

Protein Discovery, Inc. Terms and Conditions of Analysis Services – End User

The following terms and conditions of service relate to the sale by Protein Discovery, Inc. ("Seller") of specified research analysis services (each a "Service") to the purchaser of such Service (the "Buyer").

1. **ACCEPTANCE:** ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS STATED HEREIN. NO VARIATION OF THESE TERMS AND CONDITIONS SHALL BE BINDING UPON SELLER UNLESS AGREED TO IN WRITING AND SIGNED BY AN OFFICER OF SELLER. These terms and conditions together with the quote (or acknowledgement) (collectively, the "Agreement"), and not any purchase order or other document of Buyer, shall be the final binding agreement of the parties. Seller's failure to object to any provisions of any subsequent document, communication or act of Buyer shall not be deemed a waiver of any of the terms hereof.
2. **CHANGES:** Orders arising hereunder may be changed or amended only by written agreement signed by both Buyer and Seller, setting forth the particular changes to be made and the effect, if any, of such changes on the price and time of delivery. It is hereby understood and agreed that any purchase order, memorandum, or other instrument issued by Buyer in connection with this transaction is for Buyer's internal use only and its terms shall be of no force and effect with respect to the transaction covered by this Agreement. Buyer may not cancel, modify or terminate this order unless such action is expressly agreed to in writing by Seller. In such event, Seller will advise Buyer of the total charge for such action, and Buyer agrees to pay such charges, including, but not limited to, storage and shipment costs, cancellation costs imposed upon Seller by suppliers, and any other cost resulting from change of this order by Buyer which is incurred by Seller. Certification of such costs by Seller's accounting department shall be conclusive on the parties hereto.
3. **LIMITATIONS:** Seller shall not be liable for any loss, damage, or penalty as a result of any error, incomplete analysis or delay in or failure to manufacture, deliver, or otherwise perform hereunder due to any cause, including, without limitation, acts of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Seller's business, fire, explosion, recall, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, lightning, flood, windstorm or other acts of God, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies or power at current prices.
4. **ALLOCATION OF SERVICES:** If Seller is unable for any reason to provide the Services specified in Buyer's order, Seller may allocate its available resources among any or all buyers on such basis as Seller may deem fair and practical, without liability for any failure of performance which may result therefrom.
5. **PAYMENT:** Terms of sale are 100% net 30 days after the date of Seller's invoice with payments due at Seller's headquarters in Knox County, Tennessee, unless otherwise stated, or unless other provisions for payment have been made with and approved in writing by Seller. Payments are to be made in United States funds, unless otherwise stipulated. Fees not paid when due shall accrue late charges at a rate of 1.5% per month, or the maximum rate allowable by law, whichever is lower, from the date such payment was due until the date paid. If the financial condition of Buyer results in the insecurity of Seller, in its sole and absolute discretion, as to the ultimate collection of the purchase price, Seller may, without notice to Buyer, delay or postpone the delivery of any Service; and Seller, at its option, is authorized to change the terms of payment to payment in full or in part in advance of delivery of any remaining Services. In the event of default by Buyer in the payment of the purchase price or otherwise, of this or any other order, Seller, at its option, without prejudice to any other of Seller's lawful remedies, may defer delivery, cancel this agreement, or apply any of Buyer's proceeds as a credit, without set-off or deduction of any kind, against the agreement purchase price, and Buyer agrees to pay the balance then due to Seller on demand. Buyer agrees to pay all costs, including, but not limited to, reasonable attorney and accounting fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof.
6. **TAXES AND OTHER CHARGES:** Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any government authority, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller or, in lieu of such payment, Buyer shall provide Seller at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.
7. **WARRANTIES:**
 - (a) Seller warrants to Buyer that the Services shall conform in all material respects to the description of the Services as provided to Buyer by Seller through Seller's designated output specifications.
 - (b) SELLER'S SOLE AND EXCLUSIVE LIABILITY AND BUYER'S EXCLUSIVE REMEDY WITH RESPECT TO SERVICES PROVED TO SELLER'S SATISFACTION TO BE DEFECTIVE OR NONCONFORMING SHALL BE AN ADDITIONAL PROVISION OF SUCH SERVICE WITHOUT CHARGE OR REFUND OF THE PURCHASE PRICE, IN SELLER'S SOLE DISCRETION.
 - (c) EXCEPT FOR THE WARRANTIES EXPLICITLY SET FORTH IN SECTION 7(a), SELLER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING, TRADE USAGE OR OTHERWISE, WITH RESPECT TO THE SERVICES. SELLER SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE LIMITATIONS OF WARRANTY SET FORTH IN THIS AGREEMENT SHALL SURVIVE THE CANCELLATION, COMPLETION, OR OTHER TERMINATION OF THIS CONTRACT FOR ANY REASON. Some jurisdictions do not permit the exclusion of implied warranties, and so the above may not apply to Buyer.
8. **LIMITATION OF LIABILITY:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND RESULTING FROM ANY USE OR ERRONEOUS OR MISTAKEN RESULT OF THE SERVICE OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF DATA, LOSS OF WORK IN PROGRESS, DOWNTIME, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, LOSS OF PRODUCTS OF BUYER OR OTHER USE OR ANY

LIABILITY OF BUYER TO A THIRD PARTY ON ACCOUNT OF SUCH LOSS, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY ANY SERVICE, WHETHER OR NOT SELLER WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT WILL SELLER'S TOTAL LIABILITY TO BUYER FOR ALL DAMAGES IN ANY ONE OR MORE CAUSES OF ACTION EXCEED AMOUNTS RECEIVED FROM BUYER UNDER THE AGREEMENT. ANY ACTION WITH RESPECT TO ANY SERVICE PROVIDED HEREUNDER SHALL BE COMMENCED, AND ANY CLAIMS FOR BREACH OF CONTRACT MUST BE RECEIVED, WITHIN ONE (1) YEAR OF THE DATE OF SERVICE HEREUNDER, REGARDLESS OF THE NATURE OF SUCH CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED IN THIS AGREEMENT. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL SURVIVE THE CANCELLATION, COMPLETION, OR OTHER TERMINATION OF THIS AGREEMENT FOR ANY REASON.

9. **BUYER'S RESTRICTED USE OF OUTPUT:** Buyer agrees to comply with instructions, if any, furnished by Seller relating to the use of the Services and to not misuse the results of the Services in any manner. Buyer shall not reverse-engineer, decompile, disassemble or modify any output or result from the Services to create derivative works. Buyer acknowledges that Seller retains ownership of all patents, copyrights, trademarks, trade secrets and other proprietary rights relating to or residing in the Services or any portion thereof. Seller acknowledges that Buyer retains ownership of all patents, copyrights, trademarks, trade secrets and other proprietary rights relating to the data generated as a result of the Services to such extent that such data was obtained solely using Buyer's samples.
10. **BUYER'S REPRESENTATIONS, RELEASE, AND INDEMNITY:** Buyer represents and warrants that it shall use the outputs or results of the Services in accordance with Section 9, "Buyer's Restricted Use of Product," and that any such use of the outputs or results of the Services will not violate any law, regulation, judicial order, or injunction. Buyer agrees to release, discharge, disclaim, and renounce any and all claims, demands, actions, causes of action, and/or suits in law or equity, now existing or hereafter arising, whether known or unknown, against Seller, its officers, directors, employees, agents, successors, and assigns (collectively the "Released Parties") with respect to the use of the outputs or results of the Services. Buyer agrees to indemnify and hold harmless the Released Parties from and against any suits, losses, claims, demands, liabilities, costs, and expenses (including attorney, accounting, expert witness, and consulting fees) that Released Party may sustain or incur as a result of any claim against Released Party based upon negligence, breach of warranty, strict liability in tort, contract, or any other theory of law or equity arising out of, directly or indirectly, the use of the outputs or results of the Services, or by reason of Buyer's failure to perform its obligations contained herein. Buyer shall notify in writing within fifteen (15) days of Buyer's receipt of knowledge of any accident, or incident involving the Services which results in personal injury or damage to property, and Buyer shall fully cooperate with Seller in the investigation and determination of the cause of such accident and shall make available to Released Party all statements, reports, recordings, and tests made by Buyer or made available to Buyer by others. The furnishing of such information to Released Party any and any investigation by Released Party of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by Released Party.
11. **PATENT APPLICATION DISCLAIMER:** Seller does not warrant that the use or sale of the Services delivered hereunder will not infringe the claims of any United States or other patents covering the Services, output or results or the use thereof in combination with other products or in the operation of any process.
12. **ERRORS AND MISTAKES:** If Buyer demonstrates that the Services, output or results is in error or contains a mistake in fact, then Seller agrees to duplicate the Services at no expense to Buyer for replacement Services.
13. **TECHNICAL ASSISTANCE:** At Buyer's request, Seller may, at Seller's discretion, furnish technical assistance with respect to the results of the Services for such fees and other consideration agreed to in writing by Buyer and Seller. SELLER MAKES NO WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO TECHNICAL ASSISTANCE OR INFORMATION PROVIDED BY SELLER OR SELLER'S PERSONNEL. ANY SUGGESTIONS BY SELLER REGARDING USE, SELECTION, APPLICATION, OR SUITABILITY OF THE SERVICES SHALL NOT BE CONSTRUED AS AN EXPRESS WARRANTY UNLESS SPECIFICALLY DESIGNATED AS SUCH IN WRITING BY AN OFFICER OR AUTHORIZED AGENT OF SELLER.
14. **MISCELLANEOUS:** (a) Seller reserves the right to correct clerical errors and omissions. Buyer shall not export or re-export, directly or indirectly, the underlying information or technology in violation of any United States or foreign law or regulations. These terms and conditions, and any document referred to on the face hereof, constitute the entire agreement between Seller and Buyer. Seller's failure to strictly enforce any term or condition of this Agreement or to exercise any right, power, or privilege arising hereunder shall not constitute a waiver of Seller's right to strictly enforce such terms or conditions or exercise such right, power, or privilege thereafter. Any waiver or default by Buyer hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, rights, powers, and privileges shall not be affected or impaired thereby. The paragraph headings herein are for convenience only and form no part of the terms and conditions and shall not affect the interpretation of the terms and conditions. Subject to the terms and conditions of this Agreement, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, corporate representatives, agents, successors, and assigns.
(b) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TENNESSEE, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. THE UNITED NATIONS CONVENTION ON THE SALE OF GOODS SHALL NOT BE APPLICABLE TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT. UNLESS PROHIBITED BY APPLICABLE LAW, BUYER HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS OF KNOX COUNTY, TENNESSEE REGARDING ANY AND ALL DISPUTES ARISING FROM THIS AGREEMENT. THE PARTIES HEREBY DESIGNATE KNOX COUNTY, TENNESSEE AS THE PLACE OF PERFORMANCE AND PAYMENT.