

Nutraceutical Corporation

Terms and Conditions

The terms and conditions of purchase stated in this purchase order, unless modified in writing by Buyer, shall govern this transaction and any future transaction between Seller and Buyer (if Buyer does not supply additional terms and conditions), notwithstanding any conflicting term or condition of Seller's acknowledgement or any other document or communication to the contrary. Buyer hereby objects to and rejects any terms or conditions contained in any such document or communication which is contrary to or in addition to these terms and conditions.

1. Definitions. The term "Buyer," except as otherwise defined herein, means Nutraceutical Corporation ("Nutraceutical"), a Delaware corporation acting through the Director of Purchasing of Nutraceutical or any agent(s) designated by him, or such subsidiary of Nutraceutical as is identified on the face hereof. The term "Seller" refers to the company or person(s) listed on the face of this purchase order and to whom this offer or counteroffer is extended. The word "articles" means goods, products, materials, equipment, supplies, parts, assemblies, technical data, intellectual property, drawings, art work, dies, designs, engravings, services or other items covered by this purchase order. The term "purchase order" shall be understood to include these terms and conditions, the information on the face hereof, and any duly executed change orders and attachments.

2. Acceptance of Purchase Order. This purchase order constitutes Buyer's offer or counteroffer to Seller and shall become a binding contract upon acceptance by Seller. Acceptance by Seller shall occur upon Seller's sending an acknowledgment to Buyer, or the commencement of performance by Seller, or actual receipt of articles, whichever occurs first. By accepting this purchase order, Seller agrees to and accepts these terms and conditions. Buyer shall not be deemed to have accepted nor be held responsible for any articles delivered to Buyer without a written purchase order, or which for any reason do not conform to Buyer's qualitative, quantitative, or other specifications. In all the above cases, Buyer shall have the right, at its option, to return all or any part of the articles to Seller, who shall bear any risk and pay all consequential costs incurred in connection with shipment and return of such articles. Seller's warranties shall extend to Buyer and users of articles in any location or change of location.

3. Prices. Seller warrants that prices quoted to or paid by Buyer shall not exceed prices specified on the face hereof, and, in any case, shall not exceed current prices charged to any other customer of Seller for substantially similar articles, taking into account the quantity ordered. Seller shall forthwith refund any amounts paid by Buyer in excess of such price. Buyer shall be entitled at all times to set off or deduct any amount owing at any time from Seller to Buyer against any amount payable at any time to Seller by Buyer.

4. Additions, Changes, and Substitutions. The word "Buyer," for purposes of this paragraph, shall be construed to refer to agents of Buyer who are full-time Nutraceutical Purchasing personnel only, or who are current appointed officers of Nutraceutical Corporation. No change in any contract shall be binding upon Buyer until executed by Buyer. Under no conditions shall Buyer's receipt of Seller's articles be deemed to constitute consent to any modification of any contract. In the event Seller fills an order without first obtaining Buyer's express written consent to such changes, Seller shall be deemed to have accepted the original terms and conditions contained herein and the same shall be given precedence over any and all conflicting terms or conditions not expressly approved by Buyer, whether such conflicting terms or conditions are contained in a modification of this document, in Seller's acknowledgment, or in any other document or communication.

5. Correspondence and Acknowledgments. All correspondence and acknowledgments shall be directed to the attention of Buyer's Purchasing office, at the address listed on the face hereof.

6. Termination of Purchase Order. In the event of Seller's failure to deliver as herein specified, Buyer reserves the right to cancel this order or any part thereof, without prejudice to any other rights it may have. Seller also agrees that Buyer may return part or all of any shipment in the event of Seller's failure to deliver as specified and may charge Seller any expense or loss sustained by Buyer, including the additional cost of purchasing the articles elsewhere. It is understood that time is of the essence.

7. Acceptable Invoices. Buyer shall be under no legal obligation to pay principal or interest to Seller for articles covered by this purchase order until at least 30 days after Seller submits an acceptable invoice. In order to be acceptable, Seller's invoice must: (i) be submitted to Buyer at the invoice address indicated on the face hereof; (ii) cover this purchase order or any part thereof only; (iii) reference order number, quantity, description and unit price in the same form and description as contained herein. Invoices not in compliance with these requirements may be returned by Buyer.

8. Nonconforming articles. Buyer may reject or revoke acceptance of articles or any portion thereof which, without limitation, are: (i) not timely delivered; (ii) not in conformity with Buyer's or Seller's quality control standards, specifications or descriptions, or with this purchase order; (iii) defective; (iv) not in conformity with the label of the Code Number under which the articles are to be sold; (v) not in compliance with any sample (collectively, "nonconforming articles"); or, (vi) not in compliance with law. Without Buyer's prior written authorization, Seller shall not ship nonconforming articles whether as an accommodation or otherwise.

9. Consequential and Incidental Damages. By accepting this purchase order, Seller understands that Buyer is relying on Seller's special ability to obtain the articles in the specified quantities and quality in accordance with this purchase order, and further that Buyer shall suffer consequential and incidental damages (including lost profits due to loss of sales), if Seller fails to perform in accordance with this purchase order. Buyer and Seller acknowledge that damages are substantial and may be difficult to ascertain when Buyer recalls products as a result of a failure to perform in accordance with these terms and conditions. Thus, in the event of such a recall by Buyer, Buyer shall be entitled to recover as reasonable liquidated damages, and not as a penalty, an amount equal to the sum of: (i) the total price indicated on the face of this purchase order, plus (ii) the costs of packaging, transporting, or otherwise disposing of the goods, plus (iii) all legal and other fees incurred in coordinating the recall. Buyer shall also be entitled to recover any other damages or losses which it may suffer.

10. Cash Discounts. It is understood that the cash discount provided to Buyer shall date from the date of receipt of articles at the "Ship To" address listed on the face thereof or the date of receipt of the acceptable invoice, whichever is later, and not from the date of the invoice. Terms of payment, absent an authorized amendment hereto, shall be 2%-10 Days, Net 30 Days. Payment is deemed to be made for the purpose of earning the discount on the date on which it is made by Buyer.

11. Packing and Shipping. Absent other terms specified on the face hereof, all shipments to Buyer shall be made either FOB origin or FOB destination (as specified on the face hereof, but if not so specified, then the latter) to Buyer's "Ship To" address listed on the face hereof. Delivery shall be made and articles shipped as specified without charge for boxing, crating, carting or storage, unless otherwise specified, and articles shall be suitably packed to secure lowest transportation costs, and in accordance with the current National Motor Freight Classification. Articles shall be described on bills of lading in accordance with current Rail or Motor Freight Classification, whichever is applicable. Buyer's purchase order number, quantity, and description must be plainly marked on all packages, bills of lading, shipping orders, packaging lists and correspondence. Packing lists shall accompany each box or package shipment. Buyer shall not be responsible for any articles not delivered to Buyer's "Ship To" address listed on the purchase order herein or without Buyer's purchase order number, and shall return such articles to Seller at Seller's expense. Except as consented to by Buyer, Seller shall not ship in advance of schedule and shall ship exact quantities ordered.

12. Warranty. Seller warrants that all articles shall conform to applicable specifications, drawings, descriptions, samples, and shall be merchantable, of good workmanship and materials, fit for the particular purpose or purposes for which intended, free from defect, claim encumbrance, or lien, and in compliance with law. Seller warrants that the articles, including the trademarks used in connection therewith, as well as the claims and representations made by Seller with respect thereto, and the manufacturing processes and structure of the articles, do not infringe the intellectual property rights of any third parties. If the articles include any item which may become a part of a product to be consumed by humans, Seller warrants that such articles are and shall be fit for human consumption, and do not contain any substances or ingredients that may be harmful to a person who consumes them. Seller also warrants that the articles comply with all applicable laws and regulations concerning human consumption of such products and any required disclosures or warning labels. Without limiting the generality of the foregoing, Seller warrants that: the articles comprising each shipment or other delivery hereafter made by Seller to Buyer, as of the date of such shipment or delivery, shall: (i) not be adulterated, misbranded, unapproved new drugs or otherwise violative within the meaning of the Federal Food, Drug, and Cosmetic Act (hereafter "FDC Act"), 21 U.S.C. 301 et seq.; (ii) have been formulated, manufactured, packaged, labeled, advertised, promoted, and handled in accordance with, and are otherwise in accordance with and not in violation of, all other applicable requirements of federal, state and local law; (iii) not require that Buyer or any of Buyer's customers place any disclosure or warning labels or statements on the labeling thereof. Whether pursuant to the law commonly known as "Proposition 65" in California. Or pursuant to any other law or regulation; and (iv) otherwise not be an article that may not properly be introduced into commerce under the provisions of the FDC Act or any other federal, state or local law. Seller also warrants to Buyer that all claims, representations and other statements about the articles that have been made by Seller in labeling, advertising or other promotion for the articles are truthful, not misleading, and supported by valid substantiating data, and in addition, Seller warrants to Buyer that Buyer may properly repeat in any labeling, advertising or other promotion for the articles, or for any product which includes the articles, any or all of the claims, representations or other statements about the articles that have been made by Seller in its labeling, advertising or other promotion for the articles. If articles delivered or services furnished herein do not meet the warranties specified herein or otherwise applicable, Buyer may at its option return at Seller's expense the defective or nonconforming articles for credit or refund, or require Seller to correct, at no cost to Buyer, any defective or nonconforming article or services. Time is of the essence. Defective or nonconforming articles shall not be corrected or replaced without Buyer's consent or express permission. Seller's warranties shall not be deemed to be exclusive. Buyer's inspection, approval, acceptance, use of or payment for all or any part of articles shall in no way affect its warranty rights whether or not breach of warranty has become evident at the time.

13. Assignment and Subcontract. Neither this order nor any duty or right thereunder shall be delegated or assigned by Seller without the prior written consent of Buyer. Any assignment not made in accordance with the terms and conditions of this paragraph is void and shall have no effect.

14. Hazardous Materials. If any article is considered to be a hazardous material under federal, state, or local laws or regulations, a Material Safety Data Sheet (MSDS) must be submitted with each shipment of the article.

15. Indemnity. Seller agrees to indemnify and hold Buyer harmless from any and all losses, costs or expenses, including, but not limited to, government fines or assessments and legal fees and court costs incurred on account of or related to: (i) any breach by Seller of any covenant, warranty or representation contained or referenced herein, or in any other document provided or produced by Seller; (ii) any injuries or death to persons or damage to or destruction of property caused by or resulting from any acts or omissions of Seller, its agents, suppliers or employees; and (iii) any infringement or alleged infringement of the intellectual property rights of third parties arising from Buyer's purchase, use or sale of any articles. At Buyer's option, Seller shall defend Buyer, at Seller's expense, in all suits or proceedings arising out of any of the foregoing. In the event of an indemnification claim under subsection (iii) of this Section 15, Seller shall, at Buyer's option and at Seller's expense, and in addition to any other obligations Seller may have to Buyer, either (a)

procure for Buyer a license to purchase, use or sell any of the articles which allegedly infringe the rights of third parties, or (b) refund the purchase price of any infringing or allegedly infringing articles, plus all costs and expenses incurred.

16. Intellectual Property Rights. In the event any articles sold and delivered hereunder shall be covered by any patent, copyright, trademark, other intellectual property right, or application therefor (the "Intellectual Property Rights"), Seller hereby grants to Buyer a license to use such Intellectual Property Rights in connection with the manufacture, sale or distribution of those goods of Buyer which incorporate the articles.

17. Exclusive Right of Ownership. Seller agrees that title to and the right of immediate possession of all technical data, intellectual property, drawings, art work, dies, designs, engravings, plans or any other materials furnished or paid for by Buyer directly or indirectly for use herein shall be and remain in Buyer. Buyer shall retain title at all times to such articles, all of which, including copies thereof, upon request or upon completion of this purchase order, shall be promptly returned to Buyer by Seller.

18. Advertising and Endorsements. Seller shall not advertise, disclose, nor claim or imply endorsement in any way to any third party nor use any information whatever concerning this purchase order or any attachments without express written permission from Buyer. Seller shall not circularize nor advertise to units or division of Buyer without express written permission from Buyer.

19. Miscellaneous. Buyer may at any time insist upon strict compliance with these terms and conditions, notwithstanding previous custom, practice or course of dealing to the contrary. Identification of the articles shall occur at the moment this offer is accepted by Seller. This purchase order contains the entire agreement of the parties. It may not be modified or terminated, and no claimed modification, rescission or waiver shall be binding on Buyer, unless consented to by a duly authorized representative of Buyer. In the event of discrepancies, omissions, and/or errors in this purchase order, the matter shall be submitted immediately to Buyer for determination. No waiver by Buyer of any provision or of any obligation of Seller, and no partial or single exercise thereof, shall constitute a waiver of any other provision or of any other of Seller's obligations. Buyer hereby notifies Seller that Buyer may incorporate the articles into goods that will be sold in California.

20. Penalties. Monetary penalties of \$50.00 (for each infraction), may be deducted from any payment due Seller, may be assessed by Buyer upon receipt of any shipment which is not accompanied by a packing list with the appropriate purchase order number, item number or quantity. This penalty may also be assessed upon the receipt of any shipment not accompanied by an appropriate certificate of analysis.

21. Venue. The provisions of this purchase order and any contract arising herefrom shall be governed by the laws of the State of Utah, without regard to its principles of conflict of laws, and venue and jurisdiction for any proceeding to enforce or interpret said contract shall lie exclusively in federal or state court in Salt Lake City, Utah.