



## **Purchase Order Terms and Conditions**

The following terms and conditions (“Terms and Conditions”) are deemed incorporated into and shall become part of each purchase order (each, an “Order”) issued by Lang Pharma Nutrition, Inc. (“Lang”) to the Person (as defined below) to which such Order is issued (“Vendor”).

1. **SCOPE OF AGREEMENT.** These Terms and Conditions apply to all Orders submitted by Lang to Vendor, in addition to any terms set forth on the face of an individual Order. Acceptance by Lang of any offer or confirmation from Vendor is expressly limited to the terms of the Order, including these Terms and Conditions, and Lang hereby objects to and shall not be bound by any additional or conflicting terms, whether printed or not, on any communication between Vendor and Lang, it being understood that these Terms and Conditions and the other terms set forth on the face of the Order shall prevail. Vendor’s electronic acceptance of any Order, or Vendor’s shipment, supply or commencement of performance, constitutes Vendor’s acceptance of the Order, including these Terms and Conditions.

2. **ORDERING AND DELIVERY.**

2.1 Lang shall submit written Orders to Vendor specifying the ingredients, components, materials, finished goods and other services and/or property (collectively, the “Products”) to be purchased, the quantities requested, the specified delivery dates (each a “Delivery Date”) and other details regarding Lang’s purchase of Products. The Order number shall be clearly indicated on all invoices, packages, bills of lading, packing slips and shipping orders or other documents relating to the shipment of Products. Vendor shall acknowledge receipt of each Order as promptly as possible and in no instance more than three (3) business days; provided, however, that Vendor shall be deemed to have accepted an Order if not rejected in writing within such three (3) business day period, with notice of rejection specifying the deficiency of such Order.

2.2 Time is of the essence in Vendor’s performance of its obligations under any Order. Vendor will immediately notify Lang if Vendor’s timely performance under an Order is delayed or is likely to be delayed. If Vendor delivers Products after the Delivery Date specified in the Order, Lang may reject such Products, and if Lang has reason to believe that Vendor will be unable to deliver Lang’s other outstanding Orders on a timely basis, Lang may, in its discretion, terminate all or part of such Orders. Lang’s acceptance of Vendor’s delay notice will not constitute Lang’s waiver of any of Vendor’s obligations or any rights of Lang.

2.3 Vendor agrees to reimburse Lang for all reasonable direct costs and expenses incurred by Lang or imposed on Lang by its customer (“Charges”) to the extent the Charges result from Vendor’s late delivery or delivery of Defective Product. As used herein, “Defective Product” is Product that does not conform to the requirements for such Product established in the Order, including but not limited to all quantity, specification, warranty, packaging and delivery requirements.

2.4 Each shipment must be accompanied by a Certificate of Analysis (“CofA”), when applicable, with a copy of each CofA sent contemporaneously to Vendor’s designated purchasing contact at Lang.

2.5 Vendor shall deliver all Products F.O.B. at Vendor’s facility, or at such other designated delivery point as may be agreed upon by Vendor and Lang. Title and risk of loss for all Product shall pass to Lang upon loading of such Product onto a carrier designated by Lang.

3. **PRICE AND PAYMENT.**

3.1 Unless otherwise specified in the Order, the price for the Products includes all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges. All amounts paid under the Order shall be in U.S. Dollars.

3.2 Unless otherwise mutually agreed by the parties in writing, payments by Lang for Products shall be made on the basis of 2% 10 / Net 30 from the later of the date the Products are delivered to Lang or the date Lang receives an undisputed invoice therefor.

3.3 Lang shall have the right to dispute invoices by notice to Vendor. For any invoices containing invoicing errors or pertaining to nonconforming goods, payment shall be due only with respect to the undisputed portion, until the invoicing errors are corrected and a new invoice, with respect to the incorrect portions on the original invoice or adjusting for the nonconforming goods, is received by Lang, in which case the remaining payment will be due thirty (30) days from the date Vendor provides the corrected invoice.

4. **INSPECTION AND REJECTION; REMEDIES FOR DEFECTIVE PRODUCT.**

4.1 Lang may reject any Product under an Order that, based on a visual inspection of the outer layer of packaging used for shipping, is reasonably determined by Lang to be Defective Product within ten (10) business days of Lang's receipt of such Order. Within thirty (30) business days of Lang becoming aware of any latent defect in Product or any other defect or failure of the Product to conform to the terms of an Order that is not discoverable by the aforesaid initial packaging inspection, Lang may reject any Product that is reasonably determined by Lang to be Defective Product. If the quantity of Defective Product in any Order is material, or if the remaining non-Defective Product in such Order is unusable, at Lang's option, the entire Order shall be deemed Defective Product and may be rejected. Lang shall give Vendor written notice of rejection within the applicable time period aforesaid.

4.2 As to any Defective Product, Lang may, at Lang's option and at Vendor's sole expense, (i) return the Defective Product to Vendor for a refund or credit; (ii) require Vendor to replace the Defective Product in a time frame as required by Lang on a case by case basis; or (iii) require that Vendor repair the Defective Product so that it meets the requirements of the Order. As an alternative to (i) through (iii), Lang in its sole discretion may accept the Defective Product conditioned on Vendor providing a refund or credit in an amount Lang reasonably determines to represent the diminished value of the Defective Product. Lang's payment to Vendor for Product prior to Lang's timely rejection of such Product as Defective Product will not be deemed acceptance by Lang or waive its rights hereunder.

5. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

5.1 Vendor represents and warrants that (i) it has the full power to enter into and perform its obligations under the Order; (ii) the Product, and Lang's use of the Product provided in accordance with the Order, do not and will not infringe upon any patent, copyright, trademark, trade secret or other intellectual property whether proprietary, contractual, or by statutory or common law, right of any third party; (iii) Vendor will not disclose to Lang, bring onto Lang's premises, or induce Lang to use any confidential or proprietary information that belongs to a Person other than Lang or Vendor unless Vendor makes Lang aware that such information is confidential information of such Person and Vendor is authorized to disclose the same to Lang without cost or expense to Lang; (iv) Product supplied under the Order: (a) shall strictly conform to all specifications or other descriptions in the Order or otherwise furnished to Vendor by Lang or, in the absence of such specification or description, in a manner so as to protect from loss or damage and in accordance with best commercial practices, (b) shall be shipped in accordance with Lang's delivery terms, and (c) shall be fit and serviceable for the purpose intended, as agreed to by Lang and Vendor; and (v) Vendor has good and marketable title to all Products including components thereof purchased by Lang pursuant to the Order, free from all liens and encumbrances and no licenses are required by Lang to use such Products.

5.2 Vendor warrants to Lang that all such Products delivered or caused to be delivered by Vendor to Lang as of the Delivery Date thereof (i) will have been formulated, manufactured, packaged, labeled, advertised, promoted, and

handled by Vendor in accordance with all other applicable requirements of federal, state, and local law, (ii) as to any Products subject to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq. (hereafter "FDC Act"), (a) will not be adulterated or misbranded within the meaning of the FDC Act and (b) will not be an unapproved new drug within the meaning of section 505 of the FDC Act, 21 U.S.C. § 355; and (iii) otherwise will not be an article that may not properly be introduced into commerce under the provisions of the FDC Act or any other applicable federal, state, or local law.

5.3 Vendor covenants that it shall not assign, transfer or subcontract any part of the Order without the prior written consent of Lang.

5.4 Lang may provide Vendor with Lang's Supply Chain Procedures and Best Practices, which may be amended from time to time. Vendor shall use its best efforts to comply with the terms thereof.

## 6. **CONFIDENTIAL INFORMATION AND PUBLICITY.**

6.1 **Confidential Information.** The term "Confidential Information" shall mean information of a confidential or proprietary nature provided by the disclosing party to the receiving party, whether directly or indirectly, orally, in writing, or by observation, in tangible or intangible form, and stored in any form or format (collectively, the "Confidential Information") including, without limitation any of the following information of any party, which the parties agree shall be deemed confidential for purposes of this Agreement: the fact that Vendor is or may be supplying Product for Lang and, indirectly, one or more Lang customers, and the terms of the business relationship between Lang and Vendor; purchasing habits and all identifying information of customers; technical data, formulations and formulas, test reports, product concepts, proposals and descriptions, product and/or packaging samples, processes, components, ingredients and packaging purchased, nutritional information, ingredient lists, volumes of components purchased, dollar value of components purchased, technique, specialized equipment, production capabilities, engineering, drawings, models, plans, designs or other information related to products or equipment; marketing and sales and organizational plans, trade secrets, know-how, data, programs, business plans, intellectual property, work-in-process, actively prospective business endeavors or relationships; and any other information designated as confidential or proprietary at the time of disclosure.

Confidential Information does not include any information that the receiving party can clearly demonstrate by written evidence (i) was, at the time of receipt by the receiving party, already in the possession of the receiving party and obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party and (ii) was, at the time of receipt by the receiving party, or at any time thereafter has become, part of the public domain, through no fault of the receiving party. A party may disclose Confidential Information if required pursuant to a duly authorized subpoena or order of a court or government authority, in which event the receiving party shall provide prompt written notice to the disclosing party prior to such disclosure, so that the disclosing party may seek a protective order or other appropriate remedy.

6.2 **Use and Return of Information.** Confidential Information disclosed by Lang to Vendor, or by Vendor to Lang, shall be maintained confidential and shall be used by the receiving party solely for the purpose set forth in this Agreement and for no other purpose without the prior written consent of an authorized officer of the disclosing party. No receiving party will sell, transfer, publish, disclose, nor use any Confidential Information for its own benefit or the benefit of a third party or otherwise use or make available any portion of the Confidential Information of the disclosing party to any third party, except to those of the receiving party's directors, officers, employees, members, or attorneys who clearly have a need-to-know the same, in furtherance of the specific purposes of any Order. All such disclosures shall be subject to all of the provisions of these Terms and Conditions, and the party making any such disclosure to its directors, officers, employees, members and/or attorneys shall be fully responsible for ensuring the compliance by all such parties with these Terms and Conditions. Each receiving party will, at the request of the disclosing party, return to the disclosing party all or any part of the Confidential Information the receiving party received from the disclosing party or, if directed in writing by the disclosing party, destroy all of the Confidential Information (and all documents incorporating any part of the Confidential Information) and provide to the disclosing party a certificate certifying to such destruction signed by an officer of the receiving party.

6.3 Vendor shall obtain Lang's written consent prior to any publication, presentation, advertising or promotion of a Lang product or a product of one or more of Lang's customers, any display of the Product at a trade show or public event, or any public announcement or press release concerning its relationship as a Vendor to Lang or Lang's customers.

## 7. **INDEMNIFICATION.**

7.1 As used in this Section 7, a "Claim" is any claim, demand, loss, damage, liability, cost or expense (including professional fees and costs incurred) for which one party (the "Indemnifying Party") may be obligated to defend, indemnify and hold the other party (the "Indemnified Party") harmless.

7.2 The Indemnified Party will provide the Indemnifying Party with prompt written notice of the Claim and permit the Indemnifying Party to control the defense, settlement, adjustment, or compromise of any Claim. The Indemnified Party may employ counsel at its own expense to assist it with respect to any Claim. The Indemnifying Party will have no authority to settle any Claim on the Indemnified Party's behalf.

7.3 Vendor shall defend, indemnify and hold Lang harmless from and against any and all Claims as incurred, arising out of or in connection with any (i) act or omission of Vendor (including its subcontractors) or (ii) any infringement of a third party's intellectual property or other rights, in each case in the performance of any Order and the supply of Product.

7.4 Lang shall indemnify and hold Vendor harmless from and against any and all Claims as incurred, arising out of or in connection with: (i) Vendor's use of information or materials provided to Vendor by Lang or (ii) infringement of a third party's intellectual property or any other rights resulting from Vendor's adherence to Lang's written instructions.

7.5 If a third party enjoins or interferes with Lang's use of any Product, then in addition to Vendor's obligations under Section 7.3, Vendor will use its best efforts to (i) obtain any licenses necessary to permit Lang to continue to use the Product; (ii) replace or modify the Product as necessary to permit Lang to continue to use the Product; or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to Lang the amount paid for any Product for which a third party enjoins or interferes with Lang's use of the Product.

7.6 Nothing in this Section shall limit any other remedy of the parties.

## 8. **LIMITATION OF LIABILITY.**

8.1 NOTWITHSTANDING ANYTHING ELSE IN THE ORDER OR OTHERWISE, LANG WILL NOT BE LIABLE TO VENDOR WITH RESPECT TO THE SUBJECT MATTER OF THE ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT LANG PAID TO VENDOR IN THE THREE MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.

8.2 IN NO EVENT WILL LANG BE LIABLE TO VENDOR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, AN ORDER, WHETHER OR NOT LANG WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

8.3 THE LIMITATIONS OF THIS SECTION 8 WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THE ORDER LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

9. **INSURANCE.** Vendor will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property, products liability coverage in amounts sufficient to protect Vendor and its business and in no event less than Five Million Dollars (\$5,000,000) in product liability coverage, listing Lang as an additional

insured. Vendor further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Vendor in the jurisdiction or jurisdictions in which Vendor's operations take place.

10. **COMPLIANCE WITH LAWS.** Vendor represents and warrants that it will comply with all applicable federal, state and local laws and regulations pertaining to its Products and to its performance of its obligations under the Order. Vendor's failure to comply with this provision shall constitute a material breach of the Order.

11. **FORCE MAJEURE.** Neither party will be liable for any failure to perform or for delay in performance resulting from any cause beyond its reasonable control, including acts of God, governmental orders, fires, floods or extreme weather, strikes or lockouts affecting third parties, embargoes, wars, hostilities or riots, or shortages in transportation (a "Force Majeure Event"). If the Force Majeure Event continues unabated for 90 days, then both parties shall meet to discuss and negotiate in good faith what modifications to any affected Order should result from such cause.

12. **SEVERABILITY.** If for any reason a court of competent jurisdiction finds any provision of these Terms and Conditions, or portion thereof, to be invalid, illegal or unenforceable, such provision shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of the provisions shall continue in full force and effect.

13. **WAIVER.** Any waiver of any covenant, condition, or agreement to be performed by a party hereunder shall (i) only be valid if the waiver is in writing and signed by an authorized representative of the party against which such waiver is sought to be enforced, and (ii) apply only to the specific covenant, condition or agreement to be performed and to the specific instance, and shall not constitute a continuing waiver.

14. **ATTORNEYS' FEES.** In the event that Lang incurs attorneys' fees or other costs to enforce performance of any obligation, agreement or covenant by the Vendor, or to establish damages for the breach of any obligation, agreement or covenant under these Terms and Conditions, or to obtain any other appropriate relief under these Terms and Conditions, whether by way of prosecution or defense, Vendor agrees to reimburse Lang immediately upon demand, Lang's reasonable attorneys' fees and costs, including any appellate fees and the costs, fees and expenses incurred to enforce or collect such judgment or award and any other relief granted.

15. **ASSIGNMENT.** Vendor shall not assign or otherwise transfer the Order or any part hereof or any rights, obligations, benefits or interest arising under an Order without Lang's prior written consent, which consent may be withheld by Lang in its absolute discretion. Any purported assignment by Vendor without Lang's prior written consent shall be void. The Order shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors and permitted assigns, as applicable. As used in these Terms and Conditions, the term "Person" means any natural person, sole proprietorship, partnership, corporation, limited liability company, trust, joint venture, governmental authority or incorporated or unincorporated entity or association of any nature.

16. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, excluding that body of laws known as conflicts of law. The United Nations Convention on Contracts for International Sales of Goods will not apply to this Agreement.

Lang – version dated 23<sup>rd</sup> July 2020