

PURCHASE ORDER TERMS AND CONDITIONS

- 1. DEFINITIONS.** "Buyer" means Genzyme Corporation or other entity identified on this Order as the purchaser of Products. "Master Purchase Agreement" means a written agreement previously entered into between Buyer and Seller, if any, governing the sale and purchase of Products. "Order" shall have the meaning specified in **Section 2** hereof. "Products" shall have the meaning specified in **Section 7** hereof. "Seller" means the person or entity to which this Order is addressed.
- 2. AGREEMENT AND ACCEPTANCE.** Except where this Order is issued pursuant to a Master Purchase Agreement as an ordering mechanism, this purchase order, including any attached schedules (collectively, this "Order"), is an offer to purchase, and may be accepted by Seller either in writing or by any conduct which recognizes the existence of a contract. Any such acceptance is limited to the express terms of this Order. Buyer hereby objects to and rejects any proposal for additional or different terms or any attempt by Seller to vary any of the terms of this Order, including, without limitation, all preprinted or other terms and conditions of any invoice or acknowledgement submitted by Seller, and any such additional or different terms or variances shall be deemed material. Any such proposal or attempt by Seller that would materially change the description, quantity, price, rights to use or delivery schedule of the Products shall constitute a rejection of this offer. Any other such proposal or attempt shall not operate as a rejection, but this offer shall be deemed accepted by Seller without regard thereto.
- 3. ENTIRE AGREEMENT.** Except where this Order is issued pursuant to a Master Purchase Agreement as an ordering mechanism, this Order constitutes the complete and exclusive statement of the terms of the agreement between Buyer and Seller with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments or understandings with respect to such subject matter. No modification or rescission of this Order shall be binding upon Buyer unless in writing and signed by Buyer.
- 4. SHIPMENT.** All Products shall be suitably prepared and packed for shipment, and Seller shall mark the number of this Order on each container and enclose an itemized packing slip with such number in each container. If Seller fails to enclose an itemized packing slip in each container, Buyers determination of count or weight shall be conclusive. Seller shall mail invoices in duplicate and shipping documents to Buyer for each shipment on the day such shipment is made. If, in order to comply with the required delivery date, Seller must ship by a more expensive means than that specified in this Order, Seller shall bear the increased transportation costs resulting therefrom (unless the necessity for such shipment change has been caused by Buyer). The products shall be delivered in a single lot unless specifically stated otherwise in this Order or in a Master Purchase Agreement.
- 5. DELIVERY.** Time is of the essence of this Order. The Products shall be delivered on the date specified on the front of this Order. Buyer shall only accept deliveries at the delivery location Monday thru Friday between 9:00 am and 5:00 p.m. Failure to complete delivery of items or rendering of services by the time promised shall constitute sufficient cause for termination pursuant to **Section 15** hereof. Delivery in accordance with this Order does not constitute acceptance by Buyer under this Order.
- 6. INSPECTION AND REJECTION.** Payment for any Product delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect all Products for sixty (60) days after actual receipt of the Products at Buyers place of business and to reject (including revocation of its earlier acceptance of) any or all of such Products which are, in Buyers sole judgment, nonconforming. Use of a portion of the Products for the purpose of testing shall not constitute an acceptance of the Products. Buyer shall not be obligated, however, to test or reject any Product, and Buyers inspection of, or failure to inspect or reject, any Product shall not affect any rights of Buyer under this Order. Rejected Products may be held, and if Seller so requests may be returned to Seller, at Sellers sole risk and expense and, in addition to its other rights, Buyer may cancel this Order and (whether or not it has cancelled this Order) may recover so much of the price as has been paid and may charge Seller all expenses of inspection and return, including unpacking, examining, repackaging and shipment. SELLER SHALL NOT REPLACE REJECTED PRODUCTS WITHOUT THE WRITTEN CONSENT OF BUYER.
- 7. WARRANTIES.** (a) Seller hereby makes the following representations and warranties to Buyer: (i) Seller shall deliver good and marketable title to all goods and services furnished pursuant to this Order, including, without limitation, the media, articles, materials, drawings, data, information and other tangible and intangible property, and the design, delivery, installation, inspection, testing, expediting and maintenance and all related activities, specified as items, or required to furnish items, ordered by this Order (collectively, the "Products"); (ii) all Products (A) will be of good quality and workmanship and free from all defects (latent and patent) or, in the case of services, performed in a professional and workmanlike manner consistent with best industry practices; (B) will conform to all specifications, drawings, descriptions and statements of work furnished, specified, or agreed to, by Buyer; (C) will conform to any samples and to any statements made on the containers, labels, sales literature or advertisements for such Products; (D) will be adequately contained, packaged, marked and labeled; (E) will be merchantable and will be safe and appropriate for the purpose for which goods or services of that kind are normally used; and (F) if Seller knows or has reason to know the particular purpose for which Buyer intends to use the Products, will be fit for such particular purpose. Notwithstanding the foregoing, Seller shall not be liable for defects in design to the extent Products are manufactured pursuant to, and in accordance with, detailed designs furnished by Buyer; (iii) Seller is free to enter into and fully perform this Order and has obtained any and all grants of authority necessary to do so from its Board of Directors or otherwise. (b) No warranties contained in this Order and no remedies available to Buyer for the breach thereof may be limited unless and except to the extent specifically agreed upon by Buyer in a separate agreement signed by Buyer. Sellers obligations under all such warranties shall survive and be unaffected by any inspection, testing, acceptance and use. All such warranties shall run to Buyer, to its successors, assigns and customers, and to users and consumers of, and others affected by, the Products. (c) Subject to **Section 6** hereof, Seller agrees promptly to replace or repair any Product not conforming to this Order or to any warranty set forth in this Order (each, a "Nonconforming Product"), without any expense (including transportation expense) to Buyer. In the event of Sellers failure promptly to repair or replace such Nonconforming Product(s), Buyer, after reasonable notice to Seller, may repair or replace such Nonconforming Product(s) and charge Seller for all costs incurred by Buyer in doing so.
- 8. PRICE AND TAXES; PRICE WARRANTIES.** (a) The price specified herein, unless otherwise expressly stated, includes: (i) all taxes and duties of any kind that Seller is required to pay with respect to the Products (including any applicable custom duties); and (ii) all charges for labeling, packing, packaging, loading, storage and insurance (including any charges associated with obtaining necessary import/export licenses). (b) Seller represents and warrants that the prices and payment terms under this Order are not less favorable to Buyer than those currently extended to any other customer for the same or substantially similar products in similar quantities. If Seller reduces its prices for any Product before this Order is completed, Seller shall reduce the prices under this Order accordingly. At Buyers option, Seller shall promptly refund to Buyer, or apply as a credit against future payments due under this Order, the amount of any overpayments that result from such price reductions for Products not yet accepted by Buyer.
- 9. INDEMNIFICATION.** Seller shall, severally as applicable, at all times hereafter indemnify, defend and hold harmless Buyer, its affiliates, and all of their respective officers, directors, agents, sublicensees, employees, subcontractors or other representatives from and against any and all loss, liability, cost or expense, and any and all claims by, or liability to, any third party, for loss, damage or injury to persons or property which is based on or in any manner arises out of or is incidental to: (a) any breach by Seller of any warranty, representation or covenant contained in this Order; (b) any defective or nonconforming Product; or (c) any loss, damage, or injury to persons or property or damage to the extent based on or in any manner directly arising out of any act or omission by Seller, its affiliates, or any of their respective officers, directors, agents, sublicensees, employees, subcontractors or other representatives in connection with the performance or nonperformance of this Order by Seller; in each case including, without limitation, attorneys fees, court costs and other expenses associated with or incurred in connection with any such claim or loss.
- 10. TITLE AND RISK OF LOSS.** Title to the Products shall not pass from Seller to Buyer until Buyers final acceptance of the Products. Seller assumes all risk of loss of or damage to the Products (or any part thereof) prior to the acceptance thereof (and following any revocation of such acceptance) by Buyer.
- 11. BUYER PROPERTY AND CONFIDENTIALITY.** As to any information or materials provided by Buyer to Seller in connection with this Order and any information or materials (including but not limited to data, progeny or derivatives, improvements and inventions) generated by Seller resulting from the direct or indirect use of such information or materials ("Buyer Property"), the following provisions shall apply. Notwithstanding any provision to the contrary, all Buyer Property is the exclusive property and confidential information of Buyer. Seller shall not use Buyer Property for any purpose other than performance under this Order, without the express written permission of Buyer. Seller shall (i) protect the confidentiality of Buyer Property, (ii) assist Buyer in all reasonable ways (at Buyer's expense

and request) in protecting and securing Buyer Property, including but not limited to applying for patents, copyrights or other rights therein and (iii) execute, deliver such documents as may be required to carry out the provisions of 11(ii) herein. Seller shall use Buyer Property only in compliance with all applicable federal, state and local laws and regulations. Seller will promptly return or destroy Buyer Property at Buyer's request.

12. **INFRINGEMENT OF THIRD PARTY RIGHTS.** Seller shall, at its own expense, defend any suit, action or other claim against Buyer, its affiliates and/or their respective officers, directors, employees, contractors, agents, representatives, successors, assigns, customers or licensees for alleged infringement of any United States or foreign patent, trademark, copyright or other proprietary right arising from the sale or use of any Product, and Buyer may be represented by and actively participate through its own counsel in any such suit or proceedings. Seller shall indemnify and hold harmless Buyer and such other parties from any damages, liabilities, claims, royalties, losses or expenses (including attorneys fees and court costs) arising therefrom or in connection therewith. In case any Product, or any part or use thereof, is held to constitute such an infringement, Seller shall, at its own expense, either procure for Buyer the right to continue using such Product or part thereof, or replace the same with a substantially equal but noninfringing Product meeting the requirements of this Order. In the event Seller does not or cannot procure such rights, or replace such Product, Seller shall promptly refund to Buyer all payments made under this Order.
13. **CHANGE OF CONTROL.** Seller must notify Genzyme at least ninety (90) days prior to any changes in the following: component formulations, manufacturing process, component testing procedure, manufacturing or testing facilities or equipment, critical raw materials or source of animal derived materials. Sellers must notify Genzyme within thirty (30) days of any of the following: component problems and/or recalls and any enforcement actions initiated against the Seller by a Regulatory Agency.
14. **TERMINATION FOR CONVENIENCE OF BUYER.** In addition to any other provisions for termination hereunder, Buyer may terminate all or any part of this Order without cause and at any time by written notice to Seller. In the event of such termination, Seller shall immediately stop, and cause its suppliers and subcontractors to stop, all work and deliveries under this Order, with the goal of minimizing the cost of termination. If the cancelled Order is for customs goods, Buyer shall pay to Seller, within forty five (45) days of receiving a detailed invoice from Seller to which Buyer agrees, a percentage of the total Order price reflecting the percentage of the Order unpaid for and completed prior to cancellation plus reasonable costs actually incurred by Seller and directly resulting from such termination (the "**Termination Payment**"). Buyer may verify supporting documentation of such costs. Seller will not be paid for any work done or deliveries initiated after receipt of the notice of termination, nor for any costs incurred by Seller or by Sellers suppliers or subcontractors which could reasonably have been avoided. No amount for anticipated profit on work not performed or on unfinished Products will be recoverable by Seller. In no event shall the sum of the Termination Payment plus payments made or due Seller for the non-terminated portions of this Order exceed the Orders total price. Seller shall promptly refund to Buyer any payments in excess of the sum of the Termination Payment plus payments made or due for the non-terminated portions of this Order. The termination of any portion of this Order pursuant to this **Section 14** shall not affect either party's obligations as to any non-terminated portions of this Order.
15. **TERMINATION FOR CAUSE.** Buyer may, by written notice to Seller, terminate this Order, in whole or in part, for default if: (a) Seller fails to perform in accordance with any requirement of this Order or fails to make sufficient progress thereby endangering the timely performance of this Order; (b) Seller becomes insolvent, has commenced against it or proposes to commence any bankruptcy, reorganization or insolvency proceeding or other proceeding under any federal, state or other law for the relief of debtors; or (c) any receiver, trustee or custodian is appointed to take possession of all or any substantial portion of the assets of Seller. Any such termination shall be at no cost to Buyer except for completed Products delivered and accepted by Buyer prior to such termination, and Seller shall repay to Buyer any progress payments made in excess thereof. The termination of any portion of this Order pursuant to this **Section 15** shall not affect either party's obligations as to any non-terminated portions of this Order. In the event of termination pursuant to this **Section 15**, Buyer may procure or otherwise obtain, upon such terms and in such manner as Buyer may deem appropriate, goods and services similar to Products not provided to Buyer hereunder, and Seller shall be liable to Buyer for any damages arising therefrom, including attorneys fees and excess costs incurred by Buyer in obtaining such substitute goods and services.
16. **SETOFF.** All claims by Seller for payment due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any claim arising out of this or any other transaction between Buyer and Seller.
17. **C-TPAT.** Seller acknowledges that Buyer is participating in the Customs Trade Partnership Against Terrorism program ("**C-TPAT Program**") with the United States Government Customs & Border Protection, the general security recommendations for which are described at <http://www.cpb.gov/xp/cgov/import/>. In addition, Seller may request a copy of buyers Minimum Security Requirements developed in connection with the C-TPAT Program. The C-TPAT Program applies to Seller if Seller is a non-Genzyme foreign entity, located outside the U.S., with which Buyer contracts or trades directly, and that manufactures, processes, assembles, evaluates, warehouse, packs, unpacks, transports or distributes Buyers assets into the U.S. Seller Agrees that if the Program applies to Seller under the above definition, it will use its best efforts to develop and implement security procedures that compliment and support Buyers participation in the C-TPAT program in all material respects. Breach of Sellers obligations under this **Section 17** shall be grounds for immediate termination hereunder in Buyer's sole discretion.
18. **FORCE MAJEURE.** Buyer shall not be liable for any delay in, or failure of, delivery or acceptance, or any other impairment of its performance under this Order, in whole or in part caused by the occurrence of any contingency beyond its control, including, without limitation, war, riot, governmental action, strikes or other labor trouble, fire, accident or unusually severe weather, except that Buyer shall be responsible for Sellers direct additional costs in holding Products or delaying performance under this Order at Buyers request.
19. **ASSIGNMENTS AND SUBCONTRACTING.** Buyer may assign any or all of its rights or delegate any or all of its obligations under this Order to one or more third parties without the consent of Seller. Seller may not assign any of its rights or delegate any of its obligations under this Order to any third party without the prior written consent of Buyer. No part of this Order may be subcontracted without the prior written consent of Buyer.
20. **WAIVER.** Any waiver by either party of a breach of any provision of this Order shall not operate as, or be construed to be, a waiver of any other breach of such provision or of any breach of any other provision of this Order. Any waiver must be in writing. Failure by either party to insist upon strict adherence to any term of this Order on one or more occasions shall not be considered a waiver or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Order.
21. **LIMITATIONS ON LIABILITY.** In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyers liability on any claim of any kind for any loss or damage arising out of or in connection with this Order or from the performance or breach thereof shall in no case exceed the price allocable to the Product upon, or in connection with, which such claim is based. Buyer shall not be liable for penalties of any kind.
22. **SURVIVAL OF OBLIGATIONS.** The obligations hereunder which by their terms might apply after the completion or termination of this Order (including, without limitation, **Sections 7, 9, 11, 12, 17, and 21**) shall survive such completion or termination.
23. **APPLICABLE LAW.** This Order shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts (excluding the choice of law rules thereof).
24. **COMPLIANCE WITH APPLICABLE LAWS.** Seller represents and warrants that in the performance of its obligations under this Order, it shall comply with all applicable federal, state and local laws, ordinances, rules, and regulations.
25. **EQUAL OPPORTUNITY/AFFIRMATIVE ACTION.** The nondiscrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.