

UPSHER-SMITH LABORATORIES, INC.
TERMS AND CONDITIONS OF SALE

1. **Agreement and Acceptance.** All sales of products (“Products”) by Upsher-Smith Laboratories, Inc. (“USL” or “Seller”) are subject to and expressly conditioned upon the terms and conditions contained herein. These terms and conditions shall apply to any and all orders for USL Products, whether by fax, telephone, mail, electronic mail, EDI, or otherwise. No variation of these terms and conditions are binding upon Seller unless agreed to in writing and signed by an officer or other authorized representative of Seller. USL reserves the right to amend these terms and conditions at any time without prior notice to buyer (“Buyer”).
2. **Payment Terms.** Payment terms are 2% 30, net 31, meaning invoice price will be discounted by two percent if payment is made and received by USL within thirty days of the date of invoice or delivery of Product, whichever is later, and full payment with no discount is due thirty-one days after the date of invoice or delivery of Product, whichever is later. Seller reserves the right to assess a monthly service charge of 1.5%, or the highest rate allowed by law, whichever is lower, on accounts not paid on a timely basis. In the event of default by Buyer in payment of the purchase price on any order, Seller, at its option, without prejudice to any other remedies, may defer delivery, cancel the order, or sell any undelivered Product for the account of Buyer and apply such proceeds as a credit against the contract purchase price, and Buyer agrees to pay the balance due the Seller on demand, together with any applicable service charges. Buyer agrees to pay all costs, including, but not limited to, reasonable attorney fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof.
3. **Shipping Terms.** Shipment of Product from Seller to Buyer shall be F.O.B., destination, freight prepaid, subject to Seller’s sole discretion as to mode of shipment and choice of carrier. Special delivery, overnight shipment, and any other request of Buyer beyond Seller’s ordinary shipment methods shall be at Buyer’s expense and any costs shall be prepaid by Seller and billed to Buyer. Risk of loss or damage is the responsibility of Buyer upon and after delivery of goods to Buyer.
4. **Delivery and Inspection.** Delivery times are approximate and are not guaranteed. Buyer shall have ten (10) days from date of delivery in which to inspect Products and within that time period notify Seller in writing of any claims for shortages, defects, or damages. Failure of Buyer to so notify Seller within ten days after Product has been delivered shall be deemed conclusive proof the Products are conforming and have been irrevocably accepted by Buyer.
5. **Indirect Sales.** Terms of payment, shipping, and delivery and inspection for any Product purchased through a wholesaler or distributor shall be governed exclusively by the agreement between the Buyer and such wholesaler or distributor and not by the foregoing paragraphs. Unless otherwise agreed to, authorized wholesalers or distributors are those approved by Seller in its sole discretion, and are subject to change at any time at the discretion of Seller.
6. **Pricing.** Prices quoted by Seller on any sales offer, communication or document will be valid for thirty (30) days and will be null and void thereafter unless accepted in writing by Buyer within such time period. Prices specified in any agreement or contract between Buyer and Seller may be changed prospectively by USL at any time without advance notice to Buyer, unless the price is expressly guaranteed for a period of time as stated in such agreement or contract. Prices quoted by Seller do not reflect any separate costs charged by a wholesaler or distributor. Liability for any taxes, duties, or fees assessed by any governmental authority with respect to the purchase and delivery of the Products shall be borne by Buyer. Buyer is responsible for reporting all pricing discounts and rebates as may be required by federal law.
7. **WARRANTY.** SELLER WARRANTS THAT ITS PRODUCTS CONFORM TO THE DESCRIPTION OF SUCH PRODUCTS ON THE PRODUCT LABEL AND ANY APPLICABLE PRODUCT INSERT AT TIME OF DELIVERY. EXCEPT FOR THESE WARRANTIES, THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF FITNESS FOR PARTICULAR PURPOSE. UNLESS THE PRODUCTS ARE USED IN ACCORDANCE WITH APPLICABLE LABEL DIRECTIONS, THE WARRANTIES SET FORTH ON SUCH LABELS ARE VOID AND OF NO EFFECT. IN THE EVENT OF A BREACH OF WARRANTY, THE SOLE REMEDY AVAILABLE TO BUYER SHALL BE, AT SELLER’S DISCRETION, EITHER REPLACEMENT OF THE PRODUCT OR REFUND OF THE PURCHASE PRICE OF THE PRODUCT. EXCEPT IN THE EVENT OF A THIRD PARTY CLAIM FOR INJURY OR DAMAGE FOR WHICH SELLER HAS AN OBLIGATION OF INDEMNIFICATION, IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, COLLATERAL, EXEMPLARY, OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR LOSS OF CUSTOMER GOODWILL).
8. **Return Goods.** Buyer’s right to return goods to Seller shall be governed by and subject to the terms of Seller’s written Return Goods Policy. A copy of the current policy will be made available to Buyer upon request, or can be obtained at www.upsher-smith.com. Seller reserves the right to change the policy at any time without notice.

9. Product Availability. Seller makes no representation or guarantee that Products will be in stock when ordered by Buyer, whether ordered directly from Seller or indirectly through a wholesaler or distributor.
10. Force Majeure. Seller is not responsible for any delay or failure in performing its obligations hereunder due to any cause beyond its reasonable control, including but not limited to, acts of God, fire, flood, storm, earthquake, epidemic, war, terrorism, national emergency or natural disaster.
11. Confidentiality. Buyer agrees that it will not, without first obtaining Seller's written consent, (a) use the name or logo of Seller or any of its affiliates except to the extent necessary to sell Products to Buyer's customers, (b) disclose to any third party the terms and conditions upon which Products are being purchased from Seller, including but not limited to prices at which Products are being purchased, and (c) disclose to any third party any other proprietary, trade secret, or non-public information of Seller that Buyer may acquire in connection with the purchase of Products except as may be required by law.
12. Arbitration. Buyer agrees that all claims, demands, disputes, controversies, and differences relating to the sale and purchase of any Product hereunder (including whether a matter is subject to arbitration hereunder) shall be settled exclusively by arbitration in Minneapolis, Minnesota, in accordance with rules of the American Arbitration Association, applying Minnesota law. Judgment on any award thus rendered shall be binding on the Buyer and may be entered in any court having jurisdiction thereof. Seller's failure to strictly enforce any term or condition herein or to exercise any right arising hereunder shall not constitute a waiver of Seller's rights to strictly enforce such terms or conditions or exercise such rights thereafter, notwithstanding any previous custom, practice or course of dealing to the contrary.