

# Terms and Conditions of Sale

Effective: 15 January 2016

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY

**1. Acceptance** - This Agreement contains the terms and conditions that apply to your ("you" or "Customer") purchase from Restek Corporation ("we," "us," "our," or "Seller") on orders for materials and services. By accepting delivery of the products described on the invoice, customer agrees to and accepts these terms and conditions. THESE TERMS AND CONDITIONS APPLY UNLESS THE CUSTOMER HAS SIGNED A SEPARATE PURCHASE AGREEMENT WITH RESTEK, IN WHICH CASE THE SEPARATE AGREEMENT SHALL GOVERN. These terms and conditions are subject to change without prior written notice at any time, at Restek's sole discretion.

These terms and conditions may NOT be altered, supplemented, or amended by the use of any other documents, including, but not limited to, any terms or conditions proposed by you or provided with your order. Any attempt to alter, supplement, or amend this document, or to enter an order for products or services that are subject to additional or altered terms and conditions, are hereby deemed to be material alterations and notice of objection to them is hereby given.

**2. Acceptance of Orders** - Orders are not binding upon Seller until accepted by Seller. As used in the terms and conditions, "acceptance" by Seller shall mean the actual shipment to Buyer of the order. No action by us prior to shipment will constitute acceptance. Seller reserves the right at any time after receipt of Buyer's order to accept or decline Buyer's order for any reason. Seller reserves the right at any time after receipt of Buyer's order, without prior notice to Buyer, to supply less than the quantity Buyer ordered of any item. Unless otherwise authorized by a separate agreement, Seller does not accept orders from dealers, exporters, wholesalers, or other customers who intend to resell the products offered by Seller.

**3. Changes** - Buyer may not cancel this order unless such cancellation is agreed to in writing by Seller. In such event, Seller will advise Buyer of the total charge for such cancellation, and Buyer agrees to pay such charges, including, but not limited to, storage and shipment costs, costs of producing nonstandard materials, costs of purchasing nonreturnable materials, cancellation costs imposed on Seller by its suppliers, and any other cost resulting from cancellation of this order by Buyer that is permitted by Seller.

**4. Risk of Loss** - When an order is placed, it will be shipped to an address designated by the Buyer as long as that shipping address is compliant with any shipping restrictions contained in these Terms. All risk of loss and title for all items purchased from Seller pass to Buyer upon delivery of the items to the carrier. You are responsible for filing any claims with carriers for damaged and/or lost shipments. Seller shall not be liable for any delays in delivery beyond the reasonable control of Seller including, but not limited to, delays caused by unavailability or shortages of product components from Seller's suppliers, natural disasters, acts of war, acts or omissions of Buyer, fire, strike, riot, governmental interference, unavailability or shortage of materials, labor, telecommunications, fuel, or power through normal commercial channels at customary and reasonable rates, failure or destruction of plant or equipment arising from any cause whatsoever, transportation failures, or computer-related transmission failures.

**5. Claims** - Immediately upon Buyer's receipt of any goods shipped hereunder, Buyer shall inspect the same and shall notify Seller in writing of any claims for shortages, defects, or damages and shall hold the goods for Seller's written instructions concerning disposition. If Buyer fails to notify Seller within ten (10) days after the goods have been received by Buyer, such goods shall conclusively be deemed to conform to the terms and conditions hereof and to have been irrevocably accepted by the Buyer.

Goods ordered in error will be subject to a 10% restocking charge, if return is approved by Seller.

**6. Payment** - Payment will be due net thirty (30) days from date of invoice. Where other payment terms are specified on the Order Acknowledgement or Invoice, payment shall be made in accordance with those terms and conditions. If Buyer's credit has not been established with Seller, terms may be payment in advance or C.O.D. Items are shipped by a fast/standard method unless otherwise specified, with shipping and handling charges and insurance prepaid added as a separate charge on your invoice. A 1.5% per month service charge is added to delinquent accounts. In the event that it becomes necessary for Seller to incur collection costs or institute a suit to collect any amount due and payable, Buyer agrees to pay such additional collection costs, charges, and expenses, including attorney's fees if the account is placed in the hands of an attorney or an agency for collection.

**7. Pricing** - Prices shown are in U.S. Dollars and are subject to change. Taxes, shipping, and handling charges are additional. Please call for current prices if you require this information prior to placing your order. Seller guarantees its written U.S. domestic quotes for 90 days. When placing an order, Buyer should please reference its quote number. If Buyer places an order by phone, Seller will confirm its current price at that time. Seller will attempt to provide accurate pricing and information. Seller does not warrant that any product, service, description, photograph, pricing, or other information is error-free. In the event of an error regarding pricing, Seller reserves the right to correct such error and revise Buyer's order accordingly if necessary (including charging the correct price) or to cancel the order and refund any amount charged. Buyer's sole remedy in the event of such error is to cancel its order and obtain a refund.

**8. WARRANTIES** - SELLER WARRANTS SELLER'S BRANDED PRODUCTS, EXCEPT THOSE SPECIFICALLY EXEMPTED, TO BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP FOR NINETY (90) DAY FROM THE DATE OF SHIPMENT. THIS WARRANTY IS LIMITED TO THE ORIGINAL PURCHASER OF THE PRODUCT AND IS NOT TRANSFERABLE.

DURING THE WARRANTY PERIOD, SELLER WILL, AT ITS OPTION, EITHER REPAIR OR REPLACE A DEFECTIVE PRODUCT, OR RETURN TO PURCHASER THE PRICE OF THE ITEM. THIS LIMITED WARRANTY DOES NOT EXTEND TO ANY PRODUCTS THAT HAVE BEEN DAMAGED AS A RESULT OF ACCIDENT, MISUSE, ABUSE, OR SERVICE OR MODIFICATION BY ANYONE.

EXCEPT AS EXPRESSLY SET FORTH ABOVE, NO OTHER WARRANTIES ARE EXPRESSED OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (WHICH ARE EACH HEREBY DISCLAIMED BY SELLER), AND SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED HEREIN. IN THE EVENT THE PRODUCT IS NOT FREE FROM DEFECT AS WARRANTED ABOVE, THE BUYER'S SOLE REMEDY SHALL BE AS PROVIDED ABOVE.

THIS WARRANTY SHALL NOT BE APPLICABLE TO THE EXTENT THAT ANY PROVISION OF THIS WARRANTY IS PROHIBITED BY ANY FEDERAL, STATE, OR MUNICIPAL LAW THAT CANNOT BE PREEMPTED. FOR PRODUCTS SUPPLIED BY, BUT NOT MANUFACTURED BY SELLER, THE WARRANTY IS LIMITED BY THE TERMS OF THE ORIGINAL MANUFACTURER'S WARRANTY.

**9. LIMITATION OF LIABILITY** - UNDER NO CIRCUMSTANCE SHALL SELLER, ITS PARENTS, SUBSIDIARIES, OR AFFILIATES, AND EACH OF THE FOREGOINGS' DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, COUNSEL, SUCCESSORS, AND ASSIGNS BE LIABLE FOR ANY DAMAGES OR INJURY WHETHER DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL THAT RESULTS FROM THIS AGREEMENT OR ANY INFORMATION, CONTENT, OR PRODUCTS OBTAINED FROM SELLER. THIS LIMITATION OF LIABILITY APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF SELLER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY. THE TOTAL LIABILITY OF SELLER TO BUYER FOR ALL LOSSES, DAMAGES, AND CAUSES OF ACTION (IN CONTRACT, TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OR OTHERWISE) WILL NOT BE GREATER THAN THE AMOUNT BUYER PAID FOR THE PRODUCTS OR SERVICES THAT GIVE RISE TO THE LIABILITY. BUYER MAY BRING NO CLAIM AGAINST SELLER MORE THAN ONE (1) YEAR AFTER THE ACTION AROSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THE LIABILITY OF SELLER IN SUCH JURISDICTION SHALL BE LIMITED TO THE EXTENT PERMITTED BY THE LAW THEREUNDER.

**10. Buyer's Use of Products** - Products provided by Seller are not intended for clinical use. Because Seller's products are not intended for clinical use, no claim or representation is made or intended for their clinical use. It is the user's responsibility to validate performance of the Seller's products for any particular use because the performance characteristics are not established. Seller assumes no responsibility if these products are misused in any way.

**11. Buyer's Representations and Indemnity** - Buyer represents and warrants that it shall use all products ordered herein in accordance with Paragraph 10, "Buyer's Use of Products," and that any such use of products will not violate any law or regulation. Buyer shall indemnify, defend, and hold harmless Seller and its parents, subsidiaries, or affiliates, and each of the foregoing's directors, officers, employees, agents, contractors, counsel, successors, and assigns from and against all liabilities, losses, and expenses, including counsel fees and disbursements, arising from the breach of any of these Terms and Conditions by Buyer.

**12. Returns** - No returns will be accepted without prior authorization and are subject to preapproval by Seller.

- If you have a problem with a product's function (e.g., won't perform properly, results do not match our literature, instructions are unclear), contact Technical Service. Call 1-800-356-1688 / 1-814-353-1300, ext. 4 or e-mail [support@restek.com](mailto:support@restek.com).
- If you have a problem with your order (e.g., wrong part or quantity, broken or damaged item, missing items), contact our Returns Coordinator. Call 1-800-356-1688 / 1-814-353-1300, ext. 2146 or e-mail [returns@restek.com](mailto:returns@restek.com).

This procedure will prevent delays and enable us to resolve the situation to your satisfaction. We are not liable for goods returned without authorization. Returns must be sent through a traceable carrier.

**13. Technical Assistance** - At Buyer's request, Seller may, at Seller's discretion, furnish technical assistance and information with respect to Seller's products. Seller makes no warranties of any kind or nature, express or implied, including any implied warranty of merchantability or fitness for any particular purpose, with respect to technical assistance or information provided by Seller or Seller's personnel. Any suggestions by Seller regarding use, selection, application, or suitability of the products shall not be construed as an express warranty unless specifically designated as such in writing signed by an officer or other authorized representative of Seller.

**14. Governing Law** - These Terms and Conditions and any contract by any Purchase Order or Order placed hereunder shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its choice of law rules. Subject to the provisions of section 17 below, jurisdiction to resolve any dispute regarding these Terms and Conditions and/or Purchase Order is exclusively and irrevocably held by the state and federal courts of the Commonwealth of Pennsylvania located in the County of Centre and the federal courts for the Middle District of PA. The parties hereby expressly exclude the applicability of the United Nations Convention for the International Sale of Goods if the same would otherwise apply hereto.

**15. Assignment** - Buyer shall not assign any rights or duties under these terms and contracts and the contract of sales without the written consent of Seller.

**16. Export Sales** - This Agreement is subject to United States export laws and regulations controlling the export, reexport, and resale of items including, but not limited to, commodities, software, or technology (collectively, "U.S. Export Controls"). These U.S. Export Controls include the United States Administration Act, the United States Department of Commerce Export Administration Regulations, the Arms Export Control Act, and the International Traffic in Arms Regulations. Customer agrees that it will not divert, use, export, or reexport such items contrary to U.S. Export Controls and/or any other provision of United States law. Customer expressly acknowledges and agrees that it will not export, reexport, or provide such items to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of countries subject to United States economic sanctions or embargoes may change from time to time. Customer also expressly acknowledges and agrees that it will not export, reexport, or provide such items to entities and persons that are ineligible under United States law to receive such items, including but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals, or on the United States Commerce Department's Denied Persons List, Entity List, or Unverified List. In addition, manufacturers' warranties for exported Products may vary or may be null and void for Products exported outside the United States.

**17. Arbitration** - Notwithstanding the provisions of section 14, any dispute, controversy, or claim arising out of or relating to this Agreement, or to a breach thereof, including its interpretation, performance, or termination, may, at Seller's sole discretion and election, be referred to and finally resolved by arbitration as provided in this section as follows. Such arbitration shall be conducted in English and in accordance with the rules of the International Chamber of Commerce, which shall administer the arbitration. The arbitration shall be conducted by an arbitrator mutually agreed upon by Seller and Buyer, or if they cannot agree on an arbitrator, the arbitrator shall be chosen by the president of the International Chamber of Commerce. Such arbitration, including the rendering of any award, shall take place in Philadelphia, Pennsylvania, and if such arbitration is elected by Seller shall be the exclusive forum for resolving such dispute, controversy, or claim. For the purposes of such arbitration, the provisions of this Agreement and all rights and obligations thereunder shall be governed and construed in accordance with the laws of Pennsylvania. In any such arbitration, the parties hereby expressly exclude the applicability of the United Nations Convention for the International Sale of Goods and the Limitations Periods stipulated therefor. The decision of the arbitrator shall be binding upon the parties hereto, and the expense of the arbitration, including, but not limited to, the award of attorneys' fees, shall be paid as the arbitrator determines. The decision of the arbitrator shall be executory, and judgment thereon may be entered by any court of competent jurisdiction.

**18. Recall Notices** - Recall Notices, if any, will be sent to the "Ship To" address on the invoice.

**19. Confidentiality** - Seller is committed to maintaining strict confidentiality. Seller does not disclose any information clearly marked as "proprietary" or "confidential" by Buyer to third parties unless such disclosure is required pursuant to a regulation, law, or court order or is necessary for Seller to fulfill Buyer's order. Likewise, Buyer will maintain in confidence all Seller information disclosed by Seller to it or otherwise acquired by Buyer.

**20. ENTIRE AGREEMENT** - This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes and terminates all other prior commitments, arrangements, or understandings, both oral and written, between the parties with respect thereto. This Agreement may not be modified or amended except by an instrument in writing executed by each of the parties.

**21. Miscellaneous** - Seller's failure to strictly enforce any term or condition of this order or to exercise any right arising hereunder shall not constitute a waiver of Seller's right to strictly enforce such terms or conditions or exercise such right hereafter. All rights and remedies under this Agreement are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity. Any waiver of a default by Buyer hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby. The paragraph headings herein are for convenience only and they form no part of the terms and conditions and shall not affect their interpretation. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, personal representatives, successors, and permitted assigns.