

ATTACHMENT TO PURCHASE ORDER: SALK TERMS AND CONDITIONS OF PURCHASE

1. **Acceptance.** These Terms and Conditions of Purchase are an integral part of the attached purchase order which becomes the agreement (“Agreement”) between the vendor identified on the face of the purchase order (“Supplier”) and The Salk Institute for Biological Studies (“Salk”) for the purchase of the goods and/or services listed on the purchase order (the “Items”) upon Supplier’s acceptance, including by acknowledgment or commencement of performance. The purchase order can be accepted only on these terms and conditions notwithstanding any preprinted terms and conditions on Supplier’s acknowledgment or any other document Supplier may provide to Salk at any time. Any additional or different terms as may be contained in Supplier’s documents are hereby deemed to be material alterations, and Salk hereby gives notice of objection to and rejection of such material alterations. No additional or modified term or revision to this Agreement will be effective unless in writing and signed by a duly authorized representative of Salk.

2. **Acknowledgement.** Supplier will provide a written acknowledgement to this purchase order within forty-eight (48) hours after receiving the purchase order. Such acknowledgement will confirm the delivery date for the order. Failure to provide such acknowledgement will be deemed acceptance of the order by Supplier.

3. **Rescheduling.** Salk may at any time, but not less than seven (7) calendar days before the scheduled delivery date, reschedule the purchase order from such scheduled delivery date to another date, without charge or penalty.

4. **Delivery.** All deliveries of the Items will be F.O.B. Salk’s receiving area, unless another delivery term and/or destination is specified in the purchase order. No deliveries may be made to individuals or departments. All shipments must be fully prepaid. Any shipping charges to which Supplier is entitled under the purchase order must be included in Supplier’s invoice. Notwithstanding any prior inspections, Supplier bears all risk of loss, damage, or destruction to Items until final acceptance by Salk at Salk’s delivery destination. Until such delivery is made, Supplier will insure the Items against loss or damage for their full replacement value, the proceeds of which will be payable to Salk in the event of any loss or damage to the Items. All Items will be packed and shipped appropriately and in accordance with any packing and shipment specifications set forth in the purchase order. Shipments of materials which may be damaged by excessive heat or cold must be properly protected in hot or cold seasons. All Items will be shipped in complete lots. In addition, all shipments will be accompanied by a detailed packing list which will reference the product type and quantity, lot number, and the purchase order number. Salk’s count will be accepted as final and conclusive on all shipments not accompanied by a packing list. Supplier will deliver all Items on the scheduled delivery date. Items shipped to Salk or its agents in advance of a scheduled delivery date, without Salk’s prior approval, may be returned to Supplier at Supplier’s expense or held at the facility of Salk or its agent with deferred billing privileges. No shipment will be deemed complete until all ordered Items have been delivered in accordance with Salk’s instructions and accepted. Partial shipment must be authorized by Salk. No payment or other obligations of Salk will accrue on partial or incomplete shipments. Time is of the essence in delivery of the Items. If Supplier becomes aware of any anticipated delay that would result in a change to the scheduled delivery date, Supplier will notify Salk as soon as possible and provide reasons for such delay. If delivery does not occur by the delivery date, and without limiting Salk’s other rights available under the law, in equity, or under this Agreement, Salk may: (i) cancel the purchase order without penalty and demand a return or credit of all amounts paid by Salk in connection with such purchase order; (ii) assess a late charge in the amount of two percent (2%) of the net purchase price of the delayed Item per day until the Item is delivered; (iii) require Supplier to reimburse Salk any

penalty imposed by Salk’s customers as a result of such delay; and/or (iv) permit Supplier to make such delivery at the earliest possible date.

5. **Inspection and Acceptance.** Within thirty (30) days after delivery of the Items to Salk, Salk or its agent will have the right to inspect the delivered Items as to quantity and compliance to the specifications. If the Items do not conform to the specifications (“Defective Items”), Salk will provide Supplier a written notice of rejection specifying the nonconformance. Upon rejection of the Items, Salk may: (i) reduce the quantity of the Items ordered through the purchase order by the quantity of the Defective Items, without charge or penalty; (ii) require Supplier to promptly replace or correct the Defective Items, without charge; (iii) correct the Defective Item itself or through a third party and require Supplier to pay for the cost of such correction; and/or (iv) require Supplier to reimburse Salk for any penalties imposed by Salk’s customers as a result of such Defective Items. Supplier will bear all risk of loss with respect to all Defective Items returned to Supplier and will promptly pay for or reimburse all costs incurred by Salk to return, store or dispose any Defective Items. If the number of delivered Items is less than the quantity specified in the purchase order, Supplier will promptly deliver to Salk the number of Items necessary to meet the quantity set forth in the purchase order(s) and will pay to Salk any reasonable losses incurred by Salk by reason of or in connection with its failure to deliver the appropriate quantity of Items. Supplier will bear all risk of loss with respect to all Defective Items returned to Supplier and will promptly pay for or reimburse all costs incurred by Salk to return, store or dispose any Defective Items.

6. **Fees And Payment.** Salk agrees to pay Supplier the prices listed in the purchase order that apply to each Item ordered by, delivered to, and accepted by Salk. If prices are not stated in the purchase order, it is agreed that the goods shall be invoiced at the price last quoted to Salk or the prevailing market rate, whichever is lower. Supplier will submit to Salk an itemized invoice for payment with each shipment of the Items. The invoice will include: the purchase order number, a description of the Items manufactured, unit prices, total prices and any shipping expenses to be paid by Salk according to the purchase order. The prices for each Item to be paid to Supplier will be inclusive of all applicable taxes. Supplier will be solely responsible for, and will indemnify and hold Salk harmless from and against, the payment of all taxes (including sales, use, value-added, and income taxes) and other governmental charges (including customs duties), and any related fines, penalties, and interest, arising from the performance by Supplier of any services or the payment of fees to Supplier under this Agreement. Supplier will use its best efforts to achieve cost savings for the manufacture of the Items, and reduce the prices for the Items by the savings realized. Unless stated otherwise on the purchase order, Salk will pay any undisputed invoice within sixty (60) days after acceptance of the applicable Items by Salk. All invoices must be emailed to accountspayable@salk.edu to ensure prompt payment. Supplier is hereby notified that Salk cannot provide assurance that invoices will be received and/or paid on time if they are submitted by any other means. Any credits or adjustments in favor of Salk may be offset against any amount owed to Supplier hereunder, whether or not such amounts are currently due or payable. Salk will take any and all discount payment terms offered on disputed invoices, regardless of when payment is actually made, if it is determined that the dispute is due to Supplier’s error or omission. Time is of the essence and Supplier must provide an accurate invoice or request payment of an outstanding invoice balance within ninety (90) days of shipment of Items or performance of service to guarantee payment. Due to the requirements of Salk’s external funding sources and Salk’s fiscal year closing process, all Items shipped and all services performed in the months of May and June must be billed promptly to ensure Salk can process and Salk can pay all related invoices in the ten (10) business days following Salk’s fiscal year, which ends on June 30.

7. Warranty. Supplier warrants that all Items shall be free from defects in design, workmanship, material, and manufacture; shall be of merchantable quality and be fit and suitable for the purpose intended by Salk; and shall comply with the requirements of this Agreement and with all Item specifications, drawings and samples. The foregoing warranties are in addition to all other warranties, express or implied, and survive delivery, inspection, acceptance, or payment by Salk. Supplier warrants and certifies that (i) in the performance of this Agreement it will comply with all applicable federal, state or local statutes, rules, regulations and orders, including without limitation those pertaining to labor, wages, hours, and other conditions of employment, and applicable price ceilings (if any), and that the items delivered hereunder shall be produced in compliance with the Fair Labor Standards Act; (ii) neither it nor any of its principal employees is listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension;" and (iii) all Items will be free from liability for infringement of, or claim of royalties for, patent rights, copyright, trademark, trade secrets or confidential or proprietary intellectual property rights, mechanic's liens and other encumbrances of any third party (collectively "Rights and Encumbrances"). These warranties may not be limited or disclaimed by Supplier. If Salk experiences any defect, failure or non-conformity during the Warranty Period, Salk shall have the right to take the following actions, at Salk's option: (1) retain the defective goods in whole or in part with an appropriate adjustment in the price for the goods; (2) require Supplier to repair or replace the defective goods in whole or in part at Supplier's sole expense, including all shipping, transportation and installation costs; (3) correct or replace the defective items with similar items and recover the total cost from Supplier, including the cost of product recalls; and (4) exercise all other rights under the California Uniform Commercial Code and any other applicable statutes in any jurisdiction. The rights and remedies of Salk and the warranties of Supplier set forth in this Agreement shall not be exclusive and are in addition to any other rights, remedies and warranties provided by law or under this Agreement.

8. Limitation of Liability. IN NO EVENT SHALL SALK BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR CONTINGENT DAMAGES FOR ANY REASON, WHETHER OR NOT SALK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SALK'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OWED BY SALK TO SUPPLIER FOR THE APPLICABLE ITEMS GIVING RISE TO THE CLAIM.

9. Cancellation. Salk may cancel this purchase order in whole or in part by written or electronic notice, if Supplier: (i) fails to deliver Items in accordance with specified delivery times, Item requirements or other specifications; (ii) fails to replace or correct defective Items as Salk requires; or (iii) fails to comply strictly with any provision of or repudiates or anticipatorily repudiates this Agreement. Upon cancellation pursuant to the foregoing sentence, Supplier shall: (1) supply any portion of the Items for which this purchase order is not cancelled; (2) be liable for additional costs, if any, for the purchase of similar goods and services to cover such default; and (3) at Salk's request, transfer title and deliver to Salk any completed Items. Salk's rights and remedies as described herein are in addition to any other rights and remedies provided at law or in equity. Salk may also cancel this purchase order in whole or in part without cause upon notice, provided that if the cancelled Item is a custom product, Salk will pay for the materials and labor costs incurred to date to manufacture such product.

10. Indemnity by Supplier. Supplier shall defend, indemnify and hold harmless Salk (and its officers, directors, agents and representatives) from and against any and all claims, suits, losses,

penalties, damages (whether actual, punitive, consequential or otherwise) and associated costs and expenses (including attorney's fees, expert's fees, and costs of investigation) and all liabilities that are caused in whole or in part by: (i) any actual or alleged infringement of any Rights and Encumbrances; (ii) any breach by Supplier of this Agreement; (iii) any violation of applicable laws or regulations by Supplier, its employees, officers, agents, subcontractors or representatives (collectively, ("Supplier Personnel"); (iv) any negligent or intentional act, error or omission by any Supplier Personnel in connection with this Agreement; and, if any Supplier Personnel enter upon Salk's premises in connection with this Agreement, (v) any failure of Supplier Personnel to observe Salk's rules and regulations and any damage or injury otherwise caused or suffered by any Supplier Personnel, while on, entering or leaving Salk's premises. Supplier shall be obligated to obtain and inform such Supplier Personnel of, and cause them to comply with, all current rules and regulations of Salk, particularly those relating to traffic, safety, and fire precautions in our labs or other premises. Supplier further agrees to carry all workers compensation, occupational disease and liability insurance, necessary under state and federal statutes or to fully protect Salk against the risks herein mentioned. Upon request, Supplier agrees to furnish Salk with a certificate showing it is properly insured with regard to such risks. Supplier is responsible for obtaining any business or professional license necessary for performance under any purchase order and maintaining them throughout the period of performance which includes all warranty periods.

11. Force Majeure. A failure, default or delay by either party to perform due to causes beyond the control of and without the fault or negligence of such party is deemed excusable during the period in which such cause of failure continues. Such causes may include acts of God, acts of Government (in sovereign or contractual capacity), fire, flood, strike, freight embargo and other similar extraordinary events. When Supplier becomes aware of any actual or potential force majeure condition, Supplier shall immediately notify Salk of the condition and anticipated duration of the delay. During the period of any delay or failure to perform by Supplier, Salk, at its option, may purchase goods from other sources and reduce its schedules to Supplier by such quantities, without liability to Salk, or cause Supplier to provide the goods from other sources in quantities and at times requested by Salk and at the price set forth in the purchase order. If requested by Salk, Supplier shall, within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Salk deems appropriate. If the delay lasts more than the time period specified by Salk, or Supplier does not provide adequate assurance that the delay will cease within such time period, Salk may, among its other remedies, immediately cancel the applicable purchase orders without liability.

12. Audit. If this purchase order relates to a procurement transaction exceeding \$150,000 and funding for this transaction was provided by a U. S. Government funding agency, Supplier agrees that its books, documents, papers, and records which are pertinent to this purchase order shall be accessible to Salk, the relevant funding agency, and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of making audits, examinations, excerpts and transcriptions.

Required Compliance. Supplier agrees that, to the extent they are applicable to Supplier in connection with this Agreement; Supplier will comply fully with the following statutes, regulations, and requirements cited by the Office of Management and Budget Circular A-110, incorporated herein by reference, available at https://www.whitehouse.gov/omb/circulars_a110/

- (a) E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract

Compliance Programs, Equal Employment Opportunity, Department of Labor.”

- (b) the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).
- (c) the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”).
- (d) Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).
- (e) Any applicable rights of the Federal Government or Salk to inventions made under a contract or agreement for the performance of experimental, developmental, or research work (37 CFR part 401 and any implementing regulations issued by the awarding agency).
- (f) all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).
- (g) the Byrd Anti-Lobbying Amendment (31 U.S. C. 1352).

13. Miscellaneous. No right or obligation under this Agreement may be assigned by Supplier without the prior written consent of Salk. Salk may assign the rights or obligations or both of this Agreement in whole or part at any time. If Salk fails to insist on performance of any term or condition, or fails to exercise any right or privilege hereunder, such failure shall not constitute a waiver of such term, condition, right or privilege. The obligations of the following sections shall survive any cancellation: 7, 8, 10 and 14. Any provision of this Agreement that is held unenforceable or invalid for any reason shall be replaced by a valid and enforceable provision that most closely affects the intent of the invalid provision, and the remainder of the Agreement shall continue in full force and effect. Supplier warrants and represents that no law, rule, regulation, order or ordinance of the United States, a state, any governmental agency or authority of any country has been violated in supplying the Items ordered herein. This Agreement shall be governed by and construed under the laws of California, excluding its conflicts of law rules. Any suit arising out of this Agreement, at law or in equity, shall be brought in a state or federal court in San Diego County, California. Each party consents to personal jurisdiction in the above courts. Supplier further consents to such venue as Salk selects in any of such courts.

COMPANY: _____

ACCEPTED BY: _____

PRINT NAME: _____

TITLE: _____

DATE: _____