

Contract Quotation / Purchasing Agreement Terms and Conditions

These Contract Quotation / Purchasing Agreement Terms and Conditions (the “**Terms**”) are a part of and are hereby incorporated into that certain Contract Quotation / Purchasing Agreement (the “**Purchasing Agreement**”, and together with the Terms, the “**Agreement**”) which references these Terms and which is entered into by and between Wisconsin Pharmacal Company, LLC (“**Seller**”) and the customer listed on the Purchasing Agreement (“**Customer**”). To the extent of any conflict between these Terms and the Purchasing Agreement, these Terms control.

1. Definitions. Capitalized terms have the meanings set out or referred to in this Section 1.

“**Defective Products**” means Products shipped by Seller to Customer pursuant to this Agreement that do not conform to the Product Warranty under Section 5.1.

“**Delivery Location**” means Seller’s facility located in Jackson, WI.

“**Product**” means the products described on the Purchasing Agreement.

2. Product Orders, Shipment, Delivery, Acceptance, and Inspection.

2.1 Minimum Order Quantity. Customer must purchase Products in the minimum amounts set forth on the Purchasing Agreement, if any.

2.2 Delivery. The delivery terms for the Products shall be as set forth in the Purchasing Agreement.

2.3 Late Delivery. Any time quoted for delivery is an estimate only, and Seller shall have no liability to Buyer for late delivery.

2.4 Transfer of Title and Risk of Loss. Title to Products passes to Customer upon payment of the Price for such Products. Risk of loss to the Products pass to Customer upon the delivery of the Products to the Delivery Location.

2.5 Limited Right of Return. Except as provided herein, Customer has no right to return Products delivered to Customer pursuant to this Agreement.

3. Price and Payment.

3.1 Price. Customer shall purchase the Products from Seller at the prices set forth on the Purchasing Agreement (“**Prices**”). The Prices may be changed as set forth in the Purchasing Agreement.

3.2 Payment Terms. Seller shall pay the Prices at such times as are set forth in the Purchasing Agreement.

3.3 Taxes. All Prices are exclusive of, and Customer is solely responsible for and shall pay, and shall hold Seller harmless from, all taxes, with respect to, or measured by, the manufacture, sale, shipment, use of the Products (including interest and penalties thereon); provided, however, that Customer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

4. Term; Termination.

4.1 Term. The term of this Agreement commences on the Effective Date and continues unless it is earlier terminated pursuant to Section 4.2 (the “**Term**”).

4.2 Seller's Right to Terminate. Seller may terminate this Agreement, by providing written notice to Customer:

(a) if Customer is in material breach of any obligation, representation, warranty or covenant of Customer under this Agreement, and the breach is not cured by Customer within fifteen (15) days after Customer's receipt of written notice of such breach; or

(b) if Customer (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

4.3 Effect of Expiration or Termination.

(a) Upon the expiration or earlier termination of this Agreement, all amounts owed by Customer to Seller under this Agreement shall become immediately due without further notice to Customer. In addition, Customer shall, as soon as reasonably possible, reimburse Seller for the cost of any and all: (i) Products and unfinished products manufactured by Seller for Customer as of the date of termination; (ii) materials purchased by Seller for the manufacture of the Products, but not yet used as of the date of termination, and which cannot be reasonably used by Seller in other products within six (6) months of the date of termination; and (iii) tooling or machinery purchased by Seller in order to manufacture and deliver the Products.

(b) Upon the expiration or earlier termination of this Agreement, Customer shall: (i) return to Seller or destroy all documents and tangible materials containing, reflecting, incorporating, or based on Seller's confidential information; (ii) permanently erase all of Seller's confidential information from its computer systems, except for copies that are maintained as archive copies on its disaster recovery and/or information technology backup systems; and (iii) certify in writing to Seller that it has complied with this Section 4.3(b).

5. Representations and Warranties.

5.1 Limited Product Warranty. Subject to the provisions of Sections 5.3, Seller warrants to Customer (the “**Product Warranty**”) that: (a) on the date of shipment of a Product, such Product will materially conform to the specifications set forth on the Purchasing Agreement and will be free from significant defects in material and workmanship; and (b) Customer will receive good and valid title to all Products, free and clear of all encumbrances and liens of any kind.

5.2 Customer's Exclusive Remedy for Defective Products. Notwithstanding any other provision of this Agreement, this Section 5.2 contains Customer's exclusive remedy for Defective Products:

(a) Customer shall notify Seller, in writing, of any alleged claim or defect within ten (10) business days of the date on which Customer received the Product containing the alleged claim or defect;

(b) Customer shall ship, at Customer's expense and risk of loss, such allegedly Defective Products to a location as directed by Seller for inspection and testing;

(c) if Seller's inspection and testing reveal, in Seller's sole discretion, that such Products are Defective, Seller shall in its sole discretion and at its expense, repair or replace such Defective Products; and

(d) Seller shall deliver the repaired or replaced Products to the Delivery Location.

5.3 DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES. EXCEPT FOR THE PRODUCT WARRANTY SET FORTH IN SECTION 5.1, (A) NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 5.1 OF THIS AGREEMENT.

6. Indemnification.

6.1 Mutual Indemnification. Subject to the terms and conditions of this Agreement, each Party (as "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party and such other Party's officers, directors, employees, agents, successors and permitted assigns against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers (collectively, "**Losses**"), arising out or resulting from any third-party claim alleging: (a) a material breach or non-fulfillment of any representation, warranty or covenant under this Agreement by the Indemnifying Party or Indemnifying Party's personnel; (b) any grossly negligent or more culpable act or omission of the Indemnifying Party or its personnel (including any recklessness or willful misconduct) in connection with the performance of this Agreement; or (c) any failure by Indemnifying Party or its personnel to materially comply with any applicable laws.

6.2 Customer's Indemnification. In addition to the indemnification obligation set forth in Section 6.1, Customer shall indemnify and defend Seller from all Losses arising out of or related to Seller's use of any intellectual property provided by Customer for the production of the Products.

7. Limitation of Liability. EXCEPT TO THE EXTENT OF SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL SELLER BE: (a) LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (I) WHETHER SUCH DAMAGES WERE FORESEEABLE, (II) WHETHER OR NOT THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (III) THE LEGAL OR

EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED; OR (b) LIABLE FOR ANY AMOUNT IN EXCESS OF THE PRICE PAID BY CUSTOMER TO SELLER FOR THE APPLICABLE PRODUCT(S).

8. Intellectual Property Rights. Customer grants to Seller a limited, royalty-free, non-transferable license to Customer's intellectual property to the extent necessary to enable Seller to manufacture and deliver the Products or otherwise perform its obligations under this Agreement during the Term.

9. Confidentiality. Customer and Seller each agree that this Agreement and all information communicated by either Party to the other hereunder and designated as proprietary or confidential shall be received in strict confidence and will not be communicated, disclosed, transferred or otherwise made available by the Party receiving such information (the "**Recipient**") to any third party for any purpose other than the performance of its obligations, or enjoyment of its rights, hereunder without the prior written consent of the Party disclosing the information (the "**Disclosing Party**"); provided, however, that the foregoing shall not apply to disclosures to affiliates, subcontractors or suppliers, as necessary to manufacture the Products to be provided hereunder, provided that such affiliates, suppliers or subcontractors, as applicable, agree to be bound by the confidentiality obligations imposed in, or similar to the provisions of, this Section 9. In that regard, each Party agrees to exercise care that is at least equal to the care it uses to protect the confidentiality of its own confidential and proprietary information of similar importance to prevent the disclosure to third parties or the unauthorized use of such information. This Section 9 shall not be violated by disclosure or use of information that (a) at the time of the disclosure to the Recipient is publicly available or thereafter becomes so available through no act or omission of the Recipient, (b) is disclosed to the Recipient by a third party that did not acquire the information under an obligation of confidentiality known to Recipient, (c) can be shown by credible evidence to have already been in the possession of the Recipient at the time of the communication to the Recipient or to have been independently developed by the Recipient, or (d) is disclosed or used as required by court order or as otherwise required by law, on the condition that notice of the requirement for such disclosure or use is given to the Disclosing Party prior to making such disclosure or use and the Recipient cooperates in resisting the requirement for such disclosure or use as the Disclosing Party may reasonably request. In the event either Party violates or threatens to violate the provisions of this Section 9, the other Party shall be entitled to seek to obtain from a court of competent jurisdiction preliminary or permanent injunctive relief, in addition to any other remedies available at law or in equity.

10. Insurance. Customer shall maintain at Customer's own expense with a carrier rated a minimum AM Best rated "A", covering at least the following insurance: (i) workers' compensation insurance as required by applicable law, and (ii) comprehensive general liability insurance, with limits for bodily injury and property damage of not less than \$5,000,000 per occurrence, and the policy shall include premises and operation coverage, blanket contractual coverage, and completed operations coverage. In the event that these insurance policies are written on a claims-made basis, then the policy(ies) shall be maintained during the entire period of this Agreement and for a period of not less than two (2) years following the termination or expiration of this Agreement. Customer shall, prior to commencing work, provide WPC with a certificate evidencing all such coverages. Such certificate shall name Seller, its subsidiaries, affiliates, directors, officers and employees as additional insureds on a primary and non-contributory basis with respect to general liability. Such insurance shall include a provision requiring at least thirty (30) days' prior written notice to Seller in the event of cancellation or material reduction of coverage

11. Miscellaneous.

11.1 Relationship of the Parties. The relationship between Seller and Customer is solely that of independent contracting parties. This Agreement does not create any agency, joint venture, partnership, or other form of joint enterprise or fiduciary relationship between the Parties.

11.2 Entire Agreement. The Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

11.3 Survival. Any provision that, in order to give proper effect to its intent, should survive such expiration or termination of this Agreement, shall so survive.

11.4 Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other Party at its primary place of business. All notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). A notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the notice has complied with the requirements of this Section.

11.5 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

11.6 Amendment and Modification. No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

11.7 Assignment. Customer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.

11.8 Governing Law. This Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto, and all matters arising out of or relating to this Agreement, are governed by and construed in accordance with, the laws of the State of Wisconsin, United States of America, without regard to the conflict of laws provisions thereof and shall be brought in the state or federal courts located in Waukesha County, Wisconsin. The Parties agree that the United Nations Convention on Contracts for the International Sale of Products does not apply to this Agreement.

11.9 Force Majeure. No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, pandemics/epidemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (h) other

similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within ten (10) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this Section, the other Party may thereafter terminate this Agreement upon ten (10) days' written notice.