

# General Terms and Conditions for Direct Material Purchases - United States

## RAW MATERIALS PURCHASE AGREEMENT (US ONLY) TERMS AND CONDITIONS

**1. GENERAL.** In these printed Raw Materials Purchase Terms & Conditions (the "Standard T&Cs"), "Buyer" shall mean the respective Lonza entity referenced on the first page of Buyer's accompanying purchase order (the "Purchase Order" or "Order") which further describes the materials being bought and "Agreement" shall mean the Purchase Order and the Standard T&Cs. In the event of a conflict between the terms written on the Purchase Order and these Standard T&Cs, the terms written on the Purchase Order shall prevail. Each shipment received by Buyer from Seller shall be deemed to be only upon the terms, including these Standard T&Cs, in this Agreement, except as they may be added to, modified, superseded, or otherwise altered by Buyer, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller and notwithstanding Buyer's act of accepting or paying for any shipment or any similar act of Buyer, and Buyer hereby rejects any different or additional terms and conditions proposed by Seller.

**2. COMPLIANCE WARRANTY.** Seller warrants that the Product(s) shall be adequately manufactured, contained, packaged, marked, labeled, registered and shipped in compliance with, and that the Product(s) and any services provided in connection therewith shall conform to, the requirements of all applicable federal, state and local laws, regulations, rules and orders. **Additionally, and without limiting the foregoing, it is specifically understood that Buyer is an Equal Opportunity Employer and Seller warrants that it complies with the Fair Labor Standard Act of 1938, as amended.**

The foregoing representation shall be a continuing representation and shall apply to each shipment.

**3. PRICE; DELIVERY; AND RISK OF LOSS.** Price shall cover the net weight of the Product(s). Seller shall remit all invoices to Buyer in accordance with the instructions set forth on each individual Order or release order. Payment terms are net 60 days from the date of receipt of invoice by Buyer. No extra charge of any kind, including without limitation, charges for boxing, packing or crating, shall be allowed without Buyer's prior written consent. If, at any time during the term of this Agreement, Buyer can purchase goods of a like quantity at a price or on terms which will result in a delivered cost to Buyer that is lower than the delivered cost of the Product(s), Buyer may notify Seller of such lower delivered cost. Seller shall, within fifteen (15) days after such notice, advise Buyer in writing whether or not Seller will meet such price or such terms. If Seller elects not to meet such price or such terms, or fails to advise Buyer within such fifteen (15) day period, Buyer may purchase the lower delivered cost goods, and the quantity of any purchase so made shall correspondingly reduce any purchase and sales obligations of Buyer and Seller, respectively, hereunder.

The Product delivered shall correspond precisely to the Order in terms of quantity and quality. If the Seller diverges from the Order, it shall notify Buyer thereof in writing. Unless Buyer specifically agrees to these divergences, Buyer shall no longer be bound by its Order. On all dispatch documents and delivery notes, the Seller shall indicate Buyer's Order number and also details of the gross and net weight and dimensions. Unless otherwise provided in this Agreement, delivery of the Product(s) shall be at a Buyer facility. Delivery of Product shall be governed by INCOTERMS® 2010. In the absence of any differently worded delivery terms in the Agreement, the Product ordered shall be delivered on the basis "DDP place of destination (INCOTERMS® 2010)".

Risk of loss, liability and/or damage shall remain with Seller until the Product(s) are physically delivered to and accepted by a Buyer representative or authorized agent at the ship to location designated in the Purchase Order.

**4. PRICE PROTECTION.** Seller warrants that the prices for the Product(s) are not less favorable than those currently extended to any other customer for the same or like goods in equal or less quantities. In the event Seller reduces its price for such Product(s) during the term of this Agreement, Seller shall reduce the price of the Product(s) correspondingly.

**5. ACCEPTANCE AND REJECTION.** All Product(s) shall be accepted subject to Buyer's rights of inspection, rejection, and revocation of acceptance (pursuant to the provisions of this Section 5). Payment for or use of Product(s) prior to inspection shall not constitute acceptance thereof. Moreover, any payments made shall not be deemed to prejudice any and all rights and claims that Buyer may have against Seller. Any signature of a Buyer representative on any shipping/receiving document shall not constitute acceptance of Product(s) or any different terms or conditions, or acknowledge condition of Product(s), but shall merely acknowledge receipt of a shipment of Product(s).

**5.1 Rejection.** Buyer may return to the Seller any Product that, in its reasonable discretion, does not comply with the terms of this Agreement. Upon Buyer's request, Seller will, at its cost, and as soon as reasonably practicable replace the returned Product with Product that conforms with the warranty, and will deliver the replacement Product as soon as possible, but in any event within three (3) days, after receipt of the non-conforming or defective Product, at Seller's expense (including all transportation and insurance). Without limiting other remedies available to Buyer

at law, if the Seller is unable to replace the Product within three (3) days, the Seller shall at Buyer's request provide Buyer a refund as defined in Section 5.3 below.

**5.2 Complaints.** Any complaint shall be regarded as having been timely lodged if Buyer notifies the Seller of the fault at any time during the warranty period set forth in Paragraph 9 hereof. Within two weeks after any complaint lodged by Buyer concerning a non-conforming Product the Seller shall make a reasonably detailed report to Buyer on the corrective and preventive action that has been initiated according to the Sellers standard operating procedure.

**5.3 Credits/Refunds; Set-Off.** In accordance with this Section 5, the Seller shall promptly refund Buyer by wire transfer or check for any payment Buyer made with respect to such Product. Buyer may elect, at its sole discretion, to take such credit on any open invoices of the Seller in the place of such refund. Buyer may set-off any amount owed from the Seller or any of Seller's affiliates against any amount payable at any time by Buyer.

**5.4 Remedies.** The remedies contained in this Section 5 are in addition to all other remedies available at law, in equity or otherwise.

**5.5 Recalls and Field Corrections.** If any recall, product withdrawal or field correction of any Product is required by a governmental agency or for safety or efficacy reasons resulting from (a) the supply by the Seller of any Product not complying with the terms and conditions of the Agreement (including all warranties included in the Agreement) or (b) the negligent or intentionally wrongful act or omission of the Seller or its affiliates or their representatives, then the Seller shall bear all costs and expenses, including but not limited to the costs and expenses related to such recall or field correction, communications and meetings with all required regulatory agencies, replacement stock, service labor, installation, travel, notifying customers of such recall and any replacement product to be delivered to those same customers, including shipping costs. To the extent that any such recall or field correction is due in part to the grossly negligent acts or omissions of Buyer, Buyer shall be responsible for such costs and expenses equitably in proportion to such acts or omissions. For purposes of clarification, failure to provide testing of Product beyond the review certificates of compliance shall not be considered negligence on the part of Buyer.

**6. TAXES.** This Agreement shall not include sales or use taxes, nor shall such taxes be added to the price of Product(s), provided that Buyer has indicated in the space provided that the purchase of Product(s) is exempt from such taxes. Seller agrees to pay any other taxes imposed by federal, state, or local law upon the Product(s) (and/or any services provided in connection therewith) sold to Buyer hereunder unless otherwise agreed.

Seller shall, upon request of Buyer, inform Buyer whether the Product(s) are imported or manufactured with imported materials and furnish Buyer with all documentation required for duty drawback for product or imported materials contained in the Product purchased by Buyer hereunder.

**7. INTELLECTUAL PROPERTY.** Seller agrees to defend, indemnify and hold harmless Buyer, its affiliates, and their respective successors, customer and users, from and against all liability, economic loss, damage, and expense (including attorneys' fees) resulting from any actual or alleged infringement of any intellectual property right, or any litigation based thereon, with respect to the Product(s) (or any part thereof and including Seller's process of manufacturing Product(s)), and any such obligation shall survive acceptance of such Product(s) and payment therefor by Buyer.

**8. INDEMNIFICATION.** Seller shall assume the sole responsibility for any and all actual or alleged damage or injury (including death) to any and all persons (including, but not limited to employees of Seller or Buyer) and to all property arising out of or resulting from (i) any breach of its obligations, representations, or warranties of this Agreement by or any act or omission of Seller, (ii) the use or sale of the Product(s), or (iii) the negligence or willful misconduct on the part of Seller or its affiliates, and shall defend, indemnify and save harmless Buyer from and against any and all claims, liabilities, expenses (including reasonable attorneys' fees), fines, penalties, damages and/or economic losses of whatsoever nature arising therefrom except to the extent caused by the sole gross negligence of Buyer.

**9. WARRANTIES.** Seller warrants good title to all Product(s). Seller warrants that the Product(s) are new, merchantable, safe, fit for intended use, free from defects and conform to the Specifications and any drawings, samples, or other descriptions referenced herein or applicable thereto.

Seller further warrants that any services provided in connection therewith shall be performed in accordance with the highest standards, in a workmanlike manner, free from defects and in conformance with all specifications, plans, or drawings referenced herein or applicable thereto. Product(s) or services found to be defective in material or workmanship or nonconforming with specifications within eighteen months from the date of shipment (or performance) or twelve months from the date of putting same into service, whichever date occurs first, shall, at Buyer's option, be corrected or repaired in place by Seller, or be replaced at a Buyer facility by Seller, or be returned to Seller at Seller's expense (including transportation, insurance and handling costs) for repair, replacement or full refund.

Seller further warrants that it shall comply with the latest version of Lonza's Supplier Code of Conduct which may be accessed via Buyer's webpage at <http://www.lonza.com/en/about-lonza/investor-relations/-/media/C860C5E420144BA2B8C098FB83E56E19.ashx>.

**If this Agreement relates to the purchase of any food, drug, or cosmetic, or substance the intended use of which results or may reasonably be expected to result, directly or indirectly in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food), Seller hereby guarantees that the article comprising each shipment or other delivery now or hereafter made by Seller to Buyer, as of the date of such shipment or delivery, is not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, as amended, or within the meaning of applicable State laws or Municipal ordinances in which the definitions of adulteration and misbranding are substantially the same as those contained in the above Act, and not an article which may not, under the provisions of Section 404 and 505 of said Act, be introduced into interstate commerce.**

**10. RELEASE OF LIENS.** Seller shall, at its sole cost and expense, obtain from all its subcontractors and materialmen waivers and releases of all liens which may be imposed by them against the premises of Buyer or the improvements thereon, in connection with any Product(s), and Seller shall defend, indemnify and hold harmless Buyer with respect thereto.

**11. DELIVERIES.** Time is of the essence of this Agreement. The delivery dates specified in the Purchase Order are fixed dates. Product ordered shall be delivered on the date stipulated in the Agreement or within the agreed time period. When this date or period expires, the Seller is in arrears without any subsequent deadline being set. Notice shall be given in due time of the delivery of ordered Product prior to the agreed delivery date. Buyer specifically reserves the right to refuse to accept a premature supply of Product ordered, without this constituting delay in acceptance. Unless otherwise agreed, Buyer specifically reserves the right to refuse or to store a non-agreed under- or over-supply of Product ordered, at the Seller's cost and risk. In addition to all its other legal remedies, Buyer reserves the right to cancel all or any part of the undelivered Product(s) if Seller does not make deliveries as specified, or if Seller breaches any of the terms hereof.

**12. FORCE MAJEURE.**

Neither party shall be liable for any delay or failure of performance due solely to strikes, fires, or other causes beyond its control and without its fault or negligence, provided that the party subject to such cause shall have given written notice thereof to the other as soon as the same could be anticipated, and if it could not be anticipated, promptly following the commencement thereof. If Seller should be unable, due to such a cause, to meet all of its delivery commitments for the Products ordered herein as they become due, Seller shall not discriminate against Buyer or in favor of any other customer in making deliveries of such Products. Seller shall use its best efforts to anticipate the effect of such cause and mitigate the effect of such cause and to make deliveries as expeditiously as possible. However, if Buyer believes that the delay or anticipated delay in Seller's deliveries may impair its ability to meet its production schedules or may otherwise interfere with its operations, Buyer may at its option, and without liability to Seller, cancel outstanding deliveries hereunder wholly or in part. **Notwithstanding any provision of this Agreement, Seller agrees it will not claim impracticability to excuse its performance, whether by reason of Section 2-615 of the Uniform Commercial Code, usage of trade or otherwise.**

**13. CONFIDENTIALITY.** Seller agrees not to make any use of writings, data, designs, drawings, specifications or any other information furnished to it by Buyer or observed or developed by Seller in the performance hereof and to not disclose any of the foregoing to third parties, except as required in the performance of this Agreement and then only after first obtaining a written agreement from such third parties to be bound by similar secrecy and use restrictions. Upon completion, cancellation or termination of this Agreement, Seller shall return to Buyer all of the foregoing, including all copies, extracts or derivatives of tangible materials containing any of the foregoing made by Seller or third parties employed by Seller, together with Seller's certification of such return. Buyer shall at all times have title to all drawings, specifications, writings or other documents prepared or furnished by Seller hereunder. All Product(s) produced for Buyer hereunder which are subject to or may be copyrighted under the Federal Copyright Act shall be deemed to be "works made for hire" and title to and ownership of such Product(s) shall at all times be in Buyer.

**14. PRODUCT STEWARDSHIP.** Seller shall furnish Buyer, prior to the first delivery, Seller's current Material Safety Data Sheet and other literature pertaining to the hazards associated therewith and the precautions which should be observed with respect thereto. Seller shall promptly furnish Buyer copies of any revisions to any of the same issued by Seller during the term of this Agreement.

**15. CONTINUOUS IMPROVEMENT.** Seller acknowledges and agrees to commit itself to continuous quality improvement. For example, Seller specifically acknowledges its commitment to attempt to attain 100% conformance with all of its obligations pursuant to this Agreement, including the goals of 100% on-time delivery and 100% conformance with warranty obligations. Buyer may note in writing to Seller any non-conformance by Seller to the contract requirements. Seller agrees to review and provide written response, within the time period specified on such writing, to all such writings issued and agrees to put corrective actions in place to correct any non-conformance listed on such writings.

In the event that the composition, packaging or sourcing of raw materials used in the production of Product(s) is altered, or the manufacturing process, quality tests, or quality test methods used in the manufacture of the Product(s) is altered, Seller agrees to promptly notify Buyer in writing of the alteration prior to making such alteration. Upon its request, Buyer or its customer may inspect and verify Product(s) at Seller's facilities. Seller agrees to promptly notify Buyer in writing of loss of any third party certification (such as ISO9000 Series, QS9000) that occurs during the Term of this Agreement.

**16. MISCELLANEOUS.** No transfer or assignment of this Agreement or any of its rights or obligations shall be made by either party without the written consent of the other party which consent shall not be unreasonably withheld or delayed. The failure of either party to insist in any instance upon strict performance by the other party of any provision of this Agreement shall not be construed as a continuing waiver of such

item, or waiver of any other provision of this Agreement. If any part of this Agreement shall be found to be invalid or unenforceable under applicable law in any jurisdiction, such part shall be ineffective only to the extent of such invalidity or unenforceability in such jurisdiction, without in any way affecting the remaining parts of this Agreement in that jurisdiction or the validity or enforceability of the Agreement as a whole in any other jurisdiction. In addition, the part that is ineffective shall be reformed in a mutually agreeable manner so as to as nearly approximate the intent of the Parties as possible. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to its conflicts of law principles. The United Nations Convention on Contracts for International Sales of Goods shall not apply to this Agreement. Any disputes under this Agreement that cannot be resolved by the Parties through good faith negotiation shall be resolved in the courts of the State of New York and the Parties hereby consent to the exclusive jurisdiction of such courts.

**17. CORPORATE RESPONSIBILITY.** Seller warrants that Seller has not and will not, directly or indirectly, enter into any agreement, participate in a collusion or otherwise take any action in restraint of free or competitive bidding, including, but not limited to, any offer or promise of future employment or business opportunity by or for any contractor or subcontractor, or any personnel of Buyer or its contractors or subcontractors associated with this transaction.

When Seller has reasonable grounds to believe that a Buyer or Seller employee, subcontractor or subcontractor employee, directly or indirectly, solicited, accepted or attempted to accept any money, fee, gratuity, offer or promise of future employment or business opportunity, or thing of value of any kind for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or subcontract associated with Buyer, Seller shall promptly notify Buyer's General Counsel of the possible misconduct.

**18. EQUAL EMPLOYMENT OPPORTUNITY/US EMPLOYEE RIGHTS/US FAR.** Title 17 of the Civil Rights Act of 1964 as amended and Executive Order 11246, as amended, which relate to equal employment opportunities and implementing rules and regulations of the Secretary of Labor are incorporated herein by reference. Buyer is a Federal Government Contractor and complies with Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and the implementing regulations for each found at 41 CFR Part 60, and Seller agrees, to the extent applicable, to comply with the same. To the extent applicable, the Equal Opportunity clauses found at 41 CFR § 60-1.4(a), 60-741.5(a), and 60-300.5(a) are hereby incorporated by reference and made a part of this Agreement as though fully set forth herein, and are likewise incorporated by reference into all subcontracts, which Seller shall ensure, as required by 41 CFR § 60-1.4(d). This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability and qualified protected veterans, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and qualified protected veterans.

Incorporated by reference into this Agreement, as applicable, are the obligations regarding the notice of employee rights under U.S. federal labor laws found at 29 CFR Part 471, Appendix A to Subpart A, and will likewise incorporate those obligations into all applicable subcontracts, which Seller shall ensure, as required by 29 CFR Part 471.

To the extent applicable, the following U.S. Federal Acquisition Regulation ("FAR") clauses, in effect on the date of acceptance, are hereby incorporated by reference and made a part of this Agreement as though fully set forth herein: (a) FAR 52.203-13, Code of Business Ethics and Conduct (48 C.F.R. § 52.203-13), (b) FAR 52.219-8, Utilization of Small Business Concerns (48 C.F.R. § 52.219-8), (c) FAR 52.222-26, Equal Opportunity (48 C.F.R. § 52.222-26), (d) FAR 52.222-36, Affirmative Action for Workers with Disabilities (48 C.F.R. § 52.222-36), (e) FAR 52.222-50, Combating Trafficking in Persons (48 C.F.R. § 52.222-50), (f) FAR 52.244-6, Subcontracts for Commercial Items (48 C.F.R. § 52.244-6). **FOR LAKE CHARLES PLANT PURCHASES:** This is a "DO" rated order under the Defense Priorities and Allocations System, 15 C.F.R. part 700.) If the Purchase Order is issued in support of Buyer's prime contract with the U.S. Government, and the Buyer's prime contract is terminated, in whole or part, for convenience of the U.S. Government or agency thereof, Buyer shall have the right to terminate the Agreement (including the Purchase Order) for its convenience upon written notice to Seller. If the Agreement is so terminated, Buyer shall be liable only for payment under the payment provisions of the Purchase Order for services rendered or materials delivered before the effective date of termination and for nothing else.

**19. NO DEBARMENT.** Seller, its affiliates, its personnel, and each of their respective officers and directors, as applicable: (a) have not been debarred and are not subject to a pending debarment, and will not use in any capacity in connection with the services hereunder, any person who has been debarred or is subject to a pending debarment, pursuant to section 306 of the United States Food, Drug and Cosmetic Act, 21 U.S.C. § 335a, (b) are not ineligible to participate in any U.S. federal and/or state healthcare programs or U.S. federal procurement or non-procurement programs (as that term is defined in 42 U.S.C. 1320a-7b(f)), including, but not limited to, Medicare, Medicaid and Civilian Health and Medical Program of the Uniformed Services, (c) are not disqualified by any government or regulatory agencies from performing specific services, and are not subject to a pending disqualification proceeding, and (d) have not been convicted of a criminal offense related to the provision of healthcare items or services, and are not subject to any such pending action. Seller will notify Buyer immediately if Seller, its affiliates, any Seller personnel or any of their respective officers or directors, as applicable, is subject to the foregoing,



or if any action, suit, claim, investigation, or proceeding relating to the foregoing is pending, or to the best of Seller's knowledge, is threatened.

**20. COMPLIANCE WITH SITE SAFETY AND SECURITY POLICIES.** Seller agrees to require its personnel, agents, contractors (including delivery agents) who come to Buyer's facility to attend all site safety and security training conducted by Buyer if requested, to review written materials provided by Buyer relating to site safety and security, and to otherwise comply with Buyer's site safety and security practices, policies and requirements. Seller shall immediately notify Buyer of the termination of employment of any individual who is providing services at Buyer's facility and shall require the return to Buyer of any security badge or other identification provided to such personnel by Buyer in connection with access to Buyer's facility.