

## Merrimack Pharmaceuticals Purchase Order Terms

These terms ("Terms") are incorporated in any purchase order ("Purchase Order") for goods and other deliverables (referred to as "Goods") and services ("Services") issued by Merrimack Company ("Merrimack") to the supplier providing the Goods and/or Services identified in that Order ("Seller"), except to the extent any Terms conflict with a written agreement between Merrimack and Seller (the "Parties"), or other written terms Merrimack has provided to Seller, that specifically cover that transaction. If this Purchase Order follows or responds to the Seller's quotation or any other offering document, then this Purchase Order shall not be deemed to be an acceptance of any such offer. Merrimack's Purchase Order is expressly conditioned upon Seller's express acceptance of these terms and conditions. If Seller does not expressly accept the terms and conditions set forth below, then no contract exists unless Seller accepts Merrimack's terms pursuant to Section 1, below, and Merrimack shall have no obligation to purchase the goods or services from Seller.

- 1. ACCEPTANCE BY SELLER:** Seller has accepted a Purchase Order (including these Terms) if Seller gives a verbal, written or electronic acknowledgement of, or initiates performance under, that Purchase Order. By accepting a Purchase Order, Seller's acceptance is limited to the Purchase Order's terms (which include these Terms). No additional or conflicting term in any Seller acknowledgement, invoice, bid, proposal, or other documentation is binding on Merrimack, unless Merrimack specifically agreed to it in writing.
- 2. DELIVERIES AND INSPECTION:** All Goods and Services will be delivered to Merrimack in strict conformance with any packaging, product and/or service standards, specifications, and other requirements provided by Merrimack or approved in writing by Merrimack (the "Requirements"). Unless a different method of delivery is expressly set forth on the front of this Purchase Order, delivery of the goods shall be F.O.B. Merrimack's facility. Title and all risk of loss or damage shall remain with Seller until Merrimack physically receives the goods at its facility. Goods delivered under a Purchase Order may be subject to inspection and testing at Merrimack's facilities (or, if purchased for export, at the ultimate destination abroad). All or any part of the goods purchased may be returned at Seller's expense if found to be defective or not in accordance with the Purchase Order terms and Requirements. Acceptance of all or part of the goods, or payment therefor, or failure to notify Seller promptly, shall not waive nor affect Merrimack's right to cancel all or any part of the Purchase Order, return all or part of the goods, recover damages upon Seller's warranties or agreements of indemnity, or any other remedies Merrimack may have. Seller shall bear the cost of inspecting and testing of materials which are rejected.
- 3. PRICES AND PAYMENT:** Goods and Services will be delivered to Merrimack for the price stated in the Purchase Order. Unless the Purchase Order states different payment terms, payments are net forty-five (45) days, to be paid in United States dollars. Merrimack's payments may be adjusted for Seller's errors, defects or non-compliance with the Purchase Order (including these Terms). Each invoice must relate to only one Purchase Order, and be issued and dated no earlier than the date on the Goods' and/or Services' delivery date. Each Seller invoice and all related documents (such as packaging lists, bills of lading, freight bills and correspondence) must include: (a) Purchase Order number; (b) applicable Purchase Order line item number(s) and unit of measure; and (c) Merrimack's identification number (if provided by Merrimack). Seller warrants that the prices being paid by Merrimack are not affected by collusion or any other anti-competitive activity. Seller further warrants that the price it is giving to Merrimack for the goods or services is the same or less than its price to any other customer of Seller's who is purchasing similar goods and/or services. In the event that, within twelve (12) months following the date of Merrimack's Purchase Order, Seller gives a lower price to another customer for similar goods and/or services, Seller shall retroactively amend the price charged to Merrimack to the lower price, and refund the difference to Merrimack within thirty (30) days.
- 4. TIME OF ESSENCE; CANCELLATION. TIME IS THE ESSENCE OF THIS AGREEMENT.** Merrimack may cancel all or any part of a Purchase Order or may refuse to accept, or may return at Seller's expense, any goods ordered hereunder if Seller fails to deliver the goods within the time specified in a Purchase Order, or fails to deliver all or any part of the goods in accordance with its terms. Acceptance of part of the order shall not oblige Merrimack to accept later shipments nor affect Merrimack's right to return goods already accepted.
- 5. ORDER CHANGE OR SUSPENSION:** Merrimack may, without penalty or liability to Seller, suspend, cancel or change a Purchase Order by giving electronic notice to Seller at any time prior to shipment of the applicable Goods or performance of the Services. If any Purchase Order change causes an adjustment in price or delivery date, the Parties will make an equitable adjustment and modify the Purchase Order accordingly; provided, however, that Seller gives Merrimack notice of any claim for an adjustment claim within three (3) business days after receipt of Merrimack's Purchase Order change notice. In the event that Merrimack suspends a Purchase Order, Merrimack may require Seller to suspend all or part of Seller's performance for up to twelve consecutive calendar months. Seller will suspend performance and resume performance, as directed by Merrimack. If any Purchase Order suspension causes an adjustment in price, the Parties will make an equitable adjustment and modify a Purchase Order accordingly, provided that Seller gives Merrimack notice of that adjustment claim within three (3) business days after receipt of Merrimack's Purchase Order suspension notice. If Seller does not submit its claim for adjustment within three (3) business days following receipt of the notice, it shall be deemed to have waived any claim for an adjustment. Notwithstanding any of the foregoing, if Merrimack cancels an order, it shall have no further liability to Seller.
- 6. MERRIMACK MATERIAL & MERRIMACK EQUIPMENT:** Merrimack owns any material Merrimack provides to Seller, including, without limitation, raw material, databases, or documents ("Merrimack Material") and any tooling or other equipment that Merrimack provides to Seller or for which Merrimack reimburses Seller ("Merrimack Equipment"). Seller authorizes Merrimack to file UCC financing statements and other documentation without Seller's signature to acknowledge Merrimack's ownership of these items. Seller will not sell, pledge, transfer or remove from Seller's facility any Merrimack Material or Merrimack Equipment, nor allow any third-party liens to be placed on them. Seller will tag or otherwise identify Merrimack's Material and Equipment as the property of Merrimack, and will keep the material and Equipment in a separate locked room to prevent unauthorized access or theft. Seller will use all Merrimack Material and Merrimack Equipment solely to perform its obligations under Purchase Orders and for no other purpose. Seller will not alter any Merrimack Equipment. Seller will use its best efforts to maintain the security and confidentiality of all Merrimack Material and Merrimack Equipment. Seller has all risk of loss or damage to Merrimack Equipment and Merrimack Material, and will, at Merrimack's request, immediately restore or replace any damaged or lost Merrimack Equipment or Merrimack Material with an equivalent item. Promptly on Merrimack's request, Seller will return to Merrimack all Merrimack Equipment and unused Merrimack Material in their original condition, except for reasonable wear, with Merrimack liable only for crating and shipping costs. Seller will maintain all Merrimack Equipment in a safe and proper condition and indemnify Merrimack for, and defend it against, all claims arising out of Seller's use of Merrimack Equipment. If the Parties establish Merrimack Material loss allowances, Seller will reimburse Merrimack for any excess losses, at Merrimack's delivered cost to Seller. Seller will inspect Merrimack Material that will be incorporated into Goods and promptly inform Merrimack of any non-compliance with the Requirements.
- 7. WARRANTIES AND MERRIMACK'S REMEDIES:** Seller warrants to Merrimack and its customers that: (i) all goods and services will completely conform to the Requirements and to Merrimack's specifications, descriptions and samples; (ii) all goods to be delivered under a Purchase Order will be of merchantable quality, free from any latent or patent defects in design, materials or workmanship will conform, and will be safe and fit for their intended use; (iii) any services shall be performed by employees or agents of Seller who have the training, education and experience necessary to fully provide the services called for by the Purchase Order; and (iv) that all goods and services provided by Seller will comply with any applicable Federal, State or local law, regulation or ordinance. In the event of a breach of contract or a breach of warranty, Seller shall be liable to Merrimack for all of Merrimack's direct, incidental and consequential damages. In the event that Merrimack must bring a legal action against Seller, Seller shall be liable for Merrimack's legal fees, expert witness fees and any court costs and other litigation expenses.
- 8. CONFIDENTIALITY:** During performance of a Purchase Order and at all times thereafter, Seller shall hold in confidence and not use for itself or others any and all information disclosed by Merrimack or specifically developed by Seller in its performance hereunder. Seller shall require a similar agreement of any subcontractors performing work under a Purchase Order.
- 9. PRODUCTION DISCONTINUATION:** Prior to Seller's discontinuing the manufacture or sale of any Good(s) identified in any Purchase Order issued by Merrimack during the preceding twelve (12) months: (a) Seller will fill all current Purchase Orders for the Good(s); (b) Seller will give Merrimack at least six (6) months' prior written notice of that discontinuation; and (c) Merrimack will have the right to issue a last-time buy Purchase Order for, and Seller will deliver, that discontinued Good(s) at its then-current price in an amount up to Merrimack's largest twelve-month purchase

volume (based on Orders issued).

10. **INDEMNIFICATION & INSURANCE:** Seller will indemnify, defend, and hold harmless Merrimack, its affiliates, and their successors, assigns, officers, directors, employees, and agents for, from and against any claim, suit, settlement, liability, loss, damage, lien, judgment, duty, fine, sanction, civil penalty, expense and cost, including but not limited to attorneys' fees, expert's fees and litigation expenses, arising directly or indirectly out of: (a) Seller's failure to comply with any of its obligations under a Purchase Order (including these Terms), which may include, without limitation, those relating to the recall of any Good(s) or any product which incorporates all or part of any Good(s) acquired from Seller, or other action Merrimack takes regarding any such failure; and (b) claims arising out of handling, packaging, labeling, storage, treatment, removal, transportation, and disposal of any waste material at any Seller site or related to the Goods under any Laws, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sections 9601 et seq. as amended, known as "CERCLA"), the Hazardous Materials Transportation Act (49 U.S.C. Sections 5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq., known as "RCRA"), or any other current or future Law of similar effect. These indemnities do not affect any other Merrimack remedies. Seller will at all times maintain liability, property damage, errors and omissions/professional liability and other insurance, each with limits of at least \$5 Million per occurrence and \$10 Million in the aggregate, to protect Merrimack from all the foregoing risks, and will, on request, supply certificates evidencing this coverage. Whenever possible, Merrimack shall be listed as an additional insured under the policy. Each policy will contain a waiver of subrogation provision in Merrimack's favor. Seller shall require its insurer to give Merrimack at least ten (10) days written notice prior to the cancellation of any such insurance policy.
11. **FORCE MAJEURE:** Neither party shall be liable to the other for any failure to perform hereunder or for delay in performance when such failure or delay shall be caused (directly or indirectly) by fire; flood; accident; explosion; sabotage; strike or any labor disturbance; riot; invasion; war; any act of any governmental authority (whether or not valid); any Act of God; or any other event beyond the reasonable control of the party whose performance is affected (each, an "Event of Force Majeure"). The party whose performance is so affected shall provide prompt notice to the other, shall indicate the estimated duration of such Event of Force Majeure, and shall use all reasonable efforts to mitigate the effects of such Event of Force Majeure. If, by reason of any such Event of Force Majeure, Seller is excused from performance, then, to the extent goods are not delivered to Merrimack in the quantities or at the times required by the Purchase Order, Merrimack may purchase the same or similar goods from other sources without liability or obligation to Seller. In addition, if the Seller incurs one or more Force Majeure events that create an aggregate delay of more than thirty (30) days, Merrimack may terminate this Agreement without further liability to Seller.
12. **COMPLIANCE WITH LAW:** Seller represents and warrants that all goods delivered under a Purchase Order have been or will be produced, packaged, labeled, sold and delivered in accordance with the Fair Labor Standards Act of 1938, as amended; Title VII of the Civil Rights Act of 1964, as amended; the Occupational Safety and Health Act; Executive Order 11738; the Toxic Substances Control Act; the Food, Drug and Cosmetic Act, as amended; all regulations promulgated under the foregoing; and all other applicable federal, state or municipal laws, codes, regulations, rules, orders and binding requirements (collectively "Laws"). Seller agrees to comply with all requirements applicable to Seller pursuant to Merrimack's prime contract(s) with the Federal government ("applicable requirements"). Where applicable, Seller represents and warrants that it will comply with applicable requirements of the following provisions of Federal law, which are hereby incorporated by reference in this Agreement (copies of which may be furnished upon request): (1) FAR [48 C.F.R.] 52.219-8, relating to small business subcontracting; (2) FAR 52.219-9, relating to small business subcontracting documentation and reporting requirements; (3) FAR 52.222-26 and 41 C.F.R. 60-1.4, relating to Equal Opportunity; (4) FAR 52.222-35 and 41 C.F.R. 60-250.5, relating to Affirmative Action for Disabled Veterans; and (5) FAR. 52.222-36 and 41 C.F.R. 60-741.5, relating to Workers with Disabilities.
13. **SELLER WAIVER OF DAMAGES. UNDER NO CIRCUMSTANCES WHATSOEVER SHALL MERRIMACK BE LIABLE TO SELLER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCURRED BY SELLER AS THE RESULT OF ANY PURCHASE ORDER OR MERRIMACK'S ACTS OR OMISSIONS RELATED TO ANY SUCH ORDER, EVEN IN THE EVENT THAT MERRIMACK HAD BEEN PUT ON NOTICE THAT SELLER MIGHT INCUR SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, MERRIMACK SHALL NOT BE LIABLE TO SELLER FOR ANY LOST PROFITS RELATING TO OTHER AGREEMENTS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF BUSINESS REPUTATION, AND COSTS AND EXPENSES INCURRED BY SELLER IN ANY INVESTIGATION BY ANY THIRD PARTY. THIS DISCLAIMER OF CONSEQUENTIAL LIABILITY SHALL APPLY REGARDLESS OF THE NATURE OF SELLER'S CLAIM, BE IT BASED IN CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY OR OTHERWISE.**
14. **F.D.A. GUARANTY:** Seller represents and warrants that no article or goods provided by Seller to Merrimack is, as of the date of shipment, adulterated or misbranded within the meaning of the federal Food, Drug and Cosmetic Act, as amended, or the regulations promulgated thereunder, or is an article or good which may not, under the provisions of Section 404, 405 or 512 of said Act, be introduced into interstate commerce
15. **GOVERNING LAW:** A Purchase Order shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the exclusive venue for any action brought hereunder shall be the federal or state courts located within the Commonwealth of Massachusetts. Seller expressly submits to the personal jurisdiction of those courts.
16. **ASSIGNMENT:** Seller may not assign any of its rights nor delegate any of its duties hereunder without the prior written consent of Merrimack. Any such attempted assignment or delegation shall be null and void.
17. **AUDIT:** During the performance of a Purchase Order and for three (3) years thereafter, Seller will maintain all books, records and other documents relevant to its performance under a Purchase Order (including but not limited to employee billing and time records) or are required to be maintained by Laws or Permits. Seller shall make such documents available to Merrimack and its representatives for inspection, audit and copying at all reasonable times. If Merrimack's inspection and audit discloses amounts owing to Merrimack, such amounts will be paid to Merrimack within ninety (90) days of Merrimack's statement therefor.
18. **DEPARTMENT CERTIFICATION:** Seller represents and warrants that neither Seller nor any person employed by Seller in connection with a Purchase Order or any goods or services provided hereunder has been debarred under Section 306 (a) or (b) of the Federal Food, Drug and Cosmetic Act and no debarred person will in the future be employed by Seller in connection with any work to be performed for, or Goods provided to, Merrimack. If Seller becomes aware that Seller or any person employed by Seller in connection with a Purchase Order has become or is in the process of being debarred, Seller hereby agrees to notify Merrimack immediately.
19. **COMPLETE AND FINAL UNDERSTANDING.** This Purchase Order, together with these terms and conditions and any exhibits, attachments, or schedules to the Purchase Order, represents the complete and final understanding between the parties with respect to the goods and/or services being purchased by Merrimack. Any other understanding (whether written or oral) or agreement regarding the subject matter of this Purchase Order is hereby superseded by this Purchase Order and shall no longer have any force or effect. This Purchase Order may only be amended by a change order issued by Merrimack or by a writing signed by both parties, and any other attempted amendment shall be void.