

TERMS AND CONDITIONS OF PURCHASE

Includes all Acme Cryogenics, Inc. Companies, including Quality Cryogenics, Midwest Cryogenics and Wholly Owned Subsidiaries (“Buyer”)

1. ACCEPTANCE

The following terms and conditions of Buyer’s Order, and any additional specifications, terms and conditions incorporated herein and attached hereto (hereinafter referred to collectively as “Buyer’s Order”), constitute the sole and entire agreement between the parties. Buyer’s Order shall be binding upon receipt of Seller’s acknowledgment of its acceptance hereof or commencement of its performance of the work and delivery of goods contemplated by Buyer’s Order all in accordance with the terms hereof. No terms or conditions contained in Seller’s acknowledgment, or other communication shall bind Buyer unless expressly accepted by Buyer in writing. Buyer’s Order shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, and any and all disputes and claims arising out of or in any way related to Buyer’s Order (with the exception of any action in which Buyer seeks equitable relief) shall be initiated and maintained solely within the Commonwealth of Pennsylvania, Court of Common Pleas of Lehigh County, or, if based solely on federal law, the United States District Court for the Eastern District of Pennsylvania.

2. DELIVERY

Unless otherwise expressly specified by Buyer in writing, the price to be paid for the goods or services to be furnished hereunder includes the cost of delivery F.O.B. place of destination at Buyer’s place of business specified in the schedule attached hereto. Immediately upon shipment, Seller is to notify Buyer’s Purchasing Department advising complete shipping and routing information. Delivery of all materials and performance of all services shall be completed within the period prescribed by Buyer, or Buyer may otherwise, at its option, cancel Buyer’s Order without any liability of any nature to Seller, assert such other remedies as may be available pursuant to applicable law, or approve in writing a revised delivery schedule. Acceptance of any part of Buyer’s Order shall not bind Buyer to accept future shipments, nor deprive it of the right to return goods already accepted. Seller shall bear risk of loss to the goods to be furnished hereunder until received and accepted by Buyer. Seller shall be responsible for insuring said goods and paying the cost thereof.

3. PACKING

One copy of a detailed packing list is to be forwarded to Buyer’s Purchasing Department. Unless otherwise specified by Buyer, shipments will be packed, bundled and crated in accordance with standard commercial practice for domestic or export shipment as applicable. No charge will be allowed for packing, crating, drayage or storage unless otherwise stated herein. Packages and containers must contain Seller’s name, Buyer’s purchase order number, identification of contents and quantity, as well as gross and net weights.

4. CHANGES

No changes or modification to Buyer’s Order shall be binding unless made and accepted in the form of a written change order executed by an authorized officer or agent on behalf of Buyer. Buyer reserves the right to make change orders at any time, subject to mutually agreeable adjustments to the terms of Buyer’s Order.

5. CANCELLATION

(a) Buyer shall have the right to terminate Buyer's Order in whole or in part at any time by written notice. In the event of termination other than for default by Seller, and only in such event, if Seller at the time of such termination shall have in stock or on firm order any raw, semi-processed or completed materials for use in fulfilling Buyer's Order, then: (1) in the case of completed materials Buyer may, at its option, either require delivery of all or part of the completed materials and make payment therefore at the agreed price, or portion of the agreed price fairly allocated for the completed items, or (without taking delivery thereof) pay Seller the excess, if any, of the agreed price over the market price at the time of termination; and (2) in the case of raw or semi-processed material, Buyer may, at its option, either require Seller to complete and deliver all or part of said materials at the agreed price, or (without taking delivery thereof) pay Seller with respect to such raw materials or semi-processed materials, which are properly applicable to Buyer's Order, a portion of the agreed price based on the stage of completion of such materials and reduced by the value of such materials at such state of completion; and (3) in case of materials which Seller has on firm order hereunder, Buyer may, at its option, either take an assignment of Seller's rights under such orders or pay the cost, if any of settling or discharging Seller's obligation under such order. The parties hereby expressly agree and acknowledge that the provisions of Section 5(a)(1)-(3) above shall only apply in the event that Buyer's Order pertains to goods. In the event that Buyer's Order is for services, and Buyer terminates Buyer's Order other than for default by Seller, and only in such event, Buyer agrees to pay Seller its actual and reasonable costs for rendering the services provided hereunder up to the date of Buyer's termination, and thereafter Buyer shall have no further obligations to Seller hereunder of any nature.

(b) The proceeding Section 5(a) shall not limit Buyer's right to cancel Buyer's Order, or any part thereof by reason of Seller's default in failing to comply with any or all of the terms and conditions hereof, in which event Buyer may produce the goods or services called for herein from other sources and Seller shall be liable to Buyer for any and all damages resulting from Seller's default (including, without limitation, consequential and incidental damages) available to pursuant to applicable law and the terms of Buyer's Order. In the event of Seller's default hereunder, Buyer may, by written notice to Seller, terminate Buyer's Order in whole or in part. In the event of partial termination, Seller shall not be excused from performance of the non-terminated balance of goods or services to be provided pursuant to Buyer's Order.

6. NON-DISCLOSURE

Seller shall not make use of drawings, specifications, data and other information furnished to it by Buyer, except in performance of Buyer's Order. Upon completion, cancellation or termination of Buyer's Order, Seller shall promptly return to Buyer all drawings, specifications, data and other information furnished by Buyer in connection with the performance of Buyer's Order, and shall not retain or permit others to retain any reproduction or copy thereof. Seller shall not disclose any such drawing, specification, data or other information to any third party and shall make no further use thereof (or of any information derived therefrom), either directly or indirectly, without Buyer's prior written consent, except in connection with the performance of Buyer's Order. The parties hereby expressly agree and covenant that except as otherwise expressly provided in a separate written agreement executed by the parties, Buyer's Order shall not be construed as granting to Seller any right, license, interest or claim of any nature in any trademark, service mark, patent, trade secret, invention, intellectual property right, or confidential information of Buyer.

7. INSPECTION

All goods and work in process may be subject to source, site and final inspection and tests, or all of them by Buyer. If inspection and tests, whether preliminary or final, are made on Seller's premises, Seller shall furnish, without additional charge, all reasonable facilities and assistance for safe and convenient inspection and tests required by Buyer and/or Buyer's customer, as the case may be. Inspection and approval by Buyer, or failure to inspect by Buyer, shall not relieve Seller of any responsibility or liability hereunder. In the event that any inspection or test hereunder establishes that the quality of Seller's work is unsatisfactory, Buyer shall have the right to instruct Seller to discontinue work until satisfactory corrective action is taken. Seller shall be responsible for corrective costs and shall perform corrective action to meet the agreed upon delivery schedule. Whether or not inspected at the source, all goods shall be subject to Buyer's inspection and approval within forty-five (45) days after Buyer's receipt of goods. Rejected material will be returned at Seller's expense and will be promptly replaced on demand. Should Buyer elect to reject any goods, Buyer shall have the option to reject all or any portion of such goods.

8. WARRANTY

Seller warrants that the goods and services covered by Buyer's Order will conform to the specifications, drawings, samples, or other description furnished or specified by Buyer, and, except as modified by Buyer's Order will be fit and sufficient for the purpose intended, merchantable, and free from any and all liens, encumbrances, or defects in design, material or workmanship for a period of twelve (12) months after being placed in operation, but not to exceed eighteen (18) months from the date of delivery of goods or completion of the work. Seller shall, upon Buyer's written request, correct, at no cost to Buyer, any such defects in the most expeditious manner possible that is agreeable to Buyer. Seller shall pay any and all freight costs in connection with correcting defective material or services. The warranty provided herein and the remedies provided elsewhere in Buyer's Order shall be in addition to those implied by or available at law and shall exist notwithstanding the acceptance by Buyer of all or part of the items with respect to which such warranties or remedies are applicable. This provision shall not limit the effect of any representation or warranty made by Seller in connection with the purchase and sale of the items subject to Buyer's Order.

9. ASSIGNMENT

Seller shall not assign or delegate all or any portion of the performance of Buyer's Order without Buyer's prior written consent.

10. EXCUSABLE DELAYS

Any failure of performance by either party shall not constitute default hereunder or give rise to any claim for damages or otherwise if, and to the extent, caused by an occurrence beyond the reasonable control of the party failing to perform, including, but not limited to, acts of governmental authority, acts of God, strikes or other concerted acts of workmen, acts of terrorism, fires, floods, explosions, riots, war or armed conflict declared or undeclared, rebellion or sabotage. The party affected by such occurrence shall give notice to the other within five (5) working days of its commencement and shall keep the other informed of action taken to terminate the occurrence. In the event that Seller is prevented from performing by any force majeure for a period of thirty (30) days or more, Buyer may cancel Buyer's Order without penalty after which the parties shall have no further rights, duties or obligations of any nature hereunder.

11. ENDORSEMENT

Seller shall not, without first obtaining the written consent of Buyer in any manner advertise or publish the fact that Seller has furnished, or contracted to furnish to Buyer, the material and/or services ordered hereunder.

12. TAXES

Federal, State or Local taxes applicable to the goods or services furnished hereunder or the sale, purchase, transportation, use or possession there of shall be included in the agreement price and separately stated on any invoice rendered to the Buyer. If Buyer furnishes Seller an exemption certificate, or any other similar proof of exemption, with respect to any Federal, State or Local tax included in said invoice, an appropriate adjustment shall be made to the agreement price to eliminate the imposition of such tax upon Buyer.

13. COMPLIANCE WITH LAWS

Seller represents that the goods to be furnished or the services to be rendered hereunder have not been and will not be produced or performed in violation of any applicable laws and regulations including, without limitation, the Fair Labor Standards Act of 1938, the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, the Rehabilitation Act of 1973, the Occupational Safety and Health Act of 1970, the Toxic Substance Control Act, or any other applicable Federal, State or Local law, ordinance, rule or regulation, and Seller agrees to make all stipulations required such laws. With respect to the supply of goods relating to a facility regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, the provisions of Title 10 Code of Federal Regulations, Part 21 (10CFR21) are applicable to this order. Seller agrees in connection with performance of this order, not to discriminate against any employee or applicant for employment because of race, sex, religion, color, age, national origin, handicap or status as a Vietnam Era or Special Disabled Veteran.

Unless exempted, the equal employment opportunity clauses in Section 202, paragraphs one through seven of Executive Order 11246, as amended, and the affirmative action clauses as set forth in 41 C.F.R. Section 60 741.4 (for orders of \$10,000 or more) and 41 C. F. R. Section 60 250.4 (for orders of \$10,000 or more) are incorporated herein by reference. Seller further represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of goods or provision of services under this purchase order.

14. REMEDIES

The remedies herein reserved to Buyer shall be cumulative, and additional to any other or further remedies provided by applicable law or at equity. No waiver of a breach of any of the provisions of Buyer's Order shall constitute a waiver of any other breach, or of such provision.

15. INDEMNITY

Seller warrants that the manufacture, purchase and sale of goods purchased hereunder do not infringe or contribute to the infringement of any letters patent, trademark or copyright granted by the United States of America or by any foreign country, and agrees to indemnify and save harmless Buyer, its successors, assigns, customers and users of the goods, against any claim, demand, loss, and costs, including attorneys' fees, arising out of such infringement; and, after notice, Seller agrees to appear and defend

(with counsel acceptable to Buyer), at its own expense, any suits at law or in equity arising therefrom. Seller further agrees to defend, indemnify and save Buyer harmless from and against any claim, demand, loss and costs, including attorneys' fees, arising out of injury or property damage to, or the death of, any subcontractor, employee, agent, customer, representative or invitee of Buyer or Seller, or any other person arising out of Seller's performance of Buyer's Order, however such injury or death may be caused and whether caused or alleged to be caused by the negligence of Buyer or its agents, the condition of the premises or otherwise. Seller shall further indemnify and hold Buyer harmless of, from and against all claims, costs, expenses and liability (including, without limitation, reasonable attorneys' fees) arising out of or in any way related to personal injury, death, property loss, damage attributed to or in any way caused by the goods, services or other items supplied by Seller pursuant to Buyer's Order, including, without limitation, latent defects in any goods provided. To the extent that Seller is to provide services of any nature hereunder, Seller shall and hereby covenants (at no additional cost to Buyer) to procure and/or maintain such policies of insurance (to include, without limitation, general or commercial liability, automobile, builder's rights, and workers' compensation) as are typically maintained in the performance of the services to be provided hereunder, and Seller shall, prior to commencing any services, deliver to Buyer, certificates of insurance evidencing said policies of insurance and in amounts reasonably satisfactory to Buyer. All insurance to be maintained by Seller shall name Buyer as an additional insured and give Buyer no less than thirty (30) days prior written notice of any cancellation and/or non-renewal thereof. To the extent that Seller fails or is unable to obtain or maintain insurance reasonably satisfactory to Buyer, Buyer may terminate Buyer's Order without penalty, after which the parties shall have no further rights, duties or obligations hereunder.

16. INSOLVENCY

Buyer may cancel Buyer's Order without liability for the undelivered portion of the items ordered hereunder in the event Seller becomes insolvent, makes an assignment for the benefit of creditors or there is filed by or against Seller a petition of bankruptcy, receivership, or reorganization proceedings.

17. NORTH AMERICAN FREE TRADE AGREEMENT: Seller agrees to deliver as a separate line item a NAFTA Certificate of Origin (Customs Form 434) for all goods that meet the NAFTA Rules of Origin. Buyer reserves the right to withhold all payments to the Seller until such time as a completed NAFTA Certificate is delivered. A NAFTA Certificate is mandatory for all goods which are labeled "MADE IN THE USA".