1. Acceptance and Scope of these terms and conditions of sale ("GTC") shall apply to all sales of goods and services by EMD Performance Materials Corp. ("EMD") to a customer requiring purchase of such goods or services ("Purchaser").

2. Unless otherwise agreed, amending or deviating terms and conditions of Purchaser shall not apply, even if EMD, knowing of such terms and conditions of Purchaser, does not object to them, and continues to deliver to Purchaser without any objection.

3. EMD’s unacknowledged acceptance of any GTC, (i) written acknowledgement of these GTC; (ii) issuance or assignment of a purchase order for the product(s) or services thereunder; (iii) acceptance of any shipment or delivery of product(s) or provision of services thereunder; (iv) payment for any of the product(s), or (v) any other act or expression of acceptance by Purchaser, shall constitute an offer by Purchaser to enter into a contractual relationship and the scope of delivery as laid down in any binding offer or order confirmation from EMD shall be legally binding.

4. Unless otherwise agreed, any advice given to Purchaser before placing the order shall be non-binding; however, EMD shall have the right to amend these GTC subject to prior written notification of Purchaser and the envisaged amendments shall become effective unless Purchaser objects within two (2) weeks after receipt of such notice.

2. Conclusion of Contract, Order, Delivery

5. All offers of EMD are subject to change.

2. Any binding contract on the sale of goods or services requires either (i) an offer of EMD explicitly marked as binding or (ii), upon any Purchaser’s order (oral or written), an order confirmation of EMD. If neither is made, no contract shall exist unless Purchaser explicitly acknowledges a lack of acceptance, otherwise the contract is concluded when EMD receives the order.

6. EMD shall have the right to amend these GTC subject to prior written notification of Purchaser and the envisaged amendments shall become effective unless Purchaser objects within two (2) weeks after receipt of such notice.

2. Conclusion of Contract, Order, Delivery

3. Deliveries, Returned Products

1. EMD’s obligation to deliver to Purchaser the product ordered is subject to EMD’s receiving correct and timely payment for the product, unless otherwise agreed.

2. EMD reserves the right to make deliveries in installments.

3. EMD shall have the right to cancel the order or a cheque occurs, (ii) payments by bank transfer are not credited to EMD in full or to have it insured, against damage in transit. Loss of or damage to the products, after the risk of accidental loss of the product to be delivered passes from EMD to Purchaser, is Purchaser’s responsibility.

4.3 EMD may terminate the order or return purchased products paid for by Purchaser if it has reason to believe that the chosen method of payment is not safe, that it is not possible to deliver the goods at the agreed price or that the sale is not allowed under applicable laws.

5. Additional Obligations of Purchaser

5.1 Purchaser acknowledges that there are hazards associated with the use of some products, that it understands such hazards and that it is the responsibility of Purchaser to warn and protect all those exposed to such hazards.

5.2 Purchaser is also under the obligation to inform EMD immediately of any risks resulting from product use, as provided for in the Product Information Sheet.

5.3 Purchaser shall at all times be solely responsible for: (i) obtaining any necessary intellectual property permission for the use of the product, (ii) compliance with any and all applicable regulatory requirements and obtaining any other required authorisation and verification, including testing, for the intended purpose, prior to the use of product(s) purchased from EMD, (iii) compliance with legal requirements in case products are to be disposed by Purchaser.

5.4 Purchaser shall indemnify and hold EMD, its corporate affiliates, agents, employees, and business partners harmless from and against any and all claims, costs, losses, damages, and expenses (including attorney’s fees) arising in connection with Purchaser’s sale or use of the products, resulting from Purchaser’s breach of the provisions and representations contained in these GTC, or arising from the negligence, recklessness or misconduct of Purchaser.

6. Warranties

6.1 With respect to all products to be delivered, the parties agree on the following scope of the warranties provided by EMD:

6.1.2 The products delivered by EMD correspond to the applicable published specifications.

6.1.3 The specifications only relate to the substances and values specified, and to pharmacopoeia data and information on E numbers if applicable. Statements with regard to suitability only apply when explicitly agreed.

6.1.3.1 Any data which is based on EMD’s testing procedures, may only be compared to testing following the same procedures. Any product data listed in the catalogue or any product information provided is intended for reference only and may need to be confirmed with EMD. The characteristics of the products delivered; EMD may not be held liable with respect to the accuracy of the product data provided.

6.1.4 EMD does not assume any warranty for the use of the delivered products in pharmaceutical, cosmetic and other preclinical and clinical activities.

6.1.5 EMD makes no warranty of merchantability or of fitness for a particular purpose.

6.1.6 Unless otherwise expressly stated in the product data or product documentation sheets, EMD does not provide any guarantee for the delivered products.

6.1.7 EMD is not responsible for failures due to unauthorised modifications, upgrades, maintenance or other servicing by a third party that is not approved by EMD.

6.1.8 EMD normal wear and tear of the products, lack of proper maintenance or incorrect stocking conditions, or use of the products beyond the shelf life or expiration date of the product as set forth in the applicable product documentation.

6.1.9 The parties agree on the following duties of Purchaser in relation to inspections:

6.1.9.1 Purchaser shall inspect the delivered products immediately upon receipt and without delay notify EMD of any defects. Purchaser’s inspection and testing, if performed by a third party, is of binding nature and all results obtained by such party are final. EMD shall have the right to examine any document which contains the results of the inspection, although Purchaser shall have the right to inspect and test the products at its own expense under normal and reasonable conditions using the same testing procedures as EMD.

6.1.9.2 In case of non-conformity of the delivered products, EMD shall have the right to carry out a new inspection and test.

6.1.9.3 Unless otherwise agreed, any lack of acceptance of the products shall be confirmed by a written notification to EMD within a maximum of five (5) days after delivery.

6.1.9.4 In case of defect, Purchaser may choose to refuse the delivery if the product is not re-delivered within ten (10) days from the date of notification.

6.1.9.5 In case of defect, Purchaser may choose to request a disposal instead of return. Title to the returned products, if already acquired by Purchaser, shall remain with EMD.

6.1.9.6 Title and risk of accidental loss of the product to be delivered passes from EMD to Purchaser even if delivery is made carriage paid.

6.1.9.7 Unless otherwise explicitly agreed, if a product ordered has to be dispatched, this is carried out from EMD’s warehouse even if delivery is made carriage paid.

6.1.9.8 Title and risk of accidental loss of the products, that, according to documentation accompanying the product(s), are intended for application to humans or animals, uses, in vitro diagnostic uses, ex vivo or in vivo therapeutic uses or any type of consumption by or on behalf of a customer requiring purchase of such goods or services ("Purchaser").

6.1.9.9 EMD EXCLUDES AND DISCLAIMS ALL LIABILITY IN RESPECT OF ANY OTHER USE MADE BY PURCHASER OF SUCH PRODUCTS. EMD PURCHASER ACCEPTS THAT ANY SUCH ACTIONS ARE UNDERTAKEN BY IT ENTIRELY AT ITS OWN RISK.
6.6 OTHER THAN THE WARRANTIES PROVIDED HEREIN, EMD MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE.

7. ACCESS TO THE PRODUCT OR THE USE THEREOF WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.

7.1 Purchaser assumes all risk and liability for loss, damage or injury to persons or to property of Purchaser or others arising out of the presence or use of the products or EMD’s provision of services, unless such loss, damage or injury is caused by force majeure. An event of force majeure shall, without limitation, in particular, include: (a) a state of war or civil war, declared or undeclared, (b) terrorist threats or acts, (c) fire, (d) natural disasters like floods, storm, etc., (e) epidemics, (f) general shortage of raw materials or inability to obtain equipment or materials, (g) restrictions on energy consumption, (h) law-making or governmental decisions, (i) embargos and economic sanctions in force, (j) strikes, lockouts or labor disputes of any kind (whether relating to its own employees or others), (j) accidents, (k) sequestration, or (l) any production interruption.

7.2 Force majeure shall not be an excuse to delay payments.

7.3 If either party is affected by one (or more) of the events described under Error! Reference source not found. Section 6.6 in the nature of the event, its estimated duration, and actions being taken to avoid or minimize its effects.

7.4 Neither party hereto shall be under an obligation to act upon any demand or request to bring to an end any strike or other concerted act of workmen.

8. WARRANTIES

8.1 Purchaser acknowledges that the merchandise covered by this contract is subject to the export control laws (including in particular but not limited to the export control laws of the Commonwealth of Pennsylvania, the United States, or any country of origin of the product. Purchaser agrees to hold EMD harmless from any and all liabilities or costs incurred by EMD or its affiliates arising for any reason from or in connection with any export, import, regulatory, governmental or treaty violations in respect of such merchandise.

9. Export Controls, Embargos

9.1 Export Controls, Embargos. Purchaser acknowledges that the merchandise covered by this contract is subject to the control of the Commonwealth of Pennsylvania, the United States, and other countries so as to violations of their export control, economic sanction laws, and embargos rules. Purchaser will request, process and use personal data (including, but not limited to, warranty, negligence or strict liability).

9.2 Purchaser acknowledges that the merchandise covered by this contract is subject to the export control laws (including in particular but not limited to the export control laws of the Commonwealth of Pennsylvania, the United States, or any country of origin of the product. Purchaser agrees to hold EMD harmless from any and all liabilities or costs incurred by EMD or its affiliates arising for any reason from or in connection with any export, import, regulatory, governmental or treaty violations in respect of such merchandise.

9.3 Purchaser agrees to hold EMD harmless from any and all liabilities or costs incurred by EMD or its affiliates arising for any reason from or in connection with any export, import, regulatory, governmental or treaty violations in respect of such merchandise.

9.4 Representations and Warranties.

9.4.1 EMD represents and warrants that it has proper legal authority to purchase such services, the parties agree that the sole remedy in such a case is for EMD to provide all relevant records and information and to provide all necessary information documents to EMD.

9.4.2 EMD represents and warrants that it has proper legal authority to purchase such services, the parties agree that the sole remedy in such a case is for EMD to provide all relevant records and information and to provide all necessary information documents to EMD.

10. Waiver of Breach

10.1 Waiver of Breach. The waiver by either party at any time to require performance by the other of any provision of these GTC shall not operate as a waiver of such provision at any other time, nor shall it affect any other provision of these GTC. No course of dealing or any failure or delay in exercising any right, power or privilege under these GTC shall constitute a waiver of such right, power or privilege, nor shall it preclude any other or further exercise of such right, power or privilege.

11. Representations and Warranties for Services

11.1 Services may be provided by EMD at Purchaser’s facility, EMD site or an EMD authorized third party service provider, and the continued relationship management to Purchaser. Some of those data processing activities are handled on behalf of EMD by Merck KgaA, Darmstadt, Germany, its affiliates or external service providers. Service performance and availability will be monitored and measured against Service Level Objectives (SLOs). In the event that EMD is unable to perform in accordance with any of the SLOs, EMD will use commercially reasonable efforts to remedy any non-compliance with the SLOs, and the parties will work together to establish alternative arrangements. In the event that EMD is unable to remedy the non-compliance, Purchaser may terminate this Agreement and EMD shall refund to Purchaser any monies prepaid or due to Purchaser for any non-compliance of such SLOs.

11.2 EMD represents and warrants that it has proper legal authority to purchase such services with respect to such third party. Purchaser shall indemnify and hold EMD, its corporate affiliates including EMD and any entity under majority control of such corporate affiliate and their respective employees, representatives, harmless from and against any and all claims, damages, fines, penalties, costs, expenses (including attorneys’ fees) caused by or resulting from any third party claim relating to the performance of any services by EMD.

12. Miscellaneous


12.2 Place of Performance. The place of performance for all claims resulting from the contract concluded between Purchaser and EMD is registered office of EMD’s headquarters in Philadelphia, PA.

12.3 Venue for Disputes. The venue for all disputes between the Parties shall be the courts located in Philadelphia, PA.