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## EXERGEN TERMS AND CONDITIONS

1. Seller warrants the material purchased hereunder does not infringe any letters patent granted by the United States and any copyrights of third parties, and covenants and agrees to save harmless and protect Buyer, its successors, assigns, customers and users of its product against any claim or demand based upon such infringement, and after notice, to appear and defend at its own expense any suits at law or in equity arising therefrom.
2. The Buyer assumes no obligation for materials shipped in excess of the amount specified in purchase order. Over-shipment may be returned at Seller's expense.
3. No charge for packing, boxing, or cartage will be allowed unless specified.
4. Tools, dies, jigs, molds, engravings, plates, electros, and other similar devices paid for by Buyer and any other material furnished by Buyer on other than a charge basis, are to remain Buyer's property and are to be returned to Buyer on demand. Seller at no cost to Buyer will keep and maintain said property in good repair and any such property returned to Buyer will be in good productive condition and repair.
5. Where material is made according to engineering drawings furnished by Buyer, the design shall be considered as Buyer's and Seller is not to furnish to anyone else the same article or parts thereof without Buyer's written permission. Packing slips and any other paperwork must have Exergen's Purchase order number, Part number, and Revision on them. All individual material packaging be labeled with Exergen's part number and revision.
6. While any of the Buyer's property such as material, work in process, patterns, dies, equipment, etc. is in the Seller's possession, Seller agrees to carry insurance on said property against any of the insurable risks to which this property may be subjected, said insurance policy to be payable to the Buyer, as the Buyer's interests may appear. A certificate of insurance will be furnished upon request of the Buyer.
7. Any discount terms provided herein shall date from either the date of delivery at destination or the date of mailing of invoice, whichever is later.
8. Buyer reserves the right to suspend shipments of the materials covered by this order in the event of strikes, differences with workmen, accidents at Buyer's works, or other contingencies that are beyond Buyer's control.
9. The dates of delivery herein specified are of the essence of this contract. If deliveries are not made as specified, Buyer reserves the right to cancel this contract and place the order elsewhere.
10. Seller warrants, in addition to all warranties prescribed by law, that all goods furnished under this Purchase Order will be free from defects in material and workmanship, will conform to accepted samples or to Buyer's specifications or to both, and if ordered for a stated purpose will be fit for such purpose. Seller also warrants that, to the extent the goods are not manufactured pursuant to detailed specifications furnished by Buyer, they will be free from defects in design. Seller hereby indemnifies and shall save harmless the Buyer of and from any cost, claim, charge and expense or fee, including but not limited to attorneys' fees arising out of or in conjunction with the breach of any warranty.
11. Seller agrees to Notify Exergen for any of the following changes: Change of physical location/relocations, ISO Registration (update/or changes), Any Regulatory Audits (e.g. FDA) and organization changes in Quality Manufacturing or Operations.
12. Seller agrees to notify Exergen in advance for any significant process changes that affect the manufacturing or service of the product. Prior to shipping any of the affected parts the Seller will provide details explaining the changes and how it impacts the product. Exergen will be notified so that the parts may be evaluated to determine fit for use
13. Goods subject to Buyer's inspection prior to use, notwithstanding prior payments to obtain cash discounts.
14. If this order is for machinery, or equipment, special or otherwise:
  - (i) Initial testing of such items will be at Seller's factory and if requested be in the presence of Buyer's engineers; Seller will then supervise, at its expense, the installation and initial operation of such items at Buyer's plant; such items will be accepted only after all necessary corrective adjustments relating to mechanical operation, capacity, or any other matter, have been made by Seller, at its expense, and such items have been in satisfactory production use for at least 30 days, and Buyer will not be requested to make payment prior to such date.
  - (ii) Seller specifically warrants that for a reasonable period of time after being placed into regular production use, such items will, when operating under Buyer's production conditions, perform the purposes intended to be performed by such items in a manner consistent with Buyer's production and quality requirements.
  - (iii) Approval by Buyer of construction drawings or any other matter relating to design or construction of such items is merely advisory on Buyer's part and shall in no way relieve Seller of its warranties.

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15. Goods rejected on account of inferior quality or workmanship may be returned to Seller with charge for transportation both ways, Parts are only to be replaced upon receipt of an updated original purchase order or on a replacement purchase order issued by the Buyer.

16. Payment by the Buyer, for any of the materials covered by this purchase order, shall not constitute a waiver of any of the Buyer's rights under the terms of this Agreement, nor shall such payment terminate any of the Seller's warranties.

17. If the prices are higher than specified, do not ship and advise Buyer. If price is omitted, it is agreed that the material shall be billed at the price last quoted or paid, or the prevailing market price, whichever is lower.

18. The Buyer reserves the right to cancel this order for failure to comply with all instructions noted hereon.

19. If this order is for services to be performed on the premises of the Buyer:

(i) The contractor shall save the buyer harmless from any claim for damages or costs on account of injury or damage to person or property that may arise out of the performance of the contract. The contractor shall carry in his own name Workmen's Compensation and Occupational Disease coverages to protect himself against liability under the Workmen's Compensation and Occupation Disease laws of the state or states in which the work under this contract is being performed. The contractor shall carry in his own name public liability and property damage policies with limits for bodily injury of not less than \$100,000 for each person and \$300,000 for each occurrence, and not less than \$100,000 for property damage, providing coverage for his operations and contractual liability insurance to cover the assumed liability shown above.

All policies must be with good and acceptable companies and the contractor is to furnish the Buyer with certificates as evidence that such insurance is in force.

(ii) The contractor agrees at his own expense to submit plans, obtain permits, give required notices, arrange for required inspections and make tests, all to the extent required by applicable statutes, regulations and authorities having jurisdiction, and contractor agrees that, if required only licensed and bonded contractors will be used.

(iii) Contractor shall furnish Buyer with written proof of payment of all costs of labor, material and other charges that entered into the cost of work performed by contractor, which proof shall be in the form of waivers of lien or right of lien.

20. None of the terms and conditions contained in this Purchase Order may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Buyer.

21. Seller agrees and warrants that it has complied with all applicable Federal, State, and Local laws, rules and regulations and/or ordinances in the manufacture, sale, shipment or other performance with respect to the goods or services that are the subject of this Purchase Order. Such warranty by the Seller includes, but is not limited to, the Fair Labor Standards Act, Civil Rights Act. of 1964, Title VII, Executive Order 11246, as amended, and 11375, the Vietnam-Era Veterans Readjustment Act of 1972, as amended, the Rehabilitation Act of 1973, as amended, the Federal Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Occupational Safety and Health Act, the Explosive and Combustible Act of 1960, the Transportation Safety Act of 1974 and other applicable Federal, State or local laws, ordinances or regulations, and to all amendments to the mentioned acts.