

TERMS AND CONDITIONS OF SALE

ACCEPTANCE

These Terms and Conditions of Sale (this "Contract") shall govern all orders for the purchase of products from StemCulture Inc. or its affiliates (hereinafter referred to as "STEMCULTURE", "we" or "our"). The purchaser (hereinafter referred to as "Purchaser", "you", or "your") will be deemed to have assented to this Contract by ordering products. No variation of these terms and conditions will be binding upon STEMCULTURE unless agreed to in writing and signed by an authorized representative of STEMCULTURE.

PAYMENT TERMS

All invoices are issued at time of shipment and are payable within 30 days thereafter, unless otherwise required by STEMCULTURE. Payments should be made to STEMCULTURE, Accounts Receivable, 1 Discovery Drive, Rensselaer NY, 12144. Please contact us for bank account details when submitting remittance by bank wire transfer.

Any products and services tax, sales tax, use tax, manufacturers tax, occupation tax, excise tax, value added tax, duty, customs, inspection or testing fee, or any other tax, fee or charge of any nature imposed by any government authority or measured by the transaction between STEMCULTURE and Purchaser will be paid by Purchaser in addition to the purchase price. If STEMCULTURE is required to pay any such tax, fee or charge, then Purchaser will reimburse STEMCULTURE immediately upon receiving a request in writing from STEMCULTURE.

If the Purchaser fails to make any payment when due under this Contract, then the Purchaser will pay to STEMCULTURE interest on the amount unpaid from the date when payment is due until payment is made at the rate of 1.5% per month compounded monthly (equivalent to 19.56% per annum), calculated and payable monthly, as well after as before any judgment.

PRICES

Please contact STEMCULTURE or your local distributor for a current price list. Prices are subject to change without notice.

SHIPPING & DELIVERY

Orders will be shipped the day after the order is received. To avoid problems arising from unattended deliveries, we routinely schedule frozen/refrigerated product shipping on Monday through Wednesday.

All shipments are FOB origin, freight pre-paid and added to the invoice. Title to items sold passes to the purchaser upon delivery of items to the carrier.

Frozen and refrigerated products are routinely shipped via Federal Express

Standard Overnight and dry products are usually shipped Federal Express Ground, unless otherwise pre-arranged.

Frozen products are packed in insulated cartons and shipped on dry ice. A dry ice charge of \$25 per carton will be added to the invoice. Refrigerated products are packed, insulated and shipped on ice packs. Dry products are shipped at room temperature.

All international orders require payment prior to product shipment. Payment must be in U.S. funds, drawn on a U.S. bank, or by direct wire transfer.

Purchaser assumes all responsibility for the importation of the product, including the obtaining of all required permits, licenses or certificates. STEMCULTURE shall in no event be liable for the failure of any government to issue such permits, licenses or certificates.

Risk of loss or damage to the products and/or deliverables of services, as well as the obligation to bear any costs relating thereto, shall pass to the Purchaser upon STEMCULTURE's making delivery to a carrier at STEMCULTURE's facility in ~~good condition~~. Title to the products shall pass from STEMCULTURE to Purchaser when STEMCULTURE has been paid the purchase price in full.

CLAIMS & RETURNS

Product returns will not be accepted by STEMCULTURE without prior written authorization. Request to return products must be made within seven days of receipt. STEMCULTURE reserves the right to test a sample of the product prior to authorizing the return of the remaining product and to deny return if, in the opinion of STEMCULTURE, the product complaint is a result of inappropriate usage or handling rather than a failure of the product to meet specifications as outlined on our Product Information Sheets, when used under normal conditions in your laboratory. Return of custom products will not be authorized if such product meets the specifications on the custom order form. In case of a purchasing error or change in the order after the product has been shipped, a 25% restocking fee will be charged. If STEMCULTURE makes a shipping error, either a replacement product will be shipped at no charge or the customer's account will be credited.

AUTHORIZED USES

Products are sold for laboratory Research Use Only, Not For Diagnostic or Therapeutic Use, and are not to be administered to humans.

NO RESALE

The Purchaser shall not make products acquired from STEMCULTURE or any portion of them, including as a component of another product, available for resale or alter or remove the product label and the STEMCULTURE mark of origin without the express written permission of STEMCULTURE.

CATALOGUES; PRICE LISTS AND ADVERTISEMENTS

Any descriptions or illustrations contained in STEM CULTURE's catalogues, price lists and advertisements or otherwise communicated to Purchaser are intended merely to present a general idea of the products so described. Nothing contained in any of them will form any part of this Contract.

WARRANTY

All products supplied by STEM CULTURE are warranted to meet the specifications provided on our Product Information Sheets when used under normal conditions in your laboratory for a period expiring after the expiry date specified on the packaging of the product. Should any product fail to perform as specified during the warranty period (the "Warranty Period"), STEM CULTURE will credit the purchase price to the customer's account or replace the product free of charge. This warranty is exclusive and limits our liability to the replacement of the product or, at our option, full credit of the original purchase price. ANY PRODUCT NOT COVERED BY AN EXPRESS WRITTEN WARRANTY IS SOLD "AS IS", WITHOUT REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED. This warranty will not apply to product that fails to perform its specific function due to misuse, improper storage, use beyond expiry date or accidental damage to the product.

DISCLAIMER

THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED BY STEM CULTURE IN CONNECTION WITH THE PRODUCT AND IS, WHERE PERMITTED BY LAW, IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS, GUARANTEES AND REPRESENTATIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN CONNECTION WITH THE PRODUCT, HOWEVER ARISING (WHETHER BY CONTRACT, TORT, NEGLIGENCE, PRINCIPLES OF MANUFACTURER'S LIABILITY, OPERATION OF LAW, CONDUCT, STATEMENT OR OTHERWISE), INCLUDING, WITHOUT RESTRICTION, ANY IMPLIED WARRANTY OR CONDITION OF QUALITY, MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. ANY IMPLIED WARRANTY OR CONDITION OF QUALITY, MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, TO THE EXTENT THAT IT CANNOT BE EXCLUDED UNDER APPLICABLE LAW, WILL BE LIMITED IN DURATION TO THE WARRANTY PERIOD STIPULATED UNDER THE ABOVE LIMITED WARRANTY.

IN NO EVENT WILL STEM CULTURE BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES, COSTS OR EXPENSES, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, ANY ECONOMIC LOSSES OF ANY KIND, ANY LOSS OR DAMAGE TO PROPERTY, ANY PERSONAL INJURY, ANY DAMAGE OR INJURY ARISING FROM THE IMPROPER STORAGE, USE BEYOND EXPIRATION

DATE, ACCIDENTAL DAMAGE TO THE PRODUCT OR ANY COSTS ARISING FROM THE USE, THE RESULTS OF USE, OR THE INABILITY TO USE, THE PRODUCT, HOWEVER ARISING (WHETHER IN CONTRACT, TORT, NEGLIGENCE PRINCIPLES OF MANUFACTURER'S LIABILITY, OPERATION OF LAW, CONDUCT, STATEMENT OR OTHERWISE).

INDEMNITY

Purchaser shall, at your own expense, indemnify, defend and hold STEM CULTURE, its directors, officers, employees, agents, successors and assigns ("STEM CULTURE Indemnitees"), harmless from and against any and all losses, costs, damages and expenses (including, reasonable attorneys' fees and other costs of defending any action) (collectively, "Losses") that we may incur in any way arising out of or relating to (a) any breach by you of your obligations under this Contract, (b) any use of the products not in compliance with the uses stated in the Product Information Sheets, (c) any failure of you to comply with good laboratory practice, laws, regulations, guidelines or decisions in the handling or use of the products, (d) any violation or infringement of any patent, trade secret, copyright, trademark, industrial design, licenses, or other intellectual or proprietary rights ("Intellectual Property Rights") of a third party by you in the handling or use of the products, or (e) any other use or misuse of the products by you including without limitation any claim of product liability or any similar claim relating to the quality of the products or an alleged defect or deficiency in the products.

INTELLECTUAL PROPERTY RIGHTS

You acknowledge that all intellectual property rights relating to our products and services, as between you and us, are solely and exclusively owned by us. Our sale of products to you only grants you a limited, non-transferable right, for only you to use the quantity of the products that you have bought from us in accordance with the Contract. When we sell products to you, we do not grant you a license to our intellectual property, whether express, implied, by estoppel or otherwise, or grant you the right to make or have made any product or to use the product beyond the scope of the Supplemental Terms. Nothing in the Contract limits our ability to enforce our intellectual property rights.

In relation to processes, methods or related synthesis of a custom product, or otherwise in connection with the design or manufacture of a custom product, any inventions (patentable or otherwise), discoveries, improvements, data, know-how or other results that are conceived, developed, discovered, reduced to practice, or generated by or for us, or jointly by us and you, will be and will remain our sole and exclusive intellectual property, and you transfer and assign all of your right, title and interest in and to any such joint intellectual property to us and will assist us, at our request and at our expense, in securing and recording our rights in such intellectual property.

Intellectual Property Infringement Avoidance

12.3 Avoidance. We wish to avoid claims of intellectual property infringement. If we believe a product may be subject to a claim for intellectual property infringement, then you will allow us, at our option and expense, to either: (a) secure for you the right to continue using the product; (b) substitute the product with another suitable product with similar functionality; or (c) require you to return the product to us for a refund of the purchase price you paid. In the case of instruments, we will deduct a reasonable amount for the instrument's use, damage and obsolescence.

ENTIRE AGREEMENT; INCONSISTENT DOCUMENTS

This Contract and any invoice, statement of work, or the like (if any) issued by STEMCULTURE to which this Contract is attached and/or which includes this Contract constitutes the complete and entire statement of all terms, conditions and representations of the agreement between STEMCULTURE and Purchaser with respect to its subject matter. Any proposal for additional or different terms from those in this Contract or documents as aforesaid or any attempt by Purchaser to vary in any degree any of the terms of this Contract or any other document is hereby objected to and rejected, but such proposals shall not operate as a rejection of this Contract, which shall be deemed irrevocably accepted by Purchaser without said additional or different terms, unless STEMCULTURE specifically agrees to same in writing. Any waiver, amendment or other modification of this Agreement will not be effective unless in writing and signed by the party against whom enforcement is sought.

INVALIDITY OF PARTICULAR PROVISION

If any provision of this Contract or any part of any provision (in this section called the "Offending Provision") is declared or becomes unenforceable, invalid or illegal for any reason whatsoever including, without limiting the generality of the foregoing, a decision by any competent courts, legislation, statutes, bylaws or regulations or any other requirements having the force of law, then the remainder of this Contract will remain in full force and effect as if this Contract had been executed without the Offending Provision.

ENTIRE CONTRACT

The Contract represents the entire agreement between you and us regarding the products and services we provide to you under it, and supersedes and replaces any previous agreements between us (whether written or oral). Any of your additional or different terms and conditions that you may provide to us, are material alternations and we reject them. Our offer to sell products and perform services is expressly limited to the terms of the Contract. If you submit a purchase order, or other document for the purchase of products or services, whether or not in response to a quotation, you are deemed to have accepted and agree to the Contract, to the exclusion of (a) any other terms and conditions appearing in or referenced in your purchase order or other documents you give to us, and (b) any previous course of dealing, course of performance, trade

usage or co-existent agreement. The Contract cannot be amended or modified unless you and we agree in writing.

We reserve the right to change these Terms at any time. Any changes made to these Terms will not apply to the Contract between us for any order we receive before the changes are made. The most recent revision date can be found at the end of these Terms

MISCELLANEOUS

We will not be responsible or liable for failing to perform our obligations under the Contract to the extent caused by circumstances beyond our reasonable control. In certain situations, we may use our reasonable judgment and apportion products then available for delivery fairly among our customers. Our failure to exercise any rights under the Contract is not a waiver of our rights to damages for your breach of contract and is not a waiver of any subsequent breach. If any provision or part of the Contract is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the Contract. No person other than you or us will have any rights under the Contract. Headings are for convenience only and shall not be used in the interpretation of these Terms.

You agree to keep confidential any non-public technical information, commercial information (including prices, without limitation) or instructions (including any gene sequences, oligo types or sequences) received from us as a result of discussions, negotiations and other communications between us in relation to our products or services.

GOVERNING LAW

The Contract and performance under it will be governed by the laws of the State of New York, USA, without regard to provision on the conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

JURISDICTION AND VENUE

Any disputes arising under this Contract shall be resolved in the state or federal courts in Albany, New York and such courts shall have jurisdiction over such disputes. All objections to jurisdiction and venue in Albany, New York are hereby waived.