

## TERMS AND CONDITIONS OF PURCHASE

These terms and conditions of purchase, unless modified in writing by Buyer, shall govern this transaction and any future transaction between Seller and Buyer (unless Buyer supplies updated terms and conditions), notwithstanding any conflicting term or condition of Seller's acknowledgement or any other document or communication to the contrary. Buyer hereby objects to and rejects any terms or conditions contained in any such document or communication which is contrary to or in addition to these terms and conditions.

- 1. Acceptance of Purchase Order.** This purchase order constitutes Buyer's offer or counteroffer to Seller and shall become a binding contract upon acceptance by Seller. Acceptance by Seller shall occur upon Seller's sending an acknowledgment to Buyer, or the commencement of performance by Seller, or shipment or receipt of articles, whichever occurs first. By accepting this purchase order, Seller agrees to and accepts these terms and conditions. No change in any contract shall be binding upon Buyer until executed in writing by Buyer. All charges associated with this purchase order must appear on the front hereof; any charge not on this purchase order will not be paid by Buyer.
- 2. Correspondence and Acknowledgments.** All correspondence and acknowledgments shall be directed to the attention of Buyer's Purchasing office, at the address listed on the face hereof. The only individuals authorized to act on Buyer's behalf are full-time purchasing personnel employed by Buyer or currently appointed officers of Buyer.
- 3. Failure to Deliver.** In the event of Seller's failure to deliver as herein specified, Buyer reserves the right to (i) cancel this purchase order or any part thereof by written notice to Seller, without prejudice to any other rights Buyer may have, and (ii) if the articles are goods, to return part or all of any associated shipment. It is understood that time is of the essence. Additionally, commencing three (3) days after the required delivery date, Buyer may, at its sole discretion, deduct up to one-half percent (1/2%) of the amount due to Seller for each day any items are late.
- 4. Nonconforming Articles.** Buyer may reject or revoke acceptance of articles or any portion thereof (collectively, "nonconforming articles") which, without limitation, are: (i) not timely delivered, (ii) not in conformity with this purchaser order or with any of Buyer's or Seller's quality control standards, specifications or descriptions communicated to the other party; (iii) defective; (iv) not in compliance with any sample provided by Seller; or, (vi) not in compliance with law. Without Buyer's prior written authorization, Seller shall not ship nonconforming articles whether as an accommodation or otherwise.
- 5. Seller's Ability to Provide Articles.** By accepting this purchase order, Seller acknowledges that Buyer is relying on Seller's special ability to obtain and supply the articles in the specified quantities and quality and further that Buyer shall suffer consequential and incidental damages (which may include lost profits due to loss of sales), if Seller fails to perform in accordance with this purchase order. Buyer shall be entitled to recover such amounts in the event of Seller's breach.
- 6. Terms.** Terms of payment, absent an authorized amendment hereto and except where Seller offers superior terms or as otherwise provided on the face hereof, shall be 1% 10 Days, Net 45 Days from date of Buyer's acceptance, which in the case of consumables does not occur until the articles have passed all relevant screening tests. Payment is deemed made on the date on which payment is transmitted by Buyer. If the articles are goods, payment may be delayed by Buyer for the duration of any hold, ban, or detention imposed by any relevant government authority.

7. **Packing and Shipping.** If shipping terms include pickup by Buyer's agent or shipping company or delivery to any location other than Buyer's facility, then Buyer shall have the opportunity to inspect and approve or reject items after delivery to Buyer's facility. There will be no additional charge for boxing, crating, carting or storage, unless otherwise specified, and articles shall be suitably packed to secure lowest transportation costs. Articles shall be described on bills of lading in accordance with current Rail or Motor Freight Classification. Seller must provide only one packing list per purchase order, which shall accompany each shipment that relates to a purchase order. Buyer's purchase order number, quantity, and description must be plainly marked on all packing lists, packages, bills of lading, shipping orders, packing lists and correspondence. Buyer shall only be liable to pay for quantity or yield ordered but may retain excess quantities shipped without its approval. All orders are F.O.B. place of destination unless Buyer's purchase order states otherwise. Title to the articles shall remain with Seller until Buyer accepts the articles.

8. **Warranty and Compliance.** Seller warrants that all articles shall conform to applicable specifications, drawings, descriptions, samples, and shall be merchantable, of good workmanship and materials, fit for the particular purpose or purposes for which intended, free from defect, claim encumbrance, or lien, and in compliance with law. Seller warrants that the articles do not contain any ingredients or additives of any kind other than what is specifically disclosed to Buyer in Seller's certificate(s) of analysis, including but not limited to any artificial flavorings, sweeteners, chemicals or substitutes that mimic, supplement, alter or enhance the primary articles/ingredients being supplied or that would constitute any attempt to engage in "economic adulteration." Seller warrants that no animals were used to test any ingredients or raw materials that are intended for or may be used in cosmetic products. Seller warrants that the articles, including the trademarks used in connection therewith, as well as the claims and representations made by Seller with respect thereto, and the manufacturing processes and structure of the articles, do not infringe the intellectual property rights of any third parties. Seller warrants and certifies that its activities and those of its suppliers comply with all applicable laws and regulations in the country or countries in which Seller or its suppliers do business including those concerning human trafficking and slavery as well as Buyer's Code of Ethics, available at [www.nutraceutical.com](http://www.nutraceutical.com). Seller further warrants and certifies that its activities and those of its suppliers comply with Buyer's Code of Ethics and Anti-Corruption and Trade Controls Policy, as it may be amended from time to time, the current version of which can be found at <http://www.nutraceutical.com/company/ethics>. If articles delivered or services furnished herein do not meet the warranties specified herein or otherwise applicable, Buyer may at its option return at Seller's expense the defective or nonconforming articles for credit or refund, or require Seller to correct, at no cost to Buyer, any defective or nonconforming article or services. Buyer's inspection, approval, acceptance, use of or payment for all or any part of articles shall in no way affect its warranty rights.

9. **Assignment and Subcontract.** Neither this purchase order nor any duty or right thereunder shall be delegated or assigned by Seller without the prior written consent of Buyer. Any assignment not made in accordance with this paragraph is void and shall have no effect.

10. **Hazardous Materials.** If any article supplied hereunder is required to have a Material Safety Data Sheet (MSDS) under applicable laws or regulations, then a copy of the current version must be submitted with each shipment of the article or be on file with Buyer.

11. **Indemnity.** Seller agrees to indemnify and hold Buyer harmless from any and all losses, costs or expenses, including, but not limited to, government fines or assessments and reasonable legal fees and court costs incurred on account of or related to any breach by Seller of any covenant, warranty or representation contained or referenced herein, or in any other document provided or produced by Seller. At Buyer's option, Seller shall defend Buyer, at Seller's expense, in all suits or proceedings arising out of any of the foregoing, and/or reimburse Buyer for its expenses and costs (including reasonable attorneys' fees and costs). Buyer shall have the right to offset any loss, liability or damages suffered by Buyer or any of its affiliates against any amounts owing to Seller or any of Seller's affiliates.

12. **Intellectual Property Rights.**

- a) In the event any articles sold and delivered hereunder shall be covered by any patent, copyright, trademark, other intellectual property right, or application therefor owned by or licensed to Seller and necessary for Buyer to use or sell any article, Seller shall inform Buyer in writing of the nature of such right(s) and shall be deemed to have granted to Buyer a license to use such rights in connection with the manufacture, sale, marketing, or distribution of those goods of Buyer which incorporate the same. Each Party is and shall remain the owner of all intellectual property that it owns or controls as of the Effective Date or that it independently develops or acquires thereafter.
- b) In the event any articles or services sold and delivered hereunder shall result in the joint development or joint creation with Buyer of any inventions, discoveries, patents, know-how, copyright, trade secret, or other proprietary rights that are at any time incorporated into or used in connection with any of Buyer's products ("Developed IP"), ownership of such Developed IP will vest solely in Buyer and Seller hereby assigns all right, title, and interest in the Developed IP to Buyer.

13. **Advertising and Endorsements.** Seller shall not advertise, disclose, nor claim or imply endorsement in any way to any third party nor use any information whatever concerning this purchase order or Buyer's relationship with Seller without express written permission from Buyer.

14. **Miscellaneous.** Buyer may at any time insist upon strict compliance with these terms and conditions, notwithstanding previous custom, practice or course of dealing to the contrary. Identification of the articles shall occur at the moment this offer is accepted by Seller. This purchase order contains the entire agreement of the parties. In the event of discrepancies, omissions, and/or errors in this purchase order, the matter shall be submitted immediately to Buyer for determination. No waiver by Buyer of any provision or of any obligation of Seller, and no partial or single exercise thereof, shall constitute a waiver of any other provision or of any other of Seller's obligations.

15. **Liquidated Damages.** In addition to other remedies provided for herein or at law or in equity, Buyer may—as reasonable liquidated damages—(a) charge Seller (who will pay) \$50.00 for each breach by Seller of any obligation hereunder (including but not limited to failure to provide a Certificate of Analysis, Allergen Statement, or Material Safety Data Sheet) or (b) deduct such amount from any payment otherwise due to Seller. The parties acknowledge and agree the foregoing is not intended to be a penalty or punitive in any way but rather is a reasonable fee to help mitigate Buyer's damages for Seller's failure to perform as required hereunder.

16. **Venue.** The provisions of this purchase order and any contract arising here from as well as any dispute between Buyer and Seller with regard hereto or with regard to any other issue arising between them shall be governed by the laws of the State of Utah, without regard to its principles of conflict of laws, and venue and jurisdiction for any proceeding regarding any such dispute, or to enforce or interpret this contract, shall lie exclusively in federal or state courts situated in Salt Lake City, Utah.

17. **Definitions.** The term "Buyer," except as otherwise defined herein, means the entity identified on the face hereof that is issuing the purchase order. The term "Seller" refers to the company or person(s) listed on the face of this purchase order and/or to whom this offer or counteroffer is extended and includes any entity who provides the articles or services purchased by Buyer. The word "articles" means goods, products, materials, equipment, supplies, parts, assemblies, technical data, intellectual property, drawings, art work, dies, designs, engravings, services or other items covered by this purchase order. The term "purchase order" shall be understood to include these terms and conditions, the information on the face hereof (including any documents or standards referenced thereon or herein, or separately transmitted by Buyer together with these terms and conditions or as part of the purchasing process) and any duly executed change orders and attachments.

18. **Provisions Applicable to Consumables.** In addition to the foregoing, the following provisions shall apply to articles that are intended for human or animal consumption or use (with the word “human” being replaced by “animal” to the extent the article is intended for animal consumption or use): Seller represents and warrants that: (i) such articles will conform with claims made and specifications referenced on the corresponding label (to the extent that Seller has been supplied a copy of such label or been made aware of the claims made on such label); (ii) such articles are and shall be fit for human consumption or use, and do not contain any substances or ingredients that may be harmful to a person who consumes or uses them; and without limiting the generality of the foregoing, Seller warrants that the articles comprising each shipment or other delivery hereafter made by Seller to Buyer, as of the date of such shipment or delivery, shall: (i) if goods, not be adulterated, misbranded, unapproved new drugs or otherwise violative within the meaning of the Federal Food, Drug, and Cosmetic Act (hereafter “FDC Act”), 21 U.S.C. 301 et seq.; (ii) have been formulated, manufactured, packaged, labeled, advertised, promoted, and handled in accordance with, and are otherwise in accordance with and not in violation of, all other applicable requirements of federal, state and local law; and (iii) otherwise not be an article that may not properly be introduced into commerce under the provisions of the FDC Act or any other federal, state or local law and include or reference all required warnings. Seller also warrants to Buyer that all claims, representations and other statements about the articles that have been made by Seller in labeling, advertising or other promotion for the articles are truthful, not misleading, and supported by valid substantiating data, and in addition, Seller warrants to Buyer that Buyer may properly repeat in any labeling, advertising or other promotion for the articles, or for any product which includes the articles, any or all of the claims, representations or other statements about the articles that have been made by Seller in its labeling, advertising or other promotion for the articles. Furthermore, with respect to all such products, all shipments of raw materials or finished goods shall be accompanied by a current and accurate Certificate of Analysis, Allergen Statement, and Material Safety Data Sheet meeting Buyer’s requirements.