

# NORAMCO INC., TERMS AND CONDITIONS OF SALE

rev. February 26, 2018

1. **Entire Agreement; No Exclusivity; No Further Obligations.** These Terms and Conditions of Sale (the "Terms") contain the entire and exclusive agreement between the parties regarding the sale of Product by Seller to Buyer to which these Terms relate. All terms and conditions contained in any prior or subsequent oral or written communication, including, without limitation, terms and conditions contained in Buyer's purchase order, which are different from or in addition to these Terms are hereby rejected and shall not be binding on Seller, and Seller hereby objects thereto. Shipment of Product shall constitute an offer to Buyer to sell the Product on these Terms and Buyer's acceptance of the Product shall constitute its acceptance of these Terms. No addition to, or alteration or modification of, these Terms shall be valid unless made in a writing signed by an authorized representative of each party.

This sale is non-exclusive and Seller and its affiliates may sell Product to, and Buyer and its affiliates may purchase Product from, any third party without penalty or other obligation to the other party arising from the purchase and sale of Product hereunder.

Other than the purchase and sale of the specific quantities of Product to which these Terms relate, neither party has any obligation to enter into any further supply arrangements or is under any obligation of any kind to buy from or sell to the other any further Product as a consequence of this sale.

2. **Payment; Taxes.** The price for Product is the price in effect on the date of shipment, unless otherwise agreed by the parties. Payment for the full amount of each invoice shall be made to Seller, addressed as indicated on an invoice, in United States currency. Payment shall be made within thirty (30) days from the date of invoice. All claims by Buyer shall be made by written notice to Seller in accordance with the provisions of Section 6 of these Terms, and no offset or deduction from any invoice is permitted. In case of any late payment by Buyer, Buyer shall pay to Noramco late payment interest on the amounts due and outstanding one and a half percent (1.5%), or the highest rate permissible under applicable law, from the due date plus 5 days grace period until the sum is fully paid. Noramco's right to claim any further damages shall remain reserved.

Acceptance by Seller of bank draft, check, or other media of payment is subject to immediate collection of the full face amount thereof. Payment shall be by bank draft, check or wire transfer with immediately available funds unless arrangements have been made to pay by credit card or other method of payment. Upon making arrangements, credit cards may be used and shall be subject to a 2% service charge except for prepayment of bulk API purchases and reference standards.

In addition to the purchase price, Buyer shall pay Seller any and all governmental taxes, charges or duties of every kind (excluding any tax based upon Seller's net income or net worth) that Seller may be required to collect or pay upon sale, transfer or shipment of Product ("Tax"). In the event Seller is required to pay any Tax, Buyer shall reimburse Seller therefore.

3. **Breach; Termination.** If Buyer breaches these Terms or any other contractual obligation in favor of Seller, (a) Seller may choose to defer any or all further shipments or other performance hereunder and performance of any other contractual obligation in favor of Buyer until Buyer cures its breach, or (b) Seller may immediately terminate the sale to which these Terms relate if Buyer fails to cure such breach within ten (10) days after receipt of written notice from Seller describing such breach. In the event of a termination, all outstanding payment obligations or other indebtedness of Buyer to Seller shall be due and payable no later than fifteen (15) days after delivery of notice of termination. Acceptance by Seller of less than the full amount due shall not be a waiver of any of Seller's rights hereunder or applicable law.

Seller shall have no obligation to pay any rebate, issue any credit or make any other payment of any kind to Buyer unless Buyer is fully in compliance with its payment and other obligations hereunder and any other contractual obligation in favor of Seller. In addition, in the event that Buyer fails to make any payment when due, Seller shall have the right to offset any and all outstanding payment obligations or other indebtedness of Buyer to Seller against any outstanding payment obligations or other indebtedness that Seller or any of its affiliates may owe Buyer.

4. **Force Majeure.** Neither Seller nor Buyer shall be responsible for any delay or failure to make or take delivery of Product due to any cause beyond its reasonable control, including without limitation (a) fire, storm, flood, strike, lockout, accident, act of war or terrorism, riot, civil commotion, embargo, (b) any regulation, law, order or restriction of any governmental department, commission, board, bureau, agency, court, or other similar government instrumentality ("Governmental Authority"), or (c) inability of Seller to obtain any required raw material, energy source, equipment, labor or transportation, at prices and on terms Seller reasonably deems practicable from Seller's usual sources of supply. Neither party is subject to any liability to the other for failing to perform during the period such inability exists, other than the obligation to pay money. Prompt written notice of the occurrence of any force majeure shall be given to the other party. Without limiting the generality of the foregoing, under no circumstances shall Seller be obligated to purchase Product from a third party for delivery to Buyer in the event of a force majeure, nor shall Seller be liable for any differential in price if Buyer elects to obtain an alternate supply. Buyer may, within seven (7) days after receiving notice from Seller of force majeure, elect to cancel its agreement to purchase any delayed shipment. Quantities so affected may, at the option of either party, be eliminated from the sale to which these Terms relate without liability, but these Terms shall remain otherwise unaffected.

5. **Compliance with Laws; Responsibility.** Buyer shall comply with all applicable laws, statutes, ordinances and regulations of any Governmental Authority including, without limitation, the Foreign Corrupt Practices Act, ("Applicable Laws"). In addition, Buyer assumes full liability and responsibility for the transportation, delivery, unloading, discharge, storage, handling and use of the Product, following tender thereof to Buyer.

6. **Warranties; Inspection; Claims. SELLER WARRANTS THAT AT THE TIME OF DELIVERY (I) PRODUCT IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND SECURITY INTERESTS; AND (II) PRODUCT COMPLIES WITH SELLER'S PUBLISHED SPECIFICATIONS, EXCEPT AS SET FORTH ABOVE IN THIS ARTICLE 6. SELLER MAKES NO OTHER REPRESENTATION, WARRANTY OR GUARANTEE OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR MERCHANTABILITY AND ANY OTHER EXPRESS OR IMPLIED WARRANTIES PROVIDED BY APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO THOSE UNDER THE UCC AND THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**

**BUYER SHALL INSPECT THE PRODUCT SUPPLIED HEREUNDER IMMEDIATELY AFTER DELIVERY. EXCEPT WITH RESPECT TO CLAIMS FOR SHORTAGES (WHICH MUST BE RECEIVED BY SELLER IN WRITING WITHIN FORTY-EIGHT (48) HOURS AFTER DELIVERY OF PRODUCT), BUYER'S FAILURE TO GIVE NOTICE TO SELLER OF ANY CLAIM WITHIN THIRTY (30) DAYS AFTER THE DATE OF DELIVERY SHALL CONSTITUTE UNQUALIFIED ACCEPTANCE OF THE PRODUCT AND A WAIVER BY BUYER OF ALL CLAIMS WITH RESPECT THERETO. IF REQUESTED BY SELLER, BUYER SHALL RETURN THE NONCONFORMING PRODUCT TO SELLER STRICTLY IN ACCORDANCE WITH SELLER'S WRITTEN INSTRUCTIONS CONCERNING SHIPPING, HANDLING, INSURANCE, AND OTHER MATTERS AS TO WHICH SELLER ISSUES INSTRUCTIONS. FAILURE TO COMPLY WITH THESE PROVISIONS SHALL INVALIDATE ANY CLAIM BY BUYER FOR BREACH OF WARRANTY.**

7. **Intellectual Property.** All rights to and interests in Seller's and its affiliates' inventions, formulas, discoveries, methods, practices, procedures, engineering, designs, manufacturing information and other intellectual property including any improvements thereto (collectively, "IP") will remain solely with Seller and its affiliates and no right or interest therein is transferred or granted to Buyer. Buyer agrees that it does not acquire a license or any other right to Seller's or its affiliate's IP. Without limiting the foregoing, Seller and its affiliates expressly reserve all patent rights related to the Product, including but not limited to therapeutic uses in end products, drug delivery technology, or otherwise.

8. **Limitation of Liability. SELLER'S TOTAL LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ASSOCIATED WITH THE SALE TO WHICH THESE TERMS RELATE, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY IS EXPRESSLY LIMITED TO REPLACEMENT OF NONCONFORMING PRODUCT OR PAYMENT IN AN AMOUNT NOT TO EXCEED 200% OF THE PURCHASE PRICE OF THE PRODUCT FOR WHICH DAMAGES ARE CLAIMED, AT SELLER'S OPTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OTHER DAMAGES INCLUDING, WITHOUT LIMITATION, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. SUCH EXCLUDED INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES**

**INCLUDE LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF USE, OR ANY OTHER INDIRECT DAMAGE OR LOSS OF ANY KIND OR CHARACTER TO BUYER, ITS CUSTOMERS, OR OTHER PERSONS OR ENTITIES.**

9. **Indemnity.** Buyer shall defend, indemnify and hold harmless Seller from and against all claims, demands, causes of action, damages, losses, liabilities, costs, expenses (including reasonable attorneys' fees), penalties, and judgments (each, a "Claim") arising out of or related to (i) Buyer's (or others') processing, transportation, delivery, unloading, discharge, storage, handling, sale or use of any Product (or any product containing Product) following delivery to Buyer or (ii) Buyer's violation of any Applicable Laws.

10. **Quota; Interruption; Allocation.** Seller has submitted to Buyer a certificate of available Procurement Quota or a completed DEA (Drug Enforcement Administration) Form 222 for Product. Buyer acknowledges that the production and supply of Product is contingent upon DEA rules, orders, or directives, related to manufacturing quota for Product, that may limit or restrict the manufacture or supply of Product by Seller to its customers ("Manufacturing Quota Restrictions"). If Seller believes that a Manufacturing Quota Restriction is reasonably likely to result in a material reduction, suspension or delay in the delivery of Product to Buyer, Seller shall promptly consult with Buyer.

Buyer acknowledges that the day to day manufacturing operation of the facilities used by Seller to produce Product may be subject to interruptions, fluctuations, slow-downs, suspensions and reductions, due to a variety of reasons in the ordinary course of business or otherwise ("Manufacturing Interruptions")

Whether due to a Manufacturing Quota Restriction or a Manufacturing Interruption, Seller may allocate its available supply of Product among its customers, itself, and its affiliates on such basis as Seller deems fair and reasonable if Seller is unable, for any reason, to supply the quantities of Product contemplated by the sale of Product to which these Terms relate.

Seller shall not be held liable to Buyer for any loss, cost, damage, expense, inconvenience or any other consequences that may arise from any Manufacturing Interruption or Manufacturing Quota Restriction.

11. **Credit.** If at any time the financial responsibility of Buyer, or the credit risk involved, shall become unsatisfactory to Seller, Seller may require cash or satisfactory security prior to subsequent shipments or deliveries hereunder. The election by Seller to require such cash or security shall not affect the obligation of Buyer to take and pay for Product. Buyer agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in the collection of any sum payable by Buyer to Seller. Seller shall be entitled to interest on any overdue sum at the maximum rate allowed by applicable law.

12. **Title; Risk of Loss.** Title and risk of loss shall pass to Buyer upon delivery to Buyer's designated facility (FOB Destination - Freight Prepaid and Added). Seller reserves ownership until acceptance by Buyer of delivery of Product.

13. **Assignment; Survival.** Buyer shall not assign all or any portion of these Terms without Seller's prior written consent. These Terms shall bind and inure to the benefit of the successors and permitted assigns of the respective parties. In order that the parties may fully exercise their rights and perform their obligations hereunder, any provisions that are required to ensure such exercise or performance (including any obligation accrued as of the termination date) shall survive the termination of these Terms.

14. **Governing Law; Dispute Resolution.** These Terms shall be governed by the laws of the State of Delaware, USA, excluding its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended, shall not apply to these Terms. Any controversy or claim arising out of or relating to this sale, including any such controversy or claim relating to Product involving any affiliate of a party (a "Dispute"), shall first be submitted to mediation to be held in Wilmington, Delaware, according to the *Commercial Mediation Procedures of the American Arbitration Association ("AAA")* (see [www.adr.org](http://www.adr.org)). Such mediation shall be attended on behalf of each party for at least one session by a senior business person with authority to resolve the Dispute. Any period of limitations that would otherwise expire between the initiation of a mediation and its conclusion shall be extended until 20 days after the conclusion of the mediation. Any Dispute that cannot be resolved by mediation within 45 days of notice by one party to the other of the existence of a Dispute (unless the parties agree to extend that period) shall be resolved by binding, non-appealable arbitration before a single arbitrator appointed in accordance with the *Commercial Arbitration Rules of the AAA ("AAA Rules")*; see [www.adr.org](http://www.adr.org) and the Federal Arbitration Act, 9 U.S.C. §1 et seq.. The arbitration shall be conducted in Wilmington, Delaware.

The arbitrator shall decide the Dispute in accordance with the substantive law of Delaware. The arbitrator may not award special, indirect, incidental, punitive or consequential damages (including, but not limited to loss of profits or loss of opportunity), nor may the arbitrator apply any multiplier to any award of actual damages, except as may be required by statute. The award of the arbitrator shall be issued within 30 days after completion of the arbitration hearing, and such hearing shall, unless otherwise agreed to by both parties, be completed within 30 days after commencement. All discovery disputes shall be heard by the arbitrator, who may limit discovery in order to permit a timely commencement of the hearing. The arbitrator's award may be entered in any court of competent jurisdiction.

15. **Miscellaneous.** Failure of either party to exercise any right it has hereunder on one occasion shall not operate or be construed as a waiver by such party of its right to exercise the same right on another occasion or any other rights it has. Any amendment or supplement to, or waiver of, any provision of these Terms must be in a writing signed by the party against whom enforcement is sought. If any provision hereunder shall be adjudicated to be invalid or unenforceable, it is the parties' intent that the remaining provisions of these Terms will remain in full force and effect, and the affected provision or portion thereof will be deemed modified so that it is enforceable to the maximum extent permissible to reflect as closely as possible the intentions of the parties as evidenced from the provisions herein. The section headings used herein are intended for convenience of reference only and shall not be considered in interpreting these Terms. Nothing herein shall be construed as creating any direct or beneficial right in or on behalf of any third party.