

## **STANDARD TERMS AND CONDITIONS OF SALE**

1. **GENERAL INTERPRETATION AND COMPLETENESS:** This contract is deemed made in the State of New Jersey and shall be interpreted under its Uniform Commercial Code and other New Jersey laws in force at the date of contract. Products are sold only on the terms set forth on the face and reverse sides hereof. Different or additional terms previously or hereafter proposed by Buyer, are not agreed to by Seller. This contract contains the final and entire agreement between Seller and Buyer and no understandings, representations, agreements, modifications, alterations, or additions shall be effective unless in writing and signed by Seller and Buyer.
2. **PRICES AND TERMS:** All prices are F.O.B. the place of shipment, and are upon the payment terms stated on the face of this contract. If shipments are delayed by Buyer, payments shall become due from the date when Seller is prepared to make shipment. Seller may, at any time, and from time to time, in its sole discretion, limit or cancel the credit of the Buyer as to time and amount and, as a consequence, may demand payment in cash before delivery on any unfilled portion of this contract, and failure of the Buyer to make any such payment in the amount and within the time as demanded shall constitute a default under this contract. Approval of credit for one or more deliveries or contracts shall not be deemed a waiver of the provisions of this paragraph. Buyer hereby represents to Seller that it is now solvent and agrees that each acceptance of delivery of the products sold hereunder shall constitute reaffirmation of this representation at such time. In any event, Seller shall have no duty to ship any item described herein if the Buyer's general account at Seller is delinquent in whole or part at the time such shipment is required. A delinquent account shall give Seller the following remedies, which it may invoke in its absolute discretion without notice to Buyer.
  - i. Seller may bill and declare due and payable all undelivered products under this or any contract with the Seller and/or,
  - ii. Seller may defer shipment hereunder and under any other contract until such default, breach, or repudiation is removed and/or,
  - iii. Seller may cancel any undelivered portion of this and/or any other contract in whole or in part (the Buyer remaining liable for damages).

### **LIMITED WARRANTY**

3. **EXPRESS WARRANTY:** Seller expressly warrants its products to conform to Seller's specifications as set forth in the product insert.

### **DISCLAIMER OF IMPLIED WARRANTY**

**THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, OR IMPLIED, AND SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OTHER THAN AS EXPRESSED HEREIN.**

### **LIMITATION AND EXCLUSION OF REMEDIES**

The exclusive remedies available upon breach of this warranty shall be the return for credit of the defective material or for replacement of the defective material so long as the following conditions are observed:

- (1) the material shall be returned in accordance with instructions given by Seller and such return shall not be made until authorized in writing by Seller,
- (2) the warranty shall be limited to inherent defects and shall not extend to any damage caused by improper use or handling by the Buyer,
- (3) the warranty shall not apply in the event that the original product markings have been removed, defaced, or altered or if any material has been substituted or modified without the express consent of Seller,
- (4) the customer's general account at Seller's is current and not delinquent in whole or in part,
- (5) Seller also hereby excludes any warranty that the products sold hereunder shall be free of the rightful claim of any third person by way of patent infringement or the like.

**DAMAGES: IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE SALE, FURNISHING, PERFORMANCE OR USE OF ANY PRODUCT COVERED BY THIS CONTRACT.**

4. **RETURNS, ADJUSTMENTS, AND SERVICING:** If warranty or general repair or service to a Seller's product is requested by customer and authorization for its return is given by Seller, the terms of return shall include the following:
  - (1) The product must be properly packed in the original Seller's shipping container. Additional shipping containers may be purchased from Seller, if needed.
  - (2) The product shall be shipped by air freight, unless another means of transportation is specified in writing by Seller. Freight and insurance charges must be prepaid by Buyer and all risk of loss, damage, or delay in shipment shall be borne solely by the Buyer.
  - (3) After receipt of product Seller reserves the right to inspect the product and to determine the cause of the defect and warranty status. Seller shall have no duty to perform a warranty replacement or grant a credit where the product has suffered damage in shipment that prevents a determination by Seller of the cause or existence of the asserted defect under warranty.
  - (4) If the product is found to be under warranty, credit will be given or product will be replaced free of charge in accordance with the terms of the Seller's warranty. Products replaced under warranty will be returned, shipping charges prepaid by Seller, to locations within the United States. Shipping, insurance, taxes, duties, and other related charges shall be borne by the Buyer if the product is returned to a location outside the USA.
  - (5) If the product is determined to be of a non-warranty status the customer will be advised and a written purchase order for a replacement shipment will be required before shipment.
5. **TITLE, RISK OF LOSS AND INSURANCE:** Title to each shipment of the product sold hereunder and risk of loss thereon passes to Buyer when such products are delivered by Seller or its agent to a common carrier or licensed trucker, consigned to Buyer, or its agent, but they remain subject to Seller's rights of stoppage in transit and of reclamation. If a strike, embargo, government action, or any other cause beyond Seller's control prevents shipment or delivery to Buyer or his Agent, or if shipping instructions for any shipment are not received before shipment date, or if payment is to be made on or before delivery, title and risk of loss passes as soon as the shipment has been set aside by Seller and invoiced to Buyer (subject to Seller's rights as an unpaid Seller) and payment shall be made in accordance with invoices as though the products have been shipped and accepted by Buyer, and Seller shall be under no duty to carry insurance on the item for Buyer's benefit.
6. **SALES AND SIMILAR TAXES:** Unless otherwise stated, Seller's prices do not include sales, use, excise or similar taxes. Consequently, in addition to the prices specified herein, the amount of any applicable present or future sales, use, excise, or other similar tax applicable to the sale of the products hereunder shall be paid by the Buyer.
7. **DELIVERY:** Seller will use every reasonable effort to effect shipment on or before the date indicated. Seller shall not be liable for delay in performance or inability to perform occasioned by any cause beyond its control or beyond the control of its suppliers or contractors, including but not limited to strike, embargo, government regulation or inability to obtain materials. If performance by Seller is delayed by reason thereof, it shall notify Buyer, and time for performance shall be extended for the period of such contingency. If, as a result of any such contingency, Seller is unable to perform this contract in whole or in part, then to the extent that it is unable to perform, the contract shall be deemed terminated without liability to either party, but shall remain in effect as to the unaffected portion thereof, if any.
8. **SERVABILITY OF BREACH:** Any defect in quality, or delays in delivery or non-delivery caused by Seller shall affect only the particular installment so defective or delayed and shall not affect the balance of the contract. Irrespective of dispute any delivery or any item shall be paid for on the due date, as provided in this contract, without offset, defense or counterclaim and regardless of controversies relating to its delivery or other delivery or to an undelivered product.
9. **WAIVER:** Waiver by Seller of a breach by Buyer of any portion of any provision of this contract shall not be deemed a waiver of future compliance therewith, and such provision, as well as all other provisions hereunder, shall remain in full force and effect.
10. **FAIR LABOR STANDARDS ACT COMPLIANCE:** Seller represents that these goods were produced in compliance with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended, and/or regulations and orders of the United States Department of Labor issued under Section 14 thereof.
11. **ERRORS:** All clerical errors subject to correction.
12. **RETURNED GOODS:** Goods may not be returned without prior written consent of Seller.
13. **PRODUCT USE:** All Worthington products are sold for manufacturing, research, and laboratory use only. Researchers and clinical laboratory personnel intending to use any of these products for medical investigation on humans are solely responsible for such use and for compliance with the pertinent regulations of the United States Food & Drug Administration (USFDA) and other regulations. We do not assume liability for damages resulting from the use or misuse of these products or from their use or misuse in violation of patent or other rights.
14. **INDEMNIFICATION:** Buyer shall indemnify and defend Seller, its officers, directors, stockholders, agents and employees against all liability or loss and against all claims or actions brought against Seller, its officers, directors, stockholders, agents and employees, based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with or arising out of Buyer's negligence, Buyer's performance of the contract, or Buyer's violation of any federal, state or municipal law. Seller shall indemnify and defend Buyer from and against all claims or actions brought against Buyer for bodily injury or property damage (other than damage to Seller's product) caused by the sole negligence of Seller.

v2.13.12

Worthington Biochemical Corporation  
730 Vassar Ave  
Lakewood, NJ 08701 USA