

UNIDYM, INC. (Unidym)
Standard Terms and Conditions

1. **Order.** These standard terms and conditions (“Terms and Conditions”) are attached to and made a part of the order (the “Order”) executed by Purchaser and Unidym, which order specifies the quantity of products describe therein (“Products”) to be sold, the price of the Products, the shipment date of the Products, the place for shipment, and other matters relating to the sale of the Products to Purchaser. Purchaser represents and warrants that it intends to use the Products for Research and Development only, does not intend to reverse engineer the Products, and does not intend to resell or distribute the Products.
2. **Controlling Terms and Conditions.** These Terms and Conditions shall govern the sale of the Products to Purchaser. If Purchaser submits any acknowledgment of the Order or other documents that contains terms and conditions that are inconsistent with or in addition to the Order or these Terms and Conditions, those additional or inconsistent terms are specifically rejected by Unidym and Unidym hereby objects to any such terms and conditions. The Order is expressly conditioned upon Purchaser’s acceptance of all the terms and conditions in the Order and these Terms and Conditions.
3. **Payment Terms**
 - a) Prices for the Products covered by the Order are stated in U.S dollars.
 - b) Unless the Order otherwise specifically provides, the full purchase price for the Products shall be due within thirty (30) days of the shipment date from Unidym’s facilities.
 - c) The purchase prices of the Products, as indicated on the Order, is exclusive of all applicable sales and use taxes, value added taxes, export fees and duties or other similar fees and taxes.
4. **Shipping Terms.** Unless the order otherwise specifically provides, all Products shall be shipped FOB Unidym’s Plant , Sunnyvale, California, and Unidym will arrange for shipment by Federal Express to Purchaser at a location specified by Purchaser. Purchaser shall pay Unidym’s standard shipping and handling fees then in effect. All taxes, custom duties and tariffs and similar charges shall be paid by Purchaser.
5. **Compliance with Laws.** Both parties agree that all exports and reexports of Products sold under these Terms and Conditions shall be made in accordance with all applicable export control laws of the United States and perhaps other countries as well. Both parties further agree to fully cooperate in complying with such laws. If Purchaser is not the end-user of the item being sold under these Terms and Conditions, Purchaser agrees to notify Unidym immediately as to the end-user, location of the end-user, and the end use of product(s). Purchaser also agrees to cooperate with any U.S and Foreign regulatory requirement or any government inquiry, audit, investigation or other inquiry, upon notice to Purchaser by Unidym or any relevant government. If purchaser intends to resell or reexport these products to another country (ies), Purchaser is aware that these products are sold and/or exported by Unidym in accordance with U.S export laws. Compliance with these laws is mandatory on all parties anywhere in the world under U.S. law and diversion of products or acts contrary to U.S. and relevant foreign exports laws is prohibited and may be subject to significant penalties and other sanctions. If export license(s) or other authorization(s) required by applicable governments will be construed as an event excusing nonperformance under Section 11 below.
6. **Disclaimer of Warranties.**
 - a) All Products are sold “AS IS”. Purchaser acknowledges that there may be variations in the characteristics of Products, and Unidym expressly disclaims any warranties related to any samples that Unidym may from time to time provide to Purchaser.
 - b) **UNIDYM DOES NOT WARRANT THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PRODUCTS OR THE PERFORMANCE OR NONINFRINGEMENT THEREOF. UNIDYM DOES NOT MAKE AND HEREBY EXPRESSLY DISCLAIMS, ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS.**
 - c) Unidym specifically disclaims any warranty or representation that the sale or use of the Products covered by an Order will not infringe or contribute to the infringement of any patents, trademarks, or copyrights, either in the U.S.A. or in other countries.
 - d) Purchaser warrants that it has general liability insurance and product liability coverage, for a minimum amount of \$5,000,000 per occurrence and in the aggregate \$5,000,000.
 - e) Purchaser understands that although Seller is an exclusive licensee of William Marsh Rice University (“RICE”) regarding certain technology related to items purchased from Seller, Rice is not a party or otherwise involved in any sales of items by Seller to Purchaser. Seller represents that it has certain indemnification obligations to RICE regarding that technology. Further, **RICE MAKES NO REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THAT TECHNOLOGY. BY**

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WAY OF EXAMPLE BUT NOT OF LIMITATION, RICE MAKES NO REPRESENTAION OR WARRANTIES (I) OF COMMERCIAL UTILITY; (II) IF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; OR (III) THAT THE RICE TECHNICAL INFORMATION OR ITEMS PURCHASED FROM SELLER WILL NOT INFRINGE ANY PATENT, COPYRIGHT OR TRADEMARK OR OTHER PROPRIETARY OR PROPERTY RIGHTS OF OTHERS. RICE SHALL NOT BE LIABLE TO SELLER, SELLER'S SUCCESSORS OR ASSIGNS OR ANY THIRD PARTY WITH RESPECT TO: ANY CLAIM ARISING FROM THE USE OF THE RICE PATENT RIGHTS, RICE TECHNICAL INFORMATION, OR ITEMS PURCHASED FORM SELLER OR FROM THE MANUFACTURE, USE OR SALE OF THE ITEMS PURCHASED FROM SELLER; OR ANY CLAIMS FOR LOSS OF PROFITS, LOSS OR INTERRUPTION OF BUSINESS, OR FOR INDIRCT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

7) LIMITED LIABILITY. PURCHASER ACKNOWLEDGES AND AGREES THAT UNIDYM'S LIABILITY FOR ANY CLAIMS WITH RESPECT TO THE PRODUCTS UNDER THE ORDER. SUCH LIMITATIONS ON UNIDIDYM'S LIABILITY HEREUNDER SHALL APPLY EVEN IF UNIDYM'S LIABILITY IS DUE IN WHOLE OR IN PART ITS' OWN NEGLIGENCE.

8) WAIVER OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL UNIDYM OR ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, REPRESENTATIVES AND EMPLOYEES, WHETHER BASED IN CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, FOR ANY LOSS OF THE INCOME, PROFIT OR SAVINGS OR COST OF CAPITAL OF PURHCASER OR ITS AFFILIATES, FOR ANY EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, RESULTING FROM OR RELATING TO THE ORDER OR THE PRODUCTS DELIVERED HEREUNDER, EVEN IF UNIDYM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMGES.

9) Indemnification. To the fullest extent permitted by applicable law, Purchaser shall defend, indemnify, hold harmless and

reimburse Unidym, its officers, directors, employees, agents, customers and assigns from and against all suits, actions, or proceedings, at law or in equity, from all claims, damages, losses and expenses (including, without limitation, attorney's fees, consultant's fees, expert's fees) related to or in connection with the death or bodily injury of any third party or the damage, loss or destruction of any tangible personal or real property arising from or related to Purchaser's use, manufacture or sale of any products utilizing the Products.

10) Intellectual Property and Other Rights. Unidym does not grant to Purchaser any rights under Unidym's patents which it owns or controls, to use or sell Products purchased from Unidym in any combinations. Unidym does not grant licenses, either express or implied under any Unidym patents which it owns or controls.

11) Force Majeure.

- a) Delay in performance or non-performance of any obligation contained herein, other than Purchaser's obligation to pay, shall be excused to the extent such failure or non-performance is caused by force majeure.
- b) For purposes of these Terms and Conditions, force majeure shall mean any cause or event preventing performance of an obligation under the Order which is beyond the reasonable control of Unidym or Purchaser, as the case may be, including without limitation, fire, flood, power shortage, mechanical breakdown, sabotage, shipwreck, embargo, explosion, strike or other labor trouble, accident, riot, acts of government authority (including, without limitations, act based on laws or regulations now in existence as well as those enacted in the future), acts of God, and other events or conditions beyond the reasonable control of the affected party.
- c) If Purchaser or Unidym is affected by force majeure, the party affected shall promptly provide notice to the other party, explaining in detail the full particulars and the expected duration thereof. The affected party shall use its commercially reasonable efforts to remedy the interruption or delay if it is reasonably capable of being remedied, In the event a force majeure situation extends for more than thirty (30) days, the Order may be terminated without any liability by either party upon written notice thereof to the other.

12) No Assignment. Purchaser may not assign its interest in the Order, or its right to receive the Product, without prior written consent of Unidym, which consent shall not be unreasonably withheld. Any attempts to do so shall be void.

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13) **Choice of Law.** These Terms and Conditions and the Order shall be interpreted and governed by the law of the State of California, excluding its conflicts of laws rules. The parties specifically exclude the application of the UN Convention on the Sale of Goods.

14) Entire Agreement; Construction.

- a) The Order and these Terms and Conditions constitute the entire agreement between the parties relating to the matters referred to therein. The Order and these Terms and Conditions may not be amended, extended or modified in any manner, orally or otherwise, except by an instrument in writing signed by a duly authorized representative of each party.
- b) If there are any conflicts between the Order and these Terms and Conditions, then the terms of the Order shall control.
- c) Each of the provisions of these Master Terms shall apply to the full extent permitted by law, and the invalidity in whole or in part of any provisions shall not affect the remainder of such provision or any other provision.

I agree to abide by these Terms and Conditions