

TERMS AND CONDITIONS FOR PURCHASE ORDER - BIMEDA INC. (D/B/A BIMEDA USA)

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2. **Packing and Shipping:** All the materials, articles, things or goods that are the subject of this order should be suitably packed or otherwise prepared for shipment so as to secure the lowest transportation rates and to meet the carrier's requirements. No charges will be allowed for packing, crating or cartage, unless stated in this order. Each container must be marked to show quantity, order number and date, any of the Buyer's product numbers and product type, contents, any special handling and other requests and shipper's name. A packing list showing this information shall be included in each package. Seller shall prepay all shipping charges, FOB destination, unless otherwise specified and agreed in writing by Bimeda Inc.
3. **Inbound Shipment Identification:** Seller's name and Buyer's Purchase Order number must appear on all correspondence and packaging related to this order. If shipment is made by a firm other than Seller, all correspondence and package identification must clearly show Buyer's Purchase Order number and Seller's company name.
4. **Special Shipping Instructions:** When the carrier or routing is specified, failure to follow Buyer's instructions may result in a cancellation of this order with the materials, articles, things or goods returned freight collect, without obligation of payment by Buyer.
5. **Shipping Papers:** The original Bill of Lading, express receipt, and any other necessary paperwork must accompany the invoices.
6. **Acceptance, Inspection and Rejection:** Buyer will not have accepted or be deemed to have accepted the subject of this order unless the order has been delivered to Buyer (as set out herein) and Buyer has not rejected or returned the order or any part of it. Buyer reserves the right to return, at Seller's risk and expense for transportation both ways and any storage costs incurred, materials, articles, things or goods shipped in excess of this order or defective materials, articles, things or goods not meeting Buyer's specifications standards, whether paid for or not. Any acceptance of defective, late or incomplete materials articles, things, goods or services or payments made in respect thereof shall not constitute a waiver of any of Buyer's rights and remedies including the right to reject. No replacement or substitution shall be made unless so authorized in writing by Buyer.
7. **Price:** If price is not stated on this order, the materials, articles, things, goods or services that are the subject of the order will be billed at the price last quoted, or paid by a customer of Seller, or the prevailing market price, whichever is lower. Seller warrants that prices charged against this order will conform to all merchant price regulations in effect during the period required to complete the transaction.
8. **Delivery:** Time is of the essence, and Buyer may reject any materials, articles, things, goods or services not delivered or furnished on dates herein specified. No change in the scheduled delivery date or performance will be permitted without Buyer's prior written consent. No acceptance of any materials, articles, things, goods or services after the scheduled delivery date will be construed as a waiver of Buyer's rights with respect to such late delivery nor shall it be deemed as waiver of future compliance with the terms hereof.
9. **Remedies:** Failure of Buyer to take shipment hereunder, if occasioned by fire, explosion, flood, war, accident, interruption of – or delay in – transportation, labor disturbances, or any other circumstance of like or different character and not limited to the aforementioned, beyond Buyer's reasonable control, or if occasioned by partial or complete suspension of operations at any of Buyer's plants, shall not subject Buyer to any liability to Seller, but, at Buyer's option the total quantity covered by this order may be reduced by the extent of omitted shipments or the specified delivery period shall be extended by a time equal to that during which shipments shall so be omitted and such omitted shipments shall be made during the period of extension. Seller will be excused from delays in delivery by reason of the same causes as stated above provided they are beyond the control and without fault or negligence of Seller if Seller notifies Buyer in writing of the cause of such delay within a reasonable time.
10. **Risk of Loss:** Regardless of FOB point, Seller will bear all the risk of loss, injury or destruction of the materials, articles, things, goods or services ordered herein which occurs prior to acceptance by Buyer. The Seller will bear all risk for the articles, things, materials and goods owned by Buyer when such things, articles materials and goods are in the custody or under control of Seller.
11. **Termination or Cancellation:** Buyer may terminate or cancel this order in whole or in part at any time by written notice (including notice by facsimile and email). Termination shall not affect the validity of any claims one party may have against the other for work carried out and materials supplied up to date of termination or cancellation.
12. **Patents, Trademarks and Copyrights:** Seller warrants that the use or sale of the materials, articles, things or goods delivered hereunder will not, infringe any United States patent, trademark or copyright claim covering the material itself; but does not warrant against infringement by reason of the use thereof in combinations with other materials or in the operation of any process. Seller will exonerate, indemnify, keep indemnified and hold harmless Buyer from and against any and all liability, damage, cost, expense or legal costs, which may accrue to, or be sustained by Buyer on account of any claim, suit or action made or threatened to be brought against Buyer or its customers for actual or alleged infringement of any patent, trademark, copyright or other intellectual property rights by reason of the manufacture/supply of any things, articles, materials, goods or services covered by this order by Seller, the resale thereof by Buyer, or use of said things, articles, materials, goods or services or any part thereof for a purpose known to Seller. Seller, at Buyer's request, will defend, at Seller's expense, any such claim, suit or action. All specifications, drawings, blueprints, designs, files and artwork provided by Buyer in connection with this order and all intellectual property rights in any of the articles, things, materials or goods made in accordance herewith shall vest in and remain at all times the property of Buyer. Seller hereby assigns (or shall procure the assignment) to Buyer absolutely with full title guaranteed all rights, title and interest in any such intellectual property rights.
13. **Taxes:** The Purchase price herein is inclusive of any and all taxes, duties and other government charges, now imposed or hereafter becoming effective, upon the production, sale, shipment, use or erection of the materials, articles, things, goods or services specified in this order. Seller will indemnify Buyer at all times against and reimburse it for any expenditure it may be required to make on account of Seller's failure to pay such taxes, duties and other government charges. Buyer will provide Seller with any applicable state sales or use tax exemption certificates.
14. **Drawings, Prints and Specifications:** If this order relates also to the supply of tools, specifications, blueprints, designs or artwork, Seller agrees that it will not use, sell, loan or publicize any of such tools, specifications, blueprints, designs or artwork supplied or paid for by Buyer for the fulfilment of this order without Buyer's written consent. Seller undertakes not to change any specifications, methods of analysis, manufacturing process, manufacturing site and the drug master file with regard to the materials, goods, things or articles which form the subject of these terms and conditions without the prior written consent by Buyer. Seller hereby warrants that the merchandise or workmanship of this order is in accordance with agreed upon specifications, in all respects, and Seller agrees that this warranty shall survive acceptance of the goods.
15. **Tools, Dies, Molds etc.:** All tools, dies, molds, printing plates, mechanical etc. created for use of this order shall be the property of Buyer and Buyer may withdraw them from Seller's premises on demand in writing. They shall be carefully preserved by Seller and maintained in good operating condition at all times.
16. **Invoices and Discount:** All invoices must be rendered to Buyer and issued in duplicate, unless otherwise specified. Each invoice must be mailed on the date appearing on the invoice. Invoices must be rendered by the person, firm or corporation for which this order is issued. If Seller is unable to comply, Seller shall return this order to Buyer and advise Buyer of the name and address under which the invoice will be rendered. Discount date (where applicable) will be established from the date on which Seller will have complied with all requirements of this order and Buyer will have received an invoice in good order.
17. **Warranties:** In addition to all warranties, express or implied, established by statute or common law, or elsewhere set forth in this order, Seller hereby expressly warrants, any other representation or agreement to the contrary notwithstanding, that all materials, articles, things, goods or services covered by this order will conform to all specifications, drawings, samples and any other description, furnished or adopted by Buyer, and will be free from any liens or encumbrances, and will be of best quality and fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from all patent and latent defects. Buyer's failure to give notice to Seller of any breach of any warranty shall not discharge Seller's liability for any such breach. The warranties of Seller together with its service warranties and guarantees, if any, shall extend to Buyer, its customers and any other third parties.
18. **Work, Labor and Services:** Where a contract requires a furnishing of work, labor, or services, Buyer shall be entitled at any time to require deviations from, additions to or omissions in said work, provided, if such change shall make the work more or less expensive than if carried out in accordance with original requirements, a fair or reasonable increase or reduction shall be made in the correct price. No claim shall be allowed for extra labor or material above contract amount unless same has been ordered in writing by Buyer. Acceptance of final payment of contract price constitutes waiver of all claims for additions to the contract price occasioned by extra work of materials furnished.
19. **Indemnity:** Seller undertakes, irrevocably, to indemnify, keep indemnified and hold Buyer harmless at all times from and against all claims, losses, expenses, causes and/or actions, damage to persons (including death) or to property and liabilities of every kind and nature including, without limitation, reasonable legal costs, arising from Seller's work or any materials, articles, things, goods or services furnished by any of Seller's subcontractors, or out of any alleged breach of any of Seller's obligations or warranties hereunder, or from other acts or omissions of Seller, its officers, agents, employees, subcontractors consultants and third parties, however caused, instituted by third parties including persons who purchase from Buyer or use any of the materials, articles, things, goods or services purchased/supplied by Seller hereunder.
20. **Assignability:** This order in its entirety and each and every provision hereof shall insure to the benefit of the customers, successors, affiliate companies, and assigns of Buyer, Seller may not assign this order without Buyer's written consent.
21. **Waivers:** Any failure by Buyer to enforce or require strict performance by Seller of any terms or conditions of this order shall not constitute a waiver thereof by Buyer and Buyer may at any time avail itself of the remedies Buyer may have for any breach of terms hereof.
22. **Independent Contractor:** Seller is and at all times shall be an independent contractor and nothing herein stated shall constitute Seller as the legal representative of Buyer for any purpose whatsoever. Seller is not authorized to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of Buyer, or to bind Buyer in any manner whatsoever.
23. **Governing Law:** This order shall be governed by the laws of the State of California and the Courts of California shall have exclusive jurisdiction with regard to all disputes between the parties.
24. **Separate Agreements:** In the event of any separate agreement/s being concluded between Buyer and Seller, these terms and conditions shall be construed in conjunction with such agreements and not superseded thereby unless such agreement(s) records such suppression by express reference to these terms and conditions. Any terms and conditions proposed by Seller which are inconsistent with these terms, shall not be valid or enforceable unless agreed to by the parties in writing.
25. **Buyer's Trademarks:** Seller shall not use the name, trade mark, trade names of Bimeda and/or Bimeda's affiliates and/or any information relating to the existence of this Agreement without the prior written consent of Bimeda.

26. **Survival of Warranties:** All warranties and indemnities by Seller herein set out shall survive the payments by Buyer of the cost of the materials, articles, things, goods or services hereby ordered.
27. **Notification of Change:** Seller undertakes to notify Buyer prior to implementation of any change that impacts formula, route of synthesis, manufacturing and processing processes, manufacturing site, test methods and specifications. Furthermore Seller undertakes not to implement any changes without a prior written confirmation from Buyer.
28. **Changes or Alterations:** These terms and conditions apply to this order and form part of the contract between Buyer and Seller in respect of this order. They supersede any previously issued terms and conditions of purchase or supply. No terms or conditions endorsed on, delivered with or contained in any quotation, sales conditions, confirmation of order or other document issued by Seller will form part of this contract (except to the extent as is agreed to by the Buyer in writing). Acceptance of this order by the Seller will take place when it is expressly accepted either in writing or by shipment of any article of performance hereunder. No variation or alteration of these terms and conditions or to the order will be binding unless expressly agreed in writing and executed on behalf of Buyer. This order, when accepted by Seller, constitutes the entire contract between Seller and Buyer.
29. **Laws and Regulations:** Seller warrants that all materials, articles, things, goods or services delivered pursuant to this order are produced, sold and delivered to Buyer in compliance with all applicable state, federal and local laws, rules, regulations ordinances, good manufacturing practice (GMP) and statutory requirements and Seller undertakes to indemnify, keep indemnified and hold Buyer harmless at all times from and against all claims, losses, expenses and liabilities on account of any failure to do so.
30. **Labor Certifications:** Seller, by accepting this order certifies that the goods furnished hereunder were produced in compliance with all applicable labor laws, particularly the Fair Labor Standards Act of 1938 and all amendments thereto.
31. **Equal Employment Opportunity Compliance:** To the extent applicable, this instrument incorporates by reference the Equal Employment Opportunity Clause, paragraphs 1 thru 7 set forth in Sections 60-1.4 of title 41 of the Code of Federal Regulations as amended as well as Executive Order 11,758 (Employment of Handicapped) and Executive Order, 11,701 (Employment of Veterans).
32. **OSHA Standards:** When applicable, all the materials, articles, things, goods or services furnished hereunder must meet all the current Federal and State requirements and standards relating to safety and health, including those promulgated or adopted under the Federal Occupational Safety and Health Act and the applicable State Code concerning Occupational Safety and Health. When applicable, Subcontractor shall comply with all Federal Safety and Health Regulations for Construction, as specified by the Department of Labor, Bureau of Labor Standards, Federal Register Volume 36, Number 75 dated April 17, 1971. Any penalty assessed against Contractor resulting from Subcontractor or its Subcontractor's failure to comply with Federal Safety and Health Regulations shall be for the account of the Subcontractor.
33. **Quality Control Records:** Seller must maintain all quality control data and results pertaining to any materials, articles, things, or goods ordered by Buyer for three years after delivery of any order.
34. **Warning of Defects:** In the event that Seller learns, or has reason to believe, that any of the materials, articles, things or goods that are the subject of this order may fail to comply with Buyer's specifications or is otherwise defective in some way, Seller shall immediately notify Buyer thereof.