

## **Colorado Therapeutics Terms and Conditions:**

**Payment Terms.** Payment terms are Net 30 days from invoice date unless otherwise expressly stated on invoice. Colorado Therapeutics may suspend sales of products to the Purchaser in the event that the Purchaser delays payment or fails to pay any sum owed by Purchaser to Colorado Therapeutics hereunder. Payments due to Colorado Therapeutics shall be made without any deduction or offset for any costs, expenses or credits of any kind. Purchaser shall be responsible for payment of all applicable state and/or local sales, use, and/or gross receipts tax receipts resulting from the transactions hereunder. Any invoice claims or disputes by Purchaser must be made in writing within 90 days of invoice date. Colorado Therapeutics will not make payments for, or investigate, any invoice claims or disputes which are made more than 90 days after invoice date.

Purchaser shall pay Colorado Therapeutics a service charge of 1.5% per month (18% per year) or, if lower, the highest amount allowed by law on all past due amounts. Additionally, Colorado Therapeutics reserves the right to require payment in advance of shipment. Non-payment or late payments of accounts is subject to additional fees to be borne by Purchaser, including but not limited to collection fees, legal fees, court costs, and processing fees.

**Shipping.** Shipping dates that Colorado Therapeutics may provide to the Purchaser are approximate only and are estimated from the date of receipt of order. Colorado Therapeutics shall use its reasonable commercial efforts to fill and ship accepted orders on or before the estimated shipping date, however Colorado Therapeutics will not be liable for any loss or damage associated with a delay or failure of shipment or delivery of Product for any reason. In any event, receipt of Product by Purchaser shall constitute acceptance and waiver of any and all claims due to delay.

Product is shipped FOB destination (freight prepaid by Colorado Therapeutics unless other arrangements are made), and the risk of loss on any Product shall pass to Purchaser when Purchaser receives the Product. Title to all Products shall pass to Purchaser upon receipt by the Purchaser.

**Shipping Terms/Risk of Loss. Inspection and Acceptance of Product at Delivery.** Purchaser shall be responsible for visually inspecting and counting all Product(s) received prior to acceptance of delivery from the carrier. Any exception must be noted on both the packing list accompanying the shipment and the carrier's freight bill or bill of lading and must be signed by Purchaser. The carrier should countersign the packing list and the carrier's freight bill or bill of lading. Purchaser shall notify Colorado Therapeutics' Purchaser Service Department of any delivery exceptions (e.g., shortage, damage, picking error, warehouse error, Purchaser error, overage, labeling error, and order entry error) within two business days of receipt of shipment for credit eligibility consideration in accordance with Colorado Therapeutics' Return Goods Policy. The failure of Purchaser to give any such notice within two business days of receipt of shipment shall constitute irrevocable acceptance of the Product(s) by Purchaser.

**Returns.** All returns must be authorized by Colorado Therapeutics and may be subject to a 20% restocking fee. Authorization may be obtained through the Purchaser Service department. A Return Goods Authorization number will be issued upon approval of the return and the number must be referenced on all returned packages. The following merchandise is not acceptable for return: (1) Sterile items that are returned without factory seals intact; (2) special order products; (3) incomplete cases or kits; (4) expired product unless managed through a separate sales or consignment agreement; (5) product which has been marked or labeled with anything other than the standard Colorado Therapeutics label. Colorado Therapeutics does not offer any resterilization or refurbishing services for any product.

**No Charge Product.** If this product is provided to Purchaser by Colorado Therapeutics at no charge for evaluation or demonstration purposes, Purchaser agrees to not bill any third party for the no-charge product, and if covered under a government reimbursement program, Purchaser will not seek reimbursement under the billing procedures applicable to the payment system and/or the no-charge product must be treated appropriately under the billing procedures applicable to the payment system. Unless purchased or consigned, any unused product at the end of an evaluation period must be destroyed or returned per Colorado Therapeutics' instructions. If the product was provided to Purchaser in replacement of previously purchased product, and if Purchaser has previously billed for and/or sought reimbursement

for the previously-furnished product, Purchaser may not bill third parties for the replacement product and the replacement product must be treated appropriately under the billing procedures applicable to the payment system.

**Safe Medical Devices Act.** If any of the Products purchased by Purchaser are medical devices, Purchaser acknowledges that it is familiar with the Safe Medical Devices Act of 1990 (the “Medical Devices Act”) and the reporting obligations imposed on device users thereunder. Purchaser will notify Colorado Therapeutics immediately of the occurrence of any event identified in the Medical Devices Act, which imposes a reporting obligation on Purchaser and/or Colorado Therapeutics. Purchaser will maintain adequate tracking for the Products to enable Colorado Therapeutics to meet FDA requirements applicable to the tracking of medical devices.

**Warranty.** Colorado Therapeutics warrants that, during the Warranty Period (as defined below), each of the products it manufactures, when stored and used in accordance with the directions on the labeling, conforms to the specifications set forth on such labeling. The foregoing warranty is void and of no effect if a product is not stored and used in accordance with its Information for Use. THERE ARE NO OTHER EXPRESSED OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COLORADO THERAPEUTICS’ SOLE OBLIGATION AND PURCHASER’S EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY SHALL BE, AT COLORADO THERAPEUTICS’ OPTION, TO REPAIR OR REPLACE THE PRODUCT. NEITHER COLORADO THERAPEUTICS NOR ANY OF ITS AFFILIATES SHALL BE LIABLE FOR ANY PROXIMATE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS OR THE PRODUCTS SOLD HEREUNDER, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Any warranty or liability is excluded where the warranty claim, in Colorado Therapeutics’ reasonable opinion, arises out of (1) accident, theft, misuse, or neglect; (2) use of the products outside of normal operating conditions, specifications, or environment or in a manner not authorized by Colorado Therapeutics; (3) failure to store Product as indicated in any Colorado Therapeutics’ operating instructions; (4) failure to use or take any proper precautions under the circumstances; (5) user modification of any Product; (6) defects, problems, or failures created by third party products (except those comprising parts or components of Colorado Therapeutics’ products) or their interface with Colorado Therapeutics’ products; (7) Force Majeure, and (8) latent defects discovered after the expiration of the Warranty Period. The “Warranty Period” shall mean the period of time from delivery of the Product until [3] months thereafter, provided that the Warranty Period shall be deemed to end at the point in time the Product’s inner sterile pouch is introduced into a non-sterile environment (including, without limitation, by introduction into a patient’s body) or otherwise altered from its original size.

**Intellectual Property.** Purchaser agrees that Purchaser will not attempt to “reverse engineer” or otherwise discover Colorado Therapeutics’ proprietary intellectual property, patentable, patented or non-patentable inventions, trade secrets or other confidential information contained in the Products (“Seller’s Proprietary Property”). Colorado Therapeutics does not by offer, sale or delivery of the Products to Purchaser grant or convey a license to Purchaser, expressly or by implication, with respect to Seller’s Proprietary Property. In addition, no manufacture to Purchaser’s specifications entails ownership by or conveyance to Purchaser of any property right in Seller’s Proprietary Property or any invention.

**Indemnification.** Purchaser agrees to indemnify, defend and hold harmless Colorado Therapeutics, its affiliates, agents and employees from and against all claims, liabilities, damages, losses, costs, expenses (including reasonable attorneys’ fees and court costs) that Colorado Therapeutics or such persons may suffer or be subject to as a result of any negligent or wrongful act or omission by Purchaser, its affiliates, agents or employees.

**Product Training.** As necessary to fulfill applicable regulatory requirements or otherwise assure the safe and effective use of the product, Colorado Therapeutics will provide training and education to Purchaser. Such training and education will be provided at no additional charge at Purchaser’s location or other appropriate venue

**Confidentiality.** Neither Purchaser nor Colorado Therapeutics shall disclose any of these Terms and Conditions to any third party or otherwise make such terms public, unless such party receives the prior written approval of the other party or such disclosure is required by law.

**Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, excluding its conflicts of law provisions.

**Compliance with Laws.** Purchaser shall comply with all federal, state and local laws, rules and regulations applicable to the purchase and use of the goods. In addition, Purchaser shall obtain all permits and licenses required by federal, state or local authorities in connection with any of the goods and shall bear all expenses in obtaining such permits and licenses or in complying with any related rules, regulations, ordinances and statutes. Products are subject to the export laws and regulations of the United States and other countries, and diversion or re-export contrary to, or any violation of, applicable export control laws and regulations is prohibited.

**Recall.** If Colorado Therapeutics is required by a regulatory agency to recall products, or Colorado Therapeutics voluntarily initiates a recall of products, Purchaser agrees to cooperate with and assist Colorado Therapeutics in locating and retrieving the recalled products. Purchaser shall promptly report to Colorado Therapeutics any complaints or other information regarding the products of which it becomes aware that could reasonably be expected to lead to recall or other regulatory action.

**General.** Neither party shall be liable to the other party in respect of any delay or failure to perform that results from any event or cause that is beyond the reasonable control of the party obligated to perform. Neither party's failure to insist upon the performance of any of these Terms and Conditions shall be construed as a waiver or relinquishment of such party's right to such performance or other future performance of such term or terms, and the other party's obligations with respect thereto shall continue in full force. Either party's consent to or approval of any act by the other party on any one occasion shall not be deemed a consent or approval of the same act on any subsequent occasion. None of these Terms and Conditions shall be deemed to be waived by either party or amended unless such waiver or amendment is written and signed by both parties and recites specifically that it is a waiver of, or amendment to, these Terms and Conditions. This contains the full and complete expression of the rights and obligations of the parties, and it shall cancel and supersede all other written or oral communications heretofore made by the parties (including their affiliates) related to the subject matter hereof. Colorado Therapeutics' acceptance of the underlying order from Purchaser is expressly made conditional on Purchaser's assent to the terms and conditions set forth herein.