

## **LIOFILCHEM, INC. - STANDARD TERMS OF SALE ("Terms of Sale")**

**Order Confirmation.** Liofilchem, Inc. ("Liofilchem") agrees to provide to buyer ("Customer") the products and/or services ("Products") detailed on the face of the Order Confirmation subject to the following Terms of Sale. Any provisions contained in any document issued by Customer are expressly rejected and if these Terms of Sale differ from the terms of Customer's offer, the Terms of Sale shall be construed as a counter offer and shall not be effective as an acceptance of Customer's document. Customer's receipt of Products or Liofilchem's commencement of the services described on the face of the Order Confirmation will constitute Customer's acceptance of these Terms of Sale. The face of the Order Confirmation along with these Terms of Sale collectively form the "Agreement" and are the complete and exclusive statement of the contract between Liofilchem and Customer with respect to Customer's purchase of Products from Liofilchem.

**Shipping and Delivery.** The Products will be shipped to the Customer's specified address, FCA Destination, freight prepaid, meaning Liofilchem will select the carrier, pay for packing and freight for the shipment and add the costs of such to its invoice to Customer. Liofilchem retains title and risk of loss to the Products while the Products are in transit. Claims for loss or damage attributable to the carrier are Liofilchem's responsibility. Customer must notify Liofilchem of visible loss or damage on the delivery receipt before signing for the shipment and report claims to Liofilchem within five (5) business days after delivery of Products. Liofilchem shall make commercially reasonable efforts to meet the Customer's requested delivery schedules for the Products, however all shipping dates are approximate only, and Liofilchem will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Liofilchem's reasonable control. In the event of a delay due to any cause beyond Liofilchem's reasonable control, Liofilchem reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Customer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Liofilchem will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Where applicable, Customer is responsible for any and all customs, duties, bonds, levies, taxes, or fees imposed by their government during the importation of goods.

**Order Modification/Cancellation.** Orders in process may not be modified by Customer except (i) with Liofilchem's prior written consent and (ii) upon agreement by the parties as to an appropriate adjustment in the purchase price for such modifications. Orders in process may be cancelled only with Liofilchem's prior written consent and upon payment by Customer of the applicable Liofilchem cancellation charges. Customer will not be entitled to any credit or refund for Products returned by Customer without the prior written consent of Liofilchem.

**Force Majeure.** Shipping dates are estimated, and Liofilchem shall not be liable for loss or damage due to delay in manufacture or delivery resulting from any cause beyond its reasonable control including, but not limited to, acts of nature (e.g., earthquakes, extreme weather conditions, such as floods), war or threat of war, terrorist act, blockade, revolution, riot, civil commotion, fire, industrial action/strike, government action, embargo, unavailability of goods, default of suppliers, loss or breakdown of carrying vessel, loss of electricity or other utilities, and any delays resulting from any such cause shall extend the time for delivery correspondingly.

**Inspection Period and Acceptance.** Customer shall accept the Products if the Products conform in all material respect to Liofilchem's published specifications for such Products in effect at the time of shipment. If a Product fails to meet the specifications, Customer shall notify Liofilchem in writing within five (5) business days following receipt by Customer of such Product ("Inspection Period"). In such cases, the parties agree that Liofilchem will either replace the Product upon its return or, alternatively, credit Customer's purchase price for the Product upon its return, at Liofilchem's option, and this remedy the sole and exclusive remedy of Customer. Failure by Customer to notify Liofilchem of a Product defect in writing within the Inspection Period will be deemed acceptance of the Products by Customer.

**Price, Taxes, Charges and Payment Terms.** Except as otherwise expressly agreed by Liofilchem in writing, the price of each Product and Service, as applicable, shall be the price detailed for such on the face of the Order Confirmation. The price of each Product is subject to change at any time at Liofilchem's sole discretion prior to the date of purchase. Prices are for Products only and do not include technical data, proprietary rights of any kind, patent rights other than use, or other than standard commercial packaging. Prices are exclusive of handling, shipping transportation, insurance, taxes (including without limitation, any use tax, sales tax or similar tax), customs fees, duties and other charges ("Other Charges") related thereto, and Customer shall report and pay any and all Other Charges, and hold Liofilchem harmless therefrom. Liofilchem will invoice Customer upon shipment for the price and all other charges payable by Customer in accordance with this Agreement. Where credit is extended, and unless otherwise stated, payment for all Products is due and payable in full thirty (30) days from the date of Liofilchem's invoice. Liofilchem reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Customer fails to make any payment to Liofilchem when due or otherwise fails to perform its obligations hereunder. Liofilchem reserves the right to require from Customer full or partial payment in advance, or other security that is satisfactory to Liofilchem, at any time that Liofilchem believes in good faith that Customer's financial situation does not justify the terms of payment specified. Past due balances are subject to a service charge at the rate of 1.5% per month, but in no event shall such charge exceed the rate permitted by applicable law. Payment for all Products shall be made in US Dollars. All payments will be made without setoff, counterclaim, recourse or other defense. In the event the Customer fails to make timely payment, Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by Liofilchem in collecting such amounts. Nothing mentioned herein will limit any additional rights and remedies available to Liofilchem at law, in equity and/or otherwise arising due to the default of payment by the Customer.

**Warranty.** Liofilchem warrants to Customer that (i) services will be performed in a competent, professional, skilled manner and in conformance with current industry standards; and (ii) Products will conform in all material respects to Liofilchem's published specifications for such Products in effect at the time of shipment. This Product warranty lasts for a period of six (6) months from the time of shipment, except for products that have an expiration date, in which case the warranty lasts until the expiration date accompanying the applicable Product. This warranty will be void and does not cover any claims, actions, losses, damages, demands, liabilities, costs or expenses, including attorney's fees or expenses, whether a suit or other proceeding is initiated or not, which may arise from, but not limited to, the following events: (i) misrepresentations made by Customer, (ii) any neglect by Customer or end-users, (iii) Customer's or end-users' use of Products not in compliance with published specifications thereto or not for their intended purposes, (iv) Customer's or end-users' modifications or alterations of Products, (v) damage from Customer or end-user misuse, or operation outside of the environmental specifications for the products, or (vi) any other act, or failure to act, not in accordance with the terms and conditions of this warranty by Customer. At Liofilchem's sole option, Liofilchem will (a) re-perform services that do not comply to the foregoing warranty and (b) either (i) replace defective Products upon their return or (ii) credit Customer's purchase price for the defective Product upon its return, as Customer's sole and exclusive remedy for Products that do not comply with the foregoing warranty. CUSTOMER UNDERSTANDS AND AGREES THAT CUSTOMER MUST USE THE PRODUCT AS SPECIFICALLY ADVISED IN THE RELEVANT "INSTRUCTIONS FOR USE" AND, EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE PRODUCTS ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND USE OF THE PRODUCTS IS ENTIRELY AT CUSTOMER'S OWN RISK. EXCEPT AS OTHERWISE SET FORTH HEREIN, LIOFILCHEM DOES NOT MAKE AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, REPRESENTATIONS, TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES

OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, COMPLETENESS, COMPLIANCE WITH LAW, ADEQUACY AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR WARRANTY ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE PRACTICE. FURTHERMORE AND WITHOUT LIMITATION, LIOFILCHEM DOES NOT WARRANT THAT THE USE OF THE PRODUCTS WILL RESULT IN ANY PARTICULAR RESULTS. Customer is solely responsible for any and all acts or omissions taken or made in reliance on the Products or the information resulting therefrom, including inaccurate or incomplete information. Customer agrees that Liofilchem has made no agreements, representations or warranties other than those expressly set forth in this Agreement, and that no future agreement, representation or warranty of Liofilchem with regard to Services provided under this agreement shall be effective unless expressly stated in an amendment to this Agreement signed by both parties.

**Product Returns.** Except as otherwise provided with respect to the provisions to meet specifications during the inspection period and during the warranty period, Customer shall not be permitted to return any Products without obtaining (i) prior written approval from Liofilchem to return such products and (ii) a returned-goods authorization (RGA) number issued by Liofilchem. Upon receipt by Liofilchem of Products returned by Customer under RGA, Customer will be credited at Customer's purchase price, less a 25% restocking fee. Returns must be received by Liofilchem in original condition. Liofilchem cannot accept returns of certain regulated, hazmat or frozen items. If a RGA number is issued by Liofilchem, Customer shall have 7 business days from the date of delivery to return items. Refrigerated and frozen returns must be shipped by overnight delivery.

**Limitation of Liability.** CUSTOMER ACKNOWLEDGES AND AGREES THAT THE FEES AND OTHER CHARGES WHICH LIOFILCHEM IS CHARGING UNDER THIS AGREEMENT DO NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY LIOFILCHEM OF THE RISK OF CUSTOMER'S INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR OF UNLIMITED DIRECT DAMAGES. IN NO EVENT SHALL LIOFILCHEM'S TOTAL LIABILITY TO CUSTOMER FOR ANY CLAIM, DAMAGE INJURY OR LOSS ARISING OUT OF THIS AGREEMENT OR RELATED TO THE ORDER CONFIRMATION EXCEED THE AMOUNT CUSTOMER HAS ACTUALLY PAID TO LIOFILCHEM IN THE SPECIFIC ORDER CONFIRMATION GIVING RISE TO THE CLAIM. FURTHERMORE, IN NO EVENT SHALL LIOFILCHEM BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF ANTICIPATED PROFITS OR LOSS OF USE WHICH ARE IN ANY WAY RELATED TO THE ORDER, REGARDLESS OF HOW SUCH DAMAGES ARE CAUSED AND WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EVEN IF LIOFILCHEM HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. Notwithstanding anything to the contrary herein, Liofilchem's sole and exclusive liability and Customer's sole and exclusive remedy for all claims of defects in the Products will be, in Liofilchem's sole discretion, to either: (a) provide replacement Products; or (b) partially credit or refund the fees paid by Customer for such Products.

**Export Compliance.** Liofilchem sells Products to Customers for its internal use in US laboratories and not for resale to other customers. US law regulates the export, re-export or other transfer of the Products that are sold by Liofilchem. Any required US and non-US government authorization must be obtained prior to shipment, and diversion contrary to US and non-US law is prohibited. By ordering Products from Liofilchem, the Customer agrees to comply fully with all applicable export control laws and regulations of the United States and applicable foreign governments, and expressly assumes responsibility for determining whether a subsequent transaction requires US and non-US government authorization and, if so, for obtaining such authorization before shipping or otherwise transferring Products to another party. Customer shall not knowingly use, resell or distribute any Liofilchem product directly or indirectly for the development, production or proliferation of weapons of mass destruction (nuclear, chemical, or biological) and/or for terrorist activities.

**Indemnification.** Customer will indemnify, defend and hold harmless Liofilchem, and its directors, officers, employees, agents and representatives from and against any and all losses, damages, demands, claims, costs, penalties, injuries, interest, or expenses (including without limitation reasonable attorney fees) ("Losses") arising out of or relating to: (i) the use or misuse of the goods, products, Services or any portion thereof; (ii) a breach or alleged breach by Customer of any representations, warranties, obligations or responsibilities contained in this Agreement; or (iii) Customer's violation of federal, state or local laws, rules or regulations.

**General.** Any notices or consents given by the parties shall be deemed validly given if delivered by hand, registered mail, or facsimile at the addresses given on the face of the Order Confirmation. The Agreement shall be construed in accordance with and governed by the laws of the State of Massachusetts. The parties agree that the application of the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement and is strictly excluded. The Parties irrevocably consent and submit to personal jurisdiction in the state and federal courts of Massachusetts for all matters arising under this Agreement. The Order Confirmation together with the Terms of Sale constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior communications, understandings, representations or agreements respecting these matters whether oral or written, collateral or otherwise. In the event of conflict between the terms on the face of the Order Confirmation, Terms of Sale, Liofilchem quote, Customer's order, the order of governance shall be: (i) the terms on the face of the Order Confirmation; (ii) Terms of Sale, (iii) Liofilchem quote; (iv) Customer order. If any part of the Order Confirmation shall be held to be invalid or unenforceable, the remainder of the Order Confirmation shall continue in full force and effect. The Order Confirmation does not create or imply a joint venture, partnership, principal-agent or employment relationship between the parties. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless agreed in writing and signed by Liofilchem and Customer. Liofilchem's failure to object to terms contained in any subsequent communication from Customer will not be a waiver or modification of the Terms of Sale. All orders are subject to acceptance in writing by an authorized representative of Liofilchem. Customer shall not assign, transfer or subcontract any of its rights, obligations or duties under the Order Confirmation without the written permission of Liofilchem, which permission shall not be unreasonably withheld. Liofilchem may subcontract its obligations hereunder but will remain responsible for such.