

**Lifecore Biomedical, LLC
Supplier Terms & Conditions**

Table of Contents

Purpose 1
Scope..... 1
Responsibilities..... 1
Definitions..... 1
Equipment/Materials 1
Safety..... 1
Policy..... 1
References 3

Purpose

To define the Terms & Conditions for Lifecore Biomedical’s suppliers.

Scope

This document pertains to all suppliers or service providers of Lifecore Biomedical, LLC.

Responsibilities

Who	Responsibility
Lifecore Biomedical, LLC Supply Chain	Ensure that the Terms & Conditions are appropriate, and published revisions are up to date.
Lifecore Biomedical, LLC Suppliers	Ensure understanding of and compliance to the Terms & Conditions

Definitions

N/A

Equipment/Materials

N/A

Safety

N/A

Policy

This purchase order (the "Purchase Order") is issued upon and is subject to the following terms and conditions:

1. Definitions. Whenever used herein, the following terms shall have the following meaning:

"Seller" shall mean the seller identified on the face hereof;

"Buyer" shall mean Lifecore Biomedical, LLC. or any affiliate identified on the face hereof;

"Delivery Date" shall mean the delivery date stated on the face hereof and, for Services, shall mean the completion thereof and delivery To Buyer;

"Goods" shall mean the tangible personal property and other items, as well as any labor or services, in either case, or both (as the case may be) set forth on the face hereof.

Terms and conditions herein contained applicable to Goods shall also apply to Services (defined below);

"Services" shall mean any Goods which consist of labor or services, or both (as the case may be) set forth hereof. Terms and conditions contained herein applicable to Services apply only to such Services.

2. TAXES – Unless otherwise noted on this Purchase Order, Buyer is not exempt from Federal and Provincial sales tax, the Seller or Vendor of goods and/or services to the Buyer shall include the applicable sales tax in the price of all taxable items. The Seller shall be responsible for payment by itself and its subcontractors of all income taxes, sales and use taxes, franchise and personal property taxes, all employment taxes, contributions, and similar taxes or contributions imposed in connection with this Purchase Order. The Seller shall defend and indemnify the Buyer and hold the Buyer for all liability for such taxes and contributions and for all interest and penalties imposed or attempted to be imposed upon the Buyer on account of Seller's failure to pay and/or withhold such taxes and contributions.

3. ACCEPTANCE – This order, when accepted by the Seller, shall constitute the entire contract between the Buyer and Seller as agreed to and shall not be altered, amended, supplemented, or cancelled without the written approval of Buyer. Either the Seller's written acceptance of this order or the shipment of any confirming article and/or commencement of performance hereunder shall constitute acceptance of this contract. No contrary or additional terms or conditions shall apply.

4. CHANGE ORDER – The Buyer may by written Change Order, make any changes in the Purchase Order including additions to or deletions from the quantities ordered. The price specified in the Purchase Order shall be adjusted pro rata if the change is in quantity or by mutual agreement if the character or Goods are changed. No adjustment will be made in favor of the Seller with respect to Goods which are from the Seller's standard stock. No such Change Order of this Purchase Order shall relieve the Seller of its obligations as to any Goods that have been delivered. Any claim for adjustment must be asserted within (30) days from the date of Buyer's cancellation. The Buyer may from time to time, by written instructions or drawings issued to the Seller, make changes, issue additional instructions, require additional work, or direct the omission of work previously ordered. The provisions of this agreement shall apply to all such written modifications.

5. CANCELLATION – The Buyer reserves the right to cancel all or any part of the undelivered portion of this Purchase Order if the Seller does not make deliveries by the Delivery Date or as otherwise specified, or if the Seller breaches any of the terms hereof, including without limitation, the warranties of the Seller. Buyer may cancel the Purchase Order for its convenience, in whole or in part, at any time, in whole or in part, by written notice to Seller, including by facsimile or e-mail, or orally or by telephone so long as such cancellation orally or by telephone is promptly confirmed in writing by Buyer. No adjustment will be in favor of the Seller with respect to any goods which are the Seller's standard stock. No such termination of this agreement shall relieve the Seller of its obligations as to any Goods that have been delivered. Any claim for adjustment must be asserted within (30) days from the date of Buyer's cancellation.

6. CONFIRMATION, SHIPPING AND DELIVERY – Seller shall advise Buyer within 2 Business Days of receipt of Buyer's Purchase Order to confirm pricing and confirm if it is unable to deliver Goods in the quantities or on the dates specified in the Purchase Order. If in order to comply with Buyer's required Delivery Date, it becomes necessary for Seller to ship a more expensive way than specified in this Purchase Order, any increased transportation costs resulting therefrom shall be paid by Seller unless the reason for such rerouting or expedited handling has been caused by Buyer. Time is of the essence in this contract, and if delivery of items or rendering of services is not completed by the stated Delivery Date, Buyer reserves the right without liability, in addition to its other rights and remedies, to terminate this contract by notice effective when received by Seller as to Goods not yet delivered or Services not yet completed and to purchase, in its judgment, substitute Goods or Services elsewhere and charge Seller any loss incurred. Seller will plainly indicate Buyer's name, Buyer's issued purchase order number on all bills of lading, all Goods shipped pursuant to said Purchase Order and on all invoices and freight bills. Each shipment and invoice and all documentation must include a memorandum showing at a minimum, the Seller's name, contents of packages(s) or Services and Buyer's name and Purchase Order number. Partial shipments must be identified as such on shipping memorandum and invoices. Title and risk of loss of Goods shall pass to Buyer upon receipt at the Buyer's location or at the designated point specified by Buyer. Buyer's count will be accepted as final and conclusive on all shipments not accompanied by a packing slip list. Unless expressly provided for to the contrary on the face of this order, all shipments are to be made F.O.B. destination, and the Seller shall bear all the cost for cartage, boxing, or containers as required. Clean, functional, and appropriate weight bearing plastic pallets are required for all palletized deliveries.

7. ADDITIONS – No extra work, additions, or alterations will be paid for by Buyer unless performed pursuant to and in accordance with the written order of Buyer.

8. PAYMENT AND INVOICING – Net 45 days from receipt of invoice, or the date of completion of delivery of all items in a satisfactory condition whichever is later. Delay in receiving invoices or any other data required such as copies specified, or errors and omission on either, will be considered just cause for withholding payment without loss of cash discount privilege. All claims for money due or from Buyer shall be subject to deduction by Buyer for any setoff or counterclaim arising out of this or any other of Buyer's Purchase Orders with Seller. Seller shall invoice Buyer no more frequently than monthly for Goods sold to Buyer under this Purchase Order at the address indicated. Invoices must be mailed to Accounts Payable, 3515 Lyman Blvd., Chaska, MN. 55318 or emailed to: ap@Lifecore.com (unless otherwise specified) the day shipments are made. Individual invoices will be issued for each shipment and each order.

9. WARRANTIES-GOODS – Unless otherwise noted on this Purchase Order, the Seller hereby warrants to the Buyer that all equipment and/or services provided hereunder: (a) shall be merchantable, fit and safe for the purpose for which it is manufactured; (b) shall be new; (c) shall conform in all respects to the drawings, specifications and terms of this Purchase Order; and (d) shall be free from defects in design, materials and workmanship until the expiration of twelve (12) months after the date on which it was placed into service for the purpose for which it was purchased. If any item or any part thereof fails to meet the foregoing warranties and the Buyer so notifies the Seller within reasonable time after such failure, the Seller shall promptly correct such failure at its sole expense, including all shipping costs associated with such correction. Seller further warrants that it has good title to the Goods supplied and that they are free and clear from all liens and encumbrances. These warranties shall survive acceptance and payment by Buyer and shall be in limitation of any other or additional rights Buyer may have at law or in equity.

10. WARRANTIES-SERVICES – Seller represents and warrants that, with respect to all Services, it shall perform such Services in a professional, workmanlike manner, with the degree of skill and care that current, good and sound professional manner and in accordance with current, good and sound professional procedures, and so complete and deliver them to Buyer by the Delivery Date, unless otherwise set forth on the front hereof or Buyer in writing otherwise consents. Further, Seller represents and warrants that it shall perform and complete the Services and deliver them to Buyer in accordance with the specifications, including the Delivery Date, and such Services shall be correct and appropriate for the purposes contained in this Purchase Order, notified by the Buyer to Seller, or otherwise within Seller's knowledge. Seller represents and warrants that the performance of Services set forth in this Purchase Order will not conflict with, or be prohibited in any way by, any contract or statutory obligation to which Seller is bound.

11. OWNERSHIP OF INTELLECTUAL PROPERTY – To the extent the Services by Seller and its employees or contractors include the creation, development, modification or other activity pertaining to computer software or other patentable or copyrightable work, Seller acknowledges that Buyer owns such computer software, including but not limited to source codes, object code, software documentation and other patentable or copyrightable works, and all related intellectual property, all which for all purposes shall be deemed to have been created by Seller for or on behalf of Buyer as works made for hire. Neither Seller nor its employees or contractors shall have any right, title or interest in any such work, and Seller and its employees and contractors hereby assign any and all such rights in and any inventions and creative works to Buyer, free of all liens, encumbrances and claims of ownership or right to use by Seller and any third party. Upon Buyer's request, Seller and each of its employees and contractors performing such Services for Buyer shall execute all documentation requested by Company to further document and/or perfect such assignment and ownership by Buyer in and to such inventions and creative works.

12. INDEMNIFICATION – The Seller warrants that Goods and/or Services furnished under this Purchase Order do not infringe any patent, trademark, trade dress, trade name, copyright, intellectual property rights, and agrees to indemnify and save harmless the Buyer and its officers, employees or agents from any and all claims, suits, liabilities, damages, losses or costs incurred by Buyer or any person(s) on account of the use or sale of such Goods and/or Services by the Buyer or its officers, employees or agents in violation of any such rights. Seller shall defend, indemnify and hold harmless Buyer against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from defects in the Goods or Services purchased hereunder, or from any act of Seller, its agents, employees or subcontractors. The Seller agrees to indemnify and hold the Buyer harmless against all claims, demand, actions, costs and damages for injury or damage to persons or property arising out of relating to the Seller's performance of this Purchase Order. Buyer's rights to be indemnified and held harmless by Seller shall be in addition to the warranty obligations of Seller and to any or additional rights Buyer may have at law or in equity.

13. MATERIAL SAFETY DATA SHEETS – Seller shall provide Buyer with a complete and accurate Material Safety Data Sheet for each of the Goods sold hereunder and shall label each of the Goods as required by applicable law, regulation or standard. Seller's failure to supply such Material Safety Data Sheet or to do so label the Goods shall be deemed to constitute Seller's express warranty, representation and covenant that each of the Goods sold hereunder is exempt from such law, regulation or standard.

14. GOVERNING LAW – This Purchase Order shall be interpreted and enforced under the internal laws of the State of Minnesota without regard to conflicts of law provisions of any jurisdiction.

15. EXPEDITING AND INSPECTION – At the discretion of the Buyer, this Purchase Order shall be subject to physical inspection and the right to witness all tests by the Seller involved in performance of the Purchase Order. The Seller is liable for all transportation charges incurred as a result of the shipment to Buyer and the return of Goods rejected by Buyer because not in compliance with the specifications or other requirements of this Purchase Order. The Seller also agrees, upon reasonable notice from the Buyer, to allow the Buyer or duty appointed agents for the Buyer access to all facilities of the Seller and any subcontractors to the Seller that are involved in the production, manufacture, and storage of Goods and/or services sold to Buyer for purposes of inspection and verification of said facilities for the capability of producing quality goods and/or services.

16. ASSIGNMENT – Seller shall not delegate any duties nor assign any rights or claims under this Purchase Order, without the prior written consent of Buyer, and any such attempted delegation or assignment without Buyer's prior written consent shall be void.

17. DELAYS – Neither party shall be liable for delays or defaults in the performance of this contract due to strikes, fires, accidents or other causes beyond its reasonable control and without its fault or negligence.

18. INSURANCE – The Buyer requires the Seller, when any portion of this agreement is performed on the premises of the Buyer, to carry adequate worker's compensation, public liability, and property damage insurance. The Buyer shall not be liable for damages to, destruction of, or loss of any property of the Seller from any cause whatsoever. Upon request by Buyer, the Seller shall provide Certificate of Insurance evidencing the required insurances and providing the thirty (30) days written notice of cancellation to Buyer.

19. BANKRUPTCY – In the event of any proceedings in bankruptcy or insolvency by or against the Seller, or in the event of the appointment (with or without the Seller's consent) of an assignee for the benefit of creditors, or of a receiver, Buyer may cancel this order for default without liability.

20. NO CONSEQUENTIAL DAMAGES – In no event shall Buyer be liable for anticipated profits or for incidental, special or consequential damages arising from any cause whatsoever.

21. ENTIRE AGREEMENT – This agreement, including these *Additional Terms and Conditions*, the specifications and any supplemental terms and conditions incorporated by Buyer into an attachment hereto, specifically incorporated by reference herein, constitutes the sole and entire agreement between the parties. The Seller's quotation is incorporated in and made part hereof only to the extent of specifying the nature and description of the Goods ordered and only to the extent that such terms are consistent with terms hereof. No other terms and conditions shall be binding upon the Buyer unless accepted by it in writing. Any provision herein for delivery of Goods or the rendering of Services by installments shall not be construed as making the obligations of the Seller severable. Should any of the Terms and Conditions herein conflict, in whole or in part, with the Terms and Conditions of the Seller's quotation, confirmation, acceptance or other document, the provisions contained on the front of this Purchase Order and Terms and Conditions herein shall prevail.

References

N/A

