

# ACTIVCIRK PRODUCT SALES GENERAL TERMS AND CONDITIONS

**1. Acceptance** ACTIVCIRK CORPORATION (ACTIVCIRK) offer to sell product(s) to Buyer is expressly limited to Buyer's acceptance of these terms and conditions. Any of the following constitutes Buyer's unqualified acceptance of these terms and conditions: (i) written acknowledgement of these terms and conditions; (ii) issuance or assignment of a purchase order for the product(s), (iii) acceptance of any shipment or delivery of ACTIVCIRK product(s), (iv) payment for any of the product(s), or (v) any other act or expression of acceptance by Buyer. THE TERMS AND CONDITIONS SET FORTH HEREIN SHALL SUPERSEDE ANY CONFLICTING, INCONSISTENT, OR INCOMPATIBLE TERMS CONTAINED ON BUYER'S PURCHASE ORDER OR ANY OTHER DOCUMENT OR INSTRUMENT SUBMITTED BY BUYER.

**2. Prices, Taxes and Payment** All prices are firm unless otherwise agreed to in writing. ACTIVCIRK reserves the right to change the prices and specifications of its products at any time without notice, unless otherwise explicitly specified in a valid written customer product quote. Any tax, duty, custom or other fee of any nature imposed upon this transaction by any federal, state or local governmental authority shall be paid by Buyer in addition to the price quoted or invoiced. In the event ACTIVCIRK is required to pay or prepay any such tax, Buyer will reimburse ACTIVCIRK. Payment terms shall be cash in advance of shipment by ACTIVCIRK. Buyer is responsible for all collection costs on past due accounts.

**3. Delivery and Shipment** ACTIVCIRK will make every effort to ship the products or provide the services hereunder in accordance with the requested delivery date, provided that ACTIVCIRK accepts no liability for any losses or for damages arising out of delays in delivery. Shipment of all products shall be from ACTIVCIRK's point of distribution via Ex-Works (EXW) Newbury Park, CA (Incoterms 2013); identification of the products shall occur when they leave ACTIVCIRK's point of distribution, at which time title and risk of loss shall pass to Buyer. All shipment costs shall be paid by Buyer and if prepaid by ACTIVCIRK, the amount thereof shall be reimbursed to ACTIVCIRK. At its election, ACTIVCIRK may reserve a volume of certain products for evaluation on behalf of Buyer, for up to 30 calendar days. The reserved volume is subject to reallocation or release at ACTIVCIRK's discretion. Buyer is responsible for evaluation of reserved product and determination of specific volumes and delivery schedules to be requested. Within such 30 calendar days, Buyer must provide ACTIVCIRK with an Order detailing the product, lot, volume, delivery schedule for reserved product, and payment for the order. All excess product(s) will be released at ACTIVCIRK's discretion.

**4. Inspection** Buyer shall be responsible for inspecting all products shipped hereunder prior to acceptance, provided, that if Buyer shall not have given ACTIVCIRK written notice of rejection fully specifying and documenting the reasons thereof within 10 business days following shipment to Buyer, the products shall be deemed to have been accepted by Buyer.

**5. ACTIVCIRK's Standard Warranty** ACTIVCIRK warrants that its products shall be free of any defects covered in ACTIVCIRK WI-7, "Visual Inspection" for a period of thirty (30) calendar days after shipment of the product. The WI-7 is available upon request. ACTIVCIRK warrants that ACTIVCIRK that the performance of its products meet their applicable published specifications when used in accordance with their applicable instructions. ACTIVCIRK MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The warranty provided herein and the specifications and instructions of ACTIVCIRK products appearing in ACTIVCIRK's published catalogues and product literature may not be altered except by express written agreement signed by an officer of ACTIVCIRK. Representations, oral or written, which are inconsistent with this warranty or such publications, are not authorized and, if given, should not be relied upon. In the event of a breach of the foregoing warranty, ACTIVCIRK's sole obligation shall be to repair or replace, at its option, the applicable product or part thereof, provided the customer notifies ACTIVCIRK promptly of any such breach. If after exercising reasonable efforts, ACTIVCIRK is unable to repair or replace

the product or part, then ACTIVCIRK shall refund to the customer all monies paid for such applicable product or part. ACTIVCIRK SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL EXEMPLARY, PUNITIVE OR ANY OTHER LIKE DAMAGES SUSTAINED BY ANY CUSTOMER FROM THE USE OF ITS PRODUCTS.

**6. Authorized Use** The purchase of ACTIVCIRK products conveys to Buyer a non-transferable right to use the purchased product(s) in compliance with the intended use statement listed on the product data or product information that accompanies each product. Each product also may be accompanied by limited use information or limited use label licenses. Unless otherwise expressly stated in product data or product documentation sheets, ACTIVCIRK products have not been tested for safety or efficacy.

**7. Returned Goods** No products shipped under this contract may be returned without the express prior written authorization of ACTIVCIRK and all products must be returned with ACTIVCIRK's approved Product Return Authorization form. Title to such returned products shall pass to ACTIVCIRK upon delivery of the product to ACTIVCIRK's facilities. The products shall be returned in their original containers with the original ACTIVCIRK label affixed and unaltered in form and content. All product returns are subject to a restocking charge. No returns will be authorized after 30 calendar days following shipment to Buyer.

**8. Agents** No agent, employee or other representative has the right to modify or expand ACTIVCIRK's standard warranty applicable to the products or to make any representations as to the products other than those set forth in ACTIVCIRK's product literature and any such affirmation, representation or warranty, if made, should not be relied upon by Buyer and shall not form a part of this contract. **9. No Assignment** Orders are not assignable or transferable, in whole or in part, without the express written consent of ACTIVCIRK.

**10. Third Parties** Nothing in this document is intended to create any rights in third parties against ACTIVCIRK.

**11. Modification, Waiver of Breach** This contract may be modified, and any breach hereunder may be waived, only by a writing signed by the party against whom enforcement thereof is sought. Any such waiver by either party of any provision of these Terms and Conditions shall not operate as a waiver of such provision at any other time.

**12. Governing Law** This contract shall be governed by and construed in accordance with the laws (other than those relating to conflict of laws questions) of the State of California.

**13. Arbitration** Any and all disputes or controversies arising under, out of, or in connection with this contract or the sale or performance of the products hereunder shall be resolved by final and binding arbitration in Los Angeles, California under the rules of the American Arbitration Association then obtaining. The arbitrators shall have no power to add to, subtract from or modify any of the terms or conditions of this contract. The arbitrators may award to the prevailing party such party's costs, including arbitration fees; however, absent such award, the parties will be responsible for their costs of arbitration and shall equally pay the arbitration fees. Any award rendered in such arbitration may be enforced by either party in either the courts of the State of California or in the United States District Court for the Central District of California in Los Angeles, California to whose jurisdiction for such purposes ACTIVCIRK and Buyer each hereby irrevocably consents and submits.

**14. WEEE Directive** Buyer hereby agrees to bear any costs and conduct any required operations associated with the environmentally sound management of waste resulting from the products in accordance with all provisions, including any specific conditions, laid down by any national legislation, state law or local ordinance including but not lawful to legislation relating to electrical and electronic waste. Should Buyer be a distributor or the end user, for any disposal of used product support, please contact a local ACTIVCIRK representative.

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**15. Foreign Corrupt Practices Act Compliance** Buyer acknowledges that ACTIVCIRK is a United States corporation and, as such, is subject to the provisions of the Foreign Corrupt Practices which prohibits the making of corrupt payments (the "FCPA"). Under the FCPA, it is unlawful to pay or to offer to pay anything of value to foreign government officials, or employees, or political parties or candidates, or to persons or entities who will offer or give such payments to any of the foregoing in order to obtain or retain business or to secure an improper commercial advantage. Buyer further acknowledges that it is familiar with the provisions of the FCPA and hereby agrees that it shall take or permit no action which will either constitute a violation under, or cause ACTIVCIRK to be in violation of, the provisions of the FCPA.

**16. Compliance with Export Regulations and Controls** Buyer agrees that it will comply with all restrictions imposed by the United States of America upon the export of the Products pursuant to any law of the United States including, but not limited to, the U.S. Department of Commerce, Bureau of Industry and Security (BIS), Export Administration Regulations (EAR), the U.S. Department of State, International Traffic in Arms Regulations (ITAR) and the Office of Foreign Assets Control Regulations (OFAC). Buyer agrees that it will comply with all restrictions imposed by the United States government relating to the export, or re-export, of the products or the transfer of any ACTIVCIRK technical data. Buyer also agrees that, without the prior written approval of ACTIVCIRK and if applicable, the appropriate department of the United States Government, it will not sell the products to any customer it knows, or has reason to know, will use them, directly or indirectly, in any application other than the authorized intended use. A Non-U.S. Buyer will cooperate with ACTIVCIRK in obtaining appropriate export licenses for the Products and will submit all documentation requested by ACTIVCIRK to obtain the appropriate licenses prior to the export of the products or the transfer of any ACTIVCIRK technical data. If required by ACTIVCIRK, Buyer will also provide an end user statement providing a detailed explanation for the end use of ACTIVCIRK products. Buyer further agrees that it will comply with all import and export restrictions of any country in which Buyer is doing business, including but not limited to verification by Buyer that no end user of the products or recipient of technical data has been listed on any country's "restricted parties" list.

**17. Severability** If any provision of these Terms and Conditions is held illegal, invalid, inapplicable or unenforceable, such provision shall be deemed severed from these Terms and Conditions, the remainder of which shall remain in full force and effect.

**18. Entire Agreement** These Terms and Conditions of Sale shall constitute the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the sale of ACTIVCIRK products and supersedes all prior and contemporaneous understandings or agreements of the parties.

**19. Force Majeure** Any delay or failure of either party to perform its obligations shall be excused if ACTIVCIRK is unable to produce, sell or deliver, or Buyer is unable to accept delivery, buy or use, the goods or services covered by this contract, as the result of an event or occurrence beyond the reasonable control of the party and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor equipment or transportation, or court injunction or order; provided that written notice of such delay including the anticipated duration of the delay) shall be given by the affected party to the other party as soon as possible after the event or occurrence (but in no event more than 10 calendar days thereafter) During the period of such delay or failure to perform by ACTIVCIRK, Buyer, at its option, may purchase goods and services from other sources and reduce its schedules to Seller by such quantities, without liability to ACTIVCIRK, or have ACTIVCIRK provide the goods and services from other

sources in quantities and at times requested by Buyer, and at the price set forth in this contract In addition, ACTIVCIRK at its expense shall take such actions as are necessary to ensure the supply of goods and services to Buyer for a period of at least 30 calendar days during any anticipated labor disruption or resulting from the expiration of Seller's labor contract(s). If requested by Buyer, ACTIVCIRK shall, within 10 calendar days, provide adequate assurances that the delay shall not exceed 30 calendar days. If the delay lasts more than 30 calendar days or ACTIVCIRK does not provide adequate assurance that the delay will cease within 30 calendar days, Buyer may immediately terminate this contract without liability.

**20. Indemnity** BUYER SHALL AT ALL TIMES DURING THE TERM OF THIS ORDER AND THEREAFTER, INDEMNIFY AND HOLD ACTIVCIRK LABORATORIES, LLC, ITS OWNERS AND AFFILIATES AND THEIR DIRECTORS, OFFICERS AGENTS AND EMPLOYEES, HARMLESS AGAINST ALL CLAIMS, PROCEEDINGS, DEMANDS AND LIABILITIES OF ANY KIND WHATSOEVER, INCLUDING LEGAL EXPENSES AND REASONABLE ATTORNEY'S FEES, ARISING OUT OF THE DEATH OF OR INJURY TO ANY PERSON OR PERSONS OR OUT OF ANY DAMAGE TO PROPERTY, RESULTING FROM THE PRODUCTION, MANUFACTURE, SALE, USE, LEASE, CONSUMPTION OR ADVERTISEMENT OF PRODUCTS OR SERVICES DELIVERED TO BUYER UNDER THIS ORDER.