



## Terms and Conditions of Order

### 1. DEFINITIONS

"Seller" refers to "Phoenix Pharmaceuticals, Inc.", which is responsible for supplying the goods and/or services under the purchase contract or purchase order. "Buyer" refers to the person or entity receiving the goods or services, and includes all buyer's other agents, subcontractors, employees, and distributors thereof.

### 2. ACCEPTANCE BY BUYER; PURCHASE CONTRACT

Upon placing an order with Seller by phone, email, or online, this Purchase Contract is hereby accepted on the terms set forth herein. Terms in any form which are in addition to or not identical with these Terms will not become a part of any Purchase Contract unless Seller specifically and expressly agrees in writing that such other terms are accepted. By performing under this Purchase Contract or any part hereof, Buyer agrees to and accepts all the provisions of the Purchase Contract and agrees to fully perform. The rights and duties of the both Parties shall be subject to and governed by these Terms.

### 3. ACCEPTANCE BY BUYER; PAYMENT

Buyer shall transmit payment to Seller within thirty (30) days from acceptance of a proper invoice, e.g., one submitted pursuant to a valid purchase order. Buyer shall have a reasonable time (but not more than 30 days) after receipt to inspect the goods tendered by Seller. If Buyer suspects any nonconforming goods, Buyer must contact Seller and receive written authorization from Seller before rejecting any goods and/or services tendered or deducting any payment.

Seller reserves the right to refuse return on any radioactive products, custom-made products, or temperature-sensitive assay kits. Seller reserves the right to apply a 20% restocking fee to any products Buyer ordered in error.

A 1.5% service charge per month and an 18% service charge per annum will be applied to all past-due invoices.

### 4. RISK OF LOSS

Buyer shall bear all risk of loss and damage, unless such loss or damage results solely from the active negligence or intentional misconduct of Seller.

### 5. SALES AND OTHER TAXES

Unless otherwise specified herein, Buyer agrees that additional federal, state, local use, excise, transaction, or other taxes, fees, and/or assessments may be added to the total price.

### 6. EXCUSE

Buyer shall be excused for any nonperformance due principally to circumstances which are both beyond its control and not foreseeable, but in no event shall Buyer be excused for any inability to submit payment, nor for any labor dispute involving employees of Seller, Buyer, any subcontractor of either, any carrier, or any other person.



## 7. NOTICE OF LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay the payment of this order, Buyer shall immediately notify Buyer in writing, presenting all relevant information concerning the dispute and its background.

## 8. WARRANTY

Seller warrants that its products are of the stated quality at the time of shipment. Should a quality problem arise, the sole obligation of Seller is to replace the products at their original purchase price. This applies only to products in their original packaging. This does not apply to (a) products that have been tampered with or altered in any way or (b) products that have been misused or damaged by accident or through negligence. Buyer assumes all responsibility for the use and handling of these products, including any liability for consequential, special, indirect, or incidental damage resulting from their use. Buyer assumes all responsibility for determining the existence of such patents and whether their use of the material would constitute an infringement on these patents.

## 9. CHANGE OR CANCELLATION FOR CONVENIENCE

Seller, by written notice, may change or terminate all or any part of this Purchase Contract for Seller's convenience. If such a change results in an increase or decrease in costs to be incurred or time needed to complete performance of this Purchase Contract, then Buyer and Seller will make a fair and equitable modification of their rights and obligations under this agreement.

## 10. APPLICABLE LAW, ETC.

This Purchase Contract and the performance hereunder shall be construed according to the law of California as applied to contracts made and performed within California. The parties hereto agree that any dispute arising under this Purchase Contract shall be resolved in the courts of San Mateo County or in the Federal District Court for the Northern District of California, Northern Branch, and Buyer and Seller hereby submit themselves to the personal jurisdiction of said courts. All rights and remedies of Buyer and Seller shall be cumulative.

## 11. ACCESS TO RECORDS

Seller shall have access to and the right to examine any directly relevant books, documents, papers, and records of Buyer involving transactions related to this Purchase Order until the expiration of three (3) years after final payment hereunder. Buyer agrees to keep and maintain such records for such period of time. If this agreement is for the provision of services with a value of \$10,000 or more within a 12-month period, then until the expiration of four (4) years after the furnishing of any services pursuant to this agreement, Buyer shall make available, upon written request from the Secretary of the U.S. Department of Health and Human Services or from the U.S. Comptroller, such books, documents and records of Seller as are necessary to certify the nature and extent of the reasonable cost of services to Seller. If Buyer enters into an agreement with any related organization to provide services pursuant to this agreement with a value of \$10,000 or more within a 12-month period, such agreement shall contain a clause identical in content to the first sentence of this paragraph. This paragraph shall be of force and effect only to the extent required by P.L. 96-449.



## **12. INTELLECTUAL PROPERTY**

Seller may use any and all technical data prepared or produced under this Purchase Contract. For the purposes hereof, the term "technical data" means technical writing, pictorial reproductions, drawings or other graphical representations, tape recordings, reports, calculations, tables and documents of technical nature, whether copyrightable or copyrighted, which are made in the course of performing as specified.

## **13. DISCLAIMER**

All products from Seller are for research use only and are not intended for human consumption. Seller does not search for existing patents on its products. Buyer is responsible for determining the existence of such patents and whether their use of the product may constitute an infringement of these patents.

## **14. EFFECTIVE DATE**

The effective dates of this Purchase Contract shall be as stated on the individual Order Confirmation supplied by Seller.

## **15. COMPLETE AGREEMENT**

This Purchase Contract (including these Terms and Conditions) and any specifications or additional terms and conditions attached or referenced constitute the entire agreement between Buyer and Seller. No other terms or conditions are binding on Seller unless accepted by it in writing. In the event of a conflict between this Purchase Contract and terms and conditions stated in Buyer's proposal, the terms of this Purchase Contract shall take precedence.