

EXPRESSION PATHOLOGY INCORPORATED – GENERAL TERMS and CONDITION

1. Acceptance Governing Provisions: In these General Terms and Conditions (the Conditions) we, us, and our means Expression Pathology Incorporated or the Expression Pathology affiliate that is processing this order or purchase of goods, and you and your means the person, company or other legal entity that orders or buys goods from us and in each case their respective successors and/or assigns. We are shipping these goods subject to these Conditions. You will be deemed to have assented to these Conditions unless you return the goods to us within 15 days after your receipt of the goods and this form. Our failure to object to provisions contained in any purchase order or other form or document from you shall not be construed as a waiver of these Conditions nor an acceptance of any such provision. These Conditions, including all writings incorporated herein by reference, any quotation issued to you by us, and those specific terms of a purchase order or other document that are either consistent with these Conditions or expressly agreed upon by us in writing, constitute the entire contract between us (the Contract), and supersede all prior agreements and understandings between us, whether written or oral, relating to the subject matter hereof. In the event of a conflict, a quotation takes precedence over these Conditions, and a written contract signed by both of us takes precedence over either. If one or more of these Conditions are held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining Conditions shall be unimpaired.

2. Delivery: Unless specified differently in writing, all US sales are FOB Destination. International sales are INCOTERMS 2000 DDU. We reserve the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice.

3. Inspection and Returns: Upon your receipt of goods shipped hereunder, you shall inspect the goods and notify our Customer Services Department of any claims for shortages, defects or damages. If you fail to so notify us within three days after you receive the goods, the goods shall conclusively be deemed to conform to these Conditions and to have been irrevocably accepted by you. Authorization for all product returns must be approved by our Customer Services Department and a return authorization number given to you prior to the return of goods. Not all items will be authorized for return, due to temperature and packing requirements. Items authorized for return must arrive at our facilities in a state satisfactory for resale to be eligible for product credit. A restocking charge of 25% or \$25 (whichever is greater) shall be charged on returns that are not the result of any error or fault of ours. Shipping charges will not be credited. Goods may not be returned for credit after 20 days after your receipt of the goods.

4. Credits and Refunds: At our discretion, we may issue a product credit or refund for the product value and shipping charges. No product credit shall be available for use if a past due balance is outstanding on the account.

5. Payments: Unless otherwise specified in a written quotation we provide to you or written contract between the parties: goods will be billed at the price in effect at the time shipment is made; such prices shall be subject to change from time to time without notice; terms of sale are net 30 days of date of invoice, in U.S. Dollars. If you default in making any payment to us when due, we, at our option and without prejudice to our other lawful remedies, may defer delivery or cancel the Contract.

6. Taxes and Other Charges: Any use tax, sales tax, excise tax, duty, inspection or testing fee, or any other tax, fee or charge imposed by any governmental authority, on or measured by the transaction between us shall be paid by you in addition to the prices quoted or invoiced. If we are required to pay any such tax, fee or charge, you shall reimburse us therefor or provide us at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

7. Warranty: We warrant to you, our direct customer, that our goods shall conform substantially to the description of such goods as provided in our catalogues and literature accompanying the goods until their respective expiration dates or, if no expiration date is provided, for 6 months from the date of your receipt of such goods. THIS WARRANTY IS EXCLUSIVE, AND WE MAKE NO OTHER WARRANTY, EXPRESS OR IMPLIED,

INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. Our warranty shall not be effective if we determine, in our sole discretion, that you have altered or misused the goods or have failed to use or store them in accordance with instructions furnished by us. Our sole and exclusive liability and your exclusive remedy with respect to goods proved to our satisfaction (applying analytical methods reasonably selected by us) to be defective or nonconforming shall be the replacement of such goods free of charge, upon the return of such goods in accordance with our instructions, although at our discretion we may provide a credit or refund in accordance with Section 4 above. IN NO EVENT SHALL WE BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS), EVEN IF WE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. If we manufacture custom goods for you based on instructions, specifications, or other directions you provide to us, we shall not be liable for the lack of sufficiency, fitness for purpose or quality of the goods to the extent attributable to such instructions, specifications, or other directions. We shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond our reasonable control.

8. Compliance with Laws and Regulations: We certify that to the best of our knowledge: our goods are produced in compliance with all applicable federal, state, and local statutes, rules, regulations, ordinances, and orders, including applicable requirements of the Fair Labor Standards Act, as amended, the Occupational Safety and Health Act of 1970 and Executive Order 11246; we have a written Affirmative Action Program and annually file Standard Form 100 (EEO-1); we do not discriminate against any employee or prospective employee because of race, creed, color, national origin, sex, age or handicap, nor permit discrimination in any form nor maintain segregated facilities for our employees; we actively pursue employment of minorities, females, handicapped, disabled veterans and veterans of the Vietnam era; and we use our best efforts to award contracts to and place purchase orders with minority business enterprises and with labor surplus area concerns and small business concerns.

9. Intellectual Property Rights

9.1 We warrant to you that the manufacture and sale by us of goods manufactured by or for us without reliance upon instructions, specifications, or other directions provided by you and delivered hereunder, to our knowledge will not infringe the claims of any patent, trademark or copyright (Intellectual Property) of any third party. We do not warrant that the manufacture and sale by us of goods manufactured in reliance upon instructions, specifications, or other directions provided by you or your use or resale of goods delivered hereunder will not infringe the claims of any Intellectual Property of any third party.

9.2 If any claim is made against you or us for infringement of Intellectual Property rights of any third party arising from the manufacture or sale of goods by us in circumstances in which the manufacture of such goods was not based upon instructions, specifications, or other directions provided by you, we shall assume the defense of any ensuing litigation and conduct all negotiations for settlement of such claims and will bear the costs of any payment made in settlement or resulting from an award; provided that you shall give us notice in writing as early as is reasonably practicable of any such claim being made or action threatened or brought against you, shall make no admission of liability or take any other action in connection with such matter and shall permit us to defend such claim and shall (at our expense) give all reasonable information, co-operation and assistance to us (including without limitation lending your name to proceedings) in relation thereto. The foregoing describes our entire liability to you and your exclusive remedies against us in connection with claims made against you based on or resulting from such infringement of Intellectual Property rights of third parties.

9.3 If any claim is made against us for infringement of Intellectual Property rights of any third party as a result of (i) the manufacture or sale of goods based upon instructions, specifications, or other directions provided by you or (ii) your use or resale of goods purchased from us, you shall indemnify us, defend us and hold us harmless from and against any and all losses, damages and expenses (including reasonable attorneys' fees and other costs of defending any action) that we may incur as a result thereof. You shall fully cooperate with us in any investigation relating to any such claims and make available to us all related statements, reports and tests available to you.

10. Authorized Uses

10.1 Except as otherwise agreed in writing by our authorized representative, the purchase of goods only conveys to you the non-transferable right for only you to use the quantity of goods and components of goods purchased in compliance with the applicable intended use statement, limited use statement or limited label license, if any, in our catalogues or on the label or other documentation accompanying the goods (all such statements or licenses being incorporated herein by reference as if set forth herein in their entirety).

10.2 Unless otherwise expressly indicated in our catalogues or on the label or other documentation accompanying the goods, the goods are intended for research use only and are not to be used for any other purposes including, but not limited to, unauthorized commercial purposes, *in vitro* diagnostic purposes, *ex vivo* or *in vivo* therapeutic purposes, investigational use, in foods, drugs, devices or cosmetics of any kind, or for consumption by or use in connection with or administration or application to humans or animals. You acknowledge that the goods have not been tested by or for us for safety or efficacy, unless expressly stated in our catalogues or on the label or other documentation accompanying the goods. Without limiting the foregoing restrictions, you warrant to us that should you use or sell the goods for any use other than research, you shall conduct all necessary tests, comply with all applicable regulatory requirements, issue all appropriate warnings and information to subsequent purchasers and/or users and be responsible for obtaining any required Intellectual Property rights.

10.3 You represent and warrant to us that: you will properly test, use, and, to the extent authorized, manufacture and market any goods purchased from us and any final articles made from them in accordance with the practices of a reasonable person who is an expert in the field, including, but not limited to, a technically qualified individual (40 C.F.R. § 720.3(ee)), and in strict compliance with all applicable national, state, provincial, and local food, drug, device, and cosmetic and other relevant laws and regulations, now and hereinafter enacted; and any final articles manufactured from the goods shall not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act and shall not be articles which may not, under Sections 404, 505, or 512 of the Act, be introduced into interstate commerce.

10.4 You realize that, because our goods are intended primarily for research purposes, they may not be on the Toxic Substances Control Act (TSCA) inventory. You assume responsibility to ensure that the goods purchased from us are approved for use under TSCA, if applicable. Consistent with your agreement to comply with all TSCA R&D substance exemption requirements applicable to the purchase, you agree and warrant that you will comply with all requirements necessary to maintain the R&D exemption, including using the R&D substance under the supervision of a technically qualified individual, maintaining all necessary labeling, and providing all necessary notifications. You also agree and warrant that you will use or sell the R&D substance exclusively for R&D purposes or specified exempt commercial purposes. You specifically agree and warrant that you will not sell or distribute the R&D substance to consumers .

10.5 You have the responsibility to conduct any research necessary to learn the hazards involved for any of your uses of goods purchased from us and to warn your customers, employees and any auxiliary personnel (such as freight handlers, etc.) of any risks involved in using or handling

the goods. You agree to comply with instructions for use of the goods furnished by us, if any, and not to misuse the goods. If the goods purchased from us are to be repackaged, relabeled or used as starting materials or components of other products, you will verify our assay of the goods, qualify the goods provided by us for such applications, and comply with all governmental requirements relating to labeling or providing other communications to customers. You acknowledge that we provide Material Safety Data Sheets (MSDS) for our products, and that they are available electronically on our web site at <http://www.ExpressionPathology.com>, or in paper copy by calling our Customer Service Tech line at 800-955-6288, and that you are willing and able to access MSDS by these means. You also agree to inform your employees of the risks, if any, involved in using or handling the goods and to train and equip them to handle the goods safely.

10.6 You acknowledge that products received from us are subject to U.S. export control laws and regulations. You represent and warrant to us that you will not, directly or indirectly, (1) sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from us to any destination, entity, or person prohibited by the laws or regulations of the United States, or (2) use the product for any use prohibited by the laws or regulations of the United States and/or your local jurisdiction, without obtaining prior authorization from the competent government authorities as required by those laws and regulations

11. **Indemnity:** You shall, at your own expense, indemnify us, defend us and hold us harmless from and against any and all losses, damages and expenses (including reasonable attorneys' fees and other costs of defending any action) that we may incur as a result of any claim of negligence, breach of implied warranty, strict liability in tort, or other theory of law, by you, your officers, agents or employees, your successors and assigns, and your customers, whether direct or indirect, in connection with the use or resale of any goods sold pursuant hereto either as a standalone product or a component part or raw material of another product, or by reason of your breach of or failure to perform any of your obligations hereunder, except to the extent provided in Condition 9.2 above or caused by a breach by us of the express warranty set forth in Condition 7 herein. You shall notify us promptly of any incident involving goods sold pursuant hereto resulting in personal injury or damage to property, and you shall fully cooperate with us in the investigation of such incident and provide us with all related statements, reports and tests available to you.

12. **Technical Assistance:** Unless otherwise agreed, all technical assistance and information we provide to you regarding the goods will be provided gratis, and you assume sole responsibility for results obtained in reliance thereon. We make no warranty regarding such technical assistance or information.

13. **Miscellaneous:** The Contract shall be governed by and construed in accordance with the laws of the State of Maryland, without giving effect to the principles of conflicts of laws. Our exercise of any option, or failure to exercise any rights hereunder shall not constitute a waiver of our rights to damages for breach of contract and shall not constitute a waiver of any subsequent failure, delay, or breach by you. We may assign our rights and/or obligations under the Contract to any person in whole or in part.

For questions regarding the Terms and Conditions please contact

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