

Standard Terms and Conditions

The following terms and conditions apply to all Purchase Orders that reference and incorporate Standard Terms and Conditions. Please retain a copy for your files unless otherwise notified to the contrary. These terms and conditions do not take precedence over any existing Elan Nutrition Inc. ("Buyer") contract. Elan Nutrition requires a Purchase Order to be issued in order to commit to and pay for delivery of product and/or service. Invoices submitted to Elan Nutrition's Accounts Payable department without a Purchase Order number referenced will be returned to the seller unpaid. Please insist on obtaining a Purchase Order for any purchase made by Elan Nutrition prior to delivering goods or services.

1. **GENERAL INSTRUCTIONS.** Buyer's order number shall appear on all packages, invoices, shipping papers and all other documentation and correspondence relating to this order. Seller shall notify Buyer immediately if this order cannot be filled to Buyer's specifications. Seller shall submit original of all invoices, packing lists and bills of lading to Buyer. The shipper's name shall appear on Seller's invoice.
2. **GOODS COVERED.** The term "goods" includes all personal property and all services, including without limitation design, delivery, installation, inspection and testing, specifically described on this Purchase Order or required to be furnished with the goods ordered hereby.
3. **PAYMENT.** Discount or payment period terms will be computed from the date of acceptance by Buyer of confirming goods and receipt by Buyer of the latest of the following: (1) correct invoices, prepared in accordance with the terms herein, containing no discrepancies with any packing lists or the goods received; (2) formal acknowledgement of this Purchase Order by return to Buyer of the executed second copy; and (3) if and as required by Buyer, certified test reports of certificates of inspection or approval, letters of compliance, or manufacturer's literature (including recommended spare parts lists).
4. **MECHANIC'S LIENS.** Unless otherwise provided in this Purchase Order, seller shall provide and pay for all labor, materials, tools, supplies, services and equipment necessary to properly execute this Purchase Order and Buyer not obligated to make any payment until Buyer receives all receipts, releases, waivers and any other evidence required to establish that such has been paid for in full. Seller shall keep Buyer's premises free from and shall promptly discharge all liens, claims, security interests and encumbrances arising out of this Purchase Order. Seller waives all rights of mechanics' liens related to the goods against the property and premises of Buyer.
5. **PRICE.** Buyer shall not be billed at a price greater than on this Purchase Order unless authorized in writing by Buyers. Seller represents and warrants that (1) the price charged hereunder is the lowest price charged by Seller to competitors of Buyer for goods of like grade and quality and upon conditions similar to those specified herein and (2) such price complies with applicable government regulations in effect at the time of quotation, sale and delivery. Any price reductions made in the goods hereunder subsequent to placement but prior to payment thereof will be made available to Buyer. The price shall include proper packing, cartage and crating and shall include all customary loading and securing on the carrier at the shipping point.
6. **CHANGES.** Buyer may at any time change the drawings, design, specifications, or any other terms applicable to this Purchase Order, or temporarily suspend delivery or service schedules of any goods hereunder. If any such change shall result in delay or affect expense to Seller, Seller shall notify Buyer immediately and negotiate an equitable adjustment, provided, however, that Seller shall proceed diligently to supply the goods. Seller's warranties as to the

goods shall be deemed restated as to the goods as changed. Seller shall have no valid claim for equitable adjustment unless submitted to Buyer in writing within thirty (30) days from the date of any such change which claim shall include an estimate of expenses resulting from such change. Any amendments or modifications of this Purchase Order shall not be binding upon Buyer unless in writing and signed by Buyer.

7. DELIVERY. Unless otherwise stated on this Purchase Order, if goods are sold on an F.O.B. shipping point basis, Seller shall ship the goods freight collect with carrier designated by Buyer, but if such is prohibited by designated carrier, Seller shall ship the goods freight prepaid and invoice the freight charges separately against this Purchase Order number. Seller's invoice for freight charges shall include a copy of carrier's bill. If the goods are sold F.O.B. point of destination, Seller shall ship the goods freight prepaid at Seller's cost with a responsible carrier of Seller's choice. Seller shall maintain all delivery and shipping documents in the event proof of delivery is required. Buyer's count shall be accepted as final and conclusive on shipments not accompanied by Seller's itemized packing list. TIME IS OF THE ESSENCE HEREOF. Delivery of the goods must be at the time specified herein or in other written instruction issued by Buyer.
8. RESERVATION OF RIGHTS. Buyer may reject and return to Seller at Seller's expense and risk any nonconforming or defective goods, or excess or partial shipments. Buyer expressly reserves its right to inspect goods prior to payment and acceptance, but the making or failure to make any inspection of, or payment for the goods shall not impair such right nor constitute acceptance by Buyer, notwithstanding Buyer's opportunity to inspect the goods. If Buyer accepts nonconforming goods, the price thereto shall be appropriately adjusted downward.
9. WARRANTY. SELLER WARRANTS FULL, CLEAR AND UNRESTRICTED TITLE TO BUYER FOR ALL GOODS FURNISHED HEREUNDER FREE AND CLEAR OF ALL LIENS, RESTRICTIONS, RESERVATIONS, SECURITY INTERESTS, ENCUMBRANCES AND CLAIMS OF OTHERS, WHETHER OR NOT BUYER HAS KNOWLEDGE THEREOF. SELLER EXPRESSLY WARRANTS THAT THE GOODS HEREUNDER (1) SHALL BE NEW AND OF THE BEST GRADE OF THEIR RESPECTIVE KINDS, UNLESS OTHERWISE REQUESTED BY BUYER; (2) SHALL BE FREE FROM DEFECTS AND SHALL STRICTLY CONFORM TO THE REQUIREMENTS HEREUNDER AND APPLICABLE SPECIFICATIONS OF BUYER (3) NEITHER ACCEPTANCE NOR PAYMENT BY BUYER SHALL WAIVE ANY BREACH OF ANY WARRANTY. ALL WARRANTIES SHALL INURE TO BUYER, ITS PARENT COMPANY AND ANY AND ALL OF THEIR RESPECTIVE AFFILIATES, CUSTOMERS AND SUBSEQUENT OWNERS/USERS OF THE GOODS HEREUNDER OR OF THE END PRODUCTS OF WHICH THEY FORM A PART. BUYER SHALL NOTIFY SELLER WITHIN NINETY (90) DAYS AFTER ITS DISCOVERY OF ANY DEFECT, ERROR, OMISSION, PERFORMANCE DEFICIENCY OR BREACH OF WARRANTY AS THE GOODS. IF NINETY (90) DAYS ARE NOT REASONABLE UNDER THE CIRCUMSTANCES, THE TIME FOR NOTIFICATION SHALL BE EXTENDED ACCORDINGLY. IN SUCH EVENT WITHOUT VOIDING WARRANTIES SHALL BE CONSTRUED AS CONDITIONS AS WELL AS PROMISES AND SHALL NOT BE DEEMED TO BE EXCLUSIVE.
10. CONFIDENTIALITY. Performance under this Purchase Order may involve confidential or proprietary information. In accordance with Seller's obligations there under, seller shall forever maintain the confidentiality of all confidential information, shall take steps as may be reasonably necessary to prevent the disclosure of such information to third parties, shall use

such information solely for the limited purpose of performance of this Purchase Order and shall not, without the prior written consent of an authorized representative of Buyer, deliver, discuss, disclose, or otherwise communicate orally or in writing to any third party any such information, the fact that Buyer has submitted or executed this Purchase Order or any of the terms hereof. If Seller is required to execute a Confidentiality Agreement in connection with this Purchase Order the provision of such Agreement are incorporated herein by reference as if herein stated and shall govern in event of a conflict with any provision herein.

11. **TITLE AND RISK OF LOSS.** Unless otherwise stated on this Purchase Order, title to and risk of loss on all goods shipped hereunder shall pass to Buyer at the address designated on this Purchase Order when tendered as to enable Buyer to take delivery. Notwithstanding the foregoing, (1) risk of loss remains with Seller until cure or acceptance and (2) title reverts in Seller with respect to any rejection or refusal by Buyer to receive or retain the goods, or justified revocations of acceptance. Cost of all return shipments shall be borne by Seller.
12. **FOOD GUARANTEE.** Seller hereby warrants that all foods and substances for use in or for foods comprising each shipment or other delivery shall be, as of the date of shipment and delivery, neither adulterated nor misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act of 1938, as amended. The Federal Fair Packaging and Labeling Act of 1966, as amended, or any other federal, state, local, or municipal food or drug law, order, ordinance, rule or regulation, the adulterations and misbranding provisions of which are substantially the same as those found in such federal acts. Additionally, Seller warrants that the foods and all substances for use in or for foods comply with the Model State Weights and Measurement Law, as amended, the Model State Packaging and Labeling Regulation, as amended, and all other laws, orders, ordinances, rules or regulations which are substantially the same as such Model Law or regulation and all applicable hazardous and toxic substance laws, orders, ordinances, rules, and regulations.
13. **COMPLIANCE WITH LAWS.** Seller expressly warrants that the goods shall comply with all federal, state, municipal and local laws, ordinances, orders, rules, and regulations. Upon Buyer's request, Seller shall furnish Buyer with certificates of compliance with the same and any other information reasonably requested by Buyer to demonstrate compliance. Seller shall furnish Buyer with certificates of compliance with the same and any other information reasonably requested by Buyer to demonstrate compliance. Seller shall furnish Buyer with a material safety data sheet with each shipment, delivery, or provision to Buyer of a hazardous chemical or a "hazardous material" in strict compliance with the regulations promulgated under the Occupational and Safety and Health Act of 1970, as amended, and any and all state and local hazard communication, right-to-know, and similar or related laws and regulations. Seller shall comply with, without limitation, the Occupational Safety and Health Act of 1970, the provisions of Executive Order 11246 pertaining to non-discrimination in employment, the Rehabilitation Act of 1973 relating to employment of the handicapped, the Vietnam Era Veterans Readjustment Act of 1974, the American with Disabilities Act of 1990, Executive Order 11625 governing subcontracting opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals, all as amended, and the rules, standards, regulations and orders promulgated there under.
14. **CONSTRUCTION, ENGINEERING AND DESIGN SERVICES.** If this Purchase Order in whole or in part calls for the performance of construction, engineering services, including research and development work. Buyer will apply the general terms and conditions and or supplementary general conditions for the contract.

15. **TERMINATION.** Buyer shall have the right, without cause, to terminate all or any part of this Purchase Order at any time by notice to Seller. Upon receipt of such notice, Seller shall, unless notified otherwise, immediately discontinue the work, cease delivery and ordering of material, and make reasonable efforts to cancel existing orders, contracts and subcontracts upon terms satisfactory to Buyer, but shall continue to perform any work necessary to preserve and protect any work in progress, until relinquishing possession and control as provided in Buyer's notice of termination. Upon compliance thereto, Seller shall be compensated for its properly documented costs and incurred expenditures in connection hereto, together with a reasonable profit thereon, less payments and credits previously received by Seller from Buyer. Any claim for such costs and expenditures must be submitted to Buyer within sixty (60) days after the effective date of termination. Buyer shall also have the right to terminate this Purchase Order or any part hereof by notice to Seller, without any prejudice to any other rights or remedies Buyer may have and without any liability, Seller on account thereof, if (1) Seller fails to make delivery in accordance with the agreed delivery schedule or otherwise fails to comply with any other instruction, term, condition, covenant or warranty applicable to this Purchase Order (2) Seller fails to make progress so as to endanger performance of the Purchase Order; (3) Seller fails to pay its subcontractors in accordance with applicable agreements or generally fails to pay, or admits in writing its inability to pay, debts as they become due; (4) any proceedings are commenced by or against Seller in bankruptcy, or Seller takes advantage of any law for the benefits of creditors; (5) a receiver, trustee or other custodian is appointed with respect to assets of Seller; (6) an assignment for benefits of creditors is made or any dissolution or liquidation proceeding is commenced in respect of Seller; or (7) a violation or asserted violation is made by Seller of any federal, state, municipal, or local law, ordinance, order, rule or regulation (each, an "Event of Default"). At Buyer's request, Seller shall provide financial statements to Buyer, during the term of this Purchase Order for the purpose of determining Seller's financial responsibility. In the event of such termination and without prejudice to any other rights or remedies Buyer may have complete performance of this Purchase Order and Seller shall pay all additional cost incurred by Buyer. The provisions of paragraphs 3, 7, 8, 9, 10, 12, 15, 16, 20 and 22 shall survive termination of this Purchase Order.
16. **TAXES AND OTHER EXACTION'S.** Seller shall have exclusive liability for and shall pay all customs duties, taxes or other exactions on the manufacture or sale of the goods hereunder, or on any process or labor involved therein, except that which Buyer specifically agrees or is by law required to pay and for which Buyer is properly invoiced. Prices shall not include any taxes for which Seller can obtain or Buyer can furnish exemption.
17. **REMEDIES: WAIVER.** The remedies reserved to Buyer herein are cumulative, in addition to and not a limitation of any other or further remedies provided by law. In case of any breach by Seller, Buyer shall be entitled to, including but without limitation, damages for business interruption and loss of profits, revenues and business, and other incidental and consequential damages. No waiver of any term hereunder shall be deemed a waiver of any term hereunder nor shall such waiver constitute a continuing waiver unless expressly stated. No failure or delay by Buyer in exercising any right, power, or privilege shall operate as a waiver thereof nor shall any exercise thereof preclude further exercise of any right, power or privilege. Buyer may set off the amount of any or all of Buyer's claims against Seller against any amount due Seller.
18. **ASSIGNMENT.** The terms and conditions of this Purchase Order shall bind to any successors and assigns of Buyers and Seller. Neither this Purchase Order nor any rights or obligations hereunder may be assigned, delegated or otherwise transferred by Seller without the prior

written consent of an authorized representative of Buyer. Any attempted assignment or delegation without such consent shall be null and void. Buyer's consent to assignment shall not waive Buyer's right to recoupment and/or set off of claims arising out of this or any other transactions with Seller, its divisions, affiliates or subsidiaries, or to settle or to adjust matters with Seller without notice to such permitted successors and assigns.

19. **FORCE MAJEURE.** Buyer and Seller shall not be liable to the other for failing to perform hereunder if such failure is due to any act of God, labor dispute, fire or other cause so long as not caused by the negligence of such party and not within its reasonable control. Notwithstanding the foregoing, in the event that Seller is unable to perform for any such reason, Seller shall promptly notify Buyer of such inability and, at no additional cost to Buyer, shall immediately allocate production and deliveries of goods first to Buyer (as opposed to Seller's other customers), and take all reasonable steps to avoid or end such inability. In such event, Buyer shall have the right to continue the delivery dates until Seller is able to perform, have all or a part of the work performed by third parties or terminate this Purchase Order, in whole or in part, without liability or obligation whatsoever (except for amounts due and owing for conforming goods accepted by Buyer prior to delivery termination, Seller shall not be entitled to compensation under section 15 hereof.
20. **INDEMNITY.** Seller agrees to indemnify, to defend (with counsel selected by Buyer), and to hold harmless Buyer, its officers, directors, agents, representatives, employees, customers, subsequent users/owners of the goods or the end products of which they are a part and successors and assigns from and against any and all claims, losses, liabilities, causes of action and damages of any kind arising out of or in connection with, directly or indirectly, (1) an Event of Default hereunder, (2) defects in the goods, (3) breach or alleged breach of any of Seller's representations or warranties hereunder, (4) contamination of the substances for use in or for foods, if not as a result of handling buy Buyer, (5) infringement or alleged infringements of any foreign or United States patent, trade secret, trademark, copyright or proprietary right of any third part, in connection with the supply of goods, (6) the breach of the confidentiality undertakings hereunder or (7) any other act or mission of Seller, its employees, officers, directors, agents, representatives, assigns, contractors, or subcontractors or their respective employees, officers, directors, agents, representative or assigns. Seller shall afford Buyer the opportunity to participate in the defense, compromise or settlement thereof, with Buyer's counsel. The Seller's obligation hereunder shall not be limited to any amount or type of damages, compensation or benefits payable by Seller or any of its subcontractors under workers' or workmen's; compensation acts, disability benefit acts or other employee benefits acts. Without limiting the rights and remedies of Buyer, in the use, sale or other distribution of goods is enjoined or Buyer determines that such an injunction is reasonably likely, Buyer may require Seller at Seller's expense (w) to procure within thirty (30) days for Buyer the right to continue using, selling or distributing such goods (x) to modify such goods to become non-infringing, (y) to replace such goods with non-infringing but functionally equivalent goods or (z) to remove such goods and to refund the purchase price paid by Buyer for such goods.
21. **INSURANCE: SAFETY REQUIREMENTS.** While performing services hereunder, Seller shall carry and maintain comprehensive general public liability, including contractual liability, automotive bodily injury and property damage, workmen's compensation, employer's liability and occupational disease insurance with coverage and form satisfactory to Buyer. Prior commencement of any services to be performed hereunder, at Buyer's request, Seller shall deliver to Buyer certificates of such insurance which stipulate that not less than sixty (60) days notice shall be given to Buyer prior to termination or reduction of such goods.

22. **CONSTRUCTION AND LEGAL PROCEEDINGS.** This Purchase Order, except where expressly herein provided otherwise, shall be interpreted and construed in accordance with the Uniform Commercial Code and the laws of the State of Michigan without regard to principals of conflict of laws. The rights and obligations of Buyer and Seller under this Purchase Order shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods (1980). Each of Buyer and Seller irrevocably (1) agrees that any suit, action or other legal proceeding arising out of this Purchase Order shall be brought in the State Court of Michigan, in the United States District Court for the Western District of Michigan, (2) consents to the personal jurisdiction of such courts and (3) waives any objection to the laying of venue in such courts and any claim as to inconvenient forum. In the event of default of terms and conditions of this Purchase Order by Seller, Seller will pay and discharge all reasonable attorneys' fees incurred by Buyer in enforcing this Purchase Order.
23. **SEVERABILITY: NO AGENCY.** If any provision of this Purchase Order is determined to be invalid or unenforceable. Buyer may terminate this Purchase Order without further liability to Seller. In any event, such provisions, invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof.
24. **NOTICE.** All notices required or permitted hereunder shall be in writing, and shall be deemed to have been duly received when delivered by hand against receipt or when received if mailed by registered or certified mail with postage prepaid, to each party at its last known address. Notice of a change of address shall be effective only upon receipt.
25. **ENTIRE CONTRACT.** This Purchase Order shall become a binding contract between Seller and Buyer when either signs this Purchase Order and returns it to Buyer or ships or supplies the goods in compliance herewith. This Purchase Order includes all specifications, drawings, agreements, terms, conditions and other documents referred to herein and any documents or specifications referenced in exhibits or attachments, all of which are incorporated in this Purchase Order by reference as if the terms with herein stated. This Purchase Order constitutes the entire agreement between Buyer and Seller regarding the goods provided for hereunder and supersedes all prior and contemporaneous agreements and understandings whether oral or written between the parties with respect to the subject matter. If Seller discovers that any term of this Purchase Order conflicts with or violates any applicable law, order ordinance, rule or regulation, or any specifications in this Purchase Order is ambiguous or lacking, it is Seller's responsibility to give Buyer notice with respect thereto. Buyer's decision as to the governing requirement shall be final. If Seller proceeds without so notifying Buyer, Seller shall assume full responsibility and shall bear an appropriate amount of the attributable costs of correction.
26. **ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT 1-108.** These terms and conditions are covered by and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., except that nothing in this article modifies, limits, or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that Act.