

EMD PERFORMANCE MATERIALS CORP. ("EMD PM") TERMS AND CONDITIONS OF PURCHASE

1. **ACCEPTANCE; ENTIRE AGREEMENT.** Commencement of performance of this purchase order shall constitute acceptance hereof by Seller. Acceptance of this purchase order shall be unqualified, unconditional and subject to and expressly limited to the terms and conditions hereof. EMD PM shall not be bound by any provisions additional to or at variance with the terms hereof that may appear in Seller's quotation, acknowledgement, confirmation, invoice or in any other communication from Seller to EMD PM unless such provision is expressly agreed to in a writing signed by an authorized agent of EMD PM. EMD PM's acceptance or agreement for material shipped shall constitute agreement of such a transaction subject to the provisions hereof only, and shall not constitute acceptance of any counter proposal submitted by Seller not otherwise accepted in writing signed by an authorized agent of EMD PM. Upon acceptance, this purchase order shall constitute the entire agreement between EMD PM and Seller, shall supersede all prior negotiations, discussions and dealings between EMD PM and Seller. EMD PM may at any time make changes in writing to Seller relating to this purchase order, including changes to the specifications, method of shipment, quantities, delivery location or delivery date. Such changes shall be deemed accepted by Seller absent Seller's prompt (and in any event within 15 days of the date of receipt by Seller of such notification of change from EMD PM) written rejection thereof. If such changes result in an increase in cost of, or time required for, performance of Seller's obligation under this purchase order, an equitable adjustment will be made to the price, delivery schedule or both if Seller asserts such claim within 15 days of the date of receipt by Seller of notification of the change from EMD PM. Any such claim or adjustment must be approved by EMD PM in writing before Seller proceeds with such changes. No other modification or variation of this purchase order shall be effective except by a writing signed by both Seller and EMD PM.

2. **INVOICES AND PRICES.** Each invoice submitted by Seller must reference the applicable purchase order number and line item detail with pricing. EMD PM reserves the right to return all incorrect invoices. All prices are firm unless otherwise agreed in writing, in which event Seller shall advise EMD PM in writing thirty (30) days in advance of any price change, together with Seller's stated reason(s) for said price change. The price includes all applicable taxes and charges imposed by any governmental authority. Invoices shall be paid net forty five (45) days after receipt of the goods or services by EMD PM and of a properly submitted and accepted invoice. Sales and use taxes not subject to exemption shall be separately stated in Seller's invoice. If, on or before the date of delivery of any goods or services, Seller shall sell or offer to sell the same or like goods or services to any other party at net prices lower than herein provided, Seller agrees to give EMD PM the benefit of such lower prices with respect to any undelivered goods or services, and this purchase order shall be deemed so modified.

3. **EXTRA CHARGES.** No charges of any kind, including, without limitation charges for boxing, packaging, loading, bracing, cartage, fuel, duties, taxes or extra insurance, will be allowed unless specifically agreed to by an authorized agent of EMD PM in writing.

4. **TRANSPORTATION – RISK OF LOSS – TITLE TO GOODS.** All goods shall be shipped Delivery Duty Paid (DDP) INCOTERMS 2010. Transportation charges on goods sold "delivered destination" shall be prepaid by Seller. No insurance charges will be allowed unless authorized in writing by EMD PM. Title to the goods shall pass to EMD PM upon receipt by it of the goods at the designated destination.

5. **DELIVERY DATE AND SHIPMENT.** Goods shipped to EMD PM in advance of the delivery date, or in excess of the amounts identified on the purchase order or called for in a delivery schedule may, at EMD PM's option, be returned to Seller at Seller's expense. If no delivery date is specified in a purchase order issued by EMD PM, the order shall be filled promptly. If no method of delivery is specified, Seller must utilize a carrier identified on the EMD PM Shipping Guidelines that accompany every purchase order.

Seller shall package all items in suitable containers to permit safe transportation and handling in compliance with current U.S. Department of Transportation regulations. Each delivered container must be labeled and marked to identify contents without opening and all boxes and packages must contain packing sheets listing contents. EMD PM's purchase order number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading. Material Safety Data Sheets may be supplied with the shipment of hazardous materials, and these sheets shall otherwise be available upon EMD PM's request.

6. **DELAYS IN DELIVERY.** Time is of the essence with respect to Seller's performance hereunder. If Seller for any reason other than those specified in Section 27 does not comply with EMD PM's delivery schedule then in addition to remedies provided by law, EMD PM may at its option either approve a revised delivery schedule or terminate this purchase order and hold Seller accountable for all losses and damages arising therefrom.

7. **SPECIFICATIONS.** Seller expressly warrants that all goods and services covered by this purchase order will conform to the specifications, drawings, samples or other description(s) furnished or adopted by EMD PM and made known to Seller and will be of good quality, material and workmanship and free from defects. Goods furnished to EMD PM's patterns, specifications, drawings, or fabricated with its tools shall not be furnished or quoted to any other person or concern.

8. **WARRANTY.** Seller warrants, with respect to any goods, that: (1) it has good title to the goods, or will have at the time title is to pass, (2) the goods are free from encumbrances, (3) the goods are fit for the purpose for which bought, (4) the goods are merchantable, (5) the goods have no latent defect, (6) the goods are of good material and workmanship, (7) the goods comply with and have been manufactured in compliance with all applicable laws, orders and regulations, and (8) that no goods are adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act ("Act") or within the meaning of any other applicable law in which the definition of adulteration or misbranding are substantially the same as those contained in the Act, as such laws are constituted and effective at the time of shipment or delivery, or as an article which may not, under the provisions of Section 404 or 505 of the Act be introduced into interstate commerce.

Seller warrants that with respect to any services it provides to EMD PM, it shall perform the services in accordance with standards of care, skill and diligence consistent with (i) recognized and sound industry practices, procedures and techniques, (ii) all applicable laws, orders and regulations, (iii) the specifications, documents and procedures applicable to the services, and (iv) the degree of knowledge, skill and judgment customarily exercised by professional firms with respect to services of a similar nature.

Replacement or repaired goods and re-performed services shall be warranted for the same length of time as new goods or originally performed services. All warranties shall extend to EMD PM, its customers and to users of the goods or services.

This warranty shall survive inspection, acceptance and payment.

9. **REJECTIONS.** If any of the goods are found by EMD PM within a reasonable time after delivery (as appropriate for the goods at issue) to EMD PM's destination to be defective in material or workmanship, or otherwise not in conformity with the requirements of this purchase order, EMD PM, in addition to any other rights which it may have under warranty or otherwise, shall have the right to reject and return such goods at Seller's expense, which goods shall not be replaced by Seller, without written authorization from an authorized agent of EMD PM. Seller shall pay all expenses, including demurrage, handling and storage charges, and freight both ways on rejected goods. This does not limit any other legal remedies available to EMD PM.

10. **EMD PM'S PROPERTY.** Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to Seller by EMD PM or specifically paid for by EMD PM, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the sole property of EMD PM. Such property (a) shall be clearly marked "Property of EMD Performance Materials Corp." (b) shall not be used except in filling EMD PM's orders; (c) shall be held at Seller's risk; and (d) shall be delivered without cost to EMD PM promptly at its written request. Seller shall supply EMD PM with an inventory of such property quarterly. Any specifications, drawings, sketches, models, samples, tools, technical information or data, written, oral or graphic or other tangible form shall be immediately returned to EMD PM without cost upon its request. The information shall be kept confidential by Seller, shall be used only in the filling of EMD PM orders, or in performing hereunder, and may be disclosed or used for other purposes only upon such time as may be agreed between EMD PM and Seller in writing. No information furnished by Seller to EMD PM or in contemplation hereof shall be considered by Seller to be confidential or proprietary except as specifically agreed to in writing by an authorized agent for EMD PM.

11. **INTELLECTUAL PROPERTY RIGHTS.** As between Seller and EMD PM, EMD PM shall have sole ownership of all right title and interest, including, without limitation, all intellectual property rights (including without limitation, patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing) in and to, all designs, copyrightable works, ideas, inventions, technology and other creations and any related work-in-progress, improvements or modifications to the foregoing, that are created, developed or conceived by Seller (alone or with others) as a result of or in connection with the goods and services purchased pursuant to this purchase order ("Works"), all of which Works shall be considered "work made for hire". Seller hereby irrevocably assigns and agrees to assign to EMD PM, without additional consideration, all right, title and interest, including, in and to all Works, including, without limitation, all copyrights, trademarks, trade secrets, patents, industrial rights and all other intellectual property rights related thereto and the goodwill associated therewith, effective immediately upon the inception, conception, creation or development thereof. At EMD PM's request, Seller shall execute such written instruments and do such other acts as may be necessary in the opinion of EMD PM to obtain a patent, register a copyright or otherwise evidence or

enforce EMD PM's rights in and to such Works (and Seller hereby irrevocably appoints EMD PM and any of its officers as its attorney in fact to undertake such acts in its name).

12. **AUDIT.** Seller shall upon reasonable prior request and during normal office hours make available for examination and copying by EMD PM and its duly authorized agents such books and records and invoices of Seller as may be necessary to perform an audit of the costs and other items relevant to the terms of this purchase order. Such audits may be performed while this purchase order is being fulfilled and for a period of one (1) year after delivery of the goods or performance of the services.

13. **NON-ASSIGNMENT.** Assignment of this purchase order or any interest herein or any payment due or to become due hereunder, without the written consent of an authorized agent of EMD PM, shall be void and of no effect and may, at the option of EMD PM, render this purchase order invalid.

14. **SUBCONTRACTING.** Seller shall not subcontract or delegate performance of all or any part of the work called for under this purchase order without the prior written consent of an authorized agent of EMD PM. EMD PM shall have the right to return any goods to Seller that were manufactured in violation in this Section 12, and shall have the further right to a full refund of the purchase price from Seller for such goods.

15. **SET-OFF.** EMD PM shall be entitled at all times to set off any amount owing at any time from Seller or any of its affiliates to EMD PM or any of its affiliates.

16. **COMPLIANCE WITH LAWS.** Seller warrants that goods manufactured or services performed pursuant to this purchase order are performed or manufactured and shipped in compliance with all applicable federal, state and local laws, rules and regulations, including but not limited to the Toxic Substances Control Act, the Occupational Safety and Health Act, the Clean Air Act, the Federal Water Pollution Control Act, the Solid Waste Disposal Act, the Resource Conservation and Recovery Act and the Hazardous Materials Transportation Act.

17. **FAIR LABOR STANDARDS ACT.** In accepting this order, Seller warrants that the goods or services to be furnished hereunder were or will be produced in compliance with the requirements (on the date of shipment or performing) of the Fair Labor Standards Act of 1938, as amended, and unless otherwise agreed in writing Seller shall insert a certificate on all invoices submitted in connection with its purchase order stating that the goods or services covered by the invoice were produced in compliance with the requirements of such Act, including without limitation, Sections 12(a) and 15(a) thereof.

18. **INSIGNIA.** Material rejected or not purchased by EMD PM which utilizes or carries any EMD PM name, trade names, trademarks, insignia, symbols, decorative designs or evidences of EMD PM's inspection (all hereinafter designated "insignia") shall have all such insignia removed by Seller prior to any further sale, use or disposition thereof. Seller agrees to indemnify and hold EMD PM harmless from any claim, loss or damage arising out of Seller's failure to do so. This clause shall in no way modify provisions hereof relating to the use of information.

19. **WORK ON EMD PM'S OR ITS CUSTOMER'S PREMISES.** If Seller's performance under this purchase order involves operations by Seller on the premises of EMD PM or one of its customers, Seller shall comply with applicable provisions of federal, state and local laws and regulations and shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such performance. Except to the extent that any such injury is due solely and directly to the negligence of EMD PM or one or more of EMD PM's customers, as the case may be, Seller shall indemnify EMD PM and its customers against all loss which may result from any act or omission of Seller, its agents, employees, or subcontractors. Seller shall maintain such Public Liability, Property Damage, Personal Injury and Employee's Liability and Compensation insurance in an amount not less than \$1,000,000.

20. **TERMINATION.** If Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature) or if any proceeding under bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, then in any such event EMD PM may terminate all outstanding purchase orders without liability except for conforming deliveries previously made or for conforming goods covered by this purchase order then completed and subsequently delivered promptly in accordance with the terms of this purchase order. In addition, EMD PM shall have the right to terminate this purchase order and its related agreement(s) immediately upon written notice in the event that Seller is in breach of Article 33 hereof.

21. **NONWAIVER.** The failure by EMD PM to enforce at any time or for any period of time any of the provisions hereof shall not be a waiver of such provisions nor of the right of EMD PM thereafter to enforce each and every such provision.

22. **CANCELLATION.** EMD PM may cancel this purchase order at any time upon written notice.

23. **INFRINGEMENT.** The following terms apply to any infringement, or claim of infringement, or any patent, trademark or copyright based on the manufacture, normal use or sale of any material or equipment furnished to EMD PM hereunder or in contemplation hereof. Seller shall indemnify EMD PM and its customers for any loss, damage, expense or liability that may result by reason of any such infringement or claim (including without limitation attorney's fees and expenses), and shall defend or settle, at its own expense, any action or suit for which it is responsible hereunder. EMD PM shall notify Seller of any claim of infringement of which EMD PM becomes aware and, where commercially feasible, shall cooperate with Seller to facilitate Seller's defense of any such claims.

24. **DRAWINGS.** EMD PM's review and approval of drawings submitted by Seller will be for and will cover only general conformity to specifications. Such approval will not constitute approval of any dimensions, quantities or details of the material shown by such drawings, and shall not relieve Seller of its responsibilities for meeting all specifications of this purchase order. EMD PM retains rights of final approval for all finished products pursuant to Section 9 hereof.

25. **GOVERNING LAW.** The contract resulting from acceptance of this purchase order by Seller shall be governed and construed by the laws of the Commonwealth of Pennsylvania.

26. **NON-DISCRIMINATION IN EMPLOYMENT.** Seller in performing the work required by this order, shall not discriminate against any person in the employment process because of race, creed, color, sex, age, religion, national origin and veteran or handicap status. The employment process includes but is not limited to employment advertising, job postings, interviews, testing, recruiting, pay, promotion, transfer, demotion, hiring, educational opportunities, lay-offs and recall.

27. **CHANGE CONTROL; QUALITY OBLIGATIONS.** a) Change Control. Seller agrees not to make any such modification to the goods, including changes in the goods' components, manufacturing methods, materials, manufacturing sites, equipment, testing protocols, control systems, and any other aspect of the goods' configuration or performance that affect its form, fit or function, nor discontinue the goods, without EMD PM's prior written consent. Seller will apply all reasonable efforts to provide EMD PM with as much advance notice as possible and, whenever possible, provide at least twelve (12) months notice; b) Access to Facility; Audit. Upon five (5) days written notice, Seller will allow EMD PM to visit its manufacturing facility during normal business hours, for the purpose of conducting audits required by EMD PM's Quality Management System; c) Corrective Actions. EMD PM will notify Seller promptly of any nonconformity of the goods to their Specifications, customer complaints or failures that may relate to the goods. Seller shall generate a failure mode analysis and subsequent report of the causes for the failure or errors to EMD PM within thirty (30) days and, if necessary, create and implement a corrective action on a timely manner; d) Record Retention. Seller shall maintain records, to the extent it deems necessary, relating to the manufacture of goods purchased by EMD PM for a period of no less than seven (7) years from the good's date of manufacture. Such records must be made available to EMD PM in a promptly manner in order to resolve any issue that requires the gathering of historical information; (e) ISO Compliance. If required by EMD PM, Seller shall certify to the most current ISO Standard and Seller shall be ISO/TS16949 compliant (or equivalent in the place in which the goods are to be manufactured or services to be performed) and shall maintain the same for as long Seller supplies such goods or services to EMD PM.

28. **INDEMNIFICATION.** Seller shall indemnify, defend, and hold harmless each of EMD PM, its affiliates, subsidiaries, divisions, distributors, employees, agents, representatives and customers, and its or their respective successors and assigns (each an "Indemnified Party") from and against, and in respect of, any and all actions, claims, suits, judgments, damages, liabilities, losses, costs, and expenses (including, without limitation, attorneys' fees) of every kind whatsoever (collectively, "Damages") arising in any manner out of or from, or in connection with any actual or alleged (i) patent, copyright or trademark infringement, or violation of any other proprietary right, arising out of the purchase, sale, distribution or use of any goods, (ii) breach by Seller of any term or condition of this agreement, (iii) personal injury, wrongful death or property damage arising out of or relating to any goods or services, (iv) any violation on the part of Seller of any and all federal, state, county, or municipal laws, ordinances, regulations and orders in respect to any goods or services, including, without limitation, United States import or export control law, regulation, treaty or other international agreement to which the United States adheres or complies or any applicable export, import or other laws of any other jurisdiction; and (v) wrongful or negligent act or omission by Seller or its officers, directors, shareholders, employees, agents, representatives or subcontractors.

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29. **FORCE MAJEURE.** Neither party shall be liable for any delay or failure of performance due to causes beyond its reasonable control provided it shall have given notice of any such cause and shall have used its best efforts to mitigate said delay or failure. The Parties shall use due diligence and all commercially reasonable efforts to promptly address, remedy and/or remove any cause of a force majeure event.

30. **ALLOCATION.** Seller shall during any period of shortages prorate its available supply of the goods among its customers and itself (including any of its affiliated companies) on an equitable basis.

31. **PUBLICITY.** Seller shall make no reference, advertisement, or promotion regarding or mentioning EMD PM without the prior written consent of EMD PM.

32. **LIMITATION OF LIABILITY.** IN NO EVENT WILL EMD PM BE LIABLE TO SELLER FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE, OR OTHER ECONOMIC LOSS.

33. **CONFIDENTIALITY.** Seller shall keep confidential and secret any and all Confidential Information of EMD PM or its affiliates that may be disclosed by or on behalf of EMD PM. "Confidential Information" shall consist of trade secrets, know-how, proprietary information, formula, processes, records, techniques, specifications, information relating to the EMD PM's or its affiliates' past, present and future marketing and research and development activities and any other information that should reasonably be understood to be confidential that are disclosed to Seller by EMD PM or its affiliates, whether disclosed in writing, verbally or by any other means.

34. **INDEPENDENT CONTRACTOR RELATIONSHIP.** Seller will act solely as an independent contractor in relation to performance under this Agreement, and nothing herein shall be construed to create the relationship of employer and employee, partnership, or joint venture between EMD PM and Seller, or EMD PM and Seller's officers, directors, employees or agents.

35. **SOCIAL RESPONSIBILITY.** As an affiliated company of Merck KGaA, Darmstadt, Germany, EMD PM conducts its business in accordance with the principles of sustainable development and complies with internationally recognized fundamental environmental, labor and social standards, as described in the Values, Social Charter and Code of Conduct as adopted by Merck KGaA, Darmstadt, Germany and its affiliated companies. EMD PM requests from Seller, and Seller undertakes to also comply with fundamental environmental, labor and social standards. EMD PM further requests from Seller, and Seller undertakes to ensure that its suppliers and subcontractors will comply with such standards.