

Exact Sciences Corporation

TERMS AND CONDITIONS OF PURCHASE

1. Applicability. The purchase order (“**Purchase Order**”) together with these terms and conditions, which are hyperlinked from or referenced in the Purchase Order or otherwise provided to the seller (“**Seller**”), collectively constitute a binding agreement (the “**Agreement**”) between the buyer identified on the Purchase Order (“**Buyer**”) and Seller, and apply to all purchases of products (“**Products**”) and services (“**Services**”) and together with the Products, “**Ordered Items**”) by Buyer from Seller, as such Ordered Items may be described in the Purchase Order. In the event of any conflict between the Agreement and any other document or instrument submitted by Seller, the Agreement will govern. **Buyer expressly limits acceptance of the Agreement to the terms stated in the Purchase Order and herein.** As an exception to the foregoing, any written agreement, including without limitation, Buyer’s Quality Agreement, between Buyer and Seller in effect at the time Buyer submits a Purchase Order that contains terms and conditions that conflict with or are inconsistent with these terms and conditions will supersede and have priority over these terms and conditions.

2. Shipment and Delivery. All Products must be suitably packed or otherwise prepared by Seller for shipment to prevent damage, to obtain the lowest transportation and insurance rates, and to meet the carrier’s requirements, and shipped in accordance with the instructions on the Purchase Order. Expenses incurred due to failure to comply with these terms are the responsibility of Seller. Title to and all risk of loss or damage to Products remains with Seller until delivery of conforming Products to Buyer’s delivery point. Time is of the essence. Deliveries are to be made only in the quantities and at the times specified in the Purchase Order. Unless the parties agree otherwise, delivery terms are FOB Buyer’s destination (DDP per INCOTERMS 2010 if shipment is international). If delivery is not expected to be made on time, Seller must immediately notify Buyer and take reasonable steps, at its cost, to expedite delivery. Costs of premium freight required by Buyer on past due shipments are the responsibility of Seller.

Buyer may reject any delivery if Seller fails to make delivery in conformity with the terms and conditions of the Agreement, including without limitation, any failure of Products to conform to the specifications and performance criteria published by Seller for Products. Seller shall not make shipments in excess of quantities or in advance of scheduled delivery dates as shown on the Purchase Order without Buyer’s prior written approval. Buyer reserves the right to return, at Seller’s expense, any shipments received contrary to these instructions. Buyer’s acceptance of any non-conforming delivery will not constitute a waiver of its right to reject future deliveries. Seller shall reimburse Buyer for any additional costs and expenses incurred by Buyer in purchasing Products from an alternate source if Seller fails to supply Products meeting specifications on a timely basis.

3. Changes. Seller shall not change the quantities, prices, conditions or other pertinent terms of the Purchase Order except with Buyer’s written authorization. If Products are to be specifically manufactured in accordance with Buyer’s specifications, Buyer may, at any time by written order make such changes in the specifications, method of shipment or packing, and place of delivery. If any such change would cause a material change in the cost of, or time required for performance under the Agreement, such change request shall be deemed accepted by Seller unless Seller provides Buyer, within 15 days’ from receipt of Buyer’s notification of the change request, a proposed adjustment to the pricing or time of delivery

under the Purchase Order. Any such proposed adjustment must be limited to documented costs and delays directly attributable to Buyer's change request. Seller's proposed adjustment shall be deemed rejected by Buyer unless Buyer responds to Seller's proposed adjustment within 15 days of its receipt by electing, in its sole discretion, to (a) accept Seller's adjustment proposal, (b) reject the proposed adjustment and withdraw the change request, or (c) propose alternative terms. If Buyer proposes alternative terms, the parties shall repeat the change control process. Seller shall not suspend performance of the Agreement while Buyer and Seller are engaged in the change control process, except by the express written request of Buyer.

4. Taxes. Buyer is not responsible for and shall not pay Seller any federal, state, provincial, or local tax.

5. Price. A Purchase Order may not be filled without Buyer's written consent at a higher price than that stated in the Purchase Order. If the price is not stated in the Purchase Order, the Ordered Items shall be billed at the price last requested by Buyer, or billed at the prevailing market price, whichever is lower.

6. Cancellation by Buyer. Buyer reserves the right to cancel the Purchase Order, or any part thereof, at any time, by giving written notice to Seller. In the event of such cancellation, Buyer shall pay for all goods and services delivered and completed in compliance with the Purchase Order and all applicable specifications. Exercise by Buyer of the rights of cancellation reserved in this paragraph shall give rise to no liability on the part of Buyer except as specified in this paragraph and will not have the effect of waiving damages the Buyer might otherwise be entitled to.

7. Inspection. Payment for any Ordered Item under a Purchase Order shall not constitute approval or acceptance of such item by Buyer, and Buyer's right of inspection survives payment. Seller shall repay Buyer the purchase price of any Ordered Item found to be defective, not to conform to specifications, drawings or samples or not shipped in accordance with Buyer's delivery schedule and returned to Seller. Rejected Ordered Items shall be returned at the expense of Seller upon rejection, and Seller shall bear all risk of loss as to rejected Ordered Items. Buyer may elect to retain rejected Ordered Items and remedy any defects or nonconformity to specifications, drawings or samples. Cost of effecting such remedy shall be borne by Seller. Nothing contained in the Agreement relieves Seller from the obligation of testing, inspection and quality control.

8. Warranties. Seller warrants that (a) Seller conveys to Buyer clear title to the Products, free of any lien or encumbrance; (b) all Products will be new, merchantable, of high quality and workmanship, fit for their particular purpose, and free from defects; (c) all Products will conform strictly and in all respects with the terms of the Agreement and with the drawings, designs, specifications, descriptions and samples identified in the Purchase Order; (d) all Services will be performed in a workmanlike manner; and (e) Seller has complied and shall comply with all laws applicable to its performance under the Agreement. These warranties run to Buyer, its successors, assignees, customers, and users of the Ordered Items. Seller shall, at its own expense and whenever reasonably requested by Buyer, furnish and deliver to Buyer satisfactory evidence showing that each of the drawings, designs, specifications, descriptions and samples have been fully and completely complied with and that the Ordered Items fully and completely conform thereto. Seller shall, at its cost, immediately replace, repair, grant credit for, or make good, as requested by Buyer, any Ordered Items not conforming to the foregoing warranties.

9. Indemnity. Seller shall defend Buyer, its affiliates, officers, employees and agents (each, a “**Buyer Party**”) against all claims, relating to or arising out of, directly or indirectly (a) any death or injury to any person, damage to any property or any other damage or loss due to any defect in or use of any Ordered Item; (b) any Product recall; (c) any infringement or misappropriation of any proprietary right by the Ordered Items (including packaging, labeling and documentation of any Product); (d) Seller’s negligence, strict liability or intentional misconduct; (e) Seller’s breach of the Agreement; or (f) Seller’s failure to state accurate Product descriptions, adequate warnings, or instructions (each, a “**Claim**”). Seller shall indemnify and hold harmless each Buyer Party against any damages, liability, losses, fines, or judgments, including costs, attorney fees, and other expenses, incurred by that Buyer Party relating to any Claim, except to the proportional extent the liability is caused by the gross negligence or intentional misconduct of that Buyer Party as determined by a final, non--appealable order of a court having jurisdiction. Seller shall not consent to the entry of a judgment or settle without the Buyer Party’s prior written consent. Seller shall use counsel reasonably satisfactory to the Buyer Parties, and the Buyer Parties shall cooperate in the defense at Seller’s expense. If any Buyer Party reasonably determines that any Claim might have an adverse effect on its business, the Buyer Party may take control of the defense at its expense (without limiting Seller’s indemnification obligations).

10. Limitation of Liability. BUYER IS NOT LIABLE TO SELLER FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR OPPORTUNITIES. Buyer shall not be liable for interest charges or penalties of any description.

11. Right of Entry. Buyer reserves the right of Buyer or any accredited third party auditor to enter Seller’s facilities, and that of sub-tier suppliers, to review parts, processes, tooling, equipment, and related paperwork with reasonable notice to Seller for review of contracted work.

12. Confidentiality of Information. Any specifications, drawings, sketches, models, samples, tools, technical information, methods, processes, techniques, shop practices, plans, know-how, trade secrets, or data, written, oral or otherwise (collectively, the “**Information**”) furnished to Seller under, or in contemplation of, the Agreement remain Buyer's property. Upon request of Buyer, all copies of such Information in written, graphic or other tangible form must be immediately returned to Buyer and copies in electronic format must be immediately destroyed or deleted. The Information shall be kept confidential by Seller, shall be used only in the fulfillment of Purchase Orders, or in performing Seller’s obligations under the Agreement, and may be disclosed or used for other purposes only upon terms as may be agreed upon between Buyer and Seller in writing.

13. Buyer-Owned Property. Unless Buyer and Seller otherwise agree in writing, the following provisions apply to any tools, tooling, patterns, equipment, materials or other properties used in the manufacture of Products for Buyer, or in the performance of the Agreement, that are either supplied to Seller by Buyer, or have been acquired by Seller and specifically paid for by Buyer. All such properties are referred to below as Buyer-owned.

- a. Seller has the right to use Buyer-owned property without payment only for usage as required in the performance of the Agreement or other work for Buyer, but Seller shall not use Buyer-owned property in the performance of any other work without prior written approval of Buyer. Title to all Buyer-owned property at all times remains with Buyer.

- b. Seller shall take necessary measures to preserve Buyer's title to Buyer-owned property, free of all encumbrances. Buyer retains the right, in addition to other rights provided by law, to enter Seller's premises and remove Buyer-owned property with or without a court order.
- c. Seller shall, on written request of Buyer, properly pack and ship Buyer-owned property to the destination designated by Buyer.
- d. Seller shall at its expense, perform all maintenance work, repairs, and replacements necessary with respect to applicable Buyer-owned property so that such property remains suitable for the use intended.
- e. The risk of loss or damage to all Buyer-owned property shall be left with Seller from the time that such property is delivered to Seller until the property is delivered back to Buyer. Seller shall provide Buyer with proof of adequate insurance coverage on Buyer-owned property by Seller upon written request of Buyer.
- f. Buyer shall not be liable for loss, damage, detention or delay relating to any Buyer-owned property.
- g. Seller shall assume, and shall protect, defend, hold harmless and indemnify Buyer against, any and all liability, including reasonable attorneys fees, for damaged property or injury to, or death of any persons arising from or incidental to the presence of, or use of Buyer-owned property, whether such damage, injury or death is caused by defects in the property, negligence in the use thereof, or otherwise.
- h. Seller shall, upon receipt of written request, provide Buyer with a current listing of Buyer-owned property in its or its subcontractor's possession, indicating complete descriptions, quantities, and property conditions.

14. General. The Agreement and all rights and duties under the Agreement are governed by the internal law of the State of Wisconsin, without reference to any applicable conflict of laws rules or the United Nations Convention on Contracts for the International Sale of Goods. Seller irrevocably consents to exclusive jurisdiction of Dane County, Wisconsin courts for disputes arising out of the Agreement. The parties' rights and remedies under the Agreement are cumulative. Either party's failure to enforce any provision will not be a waiver of the party's rights to subsequently enforce the provision. If any provision is held to be invalid, then that provision will be modified to the extent necessary to make it enforceable, and any invalidity will not affect the remaining provisions.