

Monomer/Tetramer Terms and Conditions

MBLI agrees to manufacture, sell, and deliver to Customer and Customer agrees to purchase and take from MBLI the quantities of the Product(s) designated in the Order on the following terms and conditions.

1.0 DEFINITIONS

For purposes of this Agreement the following terms, when used with an initial capital letter and without regard to whether they are used in the singular or the plural or the possessive form, shall have the following meaning:

- A. “**MBLI**” means Medical Biological Laboratories International Corporation and each and all of its divisions, subsidiaries and affiliates, its successors and permitted assigns.
- B. “**Effective Date**” means the date of Order placement.
- C. “**Customer**” means the person or entity identified in the billing information section in the Order, and its successors and permitted assigns.
- D. “**Peptide**” means the string of amino acids associated with certain products.
- E. “**Product(s)**” means the MHC monomers, MHC tetramers, and/or other products Manufactured under this Agreement by MBLI with the use of the Peptides, alleles, fluorochromes, and/or other labels.
- F. “**Order**” means a contract between Customer and MBLI for Product purchase.
- G. “**Custom**” means any non-stocked monomer/tetramer Product(s).
- H. “**Agreement**” means the terms and conditions contained herein.

2.0 MANUFACTURE AND SALE OF PRODUCT(S)

A. **Manufacture and Sale.** MBLI agrees to manufacture, sell, and deliver to Customer and Customer agrees to purchase and take from MBLI the quantities of the Product(s) designated in the Order. MBLI's obligation to manufacture and sell each Product is conditioned upon the satisfactory formation of the MHC Peptide complex in sufficient quantity of the Product to deliver the quantity set forth in the Order and to allow MBLI to perform quality control consistent with its standard quality control practices.

B. Third Party Re-Sale.

- (i) Resale of Product(s) by a Customer to a third party is strictly prohibited.
- (ii) Resale of Product(s) by a distributor outside of their designated territory is strictly prohibited.

C. **Supply of Peptide (Custom Product(s) only).** If it is indicated in the Order that MBLI will provide the Peptide, MBLI will be responsible for producing or obtaining the Peptide. If it is indicated in the Order that Customer will provide the Peptide:

- (i) Customer shall deliver the Peptide to MBLI in a timely manner and in the quantities and specifications that MBLI reasonably may request to perform the services described in this Article of the Agreement;
- (ii) From time-to-time as required by MBLI for MBLI to meet its obligations under this Agreement, Customer shall deliver further quantities of the Peptides;
- (iii) There shall be no charge to MBLI for the delivery to or the use by MBLI of the Peptides.

D. **Shipment Terms.** The prices for the Product(s) do not include the cost of freight, handling, insurance, duties or fees, or similar costs of delivery. These delivery costs will be paid by Customer or if paid by MBLI will be invoiced to Customer. Title and risk of loss or damage to the Product(s) shall pass from MBLI to Customer upon delivery by MBLI to the carrier at MBLI's loading dock.

E. Customer Payment Obligations.

- (i) The purchase price to Customer for each of the Product(s) ordered under this Agreement shall be the price per unit set forth in the Order.
- (ii) A Peptide acquisition fee will be applied to any Custom monomer/tetramer in which the customer elects MBLI to provide the Peptide. The Peptide acquisition fee will be invoiced when the Product is shipped and is non-refundable, even if the monomer/tetramer manufacture fails.
- (iii) A feasibility fee will be applied to any Custom monomer/tetramer if the manufacture is attempted, but fails to generate the monomer/tetramer. If the manufacture is successful, the feasibility fee is waived.

(iv) Sales, use, V.A.T., G.S.T. or similar taxes applicable to transactions under this Agreement are not included in the price and will be added to amounts invoiced unless Customer provides MBLI with adequate documentation of exemption.

F. **Time of Delivery.** MBLI shall use reasonable commercial efforts to deliver the Product(s) by the requested delivery dates set forth in the Order. Both MBLI and Customer understand that the requested delivery dates are good faith estimates that are not firm commitments.

G. **Warranty.** MBLI warrants that on the date of shipment by MBLI the Product(s) shall comply with the quantity, content, concentration, and packaging criteria set forth in the Order. MBLI's sole obligation and Customer's exclusive remedy if MBLI fails to ship Product(s) which comply with the foregoing warranty shall be limited to MBLI replacing, as soon as is commercially reasonable for MBLI, any such nonconforming Product(s) or, at MBLI's election, refunding the amounts paid by Customer for the nonconforming Product(s). No warranty claim may be made for a shipment of Product(s) unless made within thirty (30) days after delivery of the Product(s). MBLI MAKES NO OTHER WARRANTIES UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, (INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM ANY COURSE OF DEALING OR TRADE USAGE) REGARDING THE PRODUCT(S). Customer expressly acknowledges that MBLI has not made any recommendations, statements, representations, or warranties as to the utility or efficacy of the Product(s).

H. **Limitation of Liability.** CUSTOMER'S EXCLUSIVE AND SOLE REMEDY FOR ANY CLAIM RELATED TO THE PRODUCT(S) SHALL BE A REFUND OF THE AMOUNT OF THE PURCHASE PRICE PAID FOR THE PRODUCT(S) IN RESPECT OF WHICH DAMAGES ARE CLAIMED, AND IN NO EVENT SHALL MBLI'S LIABILITY FOR ANY CLAIM BE GREATER THAN THAT AMOUNT. IN NO EVENT SHALL MBLI BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR ANY OTHER LOSS), WHETHER OR NOT CAUSED BY OR RESULTING FROM THE BREACH OF CONTRACT, NEGLIGENCE OR OTHER WRONGFUL ACT OR OMISSION OF MBLI EVEN IF MBLI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

I. **Use of the Product(s).** Customer acknowledges that MBLI has informed Customer that MBLI's license and rights under United States Letters Patent 5,635,363 is limited to *in vitro* research and diagnostic use. Customer represents and warrants that it shall use the Product(s) for *in vitro* research or investigation purposes only. These Products are not intended for clinical diagnosis, prognosis, or therapeutic determinations.

J. **Purchase and Sale Forms.** Any terms and conditions on either a Customer purchase order or a MBLI order acknowledgement or any other document relating to the purchase, sale, or transfer of Product(s) between the parties (the “**Transactional Forms**”) that are in conflict with or in addition to any of the terms of this Agreement shall be null and void and without legal effect. The sole purpose of the Transactional Forms shall be to confirm the mutually agreed prices, quantities, and delivery schedule for the Product(s) ordered.

K. **Hold Harmless.** Customer shall defend, indemnify, and hold MBLI and its subsidiaries, divisions and affiliates, and their respective employees, directors, officers, principals (partners, shareholders or holders of an ownership interest, as the case may be) and agents harmless against any and all claims, losses, damages and expenses howsoever incurred or suffered by MBLI (and whether direct or consequential or economic loss), including attorneys' fees, arising out of or in connection with: (i) any injury to persons, including death, or property, resulting from or arising out of Customer's use of the Product(s) manufactured by MBLI under this Agreement; (ii) Customer's failure to comply with any federal, state and local laws, rules or regulations as such laws, rules and regulations may be amended from time to time; and (iii) any breach of Customer's obligations set forth in this Agreement.

L. **Third Party Patents.** Customer shall defend, indemnify, and hold MBLI harmless, including attorneys' fees necessary to consider, advise, and defend, from and against any suit, proceeding, claim, or loss and any damages or penalties awarded or agreed to therein so far as

such suit or proceeding is based upon an assertion that the use of the Peptides supplied under this Agreement to MBLI or the use of such Peptides in the Product(s) constitutes an infringement of any patent or the unauthorized use of any third party trade secret.

3.0 CONFIDENTIALITY

A. Each party shall maintain in confidence any information related to this Agreement if received from the other party in a writing marked confidential and/or proprietary (without regard to whether such information was received prior to the Effective Date of this Agreement or during the term of this Agreement), and shall neither publish, disseminate nor disclose such information to any third party nor use such information except for the furtherance of the purposes of this Agreement without the prior express written permission of such other party. Subject to the next sentence, the foregoing obligations of confidentiality and non-use shall continue for five (5) years from the date the information was received. The obligation of the first sentence shall not apply to any information which:

- (i) now or hereafter comes into the public domain, or
- (ii) already is in the possession of the receiving party other than as a result of having received it from the disclosing party and as shown by written records, or
- (iii) is brought to the receiving party by a third party who does not require that it be maintained confidential, or
- (iv) is independently developed by the receiving party without use of or access to the information of the disclosing party.

B. Upon termination of this Agreement, each party shall, at the other party's request, destroy or return to such other party all copies of such information; provided that

- (i) counsel for each receiving party may retain one (1) copy of such information solely for the purpose of monitoring such party's obligation of confidentiality under this Agreement; and
- (ii) MBLI may retain manufacturing records relating to the Product(s) manufactured under this Agreement consistent with its normal practices and subject to the confidentiality requirements of this Article.

4.0 TERM AND TERMINATION

A. **Term.** The term of this Agreement shall begin on the Effective Date and, subject to the proviso hereafter, unless earlier terminated in accordance with Paragraph 4.B., shall expire on the delivery by MBLI to Customer of the Product(s) in the quantities set forth in the Order as provided in Article 2.0. All terms that by their nature are intended to survive termination of this Agreement, including the terms of Paragraphs 2.G., 2.H., 2.K., and 2.L., and Articles 1.0, 3.0, and 7.0, shall survive the termination of this Agreement.

B. **Termination.** If either party is in default as to any material term or condition of this Agreement and within sixty (60) days of written notice from the non-defaulting party, the defaulting party has not effected a complete cure, then the non-defaulting party shall have, in addition to all other remedies available at law or in equity, the right to terminate this Agreement in its entirety, upon delivery of five (5) days prior written notice of termination to the defaulting party.

5.0 NOTICES

All notices provided for in this Agreement shall be in writing and shall be considered delivered when they are personally delivered, sent by facsimile, or deposited in the United States mail, certified first class air mail postage prepaid, addressed to the respective parties at the following notice addresses.

If to MBLI: MBL International Corp
ATTN: Tetramer Group
15A Constitution Way
Woburn, MA 01801

If to Customer: At the address set forth in the Billing Information section of the Order.

If the notice is sent by facsimile, a confirmation copy of such facsimile shall be sent by airmail or private delivery.

6.0 LAW GOVERNING, DISPUTE RESOLUTION, AND CONSTRUCTION

A. **Governing Law.** This Agreement shall be governed by and construed pursuant to the laws of the Commonwealth of Massachusetts without reference to any conflicts that would refer to the laws of any other jurisdiction.

B. **Dispute Resolution.** Except for any actual or threatened breach of Article 3.0, to which the parties may refer to the Commonwealth of Massachusetts or federal courts for relief, any controversy or conflict involving this Agreement, its interpretation, or the respective rights or obligations of the parties shall first be submitted to their respective general managers for amicable resolution. If the parties cannot settle the controversy or conflict, the matter in dispute shall be submitted to mediation to be held in a mutually agreeable neutral place. The parties shall mediate in good faith and use their best efforts to resolve the controversy or conflict by mediation. If the parties still cannot settle the controversy or reach an accommodation, the parties then may pursue all remedies available at law or equity, subject to Paragraph 2.H., but the parties irrevocably consent to the nonexclusive jurisdiction of the state and federal courts resident in the Commonwealth of Massachusetts.

7.0 PAYMENT TERMS

Customer shall pay each MBLI invoice for Product(s) within thirty (30) days of the later of: (a) receipt of the invoice or (b) receipt of the Product(s) referenced on such invoice. Any amount invoiced not paid within thirty (30) days after the due date shall accrue interest at the rate of one percent (1%) per month (or the highest rate allowed by law if lower) from the due date.

8.0 MISCELLANEOUS

A. **Headings.** The paragraph headings herein are for convenience only and shall not affect the constructions or interpretation of this Agreement.

B. **Severability.** If any provision of this Agreement shall for any reason be found invalid, illegal, or unenforceable in any respect by a final decision of any court, arbitration panel, commission, or agency having jurisdiction over either party, the validity of the Agreement as a whole shall not be affected. The parties will then undertake to replace ineffective clauses with legally effective ones that come as close as possible to the sense of the ineffective clauses and to the purpose of this Agreement.

C. **Noneffect of Waiver.** The waiver of either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions. The delay or omission on the part of either party to exercise or avail itself of any right, power, or privilege that it has or may have hereunder shall not operate as a waiver of any breach or default by the other party.

D. **Assignment.** Customer shall not assign this Agreement to a third party without the prior written consent of MBLI. This Agreement shall be a binding obligation of the heirs, successors, and permitted assigns of all the right, title, and interest of each party hereto.

E. **Force Majeure.** Non-performance, partial performance, default, or breach shall be excused by reason of Force Majeure, but only to the extent and then only for the time actually caused by such Force Majeure. For purposes of this Agreement, "**Force Majeure**" shall mean delays in

or failure to perform caused, by way of example and not limitation, by fire, flood, earthquake, storm, Acts of God, epidemic, civil disorder, war, government actions or restrictions, or any other unforeseeable circumstances of a similar nature beyond the reasonable control of the party affected. The party incurring the Force Majeure shall use commercially reasonable efforts to relieve or correct such condition in the most expeditious manner possible so as to return to normal operations under this Agreement with the least possible disruption to the other party.

F. Independent Contractors. The parties to this Agreement are acting as independent contractors and nothing contained in this Agreement shall be construed to place the parties in the relationship of employer and employee, partners, joint venturers, or principal and agent. Neither party shall have the right to act on behalf of or bind the other except as expressly provided for in this Agreement or as may be hereafter agreed in writing.