

TERMS & CONDITIONS—PFÊNEX REAGENT PRODUCT SALES

The following terms and conditions (the "Terms and Conditions") shall apply to the sale of reagent proteins (the "Products") by Pfênex Inc. ("Seller") to the purchaser of Products pursuant to the attached purchase order ("Buyer").

1. Acceptance. ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THESE TERMS AND CONDITIONS. NO VARIATION OF THESE TERMS AND CONDITIONS SHALL BE BINDING UPON SELLER UNLESS AGREED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SELLER.

2. Changes. Orders arising hereunder may be changed or amended only by written agreement signed by both Buyer and Seller. Buyer may not cancel this order unless such cancellation is expressly 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 non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on Seller by its suppliers, and any other cost resulting from cancellation of this order by Buyer which is permitted by Seller.

3. Use Limitations. The Products are provided solely for research purposes. Buyer acknowledges that the Products have not been tested by Seller for safety and efficacy in food, drug, diagnostic, medical device, cosmetic, commercial or any other use. Buyer expressly represents and warrants to Seller that Buyer will properly test and use the Products. Buyer further represents and warrants that the Products are for its own internal use and will not be resold or otherwise provided for consideration to a third party. **BUYER ACKNOWLEDGES THAT THE PRODUCTS HAVE NOT BEEN APPROVED FOR HUMAN USE. BUYER AGREES NOT TO ADMINISTER ANY OF THE PRODUCTS TO HUMANS IN ANY MANNER OR FORM.** Buyer agrees to comply with all laws and governmental rules and regulations that are applicable to the Products or their use.

4. Limitation of Warranties and Liability. The Products are experimental in nature. As such, **SELLER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT.** In no event shall Seller be liable for any use by Buyer of the Products or any loss, claim, injury, damage or liability, of whatsoever kind of nature, which may arise from or in connection with this Agreement or the use, handling or storage of the Products. Buyer agrees to indemnify, defend, and hold harmless Seller, its officers, agents, and employees from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the use or disposition of the Products by Buyer, except to the extent resulting from the gross negligence or willful misconduct of Seller.

5. Patent Disclaimer. Seller does not warrant that the use or sale of the Products will not infringe the claims of any United States or other patents.

6. Remedies. Buyer's sole and exclusive remedy with respect to the Products that prove to be defective or nonconforming shall be replacement of the Products or refund at Seller's sole discretion. The remedies provided herein are Buyer's sole and exclusive remedies. **IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE APPLICABLE PRODUCTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL SELLER BE LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, MULTIPLE, CONSEQUENTIAL, OR SPECIAL DAMAGES SUSTAINED BY BUYER OR ANY OTHER PERSON OR ENTITY, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT SELLER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

7. No Transfer of Intellectual Property Rights. These Terms and Conditions shall not be deemed to transfer, through ownership, license or other means, any rights in any intellectual property of Seller.

8. Shipping Terms. All sales are FCA Seller's shipping point unless otherwise noted. If Shipping and Handling Charges are quoted or invoiced, they will include charges in addition to actual freight costs. Delivery of the Products to the carrier at Seller's shipping point shall constitute delivery to Buyer and Buyer shall bear all risk of loss or damage in transit. The general method of shipment for the Products is listed in Seller's catalog. However, Seller reserves the right, in its discretion, to determine the exact method of shipment. Seller reserves the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of Buyer's obligations to accept remaining deliveries.

Immediately upon Buyer's receipt of the Products 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 Products for Seller's written instructions concerning disposition. If Buyer shall fail to so notify Seller within ten business days after the Products 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.

Seller shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Seller's reasonable control, including, without limitation, embargo or other governmental act, regulation affecting the conduct of Seller's business, fire, explosion, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, lightning, flood, windstorm or other acts of God, delay in transportation, or inability to obtain

necessary labor, fuel, materials, supplies or power at current prices.

9. Terms of Sale. Terms of sale are net 30 days of date of invoice, unless otherwise stated. If the financial condition of Buyer results in the insecurity of Seller, in its sole discretion, Seller may, without notice to Buyer, delay or postpone the delivery of the Products; and Seller, at its option, is authorized to change the terms of payment to payment in full or in part in advance of shipment of the entire undelivered balance of the Products. In the event of default by Buyer in the payment of the purchase price or otherwise, of this or any other order, Seller, at its option, without prejudice to any other of Seller's lawful remedies, may defer delivery, cancel this order, or sell any undelivered Products on hand for the account of Buyer. Buyer agrees to pay all costs, including, but not limited to, reasonable attorney and accounting fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof. A 1.5% monthly late charge will be added if payment is not received within 30 days after shipping. Make checks payable to: Pfēnex Inc.

Mail payments to: Pfēnex Inc.
5501 Oberlin Drive
San Diego, CA 92121

International Buyers please make payments in U.S. dollars by a check drawn from a U.S. bank, a money order, or a wire transfer. Please note that any bank or service charges will be charged back to the Buyer.

10. Taxes and other Charges. Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore; or, in lieu of such payment, Buyer shall provide Seller at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

11. Returns. The Products may not be returned for credit except with Seller's permission, and then only in strict compliance with Seller's return shipment instructions. Any returned items may be subject to a 20% processing fee and must be returned within 90 days of purchase.

12. Governing Law. These Terms and Conditions shall be governed by and interpreted in accordance with the laws of the State of California, U.S.A., excluding its conflict of law rules.

13. Miscellaneous. The parties agree that these Terms and Conditions, together with the Purchase Order and any other attachments hereto, contain the complete and exclusive agreement between Seller and Buyer regarding the purchase of the Products. These Terms and Conditions supersede all prior agreements and understandings between the parties hereto. No modification of or amendment to these Terms and Conditions, nor waiver of any right under these Terms and Conditions will be effective unless in writing signed

by an authorized representative of both parties. All rights and remedies under this order 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 these Terms and Conditions 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. These Terms and Conditions shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, successors and assigns.

14. Export Compliance. The Products may be subject to US export laws, rules, treaties, regulations, and international agreements. The Buyer assumes the responsibility of abiding by the US export laws, rules, treaties, regulations, and international agreements along with applicable foreign laws when transferring, selling, importing, exporting, re-exporting, deemed exporting, diverting, or otherwise disposing of such Products. Buyer represents it is not located in a sanctioned country nor is the Buyer an individual restricted by US export laws, rules, treaties, regulations, and international agreements.