



Terms and Conditions of Sale

The following provisions set forth the terms and conditions on which CellPro Labs hereinafter referred to as CellPro, sells its products.

- 1 Applicability of Standard Terms and Conditions.** All purchases by customer, owner or its agent ("Customer") are expressly limited and conditioned upon acceptance of the following terms and conditions and placement of an order indicates Customer's full acceptance and agreement of the terms and conditions stated herein. Notwithstanding the foregoing, if CellPro and Customer have executed a formal written contract which is in full force and effect, the terms and conditions of that contract will apply and govern, to the exclusion of any inconsistent terms and conditions set forth herein.
- 2 Terms of Sale.** Purchase of any products sold by CellPro shall be subject to and expressly limited by the terms and conditions stated herein. No changes to, waiver of, or addition to any of these terms and conditions shall be effective unless agreed to in writing and signed by CellPro. Customer acknowledges and agrees that these terms and conditions supersede the terms and conditions of any purchase order or other documentation used by Customer and, except for delivery and billing addresses and quantities, prices and items ordered, any conflicting or additional terms are void and have no effect. Customer may place orders by use of such purchase orders and other documentation for its convenience purposes only. Additional special terms and conditions of CellPro may be applicable with respect to certain products. Notwithstanding the foregoing, CellPro reserves the right at any time to amend these terms and conditions, and Customer shall be deemed to accept such amended terms and conditions by ordering products after the date of such amendment.
- 3 Pricing and Tax Information.** All pricing quotes must be documented in writing to be valid. All prices are firm until the expiration date stated on the accepted Quotation. Unless otherwise stated in CellPro's documentation, all prices for products: (a) are quoted and payable in U.S. Dollars, (b) are subject to change without prior notice at CellPro's discretion, and (c) do not include applicable freight, handling, packaging, transportation charges, insurance, taxes, excises, duties, levies, tariffs, or other governmental impositions or assessments which CellPro may be required to pay or collect. Unless otherwise stated in CellPro's documentation, any applicable freight, handling, packaging, transportation charges, insurance, taxes, excises, duties, levies, tariffs, or other governmental impositions or assessments are the responsibility of Customer and, if paid by CellPro for Customer's account, shall be invoiced to Customer either with the products or separately. In the event Customer changes any order (if and when permitted by CellPro), CellPro may adjust prices accordingly.
- 4 Delivery and Shipment Terms.** CellPro will use reasonable efforts to deliver accepted orders in accordance with its delivery schedule provided by the order acceptance, acknowledgment, confirmation or similar document, and if no such schedule is stated, promptly. However, CellPro shall not be liable for nonperformance or delays caused by a shortage of raw materials, manufacturing problems, delivery or labor problems, priorities, acts of regulatory agencies or judicial bodies, discontinuation of a product line, acts of God or third parties, infringement claims, or other causes beyond its reasonable control. Customer agrees that in such events CellPro may allocate products among all purchasers as it deems reasonable, without liability. CellPro reserves the right from time to time to substitute a product with a product that has the same function as such product, or to delete a product from its product lists.

All products will be shipped by CellPro FOB Origin, CellPro's point of shipment. All packing, transportation expenses, handling charges, freight and insurance (if any) shall be for the account of Customer, and CellPro shall charge Customer for all such charges, costs and expenses as a separate line item on Customer's invoice. International Customers shall, at its expense, perform all functions necessary to clear the products through all customs and similar controls into the country. CellPro will select the mode of shipment and the carrier, but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed as an agent of CellPro. Title to the products (subject to CellPro's right of stoppage in transit) and risk of loss, damage and delay will pass to Customer upon CellPro's tender of delivery of the products. CellPro shall not be obligated to procure additional insurance.

When expedited delivery, specialized service, or alternate transportation modes are requested, or if requests are inconsistent with efficient distribution practices, an additional charge to cover the premium expense will be added to the invoice. Such additional charges will be based on current common carrier rates or hourly rates.

If the products are held by CellPro subject to receiving instructions from Customer, CellPro may invoice the products and Customer agrees to make payment. Products invoiced and held at any location by CellPro will be held at Customer's risk and CellPro may charge for insurance and storage (but is not obligated to carry any insurance). Customer will accept and pay for partial deliveries. When Customer has declared or manifested an intention not to accept delivery, no tender will be necessary but CellPro may, at its option, give notice to Customer that CellPro is ready and willing to deliver and such notice will constitute a valid tender of delivery.
- 5. Customer Product Inspection, Acceptance and Returned Goods Policy.**
 - a. Customer shall be allowed three (3) working days from the date of receipt of any order to notify CellPro of rejection of any product that (i) fails in a material way to meet the product insert specifications for such product, (ii) is damaged, or (iii) has other visible defects. Customer's notice shall state with particularity the reasons for such rejection. If Customer fails to so inspect or notify CellPro within three (3) working days, Customer shall be deemed to have accepted the products as shipped. Products damaged in transit or shipped in error must be reported to CellPro within three (3) working days of shipment receipt.
 - b. Customer's right to return product hereunder is limited to (i) non-confirming product (i.e., product that fails in a material way to meet the product insert specifications, is damaged or has other visible defects); (ii) returns for breach of the warranty set forth in Section 6; and (iii) for suspended or recalled product. UNLESS CELLPRO HAS AUTHORIZED IN WRITING THE RETURN OF ANY PRODUCT, CELLPRO WILL NOT BE OBLIGATED TO ACCEPT, EXCHANGE, REPLACE OR PROVIDE CREDIT OR REFUND FOR ANY PRODUCT RETURNED BY CUSTOMER. CellPro will have the right to review and/or inspect any product prior to its return or destruction by Customer.
 - c. As promptly as practicable after written confirmation by CellPro of properly rejected products and if CellPro desires that Customer return a product, Customer shall return the same to CellPro freight prepaid. CellPro will, in its sole discretion, either (i) issue a credit or refund for properly rejected and authorized returned products or (ii) replace the product. CellPro will pay the shipping charges in connection with the shipment of new products to Customer for properly rejected products. Such replacement, refund or credit shall be Customer's sole and exclusive remedy with respect to defective, nonconforming or incorrect product delivered by Customer hereunder.
- 6. Limited Warranty.**
 - a. CellPro warrants that the products supplied to Customer under the terms herein shall conform substantially with the specifications set forth in the related product inserts and that the product will comply with and be manufactured, packed, labeled and shipped in material compliance with all applicable laws, rules, regulations and standards. THE WARRANTY CONTAINED HEREIN IS CONTINGENT UPON (i) PROPER USE AND HANDLING OF THE PRODUCTS IN THE APPLICATION FOR WHICH THE PRODUCTS ARE INTENDED, AND (ii) CUSTOMER NOT MODIFYING THE PRODUCTS WITHOUT CELLPRO'S EXPRESS, PRIOR WRITTEN APPROVAL OR NOT SUBJECTING PRODUCTS TO IMPROPER STORAGE OR HANDLING.
 - b. THE EXPRESS WARRANTY DESCRIBED ABOVE CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO THE PRODUCTS AND THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, FOR ANY PRODUCTS FURNISHED HEREUNDER AND CELLPRO MAKES NO REPRESENTATION OR WARRANTY OF ANY OTHER KIND OR NATURE AND CELLPRO EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO THE PRODUCTS, WHETHER AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THEIR EQUIVALENT UNDER ANY OTHER LEGAL SYSTEM, OR ANY OTHER MATTER.
 - c. IF ANY MODEL OR SAMPLE WAS SHOWN TO CUSTOMER, SUCH MODEL OR SAMPLE WAS USED MERELY TO ILLUSTRATE THE GENERAL TYPE AND QUALITY OF PRODUCTS AND NOT TO REPRESENT THAT THE PRODUCTS WOULD NECESSARILY CONFORM TO THE MODEL OR SAMPLE.
 - d. IN NO EVENT SHALL CELLPRO OR ITS AFFILIATES BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), QUASICONTRACT, MISREPRESENTATION OR OTHERWISE, FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF USE OR REVENUE, OR PROFITS IN CONNECTION WITH OR ARISING OUT OF CELLPRO'S PROVISION OF ANY PRODUCTS, OR CUSTOMER'S USE OF ANY PRODUCTS PROVIDED BY CELLPRO. CELLPRO'S SOLE LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), QUASI-CONTRACT, MISREPRESENTATION OR OTHERWISE, AND BUYER'S SOLE REMEDY OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY FAILURE OR DEFICIENCY OF THE PRODUCTS OR NEGLIGENCE, WITH RESPECT TO ANY ITEM FURNISHED BY CELLPRO, OR IN RELATION TO ANY DELAY OR DEFAULT IN SUPPLYING THE PRODUCTS, OR ANY OTHER CLAIM SHALL BE LIMITED TO THE REMEDIES PROVIDED BELOW. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL APPLY EVEN IF ANY LIMITED REMEDY FAILS IN ITS ESSENTIAL PURPOSE.
 - e. Customer's sole and exclusive remedy for any product that does not conform to the warranty set forth herein shall be, at CellPro's option, the refund or credit of the product price for such product, together with any costs of freight and insurance incurred in connection with the shipment of such product, or, at CellPro's option, the replacement of such product at CellPro's cost and expense (including shipping). The terms set forth herein pursuant to which CellPro agrees to provide product to Customer reflect the parties' agreed upon allocation of risk, and would be different if the limited warranty, limited remedy, warranty exclusion and limitation of liability provisions were different. Customer may not bring any action or claim, on any theory whatsoever, arising under or related to the purchase and use of the products or these terms and conditions, against CellPro more than two years following the accrual of the action or claim.
- 7. Product Notices and Recall.**
 - a. Customer shall within forty eight (48) hours of receipt thereof, by phone and in writing, advise CellPro should Customer receive any communication from any government agency or any complaint regarding the products, or become aware of any defect or condition which may render any of the products in violation of any statute or regulation, or which in any way alters the specifications of the products (as set forth in the related product inserts), including without limitation, product recalls and investigations. If the incident has resulted, or is likely to result in a patient reaction, Customer shall also immediately notify CellPro by telephone.
 - b. Customer acknowledges and agrees that CellPro has the authority, in its sole and absolute discretion, to recall any product to comply with applicable laws, and Customer agrees to fully cooperate with CellPro in the case of any such recall.



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- 8. Payment Terms.** Terms of payment are strictly net thirty (30) days from date of invoice for all approved Customers. Some credit cards are accepted for payment (a transaction fee may apply). CellPro reserves the right to require pre-payment or COD for product purchases. Any international Customer order shall be prepaid to CellPro by electronic funds transfer in U.S. Dollars. In CellPro's sole discretion, credit terms may be extended to a Customer. Customer's obligation to pay outstanding invoices and all other amounts is absolute and unconditional and is not subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferral or recoupment for any reason whatsoever. All overdue payments shall bear interest at a rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is lower, until paid. Any disputed amounts should be reported immediately and remitted with the undisputed amount by the payment due date. If CellPro agrees with the billing dispute, CellPro will credit Customer the amount of the agreed-upon billing dispute. All billing disputes must be made within six (6) months of the applicable invoice date, or will be deemed to be waived. Customer shall be liable for, and shall reimburse CellPro for all costs and expenses it may incur in connection with collection of any amounts owed to CellPro or enforcement of its rights, including without limitation, reasonable attorneys' fees and expenses, court costs, and costs of collection agencies. CellPro reserves the right to in its sole discretion to cancel any unshipped orders and/or require all future shipments to be paid in full in advance of shipment until all overdue balances are made current.
- 9. Compliance with Laws, Export, Ethical Practices.** Customer will follow and comply with all applicable governmental laws, regulations, and orders in the use or import of any products. Customer will not export or re-export the products except in full compliance with all applicable laws and regulations. Customer shall be responsible for obtaining and maintaining all applicable permits, licenses or authorizations necessary for the import or use of the products in Customer's country at its sole expense (e.g., CITES import permits). Customer acknowledges it is solely responsible for complying with the Export Administration Act provisions concerning anti-boycott compliance, and that Customer is prohibited from taking or knowingly agreeing to take any of the actions contained in such Act, in either United States interstate or foreign commerce, with the intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country friendly to the United States. Customer certifies that it is not on the U.S. Commerce Department's Denied Party or Entity List or the Unverified Parties List and agrees that it will not sell or distribute any products to any party on such lists. Customer agrees and warrants that in performing its obligations under these terms and conditions, it will not take any action rendering CellPro liable for violation of the United States Foreign Corrupt Practices Act, which prohibits offering, giving, or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party, or instrumentality of these organizations, in order to assist it or CellPro in obtaining or retaining business. Customer will indemnify and hold CellPro harmless from all fees, fines, or other damages imposed on or suffered by CellPro due to Customer's failure to comply with this section. For the avoidance of doubt, nothing in this Section 9 is intended to limit the prohibition of resale set forth in Section 12 below.
- 10. Precautions.** All products offered by CellPro are intended for Customer's own use by qualified professionals. Customer acknowledges that it will comply with any instructions or directions contained in CellPro's labeling and literature concerning the products and will forward such information to its employees, agents and contractors. Customer shall ensure that all employees, agents and contractors use all due care with products to prevent potential hazards and are appropriately trained in the safe use, handling and disposal of the products.
- 11. Permissible Variations.** CellPro has the right to make changes in the composition of the products which, in CellPro's opinion, do not affect the general characteristics or properties of the products or are within applicable governmental or industry standards.
- 12. Prohibition of Resale.** Customer shall purchase the products for its own use only, and shall not resell the products or derivatives of the products to any other party. Customer shall not propagate cell line products to sell or incorporate any product into another product for sale. Customer represents it has evaluated the products and that they are acceptable and clinically suitable for its intended purposes.
- 13. Miscellaneous.**
- Any required notices shall be given in writing, in the case of CellPro, at the address set forth below, and in the case of Customer, at the address designated on Customer's purchase order or to such other address as either party may substitute by written notice to the other and shall be deemed given upon electronic or facsimile delivery, personal delivery, overnight delivery or three days following deposit in the mail.
 - Except as expressly provided herein, no changes or modifications to, or waiver of, any of these terms and conditions shall be valid or binding on either party unless in writing and signed by an authorized representative of each party. CellPro's failure or delay to exercise or enforce any of its rights hereunder shall not constitute or be deemed to be a waiver of such rights or forfeiture of such rights, and CellPro may, at its option, from time to time, exercise any of its rights or remedies.
 - These terms and conditions bind Customer and its successors and permitted assigns.
 - In respect of any action, suit or other proceeding resulting from any controversy, dispute or claim arising out of these terms and conditions or the sale of products ("Claim"), these terms and conditions will be governed by, construed and enforced in accordance with the internal laws of the State of Minnesota. If any Claim cannot be settled amicably between the parties, such Claim shall be tried by a court and not a jury. Consumer expressly and unconditionally waives its rights to a jury trial in any such Claim. Notwithstanding the foregoing, CellPro's right to institute or defend any proceeding in any jurisdiction, in or out of the United States of America, shall not be limited.
 - Customer may not change, adulterate, obscure, remove or deface trademarks, tradenames or labels appearing on any product of CellPro.
 - Any knowledge or information that Customer may disclose to CellPro shall not be deemed to be confidential or proprietary information, and shall be acquired by CellPro free from any restriction.
 - If any of the provisions of these terms and conditions are deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby.
 - ANY ERROR OR OMISSION IN THIS DOCUMENT OR ANY QUOTATION, CATALOG, SALES LITERATURE, INVOICE OR OTHER DOCUMENT ISSUED BY CELLPRO SHALL BE SUBJECT TO CORRECTION BY CELLPRO WITHOUT LIABILITY TO CELLPRO.
- 14. Technical Support.** Technical support is provided for all products purchased directly from CellPro. Technical Support can be contacted by calling 1.877.350.6446 or 1.612.877.8100 between 8:30 A.M. and 5 P.M. (Central Time), Monday through Friday (except holidays) or via fax (1.612.877.9213) or e-mail at info@cellprolabs.com.
- 15. Order Placement:**
- Purchase Orders.** Customer must submit firm written purchase orders for products to CellPro. CellPro accepts standing orders, blanket orders and one-time orders. No verbal orders will be accepted. Changes or corrections must be submitted in writing and approved in advance by CellPro. Customer shall be responsible for the accuracy of all orders. To place a purchase order, please call CellPro's Customer Service at 1.877.350.6446 or 1.612.877.8100 between 8:30 A.M. and 5 P.M. (Central Time), Monday through Friday (except holidays). Telephone orders must be confirmed in writing via fax, e-mail or mail. Orders or order confirmations may be placed at any time via fax to 1.612.877.9213. Electronic orders may be e-mailed to order@cellprolabs.com. Mail orders, or mailed order confirmations, should be sent to: CellPro Labs., Attn. Customer Service, 2525 Nevada Avenue N., Golden Valley, MN 55427. Customer agrees to submit all purchase orders in an efficient and timely manner. When placing an order, please provide account name, CellPro customer code (if known), product name and code, quantity, price, shipping instructions, customer contact name and telephone/fax numbers.
 - Order Acceptance.** No order, change or correction shall be binding upon CellPro unless and until confirmed by CellPro in writing.
 - Order Cancellation.** Customer shall not be entitled to revoke, reschedule or cancel any purchase order after acceptance by CellPro without CellPro's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. CellPro may cancel or terminate all or part of any order immediately if Customer is materially delinquent on any of its obligations hereunder or under any other order or transaction with CellPro; Customer becomes insolvent; a receiver under Title 11 U.S.C., as amended (the "Bankruptcy Code") is appointed for or on behalf of Customer, or a case under any chapter of the Bankruptcy Code is commenced for, by or against Customer; Customer suspends or terminates business or makes an assignment for the benefit of creditors; or any event occurs, whether or not similar to the foregoing, which in CellPro's good faith belief materially impairs the prospect of payment or performance by Customer hereunder. CellPro's rights to cancel or terminate may be exercised by CellPro without liability.