

TERMS AND CONDITIONS OF SALE

These terms and conditions of sale ("**Terms**") are applicable to any order placed with and accepted by APS BioGroup, Inc. or La Belle Associates, Inc. (referred to herein as "**APS/La Belle**"):

1. **SCOPE OF AGREEMENT.** APS/La Belle, upon acceptance of an order (each "**Order**") placed by a customer (the "**Buyer**"), will supply the products specified in the Order (the "**Product**") to Buyer, pursuant to the terms and conditions of these Terms. APS/La Belle's acceptance of any Order submitted by Buyer is expressly limited to these terms and conditions, notwithstanding any contrary provision contained in Buyer's purchase orders, invoices, acknowledgements or other documents. Unless otherwise agreed by APS/La Belle, the details of each Order (e.g. quantity, price, and requested delivery date) must be confirmed by a written purchase order.

2. **PRICE, PAYMENT TERMS AND CREDIT.**
 - a. Unless otherwise agreed by APS/La Belle in writing, the price payable by Buyer for Products to be supplied by APS/La Belle will be APS/La Belle's list price for the Product on the date an Order is received. Unless otherwise agreed by APS/La Belle in writing: (i) all prices are EX Works, APS/La Belle's facility; (ii) all product is non-returnable.

 - b. Subject to approved credit, payment terms are net thirty (30) calendar days from the date of the invoice. If Buyer does not pay an invoiced amount within terms, Buyer will, in addition to the purchase price, pay finance charges of one percent (1%) per month on the late balance, or the maximum amount chargeable by law and APS/La Belle reserves the right to (1) withhold shipment of future orders until full payment is made; and/or (2) revoke any credit extended to Buyer. In the event that Buyer's account is more than sixty (60) days in arrears, Buyer shall reimburse APS/La Belle for the reasonable costs, including attorney's fees, of collecting such amounts from Buyer. In the event of any good faith dispute regarding an invoice, no finance charges will apply provided that Buyer provides written notice of the dispute prior to the due date for such payment.

- c. Upon reasonable request by APS/La Belle, Buyer shall provide copies of its most recent audited financial statements or other reasonable evidence of its financial capacity and such other information as APS/La Belle reasonably requests to determine credit status or credits limits.

3. **DELIVERY, INSPECTION, NON-CONFORMING GOODS.**

- a. All purchase orders shall be subject to APS/La Belle's acceptance and availability of the Product. APS/La Belle shall use reasonable commercial efforts to meet any reasonable delivery date, but shall have no liability for late deliveries. Buyer may not cancel a purchase order without APS/La Belle's approval unless APS/La Belle fails to fulfill an Order within sixty (60) days of any agreed delivery date.
- b. Unless otherwise agreed to by APS/La Belle in writing, Product will be deemed delivered, and title and risk of loss will transfer from APS/La Belle to Buyer when the Product is delivered to Buyer at APS/La Belle's manufacturing facility.
- c. Buyer is responsible for ensuring that the product can be lawfully imported into the destination country. Buyer shall reimburse APS/La Belle for any expenses or costs incurred as a result of the product failing to clear customs for regulatory reasons.
- d. Immediately after delivery of the Product, Buyer shall inspect the quality and quantity and conduct a visual inspection of the Product. Complaints regarding the quantity and quality that could be reasonably observed by visual inspection will be reported to APS/La Belle in writing, immediately after their discovery but not later than ten (10) business days from the delivery of the Product, and in case of latent defects no later than five (5) business days from the date of discovery. Any claim of shortage or defect not reported to APS/La Belle in accordance with the preceding sentence shall be waived. In case of a justifiable claim of shortage or non-conforming goods, APS/La Belle will, in its discretion at no additional costs to Buyer either: (i) replace the defective or shorted Product; or (ii) credit Buyer's account for the purchase price of the shorted or non-conforming goods. In case a claim made by Buyer pertaining to the quality or quantity of the Product is not accepted by APS/La Belle, the parties shall use commercially reasonable efforts to resolve such dispute and, if the Parties fail to agree within thirty (30) days from the date of APS/La Belle's receipt of notice by Buyer, the dispute shall be referred to an independent expert mutually agreed by the Parties for evaluation, and the decision of the independent expert shall be final

and binding on the parties. The fee for hiring such independent expert shall be borne by the party against whom the decision of such independent expert is given. In the event the independent expert holds that the Product has a proven manufacturing defect, Buyers sole and exclusive remedy shall be for APS/La Belle to (i) replace the defective quantity of the Product; or (ii) issue a credit to Buyer's account in amount equal to the purchase price of the defective quantity of the Product.

4. **Representations and Warranties.** APS/La Belle warrants and represents that: (i) it will manufacture and supply the Product in accordance with applicable state and federal laws and regulations, and current Good Manufacturing Practices in the United States; (ii) when delivered to Buyer, the Products will comply in all material respects with APS/La Belle's then current specification for such Products; (iii) the distribution and sale of the Product in accordance with the terms and conditions of this Agreement will not infringe upon the intellectual property or other proprietary rights of any third party; and (vi) upon transfer of the risk of loss of the Product to Buyer, good and valid title to such Product will be conveyed by APS/La Belle to Buyer free and clear of any third party claims and encumbrances. **EXCEPT AS SPECIFICALLY SET FORTH HEREIN, APS/LA BELLE DISCLAIMS ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES ON THE PRODUCT INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT OF ANY BREACH OF ANY WARRANTY SPECIFIED IN THIS PROVISION, BUYER'S EXCLUSIVE REMEDY SHALL BE THAT APS/LA BELLE WILL, AT ITS OPTION, REPLACE ANY DEFECTIVE PRODUCTS AT NO COST TO BUYER OR REFUND ANY PURCHASE PRICE PAID FOR SUCH PRODUCT.**

5. **BUYER MATERIALS.** If Buyer provides APS/La Belle with any custom formulations, packaging materials or images or other items to be incorporated into packaging materials or used in connection with the manufacture of Product (individually and collectively "**Buyer's Materials**"), Buyer represents and warrants that such Buyer's Materials: (i) do not infringe any copyright or trademark or other Intellectual Property Rights of any third party; (ii) are not libelous or obscene; (iii) do not invade any person's right to privacy; (iv) are complete and accurate and do not render any Product manufactured by APS/La Belle for Buyer misbranded within the meaning of the United States Food, Drugs & Cosmetics Act and applicable regulations promulgated thereunder; and (iv) does not otherwise violate any laws or infringe the rights of any third party.

6. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, WHETHER UNDER CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY LOST PROFITS, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, EVEN IF THE PARTY WAS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY, ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT.

7. **INDEMNIFICATION.**

a. **Buyer.** Buyer shall indemnify, defend and hold APS/La Belle and its officers, directors, agents, affiliates and employees harmless from and against all costs, losses, liabilities and expenses of any type whatsoever (including reasonable attorneys' fees) arising out of: (i) the sale of the Product by Buyer to the extent that such costs, losses, liabilities and expenses arise out of any acts or omissions of Buyer, including any affiliates thereof, or any of their employees, officers, agents or representatives; (ii) the use of the Product (including without limitation product liability claims), to the extent that such costs, losses, liabilities and expenses arise out of any acts or omissions of Buyer, or any affiliates thereof, or any of their employees, officers, agents or representatives including, without limitation, any claim caused by any adulteration or alteration of the Products occurring after title to the Product passes to Buyer or a failure of Buyer to comply with any applicable regulatory requirements related to the Products; or (iii) Buyer's, including any affiliates thereof, or any of their employees, officers, agents or representatives, willful act or omission or breach of any of its representations, warranties or other obligations under these Terms.

b. **APS/La Belle.** APS/La Belle shall indemnify, defend and hold Buyer and its officers, directors, agents, affiliates and employees harmless from and against all costs, losses, liabilities and expenses of any type whatsoever (including reasonable attorneys' fees) arising out of: (i) the use of any Product (including without limitation product liability claims), to the extent that such costs, losses, liabilities and expenses arise out of any acts or omissions of APS/La Belle, or any affiliates thereof, or any of their employees, officers, agents or representatives including, without limitation, any claim caused by any adulteration or alteration of the Products occurring before title to the Products passes to Buyer or a failure of APS/La Belle to comply with any applicable regulatory requirements related to the Products; or (ii) APS/La Belle's, including any affiliates thereof, or any of their employees, officers, agents or representatives, willful act or omission or breach of

any of its representations, warranties or other obligations under these Terms.

8. **FORCE MAJEURE.** No failure or omission by either (or both) of the parties in the performance of any of its (or their) obligations hereunder (other than the obligation of Buyer to make payment to APS/La Belle for the Product) shall be construed to be a breach of these Terms, nor shall such failure or omission create a liability hereunder, if such failure or omission shall arise from any cause or causes beyond the reasonable control of the affected party, including acts of God, acts or omissions of any government or agency thereof, fire, storm, flood, weather, earthquake, accident, acts of the public enemy, war (whether declared or undeclared), rebellion, insurrection, riots, terrorism or other criminal activity or threats thereof, disease, invasions, strikes, labor disputes or lockouts, interruption or unavailability of manufacturing capacity, components, materials, utilities, transportation or other services.
9. **ASSIGNMENT.** Except as otherwise provided, each Order and these Terms shall be binding upon and inure to the benefit of the parties' successors and lawful assigns.
10. **COMPLIANCE WITH LAW.** Each party shall comply with all state, federal and local laws and regulations applicable to its performance hereunder.
11. **GOVERNING LAW.** Each Order and these Terms shall be governed by the laws of state in which APS/La Belle manufactures the Product, without reference to conflicts of law principles. Any legal suit, action or proceeding arising out of or relating to an Order or these Terms shall be commenced in a federal court or in a state court of competent jurisdiction located in the state in which APS/La Belle manufactures the Product, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding. With respect to any litigation arising out of an Order or these Terms, the parties expressly waive any right they may have to a jury trial and agree that any such litigation shall be tried by a judge without a jury and the prevailing party shall be entitled to recover its expenses, including reasonable attorney's fees, from the other party.
12. **SURVIVAL.** In the event any provision of any Order or these Terms is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of such Order or these Terms will remain in full force and effect. All sections herein relating to payment, ownership, confidentiality, indemnification and duties of defense, representations and warranties, waiver, waiver of jury trial and provisions that by their terms extend beyond the Term shall survive the fulfillment or other termination of any Order.

13. **ENTIRE AGREEMENT.** These Terms and the operative provisions of any quotation issued by APS/La Belle and any Order issued by Buyer, set forth the entire agreement and understanding among the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understandings of every and any nature among them. To the extent of any conflict between these Terms or any quotation issued by APS/La Belle on the one hand and any Order issued by Buyer on the other hand, the terms of this Agreement and/or APS/La Belle's quotation shall control. No party shall be bound by any condition, definition, warranty, or representations, other than as expressly set forth or provided for in these Terms. These Terms may not be amended, supplemented, changed, or modified, except by agreement in writing signed by the parties to be bound thereby.