

## PURCHASE AGREEMENT

University: University of North Texas Health Science Center

Vendor: Nicoya Lifesciences

Product(s): See Exhibit A

Price: See Exhibit A

Delivery: Delivery shall be FOB Destination.

Warranty: Products sold hereunder shall be free from defects in materials and workmanship and shall conform to Nicoya Lifesciences' published specifications or other specifications accepted in writing by Nicoya Lifesciences for 1 year from the date of shipment or its useful life, whichever is less. The foregoing warranty does not apply to any products which have been subject to misuse, neglect, accident, or modification, or which have been altered or soldered such that they are not capable of being tested under normal test conditions. Nicoya Lifesciences' sole obligation for products failing to comply with this warranty shall be, at Nicoya Lifesciences' discretion, to either repair or replace the nonconforming product or issue. Buyer credit for the purchase price of the nonconforming product where, within the warranty period and in accordance with Nicoya Lifesciences' return procedures: (1) Nicoya Lifesciences has received Buyer's request for an Return Merchandise Authorization ("RMA") for the return of nonconforming product; (2) where Nicoya Lifesciences has issued Buyer an RMA; (3) Buyer has returned the nonconforming product to Nicoya Lifesciences in accordance with Nicoya Lifesciences' s return procedures; and (4) Nicoya Lifesciences has determined that the product is nonconforming and such nonconformity is not the result of improper installation, repair, or other misuse.

Intellectual Property Ownership: Nicoya Lifesciences reserves the title and all rights to all plans, specifications, and technical data (Nicoya Lifesciences' Intellectual Property), including but not limited to drawings, flow diagrams, layout details, specifications, trade secrets, and computer programs supplied by Nicoya Lifesciences, and all such intellectual property belongs to and remains the property of Nicoya Lifesciences. Buyer will take every precaution and will execute any instrument necessary to maintain confidentiality of Nicoya Lifesciences' Intellectual Property. Buyer understands and agrees that Buyer has a non-exclusive license to use Nicoya Lifesciences' intellectual property only to the extent necessary to use the goods purchased from Nicoya Lifesciences, and Buyer may not share such intellectual property with any other person or disclose same to any other person, but shall agree to hold such intellectual property in strict confidence. Buyer understands and acknowledges that Nicoya Lifesciences' intellectual property gives it its competitive advantage in the industry and Nicoya Lifesciences would be irreparably harmed by any infringement, violation, or misappropriation of its intellectual property. Nicoya Lifesciences may enforce this paragraph through any and all legal action, including, but not limited to, injunctive and other equitable relief. "Intellectual Property" shall mean any and all intellectual property rights related to goods sold by Nicoya Lifesciences to Buyer, as they are now or may in future exist, including without limitation: (a) any and all rights, privileges and priorities arising under the laws or treaties of Canada, any state, territory, or possession thereof, any other country or political subdivision or territory thereof, or the United States or European Community, relating to intellectual property, including patents, copyrights, trade names, trademarks, service marks, mask works, trade secrets, inventions, databases, names and logos, trade dress, technology, know-how, and other proprietary information and licenses from third persons granting the right to use any of the foregoing, including all registrations and applications for any of the foregoing that have been issued by or filed with the appropriate authorities, any common-law rights arising from the use of the foregoing, all rights of renewal, continuations, divisions, extensions, and the like regarding the foregoing and all claims, causes of action, or other rights arising out of or relating to any actual or threatened infringement by any person relating to the foregoing; (b) all computer applications, programs and other software, including without limitation operating software, network software, firmware, middleware, and design software, all design tools, systems documentation and instructions, databases, and related items; and (c) all cost information, sales and pricing data, customer prospect lists, supplier records, customer and supplier lists, customer and vendor data, correspondence and lists, product literature, artwork, design,

**Purchase Agreement**

**UNT System OGC**

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development and manufacturing files, vendor and customer drawings, formulations and specifications, quality records and reports, and other books, records, studies, surveys, reports, plans, and documents.

Payment. In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to University; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas System – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

Eligibility to Receive Payment. By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov't Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Tax Exempt. University is exempt from the payment of taxes and will provide documentation confirming its tax exempt status.

Breach of Contract Claims Against University. Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against University that cannot be resolved in the ordinary course of business.

Governing Law and Venue. This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. Venue for any suit filed against University shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

No Excess Obligations. In the event this Agreement spans multiple fiscal years, University's continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, University shall issue written notice to Vendor that University may terminate the Agreement without further duty or obligation.

Public Information. University shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to University in an electronic format. The requirements of Subject J, Chapter 552, Texas Government Code, may apply to this contract and Vendor agrees that the contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Further, Vendor agrees (1) to preserve contracting information for the duration of the contract and according to University records retention requirements; (2) to promptly provide contracting information to University when requested; and (3) upon completion of the contract to provide, at no cost, all contracting information to University or to preserve all contracting information according to University's records retention requirements.

Required Posting of Contracts on Website. Vendor acknowledges and agrees that University is required by Section 2261.253 of the Texas Gov't Code to post each contract it enters into for the purchase of goods or services from a private vendor on its Internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

State Law Verifications. If the Agreement is subject to Texas Gov't Code Section 2271.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement. If the Agreement is subject to Texas Gov't Code Section 2274.002, Vendor hereby represents, verifies, and warrants that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. If the Agreement is subject to Texas Gov't Code Section 2274.002, Vendor hereby represents, verifies, and warrants that it does not boycott energy companies and will not boycott energy companies during the term of the Agreement.

Cybersecurity Training. Pursuant to Texas Gov't Code Section 2054.5192, any Vendor who has access to a University computer system or database must complete a cybersecurity training program as selected by University during the term of this Agreement and during any renewal period.

Force Majeure. Neither party shall be liable for delay in the performance of its obligations and responsibilities due to causes beyond its control, such as, but not limited to, war, embargo, national emergency, insurrection or riots, pandemic or epidemic, acts of the public enemy, fire, flood, or other natural disaster, provided that said party has taken reasonable measures to notify the other, in writing, of the delay. Failure of subcontractors and the inability to obtain materials shall not be considered as an excusable delay. If due to such cause, Vendor should be unable to meet all of its delivery commitments for items ordered hereunder as they become due, Vendor shall not discriminate against the University or in favor of any other customer in making deliveries of such items. However, if the University believes that the delay or anticipated delay in Vendor's deliveries may impair its ability to meet its production schedules or may otherwise interfere with its operation, the University may, at its option and without liability to Vendor, cancel outstanding deliveries hereunder wholly or in part.

**Indemnification. Vendor agrees to indemnify and hold harmless the University, its Regents, employees, and agents from any claim, damage, liability, injury, expense or loss (including attorney's fees) arising out of Vendor's performance, direct or indirect, under this Agreement. Indemnification shall survive termination. In addition, Vendor warrants the material purchased hereunder does not infringe any letters patent granted by the United States and Vendor shall defend, indemnify and hold harmless the University, its Regents, employees and agents from and against all claims arising from infringement or alleged infringement of any patent, copyright, trademark or other intellectual property rights of a third party arising out of, in connection with or resulting from this Agreement or the goods and/or services provided under this Agreement.**

Independent Contractor. With respect to this Agreement and any goods and services provided hereunder, the Vendor is and shall be deemed to be an independent contractor and not an agent or employee of the University. Vendor shall not have the authority to make any statement, representation, or commitment of any kind, or take any action which shall be binding on the University.

Nonconformity. All goods shall be received subject to the University's right of inspection and rejection. Defective goods or goods not in accordance with the University's specifications will be held for Vendor's instruction at Vendor's risk and, if Vendor so directs, will be returned at Vendor's expense. If inspection discloses that part of the goods received are not in accordance with the University's specifications, the University shall have the right to cancel any unshipped portion. Payment for goods prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that the University may have against Vendor.

State Auditor's Right to Audit. Pursuant to Section 2262.154, Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Use of University Name. Nothing in this Agreement constitutes a license to use the name or marks of the University. Any use of the University name or marks requires the express written permission of the University.

Severability. The provisions of this Agreement are separate and divisible, and if any court shall determine any provision of this Agreement is void and/or unenforceable, the remaining provision or provisions shall remain.

Non-Waiver. The University's failure to insist on Vendor's strict performance of the terms and conditions of this Agreement at any time shall not be construed as a waiver by the University for performance in the future.

Incorporation and Entire Agreement. This Agreement, including any exhibits or addenda identified and incorporated by reference herein, constitutes the entire agreement between the parties and contains all agreements between the parties. The parties expressly acknowledge that, in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement and no others.

IN WITNESS WHEREOF, the parties have executed this Agreement in to be effective as of the last date of signature herein.

**VENDOR:**

**UNIVERSITY**

A large black rectangular redaction box covers the signature area for the Vendor. To the right of the box, there are three horizontal lines stacked vertically, and a longer horizontal line at the bottom, indicating a signature line.A large black rectangular redaction box covers the signature area for the University. To the right of the box, there is a single horizontal line, and a longer horizontal line at the bottom, indicating a signature line.

HSC Contract #2022-0095



QUOTE

QU-00002173

Customer David Siderovski - UNT Health Science Center

Quote Date: 03/17/2021

Quote Expiry Date: 11/30/2021

Delivery Method: UPS - Nicoya Account

Code	Description	Comments	Qty	Price	Total
ALTO16	Alto Instrument -Alto 16-Channel Instrument Hardware -Alto Accessories Kit -Quality Control and Optics Service Cartridges -Power Cable & Ethernet Cable -1 Year Basic Hardware Warranty -Remote Installation Support & Training Session	10% Academic Discount	1	249,999.00	224,999.10
ALTO-SW-ENT	Kinetics & Affinity Analysis Software + Ongoing Updates Flexible Data Export Cloud-Based Analysis Software Linked to Control Software Platform Automatic Data Analysis 10 Accounts Increased Database Storage Yearly Subscription	3-Year License	3	10,000.00	30,000.00
KIN-CART-10-COOH	**DO NOT USE** 16 Channel Kinetics cartridge preloaded with Carboxyl sensors (10 pack)		1	2,500.00	2,500.00
ALTO-CARE-DT	Optimizes productivity with full coverage* of any issues due to normal use, misuse or accident Resolution provided by field service engineer on-site visit within 10 days Yearly	3-Year Coverage	3	25,000.00	75,000.00
DC-CARE-UPG	First year discount on warranty upgrade		1	-15,000.00	-15,000.00
SHP-ALTO	Shipping - Alto		1	2,500.00	2,500.00

**Comments:**

Please contact Shelbie McCormick (shelbie@nicoyalife.com) with any additional questions. This quote does not include applicable sales, use or other related taxes. All taxes of that nature will be calculated at time of shipment, and will be included on your final invoice, if applicable. If your organization has a sales tax exemption that is applicable to this purchase, please provide a copy of the completed certificate with your Purchase Order..

To place an order, please email a Purchase Order to orders@nicoyalife.com.

For orders over \$1,000 value, please provide a federal tax identification number (EIN) with the Purchase Order.

This quote is only valid for North America

Terms of Sale: <https://nicoyalife.com/nicoya-terms-and-conditions/terms-of-sale/>

<b>Sub Total</b>	319,999.10
<b>Charge Sub Total</b>	0.00
<b>Tax Total</b>	0.00
<b>Total</b>	319,999.10
Currency	USD

Payment Term

## **Declaration of Procurement Method**

The attached contract document has been issued as a result of either a sole source or proprietary justification approved by the University of North Texas System Procurement Department.

The approved justification form is on file with the UNT System Procurement Department records.