



## Purchase Order Terms and Conditions

- 1. ACCEPTANCE.** These terms and conditions, as written, (including the additional terms and conditions referenced in Paragraph 13 and, if applicable, the supplemental terms and conditions referenced in Paragraph 14), and where applicable, the terms of the Vendor Agreement to which these terms and conditions may be attached (the “Vendor Agreement”) shall govern the goods or services identified in the accompanying Buyer’s Purchase Order, which is incorporated herein by reference (the “PO”), and shall prevail over any terms and conditions that the Vendor purports to apply under any document issued by the Vendor, including without limitation a statement to the effect that such document(s) control in the event of an inconsistency with Buyer’s documents. Buyer’s offer as set forth in the PO is expressly made conditional on Vendor’s assent to the terms and conditions set forth in the Buyer’s documents. Vendor acknowledges and agrees that Buyer’s acceptance of the products and/or services provided by Vendor is made in reliance on Vendor’s acquiescence to Buyer’s terms and conditions. The PO shall be deemed to have been accepted on the earlier of (a) ten (10) days after Vendor’s receipt of the PO so long as there is no written notification of non-acceptance by the Vendor; (b) the shipment by Vendor of any ordered goods (or lots thereof); (c) the commencement of any ordered services; (d) the acceptance of any payment by Vendor; or (e) any other conduct by Vendor that recognizes the existence of a contract pertaining to the PO. These terms and conditions may not be modified without written consent of the La Jolla Institute for Allergy & Immunology (the “Buyer”).
- 2. CHANGES.** Buyer may make changes within the general scope of the PO by giving written notice to Vendor prior to shipment of goods or performance of services. If any such change causes an increase or decrease in the price of the PO or in the time required for its performance, Vendor shall promptly notify Buyer and assert its claim for adjustment within ten (10) days after the change is ordered, and an equitable adjustment shall be negotiated. No change by Vendor shall be allowed without written approval of Buyer.
- 3. DELIVERY OR PERFORMANCE.** Time is of the essence and the PO may be cancelled by Buyer if delivery is not made or services are not performed by the date specified on the PO (or, if no date is specified, within fifteen (15) days of the date of the PO or such later date as may be agreed upon in writing by the parties). No change in the scheduled delivery date or performance will be permitted without Buyer’s prior written consent. No acceptance of goods or services after the scheduled delivery date will waive Buyer’s rights with respect to such late delivery nor shall it be deemed a waiver of future compliance with the terms hereof. All goods shall be delivered DDP (Incoterms 2000) Buyer’s facility, provided that the risk of loss shall not shift to Buyer until such goods is accepted by Buyer.
- 4. HAZARDOUS MATERIAL PACKAGING, LABELING, AND SHIPPING.** Vendor shall package, label, transport, and ship hazardous material or items containing hazardous materials in accordance with all applicable Federal, state, and local laws and regulations, including but not limited to 49 CFR Parts 100-199, FAR 52.223.2 and DFARS 252.223-7001, the Explosive Safety Manual AFM 127-100 and Federal Aviation Regulations of the Department of Transportation: the Official Air Transport Restricted Articles Tariff; to furnish appropriate Material Safety Data Sheets in accordance with California Hazardous Substance Information and Training Act. Vendor, prior to each hazardous material shipment, shall notify Buyer of its nature and shipment date by such means of communications as will allow for proper preparation for acceptance of delivery by the carrier of the material and shall identify same on all shipping documents.
- 5. INSPECTION.** Buyer shall have a reasonable time (but not less than 30 days) after delivery to inspect the goods and services tendered by Vendor. Buyer at its option may reject all or any portion of such goods or services that do not in Buyer’s sole discretion comply in every respect with each and every term and condition of the PO or the warranty contained herein. Buyer may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. Items rejected shall be returned at Vendor’s expense, including transportation and handling charges, if any. If Buyer elects to accept nonconforming goods or services, Buyer, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate Buyer for the nonconformity. Any acceptance by Buyer, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.
- 6. INVOICES.** Vendor shall render itemized invoices for supplied products and/or service to Buyer no later than thirty (30) days after the shipment date. All invoices must reference Buyer’s PO number. Drafts will not be honored. Buyer will make payment of all undisputed amounts due to supplier within sixty (60) days after receipt of such invoice. Payment of an invoice does not constitute acceptance of the products or services pertaining thereto.
- 7. WARRANTY.** Vendor warrants that the goods and services set forth in the PO (a) are of merchantable quality and free from defects; (b) are fit for the particular needs and purposes of Buyer as may be communicated to Vendor; (c) comply with the highest warranties, representations, and options expressed by Vendor orally or in any written advertisement, correspondence or other document provided to or in the possession of Buyer; (d) comply with all applicable laws, codes and regulations; and (e) are free of claims by third parties, and can be used for its intended purpose without infringing patents, copyrights, trade secrets, or any other rights of third parties. These warranties are in addition to, and shall not be limited by, Vendor’s standard warranties. Inspection and acceptance of goods or services by Buyer or payment therefore, shall not constitute a waiver of these warranties.
- 8. ASSIGNMENT AND SUBCONTRACTING.** The PO or any rights, obligations, or monies due hereunder may not be assigned or otherwise transferred (as security for advances or otherwise) without Buyer’s prior written consent. Vendor shall not subcontract any portion of the PO or be required to recognize any subcontract without Buyer’s prior written consent.
- 9. TERMINATION FOR DEFAULT.** Buyer may terminate the PO or any part thereof by written notice if (i) Vendor fails to make deliveries or complete performance of service within the time specified or in accordance with agreed schedules or these terms and conditions (unless such failure is due to acts of God, strike or any other causes beyond Vendor’s control) and does not cure such failure within ten (10) days after written notice thereof; or, (ii) Vendor makes an assignment for the benefit of creditors, becomes insolvent, or is subject to proceedings under any law relating to bankruptcy, insolvency, or the relief of debtors. In the event of termination pursuant to this paragraph, Buyer shall not be liable to Vendor for any amount, and Vendor shall be liable to Buyer for any and all losses, damages, and expenses sustained by reason of the default and subsequent termination of the PO. If a determination is made that Buyer improperly terminated the PO pursuant to this paragraph, then such termination shall be deemed to have been for Buyer’s convenience pursuant to Paragraph 10.
- 10. CANCELLATION/TERMINATION FOR CONVENIENCE.** Prior to Vendor’s acceptance of the PO, Buyer shall have the right to revoke or withdraw the PO, in whole or in part, without liability to Buyer by giving written notice to Vendor. After Vendor’s acceptance of the PO, Buyer may terminate the PO, in whole or in part, for its convenience by written notice to Vendor. In the event of such termination, Vendor may

claim its reasonable costs incurred prior to the effective date of termination plus a reasonable allowance for profit, as may be agreed by the parties, provided, however, that the total sum payable upon termination shall not exceed the PO price, reduced by payments previously made. If it appears that Vendor would have sustained a loss on the entire order had it been completed, no profit shall be allowed. As to partially completed work or raw material included in Vendor's costs, Vendor shall hold the same for disposition in accordance with Buyer's instructions.

The rights and remedies of Buyer provided under this clause are in addition to any other rights and remedies provided by law or under the PO. The failure of Buyer to insist upon strict performance of any of the terms of the PO or to exercise any rights hereunder shall not be construed as a waiver of Buyer rights.

**11. INDEMNIFICATION.** The Vendor shall indemnify, defend, and hold harmless Buyer, its trustees, officers, employees, agents and representatives from and against any and all demands, claims, damages, liabilities, and expenses including, but not limited to, attorney's fees and costs, incurred by Buyer in connection with or arising out of (a) Vendor's performance or failure to perform under the PO, except where such liabilities are the result of the gross negligence of Buyer; (b) defective, unsafe or non-conforming goods or services provided by Vendor, or (c) a claim that Buyer's use of the goods or services provided by the Vendor, or the manufacture, import or sale of such goods or provision of such services, infringes any third party intellectual property right.

Additionally, if in the execution of this PO it becomes necessary for the Vendor, its agents, subcontractors or their employees to enter upon Buyer's premises, Vendor shall indemnify, defend, and hold harmless Buyer, its trustees, officers, employees, agents and representatives from and against any and all demands, claims, damages, liabilities, and expenses arising from or out of the presence or activity of Vendor's employees, agents, contractors or subcontractors while on Buyer's premises, including but not limited to Vendor's failure or the failure of Vendor's employees, agents, subcontractors or their employees to (i) observe Buyer's rules and regulations relating to traffic, safety, and fire precaution, or (ii) to abide by applicable laws, rules and regulations, and for any damage or injury otherwise caused by such individuals while on, entering, or leaving Buyer's laboratories or other areas of the premises.

**12. PROPRIETARY RIGHTS.** If the items to be supplied under this PO have been designed in accordance with specifications or data furnished or originated by Buyer, such items shall not be reproduced except with the approval of Buyer and all drawings, photographs, data and other written material or information supplied in connection therewith shall at all times remain the property of the Buyer and be returned promptly upon written request. If the services involve the modification or other use of Buyer's intellectual property or confidential information, any discoveries, inventions or improvements based on or relating to such intellectual property shall be the sole property of the Buyer. With respect to any copyrightable works that may be supplied or produced by Vendor under the PO, Vendor expressly agrees that such works are "works made for hire" within the meaning of the Copyright Act of 1976, 17 U.S.C. section 101 *et seq.*, as amended, and that Buyer is the sole owner of all rights in such works, including but not limited to all rights of copyright.

**13. ADDITIONAL TERMS.** In addition to these terms and conditions, Vendor shall comply with the applicable regulations set forth in Appendix A (available at [www.liai.org/purchasingterms.pdf](http://www.liai.org/purchasingterms.pdf)).

**14. SERVICE OR INSTALLATION OF WORK.** In the event the PO requires the performance of work or installation of goods by Vendor upon any property or project of Buyer, the Vendor shall comply with the terms and conditions set forth in Appendix B (available at [www.liai.org/purchasingterms.pdf](http://www.liai.org/purchasingterms.pdf)).

**15. INSURANCE.** Vendor must obtain such insurance, and provide to Buyer the Certificate(s) of Insurance, as set forth on Appendix C hereto, prior to delivery or performance of goods or services.

**16. PUBLICITY/ADVERTISING.** Vendor shall not make or issue any advertising or publicity material having or containing any reference to Buyer or any of its trustees, officers, employees or agents, without Buyer's written consent.

**17. GOVERNING LAW.** The PO and these terms and conditions shall be construed in accordance with the laws of the State of California. The United Nations Convention on the International Sale of Goods (the Vienna Convention) is deemed waived and shall not apply.

**18. ATTORNEYS' FEES.** In the event any party shall be required to commence any action of proceeding against the other party by reason of any breach or claimed breach of any provision of this Agreement, to commence any action or proceeding in any way connected with this Agreement, or, subject to Paragraph 20 hereof, to seek a judicial declaration of rights under the Agreement, each party agrees to bear its own attorneys fees and costs, whether or not the proceeding or action proceeds to judgment.

**19. LIMITATION ON LEGAL ACTION.** Vendor hereby agrees to limit all statutes of limitation on any claim or right the Vendor may bring under the PO to one (1) year if permitted by law, and otherwise to the minimum period possible by law.

**20. ARBITRATION.** All claims or disputes between or among the parties arising hereunder, which claims or disputes cannot be mutually resolved between the parties, shall be decided pursuant to the commercial rules of the American Arbitration Association ("AAA") then in effect. Written notice of the demand for arbitration shall be given by the party seeking arbitration within a reasonable period of time after the dispute has arisen. The dispute shall be heard by one (1) arbitrator mutually agreed by the parties, or if the parties so fail to agree within 15 business days, appointed by the AAA. The exclusive venue of the arbitration shall be the County of San Diego, California. The award rendered by the arbitrator shall be final and binding, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**21. COMPLIANCE WITH LAWS.** Vendor specifically agrees to comply with all applicable requirements of federal and state laws, rules, and regulations.

**22. PARTIAL INVALIDITY.** If any term of the Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the Agreements terms shall remain in full force and effect and shall not be affected.

**23. ENTIRE AGREEMENT.** The PO, the terms and conditions and the exhibits hereto, and the Vendor Agreement constitute the entire agreement between Buyer and Vendor. No other terms or conditions are binding on Buyer unless accepted by it in writing.

**24. INDEPENDENT CONTRACTORS.** Each party hereto is and will be deemed to be, an independent contractor, and not an agent or employee, of the other party.

**Appendix A**  
**To Buyer's Purchase Order Terms and Conditions**  
**Government Funding**

The Buyer receives support from public funding agencies such as the National Institute of Health, among other U. S. Government and State funding agencies, which require the Buyer's suppliers to agree to certain terms and conditions. Therefore, the Vendor hereby agrees to comply with all applicable laws, rules and regulations pertaining to the provision of goods or services under a federal or state grant, contract or sub-contract, including without limitation:

**1. Equal Employment Opportunity** - Vendor agrees to adhere to the nondiscrimination clauses contained in Section 202 of Executive Order 11246, as amended by Executive Order 11375, regarding equal employment opportunity for all persons without regard to race, color, religion, sex, national origin, handicap or veteran's status and the implementing rules and regulations prescribed by the Secretary of Labor, unless exempted. The EEO Clauses set forth in 41 CFR Chapters 60-1.4, 60-250.5, and 60-741.5 are hereby incorporated by reference. EO 13201 Employee Notice Clause set forth in 29 CFR 470 is hereby incorporated by reference.

**2. Debarment and Suspension (E.O. 12549 and 12689)** - No contract shall be made to parties listed on the General Service Non procurement Programs in accordance with E.O. 12549 and 21689, "Debarment and Suspension." By accepting this PO, Vendor certifies that neither it nor its principals have been debarred, suspended, or otherwise excluded from doing business with the federal government or declared ineligible under statutory or regulatory authority. Furthermore, if this PO is for the provision of goods or services in excess of \$100,000, Vendor shall provide Buyer with written certification that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal agency.

**3. Access to Records** In all negotiated procurement transactions exceeding \$25,000, OMB Circular A-110, .48(d) – requires that the recipient, the federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions. The Vendor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

<http://www.whitehouse.gov/omb/circulars/a110/a110.html#48>

**4. Rights to Inventions Made Under a Contract or Agreement** - Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency."

[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title37/37cfr401\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title37/37cfr401_main_02.tpl)

**5. Construction Contracts in excess of \$2,000**

**a) Copeland "Anti-Kickback" Act (29 CFR Part 3)** - Contractors or subrecipients are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work financed in whole or in part by the federal government, to give up any part of the compensation to which he is otherwise entitled. [http://www.dol.gov/dol/allcfr/ESA/Title\\_29/Part\\_3/toc.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_3/toc.htm)

**b) Davis-Bacon Act, as amended** – relates to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings. <http://www.dol.gov/esa/regs/statutes/whd/dbra.htm>

**6. Contracts in excess of \$100,000**

**a) Contract Work Hours and Safety Standards Act (40 USC §§ 3701-3708)** – requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. This Act also prohibits unsanitary, hazardous, or dangerous working conditions on federal and federally financed and assisted construction projects. <http://www.dol.gov/compliance/laws/comp-cwhssa.htm>

**b) Clean Air Act and the Federal Water Pollution Control Act, as amended** – promotes pollution prevention; requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 USC. 1251 et seq.). <http://www.epa.gov/air/caa/>

**c) Byrd Anti-Lobbying Amendment (31 USC § 1352)** – requires certification by a contractor that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award [http://www.law.cornell.edu/uscode/uscode31/usc\\_sec\\_31\\_00001352----000-.html](http://www.law.cornell.edu/uscode/uscode31/usc_sec_31_00001352----000-.html)

**Appendix B**  
**To Buyer's Purchase Order Terms and Conditions**  
**Service on Buyer's Premises or Property**

When work or services are performed under a Purchase Order (PO) on Buyer's premises, the Vendor shall abide by the following terms and conditions in addition to the terms and conditions set forth in the PO.

1. Vendor shall be solely liable for its employees, agents, contractors or subcontractors (hereafter referred to as "Vendor's personnel") and their actions while on Buyer's premises.
2. Vendor's personnel will be permitted access only to the immediate work area and nearest routes of ingress or egress from the building, as well as designated lavatory and eating facilities. Under no circumstances are unescorted Vendor's personnel permitted beyond these areas. Photographing or videotaping of Buyer's operations and facilities is prohibited.
3. Vendor shall take precautions to protect all persons from injury and all property from damage arising out of its work. It is Vendor's responsibility that Vendor's personnel abide by Buyer's fire, health and safety rules, and other applicable regulations of the governmental agencies listed below:
  - a. U.S. Environmental Protection Agency;
  - b. California Environmental Protection Agency;
  - c. San Diego County Air Pollution Control District;
  - d. U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) regulations, 29 CFR 1910 (General Industry) and 29 CFR 1926 (Construction Industry); and
  - e. California Occupational Safety & Health Administration (Cal/OSHA)

Technicians are required to read and understand the **LIAI Contractor Manual**. Additionally, Technicians are required to sign the **LIAI Contractor & Vendor Certification Form** before beginning work on the premises.

Questions concerning Buyer's fire, health, and safety rules or the applicability of the various federal, state, and local codes should be directed to the Environmental Health and Safety Department at 858.752.6500. Buyer has the right to exclude any of Vendor's personnel from the Buyer's premises who do not abide by such rules and regulations, and at Buyer's election, to declare a default under the PO.

**For emergency assistance (fire, medical assistance, spill, etc.), all Vendor's personnel are instructed to call telephone 858.752.6500 and report the following information:**

**Individual's name and company name**  
**Location of the emergency (floor, room number, area)**  
**Emergency condition**  
**Telephone extension being used**

**All injuries must be reported immediately to the Environmental Health and Safety Department at 858.752.6500.**

4. Vendor shall keep the premises and work free and clear of all mechanics and materialmen's liens or claims; Vendor shall promptly pay for all labor and material and if Vendor fails to do so, the Buyer may, without waiving any rights or remedies against Vendor for or by reason of such failure, but without any obligation to do so, pay the same and deduct the amount of such payments from sums due Vendor under the PO, and Buyer may withhold any payment to Vendor until receiving such affidavits, waivers, and releases with respect to claims for labor and materials as Buyer may require.
5. Vendor shall perform its work in accordance with the schedules and work programs established by Buyer and shall fully cooperate with Buyer and others engaged in work on the project so that the work on the entire project may be performed with the utmost speed, consistent with good practices that insure quality and safety. In case of conflict, Buyer may direct the necessary coordination of work schedules. Failure of Vendor to perform work in a timely manner that causes delay of project or impedes work of others shall be considered a material breach of contract. In the event of such breach Buyer may, without waiving other rights and remedies, cancel the PO and complete work itself or contract with others to complete the work and deduct all costs for completion from this contract.
6. Vendor shall carry on its work so that the premises shall at all times be clean, orderly and free from debris and upon completion shall remove all equipment and unused materials from the project; clean up all refuse and debris, and leave the site of the work clean, orderly and in good condition.
7. Vendor shall repair or replace for a period equal to the longer of (i) one (1) year from date of completion, or (ii) the time period provided under Vendor's warranty or by applicable law, any portion of material or workmanship that proves defective.
8. Vendor shall observe and comply with, to the extent required by Buyer, the wages, hours and working conditions established by the Buyer on the project or required of Buyer by an applicable labor agreement.

**Appendix C**  
**To Buyer's Purchase Order Terms and Conditions**  
**Insurance Requirements**

Prior to the Vendor commencing work under the Agreement, the Vendor must furnish Buyer with Certificates of Insurance as evidence of the following insurance requirements:

1) The Vendor, at its sole cost, will maintain during the performance of this Agreement policies of liability insurance issued by nationally reputable insurance companies which liability insurance will cover the Buyer against loss or liability caused by or connected with the performance of the Agreement by Vendor or Vendor's agents. When work or services are performed under a Purchase Order (PO) on Buyer's premises, the Vendor's insurance underwriter shall name the following as additional insured:

- i. Kyowa Hakko Kirin California, Inc.
- ii. La Jolla Institute for Allergy & Immunology

2) Vendor shall maintain insurance coverage for not less than the following limits:

2.1 Contracts for the purchase of goods or services:

- a. Workers' Compensation: Limits as specified by California statute
- b. Blanket contractual liability coverage, with no exclusions; and
- c. Products liability and completed operations coverage, which policy term shall extend for three (3) years beyond acceptance by the Buyer, with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

2.2 Contracts for the purchase of goods or services, when work or services are performed in whole or in part on Buyer's premises:

- a. Workers' Compensation: Limits as specified by California statute
- b. Employers' Liability: \$500,000 per accident, \$500,000 disease policy limit, per employee.
- c. Broad form Commercial General Liability (excluding automobile liability) with a minimum limit for bodily injury and property damage of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including:
  - i. blanket contractual liability coverage, with no exclusions;
  - ii. owner's and contractors protective liability;
  - iii. products liability and completed operations coverage, which policy term shall extend for three (3) years beyond acceptance by the Buyer;
  - iv. personal injury liability hazards with employee exclusion deleted; and
- e. Comprehensive Automobile Liability coverage of all owned, non-owned, or hired motor vehicles used to perform work or services under a PO, with limits of \$1,000,000 per accident for bodily injury coverage and \$1,000,000 per accident for property damage.

3) Nothing in these policies is to be construed as limiting the extent of the Vendor's responsibility to pay for damages resulting from the Vendor's operations under the PO.