



## TERMS AND CONDITIONS OF SALE

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. GENERAL. ADVANCED BIOMATRIX, Inc. ("Seller"), hereby offers for sale to the person or entity ("Buyer") that receives a quote from, or places a written or verbal order with, Seller for the sale of consumable products (e.g., collagen, ExtraCellular matrix, reagents, beads or those products ("Consumable Product(s)")) and/or equipment (e.g. miscellaneous equipment) ("Equipment") ordered by Buyer (generally and collectively, the "Product(s)") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein (the "Terms"). Any provisions contained in any document issued by Buyer are expressly rejected and if the terms and conditions in these Terms differ from the terms of Buyer's offer, this document will be construed as a counter offer and will not be effective as an acceptance of Buyer's document. Buyer's receipt of Products provided hereunder will constitute Buyer's acceptance of these Terms. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein will be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.

2. CUSTOM GOODS. If Buyer desires to purchase customized or special goods ("Custom Goods") from Seller (unique raw materials, special manufacturing processes or labeling or otherwise) and if Seller, in its sole discretion, is willing to consider the same, then Seller will prepare a written proposal for the price indicated, either as part of a price quotation, part of a bid submission or otherwise (a "Quote") for such Custom Goods. Any change to specifications requires a new Quote. Seller will not accept an Order for Custom Goods unless Seller has issued a Quote for those Custom Goods. Orders for Custom Goods may not be cancelled after 48 hours of Order placement. Seller disclaims any liability for: (1) the efficacy or compatibility of components provided or specified by Buyer in the manufacture of Custom Goods; and (2) the performance of Custom Goods within ranges desired by Buyer, even if those ranges are communicated to Seller or are included in specifications for the Custom Goods. Buyer must pay for initial lots of Custom Goods so long as they comply with Seller's specifications, even if those Custom Goods fall outside of Buyer's desired performance ranges for Buyer's own applications. In the event of an overage or shortage in a batch of Custom Goods that Seller manufactures to fill an Order, Seller may ship the entire batch, which shall be deemed to satisfy the Order so long as the variance does not exceed +/- 10% of the quantity Ordered. Buyer shall indemnify Seller against any claims, damages and expenses (including Seller's attorneys' fees in defending against claims and enforcing this indemnity) resulting from infringement of patents or other intellectual property rights of a third party arising from Seller's compliance with Buyer's special specifications or instructions.

3. PRICE. All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment. All prices are subject to adjustment due to specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation.

4. TAXES AND OTHER CHARGES. Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby, all of which taxes and duties must be paid by Buyer. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

5. TERMS OF PAYMENT. Seller may invoice Buyer upon shipment for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment will be net thirty (30) days from the date of invoice. If Buyer fails to pay any amounts when due, Buyer will pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments will be made in U.S. Dollars.

6. DELIVERY; CANCELLATION OR CHANGES BY BUYER. The Products will be shipped to the destination specified by Buyer, F.O.B. Seller's shipping point for destinations within the U.S. and FCA place of shipment (Incoterms 2000) for destinations outside the U.S, with packaging and carriers as designated by Seller, unless otherwise specified in an accepted Order. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller 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 Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer 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 Buyer's control may be placed in storage for Buyer by Seller at Buyer's risk and expense. Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders for Custom Goods and Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefore. Credit will not be allowed for Products returned without the prior written consent of Seller.

7. TITLE AND RISK OF LOSS. Notwithstanding the trade terms indicated above and subject to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier.

8. WARRANTY. Products are warranted to perform in substantial conformity with published Product specifications in effect at the time of sale, as set forth in the Product documentation, specifications and/or accompanying package inserts ("Documentation") and to be free from defects in material and workmanship. The warranty provided herein is valid only when used by properly trained individuals. Unless otherwise stated in the Documentation, this warranty is limited to forty-five (45) days from date of shipment for Consumable Products when subjected to normal, proper and intended usage. This warranty does not extend to anyone other than Buyer. **No other warranties express or implied, are granted, including without limitation, implied warranties of merchantability, fitness for any particular purpose, or non infringement. Buyer's exclusive remedy for non-conforming Consumable Products during the warranty period is limited to replacement of or refund for the non-conforming Product(s), at Seller's sole option.** Seller shall have no obligation to repair, replace or refund Products as the result of (i) accident, disaster or event of force majeure, (ii) misuse, fault or negligence of or by Buyer, (iii) use of the Products in a manner for which they were not designed, or (iv) improper storage and handling of the Products. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions of the Seller's Terms and Conditions of Sale.

9. RETURNS. Promptly after receipt of Products, Buyer must inspect the Products and advise Seller of any defects or shipment errors within ten (10) days of receipt. Except for defective Products covered under the above warranties or Seller's shipment errors, Buyer may not return Products to Seller unless Buyer makes a return request within 30 days after Buyer receives the Products and Seller, in its sole discretion, consents to the return in writing by issuing a return authorization number (obtained from Seller's customer services department). Seller will not consent to returns for shipments of Products: (1) made from the wrong Seller lot number when Buyer does not specify, at the time of placing the Order, the specific lot number on reserve for Buyer from which the Order must be fulfilled; (2) made with inadequate import documentation for shipments to destinations outside of the United States if Seller has complied with Buyer's prior import instructions; (3) with expiration dates sooner than a particular date if Buyer does not specify that date at the time of placing the Order; (4) that have already expired or that are within 60 days of expiration; or (5) that are Custom Products or that otherwise are custom manufactured. If a return is authorized, then Buyer shall return the Products to Seller within 10 days after authorization indicating the return authorization number; shall ship the Products F.O.B. place of destination Seller's facility (for shipment from places within the United States) and DDP place of destination Seller's facility (Incoterms 2000; for shipment from places outside the United States) and shall pay Seller a processing charge of US \$50.00 or 25% of the sales price, whichever is greater. Seller shall give Buyer a credit for returned Products only if Seller receives the Products, inspects them and deems the Products to be re-saleable, in Seller's sole discretion.

#### 10. INDEMNIFICATION.

10.1 By Seller. Seller agrees to indemnify, defend and save Buyer, its officer, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) for injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors. Buyer will provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller will have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

10.2 By Buyer. Buyer will indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of the Products for any non-research purpose or by a non-technically qualified individual; (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iv) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (v) use of a Product in an application or environment for which it was not designed; or (vi) modifications of a Product by anyone other than Seller without Seller's prior written approval.

11. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH WILL BE AS PROVIDED UNDER SECTION 8 ABOVE)) WILL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL PURCHASE PRICE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

12. EXPORT RESTRICTIONS. Buyer acknowledges that each Product and any related technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer will comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer will not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Buyer will cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and will indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, agents, or customers.

13. CONFIDENTIALITY. Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller. Buyer agrees to (i) keep such information confidential and not disclose such information to any third party, and (ii) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein will restrict the use of information available to the general public.

#### 14. MISCELLANEOUS.

14.1 The Products are intended to be used only for further manufacturing or research use and are not intended for diagnostic or therapeutic use or administration to animals or humans. Due to the nature of products, there may be differences which may affect the uses intended by Buyer.

14.2 Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment will be void.

14.3 The rights and obligations of the parties hereunder will be governed by and construed in accordance with the laws of the State of California, without reference to its choice of law provisions. In the event of any legal proceeding between the Seller and Buyer relating to these Terms, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. Any action arising under these Terms must be brought within one (1) year from the date that the cause of action arose. The application to these Terms of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

14.4 In the event that any one or more provisions contained herein will be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will remain in full force and effect, unless the revision materially changes the bargain.

14.5 Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein will not constitute a waiver of any other breach or of such provision.

14.6 Any notice or communication required or permitted hereunder will be in writing and will be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other.