.

(c) IN NO EVENT SHALL THE AGGREGATE LIABILITY OF NANOAFFIX AND ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS AND SUPPLIERS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER FOR THE GOODS OR \$10,000 WHICHEVER IS GREATER; PROVIDED, HOWEVER, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS **SECTION 10** SHALL NOT APPLY TO LIABILITY CAUSED BY NANOAFFIX'S WILLFUL MISCONDUCT OR TO

LIABILITY ARISING OUT OF CUSTOMER'S ACCESS TO OR USE OF THE WEBSITE OR MOBILE APPLICATION, WHICH ARE GOVERNED BY THE TERMS OF USE.

11. NANOAFFIX'S INTELLECTUAL PROPERTY.

(a) “**Intellectual Property**” means any of the following: patents, patent applications, and like statutory rights; inventions, improvements, trade secrets, confidential information, processes, technology, technical information, data, and all documentation relating to the foregoing; works of authorship, copyrights; designs, development tools, specifications, technical drawings; trademarks, trade names, trade dress, service marks, logos, designs and symbols; software, firmware, interfaces, source code, object code, architecture, databases, libraries; and all industrial and other intellectual property rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered, and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection under the laws of any jurisdiction throughout any part of the world.

(b) Customer agrees that: (i) the Software and Mobile Application are the Intellectual Property of NanoAffix; (ii) all Intellectual Property of NanoAffix is and shall remain the sole and exclusive property of NanoAffix; (iii) except as may be expressly provided for in the Terms of Use, nothing in this Agreement shall constitute or be construed to be a transfer of or license of any kind with respect to NanoAffix's Intellectual Property; (iv) Customer shall not use, have used, display, publish, practice or exploit any of NanoAffix's Intellectual Property unless expressly authorized in a written document executed by an authorized representative of NanoAffix.

(c) Customer covenants that it shall not: (i) take any action or make any claim that interferes or may interfere with any Intellectual Property of NanoAffix, including NanoAffix's ownership or exercise thereof; (ii) challenge any right, title or interest of NanoAffix in or to its Intellectual Property; (iii) relabel or repackage any Goods for resale or distribution to any third-party without NanoAffix's prior written authorization; (iv) alter, obscure or remove any of NanoAffix's trademarks, copyright notices, patent or patent pending notices, or any other proprietary rights notices or information placed on the Goods or their Documentation, labels, packaging or containers; (v) apply for any patent or trademark anywhere in the world with respect to NanoAffix's Intellectual Property; or (vi) alter, adapt, translate, decompile, disassemble, copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to work around or discover any part of the Intellectual Property of NanoAffix.

12. CONFIDENTIALITY. All non-public, confidential or proprietary information of NanoAffix (collectively, “**Confidential Information**”) disclosed or made available by NanoAffix to Customer, is confidential, solely for the use of performing this Agreement, and may not be disclosed or copied by Customer unless authorized by NanoAffix in writing. Confidential Information includes, but is not limited to, trade secrets, software, applications, specifications, samples, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, any third-party confidential information included with, or incorporated in, any information provided by NanoAffix, and any other information or materials that would reasonably be considered non-public, confidential, or proprietary given the nature of the information and NanoAffix's business. Customer shall exercise reasonable care in protecting the confidentiality of NanoAffix's Confidential Information. NanoAffix shall remain the exclusive owner of its Confidential Information. No disclosure of Confidential Information by NanoAffix shall be construed as an assignment, license or other transfer of any Confidential Information by NanoAffix to Customer or any other person or entity. Upon NanoAffix's request, Customer shall promptly return (or, if directed by NanoAffix, destroy) all documents and other materials received from NanoAffix that contain, are based on, or incorporate any Confidential Information of NanoAffix. NanoAffix shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) generally available to and known by the public; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third-party.

13. EXPORT RESTRICTIONS. Customer acknowledges that each Good, including any technical information supplied by NanoAffix or contained in any documentation relating thereto (collectively “**Items**”), is subject to export controls of the U.S. Government. The export controls may include, but are not limited to, the Export Administration Regulations of the U.S. Department of Commerce (the “**EAR**”), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Customer shall strictly comply with the EAR and all other applicable laws, statutes, rules, regulations, treaties, and agreements relating to the export, re-export, and import of any Item. Customer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency: (a) export or re-export any Item, or (b) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. Government. Customer shall cooperate fully with NanoAffix in any audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold NanoAffix harmless from and against any violation of the EAR or this Section by Customer or its employees, contractors, consultants, agents, or customers.

14. EXCUSED PERFORMANCE; ALLOCATION. NanoAffix shall not be liable or responsible to Customer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term or condition of this Agreement, when and to the extent such failure or delay is caused by or results from the following force majeure events (“**Force Majeure Event(s)**”): acts of God; flood, fire, explosion, tornado, or other natural disaster; epidemic, pandemic, viral or bacterial outbreaks; war, terrorist threats or acts, riots or other civil unrest; governmental orders, laws, emergency proclamations or restrictions; action by any governmental authority; shortage or unavailability of materials; shortage or unavailability of labor or other industrial disturbances; shortage or unavailability of adequate power or transportation facilities; and/or other events (whether or not foreseeable or similar in type or nature to the previously listed Force Majeure Events) beyond the control of NanoAffix. During any Force Majeure Event, NanoAffix may allocate its inventory of available Goods in such manner and to such persons as it may determine from time to time, in its sole discretion. NanoAffix shall resume the performance of its affected obligations as soon as reasonably practicable after the removal of the cause of the Force Majeure Event.

15. GOVERNING LAW. This Agreement shall be construed and governed under the laws of the State of Wisconsin (excluding application of its conflicts of law rules and excluding the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended).

16. DISPUTE RESOLUTION. BY ENTERING INTO THIS AGREEMENT, CUSTOMER AGREES THAT ANY DISPUTE, CONTROVERSY, OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION, OR INVALIDITY THEREOF, SHALL BE FINALLY SETTLED AND RESOLVED THROUGH BINDING INDIVIDUAL ARBITRATION and shall be governed in accordance with the Commercial Arbitration Rules and, if applicable, the Supplementary Procedures for Consumer related Disputes of the AMERICAN ARBITRATION ASSOCIATION (“**AAA**”), as modified by this Section. Customer also agrees:

(a) The arbitrator’s ruling is binding and may be entered as a judgment in any court of competent jurisdiction, or application may be made to such court for judicial acceptance of any award and an order of enforcement.

(b) For any claim where the total amount of the award sought is \$10,000 or less: (1) the arbitration shall be conducted solely based on telephone or online appearances and/or written submissions and (2) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties. If the claim exceeds \$10,000, the right to a hearing will be determined by the AAA rules, and the hearing (if any) will take place in Milwaukee, Wisconsin.

(c) The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual

claim. Further, the parties expressly agree that a court of competent jurisdiction may enter a temporary restraining order, order of specific performance, or an order enjoining a breach of this Agreement pending a final award or further order by the arbitrator. Such remedy, however, shall be cumulative and nonexclusive, and shall be in addition to any other remedy to which the parties may be entitled.

(d) Except in the event Customer opts out of arbitration, this agreement to arbitrate will survive completion or termination of this Agreement.

(e) All challenges to the validity and applicability of this agreement to arbitrate (*i.e.*, whether a particular claim or dispute is subject to arbitration) shall be determined by the arbitrator.

(f) Unless prohibited by applicable law, in any arbitration proceeding or litigation (as applicable) between Customer and NanoAffix in connection with this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs in such arbitration or litigation (as applicable) from the other party.

The arbitrator is bound by the terms of this agreement to arbitrate. Customer acknowledges and agrees that, in any arbitration proceeding, discovery will be limited to those things that the arbitrator determines, in its sole discretion, to be necessary. Further, in any arbitration proceeding: (1) the arbitrator shall apply the laws of the State of Wisconsin to the dispute, controversy or claim; (2) there shall be no award of punitive, exemplary, incidental, or consequential or other special damages; (3) all damages, claims, and awards will be governed by Wisconsin law; (4) the parties will conduct the arbitration confidentially and expeditiously and will pay their own costs and expenses of arbitration, including their own attorneys' fees. If Customer proves that it is unable to afford the AAA fee, Customer agrees to notify all persons against whom Customer has an arbitrable claim and give such persons the opportunity, individually and as a group, to pay such fee. The proceeding and the decision shall be kept confidential by the parties.

If you wish to opt out of the agreement to arbitrate, within 45 days of Effective Date of this Agreement, Customer must send NanoAffix a letter stating: "request to opt-out of agreement to arbitrate" to: NanoAffix Science LLC, 1225 Discovery Parkway, Wauwatosa, Wisconsin 53226.

17. VENUE. IF THE AGREEMENT TO ARBITRATE IN SECTION 16 ABOVE IS FOUND UNENFORCEABLE OR TO NOT APPLY FOR A GIVEN DISPUTE, OR IF CUSTOMER OPTS OUT OF THE AGREEMENT TO ARBITRATE IN ACCORDANCE WITH SECTION 16, THEN, UNLESS PROHIBITED BY APPLICABLE LAW, THE PROCEEDINGS MUST BE BROUGHT EXCLUSIVELY IN THE STATE AND FEDERAL COURTS COVERING MILWAUKEE COUNTY, STATE OF WISCONSIN, AS APPROPRIATE, AND CUSTOMER AGREES TO SUBMIT TO THE PERSONAL JURISDICTION OF EACH OF THESE COURTS FOR THE PURPOSES OF LITIGATING SUCH CLAIMS OR DISPUTES, AND CUSTOMER HEREBY WAIVES ITS RIGHT TO A JURY TRIAL, WAIVES ITS RIGHT TO INITIATE OR PARTICIPATE IN A CLASS OR COLLECTIVE ACTION, AND REMAINS BOUND BY ANY AND ALL LIMITATIONS OF LIABILITY AND DAMAGES INCLUDED IN THIS AGREEMENT.

18. MISCELLANEOUS TERMS. Sections 2, 4, 6, 7, 9 to 13, and 15 to 18 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, shall survive the performance or termination of this Agreement. No waiver of any provision of this Agreement is valid unless expressly agreed to in a writing signed by the Party so waiving. No waiver by a Party of any default under this Agreement is a waiver of any other or subsequent default. No modification of this Agreement is valid unless expressly agreed to in a writing executed by each Party. The Parties agree that their relationship is that of independent contractors and not partners, joint venturers, joint employers, or principal and agent. Neither Party is authorized to assume or create any obligation or responsibility, including but not limited to, contractual obligations and obligations based on warranties or guarantees, on behalf of or in the name of the other Party. Customer may not assign or delegate any of its rights, duties or obligations under this Agreement without NanoAffix's prior written consent. Each of the rights and remedies of NanoAffix under

this Agreement is cumulative and in addition to any other or further remedies provided under this Agreement or at law or in equity. No third-parties are intended to benefit from this Agreement, and no third-party beneficiary rights shall be implied from anything contained in this Agreement. This Agreement constitutes the entire agreement and understanding between the Parties respecting the Goods and supersedes any prior agreements, negotiations or understandings of the Parties, whether written or oral, with respect thereto. In the event any litigation is commenced to enforce or interpret the terms and conditions of this Agreement, the Party determined by the applicable court to be in breach of this Agreement shall, upon demand, pay or reimburse the non-breaching Party for all reasonable attorneys' fees and costs and expenses of litigation incurred by the non-breaching Party. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. Any electronic signature, whether digital or encrypted, of a Party included in this Agreement is intended to authenticate this writing and to have the same force and effect as a manual signature.