

■ Terms and Conditions of Sale

1. Acceptance

Acceptance of Buyer's order by Quality Biological, Inc. ("Seller") is expressly conditioned on Buyer's assent to the terms and conditions contained herein, whether additional to or different from those contained in Buyer's purchase order, or any other form or document previously or hereafter supplied by Buyer to Seller. Buyer will be deemed to have assented to these terms and conditions unless Seller receives written notice of objection prior to any delivery or other performance of Buyer's order.

Any order submitted by Buyer is not binding on Seller to the extent it is inconsistent with any agreement previously reached by the parties.

2. Changes and Cancellations

No change by Seller of any term or condition of this contract or any of Seller's rights or remedies shall be binding on Seller, nor shall any order be canceled or changed by Buyer, unless Seller's authorized officer expressly consents in writing.

3. Delivery

Unless otherwise stated, all sales are F.O.B. Seller's shipping point. Seller is not obligated to purchase insurance for products in transit, but agrees, if requested, to do so on behalf of Buyer. Buyer agrees to pay the cost of such insurance in addition to the prices quoted or invoiced. Seller reserves the right to make delivery in installments, each to be separately invoiced and paid when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries.

Buyer shall inspect products immediately upon receipt, notify Seller in writing of any claims for shortages, defects or damages and hold the damaged or defective products for Seller's written instructions concerning disposition. If Buyer shall fail to so notify Seller within 5 days after the products have been received by Buyer, such products shall conclusively be deemed to conform to the terms, conditions and specifications of this contract and to have been irrevocably accepted by Buyer. Seller shall have the right to cure the tender of damaged or defective products by substituting a conforming tender within a reasonable time.

Seller shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise hereunder due to any cause beyond Seller's reasonable control, including, without limitation, unsuccessful chemical reactions, act of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Seller's business, fire, explosion, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, lightning, flood, windstorm or other acts of God, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies or power at current prices.

If Seller is unable for any of the reasons specified above to supply the total demands for products specified in Buyer's order, Seller may allocate its available supply among any or all buyers on such basis as Seller may deem commercially fair and practical, without liability for any failure of performance which may result therefrom.

4. Price and Payment

Terms of sale are net 30 days of the date of invoice, unless otherwise stated. Delinquent accounts will be charged interest at the rate of 1.5% per month. Product prices are subject to change any time without notice and are the Seller's prices in effect at the time an order is received. If in Seller's sole discretion the financial condition of Buyer does not justify the terms of payment specified above, Seller may demand full or partial payment in advance before proceeding with the contract. If Buyer defaults in any payment when due, under this or any other order, Seller, at its option without prejudice to its other lawful remedies, may defer delivery or cancel this contract.

Buyer shall pay Seller's reasonable costs of collection of money due and unpaid including reasonable attorney's fees.

5. Taxes and Other Charges

Any use tax, sales tax, excise tax, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Seller and Buyer, except for any tax based upon Seller's net income, shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore; or, in lieu of such payment, Buyer shall provide Seller at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

6. Warranties

Seller warrants at the time of delivery that its products meet the specifications in the literature, if any, furnished to Buyer or as published in its catalog, whichever is more current. Buyer's misuse of the products in any manner or failure to use the products in accordance with instructions, if any, furnished by Seller shall void the warranty made in connection with this sale. THIS WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, OR ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM OR USAGE IN THE TRADE. INCLUDING ANY WARRANTY OF TITLE, MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. Warranties (continued)

Seller will, in its sole discretion, either replace or extend full credit on the purchase price of any product that breaches this warranty, provided that the Buyer (1) returns the product and (2) notified Seller of the breach of warranty in writing within 30 days after the date of delivery of the products. All claims for breach of warranty shall be deemed waived in the event Buyer fails to notify Seller within 30 days after the date of delivery.

7. Limitation of Liability

Seller's maximum liability to Buyer for any claim whatsoever, regardless of the form of action, whether in contract or tort, including negligence, shall not exceed the invoice price of the particular product with respect to which a claim is made. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, CLAIM OR DEMAND AGAINST IT BY ANY OTHER PARTY, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES.

8. Buyer's Use of Products

Seller's products are intended primarily for laboratory research purposes and, unless otherwise indicated on the front of Seller's invoice or on product labels, are not to be used for any other purposes, including but not limited to, in vitro diagnostic purposes, in foods, drugs or cosmetics for humans or animals or for commercial purposes. Buyer acknowledges that the products have not been tested by Seller for safety and efficacy in food, drug, device, cosmetic, commercial or any other use, unless otherwise stated in Seller's literature furnished to Buyer. Buyer expressly represents and warrants to Seller that Buyer will properly test, use, manufacture and market any products purchased from Seller and any final articles made from them in accordance with the practices of a reasonable man who is an expert in the field and in strict compliance with all applicable federal and state food, drug, device, and cosmetic and other relevant laws and regulations, now and hereinafter enacted. Buyer further warrants to Seller that any final articles manufactured from Seller's products 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, 506, or 612 of the Act, be introduced into interstate commerce.

Buyer realizes that, since Seller's products are intended primarily for research purposes, they may not be on the Toxic Substances Control Act (TSCA) inventory. Buyer assumes responsibility to assure that the products purchased from Seller are approved for use under TSCA, if applicable.

Buyer has the responsibility to verify the hazards and to conduct any further research necessary to determine the hazards involved in using products purchased from Seller. Buyer also has the duty to warn Buyer's customers and any auxiliary personnel (such as freight handlers, etc.) of any risks involved in using or handling the products. Buyer agrees to comply with

instructions, if any, furnished by Seller relating to the use of the products and not misuse the Products in any manner. If the products purchased from Seller are to be repackaged, relabeled or used as starting material or components of other products, Buyer will verify Seller's assay of the products. No products purchased from Seller shall be considered to be foods, drugs or cosmetics; nor, except if labeled "For in Vitro Diagnostic Use," to be devices.

Buyer agrees to indemnify and hold Seller harmless from and against any and all losses, damages and expenses (including attorney's fees and other costs of defending any action) that Seller may sustain or incur as a result of any claim of negligence, breach of implied warranty, strict liability in tort or other theory of law, by Buyer, its officers, agents or employees, its successors and assigns, and its customers, whether direct or indirect, in connection with the use of Seller's products, or by reason of Buyer's failure to perform the obligations contained herein. Buyer shall notify Seller within 15 days of Buyer's receipt of knowledge of any accident involving Seller's products resulting in personal injury or damage to property, and Buyer shall fully cooperate with Seller in the investigation and determination of the cause of such accident and shall make available to Seller all such statements, reports and tests made by Buyer or made available to Seller all such statements, reports and tests made by Buyer or made available to Buyer by others. The furnishing of such information to Seller and any investigation by Seller shall not constitute an assumption of any liability by Seller.

9. Patent Disclaimer

Seller does not warrant that the use or sale of the products delivered hereunder will not infringe the claim of any patents covering this product itself or the use thereof in combination with other products or in the operation of any process. The sale of products hereunder is not intended as an inducement to infringe nor shall it be construed as recommending the infringement of any patent, extending any license, express or implied, or assuming any liability under any issued or pending patent.

10. Returns

Buyer may not return any products unless prior written authorization and shipping instructions have been obtained from Seller.

11. Miscellaneous

(a) Applicable Law: The terms and conditions of this contract shall be governed by the laws of the State of Maryland.

(b) Severability: Any invalidity, in whole or in part, of any provision of this contract shall not affect the validity of any other of its provisions.

(c) Waiver: No term or provision of this contract shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. ■