

# Abraxis Technologies

## PURCHASE ORDER TERMS AND CONDITIONS

**GENERAL TERMS AND CONDITIONS** This document, together with the attachments appended hereto constitutes the Terms and Conditions for the Contract between the parties, and acceptance is strictly limited to the terms and conditions contained herein. **Additional or differing terms, conditions or limitations of liability proposed by Seller, whether in a quote, acceptance or delivery document shall have no effect unless accepted in writing by Buyer. In particular, any limitation of liability or disclaimer of warranty is expressly rejected.** Agreement by Seller to furnish the goods or services to these terms and conditions, or Seller's commencement of such performance or acceptance of payment shall constitute acceptance by Seller of these Terms and Conditions.

**1. Definitions:** Words, as employed in this Agreement, shall have their normally accepted meanings. The following terms shall have the described meaning:

- (a) "Buyer" shall mean Abraxis Technologies and/or the entity identified as the Buyer in this Contract.
- (b) "Contract" shall mean the Purchase Order, these General Terms and Conditions, and any special conditions appended hereto or documents incorporated herein.
- (c) "Goods or Services" shall mean those Goods or Services identified in this Contract, which may be changed, from time to time by the mutual written agreement of the parties.
- (d) "Seller" shall mean the party identified as the Seller in this Contract.

**2. Price:** (a) Unless otherwise specified, the prices established by this Contract are firm fixed prices. Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to other customers in substantially similar transactions.

(b) In the event Seller is liable to Buyer for any amounts, Buyer may, at its election, set-off against any amounts payable to Seller under this Contract.

**3. Schedule and Delivery; Notice of Delay:** Seller shall strictly adhere to all Purchase Order schedules. Time is and shall remain of the essence in the performance of this Contract. Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Contract. Such notice shall include a revised schedule and shall not constitute a waiver to Buyer's rights and remedies hereunder.

**4. New Materials; Packaging and Shipping:** (a) All goods to be delivered hereunder shall consist of new materials.

(b) Seller shall prepare and package the goods to prevent damage or deterioration and shall use best commercial practice for packing and packaging of items to be delivered under this Contract, unless otherwise specified in the Purchase Order.

**5. Inspection and Acceptance:** (a) Buyer's final acceptance Goods or Services is subject to Buyer's final inspection within thirty (30) days after receipt at Buyer's facility or such other place as may be designated by Buyer, notwithstanding any payment or prior test inspection.

(b) Seller and its suppliers shall establish and maintain a quality control and inspection program as specified in the Purchase Order. Subject to applicable national security regulations, Buyer and Buyer's representatives shall have the right of access, on a non-interference basis, to any area of Seller's or Seller's supply chain sub-tier premises where any part of the work is being performed. Seller shall flow this requirement down to its sub tier supply chain suppliers as a condition of this contract. Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities, and assistance for the safety and convenience of the Buyer and the Buyer's representatives in the performance of their duties.

(c) Seller shall keep and maintain inspection, test and related records, which shall be available to Buyer or Buyer's representative. Seller shall allow copies to be made and shall furnish all information required by the Buyer or Buyer's representative.

**6. Invoices:** (a) Invoices may be mailed when goods are shipped, but the time for payment shall not commence until Buyer's actual or scheduled receipt, whichever is later, of items at their destination or upon satisfactory completion of services.

Buyer shall promptly pay Seller the amount due within 30 days, except if identified elsewhere in the Contract, unless the invoiced amount is in dispute. Buyer may withhold payment for shortages and/or non-conforming Goods or Services.

**7. Changes:** (a) By written order, Buyer may from time to time direct changes for: (i) technical requirements; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities, delivery schedules or both; (v) amount of Buyer-furnished property; (vi) time of performance; and, (vii) place of performance.

(b) If any such change causes an increase or decrease in the price or in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for equitable adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this provision shall excuse Seller from proceeding immediately with the directed change(s). Changes shall not be binding upon Buyer except when specifically confirmed in a written Purchase Order or Change Order.

**8. Force Majeure:** The following events, and only the following events, shall constitute force majeure under this Contract: (a) acts of God or of a public enemy; (b) acts of Government; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and, (i) unusually severe weather. In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of the Seller. Each party shall give the other immediate notice of any event that such party claims is a *Force Majeure* Condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party's notice under this Section shall include the party's good faith estimate of the likely duration of the *Force Majeure* Condition.

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## PURCHASE ORDER TERMS AND CONDITIONS

**9. Termination for Convenience:** (a) Buyer may, by notice in writing, direct Seller to terminate work under this Contract in whole or in part, at any time, and such termination shall not constitute default. In such event, Buyer shall have all rights and obligations accruing to it either at law or in equity, including Buyer's rights to title and possession of the goods and materials paid for. Buyer may take immediate possession of all work so performed upon notice of termination.

(b) Seller shall immediately stop work and limit costs incurred on the terminated work.

(c) If such termination is for the convenience of the Buyer, Buyer, after deducting any amount(s) previously paid, shall reimburse Seller for the actual, reasonable, substantiated and allowable costs with the total amount to be paid by the Buyer being determined by negotiation.

**10. Termination for Default:** (a) Buyer may, by written Notice of Default to Seller, terminate this Contract in whole or in part, or, at Buyer's sole discretion, require the Seller to post such financial assurance as Buyer deems reasonably necessary, if the Seller fails to: (i) deliver the goods or to perform the services within the time specified in this Contract or any extension; (ii) make progress, so as to endanger performance of this Contract; or, (iii) perform any of the other provisions of this Contract.

(b) Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed goods and raw material, parts, tools, dies, jigs, fixtures, plans, drawings, services, information and contract rights (Materials) as Seller has produced or acquired for the performance of this Contract, including the assignment to Buyer of Seller's subcontracts. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed goods delivered to and accepted by Buyer shall be at the Contract price. Payment for unfinished Goods or Services, which have been delivered to and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof except that Seller shall not be entitled to profit. Buyer may withhold from Seller moneys otherwise due Seller for completed goods and/or Materials in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said goods and Materials.

(c) Seller shall promptly notify Buyer if Seller is the subject of any petition in bankruptcy. In the event of Seller's bankruptcy, Buyer may require Seller to post such financial assurance, as Buyer, in its sole discretion, deems necessary. Failure to post such financial assurance upon ten (10) days written notice shall constitute a default under this Contract. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Contract.

**11. Goods Warranty:** Unless stated otherwise in the documents accompanying these terms and conditions, Seller shall warrant all goods against defects in design and performance for a period of one year following delivery. If this Contract is for delivery of goods, Seller shall observe, comply with and afford Buyer all applicable Uniform Commercial Code warranties contained in the New York Consolidated Laws, and Seller hereby acknowledges that Buyer does not waive or accept any disclaimer of any such warranties.

**12. Right of Access:** Unless stated otherwise in the documents accompanying these terms and conditions, Seller shall allow right of access by Abraxis Technologies, our customer, and/or regulatory authorities to all facilities involved in the order and to all applicable records.

**13. Notification of Nonconforming Product:** Seller shall notify Buyer of nonconforming product detected after delivery of product, which could or does affect product delivered.

**14. Notification of Changes in Product Definition:** Seller shall notify Buyer of changes in product definition (material, processing, configuration, etc.) that could affect acceptance of product.

**15. Services Warranty:** Unless stated otherwise in the documents accompanying these terms and conditions, Seller shall warrant all services against defects in performance for a period of one year following delivery. If this Contract includes the provision of Services, Seller warrants that it has and will maintain sufficient trained personnel to promptly and efficiently execute the Services contemplated under this Contract. Seller further warrants that the services shall be performed to at least the standard of performance reasonably expected of similar service providers in Buyer's geographic area.

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