

MERRIMACK PHARMACEUTICALS, INC.

Purchase Order Terms and Conditions

These terms and conditions (these “Terms”) are incorporated into any purchase order (“Purchase Order”) for goods and other deliverables (collectively, “Goods”) and services issued by Merrimack Pharmaceuticals, Inc. (“Merrimack”) to the supplier (“Seller”) providing the Goods and/or services identified in the Purchase Order, except to the extent these Terms conflict with a written agreement between Merrimack and Seller (together, the “Parties”), or any other written terms that Merrimack has provided to Seller, specifically covering such transaction. If a Purchase Order follows or responds to Seller’s quotation or any other offering document, then such Purchase Order itself will not be deemed to be an acceptance of any such offer. Such Purchase Order is conditioned upon Seller’s express acceptance of these Terms. If Seller does not expressly accept these Terms, then no contract will exist unless and until Seller accepts these Terms pursuant to Section 1 below, and until which Merrimack will have no obligation to purchase the Goods and/or services from Seller.

- 1. ACCEPTANCE BY SELLER:** Seller will be deemed to have accepted a Purchase Order (including these Terms) if Seller gives a verbal, written or electronic acknowledgment of, or initiates performance under, such Purchase Order. By accepting a Purchase Order, Seller’s acceptance is limited to such Purchase Order’s terms (including these Terms). No additional or conflicting term in any Seller acknowledgement, invoice, bid, proposal or other documentation is binding on Merrimack unless Merrimack specifically agrees to such additional or conflicting term in writing.
- 2. DELIVERIES AND INSPECTION:** All Goods and services will be delivered to Merrimack in strict conformance with any packaging, product and 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 in a Purchase Order, delivery of the Goods will be DDP Merrimack’s facility (as defined in Incoterms 2010). Title and all risk of loss or damage will 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 facility (or, if purchased for export, at the ultimate destination abroad). All or part of the Goods purchased may be returned at Seller’s expense if found to be defective or not in accordance with the applicable Purchase Order’s terms and the Requirements. Acceptance of all or any part of the Goods, or payment therefor, or failure to notify Seller promptly, will not waive nor affect Merrimack’s right to cancel all or any part of the applicable Purchase Order, return all or any part of the Goods, recover damages in connection with Seller’s warranties or agreements of indemnity, or any other remedies Merrimack may have. Seller will bear the cost of inspecting and testing materials that 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 and payable in U.S. 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 delivery date of the Goods and/or services. Each Seller invoice and all related documents (such as packaging lists, bills of lading, freight bills and correspondence) must include: (a) the Purchase Order number; (b) the applicable Purchase Order line item number(s) and units 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 the applicable Purchase Order, Seller gives a lower price to another customer for similar Goods and/or services, Seller will retroactively amend the price charged to Merrimack to the lower price and refund the difference to Merrimack within thirty (30) days.
- 4. TIME OF THE ESSENCE; CANCELLATION:** TIME IS OF THE ESSENCE WITH RESPECT TO THE PURCHASE ORDER (INCLUDING THESE TERMS). 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 thereunder if Seller fails to deliver the Goods within the time specified in such Purchase Order or fails to deliver all or any part of the Goods in accordance with its terms. Acceptance of part of a Purchase Order will not obligate 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 applicable 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 that Seller gives Merrimack notice of any 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 any part of Seller’s performance for up to twelve (12) 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 the Purchase Order accordingly, provided that Seller gives Merrimack notice of any adjustment claim within three (3) business days after receipt of Merrimack’s Purchase Order suspension notice. If Seller does not submit a claim for adjustment within three (3) business days following receipt of either a change notice or suspension notice, Seller will be deemed to have waived any claim for an adjustment. Notwithstanding any of the foregoing, if Merrimack cancels an order, Merrimack will have no further liability to Seller.
- 6. MERRIMACK MATERIAL AND MERRIMACK EQUIPMENT:** Merrimack owns any material that Merrimack provides to Seller, including, without limitation, raw material, databases or documents (collectively, “Merrimack Material”) and any tooling or other equipment that Merrimack provides to Seller or for which Merrimack reimburses Seller (collectively, “Merrimack Equipment”). Seller authorizes Merrimack to file UCC financing statements and other documentation without Seller’s signature to acknowledge Merrimack’s ownership of any Merrimack Material or Merrimack Equipment. Seller will not sell, pledge, transfer or remove from Seller’s facility, or allow any third-party liens to be placed on, any Merrimack Material or Merrimack Equipment. Seller will tag or otherwise identify all Merrimack Material and Merrimack Equipment as the property of Merrimack and will keep the Merrimack Material and Merrimack 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 Material or Merrimack Equipment. Seller will use its best efforts to maintain the security and confidentiality of all Merrimack Material and Merrimack Equipment. Seller will bear 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 following Merrimack’s request, Seller will return to Merrimack all Merrimack Equipment and unused Merrimack Material in their original condition, except for reasonable wear and tear, 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 the Merrimack Equipment. If the Parties establish loss allowances for the Merrimack Material, Seller will reimburse Merrimack for any excess losses, at Merrimack’s delivered cost to Seller. Seller will inspect any 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: (a) all Goods and services will fully conform with the Requirements and Merrimack’s specifications, descriptions and samples; (b) 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, and will be safe and fit for their intended use; (c) any services will 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 (d) all Goods and services provided by Seller will comply with all applicable foreign, federal, state and municipal laws, codes, regulations, rules, ordinances, orders and binding requirements (collectively, “Laws”). In the event of a breach of contract or a breach of warranty, Seller will be liable to Merrimack for all of Merrimack’s direct, incidental and consequential damages. In the event that Merrimack must bring legal action against Seller, Seller will 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 will 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 of such Purchase Order. Seller will require a similar agreement of any subcontractors performing work under a Purchase Order.

9. **PRODUCTION DISCONTINUATION:** Prior to Seller 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 such discontinuation; and (c) Merrimack will have the right to issue a final Purchase Order for, and Seller will deliver, such discontinued Good(s) at the then-current price in an amount up to Merrimack's largest twelve-month purchase volume (based on Purchase Orders issued).
10. **INDEMNIFICATION & INSURANCE:** Seller will indemnify, defend and hold harmless Merrimack, its affiliates and their successors, assigns, officers, directors, employees, contractors, representatives and agents for, from and against any claim, suit, settlement, liability, loss, damage, lien, judgment, duty, fine, sanction, civil penalty, expense and cost, including, without limitation, 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) or any action Merrimack takes regarding any such failure; and (b) claims arising from the handling, packaging, labeling, storage, treatment, removal, transportation or 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), the Hazardous Materials Transportation Act (49 U.S.C. Sections 5101 et seq., as amended), the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq., as amended), or any other current or future Law of similar effect. Such indemnities do not affect any other remedies of Merrimack. 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 of the foregoing risks, and will, upon request, supply certificates evidencing such coverage. Whenever possible, Merrimack will be listed as an additional insured party under the policy. Each policy will contain a waiver of subrogation provision in Merrimack's favor. Seller will 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 will be liable to the other for any failure to perform under the Purchase Order or for delays in performance when such failure or delay is caused (directly or indirectly) by fire, flood, explosion, sabotage, strike or any labor disturbance, riot, invasion, war, 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 will provide prompt notice to the other Party, will indicate the estimated duration of such Event of Force Majeure and will 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 applicable Purchase Order, Merrimack may purchase the same or similar Goods from other sources without liability or obligation to Seller. In addition, if Seller suffers one or more Events of Force Majeure that create an aggregate delay of more than thirty (30) days, Merrimack may cancel the applicable Purchase Order 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, as amended; the Toxic Substances Control Act, as amended; the Federal Food, Drug, and Cosmetic Act, as amended; all regulations promulgated under the foregoing; and all other applicable 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 the applicable requirements of the following provisions of federal law, which are hereby incorporated by reference into these Terms: (a) FAR 52.219-8, relating to small business subcontracting; (b) FAR 52.219-9, relating to small business subcontracting documentation and reporting requirements; (c) FAR 52.222-26 and 41 C.F.R. 60-1.4, relating to equal opportunity; (d) FAR 52.222-35 and 41 C.F.R. 60-250.5, relating to affirmative action for disabled veterans; and (e) 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 WILL 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 PURCHASE ORDER, EVEN IN THE EVENT THAT MERRIMACK WAS PUT ON NOTICE THAT SELLER MIGHT INCUR SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, MERRIMACK WILL NOT BE LIABLE TO SELLER FOR ANY LOST PROFITS RELATING TO OTHER AGREEMENTS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF BUSINESS REPUTATION OR COSTS AND EXPENSES INCURRED BY SELLER IN ANY INVESTIGATION BY ANY THIRD PARTY. THIS DISCLAIMER WILL APPLY REGARDLESS OF THE NATURE OF SELLER'S CLAIM, WHETHER IT IS BASED IN CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY OR OTHERWISE.**
14. **FDA GUARANTY:** Seller represents and warrants that no article or Good 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:** All Purchase Orders (including these Terms) will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and the exclusive venue for any action brought hereunder will be the federal or state courts located within the Commonwealth of Massachusetts. Seller expressly submits to the personal jurisdiction of such courts.
16. **ASSIGNMENT:** Seller may not assign any of its rights nor delegate any of its duties under a Purchase Order (including these Terms) without the prior written consent of Merrimack. Any such attempted assignment or delegation will 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 such Purchase Order (including, without limitation, employee billing and time records) or that are required to be maintained by any applicable Laws. Seller will make such documents available to Merrimack and its representatives for inspection, audit and copying at all reasonable times. If Merrimack's inspection or audit discovers amounts owed to Merrimack, such amounts will be paid to Merrimack within thirty (30) days after 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 thereunder has been debarred under Section 306(a) or (b) of the Federal Food, Drug, and Cosmetic Act, as amended, and no debarred person will in the future be employed by Seller in connection with any work to be performed for, or Goods to be 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:** The Purchase Order (including these Terms) and any exhibits, attachments or schedules hereto or thereto, represent 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 the Purchase Order (including these Terms) is hereby superseded by the Purchase Order (including these Terms) and will no longer have any force or effect. The Purchase Order (including these Terms) may only be amended by a change order issued by Merrimack or by a writing signed by both Parties, and any other attempted amendment will be null and void.