



## **Purchase Order Terms and Conditions**

**General.** These terms and conditions and the purchase order accompanying or referencing these terms and conditions (collectively, the "Purchase Order") is an offer by ModernaTX, Inc. or an affiliated entity of ModernaTX, Inc. ("Buyer") to the seller listed on the Purchase Order ("Seller") and acceptance is limited to its provisions without additions, deletions, or other modifications. Buyer will not be responsible for any goods or services delivered that are not listed in Purchase Order.

**Acceptance.** This Purchase Order may be accepted by delivering the goods or services by the specified delivery date. This Purchase Order is limited to the terms and conditions: (i) specified herein; (ii) specified on the face of the accompanying Purchase Order; and (iii) if applicable, specified in a separate written agreement that has been duly executed by both Buyer and Seller and that specifically covers the supply of the goods or services referenced in the Purchase Order (collectively, the "Terms"). Seller agrees to comply fully with all such Terms. Acceptance of all or part of the goods or services shall not (i) waive Buyer's right to cancel or return all or any portion of the goods or services that do not conform to the Terms; (ii) bind Buyer to accept future shipments of goods or services; or (iii) preclude Buyer from making any claim for damages or breach of warranty. All purchases are subject to inspection and rejection by Buyer notwithstanding prior payment. Rejected goods will be returned at Seller's expense for transportation both ways and all related labor and packing costs. No goods returned as defective by Buyer shall be replaced by Seller without written permission of an authorized agent of Buyer. Buyer may at any time, by written order, make changes within the general scope of this Purchase Order in any one or more of the following: (a) drawings, designs or specifications; (b) method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this Purchase Order, Seller may request an adjustment in the price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly upon agreement by the parties.

**Pricing.** This Purchase Order must not be filled at a price higher than shown on the face of the Purchase Order. If no price is set forth on the front of the Purchase Order, the goods or services will be billed at the lowest of (i) the price last quoted and (ii) the same price charged by Seller to its most favored customers at the time of shipment of goods or provision of services of the same kind and quality taking into account quantity discounts. Such price is full consideration for the provisions of the goods or services, inclusive of all fees and charges. If Seller reduces its prices for such goods or services during the term of this Purchase Order, Seller shall correspondingly reduce the prices of goods or services sold thereafter to Buyer under this Purchase Order.

**Taxes.** Any tax, tariff or duty which is imposed upon Seller by any governmental authority and included by the Seller in the price shall be separately stated on Seller's invoice(s). To the extent Buyer notifies Seller that Buyer is a tax-exempt entity and provides Seller with its exemption certificate, Buyer agrees to exclude all taxes that are excludable under the Buyer's tax-exempt status.

**Invoices.** Seller shall issue a separate invoice for each separate shipment. Each invoice shall include: (i) the Purchase Order number; (ii) item number, (iii) description of goods or services, (iv) quantities, (v) unit prices, (vi) date(s) rendered and (vii) total purchase price. Undisputed amounts shall be paid within 60 days of receipt and acceptance of goods or services and a correct invoice unless otherwise agreed in writing by Buyer. Delays in receipt of goods or services, acceptance of goods or services, or a correct invoice will be just cause for Buyer to withhold payment without losing discount privileges. Cash discounts, if any, shall be computed as commencing with receipt of the invoice or goods or services, whichever is later. Invoices may be issued only for the good or services identified in the Purchase Order. In the event an invoice with conflicting terms is paid, these Terms shall govern and control. Provision of an invoice with the same or differing or additional terms as compared to this Purchase Order shall be considered acceptance of the terms herein, provided that any differing or additional terms will not apply. All invoices, must be sent electronically to the attention of "Accounts Payable" at the following address: [invoice@modernatx.com](mailto:invoice@modernatx.com) to be processed and released for payment.

**Packaging and Shipping.** All shipping containers shall be packed and packaged to: (i) ensure safe arrival to final destination; (ii) secure the lowest transportation costs; (iii) comply with requirements of common carriers; (iv) meet Buyer's written instructions; and (v) meet the requirements of all applicable laws, ordinances, rules and regulations. All shipping documents must be available on the outside of the box. All information regarding storage temperature conditions must have to be informed on Air Way Bill /Bill of Lading.

**Delivery.** Unless designated otherwise: (i) For Domestic Orders: all deliveries are DDP (Incoterms 2020) to the location designated on this Purchase Order. For both domestic and international orders, all risk of loss shall remain with Seller until goods and services have actually been received and accepted by Buyer at the applicable destination according to the Terms. The goods or services ordered must be received no later than, and no more than two business days prior to, the delivery date specified. Time is of the essence for this Purchase Order. The Seller or freight forwarder must schedule appointment and confirm number of pallets for

all shipments of palletized materials prior to delivery. Deliveries of palletized materials without scheduled appointment are at risk to be rejected by the Buyer. If Seller for any reason anticipates difficulty in complying with the required delivery date Seller will promptly notify the Buyer in writing. Deliveries must be performed by properly uniformed personnel. The original documents (with signature and stamp) should be delivered with the cargo to the freight forwarder. In case of wooden pallets, all must have a treatment stamp. Buyer may reject any deliveries that do not strictly conform to the Terms.

**Warranties.** Seller warrants that the goods or services delivered, the packaging, labeling and sorting thereof, any installation, repair, and maintenance of goods, and any other performance pursuant to this Purchase Order, will: (i) be free of infringement of property rights of third parties, including without limitation, any patent, trademark, trade name, copyright or right of publicity, or misappropriate any trade secret or violate any license or any other rights; (ii) be free from defects in material and workmanship, be of even kind and quality and run without variation; (iii) be of merchantable quality; (iv) be fit for the intended use of the Buyer, Buyer's customers and any other intended uses of such goods and shall be new and not refurbished; (v) be delivered free and clear of any lien, security interest, claim or encumbrance, and (vi) be of grade and performance in conformity with all specifications, blueprints, designs, drawings, samples, models, descriptions, instructions, and other items referred to in this Purchase Order. Seller also warrants that the goods or services to be delivered hereunder were produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938 as amended, including specifically Sections 206, 207, 212 and 215, and all regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. Seller shall maintain, solely at Seller's cost and expense, all licenses, permits, approvals, and the like necessary to conduct its business and perform its obligations under this Purchase Order. Buyer shall have the right, at its option, to reject or revoke acceptance of any goods and services which do not conform to these warranties or to the specifications. In case of such rejection or revocation of acceptance, transportation of the rejected goods, both to and from the Buyer, shall be at the expense of Seller. Such rejected goods are not to be replaced except upon specific instruction from the Buyer, and the Buyer shall have the right at its option to cancel the remainder, if any, of the Purchase Order, by notice to Seller at the time notice is given of rejection or revocation of acceptance. Seller shall be liable to the Buyer for all damages proximately caused by breach of any of the foregoing warranties, including incidental damages but excluding special or consequential damages, except with respect to breaches of confidentiality or any third party claims

**Inspection.** Buyer shall have the right to inspect and test the goods or services ordered at any time, including during the manufacture and construction, or preparation, notwithstanding any prior payment or inspection. Defective goods or services not in compliance with Buyer's drawings, specifications or standards may at any time be rejected even though such goods or services may have previously been inspected and accepted. Without limiting any rights it may have, Buyer at its sole option may require Seller, at Seller's expense to: (i) promptly repair or replace any or all rejected goods and/or services or (ii) refund the fees paid for any or all rejected goods and/or services. All such rejected goods will be held for Seller's prompt instruction and at Seller's risk. Rejected goods will be transported for return to Seller or destroyed at Seller's cost. Nothing contained herein shall relieve in any way Seller from the obligation of testing, inspection, and quality control. Payment for goods or services prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims Buyer may have against Seller or any other party

**Right to Cover.** If Seller repudiates this Purchase Order or fails to make delivery within the time specified herein, time being of the essence in connection with this Purchase Order (or, if no time of delivery has been specified, within a reasonable time after acceptance by Seller) or if Buyer rightfully rejects the goods or services or justifiably revokes acceptance thereof, then with respect to any and all goods or services involved, Buyer may pursue any remedy available including, without limitation, cancellation of this Purchase Order in whole or in part. In addition to recovering so much of the price as has been paid and irrespective of whether Buyer has cancelled this Purchase Order, Buyer may "cover" and have damages as to all goods and services affected whether or not they have been identified to this Purchase Order. Buyer may "cover" by making, in good faith and without unreasonable delay, any reasonable purchase of or contract to purchase goods or services in substitution for those due from Seller. Buyer shall recover from Seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages.

**Country of Origin.** Seller is responsible for determining the appropriate country of origin ("CO") for the products it supplies, manufactures or assembles for Buyer and for marking these Products in English in accordance with the requirements of any applicable regulations. Seller will cooperate fully with Buyer in supplying data to facilitate Buyer's origin reporting requirements and qualification for preferential origin programs such as USMCA, IFTA, FIMF, EXIM and the like.

**Limitation of Liability.** Buyer's liability to pay any amount to Seller for any reason shall not exceed the amount Buyer has agreed to pay Seller for the goods or services. BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY CONSEQUENTIAL, INCIDENTAL OR



SPECIAL DAMAGES OR COMMERCIAL LOSSES ARISING FROM THE PURCHASE OF GOODS AND/OR SERVICES REGARDLESS OF THE CAUSE OF ACTION OR THE FORM OF THE CLAIM FOR DAMAGES, AND EVEN IF BUYER IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

**Insurance.** Seller will carry, with financially sound and reputable insurers, insurance coverage (including worker's compensation at or above the applicable statutory limits, comprehensive liability and professional liability/errors and omissions coverage) with respect to the conduct of its business against loss from such risks and in such amounts as is customary for well-insured companies engaged in similar businesses and sufficient to support its obligations under this Purchase Order. Upon the request of Buyer, Seller will provide Buyer with a Certificate of Insurance evidencing such coverage and providing that thirty (30) days advance written notice will be given to Buyer of any material change or cancellation in coverage or limits.

**Assignment.** Seller shall not assign this Purchase Order or any rights, nor delegate any duties to any third party. Any attempt to do so will be void. This Purchase Order shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Each party is an independent contractor of the other party.

**Confidential Information.** Buyer's confidential and proprietary information includes, without limitation, its business plans; business strategies; marketing plans; industry and competitive information; technology, product and proposed product information; pricing and cost arrangements and agreements with Buyer, distributors, customers, suppliers, licensors and licensees; information relating to its customer base; information concerning employees and financial information. All such confidential and proprietary information shall (a) remain the property of Buyer, (b) be carefully preserved and maintained by Seller at its expense, and (c) be promptly returned to Buyer or satisfactorily accounted for upon completion of this Purchase Order or upon Buyer's written demand. Seller may not make any public statement or release concerning this Purchase Order or the transactions contemplated by this Agreement or use Buyer's in any form of advertising, promotion or publicity, without obtaining the prior written consent of Buyer.

**Force Majeure.** Failure of Buyer to take shipments of goods or receive services hereunder, if occasioned by fire, explosion, flood, war, accident, interruption of or delay in transportation, labor trouble, governmental regulation, or any other circumstances of like or different character beyond Buyer's reasonable control, or if occasioned by partial or complete suspension of operations at any of Buyer's offices or other business locations, shall not subject Buyer to any liability to Seller by reason thereof, but, at Buyer's option, the total quantity covered by this Purchase Order may be reduced by the extent of omitted shipments or services, or the specified delivery period may be extended by a time equal to that during which shipments or services shall be so omitted and such shipments shall then be made or services performed during the period of extension.

**Waiver.** A waiver of any term, condition or default of this Purchase Order shall not be construed as a waiver of any other term, condition, or default.

**Entire Agreement.** The Purchase Order represents the entire understanding between Buyer and Seller, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may be amended only by written mutual agreement of the parties. In the event of a conflict between the terms and conditions of this Purchase Order and any amendment thereto, the Purchase Order shall govern and control. Notwithstanding the foregoing, the provisions of this Purchase Order will not supersede any provisions of any other previously written agreement(s) that are currently in effect between the parties that govern the provision of the goods or services that are the subject of this Purchase Order.

**Governing Law.** This Purchase Order shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, excluding any conflict of law rules. All terms used in this Purchase Order, which are defined in the Uniform Commercial Code as adopted in the Commonwealth of Massachusetts, shall have the same meaning herein as such code. The state and federal courts of the Commonwealth of Massachusetts are the exclusive venue for any dispute related to or arising out of this Purchase Order, and Seller hereby submits to the exclusive jurisdiction of such courts. The Parties expressly reject any application to this Agreement of (a) the United Nations Convention on Contracts for the International Sale of Goods; and (b) the 1974 Convention on the Limitation Period in the International Sale of Goods, as amended by that certain Protocol, done at Vienna on April 11, 1980.

**Federal Acquisition Regulation Clauses Incorporated by Reference.** The following clauses from the Federal Acquisition Regulation ("FAR"), 48 C.F.R. Chapter 1, as applicable and as in effect on the date of this order, are incorporated by reference into this order. The full text of the below clauses is available at <http://www.acquisition.gov/far>. Unless the context requires otherwise, in the text of the below clauses the term "Contractor" means "Seller" and the terms "Contracting Officer" and "Government" mean "Buyer": (a) Contractor Code of Business Ethics and Conduct (FAR 52.203-13); (b) Utilization of Small Business Concerns (FAR 52.219-8); (c) Equal Opportunity (FAR 52.222-26); (d) Equal Opportunity for Veterans (FAR 52.222-35);



(e) Affirmative Action for Workers with Disabilities (FAR 52.222-36); (f) Notification of Employee Rights Under the National Labor Relations Act (FAR 52.222-40) (applies only if value of order exceeds \$10,000 and will be performed wholly or partially in the United States); and (g) Combating Trafficking in Persons (FAR 52.222-50).

**Global Trade Data Elements.** The following trade data elements must be available to be printed out for Buyer or be capable of being transferred electronically to Buyer on each commercial invoice prior to shipment of Products: Country of Origin; Import Country Harmonized Tariff Schedule (HTS) Classification for US, EU, UK and/or CH; Export Classification Number (i.e., ECCN) for US, EU, UK and/or CH, etc. export classification; License; Destination Control Statement; Buyer Part Number; and delivery date as specified on the Purchase Order. Seller shall inform Buyer of possible approval obligations with (re-)exports of its Products according to the US, Swiss, European, and export provisions of the country of origin of its Products

**Trade Control.** Buyer will comply with all export and import regulations, controls, sanctions, laws, and orders goods, services, technology, or technical data in all countries involved in transactions associated with this Purchase Order. Seller shall be responsible for obtaining all relevant official approvals, licenses, permits, supporting documentation and required authorizations as identified in the course of business and as appropriate based on jurisdiction

**Compliance with Laws.** Seller warrants to Buyer that the goods and services shall be provided, manufactured, shipped, stored, and otherwise handled in strict compliance with all applicable laws, codes, ordinances, regulations, executive orders, and industry standards. Seller makes all warranties contained in the Uniform Commercial Code. Without limiting the generality of the foregoing, the Buyer (i) will not do business with individuals and organizations on (a) watch lists of parties debarred from participating in international and domestic trade or (b) or debarred by the USFDA or any other regulatory authority, (ii) will comply with Executive Order 11246, as amended, including regulations related to elimination of Segregated Facilities (33 FED. REG. 7804), The Rehabilitation Act of 1973, as amended; The Vietnam-Era Veterans' Readjustment Assistance Act of 1974, as amended; Public law 95-507 pertaining to small business and small disadvantaged business; Executive Order 12138 pertaining to women-owned business; and Executive Order 13201 pertaining to employee rights concerning payment of Union dues or Fees. (iii) represents that neither it nor any of its directors, officers, employees or, to Parent's Knowledge, agents or any other Person acting on its behalf has directly or indirectly made any bribes, rebates, payoffs, influence payments, kickbacks, illegal payments, illegal political contributions, or other payments, in the form of cash, gifts, or otherwise, or taken any other action, in violation of Anti-Bribery Laws (including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010).

**Hold Harmless.** Seller agrees to defend, indemnify and hold harmless Buyer, officers, directors, shareholders, affiliated entity, employees, agents, representatives, successors and assigns ("Indemnitees") from all losses, liabilities, damages, and/or expenses which may be sustained or claimed against an Indemnitee: (i) arising out of defective goods or negligent services hereby ordered; (ii) arising from injury to Seller employees while in the course of providing goods or services to Buyer or affiliated entity; (iii) arising from Seller's use of automobiles, trucks, or heavy equipment; (iv) based on a claim that the goods or services supplied by Seller infringe a patent, copyright, or trademark or misappropriate a trade secret of a third party, or (v) based on or arising out of Seller's breach of any provision of this Purchase Order. Seller shall, at the request of Buyer or affiliated entity, defend any such claim, action or lawsuit. The indemnity under this paragraph shall survive delivery and acceptance of goods and services and termination or expiration of this Purchase Order and/or Buyer's written agreement with Seller, if applicable.

**Termination.** Buyer may terminate all or any part of this Purchase Order for convenience at any time by written notice to Seller. Upon such termination, the Buyer's liability will be limited to reasonable termination charges mutually agreed by Seller and Buyer, provided that Seller must specify any proposed charges in writing within fifteen (15) days after termination. This Purchase Order shall terminate automatically, without notice, if Seller becomes insolvent or the subject of any proceeding under the laws relating to bankruptcy or the relief of debtors. In the event of a breach of any agreement between the Buyer and Seller which cannot be cured (e.g., breach of confidentiality obligations, Buyer may terminate this or any agreement with immediate effect, at any time upon written notice to Seller.