

**MAYATERIALS, INC.**

**TERMS AND CONDITIONS OF SALE**

**1. Acceptance** - ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND UPON BUYER'S ASSENT THERETO. NO VARIATION OF THESE TERMS AND CONDITIONS WILL BE BINDING UPON SELLER UNLESS AGREED TO IN WRITING AND SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF SELLER.

**2. Changes** -Orders arising hereunder may be changed or amended only by written agreement signed by both Buyer and Seller, setting forth the particular changes to be made and the effect, if any, of such changes on the price and time of delivery. Buyer may not cancel this order unless such cancellation is expressly agreed to in writing by Seller. In such event, Seller will advise Buyer of the total charge for such cancellation, and Buyer agrees to pay such charges, including, but not limited to, storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on Seller by its suppliers, and any other cost resulting from cancellation of this order by Buyer which is permitted by Seller. Certification of such costs by Seller's independent public accountants shall be conclusive on the parties hereto.

**3. Delivery, claims, delays** - All sales are FCA Seller's shipping point unless otherwise noted. If Shipping and Handling Charges are quoted or invoiced, they will include charges in addition to actual freight costs. Delivery of the goods to the carrier at Seller's shipping point shall constitute delivery to Buyer and Buyer shall bear all risk of loss or damage in transit. Seller reserves the right, in its discretion, to determine the exact method of shipment. Seller reserves the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of Buyer's obligations to accept remaining deliveries.

Immediately upon Buyer's receipt of any goods shipped hereunder, Buyer shall inspect the same and shall notify Seller in writing of any claims for shortages, defects or damages and shall hold the goods for Seller's written instructions concerning disposition. If Buyer shall fail to so notify Seller within five days after the goods have been received by Buyer, such goods shall conclusively be deemed to conform to the terms and conditions hereof and to have been irrevocably accepted by the Buyer.

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 perform hereunder due to any cause beyond Seller's reasonable control, including, without limitation, unsuccessful 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 natural disasters, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies or power at current prices.

**4. Allocation of goods** - If Seller is unable for any reason to supply the total demands for goods specified in Buyer's order, Seller may allocate its available supply among any or all Buyers on such basis as Seller may deem fair and practical, without liability for any failure of performance which may result therefrom.

**5. Payment** - Terms of sale are net 30 days of date of invoice, unless otherwise stated. If the financial condition of Buyer results in the insecurity of Seller, in its sole and unfettered discretion, as to the ultimate collectability of the purchase price, Seller may, without notice to Buyer, delay or postpone the delivery of the products; and Seller, at its option, is authorized to change the terms of payment to payment in full or in part in advance of shipment of the entire undelivered balance of said products. In the event of default by Buyer in the payment of the purchase price or otherwise, of this or any other order, Seller, at its option, without prejudice to any other of Seller's lawful remedies, may defer delivery, cancel this Contract, or sell any undelivered products on hand for the account of Buyer and apply such proceeds as a credit, without set-off or deduction of any kind, against the contract purchase price, and Buyer agrees to pay the balance then due to Seller on demand. Buyer agrees to pay all costs, including, but not limited to, reasonable attorney and accounting fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof.

**6. Taxes and other charges** - Any use tax, sales tax, excise tax, duty, custom, 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 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.

**7. Pricing** - Prices shown are in USD and are subject to change. Please call us for current prices if you require this information prior to placing your order. We guarantee our written quotations for 30 days. When placing your order, please reference our quoted prices or our pro forma number. If you place your order by phone, we will confirm our current price at that time.

**8. Price Changes** - Shipment will be made promptly even if prices have been nominally increased. Price reductions will be automatically applied to your invoice.

**9. Warranties** - Seller warrants that its products shall conform to the description of such products as provided to Buyer by Seller through Seller's catalog, analytical data or other literature. **THIS WARRANTY IS EXCLUSIVE, AND SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.** Seller's warranties made in connection with this sale shall not be effective if Seller has determined, in its sole discretion, that Buyer has misused the products in any manner, has failed to use the products in accordance with industry standards and practices, or has failed to use the products in accordance with instructions, if any, furnished by Seller.

Seller's sole and exclusive liability and Buyer's exclusive remedy with respect to products proved to Seller's satisfaction to be defective or nonconforming shall be replacement of such products without charge or refund of the purchase price, in Seller's sole discretion, upon the return of such products in accordance with Seller's instructions. SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND RESULTING FROM ANY USE OR FAILURE OF THE PRODUCTS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, LOSS OF PRODUCTS OF BUYER OR OTHER USE OR ANY LIABILITY OF BUYER TO A THIRD PARTY ON ACCOUNT OF SUCH LOSS, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE UNLESS SUCH PERSONAL INJURY OR PROPERTY DAMAGE IS CAUSED BY SELLER'S GROSS NEGLIGENCE. All claims must be brought within one (1) year of shipment, regardless of their nature.

**10. Compliance with laws, regulations** - Seller certifies that to the best of its knowledge its products are produced in compliance with applicable requirements of the Fair Labor Standards Act, as amended, and the Occupational Safety and Health Standards Act of 1970 and regulations, rules and orders issued pursuant thereto.

**11. Buyer's use of products** - Seller's products are intended primarily for laboratory research purposes and, unless otherwise stated on product labels, in Seller's catalog or in other literature furnished to Buyer, are not to be used for any other purposes, including but not limited to, in vitro diagnostic purposes, in foods, drugs, medical devices 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, medical 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/or materials produced with products purchased from Seller in accordance with the practices of a reasonable person who is an expert in the field and in strict compliance with all applicable laws and regulations, now and hereinafter enacted. Buyer further warrants to Seller that any material produced with products from Seller shall not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act and shall not be materials which may not, under Sections 404, 505, or 512 of the Act, be introduced into interstate commerce.

Buyer realizes that, since Seller's products are, unless otherwise stated, 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 learn 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, unless otherwise stated, be considered to be foods, drugs, medical devices or cosmetics.

**12. Buyer's Representations and Indemnity** - Buyer represents and warrants that it shall use all products ordered herein in accordance with Paragraph No. 9 "Buyer's Use of Products", and that any such use of products will not violate any law or regulation. Buyer agrees to indemnify and hold harmless Seller, its employees, agents, successors, officers, and assigns, from and against any suits, losses, claims, demands, liabilities, costs and expenses (including attorney and accounting fees) that Seller may sustain or incur as a result of any claim against Seller based upon negligence, breach of warranty, strict liability in tort, contract, or any other theory of law brought by Buyer, its officers, agents, employees, successors or assigns, by Buyer's customers, by end users, by auxiliary personnel (such as freight handlers, etc.) or by other third parties, arising out of, directly or indirectly, the use of

Seller's products, or by reason of Buyer's failure to perform its obligations contained herein. Buyer shall notify Seller in writing within fifteen (15) days of Buyer's receipt of knowledge of any accident, or incident involving Seller's products which results 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 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 of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by Seller.

**13. Patent disclaimer** - Seller does not warrant that the use or sale of the products delivered under will not infringe the claims of any United States or other patents covering the product itself or the use thereof in combination with other products or in the operation of any process.

**14. Returns** - Goods may not be returned for credit except with Seller's permission, and then only in strict compliance with Seller's return shipment instructions. Certain items may not be returned for credit. These items include: diagnostic reagents, refrigerated or frozen products; reagents and standards which have passed their expiration dates; custom products or special orders; products missing labels, parts, or instruction manuals; and books, computer software and equipment removed from their original packaging. Any returned items may be subject to a 20% processing fee.

**15. Technical Assistance** - At Buyer's request, Seller may, at Seller's discretion, furnish technical assistance and information with respect to Seller's products. SELLER MAKES NO WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO TECHNICAL ASSISTANCE OR INFORMATION PROVIDED BY SELLER OR SELLER'S PERSONNEL. ANY SUGGESTIONS BY SELLER REGARDING USE, SELECTION, APPLICATION OR SUITABILITY OF THE PRODUCTS SHALL NOT BE CONSTRUED AS AN EXPRESS WARRANTY UNLESS SPECIFICALLY DESIGNATED AS SUCH IN A WRITING SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF SELLER.

**16. Miscellaneous** - Seller's failure to strictly enforce any term or condition of this order or to exercise any right arising hereunder shall not constitute a waiver of Seller's right to strictly enforce such terms or conditions or exercise such right thereafter. All rights and remedies under this order are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity. Any waiver of a default by Buyer hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter.

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. The paragraph headings herein are for convenience only; they form no part of the terms and conditions and shall not affect their interpretation.

This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, successors and assigns.

**17. Governing Law** - All disputes as to the legality, interpretation, application, or performance of this order or any of its terms and conditions shall be governed by the laws of the State of Michigan including its conflict of laws principles. Each party to this order agrees that any dispute arising between them, which results in either party instituting court proceedings shall be litigated in either the Federal District Court for the Eastern District of Michigan in the Circuit Court for the City of Ann Arbor.