



Merz Pharmaceuticals, LLC Purchase Order Terms & Conditions

1. **Acceptance** - This order is not an offer to sell but is an offer to purchase. It may be accepted within fifteen (15) days of the order's date only by Merz Pharmaceuticals, LLC ("Buyer")'s receiving Seller's written acknowledgement or commencement of performance by Seller. Acceptance is expressly limited to the terms and conditions of this offer. By acceptance in exclusion of all other terms and conditions including any contained in any acknowledgement, acceptance, letter, quote or other writing of Seller prior to simultaneously with, or after acceptance. Any proposal for additional or different terms or any attempt by Seller to vary in any degree, any of the terms of this offer in Seller's acceptance or acknowledgement shall not operate as a rejection of this offer and this offer shall be deemed accepted by Seller without said additional or different terms.
2. **Purchase Order Constitutes Complete Agreement** - This purchase order including the terms and conditions on the face and reverse side hereof with such plans, specifications, or other documents as are incorporated by reference or attached hereto constitute the entire agreement between Buyer and Seller. Buyer hereby gives notice of its objection to any different or additional terms. Reference to Seller's bids or proposals, if noted on this order, shall not affect terms and conditions hereof, unless specifically provided to the contrary herein, and no other agreement or quotation in any other way modifying any of said terms and conditions will be binding upon Buyer unless made in writing and signed by Buyer's authorized representative.
3. **Additional or Different Terms** - Each and every term and condition of this order is deemed to be of the essence. After acceptance, the terms contained in this order with any attachments will constitute the entire and only agreement of the parties and will supersede all prior discussions, representations, writings, oral agreements and understandings, or any language in the acknowledgement or acceptance of Seller to the contrary. Buyer objects to any addition to change, modification of, revision of, deletion, or waiver of any of the terms and conditions of this order, irrespective of whether such different or additional terms and conditions materially alter this order, such different or additional terms and conditions will be invalid and rejected unless specifically agreed to in writing by Buyer.
4. **Delivery** - Time is of the essence in this order, and substitutions outside of or overruns above normal accepted standards will not be accepted unless agreed upon by Buyer in writing. Goods shipped shall be at Seller's risk until no longer in possession of seller and title has passed to Buyer. Unless otherwise specified in writing, place of delivery of goods is Buyer's place of business.
5. **Warranties** - Seller warrants that all goods or services furnished hereunder will conform to applicable specifications, instructions, drawings, data and samples, will be merchantable, will be of good material and workmanship and free from defects, that the goods or services will be fit and sufficient for the purpose intended, if such intent is known to the Seller, and that all goods will be free from all liens, encumbrances and patent, trademark, copyright, trade secret or other intellectual property right infringement or claims. These warranties will be in addition to all other warranties expressed or implied and will survive acceptance of and payment for any and all goods or services ordered and will run to Buyer, its successors, assigns, customers and users of its products.
6. **Inspection and Tests** - All goods ordered hereunder will be subject to inspection and testing by buyer at all reasonable times and places including Seller's facilities. It is expressly agreed that inspections and/or payments prior to, at the time of, or after delivery will not constitute a final acceptance of the goods and services.
7. **Confidentiality** - All information, drawings, specifications or data furnished by Buyer to Seller shall be considered proprietary, and Seller shall keep confidential all such information, drawings, specifications or data unless this requirement is waived expressly in writing by Buyer, and will return the same, including all copies made by or for Seller, upon request. Seller shall not in any manner advertise or publish the fact that it has furnished or contracted to furnish to Buyer the goods or services herein mentioned without prior written consent of the Buyer.
8. **Equipment, Buyer's Property** - All equipment, tools, materials, vehicles and/or other articles required for Seller's performance of this order shall be furnished by Seller, maintained in good condition and replaced when necessary at Seller's expense. Title to and a right of immediate possession of any property or any nature whatsoever furnished or paid for by Buyer shall remain in Buyer.
9. **Force Majeure** - In the event of fire, accidents, abnormal weather conditions, governmental acts, strikes or other labor disputes, acts of God, pandemic, war, riots and other civil disturbances or any other conditions beyond either party's reasonable control which prevent manufacture, transportation, delivery, acceptance or Buyer's prompt utilization of the goods or services covered by this order, the affected party may, without any liability or penalty, delay delivery, manufacture, transportation, acceptance or utilization by written notice effective when received by the other party until such event and the consequences of such event of force majeure shall have terminated. Said notice of an event of force majeure shall contain the reason for any delay which the notifying party considers to be an event of force majeure under the provisions of this paragraph. An event of force majeure shall not include events within the total or partial control of the party giving notice including but not limited to poor business judgment or estimates, materials or labor shortages or unanticipated engineering or technical difficulties.
10. **Termination** - Buyer may terminate performance of the work under this order, in whole or in part by written notice to Seller. Upon receipt of such notice, Seller shall immediately discontinue all work and the placing of all orders for materials, facilities, and supplies pursuant to this order. Upon termination by Buyer under this paragraph for reasons other than force majeure (as set out in #9), or certain remedies of Buyer (as set out in #11), Buyer shall negotiate payment to Seller based on Seller's non-recoverable, reasonable and actual documented costs and expenses: in no case however, shall payments made under this paragraph exceed the aggregate price specified in this purchase order, less payments otherwise made or to be made. Nothing contained in this paragraph shall be construed to limit or affect any remedies which Buyer may have as provided in paragraphs 9 and 11.
11. **Default-Cancellation** - If Seller's financial condition, based on reasonable and objective criteria, is found to be or becomes unsatisfactory to Buyer during the term of this contract, Buyer reserves the right, without incurring any liability to Seller, to cancel this order by written notice and terminate this contract and receive a refund of any deposits, down payments, or other advance payments (except for goods or services already delivered). Buyer also reserves the right similarly to terminate all other contracts covering purchases by Buyer of Seller's products or services whether or not Seller may otherwise be in default, and no rights shall accrue to Seller against Buyer on account of such termination. The foregoing rights of Buyer are in addition to, and not in lieu of, any rights Buyer may possess under any provision of the Uniform Commercial Code, or other provisions of the law. If Seller fails to perform as specified in this order or breaches any of the terms hereof, Buyer reserves the right, without incurring any liability to Seller and upon giving Seller written notice to (a) Cancel this order in whole or in part, and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach, or (b) obtain the goods or services ordered herein from another source with any excess cost resulting therefrom chargeable to Seller or (c) reduce all claims for money due or to be come due from Buyer to Seller to the extent Buyer is damaged by Seller's failure to perform. The remedies herein provided shall be cumulative and in addition to any other remedies provided at law or in equity. Buyer's failure to insist on performance of any of the terms and conditions herein or to exercise any right or privilege, or Buyer's waiver of any breach hereunder, shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.
12. **Compliance With Laws** - Seller agrees to comply fully with all applicable laws, ordinances, rules, regulations and orders of all United States of America federal, state and local laws, ordinances, rules, regulations and orders pertaining to the production and sale of the goods or services ordered and, upon request, Seller shall furnish Buyer certificates of compliance. These laws shall include, without limit, the following: The Fair Labor Standards Act of 1938 as amended, Federal and State OSHA requirements, the equal opportunity clause of paragraph 202 of Executive order #11246, as amended: the rules and regulations of the Office of Federal Contract Compliance, paragraph 503 of the Rehabilitation Act, and the Toxic Substances Control Act. With specific reference to the Toxic Substances Control Act, Seller warrants that each chemical substance delivered under this order shall be on the list of chemical substances compiled and published by the Administrator of the EPA pursuant of paragraph 8 of the Toxic Substances Control Act. If this order is placed directly or indirectly, under a contract to which the United States or any state or other governmental authority is a party, then all terms and conditions required by law or regulation or contained in the government contract with respect to this order are incorporated herein by reference. Seller expressly agrees to indemnify and hold harmless Buyer, its successors, assigns, customers, and users of its products from any costs, losses, expenses, damages, claims, suits, fines, penalties, or any liability whatsoever, including attorney's fees, resulting from the failure of Seller to comply in the furnishing of goods or services under this order, with all applicable foreign or domestic federal, state, or local laws, ordinances, rules, regulations or orders as set out hereinabove.
13. **Indemnification** - Except to the extent that any injury or damage is due solely to the Buyer's negligence, Seller agrees to indemnify and hold harmless Buyer, its successors, assigns, customers, and users of its products against all suits at law or inequity and from all damages, claims and demands arising out of the death of or injury to any person, or damage to any property, alleged to have resulted from the goods or services hereby ordered, and upon the tendering of any suit or claim to Seller, to defend the same at Seller's expense as to all costs, losses, expenses, damages, claims, suits, or any liability whatsoever, including attorney's fees. The foregoing indemnification shall apply whether the death, injury, or property damage is caused by the sole or concurrent negligence of Seller.
14. **Patent And Intellectual Property Right Indemnification** - Seller shall indemnify and save harmless Buyer, its successors, assigns, customers, or users of its products, or Buyer's officers, employees and agents, from and against all costs, losses, expenses, damages, claims, suits or any other liability whatsoever, including attorney's fees, resulting from any claim that the manufacturer, use, sale or resale of any goods or services supplied under this order infringe any patent, copyright, trademark or other intellectual property rights: and Seller when notified, shall, at Buyer's sole option, either defend any action or claim of such infringement at its own expense, or reimburse Buyer's expenses, attorney's fees and other costs for defending such action or claim.
15. **Assignment** - This order may not be assigned by Seller nor may Seller delegate the performance of any of its duties hereunder without Buyer's prior written consent.
16. **Captions** - The captions appearing at the beginning of each paragraph of these terms and conditions are for convenience only and are not to be construed as a substantive part of said terms and conditions.
17. **Applicable Law** - The validity, interpretation and performance of these terms and conditions shall be governed by the laws of the State of North Carolina.
18. **Severability** - The terms and conditions of this order are severable and if any terms and conditions or portions of any terms and conditions herein are stricken or declared illegal, invalid or unenforceable for any reason whatsoever, the legality, validity or enforceability of the remaining terms and conditions shall not be affected thereby.
19. **Set-Off** - Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer any amount payable by Seller in connection with this order.
20. **Publication** - The Seller agrees that no acknowledgement or other information concerning the order and the supplies or services provided hereunder will be made public by the Seller without the prior written agreement of the Buyer.