

TERMS AND CONDITIONS OF PURCHASE – N2 Biomedical

1. ACCEPTANCE

The terms and conditions hereof including the purchase order to which this is attached become the exclusive and binding agreement between the parties covering the purchase of the products or services ordered herein when this order is accepted by acknowledgement and/or commencement of performance THE GOODS AND/OR SERVICES SET FORTH ON THE FACE HEREOF MUST BE SUPPLIED ONLY ON THESE TERMS AND CONDITIONS. ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SELLER BY ACKNOWLEDGEMENT HEREOF WILL NOT BE APPLICABLE UNLESS ACCEPTED IN WRITING BY N2 BIOMEDICAL LLC ("BUYER"). ACCEPTANCE OF THE PRODUCTS OR SERVICES DELIVERED UNDER THIS ORDER SHALL NOT CONSTITUTE ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS. No change modification or revision of this order shall be effective unless in writing and signed by Buyer's duty authorized purchasing representative or officer.

2. PRICES

Seller warrants that the prices to be charged for products or services identified on the face hereof are not in excess of prices charged to other customers for similar quantities and delivery requirements. Any price decrease applicable to the products or services that are similar to the products or services ordered herein shall automatically reduce the unit price of the unshipped products or services not yet rendered by a comparable percentage at the time of the price decrease.

3. INVOICES

Invoices shall be submitted in duplicate and shall include the following information: purchase order number, product number, description of products, sizes quantities, unit prices, and extended totals in addition to any other information specified elsewhere herein. Bill(s) of Lading or express receipt(s) shall accompany each invoice. In addition, each invoice will be deemed to contain the following certification: "Supplier represents that the products and/or services covered hereby were produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. Seller specifically warrants that it is in compliance with Executive Order Number 11246, as amended and the regulations at 41CFR, parts 60.1 through 60 60 and the regulations at 41CFR, parts 60 250 and 60 471." Payment of invoice shall not constitute acceptance of products and shall be subject to adjustment for errors, shortages, defects in the products, or other failure of Seller to meet the requirements of the order. Buyer may, at any time, set off any amount owned by Seller or any of its affiliated companies to Buyer.

4. CASH DISCOUNTS

In connection with the discount, if any, offered by Seller for prompt payment, time will be computed from the latest of (i) the scheduled delivery date (ii) the date of actual delivery, or (iii) the date an acceptable invoice is received. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Buyer's check.

5. TAXES AND EXPENSES

The prices set forth in this purchase order include all applicable Federal, State, and local taxes and miscellaneous charges, including, but not limited to, sales and use taxes, VAT, and similar taxes, duties, customs, tariffs, imports, and surcharges. All such taxes and changes shall be stated separately on Seller's invoice.

6. OVERSHIPMENTS

Buyer reserves the option to return at Seller's expense any shipment of products either in excess of the amount stated on the face of this order, or in advance of the agreed upon schedule. Such shipments will be held at Seller's risk and expense including reasonable storage charges while waiting for shipping instructions. Material for which return shipping instructions are not received within a reasonable time, may be destroyed or sold by Buyer at public or private sale and the proceeds, if any, applied toward storage charges.

7. PACKING AND SHIPMENT

Unless otherwise specified, when the price of this order is based on the weight of the ordered products, such price is to cover net weight of products ordered only and no charge will be allowed for boxing, crating, crating damage, storage or other packing requirements or any allowance for damage in connection with the foregoing. Unless otherwise specified, all products shall be packed, packaged, marked, and otherwise prepared for shipment in a manner which is (i) in accordance with good commercial practice, (ii) acceptable to common carriers for shipment at the lowest rate for the particular products and in accordance with ICC regulations, and (iii) adequate to insure safe arrival of the products at the named destination and for storage and protection against weather. Seller shall mark all containers with necessary lifting, handling, and shipping information and also, purchase order numbers, date of shipment, and the names of the consignee and consignor. An itemized packaging sheet must accompany each shipment unless otherwise specified. No partial or complete delivery shall be made hereunder prior to the date or dates shown unless Buyer has given prior written consent.

8. DDP

Unless otherwise specifically provided on the face of this order, the products called for hereunder shall be delivered on a DDP (Incoterms 2010) destination basis to Buyer's designated plant or plants.

9. WARRANTY

(a) Seller warrants that all products delivered hereunder including all components and raw materials incorporated therein, as well as products corrected under this warranty, shall be free from defects in workmanship, materials, and manufacture, shall comply with the requirements of this contract, including compliance with any drawings or specifications incorporated herein or to any samples furnished by Seller, and where design is Seller's responsibility, be free from defects in design. Seller further warrants all products purchased hereunder shall be of merchantable quality, shall be fit and suitable for the purpose intended by Buyer and shall not infringe any third party intellectual property rights. The foregoing warranties are in addition to all other warranties, whether expressed or implied, and shall survive delivery, inspection, acceptance or payment by Buyer.

(b) If any products delivered hereunder do not meet the warranties specified herein or otherwise applicable, Buyer may, at its election (i) require the Seller to promptly correct, at no cost to Buyer, any defective or non-conforming products by repair or replacement, at the location as specified by Buyer, or (ii) return such defective non-conforming products at Seller's expense to Seller and recover from Seller the order price thereof. The foregoing remedies are in addition to all other remedies at law or in equity or under this order, for damages or otherwise shall not be deemed to be exclusive. All warranties shall run to Buyer and to its customers.

(c) Buyer's approval and/or acceptance of Seller's product or design shall not relieve Seller of the warranties set forth in this clause, nor shall waiver by Buyer of any drawing or specification requirement for one or more of the products constitute a waiver of such requirements for the remaining products to be delivered hereunder unless so stated by Buyer in writing. The provisions of the clause shall not limit or affect the rights of Buyer under the clause hereof entitled: "Inspection."

(d) Claims by Buyer under this warranty may be exercised any time after final acceptance unless specifically agreed otherwise in writing.

10. INSPECTION

(a) All products purchased hereunder shall be subject to inspection and test by Buyer to the extent practicable at all times and places during and after the period of manufacture and, in any event, prior to final acceptance. If inspection or test is made by Buyer on Seller's premises, Seller without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of Buyer's inspectors. No inspection or test made prior to final acceptance shall relieve Seller from

responsibility for defects or other failure to meet the requirements of this order.

(b) In case any product is defective in material or workmanship or otherwise warranties with respect thereto are breached, or is otherwise not in conformity with the requirements of this order, Buyer shall have the right either to reject it, require its correction, or conditionally accept it. Buyer reserves the right to return such conditionally accepted products for credit, in the event that Buyer determines that such products are unsuitable for its purposes. Any product which has been rejected or required to be corrected shall be rejected or corrected by and at the expense of Seller promptly after notice. If, after being requested by Buyer, Seller fails to promptly replace or correct any defective product within the delivery schedule, Buyer (i) may by contract or otherwise, replace or correct such product, and charge to Seller cost occasioned thereby, or (ii) may without further notice terminate this order for default in accordance with the clause hereof entitled "Termination For Default," or (iii) may utilize the deficient product and require an appropriate reduction in price.

(c) Notwithstanding any prior inspections or payments hereunder, all products shall also be subject to final inspection and acceptance at Buyer's plant within a reasonable time after delivery. Seller shall provide and maintain an inspection system that is acceptable to Buyer. Records of all inspection work shall be kept complete and available to Buyer during the performance of this order and for such further period as Buyer may determine.

(d) Buyer may accept or reject shipments in accordance with its established lot inspection procedures. Where rejection of shipment is appropriately based on Buyer's normal inspection level, then (i) upon Seller's request, and at Seller's sole cost Buyer may elect at its option to conduct 100% testing of such shipment or (ii) where such rejection endangers Buyer's production schedules by reason of the fact that at least some of the products are necessary to meet such production schedules, then Buyer, at its option may charge Seller for the reasonable costs of an above normal level of inspection up to and including 100% inspection of such shipment.

11. CHANGES

Buyer may at any time, by a written order, and without notice suspend performance hereunder, increase or decrease the ordered quantities, or make changes in any one or more of the following:

- Applicable drawing, designs or specifications
- Method of shipment or packing, and or
- Place of delivery

If any such change causes an increase or decrease in the cost of, or the time required for performance of this order, an equitable adjustment shall be made in the order price or delivery schedule or both, and the order shall be modified in writing accordingly. No claim by Seller for adjustment hereunder shall be valid unless asserted in writing accompanied by an estimate of costs within twenty (20) days from the date of receipt by Seller of the notification of change and in any event, Seller must submit its final claim in writing supporting documentation within the next succeeding twenty (20) day period. Failure of Seller to either (i) assert a claim within twenty (20) days or (ii) submit a final claim within the next succeeding twenty (20) days as provided above, shall constitute and unconditional and absolute waiver by Seller of any rights to make a claim for adjustment. Buyer reserves the right to verify claims hereunder and Seller shall make available to Buyer, upon its request, all relevant books, records, inventories, and facilities for its inspection and audit.

12. TERMINATION FOR DEFAULT

(a) It is understood and agreed that time is of the essence under this order or any extension thereof effected by any change order. Buyer may, by written notice, terminate this order in whole or in part if Seller fails (i) to make delivery of the products or to perform the services within the time specified herein, or any extension thereof by written change order or amendment, or (ii) to replace or correct defective products or services in accordance with the provisions of those clauses hereof entitled "Warranty" and "Inspection," or (iii) to perform any of the other

provisions of this order or to so fail to make progress as to endanger performance in accordance with the terms hereof, including delivery schedules, or (iv) if Seller becomes insolvent, admits in writing its inability to pay its debts as they mature, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors or a petition under any bankruptcy law is filed against it.

(b) In the event of termination pursuant to this clause, Buyer may procure upon such terms and in such manner as Buyer may deem appropriate, products or services similar or substantially similar to those so terminated and Seller shall be liable to Buyer for any costs occasioned Buyer thereby.

(c) If this order is terminated pursuant to paragraph (a), Buyer, in addition to any other rights provided herein, may require the Seller to transfer title and delivery to Buyer in the manner, time and the extent directed by Buyer, (i) any completed products, and (ii) such partially completed products and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as Seller has produced or acquired for the performance of the terminated part and, (iii) Seller shall grant Buyer a royalty-free, fully-paid-up, assignable non-exclusive license to use and license others to use Seller's designs processes, drawings, and technical data substantially relating to the products terminated hereunder. Seller shall upon direction of Buyer, protect and preserve property as encompassed in this paragraph in the possession of Seller. Payment for completed products delivered to and accepted by Buyer shall be in an amount agreed upon by Seller and Buyer, however, such an amount shall not exceed the order price per unit and Seller's obligation hereunder to carry out Buyer's direction as to delivery protection and preservation shall not be contingent upon prior agreement as to such amount.

(d) If Buyer issues a notice of termination for default and it is subsequently determined that Buyer's termination under this clause is inappropriate, the termination shall be deemed by Buyer and Seller to have been originally issued under Clause 13 (Termination for Convenience) and the rights and liabilities of the parties hereto shall in such event, be governed by such clause.

(e) Failure of Buyer to enforce any right under this clause shall not be deemed a waiver of any other rights and remedies provided by law or under this order. In the event Seller becomes insolvent, admits in writing its inability to pay its debts as they mature, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors or if a petition under any bankruptcy laws is filed against it, Buyer reserves the right in its sole discretion at any time to require adequate assurance of future performance in such form as Buyer may specify, and if such assurance is not given to Buyer promptly, Buyer shall have the right to terminate this agreement in whole or in part forthwith.

13. TERMINATION FOR CONVENIENCE

(a) Buyer may terminate work under this purchase order in whole or from time to time in part, by giving written notice to Seller specifying the extent to which performance of work is terminated, and the time of which such termination becomes effective.

(b) After receipt of such notice and except as otherwise directed by Buyer, Seller shall stop work under this order to the extent specified in the notice of termination

(c) Within thirty (30) days after receipt of the notice of termination, Seller shall submit to Buyer its written termination claim (as specified in this Section 13). Failure of Seller to submit its termination claim as provided herein shall constitute an unconditional and absolute waiver by Seller of any claim arising from the Buyer's notice of termination.

(d) Seller shall reasonably assess costs for raw materials, work in process and sub-assemblies as may be included within its termination claim to determine whether or not such items may be used by Seller for the manufacture of associated products or diverted for any other purpose and to correspondingly reduce its termination claim by the value of such items when settlement has been made. Title to any of such items determined not usable by Seller and charged to Buyer in the

termination claim shall vest in Buyer upon payment of the claim and shall forthwith be delivered to Buyer.

- (e) Seller's termination claim shall consist solely of the following:
- (1) Completed products accepted by Buyer and not theretofore paid for the sum determined by multiplying the number of such products by the unit price therefor as specified in this order, and
 - (2) The total of (i) the cost of work in process, not to exceed the amount previously placed on firm release by Buyer, and (ii) a reasonable rate of profit thereon, not to exceed the rate used in establishing the original purchase price provided, however, if it appears that Seller would have sustained a loss on the entire purchase order had it been completed no profit shall be included or allowed and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. The total sum to be paid to Seller under subparagraph (e) (1) and (2) above, shall not exceed the total order price reduced by the amount of payments otherwise made and as further reduced by the price work not terminated under this order.
- (f) In no event shall Seller be entitled to incidental or consequential damages, anticipated or projected profits, costs of preparing claims, attorney's fees, costs of tooling or equipment of sales, or agent's commissions on the terminated quantity.
- (g) Buyer reserves the right to verify claims hereunder and Seller shall make available to Buyer upon its request, all relevant books, records, inventories and facilities for its inspection and audit. In the event Seller fails to reasonably afford Buyer its rights hereunder, then Seller shall be deemed to have relinquished its claim asserted under the provisions of this clause.

14. RISK OF LOSS

Notwithstanding any prior inspections, Seller shall bear all risks of loss, damage, or destruction on the products called for hereunder until final acceptance by Buyer at destination. Seller shall also bear the same risks with respect to any product rejected by Buyer, provided however, that in either case, Buyer shall be responsible for any loss occasioned by the gross negligence of its employees acting within the scope of their employment.

15. WAIVER

The failure of Buyer to enforce at any time any of the provisions of this order, or to exercise any election or option provided herein, or to require at any time performance by Seller of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this order or any part thereof, or the right of Buyer thereafter to enforce each and every such provision.

16. PATENTS, ROYALTIES, AND ENCUMBRANCES

All products supplied must be free from claims of others with respect to royalties, patent rights and mechanics liens, or other encumbrances and charges. Seller agrees to indemnify and hold harmless Buyer against all claims, demands, costs and actions for actual or alleged infringements of patent or other intellectual property rights in the use, sale or resale of said products.

17. WORK DONE AT BUYER'S PLANT

Seller shall take such steps as may be reasonable, or necessary, to prevent personal injury or property damage during any work hereunder that may be performed by any employees, agents or subcontractors of Seller at Buyer's plant and Seller shall indemnify and hold harmless Buyer from and against all loss liability and damages arising from or caused directly or indirectly by any act or omission of such agents, employees, or subcontractors of Seller, and Seller shall maintain insurance against liability and property damage.

18. COMPLIANCE WITH LAWS

Seller warrants and covenants that no law, rule or ordinance of the United States, a state or any other governmental agency has been or will be violated in the manufacture or sale of the products or in the performance of services covered by this order, and will defend

and hold Buyer harmless from loss, cost, or damage as a result of any such actual or alleged violation. Upon written request by Buyer, Seller agrees to execute and furnish a certification of compliance, which may be on Buyer's form and which shall certify compliance with all applicable Federal, State or Local Laws or Regulations, including, but not limited to FLSA, EEO, OSHA, and any Economic Control Statutes or Regulations.

19. GRATUITIES

Seller warrants that it has not offered or given and will not offer or give to any employee, agent or representative of Buyer, any gratuity with a view toward securing any business from Buyer or influencing such person with respect to the terms, conditions of performance of any contract with or order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

20. NON-DISCLOSURE

Products and services purchased pursuant to Buyer's specifications or drawings shall not be quoted for sale to others without Buyer's prior written authorization. Such specification, drawings, samples, or other data furnished by Buyer shall be treated as confidential information by Seller, shall remain Buyer's property and shall be promptly returned to Buyer upon request. Any publicity regarding this order (pictures, descriptions or samples thereof) is prohibited except with Buyer's written approval. Seller shall not disclose to any third party the fact or substance of its agreement with Buyer.

21. ASSIGNMENTS AND SUBCONTRACTS

No right or obligation under this order (including the right to receive money due hereunder) shall be assigned by Seller and Seller shall not enter into any subcontracts without the prior written consent of Buyer. Any purported assignment, without such consent shall be null and void and Buyer shall not be obligated to recognize any claim from Seller resulting from a subcontract not previously consented to by Buyer.

22. BUYER-FURNISHED PROPERTY

All tools or other materials furnished by Buyer for use in the performance of this order shall remain the property of Buyer, shall be used by Seller in the performance of this order only in accordance with the requirements of the order relating to such use and shall be returned to Buyer when requested upon the completion or termination of the order to the extent not previously delivered to Buyer. Seller agrees to exercise reasonable care in the safeguarding and preservation of all Buyer-furnished property and assumes all responsibility for loss, damage or destruction with such property that is within its possession or control. Seller shall properly insure such Buyer-furnished property against all risks.

23. RIGHTS IN WORK PRODUCT

Seller, as part consideration for this purchase order and without further cost to Buyer, hereby grants and agrees to grant to Buyer an irrevocable non-exclusive, fully-paid-up, royalty-free right and license to use, sell, manufacture and cause to be manufactured, products embodying any and all inventions and discoveries made, conceived, or actually reduced to practice in connection with the performance of this purchase order. Where Seller's performance on this purchase order will result in a unique or customized work product, all rights and interest to the design, layout, pattern, or arrangement of that work product, to the extent that its features were created for Buyer, shall vest with Buyer, but all such background rights and interests remain with Seller or other party that originated them.

24. SPECIAL TOOLING

If special tooling used in the performance of this order have been charged to this order, or to this order and other orders placed by Buyer, title to such special tooling shall vest in Buyer, at the option of Buyer. Such tooling is to be used only in the performance of such purchase orders unless otherwise approved by Buyer. Seller agrees that it will follow normal industrial practice in the identification and maintenance of the property control records on all such tooling and will make such records available for inspection

by Buyer. After the termination or completion of such order(s) and upon the request of Buyer, Seller shall furnish a list of such tooling in the form requested and shall make such tooling available for disposition by Buyer.

25. FORCE MAJEURE

In the event of an actual or potential delay, or failure of performance because of acts of God, or other causes beyond Seller's control, including but not limited to, labor disputes, Seller shall immediately give notice thereof to Buyer in the event of any of the foregoing. Buyer has the option of either (i) extending time of performance or (ii) terminating the uncompleted portion of the order at no cost to Buyer.

26. CHANGES IN PROCESS OR METHOD

Seller agrees that it will not invoice any changes in process or method of manufacturing during their term of this order without Buyer's written consent. Seller further agrees that any contemplated changes in process or method of manufacturing will be submitted to Buyer in sufficient time to enable Buyer a reasonable opportunity in which to evaluate such changes.

27. NOTICE

All notices to be given or served hereunder shall be given or serviced in writing either in person, by U.S. mail, postage prepaid, or by telegram. All such notices shall be effective upon receipt and addressed as follows:

To Buyer at: N2 Biomedical
One Patriots Park, Bedford, MA 01730-2396

To Seller at: The address appearing on the face side of the purchase order or such other address that Seller may advise from time to time.

28. DISPUTES

Pending the final determination of any dispute arising in connection with this Order, Seller will proceed with performance and to the extent, directed by Buyer.

29. SEVERABILITY

The invalidity in whole or in part of any provision shall not affect the validity of any other provision.