

PRECITEC, INC.

EQUIPMENT WARRANTY AND SERVICE TERMS

1. Warranty. PRECITEC, INC., a Delaware corporation (“Precitec”), warrants to the Buyer that the products and equipment (collectively, the “Equipment”) which it has manufactured and sold to Buyer (a) conforms to Precitec’s published specifications at the time of shipment to Buyer, and (b) are free from defects in materials and workmanship at the time of shipment to Buyer. Since the operating characteristics of the Equipment may change with age and use, Precitec does not warrant that the Equipment will continue to conform to such specifications throughout the Warranty Period. This warranty obligation (a) is undertaken only to customers purchasing the Equipment directly from Precitec, (b) is non-transferable, and (c) does not extend to any third party, nor create any rights in favor of any third party.

2. Warranty Period. The Warranty Period shall begin on the date of shipment of the Equipment to Buyer, and shall expire twelve (12) months from the date of shipment, unless specifically exempted herein. Precitec will only consider a warranty claim made by Buyer if Buyer duly notifies Precitec of the claim within twelve (12) months from the date of shipment of the Equipment, in accordance with the terms set forth in Section 7 below. Notwithstanding the foregoing, however, in the event the Equipment is first shipped to an “Integrator” (as defined below) who then ships it to an end user, the Warranty Period shall begin on the date of shipment of the Equipment to the Integrator, and shall expire fourteen (14) months from the date of such shipment to the Integrator. The extension period of two (2) months is provided to allow for integration and transportation/reinstallation of the Equipment to the end user. The term “Integrator”, as used herein, shall be defined as a third party who is contracted by the end user to provide a manufacturing process for a cell (or cells), incorporating supervision, coordination, engineering, design, build, test and run-off responsibilities, using multiple vendors, their products and expertise.

3. Remedy. Buyer’s sole and exclusive remedy under this Warranty shall be limited to the repair or replacement of any Equipment which, upon inspection by Precitec, does not conform to the Warranty provided herein by Precitec, and which Buyer ships prepaid to Precitec’s place of business. Precitec may elect any method of repair or replacement, at its sole and exclusive option. The specific procedures for the determination of warranty claims, and the shipment and repair of Equipment, are provided in Sections 7, 8 and 9 below, and the conditions under which Precitec will provide warranty services at Buyer’s place of business is provided in Section 10 below. If this remedy fails in its essential purpose, Precitec may elect, at any time, to fully discharge its warranty obligation hereunder by accepting return of the Equipment and refunding the purchase price paid by Buyer. **PRECITEC SHALL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM BREACH OF ITS WARRANTY OBLIGATIONS EITHER UNDER THIS WARRANTY OR OTHERWISE IMPOSED BY LAW, EVEN IF PRECITEC HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSSES.**

4. Exclusions. Precitec makes no express warranty, and excludes all implied warranties, for any and all portions and parts of the Equipment which have not been manufactured by Precitec. Such exclusions include, but shall not be limited to, (a) systems into which Precitec Equipment is incorporated (other than Precitec Equipment itself), and (b) components manufactured and

warranted by other parties, and sold to Buyer by Precitec as part of a system with Precitec Equipment. Manufacturers' warranties for parts and components not warranted by Precitec shall be assigned and transferred to Buyer, if possible. The specific exclusions stated in this section are not intended to broaden this Warranty by failure to enumerate each and every excluded item.

5. Voidance of Warranty. This Warranty will become null and void in the following circumstances: (a) improper disassembly, reassembly, repair or alteration of the Equipment which is not performed by Precitec's staff, (b) failure to maintain the Equipment as provided in the relevant Precitec operations manual(s), (c) accident, misuse or abuse of operation of the Equipment, (d) damages sustained during transportation of the Equipment (Buyer must inspect the Equipment upon delivery and submit shipping or transportation damage claims directly to the carrier), (e) repair or alteration made to the Equipment by any party except Precitec, and (f) Buyer's failure to pay the full purchase price for the Equipment, according to the payment terms of the contract for sale.

6. Disclaimer. **THIS WARRANTY IS EXPRESSLY IN LIEU OF, AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF KNOWN TO PRECITEC'S EMPLOYEES OR AGENTS.**

7. Equipment Return Procedure. Within the Warranty Period, Buyer may submit warranty claims on Equipment to Precitec, either in writing, by telephone or other electronic means. At the time of submission of the claim, Buyer must request and obtain a "Returned Merchandise Authorization Number" from Precitec, and then ship the Equipment at Buyer's expense (no COD or collect freight accepted), with the "Returned Merchandise Authorization Number" enclosed, to Precitec for inspection. Equipment shipped without a "Returned Merchandise Authorization Number" will not be processed hereunder. Upon receipt of properly returned Equipment, and following Precitec's examination, Precitec will promptly determine the warranty status of the Equipment.

8. Warranty Determination of Returned Equipment. If, upon Precitec's examination, it is determined that a "defect" exists which is covered by this Warranty, then the Equipment will be repaired at no charge and shipped, prepaid, back to Buyer. If, however, Buyer desires express or air freight return delivery, the Equipment will be shipped collect, at Buyer's expense. Any warranty repairs or replacements made hereunder will not extend the original Warranty Period.

9. Non-Warranty Determination of Returned Equipment. If, upon Precitec's examination, it is determined that the "defect" or Equipment is not covered by this Warranty, Precitec shall inform Buyer of this determination, and the cost of making the necessary repair or replacement. In the event that Buyer instructs Precitec not to repair or replace the Equipment, Precitec will return the Equipment, "as is", at Buyer's expense. In the event that Buyer does desire for the repair or replacement to be made to the Equipment, Buyer shall be required to issue a valid purchase order to Precitec, in order to cover the cost of the repair and freight charges. Failure to issue a purchase order or approval within thirty (30) days from the date Precitec notifies Buyer of the non-warranty status of the Equipment, shall result in the Equipment being returned to Buyer, "as is", at Buyer's expense. Equipment which is not claimed within thirty (30) days from the date of repair, or items which are non-repairable and not claimed within thirty (30) days from the date of notification,

shall become the property of Precitec.

10. On-Site Service Policy. Precitec will not ordinarily provide services of its technicians at Buyer's place of business in response to a claim under this Warranty because the Equipment is easily transported, and malfunctions may be better evaluated at Precitec's facilities. It is also Precitec's experience that malfunctions which cannot be diagnosed by telephone and remedied by repair or replacement of parts by Buyer, are likely to be caused by the system into which the Precitec Equipment has been incorporated. Nevertheless, if a return of Equipment which is the subject of a claim under this Warranty is impractical, and if Precitec determines that the problem could be warranty related, then Precitec will dispatch a service technician to the location of the Equipment upon receipt from Buyer of a valid purchase order unconditionally undertaking to pay the actual travel and subsistence costs and expenses, and daily rate of the technician at the then current quoted rate, regardless of warranty determination. If the defect is determined to be covered by this Warranty, then the prevailing service charge shall be waived from the issued purchase order, and the Equipment will be repaired or replaced by the service technician without additional charge, but Buyer shall, nevertheless, be responsible for paying the service technician's expenses and daily rate per Buyer's purchase order. Installation assistance may also be provided to Buyer by Precitec at the then prevailing daily rate of the service technician, plus transportation, travel and subsistence costs and expenses.