

**UPSHER-SMITH LABORATORIES, LLC**  
**PURCHASING TERMS AND CONDITIONS**

1. **AGREEMENT AND ACCEPTANCE.** Except as specifically superseded by a written agreement between the parties, all purchases of products and services by Upsher-Smith Laboratories, LLC (“USL”) are subject to and expressly conditioned upon the terms and conditions (“Terms”) contained herein. These Terms shall apply to any and all purchases made by USL, whether by fax, telephone, mail, electronic mail, EDI, or otherwise. No variation of these Terms are binding upon USL unless agreed to in writing and signed by an officer or other authorized representative of USL. USL reserves the right to amend these Terms at any time without prior notice to seller (“Seller”). Unless otherwise provided herein, Seller’s acknowledgment of these Terms, commencement of any work, shipment of goods, or performance of any services shall constitute acceptance by Seller of these Terms. No terms or conditions stated by Seller in acknowledging or otherwise accepting a request for purchase from USL shall be binding upon USL unless specifically accepted by USL in writing.
  
2. **DELIVERY AND INSPECTION.** USL’s production schedules are based on the agreed upon date of delivery on the face of the purchase contract. Therefore, time is of the essence. If deliveries are not made by the agreed upon time, and absent USL consent to extend the delivery due date, USL reserves the right to cancel the purchase or seek an alternate source for the product or service. USL may hold Seller accountable for extra costs incurred by USL due to the delay or non-performance, costs which may include the difference between the agreed upon contract price and the price of the substitute product or service. All products are subject to inspection and rejection upon receipt. USL reserves the right to test products in order to determine compliance with the purchase contract. If a product is defective or non-conforming, USL, in addition to its remedies under the Uniform Commercial Code, may reject such defective or nonconforming product, require replacement, or accept the product with an equitable adjustment in price. Payment prior to inspection shall not constitute waiver of any right hereunder.
  
3. **SHIPPING.** All products are to be suitably prepared and packed for shipping and shall be shipped in accordance with the specific routing instruction on the face of the purchase contract. Sellers must ship all palletized product to USL on Heat Treated Pallets compliant to ISPM 15 standards. All packages, packing slips and invoices shall be plainly marked to show USL’s Purchase Order number. All invoices shall be sent to USL’s Accounts Payable Department in duplicate.
  
4. **WARRANTY.** SELLER WARRANTS THAT ALL ARTICLES FURNISHED UNDER A PURCHASE CONTRACT WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP, AND WILL CONFORM TO APPLICABLE SPECIFICATIONS, DRAWINGS, SAMPLES OR OTHER DESCRIPTIONS, AND THAT ARTICLES OF SELLER’S DESIGN WILL ALSO BE FREE FROM DEFECTS IN DESIGN. These warranties shall remain in effect as to each product furnished, serviced and/or repaired, for a period of time consistent with the warranty life normally offered by the product

manufacturer or by Seller, whichever is longer. All warranties shall be construed as conditions as well as warranties and shall not be deemed exclusive. Seller warrants the prices of the items set forth herein shall not exceed those charged by the Seller to any other customers purchasing the same of substantially similar items in similar or smaller quantities.

5. **INDEMNIFICATION.** Seller shall indemnify USL from any and all losses, claims, damages, expenses, or liabilities of any kind suffered by USL by reason of or in connection with Seller's fulfillment of a purchase contract, breach of a purchase contract, Seller negligence or willful misconduct, or the manufacture and sale to USL of any product under the purchase contract.
6. **PATENT INFRINGEMENT.** Seller agrees to save USL, its customers, and agents harmless from any loss, damage, or liability on account of any alleged infringement of any patent with respect to any product furnished under a purchase contract provided that such product is not manufactured pursuant to USL's design. Seller also agrees that it will, at its own expense, defend any action, suit or claim in which infringement is alleged, provided Seller is duly notified as to such suit. In case the product or any part thereof is held to constitute an infringement, Seller shall, at its own expense, either procure for USL the right to continue using the product or any part thereof or replace same with non-infringing product or part thereof, or modify the product so that it becomes non-infringing, or in the event of the impossibility of the foregoing options grant USL a credit for the purchase price of such product. Seller will not be liable to USL if any patent infringement or claim thereof is based upon the use of the product in combination with other items where such infringement or claim thereof would not have occurred from the normal use for which the product was designed.
7. **CHANGES.** USL may at any time by written change order make changes in the product or service to be furnished under a purchase contract or their quantities or delivery dates. If the cost of, or time required for, furnishing the articles or services ordered hereby is increased or decreased as a result of such change order, an equitable adjustment in the contract price and/or delivery schedule will be made in the change order. If a price and/or delivery adjustment is not included in the change order, no increase in price or delay in delivery will be allowed unless Seller notifies USL in writing, within (30) days from the date of the change order, of its claim for such an increase in price or delay in delivery.
8. **NON-WAIVER.** A waiver by USL of any of these Terms shall not constitute a waiver of any similar provision or other such breach. These Terms shall not be deemed or construed to be modified, amended, rescinded, cancelled, or waived in whole or in part, except by written change order signed by a USL-authorized representative.
9. **PROPRIETARY INFORMATION.** Seller agrees that all information contained in drawings, specifications, etc., which are submitted by USL to Seller under or pursuant to a purchase contract is proprietary to USL and is submitted with the understanding and agreement by Seller that such information shall not be utilized in whole or in part by Seller, except for fulfillment of this contract, without written permission of USL. Any information

which is proprietary to Seller and which is disclosed in the products or documents furnished by Seller to USL shall be deemed to have been disclosed as part of the consideration for the purchase contract and USL shall have full right to its use as USL sees fit.

**10. COMPLIANCE WITH APPLICABLE LAWS; GOVERNING LAW.** Seller certifies that all the products and services furnished will be manufactured or supplied by Seller in accordance with all applicable federal, state, and local laws. Purchase contracts shall be governed by and interpreted in accordance with the laws of the State of Minnesota.

**11. ASSIGNMENT.** Seller may not assign either its rights or obligations under a purchase contract without the prior written consent of USL except that claims for monies due or to become due under this contract may be assigned by Seller provided that Seller shall supply USL promptly with two copies of any such assignment.

**12. TERMINATION.**

A. USL reserves the right to terminate a purchase contract, or any part thereof, and to cancel all or any part of the undelivered portion of a purchase contract if Seller does not make deliveries as provided in the purchase contract or if Seller breaches any of the terms of such purchase contract, including the warranties. Seller agrees that any delay in delivery or other failure to perform shall not be deemed an excusable delay or otherwise excuse Seller from performance as required. USL shall also have the right to terminate a purchase contract or any part thereof, and cancel all or any parts of the undelivered portion in the event of the happening of any of the following: insolvency of Seller, filing of a voluntary petition in bankruptcy, filing of an involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty (30) days from the date of such filing, or the execution by Seller of any assignment for the benefit of creditors. USL shall have no obligations to Seller in respect to the cancelled portion of a purchase contract and USL's liability shall be limited to payment for the delivered portion of a purchase contract at the rate specified on the face thereof (reflecting quantity prices as though the purchase contract had gone to full completion). If, as a result of default of performance by the Seller, a purchase contract is terminated in whole or in part and it is necessary to procure any of the specified products or services elsewhere, then Seller will be liable for any procurement charges which exceed the amount which would have been due the Seller if he had satisfactorily competed this contract. These remedies shall be cumulative and in addition to any other further remedies provided in law or in equity.

B. USL may, for its convenience, terminate work under a purchase contract, in whole or in part, at any time by giving notice to Seller in writing. Seller will thereupon immediately stop work on the purchase contract or the terminated portion thereof and notify any subcontractors to do likewise. Seller shall be entitled to reimbursement for its actual costs incurred up to and including the date of termination, such costs to be determined in accordance with recognized accounting principles. Seller shall also be entitled to a reasonable profit on the work done prior to such termination at a rate not exceeding the rate used in establishing the original purchase price. The total of such claim shall not exceed the pro rata portion of the cancelled purchase contract.

- 13. PAYMENT TERMS.** Supplier payment terms are negotiated by our procurement department and follow USL's standard payment terms of 2% 10, net 45 days following USL's receipt of the later of (i) the purchased goods/services accompanied by all documentation, or (ii) Seller's invoice for the goods/services. Should you have questions regarding your payment terms, please contact your procurement specialist.
- 14. RIGHT OF INSPECTION.** USL shall have the right to inspect the premises of Seller used in connection with the production of products purchased.
- 15. EQUAL OPPORTUNITY.** When applicable, Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a) and Appendix A of Subpart A of 29 CFR 471. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.