

LIFESPIN GMBH - Terms and Conditions

SELLER AND BUYER AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS THAT ACCOMPANY THE PURCHASE ORDER, AND UNLESS (1) SUPERSEDED BY A WRITTEN CONTRACT ALREADY IN FORCE OR (2) MODIFIED IN WRITING BY BUYER AS PERMITTED UNDER SECTION 12 BELOW, THESE TERMS AND CONDITIONS SHALL GOVERN THE TRANSACTION, NOTWITHSTANDING ANY CONFLICTING TERM OR CONDITION OF SELLER'S ACKNOWLEDGMENT OR ANY OTHER DOCUMENT OR COMMUNICATION TO THE CONTRARY.

1. DEFINITIONS

(a) "Buyer" refers to the business, firm, partnership, company or other business entity or person(s) listed on the face side of this Purchase Order.

(b) "FDA" means U.S. Food and Drug Administration.

(c) "Permitted Uses" means the field of use and/or application of the Products (or specific Products or classes of Products) by end-users, as specified on Product labels or inserts affixed to or accompanying the Products, subject to any restrictions or limitations on usage set forth therein, including but not limited to Section 6 of these Terms and Conditions.

(d) "Products" means services, test results and other data furnished to Buyer as described in the Purchase order and any labeling that accompanies the Products.

(e) "Seller" means LIFESPIN GMBH.

(f) "Third Party Licenses" means rights or licenses of Buyer under contractual agreements between Buyer and one or more third parties.

(g) "This Agreement" also means the Terms and Conditions

2. ACCEPTANCE OF PURCHASE ORDER

By completing and delivering this Purchase Order to Seller, Buyer agrees to the terms and conditions hereof. Seller reserves the right to reject any Purchase Order for any reason, including but not limited to Buyer's credit history, product availability, etc. Seller shall not be deemed to have accepted this Purchase Order, or to have any obligations hereunder, unless and until (a) Seller delivers written acknowledgement of acceptance to Buyer or (b) Seller delivers Products to Buyer, whichever occurs first.

3. SHIPPING AND INSURANCE

Seller shall deliver the Products to a common carrier for shipment and delivery, in accordance with Seller's ordinary packaging, shipping and insurance practices, to the address designated by Buyer ("Delivery Point"). Buyer shall bear all freight, insurance and other shipping expenses to Delivery Point, unless otherwise agreed by

Seller in a written quotation delivered to Buyer within thirty (30) days prior to the date hereof. Seller may ship in one or more lots, at Seller's sole election, in which case each lot shall be deemed a separate sale, and Seller shall not be liable for any failure or delay in shipping. Seller shall have the right, in its reasonable judgment, to apportion fairly among its various customers in such manner as Seller deems equitable, the Products then available for delivery. Any proceeds of insurance on the Products shall be paid to Seller and applied against any loss or damage to the Products.

4. TITLE AND RISK OF LOSS

Effective as of Seller's receipt of the Purchase Price and subject to the Terms and Conditions herein, Seller shall, and hereby does, sell, transfer and assign to Buyer, free and clear of any liens or encumbrances of any kind or nature created by or through Seller, good and marketable title in and to the Products. Seller shall retain all risks of loss or damage to the Products until tender of delivery to Buyer at Delivery Point. From and after the time of tender of delivery of the Products at the Delivery Point,

(a) Buyer shall store Products in accordance with Seller's storage and handling instructions delivered with the Products (or, absent such instructions, in accordance with industry customs and standards), including all temperature and climate control standards, and (b) Buyer shall be and is responsible for all risk of loss or destruction of or damage to the Products and no such loss or damage shall relieve Buyer from its payment obligations under these Terms and Conditions.

5. ACCEPTANCE AND REJECTION

Buyer shall inspect the Products upon delivery and shall accept or reject the Products no later than the close of business on the fifth (5th) full business day following delivery. The Products shall be deemed accepted if not rejected in writing received by Seller within the stated time period or, if earlier, upon Buyer's written acceptance. Any claims for defective, damaged or missing Products, or to return Products based on Permitted Use limitations, must be reported to Seller in writing within the stated time period and Buyer must promptly return rejected Products to Seller C.O.D. accompanied by a valid

return authorization number obtained from Seller. Seller may refuse any Product not timely rejected or sought to be returned without a valid return authorization number. For any valid claim timely made, at Seller's option, Seller may elect to repair or to replace the Product with a comparable Product or to refund the Purchase Price of the Product. These are Buyer's sole and exclusive remedies for defective, damaged or missing Product(s).

6. PERMITTED USES: RESEARCH USE ONLY

PRODUCTS ARE INTENDED AND PERMITTED SOLELY FOR RESEARCH USE ONLY. PRODUCTS ARE NOT INTENDED OR PERMITTED FOR USE IN DIAGNOSIS, PREVENTION, TREATMENT, MITIGATION, OR CURE OF ANY DISEASE OR OTHER HEALTH CONDITIONS. PRODUCTS HAVE NOT BEEN ASSESSED, APPROVED, OR AUTHORIZED FOR ANY USE BY FDA OR ANY OTHER

REGULATORY BODY. Products must be used by Buyer in compliance with all applicable laws and government regulations and obtain all necessary approvals, authorizations, and permission needed. Buyer represents and warrants that their particular use of products will not violate any law or regulation.

7. PURCHASE PRICE

In exchange for the Products, Buyer shall pay to Seller the communicated Purchase Price hereof, plus applicable sales and use taxes, value added taxes or similar taxes or assessments, if any, and shipping and insurance costs to the extent of Buyer's responsibility under Section 3 above. The Purchase Price shall be due and payable no later than thirty (30) calendar days after the date of Seller's invoice. Seller reserves the right to require other payment terms, including without limitation, payment in advance and/or letters of credit. All foreign shipments require prepayment prior to shipping, unless otherwise specified by the Company. Buyer is not entitled to abate or reduce such payments, or to offset any amounts or charges against the amounts due to Seller under this Agreement. Payments are deemed made by Buyer when received by Seller. Interest shall accrue on any unpaid balances due to Seller at a rate of 1.5% per month (or the maximum legal interest rate allowed by applicable law, if less) from and after the due date.

8. INDEMNIFICATION

Seller shall indemnify, defend and hold Buyer harmless from and against any claims, demands, causes of action or liability asserted by any third party based upon a claim that the sale or use of Products for Permitted Uses infringes or misappropriates the patent, trademark or other intellectual property rights of such third party. Buyer shall indemnify, defend and hold Seller harmless from and against any claims, demands, causes of action or liability asserted by any third party and arising from or related to (a) the use, possession or operation of the Products, (b) the conduct by Buyer of its business and operations, and (c) any breach of any covenant or any representation or warranty made by Buyer in this Agreement.

9. LIMITATION OF LIABILITY

Under no circumstance shall Seller have any liability to Buyer, Buyer's officers, directors, owners, agents, employees, Buyers or any third parties for any incidental, indirect, special or consequential damages arising out of or related to (a) the use, possession or operation of the Products, or (b) the conduct by Buyer of its business and operations, or for any damages based on strict or absolute tort liability, negligence or other theory of liability (except to the extent of contract liability to Buyer arising from a Seller default, if any, under this Agreement), regardless of whether Seller is advised or has knowledge of the possibility of such damages. Notwithstanding anything to the contrary in this Agreement, Seller's liability under this Agreement, if any, to Buyer or its employees, agents, Buyers or invitees, or any third party(ies), shall be, and hereby is, expressly limited to the Purchase Price paid by Buyer and received by Seller in connection with the specific Product(s) which are the proximate cause of any such liability.

10. EXPORT CONTROLS

Buyer and Seller shall comply with, and Seller's duty to export, ship or deliver Products to Buyer is subject to, applicable laws and regulations including, without limitation, the Export Administration Act of 1979, the Export Administration Regulations issued by the United States Department of Commerce, and the International Traffic in Arms Regulations (ITAR) issued by the United States Department of State.

11. LIMITED WARRANTY

(a) With respect to Products designed, synthesized and/or manufactured by Seller, Seller warrants that it will make commercially reasonable efforts, consistent with the standard of care then prevailing in its industry in the state in which Seller

maintains its principal manufacturing facilities, will meet represented standards of identity and quality consistent with the Permitted Uses.

(b) This limited warranty will apply only to problems reported in writing to the Seller no later than 60 days after delivery of Products to the buyer. Seller has the discretion of providing replacement product or a refund in the event of a breach of the limited warranty.

(c) Replacements under the above limited warranty are warranted to be free from defects in materials or workmanship, except that the defect must appear (i) within 60 days from the date of replacement. Inspection and acceptance of items by Buyer and/or payment therefor shall not relieve Seller of responsibilities hereunder.

12. MISCELLANEOUS PROVISIONS

These Terms and Conditions are final and complete expressions between Buyer and Seller regarding the sale of the Products and other subjects covered hereby. These Terms and Conditions shall be legally binding upon and effective against the parties. No other terms or conditions, regardless of whether written or verbal and regardless of whether set forth in any proposals, negotiations, credit applications, purchase orders, invoices or similar documents or statements between Buyer and Seller are part of these Terms and Conditions, and any prior version(s) of these Terms and Conditions are hereby void and superseded. In case of any discrepancies between the German version (on the website) and the English version of the Terms and Conditions the English version shall prevail. These Terms and Conditions may be modified only by a written instrument dated subsequent to the date hereof and signed by Buyer and [Specified Executive Officer, e.g., President or VP of Marketing].

of the Seller. If any provision of this contract is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others. These Terms and Conditions shall be deemed fully executed and performed in, and shall be governed by and construed in accordance with the laws of Germany. Buyer hereby irrevocably submits generally and unconditionally to the jurisdiction of any court located in Germany, and Buyer and Seller irrevocably waive trial by jury in action or proceeding related to or arising from these Terms and Conditions. The United Nations Convention on the International Sales of Goods shall not apply to the transactions contemplated for these Terms and Conditions. If any action at law or in equity is necessary to enforce or interpret the terms of these Terms and Conditions, venue shall be exclusively vested in the courts of Germany, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.