

Genzyme Ireland Ltd - Terms & Conditions

1. DELIVERY

- (a) Time is of the essence in this contract. The goods shall be delivered on or before the date specified on the front of this purchase order. Genzyme Ireland Limited ("Genzyme") shall only accept deliveries Monday to Friday between the hours of 9:00 a.m. to 5:00 p.m. Seller shall enclose an itemized packing slip with all deliveries, and on deliveries not so accompanied, Genzyme's determination of count or weight shall be conclusive. If deliveries are not made on or before the date agreed upon, Genzyme reserves the right to cancel the contract or to purchase elsewhere and hold the Seller accountable therefore.
- (b) The goods called for by this contract shall be delivered in a single lot unless specifically stated otherwise on this purchase order.
- (c) When delivery in installments is permitted, each installment is dependent on every other installment and a delivery of goods which do not conform to the terms of this contract or a default of any nature with respect to any installment, including defaults as to time of delivery, quantity, quality or the like, will impair the value of the whole contract, entitle Genzyme to reject the non-conforming installment, and constitute a total breach of the contract.
- (d) Unless otherwise specified, goods shipped from within Ireland are sold F.O.B. Genzyme's facility in Waterford, Ireland. Any goods shipped from a location outside Ireland are sold D.D.P. Genzyme's facility in Waterford, Ireland.

2. INSPECTION RIGHTS AND RIGHT TO REJECT

Genzyme shall have the right to inspect the goods, including the right to verify the quantity of goods actually shipped, at the time and place of delivery before tendering payment or accepting the goods. The goods may be inspected within thirty (30) days after actual receipt of the goods at Genzyme's place of business. Failure to inspect within thirty (30) days after actual receipt of the goods shall constitute a waiver of Genzyme's rights of inspection and shall be equivalent to acceptance of the goods. Such failure to inspect shall not, however, limit Genzyme's right to revoke acceptance if the goods do not conform to the terms of this contract.

Upon inspection, and in the event that the goods or the tender of delivery fail in any respect to conform to the contract, Genzyme may (a) reject the whole; or (b) accept the whole; or (c) accept any commercially reasonable unit or units and reject the rest. If the goods or any portion thereof are rejected within the thirty (30) days inspection period, Genzyme shall promptly notify Seller of such rejection. Seller agrees to replace or correct defects in any rejected goods as directed by Genzyme without expense to Genzyme when notified of such rejection by Genzyme. In the event of a failure of Seller to correct defects or replace rejected goods promptly, Genzyme, after reasonable notice to Seller, may make such corrections or replace such goods and charge Seller for costs incurred by Genzyme in doing so or set off any such costs against any sums accruing to Seller.

Genzyme shall have the opportunity, at the time and place of inspection, to run adequate tests to determine whether the goods tendered conform to the specifications of the contract. Use of a portion of the goods for the purpose of testing shall not constitute an acceptance of the goods. In the event that the goods are rejected as non-conforming, Genzyme shall return the goods to the Seller at the Seller's sole risk, and Seller shall compensate Genzyme for the costs of unpacking, examining, re-packing and reshipping such goods.

3. TERMINATION FOR CONVENIENCE OF GENZYME

Genzyme reserves the right to terminate this order in whole or in part at its sole convenience by giving notice of such termination to Seller before the goods are shipped. In the event of such termination, Seller shall immediately stop all work hereunder and shall send Genzyme a written acknowledgment of receipt of such notice of termination. Genzyme shall be responsible for goods that are manufactured by the Seller as special or custom for Genzyme up to the point of completion of the goods. Any sums issued to the Seller for the special or custom manufactured goods will constitute liquidated damages and shall be the exclusive remedy of the Seller where notice of termination is properly given. Genzyme accepts no liability whatsoever for any other goods manufactured prior to receipt of any such termination notice and which have not been shipped.

4. TERMINATION FOR CAUSE

Genzyme may also terminate this contract or any part hereof for cause in the event of any default by the Seller, or if the Seller fails to comply with any of the terms and conditions of this contract. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Genzyme upon request reasonable assurance of future performance shall, without limitation, all be causes allowing Genzyme to terminate this contract for cause. In the event of termination for cause, Genzyme shall not be liable to Seller for any amount, and Seller shall be liable to Genzyme for any and all damages sustained by reason of the default, which gave rise to the termination.

5. WARRANTIES

As a term and condition of this contract, Seller warrants as follows:

- (a) Seller has legal title to the goods and transfer of title to Genzyme does not violate any agreement between Seller and a third party;
- (b) The goods shall be delivered free from any security interest or other lien or encumbrance;
- (c) The goods shall be of merchantable quality and fit, for the ordinary purposes for which such goods are used;
- (d) The goods ordered to specifications will conform thereto and to any drawings, samples or other description furnished or adopted by Genzyme;
- (e) The goods shall be fit for any special or particular purpose of which Genzyme notifies Seller at the time of contracting or of which Seller has reason to know; and
- (f) The goods shall conform to any affirmation of fact made by Seller to Genzyme which relates to the goods, to any description of the goods made by Seller to Genzyme and to any such sample or model furnished to Genzyme by Seller.
- The warranties described above, together with Seller's service warranties and guarantees, if any, shall survive inspection, test, acceptance of any payment for the goods and shall inure to the benefit of Genzyme, its successors, assigns and customers. Nothing in this contract shall prejudice the protections afforded Genzyme as a Purchaser pursuant to the Sale of Goods Acts, 1893 and 1980 and the Liability for Defective Products Act, 1991.
- GENZYME EXPRESSLY CONDITIONS ACCEPTANCE OF THIS PURCHASE ORDER ON SELLER ASSUMING THE WARRANTIES DESCRIBED ABOVE. NO DISCLAIMER OF ANY OR ALL OF THE ABOVE WARRANTIES CONTAINED IN ANY FORM OR ACKNOWLEDGMENT OF THE SELLER SHALL BE EFFECTIVE UNLESS GENZYME EXPRESSLY CONSENTS TO SUCH DISCLAIMER IN WRITING.**

6. PRICE WARRANTY

Seller warrants that the price for the goods ordered are not less favorable than those currently extended to any other customer for the same or similar goods in similar or smaller quantities and under like circumstances. In the event Seller reduces its price for such goods during the terms of this order, Seller agrees to reduce the prices stated in this order correspondingly. No additional charges shall be added to the price shown on the purchase order without Genzyme express written consent. Such additional charges shall include, but are not limited to, shipping; packaging; labeling; federal, state and local taxes and duties, other than sales or use taxes; storage; insurance; boxing; and crating.

Except as may be otherwise provided in this contract, the contract price includes all applicable federal, state and local taxes and duties, other than sales and use taxes, in effect on the date of this contract.

7. IDENTIFYING NUMBERS

The order number shown on this purchase order must appear on all invoices, packing slips or correspondence pertaining to this order.

8. INDEMNIFICATION AND NOTICE OF SUIT

The Seller shall indemnify and hold harmless Genzyme, its directors, officers, agents and employees from and against all claims, expenses, or liability of whatever nature arising out of any defect in the goods supplied to Genzyme by the Seller hereunder.

In the event that Genzyme is sued by a consumer or other third person for breach of warranty or other obligation for which Seller is answerable, Genzyme shall give Seller written notice of the suit, stating that Seller may come in and defend against such suit and that if Seller does not do so Seller will be bound in any subsequent action between Genzyme and Seller as to any determination of fact common to the two litigations.

9. PATENTS AND OTHER PROPRIETARY RIGHTS

The Seller shall defend, at its own expense, Genzyme, its distributors and dealers, and users of the products of Genzyme and hold them harmless with respect to any and all claims that the products or materials furnished by the Seller under this contract infringe any United States or foreign letters patent, trade marks, copyright, design rights or any other proprietary rights of a third party, and with respect to any and all suits, controversies, demands, and liabilities arising out of any such claims.

10. INTERPRETATIONS AND PAROL EVIDENCE

This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. Words and expressions defined in the Sale of Goods Acts, 1893 and 1980 or in Incoterms 2000 will, when used in this contract, save where the context otherwise requires, bear the same meanings as therein.

11. REMEDIES

Genzyme and Seller shall have all rights and remedies afforded under the laws of the Republic of Ireland.

12. MODIFICATIONS

This contract may not be released, discharged, supplemented, amended, varied, modified or rescinded in any manner except by an instrument in writing signed by both the parties or their duly authorized agents or officers. In particular, no terms and conditions on the Seller's contract, order form or invoice shall have any effect unless expressly agreed to in writing by Genzyme.

13. WAIVER INEFFECTIVE

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. Waiver by either Seller or Genzyme of a breach by the other of any provision of this contract shall not be deemed a waiver of any subsequent breach thereof, and such provisions shall remain in full force and effect.

14. ASSIGNMENT AND DELEGATION

No right or interest in this contract shall be assigned by either Genzyme or Seller without the written permission of the other party, and no delegation of any obligation owed or of the performance of any obligation, by either Genzyme or Seller shall be made without the written permission of the other party. A change in control of the Seller prior to completion of this contract shall constitute an impermissible delegation, which will make this contract voidable at the option of Genzyme.

15. STATUTE OF LIMITATIONS

Notwithstanding the terms of the Statute of Limitations, 1957 any action by Genzyme or Seller for breach of or arising in any way whatsoever as a result of this contract must be commenced within four (4) years after the cause of action has accrued.

16. APPLICABLE LAW AND JURISDICTION

This contract and all relationships created hereby shall be in all respects governed by and construed in accordance with Irish Law. It is irrevocably agreed that the Irish courts are to have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement or its performance and accordingly that any suit, action or proceedings so arising may be brought in such courts. This clause is for the exclusive benefit to Genzyme, and nothing in this clause will limit its right to take any suit, action or proceedings including any third party proceedings ("Proceedings") against Seller or any other party or parties in any other court of competent jurisdiction, nor will the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction, whether concurrently or not.

17. BANKRUPTCY

In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then Genzyme shall be entitled to cancel any unfulfilled part of this contract without any liability whatsoever.

18. MISCELLANEOUS

Genzyme is an equal opportunity employer.