



**State of West Virginia  
Department of Administration  
Purchasing Division**

**NOTICE**

Due to the size of this bid, it was impractical to scan every page for online viewing. We have made an attempt to scan and publish all pertinent bid information. However, it is important to note that some pages were necessarily omitted.

If you would like to review the bid in its entirety, please contact the buyer. Thank you.

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April 16, 2010

Via Federal Express

Mr. Ron Price  
Department of Administration  
Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130

**Re: State of West Virginia Request For Quotation No. AGR1018 for an LC/MS System;  
AB Quote No. 20650055 and 20650058**

Dear Mr. Price:

Thank you for the opportunity to respond to your request For Quotation No. AGR1018 for a LC/MS System. Please accept the attached bid package, which includes completed bid forms, HIPAA statement, and two proposals as detailed below, the first for an API 3200 LC/MS/MS System and the second for a 3200 QTrap LC/MS/MS System. Please note that the prices set forth in Quote No. 20650055 and 20650058 are valid until June 30, 2010.

**Proposal number 1 for the API 3200 LC/MS/MS System includes:**

- Cover Letter
- Completed Cost Sheet
- Quote Number 20650055
- Leasing Proposals
- API 3200 Brochure
- AB 3G Brochure
- App Note: EPA Method 535
- App Note: Detect Organonitrogen and Triazine Pesticides
- App Note: Analysis of Residual Phenoxyacid Herbicides
- Differentiating Features of the API 3200 LC/MS/MS System
- Tech Note: Characterizing and Quantifying Chloramphenicol
- App Note: Sensitivity Quantitation of Metabolites of Nitrofurantoin
- App Note: Simultaneous Analysis of Multiple Anti-Bacterial Drugs
- Webcast Information
- App Note: Simultaneous Quantitative Screen of 300 Pesticides using 3200 QTrap
- Article: Determination of 142 Pesticides in Fruit and Vegetable Infant Foods
- Slide: New Residues of Pesticides in Drinking Water
- Prominence Brochure
- App Note: Higher Degree of Confirmation with QTrap LC/MS/MS Systems
- Shimadzu LC Systems Specifications
- Site Planning Guide

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PURCHASING DIVISION  
STATE OF WV

- Tech Note: Smaller Footprint

**Proposal number 2 for the 3200 QTrap LC/MS/MS System includes:**

- Cover Letter
- Completed Cost Sheet
- Quote Number 20650058
- Leasing Proposals
- 3200 QTrap Brochure
- AB 3G Brochure
- App Note: Analysis of Residual Amount of Phenoxyacid Herbicides
- App Note: Simultaneous Quantitative Screening of 300 Pesticides Using 3200 QTrap
- Tech Note: Simultaneously Characterizing Chloramphenicol
- App Note: Sensitivity Quantitation of Metabolites of Nitrofurantoin
- App Note: Simultaneous Analysis of Multiple Anti-Bacterial Drugs
- Webcast Information
- Differentiating Features of the 3200 QTrap LC/MS/MS System
- Article: Determination of 142 Pesticides in Fruit and Vegetable Infant Foods
- Slide: New Residues of Pesticides in Drinking Water
- Prominence Brochure
- App Note: Higher Degree of Confirmation with QTrap LC/MS/MS Systems
- Shimadzu LC Systems Specifications
- Site Planning Guide
- Tech Note: Smaller Footprint

**References:**

1. US FDA, Center for Veterinary Medicine  
Dr. Pak Chu, [Pak.Chu@fda.hhs.gov](mailto:Pak.Chu@fda.hhs.gov), 310.210.4583
2. US FDA, Center for Veterinary Medicine  
Dr. Mary Carson, [Mary.Carson@fda.hhs.gov](mailto:Mary.Carson@fda.hhs.gov), 301.210.4652
3. US FDA, Center for Food Safety and Applied Nutrition, College Park, MD  
Dr. John Callahan, [john.callahan@cfsan.fda.gov](mailto:john.callahan@cfsan.fda.gov), 301.436.2039
4. State of Virginia, Department of Consolidated Laboratory Services, Richmond, Virginia  
Mr. Shane Wyatt, [Shane.wyatt@dgs.virginia.gov](mailto:Shane.wyatt@dgs.virginia.gov), 804.648.4480 ext 377
5. Health Canada, Pesticide Management and Regulatory Agency  
[peter.bradley@inspection.gc.ca](mailto:peter.bradley@inspection.gc.ca), 613.759.1285
6. Canadian Food Inspection Agency  
Dr. Jian Wang, Calgary Laboratory, 3650 36th St NW, Calgary, Alberta, Canada T2L 2L1


In regard to your Updates section under your Additional Specifications, please refer to line item 0012 in both quotations for further details. Hardware updates are not included, but available at list prices current at time of purchase.

To clarify, under Section 13 of your General Terms and Conditions, HIPAA Business Associate Addendum, our understanding, for reasons set forth in attached the HIPAA statement, is the nature of services we will be providing under any resulting contract will not expose us to any protected information that would qualify us as a business associate under HIPAA.

Should you have any questions regarding our products and/or pricing, please contact Robert Christian at phone 434.295.9626 or at email [robert.christian@absciex.com](mailto:robert.christian@absciex.com). For any contractual issues, please contact me as provided below.

Thank you in advance for your time and consideration.

Sincerely,



Carla T. Mc Murray-Müller  
Applied Biosystems LLC  
on behalf of AB Sciex  
Ph.650.554.2350  
Fax.650.638.5143  
[carla.mcmurray@lifetech.com](mailto:carla.mcmurray@lifetech.com)

*Enclosures*



April 5, 2010,

Mr. Ron Price  
State of West Virginia

**Proposal #1**

Dear Mr. Price,

In response to the RFQ AGR1018 AB SCIEX is pleased to offer the enclosed proposal for an API 3200 LC-MS/MS System. The package we are offering meets or exceeds all of the performance specifications in the RFQ.

AB SCIEX is the worlds leading provider of mass spectrometry instrumentation to the life science market with an install base of over 13,000 instruments. Our instruments offer best in class precision, accuracy, sensitivity and robustness performance, characteristics that have positioned AB SCIEX as the preferred partner for LC-MS/MS applications. AB SCIEX instruments have been implemented in many labs throughout the world for testing of food products, including at the US FDA Center for Food Safety and Applied Nutrition, US FDA Center for Veterinary Medicine, the FDA Field Lab organization and the US Department of Agriculture. An extensive list of relevant references is included in our proposal

To further illustrate the capabilities of our technology we have included a range of peer reviewed publications and Application Notes specific to the analysis of pesticides and antibiotics.

Our proposal is valid until June 30<sup>th</sup>, 2010, is being offered with shipping terms of FOB Destination with Freight quoted. All products will be delivered within 45 days after receipt of order.

During installation two copies of user manuals will be provided. These manuals include system descriptions, operator training and instructions on how to perform routine maintenance.

To support the large install base, AB Sciex offers a best in class service organization with unparalleled response times and speed of resolution. With this bid we are offering our standard Warranty and AB Assurance program which provides four (4) hour telephone call back and 48-hour guaranteed on-site response. We also offer free technical support via our toll free telephone number from 8 am-8 pm, Monday through Friday.

AB SCIEX appreciates the opportunity to work with the State of West Virginia. Our proposal offers the highest performance instruments and offers the State of West Virginia the best value solution available.

Thank you for your consideration.

Sincerely,

ROB CHRISTIAN, Ph.D.  
Mass Spectrometry Sales Specialist

## Cost Sheet

Vendors must complete the below cost sheet

### Chromatograph / Mass Spectrometer LC / MS

\*\* If bidding and equal product, please list manufacturer and model on the line below.  
Model literature should be included with your bid.

**AB SCIEX**

**API 3200**

Manufacturer

Model Number

Purchase Option	3 yr Lease Option Including Maintenance	4 yr Lease Option Including Maintenance	5 yr Lease Option Including Maintenance
Equipment \$ 217,872	\$ 7774.53/month	\$ 6524.70/month	\$ 5828.54/month
Maintenance	3 yr Lease/w Buyout	4 yr Lease/w Buyout	5 yr Lease/w Buyout
3 year \$ 40329.90	\$1	\$ 1	\$1
4 year \$ 60494.85			
5 year \$ 80659.80			
<b>Total Equipment Purchase/w 3 yr Maintenance</b>			
<b>\$ 258201.9</b>			
<b>Total Equipment Purchase/w 4 yr Maintenance</b>			
<b>\$ 278366.90</b>			
<b>Total Equipment Purchase/w 5 yr Maintenance</b>			
<b>\$ 298531.80</b>			

The options above will be used for evaluation purposes.



# Quotation

AB Sciex LLC  
353 Hatch Drive  
Foster City, CA 94404 U.S.A.  
T(650)638-5800, F(650)638-5884

PAGE 1 of 12

To: Mr. Ron Price  
WV Dept of Agri  
2019 Washington Street East  
CHARLESTON WV 25305

**Quote No.:** 20650055  
**Quote Valid To:** 06/30/2010  
**Quote Date:** 04/06/2010  
**Pay Terms:** Net 30 Days  
**Freight Terms:** FOB DESTINATION - FRT QUOTED

Telephone No.  
Fax No.

**Please reference Quote No.  
when placing your orders.**

Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
0001	4365413	API 3200 Applied Markets System Package INCLUDES:  API 3200 Instrument Enhanced high performance triple quadrupole LC/MS/MS mass spectrometer with a mass range of m/z 5 to 2000.  Integrated syringe pump 10 port, 2 position switching valve.  Turbo V Source that accepts either the TurbolonSpray or APCI Probe  TurbolonSpray Probe Heated IonSpray probe for use in the Turbo V Source. Accepts flow rates from 5 to 3000 ul/min without splitting. Ideal for quantitation at high sensitivity and high flow rates.  APCI Probe Atmospheric Pressure Chemical Ionization probe for use in the Turbo V Source. Useful for ionization of small polar and neutral molecules. Accepts flow rates from 200 to 3000 ul/min.	1.00	226,000.00	159,150.00	159,150.00

### WARRANTY INFORMATION

AB Sciex limited product warranties are included with shipment of its products. You may visit [www.absciex.com](http://www.absciex.com) for warranty information or contact your local AB SCIEX sales representative to request a copy. AB Sciex instruments and accessories are warranted by AB Sciex for a period of one year, unless a different period or no warranty is indicated on AB Sciex quotation. The warranty period for AB Sciex instruments begins on the earlier of the date of installation or 90 days from the date of shipment for instruments installed by AB Sciex personnel. For AB Sciex instruments installed by the buyer or anyone other than AB Sciex, the warranty period begins on the date the instrument is delivered.

### TERMS AND CONDITIONS

This quotation, including AB Sciex' General Terms and Conditions of Sale furnished with this quotation, and, if software is included, AB Sciex' applicable end user software license agreement, sets forth the terms on which AB Sciex is offering to sell the product(s) listed on this quotation. AB Sciex' end user license agreement for instrument operating software can be found on AB Sciex website, at: <http://www.absciex.com/legal>. Licenses for stand alone software are in click wrap form. You may contact AB Sciex for a copy at any time. By issuing a purchase order or otherwise ordering the product(s), the customer expressly agrees to these General Terms and Conditions of Sale (and operating software end user software license agreement, if applicable) to the exclusion of all others not expressly agreed to in writing by an authorized representative of AB Sciex. If you have any questions, please call AB Sciex' Customer Account Services at 650-638-5800. Stenographical/clerical errors are subject to correction. Most recent quotation will supersede all prior quotations. All amounts are in USD.

**Sales Representative: Robert Christian**

**Prepared by: Cherry Gallardo**

ACCEPTANCE OF THIS QUOTATION IS LIMITED TO THE ATTACHED TERMS



# Quotation

AB Sciex LLC  
 353 Hatch Drive  
 Foster City, CA 94404 U.S.A.  
 T(650)638-5800, F(650)638-5884

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**QUOTE NO.:** 20650055  
**QUOTE VALID TO:** 06/30/2010  
**QUOTE DATE:** 04/06/2010

To: Mr. Ron Price  
 WV Dept of Agri

**Please reference Quote No.  
 when placing your orders.**

Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
		<p>Core software for control, data acquisition, and data processing on AB/SCIEX QqQ and QTRAP(R) mass spectrometers. Includes 2 licenses: 1 license for the instrument workstation, and 1 processing-only license for an extra non-instrument PC.            Compatible with Windows XP SP3 or 2000 SP4.</p> <p>Cliquid 3.0 Software Startup Kit            Software for Routine Analysis and Microsoft office only. Designed for users who want to employ their own tests or to add tests using the iMethods Test products (to be purchased separately). Two sample methods and an example System Suitability test are included.</p> <p>Dell Optiplex 960 Core 2 Duo, 3.0GHz processor, 4 GB RAM, 2x500GB hard drives with RAID 1 configuration, DVD RW (CD RW capable), 3 Ethernet ports, Laser 6-button mouse and keyboard. Built-in DisplayPort Video (with adapter) capable of a maximum digital resolution of 1920x1200.            The computer is imaged with Windows XP SP3 Professional (licensed with Vista Business), and drivers. This PC is RoHS compliant and can be used as an acquisition workstation or stand-alone processing computer.            (This computer contains no GPIB PCI card for instrument communication. USB GPIB is included in instrument installation kit where instrument control by GPIB is required.)</p> <p>Dell 22 inch Widescreen LCD Monitor</p> <p>Edgeport USB to serial converter box with 4 port connections and 1 meter USB cable. Required to control more than 2 peripheral devices.            Requires the purchase of appropriate peripheral cables.</p> <p>TRAINING:</p> <p>Tuition for one person for an Operator Training Class at an AB SCIEX facility (does not include travel and living expenses). This training session is valid for one year from installation and is not transferable.</p> <p>LIMITED WARRANTY:</p> <p>Includes standard parts and labor warranty for one year starting from the completion of instrument commissioning. One no-charge Preventative Maintenance (PM) during the one-year warranty period</p>				





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T(650)638-5800, F(650)638-5884

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**QUOTE VALID TO:** 06/30/2010  
**QUOTE DATE:** 04/06/2010

To: Mr. Ron Price  
WV Dept of Agri

**Please reference Quote No.  
when placing your orders.**

Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
		(as provided in AB SCIEX's written limited warranty statement and accompanying terms in the user manual or other product documentation).				
0002	1029120	OPT,LINE ADJUST TRANSFORMER Required in areas where line voltage is out of specification (208-240VAC)	1.00	1,000.00	750.00	750.00
0003	N020-0514	API ONSITE CONSULTATION (CHARGE PER DAY) NOTE Cancellations of on-site FAS support that have been scheduled at least three weeks in advance are subject to a \$1,000.00 cancellation fe (or its dollar equivalent of time)IF the customer cancellation occurs within 5 working days of the agreed to date to come on-site with the customer.	5.00	3,500.00	0.00	0.00
0004	1016082	CARD,3C905CX-TX-M 3COM NIC 3COM 10/100 Network Interface Card, single port 32 bit, 33 MHz PCI.	1.00	68.25	60.00	60.00
0005	4425032	CTRLR,220-91398-20 SHIM CBM-20A	-1.00	2,800.00	2,464.00	2,464.00
0006	4425033	DEGASSER,228-45018-32 SHIM DGU-20A3 3-channel inline membrane degasser	1.00	2,200.00	1,936.00	1,936.00
0007	4415511	PUMP,228-45137-32 SHIM LC20-AD XR Isocratic pump with 9572 psi pressure limit.	2.00	7,800.00	6,864.00	13,728.00
0008	4425925	MIXER,228-35830-93 SHIM 100UL HP 9572 psi pressure limite. SS mixing chamber for use in semi-micro to standard analytical applications.	1.00	945.00	832.00	832.00
0009	4425012	AUTOSAMPLER,220-91397-18 SHIM SIL20ACXR 9572 psi pressure limit. Accommodates several vial sizes and titer plate formats for high speed, accurate, and precise HPLC sample injection. Temperature controlfrom 4- 40 C.	1.00	19,600.00	17,248.00	17,248.00
0010	4425037	COLUMN OVEN,228-45010-32 SHIM CTO-20AC	1.00	4,000.00	3,520.00	3,520.00



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To: Mr. Ron Price  
 WV Dept of Agri

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Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
		Full-sized oven with forced air temperature control from 10 C below ambient temperature to 85 C. Can accommodate a manual injector, mixer, and 2 switching valves.				
0011	4428197	RES,TRAY/BOTTLES,220-91413-02 SHIM Prominence reservoir tray with a set of (5) 1-L solvent bottles and caps.	1.00	578.00	509.00	509.00
0012	1033188	OPT,ANALYST 1.5 SW 2YR UPGRADE AGREEMNT A two-year software upgrade agreement for Analyst 1.5 customers where AB SCIEX will automatically provide customers with new Analyst software releases so that they may upgrade their systems to the most current Analyst software. Software releases may include full version releases, Enhancement packs, and Hotfixes. All new software provided shall be customer installable. Customers must fax/mail in Enrollment Form included in the agreement.	2.00	1,000.00	750.00	1,500.00
0013	800-L	Peak Generator AB-3G	1.00	0.01	16,000.00	16,000.00
0014	800-L	USA Boost Transformer PN 06-3100	1.00	0.01	175.00	175.00
		***** TOTAL: \$217,872.00 *****				
* Total above does not include freight.						
OPTIONAL ITEMS: (Optional items are not included in the Quotation Total. If you would like to purchase any of the Optional Items below, please include them on your purchase order as separate line items and reflect net price for each item in the purchase order total.)						



# Quotation

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PAGE 5 of 12

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To: Mr. Ron Price  
 WV Dept of Agri

**Please reference Quote No.  
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Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
0015	ZG12-SCAPI3200	Assurance 2PM API3200 This Assurance Plan is subject to and governed by the AB SCIEX Service Agreement Terms and Conditions attached to this Quotation, rather than AB SCIEX's General Terms and Conditions of Sale. By ordering or otherwise accepting an Assurance Plan, you agree to these Service Agreement Terms and Conditions to the exclusion of all other terms relating the Assurance Plan not expressly agreed to in writing by an authorized representative of AB SCIEX.	1.00	23,709.00	15,410.85	15,410.85
0016	ZG11-SCSHIMXR	Assurance XR Sys  Estimated Shipping and Handling:	1.00	7,314.00	4,754.10	4,754.10 2,548.29
<p>Note: AB SCIEX makes no warranty whatsoever in regards to products or parts furnished by third parties; such products or parts will be subject to the warranties, if any, of their respective manufacturer. (applies to all 800-L items quoted).</p> <p>The items quoted are being offered as a convenience to the customer and may only be purchased in conjunction with AB SCIEX products listed above.</p> <p>THE SPECIAL DISCOUNTS APPLIED TO THIS QUOTATION ARE VALID UNDER THIS QUOTATION ONLY AND IS CONTINGENT UPON RECEIPT OF YOUR PURCHASE ORDER FOR ITEMS AS QUOTED, ON OR BEFORE THE "QUOTE VALID" DATE.</p> <p>Freight charges are prepaid and added to invoice. Shipments are made immediately upon availability.</p> <p>All orders made in reference to this quotation must include all part numbers and quantities as listed. If you would like to modify this order, please contact your Sales Representative.</p>						



# Quotation

AB Sciex LLC  
353 Hatch Drive  
Foster City, CA 94404 U.S.A.  
T(650)638-5800, F(650)638-5884

PAGE 6 of 12

**QUOTE NO.:** 20650055  
**QUOTE VALID TO:** 06/30/2010  
**QUOTE DATE:** 04/06/2010

To: Mr. Ron Price  
WV Dept of Agri

**Please reference Quote No.  
when placing your orders.**

Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
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To place your AB Sciex LLC order:

For INSTRUMENTS & CONSUMABLES:

Fax # 650-638-5875, Attn: Sales Administration or phone 1-800-327-3002

## AB SCIEX LLC GENERAL TERMS AND CONDITIONS OF SALE

These General Terms and Conditions of Sale ("Terms") shall govern all orders for and purchases of products and services from AB Sciex ("AB"), including installation of equipment, unless other terms are specifically designated by AB to apply to a specific product or service, or AB and buyer have entered into a master purchase agreement or other written agreement that expressly provides that its terms supersede and replace these Terms with respect to the products or services covered by the master purchase or other agreement (See Section 12, SOLE TERMS, INCONSISTENCIES, ORDER OF PRECEDENCE).

**1. PRICE.** The price for any product or service (hereinafter collectively "Product") shall be the price stated in AB's quotation to buyer for the Product ("AB's Quotation") or, if AB has not issued a quotation, AB's list price of the Product at the time AB receives buyer's purchase order. AB's quotations are valid for 30 days from the quotation date unless otherwise stated in AB's Quotation. If AB's price is stated by reference to a price list then the price shall be AB's list price in the jurisdiction in which the Product is to be delivered or performed in effect at the time AB receives buyer's purchase order. Prices stated are exclusive of all taxes, fees, licenses, duties, levies or other governmental assessments ("Taxes") and, unless otherwise stated in AB's Quotation, shipping and handling charges, freight and insurance. All Taxes related to Product shall be paid by buyer (other than taxes assessed against AB's net income), or in lieu thereof, buyer shall provide AB with a tax exemption certificate acceptable to the relevant taxing authorities. Taxes and other charges payable by buyer may be billed as separate items on AB's invoice.

**2. PAYMENT TERMS; COLLECTION COSTS; SECURITY TERMS.** Payment terms are net 30 days from date of AB's invoice. If AB deems buyer to be or to have become uncreditworthy, AB shall have the right to require alternative payment terms, including without limitation sight draft, letter of credit, or payment in advance. Payment for partial shipments shall be based on unit or prorated prices, and payment for partial installation(s) shall be based on percentage of completion of installation, as reasonably determined by AB. If payment is not received by the due date, AB may assess and buyer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If AB retains a collection agency or attorney to collect unpaid amounts, AB may invoice buyer for, and buyer will pay, all reasonable costs of collection, including without limitation reasonable attorneys fees. Buyer hereby grants to AB and AB reserves a purchase money security interest in all tangible Product purchased from AB, and in any proceeds thereof, for all amounts owing to AB for or related to such Product. Upon request by AB, buyer shall sign any reasonable documents required for AB to perfect such security interest and, to the fullest extent permitted by law, buyer hereby expressly grants AB authority and a limited power of attorney to file financing statements and amendments thereto for and on behalf of buyer for such Product and any proceeds thereof. Payment in full of all amounts owed for and related to such Product shall release such security interest in the Product and proceeds.

**3. CREDIT TERMS.** AB may, at any time and in its sole discretion, limit or cancel the credit of buyer as to time and amount, suspend shipments, demand payment in cash before delivery of Product, or demand other assurances of buyer's performance. If buyer fails to agree and comply with the different terms of payment demanded, or fails to give adequate assurances of performance, AB may, without prejudice to any other right or remedy AB may have: (i) by notice to buyer, treat such failure or refusal as a repudiation by buyer of that portion of buyer's order not then fully performed, whereupon AB may cancel all further deliveries, and any amounts unpaid for non-cancelled Product shall immediately become due and payable; or (ii) make shipments under reservation of a security interest and demand payment against tender of title documents.

**4. ACCEPTANCE OF ORDERS, DELIVERY, TITLE AND RISK OF LOSS, INSTALLATION.** AB may accept or reject any buyer purchase order for Product in whole or in part. If a purchase order is accepted, AB will use reasonable efforts to ship tangible Product or perform services, including equipment installation if agreed to by AB, subject to the purchase order within a reasonable time after ordered, or, if a shipment, service commencement or installation date is indicated in AB's Quotation or otherwise agreed upon in writing by an authorized representative of AB, on or before such date. AB may make delivery in installments, and each installment shall be deemed to be a separate sale. AB may render a separate invoice for each installment, which invoice shall be paid without regard to prior or subsequent installments. Unless indicated otherwise in AB's Quotation, title and risk of loss with respect to all Products except Products that are software or services, and risk of loss with respect to software, shall pass from AB to buyer upon transfer of possession of the Product to a common or other third party carrier at AB's facility. If AB has undertaken to install a Product, it is buyer's responsibility, at buyer's cost, to have the installation site prepared and available for installation free of hazardous or unsafe conditions and, unless AB otherwise agrees, to move the Product, uncrated, from the buyer's delivery dock or receiving location to the table top or other place of installation. Buyer shall not assign AB personnel to work in biosafety level 3 or level 4 laboratories without prior written notice to AB and AB's consent.

**5. CANCELLATION AND DEFERRAL.** BUYER MAY NOT CANCEL ANY PURCHASE ORDER. However, unless otherwise stated in AB's Quotation, buyer may defer the shipment date one time for up to 60 days for instruments and other hardware, and up to 30 days for reagents, consumables and other tangible Product, by giving written notice to AB at least 30 days before the scheduled shipment date for instruments and other hardware, and at least 10 days before the scheduled shipment date for other Product.

**6. REJECTION AND RETURN OF GOODS.** Any claims for damaged, missing or defective Product must be reported in writing by buyer within 15 days from the date of buyer's receipt of the Product. In addition, buyer must promptly return a rejected Product to AB, C.O.D., unused and in a condition no worse than that delivered to buyer and in the Product's original containers and packing material, accompanied by a valid return authorization number obtained from AB. AB may refuse any Product not timely rejected or sought to be returned without a valid return authorization number. For any valid claim timely made, AB, at its option, may repair the Product or replace the Product with an identical or substantially similar Product. Shipping charges will not be credited. **THESE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR DAMAGED OR MISSING PRODUCT, AND, EXCEPT FOR EXPRESS WRITTEN WARRANTY RIGHTS, FOR DEFECTIVE PRODUCT.** AB may require that buyer sign and deliver a properly completed certificate of decontamination prior to returning any Product.

**7. LIMITED WARRANTY.** AB makes only those warranties with respect to Product expressly identified as "warranties" and set forth in AB's current operating manual or catalog, or in a specific written warranty included with and covering Product, if any. Warranties are made only to the buyer purchasing the Product directly from AB, are not transferable and do not extend to the benefit of any other person or entity, unless otherwise expressly stated in writing by AB. **ANY PRODUCT NOT COVERED BY AN EXPRESS WRITTEN WARRANTY IS SOLD AND PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED.** Any description of Product recited in AB's Quotation is for the sole purpose of identifying Product, and any such description is not part of any contract between AB and buyer and does not constitute a warranty that Product shall conform to that description. Any sample or model used in connection with AB's Quotation is for illustrative purposes only, and is not part of any contract between AB and buyer and does not constitute a warranty that Product will conform to the sample or model. No affirmation of fact or promise made by AB, whether or not in AB's Quotation, shall constitute a warranty that Product will conform to the affirmation or promise. Unless otherwise specified in writing in documentation shipped with Product or otherwise agreed by AB in writing, AB does not provide service or support

for custom products or other products made to buyer's specifications. **THE WARRANTIES IDENTIFIED IN THE FIRST SENTENCE OF THIS PARAGRAPH ARE AB'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO PRODUCT AND ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, ALL OF WHICH OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS), WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE.**

## **8. INTELLECTUAL PROPERTY AND RELATED INDEMNITY.**

**8.1 BY AB.** Subject to the restrictions set forth in this Section 8 and provided buyer complies with its obligations in this Section 8, AB agrees to defend buyer, and indemnify buyer from and against any infringement damages finally awarded, in any legal action or proceeding brought by a third party against buyer to the extent that such action is based on a claim that the manufacture and sale of a Product by AB infringes any United States or foreign patent, copyright, trademark or other intellectual property right of such third party if AB had actual knowledge of such intellectual property right and infringement at the time of delivery of the Product to buyer. Notwithstanding the foregoing, AB shall have no liability or obligation under this Section 8 with respect to any claim of infringement based upon: (i) modifications to any Product made by buyer or a third party; (ii) manufacture, assembly, labeling or branding of Product by AB pursuant to specifications or designs or requests for specific labeling or branding furnished by buyer. Notwithstanding anything herein to the contrary, AB shall have no indemnification obligations with respect to Product originating from a third party and provided under these Terms. Buyer's sole right to indemnification with respect to such third party Product shall be pursuant to the original manufacturer's or licensor's indemnification obligations, if any, to the extent provided by the original manufacturer or licensor.

**8.1.1 Buyer's Obligations.** Buyer must notify AB in writing of any claim for which it may seek defense and indemnity from AB hereunder promptly after becoming aware of such claim, make no admission of liability with respect to the claim, and cooperate with and provide reasonable assistance to AB, at AB's expense with respect to reasonable out of pocket expenses paid by buyer to third parties for such assistance, in the defense or settlement of such claim. AB shall have sole authority to defend and/or settle any claim under this Section 8. AB's obligations under this Section 8 are contingent upon buyer's compliance with all of the foregoing.

**8.1.2 Remedy for Infringement, Rights of AB, Exceptions.** If any Product or portion thereof is subject to a suit or other legal proceeding claiming that the Product or such portion infringes a third party's intellectual property right, or in AB's opinion is (are) likely to become subject of such a claim, AB shall, at its option, have the right to either: (a) procure for buyer the right to continue using the Product; or (b) modify the Product so that it becomes non-infringing; or (c) require buyer to return the Product and upon return, refund to buyer the price actually paid by buyer for the Product, less a reasonable amount for use, damage and obsolescence; or (d) substitute for the alleged infringing Product other suitable, non-infringing Products with comparable functionality.

**8.1.3 ENTIRE LIABILITY. THE FOREGOING STATES THE ENTIRE LIABILITY OF AB, AND THE EXCLUSIVE REMEDY OF BUYER, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET OR ANY OTHER INTELLECTUAL PROPERTY RIGHT BY OR IN CONNECTION WITH ANY PRODUCT.**

**8.2 BY BUYER FOR BUYER'S MODIFICATIONS OR SPECIFICATIONS.** If buyer modifies any Product or furnishes AB with specifications or designs or requests for specific labeling or branding, buyer agrees to defend, indemnify and hold AB harmless against all liabilities, damages, costs, expenses and claims arising from or based upon buyer's modifications or AB's manufacture and sale of Product or other performance in compliance with such specifications or designs or requests for labeling or branding.

**9. COMPLIANCE WITH LAWS, USE OF PRODUCT, VALIDATION.** Without limiting the generality of the paragraph above entitled "LIMITED WARRANTY," unless otherwise expressly stated in writing by AB, no claim or representation is made or intended (i) as to any clinical use of any Product (whether diagnostic, prognostic, therapeutic, blood banking or any other clinical use), (ii) that any Product has been cleared, approved, registered or otherwise qualified (collectively, "Approval") by AB with any regulatory agency for use in any clinical procedure or for other use requiring compliance with any federal, state, provincial, European or any other governmental agency or regulatory body regulating diagnostic, therapeutic, blood or other clinical products, medical devices or similar products (collectively, "Regulatory Laws"), (iii) that any Product will satisfy the requirements of any governmental body or other organization, including, but not limited to, the United States Food and Drug Administration or the International Organization for Standardization, or (iv) that any Product or its performance is suitable or has been validated for any specific use or application. Product should not be used for any purpose that would require Approval unless proper Approval is obtained, or, in the case of use in diagnostic laboratory systems and then only to the extent permitted by law, the laboratory has validated its complete system as required by the Clinical Laboratory Improvements Act of 1988, as amended, in the United States or equivalents in other countries. Buyer agrees that if it elects to use Product for a purpose that would subject buyer, its customers or any Product to the jurisdiction of Regulatory Laws or other applicable law, buyer shall be solely responsible for obtaining any required Approvals or other approvals and otherwise ensuring that its use of any Product complies with such laws. Unless otherwise expressly stated in writing, Products have not been tested by or for AB for any particular use or purpose, or for safety or efficacy. Buyer agrees that it is buyer's responsibility, and not AB's, to validate the performance of Products for any specific use or application and to ensure that Products meet applicable regulatory, certification, validation or its other requirements, since the use and performance characteristics of Products have not been validated by AB for any specific use or application, except as may be otherwise expressly set forth by AB in writing. Product should be used in strict accordance with applicable instructions, warnings and other information in user manuals and other Product documentation.

**10. FORCE MAJEURE.** AB shall not be liable for any delay or failure of performance, including without limitation failure to deliver or failure to install, where such delay or failure arises or results from any cause beyond AB's reasonable control, including, but not limited to, flood, fire, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, plant breakdown, computer or other equipment failure, unusually severe weather, earthquake or other act of God, power loss or reduction, strike, lock-out, boycott or other labor disputes of any kind (whether relating to its own employees or others), embargo, governmental regulation or an inability or delay in obtaining materials. In the event of any such delay or failure of performance, AB shall have such additional time within which to perform its obligations hereunder as may be reasonably necessary under the circumstances; and AB shall also have the right, to the extent necessary in AB's reasonable judgment, to apportion Product then available for delivery fairly among its various customers in such manner as AB may consider equitable.

**11. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL AB BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES SUSTAINED BY BUYER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR CAUSED BY PRODUCT, AB'S**

**PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS RELATING TO THE PURCHASE OF PRODUCT OR PERFORMANCE OF SERVICES, AB'S BREACH OF THESE TERMS, THE POSSESSION OR USE OF ANY PRODUCT, OR THE PERFORMANCE BY AB OF ANY SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT AB IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, DOWNTIME, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL, OR BUSINESS OR OTHER FINANCIAL LOSS.**

**12. SOLE TERMS; INCONSISTENCIES; ORDER OF PRECEDENCE.** These Terms, together with AB's Quotation, any applicable label license or patent statement or other written conditions of use, any other terms and conditions expressly agreed to in writing by an authorized representative of AB "(collectively, "AB's, Terms"), and buyer's statement on its purchase order (if accepted by AB) of the name or identity of the Product(s) purchased, quantity, delivery date, bill to and ship to address and, if accurate, price (and only such information on buyer's purchase order), constitute the complete, exclusive and entire agreement between AB and buyer with respect to purchases of Product (unless other terms and conditions are expressly designated to be applicable by AB in writing), and AB's offer to sell Product is expressly limited to such terms. Such terms shall take precedence over and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, and any of buyer's additional or different terms and conditions, which are hereby rejected and shall be void. Buyer's submission of a purchase order or other instrument for or regarding the purchase of Product, whether or not in response to an AB Quotation, shall be deemed acceptance of and agreement to AB's Terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order (except the name or identity of products purchased, quantity, delivery date, bill to and ship to address and, if accurate, price) or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in buyer's purchase order or other instrument or elsewhere. Any acceptance by AB of any offer of buyer is expressly conditioned on buyer's assent to and acceptance of AB's Terms to the extent they are additional or different terms from those of buyer's offer. Except as otherwise provided in these Terms, in the event of an inconsistency between these Terms and the terms appearing on AB's Quotation or other agreement signed by an authorized representative of AB, the terms appearing on AB's Quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these Terms, and all other provisions of these Terms shall remain in full force and effect.

**13. NO IMPLIED RIGHTS.** Nothing in these Terms shall be deemed or construed (i) as a license or grant of any intellectual property rights, whether express, implied, by estoppel or otherwise; (ii) to limit AB's rights to enforce its patent or other intellectual property rights, including, without limitation, as to use of any Product beyond that granted under any patent or other intellectual property label license or statement applicable to the Product; (iii) as granting buyer any right to be supplied with any Product or component thereof beyond those ordered by buyer and supplied by AB in accordance with these Terms; or (iv) as a license or grant of any right to buyer to manufacture or to have manufactured any Product.

**14. CHOICE OF LAW.** Any contract between AB and buyer relating to Product, including these Terms, and any disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of California, U.S.A., excluding both its choice of law provisions and the United Nations Convention on Contracts for the International Sale of Goods.

**15. EXPORT CONTROLS.** Buyer agrees that it will not export or transfer Product for re-export in violation of any United States laws or the laws of any other jurisdiction, or to any denied or prohibited person, entity, or embargoed country in violation of such laws.

**16. MISCELLANEOUS.** No amendment of AB's Quotation or these Terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both AB and buyer. AB's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these Terms for any other purpose. If any provision of these Terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect.

**17. ADDITIONAL TERMS AND CONDITIONS OF SALE FOR OLIGONUCLEOTIDE PRODUCTS, INCLUDING SPECIAL TERMS TO PROTECT CUSTOMER CONFIDENTIAL INFORMATION.** THE FOLLOWING TERMS AND CONDITIONS OF SALE FOR PRODUCTS THAT ARE OLIGONUCLEOTIDE PRODUCTS, IN ADDITION TO ALL OF THE TERMS AND CONDITIONS OF SALE SET FORTH ABOVE, APPLY TO THE PURCHASE AND SALE OF ALL AB SCIEX OLIGONUCLEOTIDE PRODUCTS, INCLUDING TAQMAN® ASSAYS, TAQMAN® LOW DENSITY ARRAYS AND CUSTOM OLIGONUCLEOTIDE SYNTHESIS PRODUCTS.

**17.1 DEFINITIONS.** The following definitions apply to these Additional Terms and Conditions of Sale for Oligonucleotide Products.

"Confidential Information of Buyer" means each Nucleic Acid Sequence specified by buyer in writing to AB that is intended to be detected by use of a Custom Product or to be included in primers and probes or other oligonucleotide Products manufactured by AB and sold to buyer, and the facts that buyer placed orders for Products containing or intended to detect such sequence and that buyer ordered oligonucleotide Products from AB containing or intending to detect such sequence.

"Custom Product" means (i) an Oligonucleotide Kit that is intended to detect a Nucleic Acid Sequence specified by buyer, or (ii) primers and probes or any other oligonucleotide Product that includes a Nucleic Acid Sequence, or other non-off-the-shelf elements or features, specified by buyer.

"Nucleic Acid Sequence" means the nucleic acid sequence of a genome intended to be detected by use of an Oligonucleotide Kit or that is specified as being included in other oligonucleotide Products.

"Oligonucleotide Kit" means a Product that consists of a combination of reagents and other products that includes at least one oligonucleotide based primer or probe, that is sold by AB as an assay kit, and the use of which is intended to detect at least one specific nucleic acid sequence in a sample.

"Synthesis" means the design (where applicable) or manufacture by AB of Custom Kits or other oligonucleotide Products for delivery to buyer.

**17.2 AB'S EVALUATION OF CUSTOM KIT ORDERS.** AB may decline the Synthesis, at any stage of the Synthesis process, of any Custom Product ordered by buyer that AB deems to be unsuitable or commercially impractical for Synthesis, whether on technological, cost or other grounds. AB will give written notice to buyer within a reasonable time following its determination to decline Synthesis of a Custom Product. Buyer shall have no obligation to pay any fees for time and materials, or for any other expenses incurred by AB, in connection with any declined Custom Product. All Custom Product orders not declined by AB must be paid for by buyer, and orders may not be cancelled or changed by buyer without the written consent of AB. Buyer understands and agrees that buyer's obligation to pay for all Custom Products that AB proceeds to Synthesize and deliver is firm and irrevocable, regardless of the number of Custom Products declined for Synthesis in a given order. Each purchase order for Custom Products must be for the total amount payable for all Custom

Products ordered. The amount corresponding to the charges applicable to declined Synthesis will be reflected in AB's invoice for the order.

**17.3 BUYER'S REPRESENTATIONS.** By submitting an order, buyer represents, warrants and agrees that

- (i) buyer will provide AB with all information known to buyer regarding biological, radiological, and chemical hazards associated with the handling, transport, exposure to or other use of any materials supplied to AB by buyer;
- (ii) buyer has the right to cause the sequences that buyer has requested AB to manufacture to be manufactured by AB and sold to buyer, that such sequences and the manufacture and sale thereof to buyer will not infringe or result from the misappropriation of the intellectual property rights, including without limitation patent, copyright, trademark and trade secrets, of any third party anywhere in the world (provided that the foregoing shall not be deemed a representation or warranty with respect to methods of manufacture employed by AB), and that the materials buyer furnishes to AB will not infringe or result from the misappropriation of any such intellectual property rights; and
- (iii) the oligonucleotide Products and components thereof sold to buyer shall be for buyer's own internal research and development use only and shall not be resold or otherwise transferred or conveyed to any third party without the prior express written consent of AB.

**17.4 CONFIDENTIAL INFORMATION OF BUYER.** AB agrees that for seven (7) years after the disclosure by buyer to AB of Confidential Information of Buyer, AB shall not disclose such Confidential Information of Buyer to any third party and will use at least the same degree of care as it uses to protect its own confidential information of a like nature, but in no event less than a reasonable degree of care, to prevent the disclosure of such Confidential Information of Buyer to any third party. This undertaking of confidentiality shall not apply to, and AB shall have no obligations under this paragraph with respect to, any Confidential Information of Buyer that (a) was in AB's possession before receipt from buyer, (b) is or becomes a matter of public knowledge or part of the public domain through no fault of AB, (c) is rightfully received by AB from a third party that was not obliged to keep such information confidential, (d) is developed by AB without reference to Confidential Information of Buyer, or (e) is disclosed by AB with buyer's prior written approval. Notwithstanding the foregoing, AB may disclose Confidential Information of Buyer to the extent required to comply with governmental regulations and other applicable laws or to respond to subpoena or other compulsory legal process, provided in all cases that AB takes reasonable and lawful actions to avoid or minimize the extent of such disclosure and notifies buyer in writing as far in advance of the date of disclosure as is reasonably feasible so that buyer to the extent feasible will have an opportunity to seek to prevent or limit disclosure.

**17.5 INTELLECTUAL PROPERTY RIGHTS.** Any inventions (patentable or otherwise), discoveries, developments, improvements, information, data, compounds, formulae, know-how or other results that are conceived, developed, discovered, reduced to practice, or generated by or for AB or jointly by buyer and AB and that relate or apply to the processes and methods used in or related to the Synthesis of oligonucleotide Products or otherwise in connection with designing or manufacturing oligonucleotide Products, including without limitation primers and probes, shall be and remain the sole and exclusive intellectual property of AB Sciex Pte. Ltd., a limited liability company organized under the laws of Singapore ("AB SCIEX Pte") or one of its affiliates, as applicable and buyer hereby transfers and assigns all of its right, title and interest in and to any such joint intellectual property to AB SCIEX Pte. Buyer will take reasonable steps, upon the request and at the expense of AB SCIEX Pte, to assist AB to secure, evidence and record AB SCIEX Pte 's rights in such intellectual property.



## AB SCIEX LLC PERFORMANCE AGREEMENT TERMS AND CONDITIONS

1. These Performance Agreement Terms and Conditions shall govern all orders for and purchases from AB Sciex LLC (herein called "AB") of Performance Plans and other agreements for services relating to instruments and other equipment, including the maintenance, repair, installation, relocation or servicing of instruments and other equipment, and sets forth the agreement between AB and its customer regarding the performance of such services, unless other terms are specifically designated by AB to apply to a specific service (See Section 20 below).
2. Services under all Performance Plans of AB are provided during normal working hours (Monday through Friday, 8:00 AM to 5:00 PM, excluding holidays). Planned maintenance ("Planned Maintenance") will be performed in accordance with AB's Planned Maintenance procedures and checklist for the instrument or component being serviced.
3. The decision to repair or replace any parts of the instrument will be made by AB on the basis of which approach will provide the Customer with the best service. Parts and components replaced or otherwise utilized in the repair of the instrument may be either new or refurbished at the discretion of AB.
4. AB will use reasonable efforts under the circumstances to provide service as quickly as possible. The service will be scheduled at a time mutually agreed upon by AB and the Customer.
5. AB warrants that it will provide its services at least in accordance with generally accepted standards prevailing in the instrument repair industry at the time and place performed. Warranty claims must be made within ninety (90) days after services are performed. **AB MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY WITH RESPECT TO ITS SERVICES, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED. AB'S SOLE LIABILITY AND RESPONSIBILITY UNDER THIS AGREEMENT FOR BREACH OF WARRANTY IS RE-PERFORMANCE OF THE SERVICES WITHIN A REASONABLE TIME OR RETURN OF THE FEE PAID FOR THE DEFECTIVE SERVICES AT AB OPTION. THESE ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY.**
6. This Performance Agreement does not cover replacement of parts, costs, repairs or adjustments due to Year 2000 noncompliance or for defects caused by or repairs necessitated by acts of nature, misuse, carelessness or unauthorized changes to the instrument made by the Customer, Customer's employees, agents or an unauthorized contractor. This Performance Agreement also does not require AB to repair or replace parts that are radioactive or contaminated with biological, toxic or other dangerous materials or substances.
7. This Performance Agreement does not cover costs, repairs, or adjustments made necessary by connection of the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, or by any interruption or surge in voltage (see Instruction Manual for specifications).
8. Payment terms are net 30 days from date of AB's invoice to customer. If payment is not received by the due date, AB may assess and customer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If AB retains a collection agency and/or attorney to collect unpaid amounts, AB may invoice customer for, and customer will pay, all costs of collection, including without limitation reasonable attorneys fees.
9. The initial term of this Performance Agreement is one year commencing on the date designated by AB in its quotation or otherwise specified to Customer. This Performance Agreement may be terminated by either party upon at least thirty (30) days written notice to the other party. Termination will be effective thirty (30) days after the receipt of such notice, or at a later date if one is so specified in the notice ("Termination Date"). Termination cannot be made effective prior to thirty (30) days after notice is received. AB will cease performance under this Performance Agreement on the Termination Date unless the Customer specifies a separate, earlier date in writing ("Cessation Date"). In that event, AB will cease performance under this Performance Agreement on such Cessation Date.
10. In the event of termination of this Performance Agreement under Section 9, AB shall calculate at its sole discretion the total price of services actually performed and expenses actually and reasonably incurred in servicing the covered equipment under this from its effective date until the Termination Date. The Customer's total payment obligation to AB under this Agreement shall equal (1) the amount so calculated or (2) the prorated price of this Agreement from its effective date until the Termination Date, whichever is greater, plus ten percent (10%) of the total fee paid for this Performance Agreement, not to exceed the total amount paid. Any payments made by Customer to AB in excess of this amount shall be credited to the Customer's account within thirty (30) days after the Termination Date toward future purchases of AB instruments, consumables or Performance Plans. Any unpaid portion of this amount shall be immediately due upon Customer's receipt of an invoice from AB. If a Performance Plan is terminated early in connection with the trade in of a used AB instrument for a new AB instrument, the credit may be applied toward purchase of a Performance Agreement for the new instrument. Contact your AB service representative for details. No cash refunds will be made on account of the early termination of any Performance Plan or other agreement for services.
11. AB will indemnify and hold Customer harmless from and against any and all claims for injury or death of persons, or damage to tangible property, occurring while AB personnel are on Customer's premises performing services pursuant to this Agreement to the extent caused by the negligent acts or negligent omissions of AB, provided AB is given prompt notice of any such claim and the opportunity to control the defense and settlement of same.
12. **IN NO EVENT SHALL AB BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNATIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR FAILURE TO PERFORM SERVICES OR OTHERWISE, EVEN IF AB IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; AND IN NO EVENT SHALL AB BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF INSTRUMENT FAILURE. WITHOUT LIMITING THE FOREGOING, EXCEPT SOLELY FOR ANY PAYMENTS MADE UNDER AB'S INDEMNITY SET FORTH IN SECTION 11, AB TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS PERFORMANCE AGREEMENT AND SERVICES RENDERED, IN CONTRACT, TORT, WARRANTY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO AB PURSUANT TO THIS AGREEMENT.**
13. Parts in contact with any liquid are considered wetted and may be deemed user replaceable and not covered by this Performance Agreement, including, but not limited to seals, filters, gaskets, etc.
14. Use of any non-AB's parts or reagents that deposit or cause to be deposited residual matter in the instrument flow path or that otherwise interrupt the flow path that are reasonably determined by AB to have caused instrument failure will require remedial repairs of the effected parts to be completed outside the Performance Agreement at AB's then prevailing rates for billable service.
15. Ancillary equipment not manufactured by AB and deemed by AB as non-integral to the system or the operation of the instrument may be excluded from this Performance Agreement.
16. AB makes no representation whatsoever that services under this Agreement satisfy or will satisfy any requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug Administration or the International Organization for Standardization. Customer agrees that it is the Customer's responsibility to ensure that such services are adequate to meet its regulation/certification requirements and that all requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug Administration or the International Organization for Standardization are the responsibility of Customer.
17. This Performance Agreement is not assignable or otherwise transferable by Customer. Any assignment or transfer or attempt to assign or to transfer the Performance Agreement by Customer shall be void.
18. AB may require a completed Certificate of Decontamination, or transfer of an instrument to a suitable safe and secure location, as a condition to servicing any instrument. Customer warrants that any instrument or component to be serviced pursuant to this Performance Agreement will be fully decontaminated of radioactive, biological, toxic or other dangerous materials or substances prior to servicing so that the

service technician will not be exposed to any such materials.

19. Performance Plans do not include customer training or services related to the relocation of instruments unless otherwise specifically stated in writing by AB in any particular case.

20. This Performance Agreement, together with AB's quotation regarding the Performance Plan or other services subject to these terms and conditions (collectively, "AB's Terms"), represents the entire agreement between the parties and supersedes and entirely replaces (i) any previous agreements between the parties with respect to the subject matter herein and (ii) any pre-printed, standard or other terms set forth in customer purchase order or any other document not signed by an authorized representative of AB, which are hereby rejected and shall be void. Customer's submission of a purchase order or other instrument regarding the purchase of a Performance Plan in response to AB's quotation or any other AB document that includes or incorporates these shall be deemed acceptance of these terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in such purchase order or other instrument or elsewhere. Any acceptance by AB of any offer of customer is expressly conditioned on customer's assent to and acceptance of AB's Terms to the extent they are additional or different terms. Except as otherwise provided in these terms, in the event of an inconsistency between these terms and the terms appearing on AB's quotation or other agreement signed by an authorized representative of AB, the terms appearing on AB's quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these terms, and all other provisions of these terms shall remain in full force and effect.

21. No amendment of these terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both AB and customer. AB's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these terms for any other purpose. If any provision of these terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect. No additions or modifications to this Performance Agreement shall be valid unless specifically agreed to in writing by both parties. This Performance Agreement shall be governed by the laws of the State of California, exclusive of its conflict of laws rules.



April 7, 2010

West Virginia Dept. of Agriculture.  
2019 Washington Street East  
Charleston, WV 25305

Dear Mr. Price

I am pleased to submit the following Finance Proposal for instrumentation manufactured by AB Sciex.

LESSEE: West Virginia Dept. of Agriculture

INSTRUMENT: Products and Services as described on attached Quotation  
20650055

INSTRUMENT COST: \$258,201.90

AMOUNT FINANCED: \$258,201.90

TERM OF LEASE: The lease term shall commence upon completion of installation  
of the instrument.

PAYMENTS: Payments are to made as follows:

TERM (months): 36

PAYMENTS: \$7,774.53

OPTION: \$1

PAYABLE: Monthly

Payment does not include service or applicable taxes.

SECURITY DEPOSIT: None required.

DOCUMENTATION FEE: \$150.00

ADVANCE PAYMENT: None required.

COMMITMENT FEE: None required.

OPERATING EXPENSES: All operating expenses, including insurance, maintenance,  
taxes and assessments shall be the responsibility of the  
Lessee.

GUARANTEE: None Required.

INSURANCE: Prior to delivery and acceptance of the Equipment, Lessee shall  
be required to furnish physical damage and liability insurance in  
the amounts and with endorsements acceptable to Lessor.

RATE INDEXING: The rate quoted herein will increase or decrease based on the

increase or decrease in comparable term U.S. Treasury Notes as published in the eastern edition of the Wall Street Journal at the time of lease closing.

COMMITMENT:

**The terms and conditions of this proposal are subject to credit approval. This document is not an offer to lease. All transactions will be governed by the provisions of the lease agreement and related documents.**

This proposal must be accepted prior to April 17, 2010 or it will expire automatically. I appreciate the opportunity to submit this proposal and to do business with you. If you have any questions, or if this proposal does not specifically address any consideration important to you, please call me at 484-882-1741. I look forward to working with you.

Very truly yours,

Agreed and Accepted

*Robin Schatz*

Robin Schatz  
Financial Services  
Sr. Consultant

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Lease Term: \_\_\_\_\_ Option: \_\_\_\_\_



April 7, 2010

West Virginia Dept. of Agriculture.  
2019 Washington Street East  
Charleston, WV 25305

Dear Mr. Price

I am pleased to submit the following Finance Proposal for instrumentation manufactured by AB Sciex.

LESSEE: West Virginia Dept. of Agriculture

INSTRUMENT: Products and Services as described on attached Quotation  
20650055

INSTRUMENT COST: \$278,366.85

AMOUNT FINANCED: \$278,366.85

TERM OF LEASE: The lease term shall commence upon completion of installation  
of the instrument.

PAYMENTS: Payments are to made as follows:

TERM (months):	48
PAYMENTS:	\$6,524.70
OPTION:	\$1
PAYABLE:	Monthly

Payment does not include service or applicable taxes.

SECURITY DEPOSIT: None required.

DOCUMENTATION FEE: \$150.00

ADVANCE PAYMENT: None required.

COMMITMENT FEE: None required.

OPERATING EXPENSES: All operating expenses, including insurance, maintenance,  
taxes and assessments shall be the responsibility of the  
Lessee.

GUARANTEE: None Required.

INSURANCE: Prior to delivery and acceptance of the Equipment, Lessee shall  
be required to furnish physical damage and liability insurance in  
the amounts and with endorsements acceptable to Lessor.

RATE INDEXING: The rate quoted herein will increase or decrease based on the

increase or decrease in comparable term U.S. Treasury Notes as published in the eastern edition of the Wall Street Journal at the time of lease closing.

COMMITMENT:

**The terms and conditions of this proposal are subject to credit approval. This document is not an offer to lease.** All transactions will be governed by the provisions of the lease agreement and related documents.

This proposal must be accepted prior to April 17, 2010 or it will expire automatically. I appreciate the opportunity to submit this proposal and to do business with you. If you have any questions, or if this proposal does not specifically address any consideration important to you, please call me at 484-882-1741. I look forward to working with you.

Very truly yours,

Agreed and Accepted

*Robin Schatz*

Robin Schatz  
Financial Services  
Sr. Consultant

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Lease Term: \_\_\_\_\_ Option: \_\_\_\_\_



April 7, 2010

West Virginia Dept. of Agriculture.  
2019 Washington Street East  
Charleston, WV 25305

Dear Mr. Price

I am pleased to submit the following Finance Proposal for instrumentation manufactured by AB Sciex.

LESSEE: West Virginia Dept. of Agriculture

INSTRUMENT: Products and Services as described on attached Quotation  
20650055

INSTRUMENT COST: \$298,531.80

AMOUNT FINANCED: \$298,531.80

TERM OF LEASE: The lease term shall commence upon completion of installation  
of the instrument.

PAYMENTS: Payments are to made as follows:

TERM (months): 60

PAYMENTS: \$5,828.54

OPTION: \$1

PAYABLE: Monthly

Payment does not include service or applicable taxes.

SECURITY DEPOSIT: None required.

DOCUMENTATION FEE: \$150.00

ADVANCE PAYMENT: None required.

COMMITMENT FEE: None required.

OPERATING EXPENSES: All operating expenses, including insurance, maintenance,  
taxes and assessments shall be the responsibility of the  
Lessee.

GUARANTEE: None Required.

INSURANCE: Prior to delivery and acceptance of the Equipment, Lessee shall  
be required to furnish physical damage and liability insurance in  
the amounts and with endorsements acceptable to Lessor.

RATE INDEXING: The rate quoted herein will increase or decrease based on the

increase or decrease in comparable term U.S. Treasury Notes as published in the eastern edition of the Wall Street Journal at the time of lease closing.

COMMITMENT:

**The terms and conditions of this proposal are subject to credit approval. This document is not an offer to lease.** All transactions will be governed by the provisions of the lease agreement and related documents.

This proposal must be accepted prior to April 17, 2010 or it will expire automatically. I appreciate the opportunity to submit this proposal and to do business with you. If you have any questions, or if this proposal does not specifically address any consideration important to you, please call me at 484-882-1741. I look forward to working with you.

Very truly yours,

Agreed and Accepted

*Robin Schatz*

Robin Schatz  
Financial Services  
Sr. Consultant

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Lease Term: \_\_\_\_\_ Option: \_\_\_\_\_





April 5, 2010,

Mr. Ron Price  
State of West Virginia

**Proposal #2**

Dear Mr. Price,

In response to the RFQ AGR1018 AB SCIEX is pleased to offer the enclosed proposal for a 3200 QTrap LC-MS/MS System. AB SCIEX has a long history of providing quality LC-MS/MS instrumentation into a wide range markets. The package we are offering meets or exceeds all of the performance specifications in the RFQ.

AB SCIEX is the worlds leading provider of mass spectrometry instrumentation to the life science market with an install base of over 13,000 instruments. Our instruments offer best in class precision, accuracy, sensitivity and robustness performance, characteristics that have positioned AB SCIEX as the preferred partner for LC-MS/MS applications. AB SCIEX instruments have been implemented in many labs throughout the world for testing of food products, including at the US FDA Center for Food Safety and Applied Nutrition, US FDA Center for Veterinary Medicine, the FDA Field Lab organization and the US Department of Agriculture. An extensive list of relevant references is included in our proposal

To further illustrate the capabilities of our technology we have included a range of peer reviewed publications and Application Notes specific to the analysis of pesticides and antibiotics.

Our proposal is valid until June 30<sup>th</sup>, 2010, is being offered with shipping terms of FOB Destination with Freight quoted. All products will be delivered within 45 days after receipt of order.

During installation two copies of user manuals will be provided. These manuals include system descriptions, operator training and instructions on how to perform routine maintenance.

To support the large install base, AB Sciex offers a best in class service organization with unparalleled response times and speed of resolution. With this bid we are offering our standard Warranty and AB Assurance program which provides four (4) hour telephone call back and 48-hour guaranteed on-site response. We also offer free technical support via our toll free telephone number from 8 am-8 pm, Monday through Friday.

The 3200 QTrap instrument is a hybrid triple quadrupole/linear ion trap mass spectrometers and is unique technology to AB SCIEX. The 3200 QTrap will afford the State of West Virginia the ability to perform relevant experiments that no other triple quadrupole based mass spectrometer can offer, not even AB SCIEX triple quadrupoles. The 3200 QTrap offers all of the functionality of a triple quadrupole mass spectrometer, however, it can also operate as a linear ion trap, offering best in class quantitation and full scan sensitivity. Compared to a triple quad the QTrap offers more than 100X improvement in sensitivity when performing full scan experiments. An application note is enclosed which describes the unique capability of the 3200 QTrap to combine its triple quadrupole and ion trap functionality to screen and confirm 300 Pesticides in a single

LC-MS/MS experiment. This type of experiment is not possible on triple quadrupole mass spectrometers which in scan speed and/or sensitivity limitations in full scan mode.

AB SCIEX appreciates the opportunity to work with the State of West Virginia. Our proposal offers the highest performance instruments and offers the State of West Virginia the best value solution available.

Thank you for your consideration.

Sincerely,

ROB CHRISTIAN, Ph.D.  
Mass Spectrometry Sales Specialist

## Cost Sheet

Vendors must complete the below cost sheet

### Chromatograph / Mass Spectrometer LC / MS

\*\*\* If bidding and equal product, please list manufacturer and model on the line below.  
Model literature should be included with your bid.

**AB SCIEX**

Manufacturer

**3200 QTrap**

Model Number

	3 yr Lease Option Including Maintenance	4 yr Lease Option Including Maintenance	5 yr Lease Option Including Maintenance
Purchase Option			
Equipment \$	\$8383.88/month	\$7007.68/month	\$6238.04/month
Maintenance			
3 year \$	3 yr Lease/w/ Buyout	4 yr Lease/w/ Buyout	5 yr Lease/w/ Buyout
4 year \$		\$ 1	
5 year \$			
<b>Total Equipment Purchase/w/ 3 yr Maintenance</b>			
<b>\$ 278725</b>			
<b>Total Equipment Purchase/w/ 4 yr Maintenance</b>			
<b>\$ 299401.5</b>			
<b>Total Equipment Purchase/w/ 5 yr Maintenance</b>			
<b>\$ 320078</b>			

The options above will be used for evaluation purposes.



# Quotation

AB Sciex LLC  
 353 Hatch Drive  
 Foster City, CA 94404 U.S.A.  
 T(650)638-5800, F(650)638-5884

PAGE 1 of 11

To: Mr. Ron Price  
 WV Dept of Agri  
 2019 Washington Street East  
 CHARLESTON WV 25305

**Quote No.:** 20650058  
**Quote Valid To:** 06/30/2010  
**Quote Date:** 04/06/2010  
**Pay Terms:** Net 30 Days  
**Freight Terms:** FOB DESTINATION - FRT QUOTED

Telephone No.  
 Fax No.

**Please reference Quote No.  
 when placing your orders.**

Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
0001	4365402	3200 Q TRAP APPLIED MKTS SYSTEM PKG INCLUDES:  3200 Q TRAP Instrument Enhanced high performance hybrid triple quadrupole/linear ion trap LC/MS/MS mass spectrometer with a mass range of m/z 5 to 1700. Instrument system includes integrated syringe pump an 10 port, 2 position switching valve.  Turbo V Source  TurbolonSpray Probe Heated IonSpray probe for use in the Turbo V Source. Accepts flow rates from 5 to 3000 ul/min without splitting. Ideal for quantitation at high sensitivity and high flow rates.  APCI Probe Atmospheric Pressure Chemical Ionization probe for use in the Turbo V Source. Useful for ionization of small polar and neutral molecules. Accepts flow rates from 200 to 3000 ul/min.  Core software for control, data acquisition, and data processing on AB/SCIEX QqQ and QTRAP(R) mass spectrometers. Includes 2 licenses: 1 license for the instrument workstation, and 1 processing-only license for an extra non-instrument PC. Compatible with Windows XP SP3 or 2000 SP4.	1.00	256,000.00	178,650.00	178,650.00

### WARRANTY INFORMATION

AB Sciex limited product warranties are included with shipment of its products. You may visit [www.absciex.com](http://www.absciex.com) for warranty information or contact your local AB SCIEX sales representative to request a copy. AB Sciex instruments and accessories are warranted by AB Sciex for a period of one year, unless a different period or no warranty is indicated on AB Sciex quotation. The warranty period for AB Sciex instruments begins on the earlier of the date of installation or 90 days from the date of shipment for instruments installed by AB Sciex personnel. For AB Sciex instruments installed by the buyer or anyone other than AB Sciex, the warranty period begins on the date the instrument is delivered.

### TERMS AND CONDITIONS

This quotation, including AB Sciex' General Terms and Conditions of Sale furnished with this quotation, and, if software is included, AB Sciex' applicable end user software license agreement, sets forth the terms on which AB Sciex is offering to sell the product(s) listed on this quotation. AB Sciex' end user license agreement for instrument operating software can be found on AB Sciex website, at: <http://www.absciex.com/legal>. Licenses for stand alone software are in click wrap form. You may contact AB Sciex for a copy at any time. By issuing a purchase order or otherwise ordering the product(s), the customer expressly agrees to these General Terms and Conditions of Sale (and operating software end user software license agreement, if applicable) to the exclusion of all others not expressly agreed to in writing by an authorized representative of AB Sciex. If you have any questions, please call AB Sciex' Customer Account Services at 650-638-5800. Stenographical/clerical errors are subject to correction. Most recent quotation will supersede all prior quotations. All amounts are in USD.

**Sales Representative: Robert Christian**

**Prepared by: Cherry Gallardo**



# Quotation

AB Sciex LLC  
 353 Hatch Drive  
 Foster City, CA 94404 U.S.A.  
 T(650)638-5800, F(650)638-5884

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**QUOTE NO.:** 20650058  
**QUOTE VALID TO:** 06/30/2010  
**QUOTE DATE:** 04/06/2010

To: Mr. Ron Price  
 WV Dept of Agri

**Please reference Quote No.  
 when placing your orders.**

Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
		<p>Cliquid 3.0 Software Startup Kit            Software for Routine Analysis and Microsoft office only. Designed for users who want to employ their own tests or to add tests using the iMethods Test products (to be purchased separately). Two sample methods and an example System Suitability test are included.</p> <p>Dell Optiplex 960 Core 2 Duo, 3.0GHz processor, 4 GB RAM, 2x500GB hard drives with RAID 1 configuration, DVD RW (CD RW capable), 3 Ethernet ports, Laser 6-button mouse and keyboard. Built-in DisplayPort Video (with adapter) capable of a maximum digital resolution of 1920x1200. The computer is imaged with Windows XP SP3 Professional (licensed with Vista Business), and drivers. This PC is RoHS compliant and can be used as an acquisition workstation or stand-alone processing computer.            (This computer contains no GPIB PCI card for instrument communication. USB GPIB is included in instrument installation kit where instrument control by GPIB is required.)</p> <p>Dell 22 inch Widescreen LCD Monitor</p> <p>Edgeport USB to serial converter box with 4 port connections and 1 meter USB cable. Required to control more than 2 peripheral devices.            Requires the purchase of appropriate peripheral cables.</p> <p>LIMITED WARRANTY:            Standard parts and labor warranty for 1 year starting from the completion of instrument commissioning, including 1 PM visit            (as provided in AB SCIEX's written limited warranty statement and accompanying terms in the user manual or other product documentation).</p> <p>TRAINING INFORMATION:            Tuition for one person for an Operator Training Class at an AB SCIEX facility (does not include travel and living expenses). This training session is valid for one year from installation and is not transferable.</p>				
0002	1029120	OPT,LINE ADJUST TRANSFORMER	1.00	1,000.00	750.00	750.00



# Quotation

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WV Dept of Agri

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Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
		Required in areas where line voltage is out of specification (208-240VAC)				
0003	N020-0514	API ONSITE CONSULTATION (CHARGE PER DAY) NOTE Cancellations of on-site FAS support that have been scheduled at least three weeks in advance are subject to a \$1,000.00 cancellation fe (or its dollar equivalent of time)IF the customer cancellation occurs within 5 working days of the agreed to date to come on-site with the customer.	5.00	3,500.00	0.00	0.00
0004	1016082	CARD,3C905CX-TX-M 3COM NIC 3COM 10/100 Network Interface Card, single port 32 bit, 33 MHz PCI.	1.00	68.25	60.00	60.00
0005	4425032	CTRLR,220-91398-20 SHIM CBM-20A	1.00	2,800.00	2,464.00	2,464.00
0006	4425033	DEGASSER,228-45018-32 SHIM DGU-20A3 3-channel inline membrane degasser	1.00	2,200.00	1,936.00	1,936.00
0007	4415511	PUMP,228-45137-32 SHIM LC20-AD XR Isocratic pump with 9572 psi pressure limit.	2.00	7,800.00	6,864.00	13,728.00
0008	4425925	MIXER,228-35830-93 SHIM 100UL HP 9572 psi pressure limite. SS mixing chamber for use in semi-micro to standard analytical applications.	1.00	945.00	832.00	832.00
0009	4425012	AUTOSAMPLER,220-91397-18 SHIM SIL20ACXR 9572 psi pressure limit. Accommodates several vial sizes and titer plate formats for high speed, accurate, and precise HPLC sample injection. Temperature controlfrom 4- 40 C.	1.00	19,600.00	17,248.00	17,248.00
0010	4425037	COLUMN OVEN,228-45010-32 SHIM CTO-20AC Full-sized oven with forced air temperature control from 10 C below ambient temperature to 85 C. Can accommodate a manual injector, mixer, and 2 switching valves.	1.00	4,000.00	3,520.00	3,520.00
0011	4428197	RES,TRAY/BOTTLES,220-91413-02 SHIM Prominence reservoir tray with a set of (5) 1-L solvent bottles and caps.	1.00	578.00	509.00	509.00



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Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
0012	1033188	OPT,ANALYST 1.5 SW 2YR UPGRADE AGREEMNT A two-year software upgrade agreement for Analyst 1.5 customers where AB SCIEX will automatically provide customers with new Analyst software releases so that they may upgrade their systems to the most current Analyst software. Software releases may include full version releases, Enhancement packs, and Hotfixes. All new software provided shall be customer installable. Customers must fax/mail in Enrollment Form included in the agreement.	2.00	1,000.00	750.00	1,500.00
0013	800-L	Peak Generator AB-3G	1.00	0.01	16,000.00	16,000.00
0014	800-L	USA Boost Transformer PN 06-3100	1.00	0.01	175.00	175.00
***** TOTAL: \$237,372.00 *****						
* Total above does not include freight.						
OPTIONAL ITEMS: (Optional items are not included in the Quotation Total. If you would like to purchase any of the Optional Items below, please include them on your purchase order as separate line items and reflect net price for each item in the purchase order total.)						
0015	ZG12-SC3200QTRAP	Assurance 2PM 3200QTRAP This Assurance Plan is subject to and governed by the AB SCIEX Service Agreement Terms and Conditions attached to this Quotation, rather than AB SCIEX's General Terms and Conditions of Sale. By ordering or otherwise accepting an Assurance Plan, you agree to these Service Agreement Terms and Conditions to the exclusion of all other terms relating the Assurance Plan not expressly agreed to in writing by an authorized representative of AB SCIEX.	1.00	24,496.00	15,922.40	15,922.40



# Quotation

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PAGE 5 of 11

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To: Mr. Ron Price  
WV Dept of Agri

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when placing your orders.**

Item	Part Number	Description	QTY	Unit List Price	Unit Net Price	Total Extended Price
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0016	ZG11-SCSHIMXR	Assurance XR Sys	1.00	7,314.00	4,754.10	4,754.10
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		Estimated Shipping and Handling:				2,780.00
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Note: AB SCIEX makes no warranty whatsoever in regards to products or parts furnished by third parties; such products or parts will be subject to the warranties, if any, of their respective manufacturer. (applies to all 800-L items quoted).

The items quoted are being offered as a convenience to the customer and may only be purchased in conjunction with AB SCIEX products listed above.

THE SPECIAL DISCOUNTS APPLIED TO THIS QUOTATION ARE VALID UNDER THIS QUOTATION ONLY AND IS CONTINGENT UPON RECEIPT OF YOUR PURCHASE ORDER FOR ITEMS AS QUOTED, ON OR BEFORE THE "QUOTE VALID" DATE.

Freight charges are prepaid and added to invoice. Shipments are made immediately upon availability.

All orders made in reference to this quotation must include all part numbers and quantities as listed. If you would like to modify this order, please contact your Sales Representative.

**To place your AB Sciex LLC order:**

**For INSTRUMENTS & CONSUMABLES:**

**Fax # 650-638-5875, Attn: Sales Administration or phone 1-800-327-3002**



## AB SCIEX LLC GENERAL TERMS AND CONDITIONS OF SALE

These General Terms and Conditions of Sale ("Terms") shall govern all orders for and purchases of products and services from AB Sciex ("AB"), including installation of equipment, unless other terms are specifically designated by AB to apply to a specific product or service, or AB and buyer have entered into a master purchase agreement or other written agreement that expressly provides that its terms supersede and replace these Terms with respect to the products or services covered by the master purchase or other agreement (See Section 12, SOLE TERMS, INCONSISTENCIES, ORDER OF PRECEDENCE).

**1. PRICE.** The price for any product or service (hereinafter collectively "Product") shall be the price stated in AB's quotation to buy for the Product ("AB's Quotation") or, if AB has not issued a quotation, AB's list price of the Product at the time AB receives buyer's purchase order. AB's quotations are valid for 30 days from the quotation date unless otherwise stated in AB's Quotation. If AB's price is stated by reference to a price list then the price shall be AB's list price in the jurisdiction in which the Product is to be delivered or performed in effect at the time AB receives buyer's purchase order. Prices stated are exclusive of all taxes, fees, licenses, duties, levies or other governmental assessments ("Taxes") and, unless otherwise stated in AB's Quotation, shipping and handling charges, freight and insurance. All Taxes related to Product shall be paid by buyer (other than taxes assessed against AB's net income), or in lieu thereof, buyer shall provide AB with a tax exemption certificate acceptable to the relevant taxing authorities. Taxes and other charges payable by buyer may be billed as separate items on AB's invoice.

**2. PAYMENT TERMS; COLLECTION COSTS; SECURITY TERMS.** Payment terms are net 30 days from date of AB's invoice. If AB deems buyer to be or to have become uncreditworthy, AB shall have the right to require alternative payment terms, including without limitation sight draft, letter of credit, or payment in advance. Payment for partial shipments shall be based on unit or prorated prices, and payment for partial installation(s) shall be based on percentage of completion of installation, as reasonably determined by AB. If payment is not received by the due date, AB may assess and buyer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If AB retains a collection agency or attorney to collect unpaid amounts, AB may invoice buyer for, and buyer will pay, all reasonable costs of collection, including without limitation reasonable attorneys fees. Buyer hereby grants to AB and AB reserves a purchase money security interest in all tangible Product purchased from AB, and in any proceeds thereof, for all amounts owing to AB for or related to such Product. Upon request by AB, buyer shall sign any reasonable documents required for AB to perfect such security interest and, to the fullest extent permitted by law, buyer hereby expressly grants AB authority and a limited power of attorney to file financing statements and amendments thereto for and on behalf of buyer for such Product and any proceeds thereof. Payment in full of all amounts owed for and related to such Product shall release such security interest in the Product and proceeds.

**3. CREDIT TERMS.** AB may, at any time and in its sole discretion, limit or cancel the credit of buyer as to time and amount, suspend shipments, demand payment in cash before delivery of Product, or demand other assurances of buyer's performance. If buyer fails to agree and comply with the different terms of payment demanded, or fails to give adequate assurances of performance, AB may, without prejudice to any other right or remedy AB may have: (i) by notice to buyer, treat such failure or refusal as a repudiation by buyer of that portion of buyer's order not then fully performed, whereupon AB may cancel all further deliveries, and any amounts unpaid for non-cancelled Product shall immediately become due and payable; or (ii) make shipments under reservation of a security interest and demand payment against tender of title documents.

**4. ACCEPTANCE OF ORDERS, DELIVERY, TITLE AND RISK OF LOSS, INSTALLATION.** AB may accept or reject any buyer purchase order for Product in whole or in part. If a purchase order is accepted, AB will use reasonable efforts to ship tangible Product or perform services, including equipment installation if agreed to by AB, subject to the purchase order within a reasonable time after ordered, or, if a shipment, service commencement or installation date is indicated in AB's Quotation or otherwise agreed upon in writing by an authorized representative of AB, on or before such date. AB may make delivery in installments, and each installment shall be deemed to be a separate sale. AB may render a separate invoice for each installment, which invoice shall be paid without regard to prior or subsequent installments. Unless indicated otherwise in AB's Quotation, title and risk of loss with respect to all Products except Products that are software or services, and risk of loss with respect to software, shall pass from AB to buyer upon transfer of possession of the Product to a common or other third party carrier at AB's facility. If AB has undertaken to install a Product, it is buyer's responsibility, at buyer's cost, to have the installation site prepared and available for installation free of hazardous or unsafe conditions and, unless AB otherwise agrees, to move the Product, uncrated, from the buyer's delivery dock or receiving location to the table top or other place of installation. Buyer shall not assign AB personnel to work in biosafety level 3 or level 4 laboratories without prior written notice to AB and AB's consent.

**5. CANCELLATION AND DEFERRAL.** BUYER MAY NOT CANCEL ANY PURCHASE ORDER. However, unless otherwise stated in AB's Quotation, buyer may defer the shipment date one time for up to 60 days for instruments and other hardware, and up to 30 days for reagents, consumables and other tangible Product, by giving written notice to AB at least 30 days before the scheduled shipment date for instruments and other hardware, and at least 10 days before the scheduled shipment date for other Product.

**6. REJECTION AND RETURN OF GOODS.** Any claims for damaged, missing or defective Product must be reported in writing by buyer within 15 days from the date of buyer's receipt of the Product. In addition, buyer must promptly return a rejected Product to AB, C.O.D., unused and in a condition no worse than that delivered to buyer and in the Product's original containers and packing material, accompanied by a valid return authorization number obtained from AB. AB may refuse any Product not timely rejected or sought to be returned without a valid return authorization number. For any valid claim timely made, AB, at its option, may repair the Product or replace the Product with an identical or substantially similar Product. Shipping charges will not be credited. **THESE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR DAMAGED OR MISSING PRODUCT, AND, EXCEPT FOR EXPRESS WRITTEN WARRANTY RIGHTS, FOR DEFECTIVE PRODUCT.** AB may require that buyer sign and deliver a properly completed certificate of decontamination prior to returning any Product.

**7. LIMITED WARRANTY.** AB makes only those warranties with respect to Product expressly identified as "warranties" and set forth in AB's current operating manual or catalog, or in a specific written warranty included with and covering Product, if any. Warranties are made only to the buyer purchasing the Product directly from AB, are not transferable and do not extend to the benefit of any other person or entity, unless otherwise expressly stated in writing by AB. **ANY PRODUCT NOT COVERED BY AN EXPRESS WRITTEN WARRANTY IS SOLD AND PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED.** Any description of Product recited in AB's Quotation is for the sole purpose of identifying Product, and any such description is not part of any contract between AB and buyer and does not constitute a warranty that Product shall conform to that description. Any sample or model used in connection with AB's Quotation is for illustrative purposes only, and is not part of any contract between AB and buyer and does not constitute a warranty that Product will conform to the sample or model. No affirmation of fact or promise made by AB, whether or not in AB's Quotation, shall constitute a warranty that Product will conform to the affirmation or promise. Unless otherwise specified in writing in documentation shipped with Product or otherwise agreed by AB in writing, AB does not provide service or support

for custom products or other products made to buyer's specifications. **THE WARRANTIES IDENTIFIED IN THE FIRST SENTENCE OF THIS PARAGRAPH ARE AB'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO PRODUCT AND ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, ALL OF WHICH OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS), WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE.**

## **8. INTELLECTUAL PROPERTY AND RELATED INDEMNITY.**

**8.1 BY AB.** Subject to the restrictions set forth in this Section 8 and provided buyer complies with its obligations in this Section 8, AB agrees to defend buyer, and indemnify buyer from and against any infringement damages finally awarded, in any legal action or proceeding brought by a third party against buyer to the extent that such action is based on a claim that the manufacture and sale of a Product by AB infringes any United States or foreign patent, copyright, trademark or other intellectual property right of such third party if AB had actual knowledge of such intellectual property right and infringement at the time of delivery of the Product to buyer. Notwithstanding the foregoing, AB shall have no liability or obligation under this Section 8 with respect to any claim of infringement based upon: (i) modifications to any Product made by buyer or a third party; (ii) manufacture, assembly, labeling or branding of Product by AB pursuant to specifications or designs or requests for specific labeling or branding furnished by buyer. Notwithstanding anything herein to the contrary, AB shall have no indemnification obligations with respect to Product originating from a third party and provided under these Terms. Buyer's sole right to indemnification with respect to such third party Product shall be pursuant to the original manufacturer's or licensor's indemnification obligations, if any, to the extent provided by the original manufacturer or licensor.

**8.1.1 Buyer's Obligations.** Buyer must notify AB in writing of any claim for which it may seek defense and indemnity from AB hereunder promptly after becoming aware of such claim, make no admission of liability with respect to the claim, and cooperate with and provide reasonable assistance to AB, at AB's expense with respect to reasonable out of pocket expenses paid by buyer to third parties for such assistance, in the defense or settlement of such claim. AB shall have sole authority to defend and/or settle any claim under this Section 8. AB's obligations under this Section 8 are contingent upon buyer's compliance with all of the foregoing.

**8.1.2 Remedy for Infringement, Rights of AB, Exceptions.** If any Product or portion thereof is subject to a suit or other legal proceeding claiming that the Product or such portion infringes a third party's intellectual property right, or in AB's opinion is (are) likely to become subject of such a claim, AB shall, at its option, have the right to either: (a) procure for buyer the right to continue using the Product; or (b) modify the Product so that it becomes non-infringing; or (c) require buyer to return the Product and upon return, refund to buyer the price actually paid by buyer for the Product, less a reasonable amount for use, damage and obsolescence; or (d) substitute for the alleged infringing Product other suitable, non-infringing Products with comparable functionality.

**8.1.3 ENTIRE LIABILITY. THE FOREGOING STATES THE ENTIRE LIABILITY OF AB, AND THE EXCLUSIVE REMEDY OF BUYER, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET OR ANY OTHER INTELLECTUAL PROPERTY RIGHT BY OR IN CONNECTION WITH ANY PRODUCT.**

**8.2 BY BUYER FOR BUYER'S MODIFICATIONS OR SPECIFICATIONS.** If buyer modifies any Product or furnishes AB with specifications or designs or requests for specific labeling or branding, buyer agrees to defend, indemnify and hold AB harmless against all liabilities, damages, costs, expenses and claims arising from or based upon buyer's modifications or AB's manufacture and sale of Product or other performance in compliance with such specifications or designs or requests for labeling or branding.

**9. COMPLIANCE WITH LAWS, USE OF PRODUCT, VALIDATION.** Without limiting the generality of the paragraph above entitled "LIMITED WARRANTY," unless otherwise expressly stated in writing by AB, no claim or representation is made or intended (i) as to any clinical use of any Product (whether diagnostic, prognostic, therapeutic, blood banking or any other clinical use), (ii) that any Product has been cleared, approved, registered or otherwise qualified (collectively, "Approval") by AB with any regulatory agency for use in any clinical procedure or for other use requiring compliance with any federal, state, provincial, European or any other governmental agency or regulatory body regulating diagnostic, therapeutic, blood or other clinical products, medical devices or similar products (collectively, "Regulatory Laws"), (iii) that any Product will satisfy the requirements of any governmental body or other organization, including, but not limited to, the United States Food and Drug Administration or the International Organization for Standardization, or (iv) that any Product or its performance is suitable or has been validated for any specific use or application. Product should not be used for any purpose that would require Approval unless proper Approval is obtained, or, in the case of use in diagnostic laboratory systems and then only to the extent permitted by law, the laboratory has validated its complete system as required by the Clinical Laboratory Improvements Act of 1988, as amended, in the United States or equivalents in other countries. Buyer agrees that if it elects to use Product for a purpose that would subject buyer, its customers or any Product to the jurisdiction of Regulatory Laws or other applicable law, buyer shall be solely responsible for obtaining any required Approvals or other approvals and otherwise ensuring that its use of any Product complies with such laws. Unless otherwise expressly stated in writing, Products have not been tested by or for AB for any particular use or purpose, or for safety or efficacy. Buyer agrees that it is buyer's responsibility, and not AB's, to validate the performance of Products for any specific use or application and to ensure that Products meet applicable regulatory, certification, validation or its other requirements, since the use and performance characteristics of Products have not been validated by AB for any specific use or application, except as may be otherwise expressly set forth by AB in writing. Product should be used in strict accordance with applicable instructions, warnings and other information in user manuals and other Product documentation.

**10. FORCE MAJEURE.** AB shall not be liable for any delay or failure of performance, including without limitation failure to deliver or failure to install, where such delay or failure arises or results from any cause beyond AB's reasonable control, including, but not limited to, flood, fire, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, plant breakdown, computer or other equipment failure, unusually severe weather, earthquake or other act of God, power loss or reduction, strike, lock-out, boycott or other labor disputes of any kind (whether relating to its own employees or others), embargo, governmental regulation or an inability or delay in obtaining materials. In the event of any such delay or failure of performance, AB shall have such additional time within which to perform its obligations hereunder as may be reasonably necessary under the circumstances; and AB shall also have the right, to the extent necessary in AB's reasonable judgment, to apportion Product then available for delivery fairly among its various customers in such manner as AB may consider equitable.

**11. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL AB BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES SUSTAINED BY BUYER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR CAUSED BY PRODUCT, AB'S**

**PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS RELATING TO THE PURCHASE OF PRODUCT OR PERFORMANCE OF SERVICES, AB'S BREACH OF THESE TERMS, THE POSSESSION OR USE OF ANY PRODUCT, OR THE PERFORMANCE BY AB OF ANY SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT AB IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, DOWNTIME, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL, OR BUSINESS OR OTHER FINANCIAL LOSS.**

**12. SOLE TERMS; INCONSISTENCIES; ORDER OF PRECEDENCE.** These Terms, together with AB's Quotation, any applicable label license or patent statement or other written conditions of use, any other terms and conditions expressly agreed to in writing by an authorized representative of AB "(collectively, "AB's Terms"), and buyer's statement on its purchase order (if accepted by AB) of the name or identity of the Product(s) purchased, quantity, delivery date, bill to and ship to address and, if accurate, price (and only such information on buyer's purchase order), constitute the complete, exclusive and entire agreement between AB and buyer with respect to purchases of Product (unless other terms and conditions are expressly designated to be applicable by AB in writing), and AB's offer to sell Product is expressly limited to such terms. Such terms shall take precedence over and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, and any of buyer's additional or different terms and conditions, which are hereby rejected and shall be void. Buyer's submission of a purchase order or other instrument for or regarding the purchase of Product, whether or not in response to an AB Quotation, shall be deemed acceptance of and agreement to AB's Terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order (except the name or identity of products purchased, quantity, delivery date, bill to and ship to address and, if accurate, price) or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in buyer's purchase order or other instrument or elsewhere. Any acceptance by AB of any offer of buyer is expressly conditioned on buyer's assent to and acceptance of AB's Terms to the extent they are additional or different terms from those of buyer's offer. Except as otherwise provided in these Terms, in the event of an inconsistency between these Terms and the terms appearing on AB's Quotation or other agreement signed by an authorized representative of AB, the terms appearing on AB's Quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these Terms, and all other provisions of these Terms shall remain in full force and effect.

**13. NO IMPLIED RIGHTS.** Nothing in these Terms shall be deemed or construed (i) as a license or grant of any intellectual property rights, whether express, implied, by estoppel or otherwise; (ii) to limit AB's rights to enforce its patent or other intellectual property rights, including, without limitation, as to use of any Product beyond that granted under any patent or other intellectual property label license or statement applicable to the Product; (iii) as granting buyer any right to be supplied with any Product or component thereof beyond those ordered by buyer and supplied by AB in accordance with these Terms; or (iv) as a license or grant of any right to buyer to manufacture or to have manufactured any Product.

**14. CHOICE OF LAW.** Any contract between AB and buyer relating to Product, including these Terms, and any disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of California, U.S.A., excluding both its choice of law provisions and the United Nations Convention on Contracts for the International Sale of Goods.

**15. EXPORT CONTROLS.** Buyer agrees that it will not export or transfer Product for re-export in violation of any United States laws or the laws of any other jurisdiction, or to any denied or prohibited person, entity, or embargoed country in violation of such laws.

**16. MISCELLANEOUS.** No amendment of AB's Quotation or these Terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both AB and buyer. AB's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these Terms for any other purpose. If any provision of these Terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect.

**17. ADDITIONAL TERMS AND CONDITIONS OF SALE FOR OLIGONUCLEOTIDE PRODUCTS, INCLUDING SPECIAL TERMS TO PROTECT CUSTOMER CONFIDENTIAL INFORMATION.** THE FOLLOWING TERMS AND CONDITIONS OF SALE FOR PRODUCTS THAT ARE OLIGONUCLEOTIDE PRODUCTS, IN ADDITION TO ALL OF THE TERMS AND CONDITIONS OF SALE SET FORTH ABOVE, APPLY TO THE PURCHASE AND SALE OF ALL AB SCIEX OLIGONUCLEOTIDE PRODUCTS, INCLUDING TAQMAN® ASSAYS, TAQMAN® LOW DENSITY ARRAYS AND CUSTOM OLIGONUCLEOTIDE SYNTHESIS PRODUCTS.

**17.1 DEFINITIONS.** The following definitions apply to these Additional Terms and Conditions of Sale for Oligonucleotide Products.

"Confidential Information of Buyer" means each Nucleic Acid Sequence specified by buyer in writing to AB that is intended to be detected by use of a Custom Product or to be included in primers and probes or other oligonucleotide Products manufactured by AB and sold to buyer, and the facts that buyer placed orders for Products containing or intended to detect such sequence and that buyer ordered oligonucleotide Products from AB containing or intending to detect such sequence.

"Custom Product" means (i) an Oligonucleotide Kit that is intended to detect a Nucleic Acid Sequence specified by buyer, or (ii) primers and probes or any other oligonucleotide Product that includes a Nucleic Acid Sequence, or other non-off-the-shelf elements or features, specified by buyer.

"Nucleic Acid Sequence" means the nucleic acid sequence of a genome intended to be detected by use of an Oligonucleotide Kit or that is specified as being included in other oligonucleotide Products.

"Oligonucleotide Kit" means a Product that consists of a combination of reagents and other products that includes at least one oligonucleotide based primer or probe, that is sold by AB as an assay kit, and the use of which is intended to detect at least one specific nucleic acid sequence in a sample.

"Synthesis" means the design (where applicable) or manufacture by AB of Custom Kits or other oligonucleotide Products for delivery to buyer.

**17.2 AB'S EVALUATION OF CUSTOM KIT ORDERS.** AB may decline the Synthesis, at any stage of the Synthesis process, of any Custom Product ordered by buyer that AB deems to be unsuitable or commercially impractical for Synthesis, whether on technological, cost or other grounds. AB will give written notice to buyer within a reasonable time following its determination to decline Synthesis of a Custom Product. Buyer shall have no obligation to pay any fees for time and materials, or for any other expenses incurred by AB, in connection with any declined Custom Product. All Custom Product orders not declined by AB must be paid for by buyer, and orders may not be cancelled or changed by buyer without the written consent of AB. Buyer understands and agrees that buyer's obligation to pay for all Custom Products that AB proceeds to Synthesize and deliver is firm and irrevocable, regardless of the number of Custom Products declined for Synthesis in a given order. Each purchase order for Custom Products must be for the total amount payable for all Custom

Products ordered. The amount corresponding to the charges applicable to declined Synthesis will be reflected in AB's invoice for the order.

**17.3 BUYER'S REPRESENTATIONS.** By submitting an order, buyer represents, warrants and agrees that

- (i) buyer will provide AB with all information known to buyer regarding biological, radiological, and chemical hazards associated with the handling, transport, exposure to or other use of any materials supplied to AB by buyer;
- (ii) buyer has the right to cause the sequences that buyer has requested AB to manufacture to be manufactured by AB and sold to buyer, that such sequences and the manufacture and sale thereof to buyer will not infringe or result from the misappropriation of the intellectual property rights, including without limitation patent, copyright, trademark and trade secrets, of any third party anywhere in the world (provided that the foregoing shall not be deemed a representation or warranty with respect to methods of manufacture employed by AB), and that the materials buyer furnishes to AB will not infringe or result from the misappropriation of any such intellectual property rights; and
- (iii) the oligonucleotide Products and components thereof sold to buyer shall be for buyer's own internal research and development use only and shall not be resold or otherwise transferred or conveyed to any third party without the prior express written consent of AB.

**17.4 CONFIDENTIAL INFORMATION OF BUYER.** AB agrees that for seven (7) years after the disclosure by buyer to AB of Confidential Information of Buyer, AB shall not disclose such Confidential Information of Buyer to any third party and will use at least the same degree of care as it uses to protect its own confidential information of a like nature, but in no event less than a reasonable degree of care, to prevent the disclosure of such Confidential Information of Buyer to any third party. This undertaking of confidentiality shall not apply to, and AB shall have no obligations under this paragraph with respect to, any Confidential Information of Buyer that (a) was in AB's possession before receipt from buyer, (b) is or becomes a matter of public knowledge or part of the public domain through no fault of AB, (c) is rightfully received by AB from a third party that was not obliged to keep such information confidential, (d) is developed by AB without reference to Confidential Information of Buyer, or (e) is disclosed by AB with buyer's prior written approval. Notwithstanding the foregoing, AB may disclose Confidential Information of Buyer to the extent required to comply with governmental regulations and other applicable laws or to respond to subpoena or other compulsory legal process, provided in all cases that AB takes reasonable and lawful actions to avoid or minimize the extent of such disclosure and notifies buyer in writing as far in advance of the date of disclosure as is reasonably feasible so that buyer to the extent feasible will have an opportunity to seek to prevent or limit disclosure.

**17.5 INTELLECTUAL PROPERTY RIGHTS.** Any inventions (patentable or otherwise), discoveries, developments, improvements, information, data, compounds, formulae, know-how or other results that are conceived, developed, discovered, reduced to practice, or generated by or for AB or jointly by buyer and AB and that relate or apply to the processes and methods used in or related to the Synthesis of oligonucleotide Products or otherwise in connection with designing or manufacturing oligonucleotide Products, including without limitation primers and probes, shall be and remain the sole and exclusive intellectual property of AB Sciex Pte. Ltd., a limited liability company organized under the laws of Singapore ("AB SCIEX Pte") or one of its affiliates, as applicable and buyer hereby transfers and assigns all of its right, title and interest in and to any such joint intellectual property to AB SCIEX Pte. Buyer will take reasonable steps, upon the request and at the expense of AB SCIEX Pte, to assist AB to secure, evidence and record AB SCIEX Pte 's rights in such intellectual property.

## AB SCIEX LLC PERFORMANCE AGREEMENT TERMS AND CONDITIONS

1. These Performance Agreement Terms and Conditions shall govern all orders for and purchases from AB Sciex LLC (herein called "AB") of Performance Plans and other agreements for services relating to instruments and other equipment, including the maintenance, repair, installation, relocation or servicing of instruments and other equipment, and sets forth the agreement between AB and its customer regarding the performance of such services, unless other terms are specifically designated by AB to apply to a specific service (See Section 20 below).
2. Services under all Performance Plans of AB are provided during normal working hours (Monday through Friday, 8:00 AM to 5:00 PM, excluding holidays). Planned maintenance ("Planned Maintenance") will be performed in accordance with AB's Planned Maintenance procedures and checklist for the instrument or component being serviced.
3. The decision to repair or replace any parts of the instrument will be made by AB on the basis of which approach will provide the Customer with the best service. Parts and components replaced or otherwise utilized in the repair of the instrument may be either new or refurbished at the discretion of AB.
4. AB will use reasonable efforts under the circumstances to provide service as quickly as possible. The service will be scheduled at a time mutually agreed upon by AB and the Customer.
5. AB warrants that it will provide its services at least in accordance with generally accepted standards prevailing in the instrument repair industry at the time and place performed. Warranty claims must be made within ninety (90) days after services are performed. **AB MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY WITH RESPECT TO ITS SERVICES, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED. AB'S SOLE LIABILITY AND RESPONSIBILITY UNDER THIS AGREEMENT FOR BREACH OF WARRANTY IS RE-PERFORMANCE OF THE SERVICES WITHIN A REASONABLE TIME OR RETURN OF THE FEE PAID FOR THE DEFECTIVE SERVICES AT AB OPTION. THESE ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY.**
6. This Performance Agreement does not cover replacement of parts, costs, repairs or adjustments due to Year 2000 noncompliance or for defects caused by or repairs necessitated by acts of nature, misuse, carelessness or unauthorized changes to the instrument made by the Customer, Customer's employees, agents or an unauthorized contractor. This Performance Agreement also does not require AB to repair or replace parts that are radioactive or contaminated with biological, toxic or other dangerous materials or substances.
7. This Performance Agreement does not cover costs, repairs, or adjustments made necessary by connection of the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, or by any interruption or surge in voltage (see Instruction Manual for specifications).
8. Payment terms are net 30 days from date of AB's invoice to customer. If payment is not received by the due date, AB may assess and customer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If AB retains a collection agency and/or attorney to collect unpaid amounts, AB may invoice customer for, and customer will pay, all costs of collection, including without limitation reasonable attorneys fees.
9. The initial term of this Performance Agreement is one year commencing on the date designated by AB in its quotation or otherwise specified to Customer. This Performance Agreement may be terminated by either party upon at least thirty (30) days written notice to the other party. Termination will be effective thirty (30) days after the receipt of such notice, or at a later date if one is so specified in the notice ("Termination Date"). Termination cannot be made effective prior to thirty (30) days after notice is received. AB will cease performance under this Performance Agreement on the Termination Date unless the Customer specifies a separate, earlier date in writing ("Cessation Date"). In that event, AB will cease performance under this Performance Agreement on such Cessation Date.
10. In the event of termination of this Performance Agreement under Section 9, AB shall calculate at its sole discretion the total price of services actually performed and expenses actually and reasonably incurred in servicing the covered equipment under this from its effective date until the Termination Date. The Customer's total payment obligation to AB under this Agreement shall equal (1) the amount so calculated or (2) the prorated price of this Agreement from its effective date until the Termination Date, whichever is greater, plus ten percent (10%) of the total fee paid for this Performance Agreement, not to exceed the total amount paid. Any payments made by Customer to AB in excess of this amount shall be credited to the Customer's account within thirty (30) days after the Termination Date toward future purchases of AB instruments, consumables or Performance Plans. Any unpaid portion of this amount shall be immediately due upon Customer's receipt of an invoice from AB. If a Performance Plan is terminated early in connection with the trade in of a used AB instrument for a new AB instrument, the credit may be applied toward purchase of a Performance Agreement for the new instrument. Contact your AB service representative for details. No cash refunds will be made on account of the early termination of any Performance Plan or other agreement for services.
11. AB will indemnify and hold Customer harmless from and against any and all claims for injury or death of persons, or damage to tangible property, occurring while AB personnel are on Customer's premises performing services pursuant to this Agreement to the extent caused by the negligent acts or negligent omissions of AB, provided AB is given prompt notice of any such claim and the opportunity to control the defense and settlement of same.
12. **IN NO EVENT SHALL AB BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNATIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR FAILURE TO PERFORM SERVICES OR OTHERWISE, EVEN IF AB IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; AND IN NO EVENT SHALL AB BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF INSTRUMENT FAILURE. WITHOUT LIMITING THE FOREGOING, EXCEPT SOLELY FOR ANY PAYMENTS MADE UNDER AB'S INDEMNITY SET FORTH IN SECTION 11, AB TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS PERFORMANCE AGREEMENT AND SERVICES RENDERED, IN CONTRACT, TORT, WARRANTY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO AB PURSUANT TO THIS AGREEMENT.**
13. Parts in contact with any liquid are considered wetted and may be deemed user replaceable and not covered by this Performance Agreement, including, but not limited to seals, filters, gaskets, etc.
14. Use of any non-AB's parts or reagents that deposit or cause to be deposited residual matter in the instrument flow path or that otherwise interrupt the flow path that are reasonably determined by AB to have caused instrument failure will require remedial repairs of the effected parts to be completed outside the Performance Agreement at AB's then prevailing rates for billable service.
15. Ancillary equipment not manufactured by AB and deemed by AB as non-integral to the system or the operation of the instrument may be excluded from this Performance Agreement.
16. AB makes no representation whatsoever that services under this Agreement satisfy or will satisfy any requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug Administration or the International Organization for Standardization. Customer agrees that it is the Customer's responsibility to ensure that such services are adequate to meet its regulation/certification requirements and that all requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug Administration or the International Organization for Standardization are the responsibility of Customer.
17. This Performance Agreement is not assignable or otherwise transferable by Customer. Any assignment or transfer or attempt to assign or to transfer the Performance Agreement by Customer shall be void.
18. AB may require a completed Certificate of Decontamination, or transfer of an instrument to a suitable safe and secure location, as a condition to servicing any instrument. Customer warrants that any instrument or component to be serviced pursuant to this Performance Agreement will be fully decontaminated of radioactive, biological, toxic or other dangerous materials or substances prior to servicing so that the

service technician will not be exposed to any such materials.

19. Performance Plans do not include customer training or services related to the relocation of instruments unless otherwise specifically stated in writing by AB in any particular case.

20. This Performance Agreement, together with AB's quotation regarding the Performance Plan or other services subject to these terms and conditions (collectively, "AB's Terms"), represents the entire agreement between the parties and supersedes and entirely replaces (i) any previous agreements between the parties with respect to the subject matter herein and (ii) any pre-printed, standard or other terms set forth in customer purchase order or any other document not signed by an authorized representative of AB, which are hereby rejected and shall be void. Customer's submission of a purchase order or other instrument regarding the purchase of a Performance Plan in response to AB's quotation or any other AB document that includes or incorporates these shall be deemed acceptance of these terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in such purchase order or other instrument or elsewhere. Any acceptance by AB of any offer of customer is expressly conditioned on customer's assent to and acceptance of AB's Terms to the extent they are additional or different terms. Except as otherwise provided in these terms, in the event of an inconsistency between these terms and the terms appearing on AB's quotation or other agreement signed by an authorized representative of AB, the terms appearing on AB's quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these terms, and all other provisions of these terms shall remain in full force and effect.

21. No amendment of these terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both AB and customer. AB's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these terms for any other purpose. If any provision of these terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect. No additions or modifications to this Performance Agreement shall be valid unless specifically agreed to in writing by both parties. This Performance Agreement shall be governed by the laws of the State of California, exclusive of its conflict of laws rules.



April 7, 2010

West Virginia Dept. of Agriculture.  
2019 Washington Street East  
Charleston, WV 25305

Dear Mr. Price

I am pleased to submit the following Finance Proposal for instrumentation manufactured by AB Sciex.

LESSEE: West Virginia Dept. of Agriculture

INSTRUMENT: Products and Services as described on attached Quotation  
20650058

INSTRUMENT COST: \$278,439.00

AMOUNT FINANCED: \$278,439.00

TERM OF LEASE: The lease term shall commence upon completion of installation  
of the instrument.

PAYMENTS: Payments are to made as follows:

TERM (months): 36

PAYMENTS: \$8,383.88

OPTION: \$1

PAYABLE: Monthly

Payment does not include service or applicable taxes.

SECURITY DEPOSIT: None required.

DOCUMENTATION FEE: \$150.00

ADVANCE PAYMENT: None required.

COMMITMENT FEE: None required.

OPERATING EXPENSES: All operating expenses, including insurance, maintenance,  
taxes and assessments shall be the responsibility of the  
Lessee.

GUARANTEE: None Required.

INSURANCE: Prior to delivery and acceptance of the Equipment, Lessee shall  
be required to furnish physical damage and liability insurance in  
the amounts and with endorsements acceptable to Lessor.

RATE INDEXING: The rate quoted herein will increase or decrease based on the

increase or decrease in comparable term U.S. Treasury Notes as published in the eastern edition of the Wall Street Journal at the time of lease closing.

COMMITMENT:

**The terms and conditions of this proposal are subject to credit approval. This document is not an offer to lease.** All transactions will be governed by the provisions of the lease agreement and related documents.

This proposal must be accepted prior to April 17, 2010 or it will expire automatically. I appreciate the opportunity to submit this proposal and to do business with you. If you have any questions, or if this proposal does not specifically address any consideration important to you, please call me at 484-882-1741. I look forward to working with you.

Very truly yours,

Agreed and Accepted

*Robin Schatz*

Robin Schatz  
Financial Services  
Sr. Consultant

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Lease Term: \_\_\_\_\_ Option: \_\_\_\_\_





April 7, 2010

West Virginia Dept. of Agriculture.  
2019 Washington Street East  
Charleston, WV 25305

Dear Mr. Price

I am pleased to submit the following Finance Proposal for instrumentation manufactured by AB Sciex.

LESSEE: West Virginia Dept. of Agriculture

INSTRUMENT: Products and Services as described on attached Quotation  
20650058

INSTRUMENT COST: \$298,972.50

AMOUNT FINANCED: \$298,972.50

TERM OF LEASE: The lease term shall commence upon completion of installation  
of the instrument.

PAYMENTS: Payments are to made as follows:

TERM (months):	48
PAYMENTS:	\$7,007.68
OPTION:	\$1
PAYABLE:	Monthly

Payment does not include service or applicable taxes.

SECURITY DEPOSIT: None required.

DOCUMENTATION FEE: \$150.00

ADVANCE PAYMENT: None required.

COMMITMENT FEE: None required.

OPERATING EXPENSES: All operating expenses, including insurance, maintenance,  
taxes and assessments shall be the responsibility of the  
Lessee.

GUARANTEE: None Required.

INSURANCE: Prior to delivery and acceptance of the Equipment, Lessee shall  
be required to furnish physical damage and liability insurance in  
the amounts and with endorsements acceptable to Lessor.

RATE INDEXING: The rate quoted herein will increase or decrease based on the

increase or decrease in comparable term U.S. Treasury Notes as published in the eastern edition of the Wall Street Journal at the time of lease closing.

COMMITMENT:

**The terms and conditions of this proposal are subject to credit approval. This document is not an offer to lease. All transactions will be governed by the provisions of the lease agreement and related documents.**

This proposal must be accepted prior to April 17, 2010 or it will expire automatically. I appreciate the opportunity to submit this proposal and to do business with you. If you have any questions, or if this proposal does not specifically address any consideration important to you, please call me at 484-882-1741. I look forward to working with you.

Very truly yours,

Agreed and Accepted

*Robin Schatz*

Robin Schatz  
Financial Services  
Sr. Consultant

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Lease Term: \_\_\_\_\_ Option: \_\_\_\_\_



April 7, 2010

West Virginia Dept. of Agriculture.  
2019 Washington Street East  
Charleston, WV 25305

Dear Mr. Price

I am pleased to submit the following Finance Proposal for instrumentation manufactured by AB Sciex.

LESSEE: West Virginia Dept. of Agriculture

INSTRUMENT: Products and Services as described on attached Quotation  
20650058

INSTRUMENT COST: \$319,506.00

AMOUNT FINANCED: \$319,506.00

TERM OF LEASE: The lease term shall commence upon completion of installation  
of the instrument.

PAYMENTS: Payments are to made as follows:

TERM (months):	60
PAYMENTS:	\$6,238.04
OPTION:	\$1
PAYABLE:	Monthly

Payment does not include service or applicable taxes.

SECURITY DEPOSIT: None required.

DOCUMENTATION FEE: \$150.00

ADVANCE PAYMENT: None required.

COMMITMENT FEE: None required.

OPERATING EXPENSES: All operating expenses, including insurance, maintenance,  
taxes and assessments shall be the responsibility of the  
Lessee.

GUARANTEE: None Required.

INSURANCE: Prior to delivery and acceptance of the Equipment, Lessee shall  
be required to furnish physical damage and liability insurance in  
the amounts and with endorsements acceptable to Lessor.

RATE INDEXING: The rate quoted herein will increase or decrease based on the

increase or decrease in comparable term U.S. Treasury Notes as published in the eastern edition of the Wall Street Journal at the time of lease closing.

COMMITMENT:

**The terms and conditions of this proposal are subject to credit approval. This document is not an offer to lease. All transactions will be governed by the provisions of the lease agreement and related documents.**

This proposal must be accepted prior to April 17, 2010 or it will expire automatically. I appreciate the opportunity to submit this proposal and to do business with you. If you have any questions, or if this proposal does not specifically address any consideration important to you, please call me at 484-882-1741. I look forward to working with you.

Very truly yours,

Agreed and Accepted

*Robin Schatz*

Robin Schatz  
Financial Services  
Sr. Consultant

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Lease Term: \_\_\_\_\_ Option: \_\_\_\_\_