

## PURCHASE ORDER TERMS AND CONDITIONS

1. **Acceptance.** This purchase order ("Order") is for the purchase of the goods and/or services described on the front side hereof and constitutes the offer of Buyer (as identified on the front side hereof) to Seller (as identified on the front side hereof). Acknowledgement of this Order by Seller shall constitute acceptance of this Order and the terms and conditions herein set forth. In the absence of acknowledgement, delivery of any of the goods to Buyer or performance of any of the services by Seller shall constitute a contract on, and Seller's acceptance of, the terms and conditions hereof. Any acknowledgement or other document of Seller containing any different or additional terms or conditions from those set forth herein are hereby expressly rejected by Buyer, except only to the extent otherwise expressly agreed to in a writing executed by Buyer.
2. **Risk of Loss.** Risk of loss shall be upon Seller until the goods are delivered to Buyer's requested destination, unless otherwise noted on the purchase order.
3. **Buyer's Rejection.** Buyer may reject and return, at Seller's cost and expense, any goods and/or services which do not meet Buyer's specifications or requirements as to quality or quantity. Buyer's time to inspect any goods or services and to give appropriate notice under the Uniform Commercial Code is hereby lengthened by sixty (60) days. No goods or services are to be tendered by Seller after the expiration of the specified date for delivery or performance without Buyer's written consent.
4. **Price.** If omitted from this Order, the price shall be the lowest prevailing market price, but never more than Seller's last quotation. Buyer is not obligated to pay for any boxing, crating or cartage charges, nor to purchase any dies, tools, molds, engravings, drawings, or similar items unless specifically agreed to by Buyer in writing.
5. **Taxes.** The price specified herein includes all applicable federal, state and local taxes in effect on the date of this Order except as specified on the front side of this Order.
6. **Confidentiality.** Seller agrees that all information, processes, and other data received from Buyer or obtained from access to Buyer's facilities or personnel or representatives ("Confidential Information") are and shall remain the property of Buyer and shall not be used (except solely for the performance of this Order) or disclosed to any third party, except that Confidential Information shall not include information which (a) is public knowledge, (b) is lawfully acquired by Seller from third parties, or (c) Seller can demonstrate from its written records was already in Seller's possession at the time of initial receipt from Buyer. Seller shall return all documents and materials furnished by Buyer to Seller upon performance of this Order or otherwise at Buyer's request. If any Confidential Information is required to be disclosed by Seller pursuant to any judicial order, law, or governmental agency, Seller shall give Buyer immediate notice thereof so that Buyer may seek a protective order, and in any event, Seller shall disclose only the minimum Confidential Information required in order to comply with any such order, law, or agency. Seller shall not use Buyer's name without prior written permission from Buyer.
7. **Warranty.** Seller expressly warrants that all goods shall be merchantable within the meaning of Article 2-314(2) of the Uniform Commercial Code. In addition, all goods and all services shall conform to Buyer's specifications and other descriptions and shall be free from defect in material, design and workmanship and shall be suitable for the

intended use. This warranty shall survive any inspection, delivery, acceptance, and payment of or for the goods or services. Services shall be performed in accordance with the highest standards prevalent in Seller's industry, and Seller warrants that it possesses all licenses, qualifications, and registrations necessary to perform such services and to deliver such goods.

8. **Insurance.** If this Order is for or includes work or services to be performed on Buyer's premises, Seller shall, at its sole cost and expense, before commencement of any work or services, procure and maintain throughout the execution of this Order the following types and minimum limits of insurance (or such higher limits as Buyer shall reasonably request):

Worker's Compensation in accordance with the statutory requirements of the state or jurisdiction where the work is to be performed; Employers Liability insurance with limits of \$500,000 per occurrence; General Liability insurance, including contractual liability and products/completed operations coverage, with limits of \$1,000,000 per occurrence; and Automobile Liability insurance with limits of \$1,000,000 per occurrence.

Upon Buyer's request, Seller shall provide an original certificate of insurance to Buyer evidencing such insurance, and such liability insurance shall be endorsed to name Buyer as an additional insured.

9. **Changes.** Buyer may, at any time, make changes in the quantity or specifications of the goods or services to be delivered or performed or may change any other term or condition of this Order by written notice to Seller. Any claim for an adjustment to the prices, time of performance, or other term or condition must be made by Seller in writing within fifteen (15) days from the date of receipt of such change.

10. **Compliance with Laws.** Seller certifies that it is, and all goods and services provided to Buyer will be, in compliance with all federal, state and local laws, rules, and regulations. Without limiting the foregoing, Seller specifically guarantees that, to the extent applicable, the goods are in compliance with: (a) §§5 and 12 of the Federal Trade Commission Act; (b) the Fair Packaging and Labeling Act; (c) the provisions of the federal Food, Drug, and Cosmetic Act concerning adulterated or misbranded goods and §§404 or 505 of that Act concerning shipment of substances or any similar foreign, state or local laws; (d) the Federal Insecticide, Fungicide, and Rodenticide Act; (e) applicable laws regarding misbranded or banned hazardous substances; (f) the Fair Labor Standards Act; (g) all applicable federal equal employment opportunity requirements, including, without limitation, any such requirements set forth in the certification of compliance executed by Seller at Buyer's request, the terms of which are incorporated herein by reference; (h) the Occupational Safety and Health Act; (i) the Immigration Reform and Control Act; (j) the California Safe Drinking Water and Toxic Enforcement Act of 1986; (k) the substantive equivalent of any of the foregoing in any state or foreign jurisdiction; and (l) all rules, regulations, and policies under each of the foregoing.

11. **Assignment.** Seller shall not assign this Order or any interest herein, including performance, or any monies due hereunder, without Buyer's prior written consent.

12. **Termination.** This Order, any addenda and/or amendments hereto, and/or any services to be performed hereunder or goods to be delivered hereunder shall be immediately terminable, with or without cause, at any time by Buyer upon written notice to Seller. Upon the delivery of such

notice by Buyer, Seller shall immediately cease work on such services or goods, deliver to Buyer all work in progress at Buyer's request, and return all Confidential Information with respect thereto. To the extent this Order is terminated for cause, Buyer shall have no liability to Seller except to the extent that Seller submits an invoice documenting the costs of goods and services actually delivered and accepted by Buyer. Any claim by Seller for such costs must be submitted to Buyer within thirty (30) days from the effective date of termination. Any termination by Buyer shall be without prejudice to any claims or rights of Buyer against Seller.

13. **Force Majeure.** Neither party shall be liable for delays or failure of performance caused by events beyond its control, provided that the delayed party gives prompt written notice to the other party. In the event of any delay in the performance by Seller of this Order beyond any date specified by Buyer, Buyer may cancel this Order or, in Buyer's discretion, any part thereof, without liability of Buyer as to the cancelled portion.

14. **Insolvency.** Seller shall notify Buyer in the event (a) Seller becomes insolvent, files a petition for bankruptcy, or makes an assignment for the benefit of creditors or (b) a receiver or trustee is appointed for Seller or any of Seller's business or assets. Upon and following the occurrence of any such event, Buyer may cancel this Order or, in Buyer's discretion, any part thereof, without liability of Buyer as to the cancelled portion.

15. **Patents and Copyrights.** Seller warrants that all goods and services furnished under this Order do not and will not infringe any patent, trademark, trade name, copyright, or other proprietary right of any third party, and agrees to indemnify, defend (with legal counsel satisfactory to Buyer), and hold harmless Buyer and Buyer's affiliates and any and all vendees of Buyer from and against all claims, liability, damages, losses, costs, and expenses (including legal fees and disbursements) incurred or suffered by Buyer or Buyer's affiliates or vendees by reason of such infringement. Unless specifically agreed to the contrary, any copyright in any material prepared by Seller in performance of this Order shall be the sole property of Buyer and is hereby assigned to Buyer. This paragraph shall survive any delivery or payment under or termination of this Order.

16. **General.** All warranties shall be construed as conditions as well as warranties. No waiver of a breach of any term of this Order shall constitute a waiver of any other breach or provision of this Order.

17. **GMP Good and Services.** If this Order is for Good Manufacturing Practices (GMP) goods or services, the following additional provisions apply. GMP goods are designated by reference to a Buyer's item specification number with the Purchase Order.

a. Seller is prohibited from making changes to: manufacturing site, manufacturing or testing process, or specifications without prior written notification to Buyer at: **FUJIFILM Diosynth Biotechnologies U.S.A., LLC** Vendor Quality, 101 J. Morris Commons Lane, Morrisville, NC 27560.

b. Seller must assure current specifications are on file with and have been approved by Buyer.

c. Seller must notify Buyer of any change to Transmissible Spongiform Encephalopathy/Bovine Spongiform Encephalopathy (TSE/BSE) or animal origin status for any materials or good supplied by sending written notification to Buyer at: **FUJIFILM Diosynth Biotechnologies**

U.S.A., LLC Vendor Quality, and 101 J. Morris Commons Lane, Morrisville, NC 27560.

d. Seller will not subcontract production or services without obtaining prior written approval from Buyer's Vendor Quality department.

e. Seller will periodically complete surveys regarding its quality systems and records. Seller will permit Buyer to periodically audit or to conduct a "for cause" audit of Seller's quality systems and related records at the Seller's site during Seller's normal business hours.

f. Seller warrants that it possesses all licenses, qualifications, and registrations necessary to perform such services and to deliver such goods. Seller certifies that it is, and all goods and services provided to Buyer will be in compliance with all federal, state and local laws, rules, and regulations.

g. Supplier agrees to notify Buyer of any regulatory agency actions, inspections and resulting corrective actions that may have impact on the material purchased by Buyer.

h. The following shall apply to any Supplier of 1) cGMP materials or products that will be used by Buyer in manufacturing; 2) wood pallets; and/or 3) non-cGMP materials or products whereby Buyer has previously notified Supplier to comply; Supplier expressly agrees and represents, warrants and covenants that any shipment to a Buyer site or location using wood pallets shall only be done if the wood pallets meet the following criteria:

- Certified heat treated wood pallets, in accordance with the International Standards for Phytosanitary Measures (ISPM) 15 "Regulation of Wood Packaging Materials in International Trade", developed by the International Plant Protection Convention (IPPC), as amended; provided, however, that nothing herein or therein shall permit the use of any chemical on wood pallets to be supplied to Buyer.
- No additional chemical treatments have been used on such wood pallets, including, but not limited to Methyl Bromide.
- Contain the heat-treatment certification (stamped "HT"), the country of origin two-letter designator, the regional identifier, and a registration number in accordance with ISPM, and such stamp, designator and number will be located on the wood pallets to be supplied to allow Buyer to visually inspect the wood pallet, upon receipt.

18. Signature. This Order is not valid unless signed by Buyer's authorized representative.

19. Indemnification. Seller agrees to indemnify, defend (with legal counsel satisfactory to Buyer), and hold harmless Buyer and Buyer's affiliates and all vendees of Buyer from and against all claims, liability, damages, losses, costs, and expenses (including legal fees and disbursements) arising from or in connection with (a) any actual or alleged defect or deficiency in any goods or services provided under this Order, (b) any performance, act, misconduct, negligent act, or omission of or by Seller or its employees, agents, or subcontractors under or in connection with this Order, (c) any violation by Seller or its employees, agents, or subcontractors of any federal, state, local or foreign law, rule or regulation, or (d) any failure by Seller or its employees, agents, or subcontractors to comply with the terms and conditions of this Order. This paragraph shall survive any delivery or payment under or termination of this Order.

20. Setoffs and Counterclaims. All claims for money due or to become due from Buyer shall be subject to deduction by Buyer for any setoff, claim, or counterclaim against Seller, whether arising out of this Order or any other of Buyer's purchase orders with Seller or otherwise.

21. Conflicts. If any term or provision of this Order conflicts with the terms of a definitive written agreement executed and delivered by Buyer and Seller which covers this Order, then the terms of such definitive agreement to the extent of such conflict shall prevail.

22. Hazardous Chemicals. All products provided by Seller (a) shall be packaged and shipped in compliance with all applicable USDOT regulations, including, without limitation, the hazardous materials regulations, 49 C.F.R. Parts 171-180, (b) shall bear a label which satisfies the requirements of the universal labeling provision of the New Jersey Worker and Community Right-to-Know Act, N.J.S.A. 34:5A-14, and (c) shall bear a label which satisfies the requirements of the OSHA hazard communication standard, 29 C.F.R. § 1910.1200. Seller also shall comply with 29 C.F.R. § 1910.1200(g) regarding material safety data sheets.

23. Independent Contractor. Seller agrees that it is acting as an independent contractor, and that Seller is not, and shall not hold itself out as, an agent of Buyer. Buyer shall not be responsible for any act or omission of Seller or of Seller's employees, agents, subcontractors, or other representatives.

24. Intellectual Property. All concepts, inventions, ideas, patent rights, data, trademarks, and copyrights which are related to or arise out of or in connection with (i) Seller's work product or (ii) any and all services performed by Seller pursuant to this Order, shall be the exclusive property of, and all ownership rights shall vest in, Buyer. Seller agrees to sign all necessary documents and take such other actions as Buyer may reasonably request in order to perfect any and all such rights in Buyer. The parties expressly agree that all works created pursuant to this Order are "Works Made for Hire" as defined in the U.S. Copyright Act and shall vest exclusively in Buyer as author. All other work product, whether copyrightable or not, including, without limitation, any works which may be deemed not to be Works Made For Hire created pursuant to this Order, are hereby assigned to Buyer, including, without limitation, all right, title, and interest in and to the copyright thereof throughout the world, including all renewals and extensions thereof and including the right to make and distribute copies in any media, to translate and the right to make derivative works therefrom. This paragraph shall survive any delivery or payment under or termination of this Order.

25. Recordkeeping. During the performance of this Order and for three (3) years thereafter, Seller shall maintain, in accordance with generally accepted accounting practices, accurate and complete records of all contracts, papers, correspondence, accounts, invoices, and other information relating to the services performed and goods delivered under this Order, and upon prior written notice to Seller, shall permit Buyer or Buyer's representatives to examine, copy, and audit such records during normal business hours.

26. Waiver. No waiver by Buyer of any one or more defaults by Seller shall be effective unless in writing and signed by Buyer, and no effective waiver shall be construed as a waiver of any other or any earlier or later defaults, whether of a like kind or different nature.

27. Seller Rights, Remedies and Damages. SELLER SHALL NOT ASSERT, AND HEREBY IRREVOCABLY WAIVES, ANY CLAIM OR CAUSE OF ACTION IT MAY NOW HAVE OR HEREAFTER

ACQUIRE AGAINST BUYER AND EACH AFFILIATE OF BUYER ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT AND ACTUAL DAMAGES) IN CONNECTION WITH, RELATING TO, OR AS A RESULT OF, THIS ORDER AND THE TRANSACTIONS CONTEMPLATED HEREBY.

28. No Third-Party Beneficiaries. Nothing contained in this Order shall create or be deemed to create a contractual relationship with, or any rights in favor of, any third party.

29. No Oral Change. This Order and any provisions hereof may not be modified, amended, waived, extended, changed, discharged, or terminated orally or by any act or failure to act on the part of Buyer or Seller, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge, or termination is sought.

30. Governing Law and Waiver of Trial by Jury. THIS ORDER AND THE RIGHTS AND OBLIGATIONS OF THE BUYER AND SELLER IN CONNECTION WITH THIS ORDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW JERSEY (WITHOUT GIVING EFFECT TO ITS PRINCIPLES OF CONFLICTS OF LAWS). TO EXPEDITE RESOLUTION OF ANY ACTION, SUIT, OR PROCEEDING WHICH ARISES HEREUNDER, BUYER AND SELLER IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY SUCH ACTION, SUIT, OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT TO WHICH IT MAY BE A PARTY.

31. Jurisdiction. WITH RESPECT TO ANY ACTION, SUIT, OR PROCEEDING RELATING TO THIS ORDER OR ARISING IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, BUYER AND SELLER IRREVOCABLY (A) SUBMIT TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF THE STATE OF NEW JERSEY, (B) AGREE TO FILE AND BRING SUCH ACTION, SUIT, OR PROCEEDING EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY LOCATED IN NEWARK, NEW JERSEY OR IN THE STATE COURTS OF NEW JERSEY, COUNTY OF UNION, (C) WAIVE ANY OBJECTION WHICH IT OR THEY MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY ACTION, SUIT, OR PROCEEDING IN ANY SUCH COURT, (D) WAIVE ANY CLAIM THAT ANY SUCH ACTION, SUIT, OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, AND (E) WAIVE THE RIGHT TO OBJECT THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER THE PARTIES.

32. Time of the Essence. Time is of the essence as to the observance, performance, and fulfillment of Seller's duties, obligations, and responsibilities to Buyer.

33. Entire Agreement. This Order, together with any other document executed by Buyer and Seller concurrently herewith or which otherwise incorporates this document, represents the entire agreement by and between Buyer and Seller with respect to the subject matter hereof and thereof and supersedes all prior communications, negotiations, representations, or agreements, either written or oral, relating to the subject matter hereof or thereof.