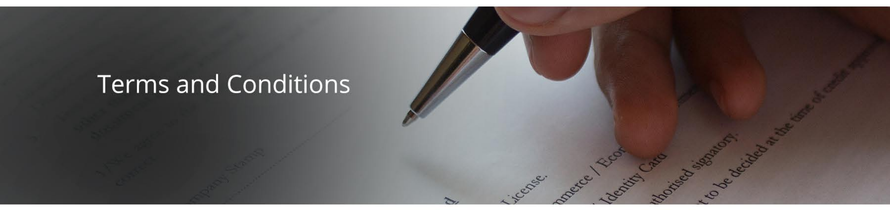

Terms and Conditions

BRIGHTEX BIO-PHOTONICS TERMS AND CONDITIONS

The acceptance of Your ("Customer" or "You") order by BrighTex Bio-Photonics LLC ("BTBP" or "Us" or "We") for the goods set forth on a purchase order ("Equipment") is EXPRESSLY MADE CONDITIONAL UPON CUSTOMER'S ASSENT TO THE TERMS AND CONDITIONS HEREIN, and these constitute the only binding terms and conditions between the parties, even if these terms and conditions differ from or in addition to those on any purchase order or other document sent to BTBP by Customer. Any terms of sale requested by Customer which are in any way inconsistent with or in addition to these terms and conditions are rejected and will not be binding upon BTBP. If you object to these terms and conditions, return the unopened package within 7 days of purchase for a refund.

1. Shipping Terms:

All orders are F.O.B. BTBP's, or its designee's facility, San Jose; California, U.S.A. BTBP does not cover insurance during transit. Customer is responsible for all duties, taxes, and insurance. BTBP will package the Equipment for shipment in accordance with BTBP's standard commercial shipping package and packing procedures. BTBP's price for the goods, unless otherwise agreed upon, does not include freight or transportation charges (including, but not limited to, charges associated with importing or exporting the goods), the costs of which will be charged to Customer at cost for each shipment and shall be payable with payment of the price for the Equipment. BTBP shall not be liable for any transportation charges incurred at destination such as importation, spotting, switching, drayage, demurrage, pier unloading charges, etc.

2. Delivery:

The delivery date is dependent upon when payment is made. Once BTBP has received payment and complete end-user information, BTBP will process Your order within one to three business days. All shipping dates are approximate and tentative and are based on prompt receipt from Customer of all necessary information. Requests for proof of delivery must be made within 60 days of the date of shipment. If Customer fails to accept delivery, Customer shall nonetheless make payment to BTBP.

If Customer determines that it cannot observe an agreed-upon time for the delivery or receipt of the goods (in whole or in part), or if delay appears probable, Customer shall (a) promptly give notice thereof to BTBP, and (b) shall pay BTBP reasonable delay charges. BTBP shall take all reasonable actions to minimize any delay charges and shall provide an accurate accounting of all charges to Customer at the time BTBP makes a request for payment of those charges. Delay charges shall not include any incidental or indirect charges or expenses.

If BTBP cannot observe an agreed upon time for the delivery of the goods, or if delay appears probable, BTBP shall promptly give notice to that effect to Customer. Any expedited freight costs in excess of normal routing associated with adhering to Customer's delivery schedule are the responsibility of, and at the expense of BTBP. However, any such additional freight costs arising solely from Customer's improper actions or inaction shall be borne by Customer.

Complaints regarding any faults or shortages in the goods shall be made in writing, specifying the nature and extent of the fault in reasonable detail, within three (3) days after Equipment has been delivered. Upon receipt of Customer's notice, BTBP shall timely replace, at no cost to Customer, any nonconforming goods rejected and BTBP shall pay all transportation charges for all replacements.

3. Payment Terms:

a. Payment Timing.
Custom software development projects: 80% in order for work to commence; 20% due on delivery.
Hardware & software systems: 100% due on order for Equipment to ship.
Service agreements & support services: 100% due on order for services to be rendered.
Amounts overdue for payment will be charged interest at the rate of the then Prime Rate as published in the Wall Street Journal plus six (6) percent but in no event more than the maximum permitted by applicable law.

b. Payment Methods.
Check made payable to: BrighTex Bio-Photonics (in U.S. dollars, drawn on a U.S. bank)
Mail to:
BTBP
359 Piercy Road
San Jose, CA 95138 USA
Bank wire transfer to: BrighTex Bio-Photonics (Customer will be responsible for any associated charges)

Account Name: BrighTex Bio-Photonics, LLC
Bank Name: Comerica Bank, 333 West Santa Clara Street, San Jose, California 95113, USA
BA Routing Number: 121137522
Account Number: 1892768795

c. Security Interest:
Customer hereby grants to BTBP a security interest in all Equipment shipped by BTBP to Customer and all proceeds thereof, until all indebtedness of Customer to BTBP for all such Equipment has been satisfied. Customer hereby appoints BTBP as Customer's agent for the purpose of filing financing statements to perfect this security interest. Each shipment made under any order shall be treated as a separate transaction, but in the event of any default by Customer, BTBP may decline to make further shipments without in any way affecting its right under such order. Failure of Customer to pay the purchase for any product when due gives BTBP the right, without liability, to repossess such product with or without legal notice, and to avail itself of any legal or equitable remedy available.

d. Price Validity:
Prices are good until the end of the month.

4. Support:

Current support orders include one year of support and upgrades via download from the web. This is a non-deliverable order. User information and system hardware and software serial number are required to purchase current support. The serial number can be found on the back of the system.

a. Equipment Covered:
When We refer to "Covered Equipment" in this Agreement, We mean the hardware and software items manufactured and/or designed by BTBP (as indicated on Your invoice). The laptop or computer supplied as a part of Your Equipment is held under warranty by its manufacturer (e.g., DELL) and is not Covered Equipment hereunder. For any support or service related to such non-Covered Equipment failures or issues, please refer to the applicable manufacturer's service agreement.

b. Scope of Support:
i. The intent of this Agreement. BTBP will maintain the Covered Equipment and be responsive to Your service needs in accordance with, and subject to (including Your compliance with), these terms and conditions. The Principle Period of Maintenance ("PPM") is twenty-four (24) hours a day and seven (7) days a week, excluding regularly observed holidays, and, in most cases, a BTBP technician will respond to a support call or email within twenty-four (24) hours of receiving Your message/email (during the PPM).

ii. Support Limitations. Our service obligations under these terms and conditions extend only to uses for which the Covered Equipment was designed. BTBP agrees to provide services hereunder that are necessary because of any existing defect or because a defect occurs in materials or workmanship in the Covered Equipment. Preventive maintenance is not included. Repairs necessitated by a result of alteration, adjustment, or repair by anyone other than BTBP are not included. BTBP is not obligated to repair any Covered Equipment with respect to which there has been (i) improper installation, improper maintenance or testing, (ii) failure to provide a suitable operating environment, (iii) use of the Covered Equipment for purposes other than that for which it was designed, (iv) use of the Covered Equipment with third-party data, software or hardware; (v) failure to store the Covered Equipment in accordance with applicable specifications in good industry practice, (vi) unauthorized attachment or removal or alteration of part of the Covered Equipment, (vii) unusual mechanical, physical or electrical stress, (viii) modifications or repairs done by other than Covered BTBP or its authorized service representative, (ix) any other abuse, misuse, mishandling, neglect or accident, (x) an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, fire, hurricanes, or (xi) the moving of the Covered Equipment from one location to another. With regard to any services that are not within the coverage of this Agreement, it will be within BTBP'S discretion whether to perform the services and, if BTBP elects to perform the services, the services will be subject to an additional charge to be paid by you.

c. Your Responsibilities:
To receive service, you are responsible for complying with the following:

i. **Valid Service Contract.** The service obligations defined herein are valid for one year from date of Equipment purchase.
ii. **Report the Problem.** For service email our support team at support@btbp.org. The email service is open twenty-four (24) hours a day, seven days a week, including regularly observed holidays. These emails are usually answered within twenty-four (24) hours by email. You will be required to provide the Equipment serial number or service tag number as well as its manufacturer and model number when you email. You can also report a problem by visiting the BTBP web site at www.btbp.org and clicking the Support link to submit a support request.
iii. **Cooperate with the Technician.** Many problems and errors can be corrected over the phone as a result of close cooperation between the user and the technician. If the technician is required to remotely view Your system, the technician must have access to the Equipment and any machines, attachments, accessories, or software necessary to perform the required service via a high-speed internet connection.

i. **Replacement & Repairs.** For replacement of consumable parts an invoice will be required for any parts to ship; parts in-stock will ship within forty-eight (48) hours of receipt of invoice. Pricing for consumable parts is available upon request. For repairs related to non-consumable parts ship Your Equipment to BTBP's warehouse, located at 359 Piercy Road, San Jose, CA 95138 USA. All shipping and handling fees are to be borne by You the Customer.

ii. **Software/Data Backup.** You understand and agree that BTBP is not responsible for any lost or corrupted software or data. BTBP strongly recommends that you maintain a complete data backup and disaster recovery plan. Any attempted data recovery and/or installation and configuration of application software we perform will be subject to an additional charge to be paid by you.

d. Service Term and Renewal. Our service obligations become effective upon payment of Your initial Equipment purchase invoice and it remains in effect for one year. The software we perform will be subject to an additional charge to be paid by you.

e. Parts Ownership. All parts removed from Your Equipment in the course of Our undertaking repairs become the property of BTBP. You will be obligated to pay the current retail price(s) for any parts removed from Your Equipment and retained by you. BTBP uses new and reconditioned parts made by various manufacturers in performing repairs.

5. BTBP End User License Agreement:

a. License Term. BTBP hereby grants You a non-exclusive, non-transferable license to use its proprietary computer software product ("Software") and hardware where applicable contained in this package subject to the following terms and conditions. The term of this license commences upon delivery of the Software and the hardware where applicable to You. The license is personal to You and may not be transferred without the prior written consent of BTBP. You may physically move the Software from one computer to another provided that the Software is used only on one computer at a time. BTBP will provide technical support and maintenance of the Software and Hardware for a period of three (3) months from the date of purchase to the extent such technical support and maintenance can be provided on-line or over the telephone (including delivering Software updates online). Additional support and maintenance are available upon payment of an additional charge and subject to a separate service agreement. This license is effective until terminated. You may terminate it by destroying the program and documentation and all copies thereof. Either party may terminate this Agreement immediately in the event of a breach of the terms of this Agreement. Upon termination of this Agreement, you shall immediately discontinue the use of the Software and shall within 10 days return to BTBP all copies of the Software and Hardware. Your obligations to pay accrued charges and fees shall survive any termination of this Agreement.

b. Title. Title, and ownership right, and intellectual property rights in and to the Software shall remain in BTBP. You may not loan, lease, or rent the Software. You acknowledge that the Software in source code form remains a confidential trade secret of BTBP and therefore you agree not to decompile, decipher, reverse engineer, create derivative works of, or develop source code for the Software or knowingly allow others to do so. You also agree not to tamper with, or attempt to defeat the purpose of the software key lock supplied as part of the Software, or to knowingly allow others to do so. You will own only the physical media on which the program or its related documentation are recorded or fixed.

6. Limited Warranty:

BTBP warrants the Equipment (including the Covered Equipment), Software, hardware (where applicable), and documentation provided by BTBP to be free of defects in material and workmanship for a period of one (1) year from the purchase date. BTBP SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. BTBP DOES NOT WARRANT THAT YOUR USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR THAT THE OPERATION, RESULTS, OR DATA GENERATED BY THE SOFTWARE WILL BE ERROR-FREE.

7. Limitation of Liability:

Your sole and exclusive remedy for any damage or loss in any way connected with the Equipment (including the Covered Equipment), Software, hardware (where applicable), whether by BTBP's breach of any express or implied warranty, negligence, or any breach of any other duty, shall be, at BTBP's option, and subject to BTBP confirming the alleged deficiency, repair or replacement of the Software or return for a refund of the price paid by you for a license to such software. Equipment must be returned to BTBP, freight prepaid by Customer, for determination by BTBP that such Equipment is defective. Such Equipment shall be accompanied by a written description of the circumstances under which the applicable Equipment purportedly failed. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL BTBP BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, OR FOR ANY DAMAGES (INCLUDING DIRECT) IN EXCESS OF THE PRICE PAID BY YOU TO US, EVEN IF BTBP SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY.

8. Indemnification:

Customer shall indemnify and hold BTBP harmless for any loss, damage or other consequence suffered by Customer or any other party as a direct or indirect result of the Equipment or the use of the Equipment. BTBP will (a) provide Customer reasonably prompt notice in writing of any such claim or action and permit Customer, through counsel reasonably acceptable to BTBP, to answer and defend such claim or action and (b) provide Customer with information, assistance and authority, at Customer's expense, to help Customer to defend any claim or action. Customer will not settle any claim or action under this Section 8 on BTBP's behalf without first obtaining BTBP's written permission, which permission will not be unreasonably withheld.

9. Intellectual Property Rights:

BTBP, or its third-party licensors, shall exclusively own all right, title and interest in and to any inventions, discoveries and improvements to the Equipment, whether or not patentable, which are made, created or developed by Customer in the arising out of the use of the Equipment provided hereunder and to the extent exclusively or primarily relating to the Equipment or their use. Notwithstanding the foregoing, all data, information and results entered, stored, compiled, generated and/or analyzed by Customer using the Equipment in accordance with these terms and conditions shall be the property of Customer. Unless otherwise agreed to in writing by the parties, Customer-supplied design information that is incorporated into goods shall remain the property of Customer. With respect to any Equipment, including Equipment containing or incorporating Customer- supplied design information, Customer obtains no right to Equipment other than the limited right to use such Equipment for the purposes sold and any Customer-supplied information incorporated in such, if any. Notwithstanding the foregoing, with respect to such Equipment, BTBP retains all rights in BTBP's intellectual property incorporated therein, including but not limited to processing information and any BTBP information used in design, production or in filling orders for Equipment placed by Customer hereunder. No ownership rights in BTBP's intellectual property shall pass to Customer by the provision of any Equipment hereunder. Customer shall receive no right or license, express or implied, in or to any BTBP intellectual property or information incorporated into the Equipment, or used in the processing or manufacturing of the Equipment, other than the limited right to use the Equipment for the purposes sold. The parties agree that all technology and discoveries, inventions, developments, modifications, innovations, updates, enhancements, improvements, writing or rights (whether or not protectable under patent, copyright, trademark or similar law) that are conceived, discovered, invented, developed, created, made or reduced to practice by Customer related to the Equipment shall be the sole and exclusive property of BTBP and Customer agrees to assign, and hereby does assign, to BTBP Customer's entire right, title and interest in and to any and all such inventions without additional consideration to Customer as well as to provide reasonable assistance in obtaining, perfecting, maintaining or enforcing BTBP's rights therein

10. Miscellaneous:

The acceptance of any purchase order placed by you for the Software and hardware is expressly made conditional on Your assent to the terms and conditions set forth herein, and BTBP agrees to furnish the Software only upon these terms and conditions and not those contained in Your purchase order. If any provision of this Agreement is held to be ineffective, unenforceable, or illegal under certain circumstances for any reason, such decision shall not affect the validity or enforceability (i) of such provision under other circumstances, or (ii) of the remaining provisions hereof under all circumstances and such provision shall be reformed to and only to the extent necessary to make it effective, enforceable, and legal under such circumstances. This Agreement shall be governed by and construed under California State law, without regard to any conflict of laws provisions or policies that would lead to the application of any other state's laws, except as required by U.S. Government rules and regulations to be governed by Federal law. BTBP and Customer are independent contracting parties and nothing in the Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party. This acknowledgement represents the entire agreement between the parties with respect to the Equipment and Software and supersedes all prior discussions or understandings between them.

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