



## Terms and Conditions of Sale

**ACCEPTANCE OF TERMS:** These Terms and Conditions of Sale ("Contract") shall govern all orders for the purchase of products from chemQ bioscience LLC ("chemQ" or "CHEMQ"), and this Contract shall contain the only terms and conditions governing sales of products by chemQ to the purchaser thereof (the "Purchaser"). The Purchaser will be deemed to have assented to these terms and conditions by ordering products. Terms or conditions contained in any order form, purchase order, or other document submitted by Purchaser which are inconsistent with, or in addition to, these Terms and Conditions are rejected, objected to and shall be deemed void and of no force or effect. All orders of Purchase are subject to acceptance by chemQ.

**DESCRIPTION OF GOODS:** chemQ manufactures and offers sale of bio-preservation media, tissue perfusion solutions, cell culture media, cytology processing solutions and reagents (each, a "PRODUCT"; collectively, "PRODUCTS"). All sales of PRODUCTS are subject to the terms and conditions set forth herein.

**AUTHORIZED USES:** chemQ's PRODUCTS are solely for research use only ("RUO"). PRODUCTS are to be used in a safe manner and in accordance with all applicable laws, rules, regulations, and guidelines. Human use of PRODUCTS is strictly prohibited. Unless otherwise expressly indicated in our catalogues or on the label or other documentation accompanying PRODUCTS, PRODUCTS are not intended for unauthorized commercial purposes, in vitro diagnostic purposes, therapeutic purposes, investigational use in foods, drugs, devices or cosmetics of any kind, or for consumption by or use in connection with or administration to humans or animals. Purchaser expressly represents, warrants, and covenants to chemQ that Purchaser will properly use, store, handle, and dispose of PRODUCTS in accordance with this Contract and any additional guidance provided with any written information or labeling provided with the PRODUCTS, the practices of a properly trained person who is an expert in the permitted field in which they will be used, and in strict compliance with all applicable laws, rules, regulations, and guidelines, now and hereinafter enacted. Purchaser shall not reverse engineer or alter, modify, separate, or break down any PRODUCTS physically, chemically, or biologically. Purchaser further warrants to chemQ that any material produced with or incorporating PRODUCTS shall not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act.

**SAFETY STATEMENT:** Purchaser acknowledges that some of the PRODUCTS may be hazardous or could otherwise present a safety risk as may be outlined in any Safety Data Sheet provided with, or made publicly available by, chemQ with respect to, the PRODUCTS or any other label or document shipped with or otherwise associated with any of PRODUCTS. Purchaser agrees to use, store and otherwise handle the PRODUCTS with such care and taking such safety precautions as is necessary or appropriate in each case. In no event shall chemQ be liable for any personal injury or any other damages arising from or as a result of use, handling misuse or mishandling of the PRODUCTS or any breach of this Contract or failure to comply with applicable laws, rules, regulations, or guidelines.

**PRICE:** All prices published by chemQ or quoted by chemQ's representatives may be changed at any time without notice. All prices quoted by chemQ or chemQ's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of chemQ's original price quotation.

**PURCHASE ORDERS:** All orders placed by Purchaser are subject to acceptance by chemQ. Orders may not be cancelled, rescheduled or changed without chemQ's written consent. All orders must identify PRODUCTS, unit quantities, REF numbers, and applicable prices of PRODUCTS being purchased. chemQ may in its sole discretion allocate PRODUCTS among its purchasers thereof.

**TAXES AND OTHER CHARGES:** chemQ shall not be responsible for the payment of any use, sales, value added, excise, or other tax, duty, tariff, customs, inspection, or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority with respect to the sale or transfer or PRODUCTS to Purchaser or import or export of PRODUCTS in the course of shipment of Purchaser, with the sole exception of any sales taxes invoiced and collected from Purchaser by chemQ. All other such charges (if any) must be paid by Purchaser separately and in addition to the prices quoted or invoiced. In the event chemQ is required to pay any such tax, tariff, duty, fee or charge, Purchaser shall reimburse chemQ therefor. If Purchaser claims any exemption with respect to any such tax, tariff, duty, fee or charge, Purchaser must provide a valid, signed certificate or letter of exemption for each respective jurisdiction and indemnify, defend, and hold harmless chemQ with respect to any potential liability resulting from any failure to pay any such tax, tariff, duty, fee or charge.

**TERMS OF PAYMENT:** Payment in full shall be made within twenty-one (21) days of invoice. Payment may be made by ACH transfer or check, however, ACH transfer is the preferred method. chemQ will invoice Purchaser upon shipment for the full price and all other charges and amounts payable by Purchaser in accordance with the terms on this Contract. If Purchaser fails to pay any amounts when due, Purchaser shall pay chemQ interest thereon at a periodic rate of one and one-half percent (1.5%) per month or, if lower, the maximum amount that can be charged under law, compounded monthly (equivalent to 19.56% per annum), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by chemQ in collecting such overdue amounts or otherwise enforcing chemQ's rights hereunder. chemQ reserves the right to require from Purchaser full or partial payment in advance, or other security that is satisfactory to chemQ, at any time that chemQ believes in good faith that Purchaser's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars.

**DELIVERY:** PRODUCTS will be delivered to Purchaser Ex Works (EXW) (INCOTERMS 2010) chemQ's facility. Freight, insurance, handling and other charges as may be incurred will be paid by Purchaser. chemQ will have the right, at its election, to make partial shipments of PRODUCTS and to invoice each shipment separately. chemQ reserves the right to stop delivery of PRODUCTS and to withhold delivery in whole or in part if Purchaser fails to make any payment to chemQ when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and chemQ will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver. In the event of a delay due to any cause beyond chemQ's reasonable control, chemQ reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Purchaser will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. PRODUCTS as to which delivery is delayed due to any cause within Purchaser's control may be placed in storage by chemQ at Purchaser's risk and expense and for Purchaser's account.

**PRODUCT AVAILABILITY:** chemQ makes no guarantee of PRODUCT availability, but will use commercially reasonable efforts to fill the customer's orders accepted by chemQ in writing in a timely fashion.

**WARRANTY, LIABILITY, DISCLAIMER:** PRODUCTS supplied by chemQ are warranted to materially comply with any specifications explicitly provided on our PRODUCTS labels, documentation, published specifications or package inserts for the period specified therein and when a) stored properly under specified conditions provided on labels and specifications, b) used in accordance with industry standards and practices, c) used by properly trained personnel in Purchaser's facility. Should any PRODUCT fail to satisfy any such applicable specifications as specified during the applicable warranty period, chemQ will credit the purchase



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price to the Purchaser's account or replace the PRODUCT free of charge. This warranty is exclusive and limits our liability to, at chemQ's option, the replacement of the PRODUCT or full credit of the original purchase price. **chemQ's warranties made in connection with this sale shall not be effective if chemQ has determined, in its sole discretion, that Purchaser have stored PRODUCTS in improper condition, have misused the PRODUCTS in any manner, have failed to use PRODUCTS in accordance with industry standards and practices, have failed to use PRODUCTS in accordance with instructions, if any, furnished by chemQ, or have otherwise breached this Contract.**

THE WARRANTIES SET FORTH HEREIN ARE CHEMQ'S SOLE AND EXCLUSIVE WARRANTIES FOR OR RELATING TO PRODUCTS, AND CHEMQ HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

CHEMQ'S SOLE AND EXCLUSIVE LIABILITY TO PURCHASER, AND PURCHASER'S EXCLUSIVE REMEDY, WITH RESPECT TO PRODUCTS PROVED TO CHEMQ'S SATISFACTION TO BE DEFECTIVE OR NONCONFORMING IN ACCORDANCE WITH THE PRECEDING PARAGRAPH SHALL BE REPLACEMENT OF SUCH PRODUCTS WITHOUT CHARGE OR REFUND OF THE PURCHASE PRICE, AS ELECTED IN CHEMQ'S SOLE DISCRETION, UPON THE RETURN OF SUCH PRODUCTS IN ACCORDANCE WITH CHEMQ'S INSTRUCTIONS. CHEMQ SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES OF ANY KIND WITH RESPECT TO PRODUCTS OR THE USE OR SALE THEREOF, INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, COST OF CAPITAL, LOSS OF WORK IN PROGRESS, DOWNTIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, ANY LIABILITY OF PURCHASER TO A THIRD PARTY, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY OR PROPERTY DAMAGE. CHEMQ'S TOTAL LIABILITY HEREUNDER SHALL IN NO CASE EXCEED THE CONTRACT PRICE PAID TO CHEMQ BY PURCHASER FOR THE SPECIFIC PRODUCTS THAT GIVE RISE TO ANY BREACH, CLAIM OR DAMAGE. THESE EXCLUSIONS AND LIMITATIONS ON DAMAGES SHALL APPLY REGARDLESS OF HOW THE LOSS OR DAMAGE MAY BE CAUSED AND AGAINST ANY THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY. ALL CLAIMS WITH RESPECT TO NONCONFORMING PRODUCTS MUST BE BROUGHT WITHIN THIRTY (30) DAYS OF SHIPMENT, REGARDLESS OF THEIR NATURE.

**RESALE:** Resale or transfer of any PRODUCTS from the purchaser to other markets, organizations, or individuals is prohibited by chemQ. PRODUCTS may be resold or transferred only with the written permission by chemQ.

**INDEMNITY:** Purchaser shall indemnify, defend, and hold chemQ, its affiliates, and its and their directors, officers, stockholders, members, managers, employees, agents, and other representatives harmless from and against any third party claims, and all losses, damages and expenses (including reasonable attorneys' fees and other costs of defending any action) associated therewith, that chemQ may incur as a result of Purchaser's use of PRODUCTS or any materials manufactured using PRODUCTS or the negligence, intentional misconduct, breach of this Contract, or failure to comply with applicable law, rule, or regulation on the part of Purchaser, any affiliate thereof, or any of its or their directors, officers, stockholders, members, managers, employees, agents, or other representatives.

**INTELLECTUAL PROPERTY RIGHTS:** Nothing contained in this Contract will be construed as an assignment to Purchaser of any Intellectual property rights in or to PRODUCTS or their use or manufacture. All intellectual property rights in or to PRODUCTS are and will remain the sole and exclusive property of chemQ.

**REFUND POLICY:** ChemQ does not accept any returns. Sales of chemQ's PRODUCTS are non-refundable.

**GOVERNING LAW:** All disputes allegedly arising from the legality, interpretation, application, or performance of Purchaser's order, the PRODUCTS or this Contract, and this Contract itself, shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina, excluding that body of law known as choice of law, and shall be binding upon the parties hereto in the United States and worldwide. All disputes with respect to the subject matter hereof shall be brought and heard either in the North Carolina state courts located in Durham County, North Carolina, or the federal district court for the Middle District of North Carolina located in Durham County, North Carolina. Purchaser hereby consents to the *in personam* jurisdiction and venue of such courts. The parties agree that service of process upon them in any such action may be made if delivered in person, by courier service, by telegram, by telefacsimile or by first class mail, and shall be deemed effectively given upon receipt.

**ASSIGNMENT:** Purchase may not assign this the Sale Documents, in whole or in part. Any attempt by Purchaser to assign or transfer any of the rights, duties or obligations of the Sale Documents, in whole or in part, without chemQ's written consent is void.

**ENTIRE AGREEMENT; REVISIONS TO TERMS:** This Contract constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. This Contract may not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealing without the express written consent of chemQ. If any part of this Contract is declared invalid, illegal or unenforceable, such provision shall be severed from this Contract and the other provisions shall remain in full force and effect. Captions included in this Contract are for convenience only and are not to be used for purposes of interpretation of this Contract. Any clerical errors made on this form are subject to correction by chemQ. Waiver by chemQ of any breach of any provision contained herein shall not constitute or be deemed to be a waiver of any other breach or of such provision. chemQ may at any time revise this Contract without notice. Purchaser is bound by any such revisions with respect to any purchase of PRODUCTS made after any such revision and should, therefore, periodically visit this page to review any updates to this Contract.