

## ORDER ACKNOWLEDGMENT TERMS AND CONDITIONS

Updated December 8, 2020

- 1. ACCEPTANCE:** These Terms and Conditions ("Contract") apply to all Purchase Orders placed by Buyer ("Purchase Order"), and any provisions in a Purchase Order, any confirmation, email, fax, or other writing of whatever kind inconsistent with or in addition to the terms of this Contract shall not be binding upon Seller ("DermaCare Biosciences") unless expressly approved in writing by Seller making specific reference to the inconsistent or additional term or condition. If a Purchase Order is given pursuant to any existing Manufacturing or Supply Agreement between Seller and Buyer, it is subject to the terms of such agreement and such terms shall control in the case of any conflict with the provisions hereof. Otherwise, Seller's acceptance of a Purchase Order for the purchase of the goods and/or services described therein (collectively the "Products"), is subject to these terms and conditions, unless Buyer advises Seller in writing of any exception terms, and Seller accepts such Exception Terms in writing. In the case of Exception Terms, the Delivery date may be tolled and Seller may withhold performance until agreement thereon is reached in writing. Unless so modified in writing, this Contract is the final expression of the entire agreement of Seller and Buyer and is intended also as the complete and exclusive statement of all terms of their Agreement. No evidence of any prior or contemporaneous agreement or negotiation, whether oral or written, or any evidence of course of dealing, usage of trade or course of performance may be used to contradict, explain, or supplement this Contract, nor may the same be used to establish that because of mistake the writing does not reflect the actual agreement of the parties.
- 2. PRICE:** Products shall be delivered at the prices stated in the Purchase Order Acceptance ("Product Price"). All Product Prices expressed are F.O.B Seller's loading dock unless otherwise noted. Product pricing is exclusive of all taxes, freight, shipping, fees, or any other fees, which shall be paid by Buyer or reimbursed to Seller if paid or advanced by Seller. If payment is made by credit card, all credit card fees shall be passed through to Buyer.
- 3. TERMS; INVOICE:** Payment terms are PREPAYMENT in advance of shipment. In some instances, partial credit terms maybe granted with a 50% deposit required with order, and balance due prior to shipment and delivery. The payment terms set forth herein are subject to Buyer and Seller maintaining a mutually acceptable credit arrangement.
- 4. SHIPMENT:** The proposed shipping date is an estimate. Title and the risk of loss of the Products shall pass to Buyer at the time the Products are shipped.
- 5. EXCUSES FOR NONPERFORMANCE.** If the manufacture, transportation, delivery or receipt by either party of any materials covered hereby is prevented, restricted or interfered with by reason of any event or cause whatsoever beyond the reasonable control of the party so affected, such party shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference. If by reason of any such event or cause, the quantities of the materials covered hereby, or of any materials used in the production thereof reasonably available to Seller shall be less than its total needs for its own use and for sale, Seller may allocate its available supply of any such materials among its existing or prospective purchasers in such manner as Seller deems proper, without thereby incurring liability for failure to perform this contract.
- 6. SELLER'S WARRANTIES:** Seller represents and warrants that the Products will be manufactured and Delivered (i) in accordance with all laws where the Products may be sold; (ii) free from defects in workmanship; (iii) in accordance with applicable current Good Manufacturing Practices ("cGMPs") found in Title 21 of the Code of Federal Regulations, and any other applicable industry, state, federal, or international laws, regulations, policies or guidelines in effect. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS CONTRACT, (A) NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION, AFFIRMATION OF FACT, GUARANTY, OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE OR PARTICULAR PURPOSE, NONINFRINGEMENT, OR PERFORMANCE OF GOODS OR PRODUCTS TO STANDARDS SPECIFIC TO THE STATE AND/OR COUNTRY OF IMPORT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION, AFFIRMATION OF FACT, OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS CONTRACT.

7. **BUYER'S WARRANTIES:** Buyer represents and warrants that (i) it will use the Product for surveillance purposes only and not for diagnostic purposes.

8. **SELLER'S INDEMNIFICATION:** Seller shall indemnify and hold harmless Buyer and its Affiliates and their respective owners, agents, officers, and employees from and against all claims, liability, loss, cost, expense (including reasonable attorneys' fees), judgments, and damages which may arise from (a) any breach of any of Seller's warranties or any other breach of this Contract by Seller; and (b) the negligence or willful misconduct of Manufacturer or its agents or employees.

9. **BUYER'S INDEMNIFICATION:** Buyer shall indemnify, defend, and hold harmless Seller and its affiliates and their respective owners, agents, officers, and employees from and against all claims, liability, loss, cost, expense (including reasonable attorneys' fees), judgments, and damages which arise from (a) any breach of Buyer's warranties contained herein or any other provision of this Contract by Buyer; (b) bodily injury (including death) or damage to personal property caused by Buyer or its agents or employees; (c) the negligence or willful misconduct of Buyer, its officers, directors, owners, members, managers, employees, agents, or contractors; (d) any representations or claims (other than as made by Seller in this Contract) made to third parties by Buyer or its affiliates or their respective agents or employees with respect to the Products, whether contained in Buyer advertising, on the labels, or otherwise; (e) Buyer's not shipping, warehousing, and distributing finished Product as per the shipping and storage conditions which are specified after the Product has shipped from Seller; (g) damaging or tampering with the Products by anyone other than Seller, its employees, agents, contractors, licensees, or invitees; and (f) any claims (including without limitation product liability) related to the health, efficacy, safety, design, or Specifications of a Product, or any Product's regulatory status as classified by the FDA.

10. **ASSIGNMENT:** Neither this Agreement, nor any right or interest herein may be assigned by either Party without the express written consent of the other Party. This restriction shall not apply in the event of the change of Control, merger, or sale of substantially all of the assets of the business of either Party.

11. **SELLER'S REMEDIES:** The occurrence of any of the following events shall constitute a default by Buyer and a breach of the entire Contract: (a) Buyer's failure to perform any of its obligations in this Contract, including but not limited to the obligation to accept and pay for any Product Delivered or to be Delivered hereunder; (b) Buyer's insolvency as defined by the law of any jurisdiction, inability to pay its debts as they become due, making any assignment for the benefit of creditors, commencement of bankruptcy or insolvency proceedings by or against Buyer, any reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy; the appointment of a receiver, trustee, custodian or other similar official for it or for all or a substantial part of its property; (c) the issuance of any execution process, or any condemnation, levy, forfeiture, or similar action against the Products which are the subject of this Contract or any portion thereof; and (d) default by Buyer under any other contractual undertaking between Buyer and Seller.

12. **APPLICABLE LAW; FORUM SELECTION AND CONSENT TO JURISDICTION:** The parties hereto agree that all actions or proceedings arising in connection herewith shall be tried and litigated exclusively in the applicable Federal or State courts in and for the State of Florida, Palm Beach County, where Seller's distribution facility is located. The parties agree to exclude the application of the UN Convention on Contract for the International Sale of Goods.

13. **NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES: IN NO EVENT SHALL EITHER PARTY OR THEIR REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS CONTRACT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND/OR (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**