



ProtoKinetics
STANDARD TERMS AND CONDITIONS

These ProtoKinetics Standard Terms and Conditions (the "Terms and Conditions") apply to and are incorporated by reference into the ordering document (the "Quote") made by and between ProtoKinetics, LLC ("Seller") and the Buyer (as identified on the Quote). This Agreement sets forth the terms and conditions under which Buyer may (i) Use Seller's proprietary hardware (Zeno mat) and software, including PKMAS, that is specifically licensed to Buyer pursuant to the Quote; and (ii) Use the User documentation that Seller makes generally available in hard copy or electronic form to its general customer base in conjunction with the licensing of such products (the "Documentation").

1. DEFINITIONS

- 1.1. "Buyer" means the individual or entity who buys or agree to buy the Products from the Seller;
- 1.2. "Contract" means the Quote between the Seller and the Buyer for the sale and purchase of Products incorporating these Terms and Conditions;
- 1.3. "Delivery Date" means the date in which the Products are actually delivered to Buyer's shipping location, which Delivery Date may be estimated by Seller in the Quote;
- 1.4. "Price" means the price identified in the Quote for the Products, which may include sales tax (or similar), carriage freight, postage or insurance costs as applicable;
- 1.5. "Products" means the hardware, software and installation, training and maintenance services that are identified in the Quote;
- 1.6. "Quote " means an order for Products by the Buyer and acknowledged by the Seller in accordance with Section [2.2];
- 1.7. "Seller" means ProtoKinetics LLC with a mailing address of 8 John Walsh Blvd, Suite 429, Peekskill, NY, 10566;
- 1.8. It is expressly understood that Buyer is not a consumer;
- 1.9. Any reference to a statutory provision shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time or similar provision in a relevant jurisdiction.

2. APPLICATION OF THESE TERMS AND CONDITIONS

- 2.1. These Terms and Conditions shall apply to all contracts for the sale of Products by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions, except for master agreements ("GPO Agreements") negotiated with group purchasing organizations ("GPOs"), that the Buyer may purport to apply under any purchase order, confirmation of order or similar document. Acknowledgment by Buyer of the primacy of these Terms and Conditions is a condition precedent to Seller's performance under the Contract.
- 2.2. All orders for Products shall be deemed to be an offer by the Buyer to purchase Products pursuant to these Terms and Conditions and shall be accepted by means of either the Seller's standard acknowledgement form, the Quote, or the Seller's invoice.
- 2.3. Acceptance of delivery of the Products shall be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions.
- 2.4. Except for GPO Agreements executed by Seller, any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless specifically agreed to in writing by Seller.

3. PRICE AND PAYMENT

- 3.1. The Price shall be the current price agreed to by Seller within the Quote. If Buyer is a qualified member of a GPO with which Seller has an existing GPO Agreement, the Price may be established by and between Seller and such GPO, acting as Buyer's exclusive group purchasing organization.
- 3.2. Payment of the Price shall be due Ten (10) days from the Delivery Date (NET 10), unless specified differently in the Quote.
- 3.3. Interest on overdue invoices shall accrue, and be charged, from the date when payment becomes overdue, at the rate of the lower of (i) the maximum rate allowed by the applicable jurisdiction and (ii) One and One-Half Percent (1.5%) per month.

4. PRODUCTS

- 4.1. The quantity and description of the Products shall be as set out in the Quote, which may attach or incorporate a purchase order from Buyer. In such instance, except for GPO Agreements, these Terms and Conditions control.



4.2. Seller warrants that all the Products are free from defects in material and workmanship and shall conform on the Delivery Date to the specification of the Products as set forth in the Quote and the Documentation applicable as of the Delivery Date and as may be required by any governmental agency, including the Food and Drug Administration ("FDA"), as applicable.

5. PRODUCT DELIVERY

- 5.1. Unless otherwise agreed in writing, delivery of the Products shall take place at the address specified in the Buyer's Purchase Order by the Delivery Date and the Buyer shall be deemed to have accepted the Products upon their delivery. The Buyer shall make all necessary arrangements to take delivery of the Products whenever they are tendered for delivery.
- 5.2. The Delivery Date specified by the Seller is a good faith estimate only.
- 5.3. Seller shall replace any Product damaged during transportation, which shipping damage shall be reported by Buyer to Seller no later than five (5) business days after the Delivery Date.
- 5.4. Buyer shall notify the Seller of any Product delivery that does not conform to the Quote within five (5) business days of the Delivery Date.
- 5.5. Except as set forth in this Section, risk of damage or loss of the Product shall pass to Buyer on the Delivery Date.

6. TITLE

- 6.1. The Seller warrants that it has good title to the Products on the Delivery Date.
- 6.2. Title to the Products shall not pass to the Buyer until the Seller has been paid in full for the Products.

7. LICENSE

- 7.1. Subject to the terms and conditions of this Agreement, Seller hereby grants to Buyer a perpetual, non-exclusive, irrevocable, world-wide license and right to install and Use the Products. In the event that Buyer purchases hardware and software Products, and unless specifically modified in the Quote, Buyer may utilize the software Product only in conjunction with Use of the hardware Product (or other replacement hardware Product provided by Seller). In the event that the Buyer purchases software Products (and no hardware Products), Buyer may utilize the software Product on hardware owned or leased by Buyer only. Buyer may transfer the license rights set forth herein to a third party if, and only if, Buyer is concurrently transferring the hardware Product(s) provided by Seller to such third party. Buyer may not otherwise assign or sublicense to any third party without the written consent of Seller.
- 7.2. Except as otherwise provided herein, Buyer shall not (i) copy, modify, create derivative works of, sublicense, sell, lease, loan, rent, distribute, convey, pledge as security or otherwise encumber, the Products; (ii) reverse engineer, decompile, translate, adapt or disassemble the Products in an attempt to reconstruct or discover the source code or algorithms of any software Product or the design or manufacture of any hardware Product, except as may be permitted by law; (iii) remove proprietary notices or legends included by Company in or on the Products or Documentation without Seller's written consent; or, (iv) cause or authorize any third party to do any of the foregoing.
- 7.3. The foregoing represent the only rights granted to Buyer with respect to the Products and Documentation. Except for the license rights set forth herein, Seller reserves all other rights in and to the Products and Documentation.
- 7.4. Other than the Price identified on the Quote, no other fees are due for such license rights.

8. WARRANTY

- 8.1. Seller warrants that, absent User Damage (as defined in this Section 8), the Products shall perform consistent with Seller's specifications as of the Delivery Date for a period of Two (2) years after the Delivery Date (the "Warranty Period"). The Warranty Period may be modified as set forth in the Quote, including extension pursuant to the payment of certain warranty Products offered by Seller. Where the Products supplied by the Seller are found to be defective, the Seller shall repair, or in its sole discretion, replace defective Products free of charge, subject to the following conditions:
 - 8.1.1. The Buyer's notification to the Seller of the defect (the "Defect Notice") within 5 business days of the defect becoming apparent;
 - 8.1.2. The Defect Notice being received by Seller within the Warranty Period;
 - 8.1.3. Buyer's strict compliance with all Use and maintenance requirements for the Product as specified in the Documentation;
 - 8.1.4. The defect being solely due to the faulty design, materials or workmanship of the Seller; and



- 8.1.5. The defect not being the result of User Damage. User damage includes, but is not limited to, damage caused by water (including introduction of fluids or chemicals, flooding, spills, moving heavy equipment over the mat or other crushing, excessive use of water in mopping), the wearing of high-heeled shoes on the mat, dropping the mat, improper storage, and damage while relocating the Product.
- 8.2. If the Defect Notice is delivered during the Warranty Period, Seller shall be responsible for having the Product delivered to Seller's maintenance location. If the Defect Notice is not received during the Warranty Period or if the discovered defect was caused by User Damage, Buyer shall be responsible for all shipping costs, including reimbursement of Seller's shipping and handling costs. ALL PRODUCTS TO BE RETURNED TO SELLER MUST BE SANITIZED AND DECONTAMINATED BY BUYER PRIOR TO RETURN. SELLER WILL NOT ACCEPT CONTAMINATED PRODUCT RETURNS.
- 8.3. Upon delivery of a returned Product, Seller shall provide Buyer with a written diagnostic review ("Review") of any returned Product as soon as reasonably practicable. Seller's determinations contained in the Review are final. For those Product returns outside the Warranty Period or determined to be caused by User Damage, Seller may charge Buyer up to \$150 for completing the Review.
- 8.4. If the Product is not within the Warranty Period or, if within the Warranty Period and the defect is determined not to qualify as a Warranty repair/replacement under this Section, Seller shall provide an estimate as to Buyer's cost of repair or replacement of the returned Product. If Buyer elects not to proceed with any of the repairs recommended by Seller, Buyer may request the return of the Product by Seller. (If within the Warranty Period, Seller is responsible for the shipping costs; outside the Warranty Period, Buyer is responsible for shipping costs.) If Buyer fails to request the unrepaired Product returned within 21 days of the Review, Seller may, at Seller's option, (i) return the Product to Buyer at Buyer's cost or (ii) provide 30 days' written notice that Seller considers the Product abandoned by Buyer and Seller may dispose or repurpose the Product as Seller sees fit at the conclusion of such notice period.
- 8.5. Seller reserves the right to require Buyer's payment in advance before taking any action not required by the Warranty.
- 8.6. Seller shall provide an estimate of the days necessary to complete approved repairs. Such repairs are usually completed within 5 business days; however, Buyer acknowledges that repair times may vary due to complexity and/or need to order third-party parts. Seller's estimates are estimates only.
- 8.7. Once a repair is completed, Seller provides a "same fault" repair warranty that covers all "same fault" repairs for the longer of: (i) Six months and (ii) the remainder of the Warranty Period. "Same fault" repair refers to: the same fault reoccurring on the same serial number of equipment and is diagnosed requiring the same part to be replaced due to repeat part failure or incorrect diagnosis resulting in the fault reoccurring and resulting in a different part repair or replacement.
- 8.8. The warranties provided in this Section are expressly limited to those Products actually manufactured and/or designed by Seller and shall not apply to components manufactured by third parties. As an example, Seller's Products often include a computer manufactured by a third-party (including Apple). In such instances, Seller does not warranty the performance of the computer but shall merely transfer Seller's warranty rights, if any, in such Product.
- 8.9. SELLER WARRANTS TO BUYER THAT SELLER HAS FULL RIGHT AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND GRANT TO CUSTOMER THE RIGHTS GRANTED HEREIN WITHOUT BREACH OF ANY OTHER AGREEMENT TO WHICH SELLER IS A PARTY. SELLER WARRANTS THAT THE PRODUCTS (HARDWARE AND SOFTWARE) MANUFACTURED BY SELLER SHALL OPERATE IN MATERIAL CONFORMANCE WITH ITS DOCUMENTATION FOR THE WARRANTY PERIOD. EXCEPT FOR THE FOREGOING, SELLER MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO THE PRODUCTS. SELLER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE.
- 9. LIMITATION OF LIABILITY**
- 9.1. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING HEREUNDER RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THE DEATH OR PERSONAL INJURY OF A USER, LOSS OF DATA, PROFITS, GOODWILL OR OTHER INTANGIBLE ITEM WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED OR IS REASONABLY FORESEEABLE. FURTHER, IN NO EVENT SHALL SELLER'S LIABILITY HEREUNDER, FOR ALL CLAIMS IN THE AGGREGATE, EXCEED THE AMOUNTS PAID TO SELLER BY BUYER UNDER HEREUNDER.



9.2. Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's gross negligence and/or willful misconduct or that of Sellers employees or agents.

10. DISPOSAL OF WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT

10.1. SELLER DOES NOT ACCEPT RESPONSIBILITY FOR THE DISPOSAL OF BUYER'S WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT ("WEEE") AND BATTERIES AT ANY TIME. BUYERS ARE NOTIFIED THAT THEY ARE REQUIRED TO DISPOSE OF WEEE AND BATTERIES IN ACCORDANCE WITH THE WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT REGULATIONS IN RELATION TO THE TREATMENT, RECYCLING AND RECOVERY AND ENVIRONMENTALLY SOUND DISPOSAL OF WEEE.

11. HIPAA PROVISIONS

- 11.1. Buyer and Seller recognize the applicability or potential applicability of the Health Insurance Portability and Accountability Act ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") as they relate to products sold by, and services rendered by, Seller to Buyer. The parties recognize that Buyer will rarely make available to Seller certain Protected Health Information of Individuals ("PHI") of certain individuals, typically during Warranty services provided by Seller. In such circumstances, should Buyer make available to Seller certain Protected Health Information of Individuals, which such parties may only Use or Disclose in accordance with this Agreement, HIPAA, and the HITECH Act.
- 11.2. Seller and Buyer agree to the terms and conditions of this Agreement in order to comply with the rules on handling of Protected Health Information under the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E ("Privacy Rule"), the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C ("Security Rule"), and the HIPAA Breach Notification Regulations, 45 C.F.R. Part 164, Subpart D ("Breach Notification Rule"), all as amended from time to time. Unless otherwise provided in the Terms and Conditions, all capitalized terms in this Agreement will have the same meaning as provided under the Privacy Rule, the Security Rule and the Breach Notification Rule.
- 11.3. Seller will Use or Disclose PHI only for those purposes necessary to perform services set forth in the Quote or these Terms and Conditions, or as otherwise required by law, and will not further Use or Disclose such PHI. Seller agrees that, in accordance with 45 C.F.R. §164.502(e)(1), if Seller's Subcontractor creates, receives, maintains or transmits PHI on behalf of Seller, Seller will enter into an agreement with such Subcontractor that contains substantially the same restrictions and conditions on the Use and Disclosure of PHI as contained herein.
- 11.4. Seller may Use PHI for Seller's management and administration, or to carry out Seller's legal responsibilities. Seller may Disclose PHI to a third party for such purposes only if: (1) the Disclosure is Required by Law; or (2) Seller secures written assurance from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) Use or Disclose the PHI only as Required by Law or for the purposes for which it was Disclosed to the recipient; and (iii) notify the Seller of any other Use or Disclosure of PHI.
- 11.5. Seller may Use PHI to perform data aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B). Seller may also de-identify PHI in accordance with 45 C.F.R. § 164.514.
- 11.6. To the extent Seller is to carry out Buyer's obligations under the Privacy Rule, Seller will comply with the requirements of the Privacy Rule that apply to Buyer's compliance with such obligations.
- 11.7. Buyer and Seller will implement and maintain appropriate safeguards to prevent any Use or Disclosure of PHI for purposes other than those permitted by this Agreement, including administrative, physical and technical safeguards to protect the confidentiality, integrity, and availability of any electronic protected health information ("ePHI"), if any, that either party creates, receives, maintains, and transmits.
- 11.8. Each party shall comply with the applicable requirements of the HIPAA Security Rule.
- 11.9. Seller shall report in writing to Buyer any Use or Disclosure of PHI for purposes other than those permitted by this Agreement within ten (10) business days of Seller's learning of such Use or Disclosure.



- 11.10. Seller will report in writing to Buyer any Security Incident of which Seller becomes aware. Specifically, Seller will report to Buyer any successful unauthorized access, Use, Disclosure, modification, or destruction of ePHI or interference with system operations in an information system containing ePHI of which Seller becomes aware within ten (10) business days of Seller learning of such Security Incident. Seller also will report the aggregate number of unsuccessful, unauthorized attempts to access, Use, Disclose, modify, or destroy ePHI or interfere with system operations in an information system containing ePHI, of which Seller becomes aware, provided that: (i) such reports will be provided only as frequently as the parties mutually agree, but no more than once per month; and (ii) if the definition of "Security Incident" under the Security Standards is amended to remove the requirement for reporting "unsuccessful" attempts to Use, Disclose, modify or destroy ePHI, the portion of this Section 11 addressing the reporting of unsuccessful, unauthorized attempts will no longer apply as of the effective date of such amendment.
- 11.11. Seller will report in writing to Buyer any Breach of Unsecured Protected Health Information, as defined in the Breach Notification Rule, within ten (10) business days of the date Seller learns of the incident giving rise to the Breach. Seller will provide such information to Buyer as required in the Breach Notification Rule.
- 11.12. To the extent Seller maintains PHI in a Designated Record Set that is not duplicative of a Designated Record Set maintained by Buyer, Seller will make such PHI available to Buyer within ten (10) business days of a request by Buyer for access to such PHI.
- 11.13. If an Individual makes a request for access directly to Seller, Seller will within ten (10) business days forward such request in writing to Buyer. Buyer will be responsible for making all determinations regarding the grant or denial of an Individual's request for PHI and Seller will make no such determinations. Only Buyer will release PHI to an Individual pursuant to such a request, unless Buyer directs Seller to do so.
- 11.14. To the extent Seller maintains PHI in a Designated Record Set that is not duplicative of a Designated Record Set maintained by Buyer, Seller will provide such PHI to Buyer for amendment within ten (10) business days of receiving a request from Buyer to amend an Individual's PHI. Alternatively, if Buyer's request includes specific instructions on how to amend the PHI, Seller will incorporate such amendment into the PHI it holds in a Designated Record Set within ten (10) business days of receipt of the Buyer's request.
- 11.15. If an Individual makes a request for amendment directly to Seller, Seller will within ten (10) business days forward such request in writing to Buyer. Buyer will be responsible for making all determinations regarding amendments to PHI and Seller will make no such determinations unless Buyer directs Seller to do so.
- 11.16. Seller shall keep a record of any Disclosure of PHI that Seller makes, if Buyer would be required to provide an accounting to Individuals of such Disclosures under 45 C.F.R. § 164.528. Seller will maintain its record of such Disclosures for six (6) years from the date of the Disclosure.
- 11.17. For each Disclosure for which it is required to keep a record under paragraph 7(a), Seller will record and maintain the following information: (1) the date of Disclosure; (2) the name of the entity or person who received the PHI and the address of such entity or person, if known; (3) a description of the PHI Disclosed; and (4) a brief statement of the purpose of the Disclosure. Within ten (10) business days of receiving a notice from Buyer, Seller will provide to Buyer its records of Disclosures. If an Individual requests an accounting of Disclosures directly from Seller, Seller will forward the request and its record of Disclosures to Buyer within ten (10) business days of Seller's receipt of the Individual's request. Buyer will be responsible for preparing and delivering the accounting to the Individual. Seller will not provide an accounting of its Disclosures directly to any Individual, unless directed by Buyer to do so.
- 11.18. Seller will make its internal practices, books and records on the Use and Disclosure of PHI available to the Secretary to the extent required for determining compliance with the Privacy Rule, the Security Rule, or the Breach Notification Rule. No attorney-client, accountant-client or other legal privilege will be deemed waived by Seller or Buyer as a result of this Section.
- 11.19. Within thirty (30) days of termination of this Agreement, Seller will return to Buyer all PHI that Seller or its Subcontractors maintain in any form or format. Alternatively, Seller may, upon Buyer's consent, destroy all such PHI and provide Buyer with written documentation of such destruction.



11.20. If Seller believes that returning or destroying PHI at the termination of this Agreement is infeasible, it will provide written notice to Buyer within thirty (30) days of the effective date of termination of this Agreement. Such notice will set forth the circumstances that Seller believes makes the return or destruction of PHI infeasible and the measures that Seller will take for assuring the continued confidentiality and security of the PHI. Seller will extend all protections, limitations and restrictions of this Agreement to Seller's Use or Disclosure of the PHI retained after termination of this Agreement and will limit further Uses or Disclosures of such PHI to those purposes that make the return or destruction of the PHI infeasible.

11.21. Nothing in this Section will confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

12. FORCE MAJEURE

12.1. Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control including but not limited to acts of God, strikes, lock outs, pandemics, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

13. SEVERANCE

13.1. If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Condition had been agreed with the invalid illegal or unenforceable provision eliminated.

14. GOVERNING LAW AND JURISDICTION

14.1. These Terms and Conditions shall be governed by and construed in accordance with the Commonwealth of Pennsylvania, United States and the parties hereby submit to the exclusive jurisdiction of the state or federal Courts having jurisdiction in the Commonwealth of Pennsylvania.

[END OF TERMS AND CONDITIONS]