

PREDICINE, INC.

TERMS AND CONDITIONS

ENTIRE AGREEMENT

The Terms and Conditions set forth herein, together with those appearing on the face hereof and in any schedules set forth herein, shall constitute the complete and exclusive Purchase Order Agreement between ("Buyer") and Seller (collectively, "Purchase Order" or "Agreement"). In the event of a conflict between these Terms and Conditions and the terms and conditions of any attachment hereto, these Terms and Conditions shall control. No modification of the Agreement shall be binding on Buyer unless in writing and signed by an authorized representative of Buyer. Any additional or conflicting terms or conditions, including those that may be presented or provided by Seller in acknowledging or accepting this Purchase Order, are hereby rejected, and shall not apply to this Purchase Order unless specifically agreed to in a writing signed by an authorized representative of Buyer. Any commencement of performance hereunder by Seller shall constitute acceptance of the Agreement. By accessing or using this site or accepting a Purchase Order, as defined below, from Predicine, Inc. ("Buyer"), Seller accepts the Terms and Conditions set forth herein. Please read the Terms and Conditions before accepting a Purchase Order from Buyer.

CHANGES

Buyer reserves the right to make changes in any one or more of the following: (a) specifications, drawings, and data incorporated into the Agreement where the goods to be furnished are to be specially manufactured for Buyer; (b) methods of shipment or packing; (c) place of delivery; and (d) time of delivery or performance. If any such change causes an increase or decrease in the price, or the time required for delivery or performance of the Agreement, either party may request in writing that an equitable adjustment shall be made in the price or delivery schedule, or both. Any request by Seller for adjustment under this clause shall be deemed waived unless made in writing within ten (10) days from receipt by Seller of the change. Price increases or extensions of time for delivery or performance shall not be binding on Buyer unless evidenced by a Purchase Order Change Notice issued and signed by Buyer.

DELIVERY

Time is of the essence under the Agreement. Delivery and performance shall be strictly in accordance with the schedules set forth herein. Seller shall immediately notify Buyer in writing of any delays in shipping or performance. Buyer reserves the right without liability to cancel any Purchase Order in whole or in part if Seller fails for any reason to make delivery or performance as required hereunder and in accordance with the schedules set forth herein. Shipments sent C.O.D. without Buyer's written consent shall not be accepted by Buyer and shall be at Seller's risk. All shipments hereunder must equal exact amounts ordered unless otherwise agreed in writing by Buyer.

PRICE

Buyer shall not be billed at a price higher than stated on the reverse hereof unless such increase is agreed to in writing by Buyer. Seller represents that the price charged for the goods or services covered by this Purchase Order, is the lowest price charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in this Purchase Order. Seller agrees that any price reduction made in goods covered by this Purchase Order subsequent to the placement of this Purchase Order will be applicable to this Purchase Order. Unless otherwise provided herein, the price stated on the reverse hereof shall include all applicable federal, state and local taxes or assessments of any kind and any and all fees and charges (including without limitation for any licenses, permits, certifications or approvals) of whatever kind applicable to Seller's performance hereunder.

PACKING

No charge shall be allowed for packing, boxing, or cartage unless otherwise agreed to by Buyer in writing. Goods not adequately and properly packed for the type and kind of carriage employed by Seller shall be at Seller's risk. Each package or packing unit shall contain a packing list, bearing Seller's or shipper's name, and Buyer's Purchase Order number.

DEFECTIVE OR NON-CONFORMING WORK OR GOODS

Buyer reserves the right in its sole discretion and election to reject, and refuse acceptance, of goods or services or to return goods which are defective or not in conformance with any of the specifications, requirements, or instructions set forth herein or with Seller's warranty. Rejected goods that are returned to Seller shall be returned at Seller's expense and risk. If goods are rejected, at Buyer's election, Seller shall either promptly replace rejected goods with conforming goods at Seller's expense, or refund to Buyer any amounts paid for the rejected goods. Rejected services shall at Buyer's election, either be reperfomed by Seller, at Seller's expense and risk, until the specifications, requirements, instructions and warranties set forth herein are met to Buyer's satisfaction, or the amounts paid for such rejected services shall be refunded to Buyer.

TITLE AND RISK OF LOSS

Unless otherwise agreed in writing by Buyer or as provided herein, all goods shall be shipped F.O.B. destination, and title and risk of loss shall pass to Buyer upon proper delivery of the shipment to the Buyer's location or designated destination. When goods are shipped F.O.B. destination, Buyer shall not be required to claim against the carrier, and title and risk of loss shall remain with Seller until proper delivery is made to Buyer at Buyer's "ship to" address set forth on the reverse hereof. In any event, Seller shall remain liable for any loss or damage to the shipment including as a result of Seller's failure to properly package the shipment.

SELLER'S WARRANTY

Seller warrants that the goods or services to be provided hereunder shall: (i) be in strict conformity to all requirements, specifications, drawings, data, or designs set forth in the Agreement, (ii) be free from defects in design, materials and workmanship, (iii) be made, and all services shall be performed, in accordance with all applicable federal, state and local laws, regulations, rules, regulatory requirements and ordinances, and (iv) not infringe or misappropriate any third party intellectual property rights. These warranties shall survive Buyer's acceptance of the goods or services and payments therefor and shall be in addition to all other warranties given to Buyer by Seller or by law.

INDEMNITY. Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent company and their subsidiaries, affiliates, successors or assigns and their respective directors, officers and employees and Buyer's customers (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any rights hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the goods purchased or services received from Seller or Seller's negligence, willful misconduct or breach of these Terms and Conditions. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

INTELLECTUAL PROPERTY INDEMNITY. Seller shall, at its expense, defend, indemnify and hold harmless Indemnitees against any and all Losses arising out of or in connection with any claim that such Indemnitee's use or possession of the goods or receipt of the services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without Indemnitee's prior written consent.

BUYER'S PROPERTY

All special dies, molds, tools, tooling, patterns, jigs, fixtures, drawings, specifications, documents, materials, equipment and other items, supplied by Buyer to Seller, or purchased or fabricated by Seller for Buyer, including but not limited to any items that are purchased or fabricated by Seller in order for Seller to fulfil this Purchase Order (collectively, "Buyer's Property") shall be and remain the sole property of Buyer and no title shall pass from Buyer to Seller nor shall any license or other rights be granted by Buyer to Seller by virtue of the Agreement or otherwise. Seller understands and agrees that Buyer's Property is proprietary to Buyer, and Seller

shall not use, copy, distribute, reverse engineer, decompile, sell, lease or otherwise transfer, modify, adapt, translate, network, publish, create derivative works of or disclose (other than to Seller's employees) Buyer's Property without Buyer's prior written authorization. If Seller formulates, modifies and/or tests any of Buyer's Property in any way, all resulting data, information and/or test results shall be submitted to Buyer and shall be owned solely by Buyer. Seller agrees that Buyer's Property will be held by Seller at Seller's risk and will be kept free and clear of all claims, demands, security interests, liens and encumbrances, shall be used only in filling orders from or performing services for Buyer, kept separate from other materials, and specifically identified as property of Buyer. Seller hereby waives any right it may have to withhold Buyer Property. Seller's failure to return Buyer's Property shall be deemed a material breach of this Agreement.

CLAIMS

At Seller's sole expense, Seller shall defend, indemnify and hold Buyer and its affiliates and their respective officers, directors, agents and employees, and Buyer's and its affiliates' licensees and customers, harmless from and against all liabilities, damages, losses, awards, settlements, penalties, fines, costs and expenses (including without limitation reasonable attorney's fees and litigation costs, regardless of outcome) resulting from any claims, suits, actions, demands or proceedings arising out of Seller's performance or non-performance of its obligations, or breaches of any of its warranties, under the Agreement.

REMEDIES

If Seller breaches the Agreement, Buyer may exercise any and all of its rights and remedies available hereunder in equity and at law, which rights and remedies shall be cumulative. If Buyer breaches this Agreement, Seller's sole and exclusive remedy and Buyer's sole and exclusive liability shall be Seller's recovery of the goods from Buyer or the price thereof if sold by Buyer to a third party. In no event shall Buyer be liable for incidental, indirect, consequential, special, punitive or exemplary damages or penalties (including without limitation, damages resulting from interruption or loss of business, interruption or loss of use, loss of profits or other economic loss) arising out of the Agreement, even if Buyer had or should have known of the possibility of such damages. Such exclusion of damages shall apply whether a claim is based on breach of contract, breach of warranty, tort (including negligence), product liability, strict liability or otherwise, and notwithstanding any failure of essential purpose or of any limited remedy herein.

COMPLIANCE WITH LAWS

Seller will comply with all federal, state and local laws, regulations, rules, regulatory requirements and ordinances applicable to the performance of its obligations hereunder including without limitation the United States Federal Food, Drug and Cosmetic Act as amended, and implementing regulations and guidances, and federal, state and local environmental, health and safety laws, rules, regulations, orders and requirements including federal and state EPA and OSHA requirements. If the goods ordered herein are purchased for incorporation into products sold under a United States Government contract or subcontract, the terms required to be included in that contract or subcontract shall be deemed to apply to this Purchase Order. Seller shall maintain all registration, authorizations, permits, licenses, certifications and approvals required for the lawful performance of Seller's obligations hereunder.

TERMINATION

Buyer may, at any time with or without cause terminate this Purchase Order in whole or in part by written notice, or verbally if confirmed in writing, without liability. Termination by Buyer shall not be an exclusive remedy and all other remedies will be available to Buyer, in equity and at law, whether or not the Agreement is terminated by Buyer. Termination of the Agreement by either party shall not affect the rights and obligations of the parties accrued prior thereto. Notwithstanding the foregoing, termination of this Purchase Order, for whatever reason, shall not terminate or modify the terms of any other Purchase Order, unless expressly agreed to by Buyer in writing.

NOTICE OF CHANGES

Seller agrees to notify Buyer in writing in advance of any changes in the products (including, without limitation, any changes in the location where products are made or in the equipment used to make the products, or in the methods of or processes for making such products) or services provided hereunder.

RECORD RETENTION, INSPECTION, AUDIT RIGHTS.

Seller shall maintain complete books and records, including inspection records, with respect to all goods and services, which records shall be in English and be available to Buyer during performance of this Purchase Order and until the later of 10 years after final payment; final resolution of any dispute involving the goods or services delivered hereunder; or the latest time required by applicable law or regulation. Seller shall at any time, and after reasonable notice by Buyer: (i) grant to Buyer, Buyer's customers and/or to any applicable regulatory authority, unrestricted access to (or if Buyer so requests, provide to Buyer copies of) such books and records, wherever such books and records may be located (including third-party repositories), and (ii) provide Buyer, Buyer's customers and/or any such authority the right to access, and to perform any type of inspection, test, audit or investigation at Seller's premises, including manufacturing and test locations, for the purpose of enabling Buyer to verify compliance with the requirements of this Order or for any other purpose indicated by Buyer's customers or said authority in certification, manufacture, use and/or connection with the design, development or support of the goods or services. Seller and its subcontractors shall furnish all reasonable facilities and assistance for the safe performance of the inspection, test, audit and/or investigation.

GENERAL

- Seller shall not subcontract or delegate any duties or assign any rights under the Agreement without the prior written consent of Buyer. Buyer may assign the Agreement without the consent of Seller.
- The waiver of the breach of any term or condition hereof shall not be deemed a waiver of any future breach thereof.
- Should Buyer seek to enforce any provision hereof, Buyer shall be entitled to recover in addition to other damages reasonable attorney fees.
- The Agreement shall be governed by the laws of the State of California, regardless of its or any other jurisdiction's choice of law principles, and Seller hereby consents to the jurisdiction and venue of the courts within that state. The United Nations Convention on Contracts for the International Sale of Goods (1980) does not and shall not apply to the Agreement.
- Any notices required to be given hereunder shall be sent in writing to the address of each party as set forth on the Purchase Order and shall be deemed given when faxed or mailed U.S. first classes postage prepaid, properly addressed.
- If Buyer and Seller have not entered into a separate written agreement containing terms and conditions relating to confidentiality and non-use, the following shall apply: Seller shall keep strictly confidential (using no less than a reasonable degree of care) and will not disclose, copy or use for any purpose other than in performing its obligations under the Agreement, all data, information and materials in whatever form disclosed or made available by Buyer to Seller ("Confidential Information"). Seller shall return all Confidential Information to Buyer upon request.
- The following provisions shall survive Buyer's acceptance of the goods or services and payments therefor: DEFECTIVE OR NON-CONFORMING WORK OR GOODS, WARRANTY, BUYER'S PROPERTY, CLAIMS, REMEDIES, TERMINATION and GENERAL.
- In the event of an inconsistency between any terms of the Agreement and any translations thereof into another language, the English language meaning shall control.