

TERMS AND CONDITIONS OF PURCHASE

1. **PARTIES.** As used herein, “Buyer” means EMD Inc. and its subsidiaries and affiliates, as applicable. “Seller” means the party described on the face hereof. This purchase order, including any specifications, drawings, proposal or statement of work attached hereto or specifically referred to herein and these Terms and Conditions of Purchase (this “Order” or “Agreement”), provides for the purchase by Buyer from Seller of the raw materials, equipment, supplies and other tangible personal property (“Goods”) and/or the consulting, advisory and other services (“Services”) described herein. Seller shall provide Goods and render Services hereunder as an independent contractor and not as an agent of Buyer, and nothing contained in this Agreement is intended to create a partnership, joint venture or employment relationship between the parties. In the event Seller provides Services and/or Goods to Buyer either directly or through a subcontractor, Seller agrees for itself, and agrees to require any subcontractor who provides services and/or Goods to Buyer pursuant to an Order to agree to all Terms and Conditions set forth herein as a condition of their providing the Goods or Services. Both Seller under an Order and any of its subcontractors shall be referred to as the “Seller” herein.

2. **OFFER AND ACCEPTANCE.** The Order is an offer to enter into a contract. Buyer may revoke or modify this offer at any time prior to Seller's acceptance. Any of the following shall constitute Seller's acceptance of this Order on the terms and conditions set forth herein and no other terms: (a) Seller's execution and delivery to the Buyer of the acknowledgment copy of this Order or Seller's own acknowledgment form, (b) Seller's commencement of performance pursuant to this Order, or (c) Seller's acceptance of any payment by Buyer hereunder. Buyer is not bound by and hereby expressly rejects any additional or different terms or provisions that may appear on any proposal, quotation, price list, acknowledgment, invoice, packing slip or the like used by Seller. No acceptance of an Order on terms and conditions which modify, supercede, supplement or otherwise alter the terms and conditions of this Order shall be binding upon Buyer and such terms and conditions shall be deemed rejected and replaced by the terms and conditions contained herein unless Seller's proffered terms or conditions are accepted in writing by Buyer, notwithstanding Buyer's acceptance of or payment for shipment of goods or similar act of Seller.

3. **PRICES AND TAXES.** Seller shall furnish the Goods and/or Services called for by this Order at the prices stated on the date hereof. If no price is stated, Seller's lowest prevailing market price shall apply. Unless otherwise specified, the price stated includes all charges and expenses of Seller such as handling, packing, boxing, cartage, and all applicable federal, provincial and local taxes and fees including but not limited to duty, customs, excise, value added, sales and use, occupational and manufacturing taxes. Seller shall accept an appropriate tax exemption certificate in lieu of any tax that may be included in this Order. Any discount terms applicable to this Order shall date from the date of delivery to Buyer or the date of receipt of invoices or date of settlement of disputes or claims, whichever is latest.

4. **INVOICES; PAYMENT TERMS.** Seller's invoices shall be dated no earlier than the date of shipment of Goods or, in the case of Services, the date the agreed upon Services have been rendered in full. Buyer's Order number, “ship to” address(es), Seller's catalog number, quantity and, to the extent applicable, the expiration or “shelf life” date and batch or lot number must appear on the outside of each shipping container and on all invoices, packing lists and bills of lading. Delay in receiving invoices, bills of lading and packing lists and any quality control certificates, package inserts and Material Safety Data Sheets, as well as errors or omissions therein shall constitute cause for Buyer's delaying payment. Unless otherwise specified, payment terms are net 30 days from date of acceptance by Buyer of Goods and/or Services that conform to the requirements of this Order. Seller shall not impose any charges on Buyer other than those agreed upon in this Order. In the event of a dispute, the parties agree to negotiate any disputes in good faith.

5. **DELIVERY.** Goods to be shipped will be packed in accordance with sound commercial practices and so as to obtain the lowest rate possible under freight classifications except when otherwise specified by Buyer. Time is of the essence for this Order. Deliveries are to be made both in quantities and at times specified on the face hereof, or on release schedules furnished against this Order and, unless otherwise specified by Buyer, in a single shipment. No partial shipments shall be made without Buyer's prior written consent. Buyer reserves the right to cancel this Order and refuse delivery of Goods and return same at Seller's risk and expense if Seller defaults in the manner and time of delivery or in the rate of shipment. All costs incurred by Buyer as a result of

Seller's failure to make delivery at the time and place specified herein, shall be charged to Seller. Regardless of the ship-to location designated on any Seller documentation or Order, title and all risk of loss or other damages to and with respect to the Goods will remain with Seller until the Goods have been accepted by Buyer, or an agent or consignee designated by Buyer, at the ship-to location specified on the face of this Order. Shipping terms are F.O.B. destination (Incoterms 2002) unless otherwise specified by Buyer in writing. Seller shall insure the Goods for all loss and damage until accepted by Buyer at the ship-to location. If a blanket purchase order or other contract has been entered into between Seller and Buyer, the quantity included in this Order shall apply against the quantity covered by such Order or contract. If any Goods to be delivered pursuant to this Order have a shelf life, any production of such Goods prior to Seller's normal processing time or release date is not permitted unless specifically authorized in writing by Buyer. If Seller ships more Goods than in any Order, Buyer may either retain possession and assume ownership at no cost to the Buyer or, at the sole discretion of the Buyer, return the Goods to Seller freight collect, plus any charges for repacking. Buyer is under no obligation hereunder to notify Seller of any overshipment, nor shall Buyer assume any liability to pay for any amounts over and above that specifically stated in an Order.

6. **INSPECTION.** All Goods called for hereunder or portions thereof shall be subject to inspection and test by Buyer at any point during the manufacture thereof. Buyer may at its option require a source inspection at Seller's facilities. If so, Seller agrees not to ship Goods to Buyer until Buyer has successfully completed such inspection and signed a document permitting Seller to ship Goods to Buyer. If any inspection or test by Buyer is made on the premises of Seller, Seller shall provide reasonable facilities and assistance for the safety and convenience of Buyer's inspection personnel. In addition, all Goods shall be received by Buyer subject to Buyer's further right of inspection and rejection. If, as a result of sampling inspection, any portion of a lot or shipment of like or similar items is found not to be in conformity with this Order, Buyer may reject and return the entire shipment or lot without further inspection or, at its option, complete inspection of all items in the shipment or lot, reject and return any or all nonconforming units (or accept them at a reduced price) and charge Seller the cost of such inspection. Items once rejected shall not thereafter be tendered for acceptance unless a written replace order is submitted to Seller. Payment for Goods or Services on this Order shall not constitute an acceptance thereof. Acceptance shall not release or discharge Seller's liability in damages or other legal remedy for breach of promise or warranty, expressed or implied, or any other term of this Order.

7. **WARRANTIES.** Seller represents and warrants that all Goods and/or Services delivered or performed hereunder (a) will be merchantable, new, suitable for the uses intended, of the grade and quality specified, free from all defects and impurities (as applicable) in design, material and workmanship and of the professional or industry standards for the industry concerned, (b) will conform to the description thereof on the face of this Order and in the applicable catalog, data, specification and information sheets of Seller and any other sales materials of Seller, and to any specifications or drawings provided by Buyer to Seller; (c) will be manufactured, tested in accordance with cGMP, cGLP, cGCP, if applicable, and, if required, certified in accordance with all applicable laws, ordinances, regulations and standards; (d) will not, alone or in any combination, infringe any Canadian or foreign patent, trademark, copyright, trade name, trade secret, license or other intellectual property and/or proprietary right of any third party; and (e) will be free of all liens and encumbrances. All Services will further be provided in a good and workmanlike manner and in accordance with all applicable laws. These warranties shall survive any delivery, inspection, acceptance, payment or resale of the Goods or Services and shall extend to Buyer and its agents, contractors and customers. These warranties shall not be deemed to exclude Seller's standard warranties or other rights or warranties, which Buyer may have or obtain. In the event that any Goods or Services prove unsatisfactory on account of inferior quality, workmanship or failure to conform to specifications, drawings, samples or other descriptions or standard mentioned herein, Buyer reserves the right to reject the same at any time, and in the event rejected Goods or Services have been paid for by Buyer, they may be returned and/or charged back to Seller, in which event Seller will allow a credit to pay the charge back, including Buyer's inspection and handling expenses and transportation both ways. If, after notice, Seller fails promptly to replace, repair or redo any such Goods or Services, Buyer may do so without further notice and Seller shall reimburse Buyer for all costs incurred thereby. If Buyer is unable to replace or repair any such Goods or Services, Seller shall promptly refund to Buyer the full purchase price paid by Buyer for all Goods or Services, including any and all applicable taxes. Acceptance of, or payment for, all or any part of the Goods or Services furnished under this

Order shall not be deemed to be a waiver of Buyer's right to cancel or return or reject all or any part thereof because of failure to conform to order or by reason of defects, latent or patent, or other breach of warranties, or to make any claim for damages, including manufacturing costs and loss of profits or other special damages occasioned the Buyer.

8. **CHANGES.** No modifications hereto may be made without the written consent of Buyer. If any such change affects the cost of or time necessary for performance, Seller shall advise Buyer in writing within five (5) days after receipt of such change, and thereafter, unless this Order is terminated, an equitable adjustment may be made to the price of the Goods or Services or delivery date.

9. **INDEMNITY.** Seller shall indemnify and hold harmless Buyer, its agents, employees and customers, and anyone selling or using any of Buyer's products, from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, judgments, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature (including special, indirect, incidental, consequential damages), whether arising before or after completion of the delivery or performance of the Goods or Services covered by this Order, in any manner caused or claimed to be caused by the acts, omissions, faults, breach of express or implied warranty, breach of any of the provisions of this Order, or negligence of Seller, or of anyone acting under its direction or control or on its behalf, in connection with Goods or Services furnished by Seller to Buyer under this Order.

10. **INSURANCE.** Seller shall maintain such insurance as will be adequate to protect it and Buyer from all claims which may arise from Seller's performance of its obligations hereunder. Seller further agrees to deliver, upon Buyer's request, insurance certificates showing that Seller has Workmen's Compensation, Public Liability, Product Liability, Auto Liability, Professional Liability and Property insurance coverage, as applicable. Such certificates must set forth the amount of coverage, policy carrier and number and date of expiration, and shall be subject to Buyer's approval for adequacy of insurance.

11. **CANCELLATION; AUDIT.** Buyer may at any time terminate all or any part of this Order. Seller agrees that any termination charges shall be limited to actual costs of Goods and labor incurred hereunder prior to Seller's knowledge of termination, and further agrees to take all steps reasonably possible to mitigate such termination charges. Seller shall maintain records for one year following completion of Seller's performance obligations hereunder of all Goods delivered and Services performed and expenses incurred under this Agreement, or longer as may be required by applicable law. Buyer shall have the right, upon reasonable notice, to examine such records.

12. **MATERIALS FURNISHED BY BUYER.** All machinery, tools, drawings, specifications, raw materials, biological materials (including vector systems and cell lines and their progeny) and any other property or materials furnished to Seller by or for Buyer, or paid for by Buyer, for use in the performance of this Order, shall be and remain the sole exclusive property of Buyer and shall not be furnished to any third party without Buyer's prior written consent, and all information with respect thereto shall be confidential and proprietary information of Buyer. In addition, any and all of the foregoing shall be used solely for the purpose of filling Orders from Buyer, shall be held at Seller's risk, shall be kept in good condition and be replaced by Seller, if necessary, at Seller's expense, shall be subject to periodic accounting by Seller as reasonably requested from time to time by Buyer, and shall be subject to return (including any progeny) promptly upon Buyer's request. Seller agrees to furnish at its own expense all machinery, tools, raw material, biological materials necessary to perform its obligations under this Order.

13. **CONFIDENTIALITY.** Seller shall hold in confidence all information and material disclosed by or on behalf of Buyer ("**Confidential Information**"), unless and to the extent only that such information or material: (i) is or becomes generally available to the public other than as a result of disclosure by Seller; (ii) is already known by or in the possession of Seller at the time of disclosure by Buyer other than through a breach of confidentiality obligations; or (iii) is independently developed by Seller without use of or reference to Confidential Information. Seller shall use the Confidential Information only for the purpose of performing its obligations under this Agreement and shall not use the Confidential Information for its own benefit or the benefit of another. Seller shall protect Buyer's Confidential Information using not less than the same care with which it treats its own Confidential Information, but at all times shall use at least reasonable

care. Seller shall not disclose or otherwise make available any of the Confidential Information to anyone, including employees and agents, except those employees and agents of Seller who need to know the Confidential Information for the purpose of performing Seller's obligations under this Agreement.

14. **INTELLECTUAL PROPERTY.** Buyer shall retain all rights in any samples, data, works, materials and intellectual and other property provided by Buyer to Seller. All deliverables and other data, reports, works, inventions, know-how, software, improvements, designs, devices, apparatus, practices, processes, methods, products and other work product produced or acquired by Seller, its personnel or its agents for Buyer under this Agreement (the "**Work Product**") shall be deemed "works made for hire". To the extent that any of the Work Product may not, as a matter of law, be deemed a work made for hire, Seller hereby assigns to Buyer all right, title and interest in the Work Product, including copyright. Seller shall execute and deliver any documents and do such things as may be necessary or desirable in order to carry into effect the provisions of this Section. All Work Product shall be deemed Confidential Information.

15. **ASSIGNMENT.** Failure of Buyer to insist upon strict performance shall not constitute a waiver of any of the provisions of this Order or waiver of any other default. The rights and obligations of Seller under this Agreement are personal to Buyer and may not be assigned, delegated or subcontracted to others without Buyer's written consent. Buyer may assign this Agreement in whole or in part without Seller's consent.

16. **APPLICABLE LAW; JURISDICTION.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario without regard to choice or conflict of laws principles. The Parties submit to the courts located in Toronto, Ontario.

17. **SURVIVAL.** The obligations set forth in Sections 7 (Representations and Warranties), 9 (Indemnity), 11 (Cancellation; Audit), 13 (Confidentiality), 14 (Intellectual Property), 15 (Assignment), 16 (Applicable Law), 17 (Survival), 18 (Remedies), 19 (Limitation of Liability) and 20 (Notices) hereof shall survive any termination or expiration of this Order.

18. **REMEDIES.** Any amount owed to Seller by Buyer or any of its affiliates shall be subject to deduction for any set-off, counterclaim or indemnification right arising out of this or any other Order to Seller from Buyer or any of Buyer's affiliates. Seller shall promptly pay Buyer on demand all legal fees and expenses Buyer may incur to assert or enforce its rights against Seller hereunder or at law. The remedies herein reserved shall be cumulative, and are in addition to any other remedies provided in law or equity.

19. **LIMITATION OF LIABILITY.** BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY LOST REVENUE, LOST PROFITS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES BASED ON BREACH OR DEFAULT UNDER THIS ORDER, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event shall Buyer be liable to Seller, its successors or assigns for damages in excess of the amount due to Seller for complete performance under this Order, less any amounts already paid to Seller by Buyer.

20. **NOTICES.** Notices hereunder must be in writing and given to the other party by in-hand delivery; or by courier to the mailing address set forth on the face hereof or to such other address as either party may designate. Notices shall be effective when received if prior to 4:00 pm on a business day of the recipient, and otherwise on the next business day.

21. **ENTIRE AGREEMENT.** This Order and any other contract entered into between the parties with respect to the purchase of Goods or Services (the "**Master Agreement**") is the complete and exclusive statement of the agreement between Buyer and Seller and supersedes any prior oral or written agreements, negotiations or discussions with respect to the subject matter hereof. In the event of a conflict between the terms and conditions on the face of the Order and the terms and conditions contained on the reverse side of this Order, the terms and conditions on the face of this Order shall control. In the event of a conflict between the terms of this Order and the terms of the Master Agreement, the Master Agreement shall control. No course or prior dealings between the parties and no usage of the trade shall be relevant to determine the meaning of this Order. No waiver, consent, modification or amendment of the terms of this Order shall be binding unless made in a writing specifically referring to this Order signed by Buyer and Seller.