

Exelixis, Inc. ("Exelixis") Purchase Order Terms and Conditions

1. Offer and Contract. This Purchase Order ("Order") is Exelixis' offer to Seller and becomes a binding contract, subject to the terms and conditions hereof, when accepted by acknowledgement or commencement of performance by Seller. Any different or additional terms in Seller's quotation or acceptance of this offer are hereby objected to and rejected by Exelixis, unless approved by Exelixis in writing.
2. Changes. Exelixis may make changes to the Order at any time, in which event an equitable adjustment shall be made, if appropriate. Seller's written claim for such adjustment must be made within fifteen (15) days from the date of receipt by Seller of notice of the change. Substitutions or changes by Seller shall not be made without Exelixis' prior written approval.
3. Termination. Exelixis may terminate this Order, in whole or in part, at any time for any reason. As Seller's sole compensation for such termination, Seller shall be paid a reasonable termination charge consisting of a pro rata percentage of the Order price reflecting the percentage of work performed prior to notice of termination, plus actual costs resulting from termination. Seller shall not be paid for work performed or costs incurred after receipt of notice of termination, nor for costs incurred by Seller that Seller reasonably could have avoided. Exelixis may terminate this Order, in whole or in part, for cause if Seller defaults, fails to comply with any terms and conditions of the Order, or becomes insolvent or files for bankruptcy protection. Late delivery of goods or performance of services that are defective or do not conform to the Order shall, without limitation, be causes allowing Exelixis to terminate for cause. In the event Exelixis terminates for cause, Exelixis shall not be liable to Seller for any amounts but Seller shall be liable to Exelixis for all losses, damages, and expenses, including costs of cover, resulting from the default that caused termination. Upon any default or breach of this Order by Seller, Exelixis may require transfer to Exelixis of all materials, goods, work in process, completed supplies, tooling plans, and specifications.
4. Price. Seller shall give Exelixis the benefit of any price reduction or other discount available or in effect at the actual time of shipment. Seller warrants that the prices quoted in the Order are not greater than those currently charged any other customer for similar quantities of goods or services.
5. Payment. Unless otherwise stated on the face hereof, payment shall become due thirty (30) days from delivery of goods or services to Exelixis or thirty (30) days after Exelixis' receipt of Seller's duly approved invoice by Exelixis, whichever occurs last.
6. Delivery. Time is of the essence. Seller shall deliver strictly in accordance with the quantities and schedules set forth in this Order. If Seller fails to make deliveries in accordance with the terms of this Order and any Corporate Purchase Agreement referenced herein, Exelixis may, without liability and in addition to its other rights and remedies: terminate this Order in whole or in part; purchase substitute goods or services elsewhere and charge Seller for any additional expense incurred; or direct expedited routing of the goods by Seller and any increased costs due to expedited routing shall be paid by Seller. Unless otherwise specified herein, no deliveries shall be made in advance of Exelixis' delivery schedule. Acceptance of any part of this Order shall not bind Exelixis to accept any future shipments or deprive it of the right to return goods already accepted.
7. Over-Shipment. Over-shipment of goods not approved by Exelixis in writing shall be held at Seller's risk and expense for a reasonable time awaiting shipping instructions. Shipping charges for returns shall be at Seller's expense.
8. Title and Risk of Loss. Title passes to Exelixis upon delivery. Risk of loss shall pass to Exelixis in accordance with the Freight Terms listed on the applicable Order, except that Seller shall retain the risk of loss for goods which Exelixis does not accept or rejects.
9. WARRANTY. SELLER EXPRESSLY WARRANTS THAT ALL GOODS OR SERVICES DELIVERED HEREUNDER SHALL CONFORM STRICTLY TO THE DESIGNS, SPECIFICATIONS,

DRAWINGS, PERFORMANCE STANDARDS, SAMPLES, REQUIREMENTS OF THIS ORDER; OR OTHER DESCRIPTIONS FURNISHED BY OR SPECIFIED BY EXELIXIS; SHALL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP; BE MERCHANTABLE; AND, BE FIT AND SUFFICIENT FOR THE PURPOSES INTENDED. SUCH WARRANTIES SHALL SURVIVE ANY INSPECTION, DELIVERY, ACCEPTANCE, OR PAYMENT BY EXELIXIS OF, OR FOR, THE GOODS OR SERVICES, FOR A PERIOD OF TWELVE (12) MONTHS FOLLOWING DATE OF ACCEPTANCE OF GOODS, UNLESS OTHERWISE SPECIFIED HEREIN. SELLER WARRANTS THAT IT HAS CLEAR TITLE TO THE GOODS AND THAT THE GOODS AND SERVICES SHALL BE DELIVERED FREE OF LIENS OR ENCUMBRANCES. SELLER WARRANTS THAT ALL GOODS OR SERVICES UNDER THE ORDER SHALL COMPLY WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS.

10. Inspection and Testing. Goods or services purchased under this Order are subject to Exelixis' inspection and testing prior to acceptance. Payment for any goods or services provided under the Order shall not constitute acceptance thereof. Exelixis may reject any items that are, in Exelixis' sole judgment, non-conforming. Goods rejected may be returned at Seller's expense, including the costs of inspection and other related costs.

11. Title To Specifications, Confidentiality. Exelixis shall at all times own and have title to all designs, specifications, drawings, performance standards, samples or other descriptions furnished by Exelixis ("Material"). Seller shall, upon Exelixis' request, or upon completion of the work, promptly return all such Material to Exelixis. Seller shall not furnish or disclose, in any manner or to any other party, any Material supplied by Exelixis, without prior written consent from Exelixis. Seller agrees to maintain all such Material under secure conditions using at least the same level of security as Seller protects its own information, but in no event with less than reasonable care. Seller agrees that any goods manufactured using Exelixis' Material shall be sold only to Exelixis or Exelixis' designee.

12. Insurance. Seller shall carry workers' compensation as required by law and the following policies of insurance with minimum limits of \$1,000,000 for each occurrence: Employer's Liability, Products Liability, Comprehensive General Liability, including Seller's contractual liability under this Order, and Automobile Liability on all owned, non-owned, or hired vehicles. If this Order includes goods, Seller shall carry Products Liability insurance with minimum limits of \$1,000,000 for each occurrence. All of the above required insurance policies shall contain a waiver of subrogation against Exelixis, shall name Exelixis as an additional insured, and provide for thirty (30) days' notice of cancellation to be sent to Buyer. If Seller is a self-insurer, the certificate of the appropriate state agency of the state in which said labor is to be performed must be furnished by such state agency directly to Exelixis. If Seller, its assignees or subcontractors, performs work on Exelixis' premises, Seller agrees that all shall be bound by Exelixis' policies.

13. Indemnification. Seller agrees to indemnify and hold Exelixis, its affiliates and its and their successors, assigns, officers, agents, employees, and customers, harmless from and against all claims, liability, loss, damage, and expenses including legal fees, arising from or due to any: a) actual or claimed trademark, patent, or copyright infringement and any litigation based thereon, with respect to any part of the goods or services covered by the Order; b) goods or services purchased under the Order; or c) act, omission, operation, product or service of Seller, its employees, agents, suppliers, and subcontractors.

14. Limited Liability. Exelixis shall not be liable to Seller, its employees, representatives, agents, suppliers, or subcontractors for any anticipated profits or incidental, consequential, indirect, special, exemplary, or punitive damages. Exelixis' liability on any claim for loss, damage or expense arising in connection to this Order shall not exceed the price of the goods or services that gave rise to the claim.

15. Force Majeure. Neither party shall be liable for delay in its performance of its obligations and responsibilities under this Order due to causes beyond its control, such as, but not limited to, war, embargo, national emergency, insurrection or riots, acts of the public enemy, fire, flood, or other natural disaster, provided that said party has taken reasonable measures to notify the other, in writing, of the delay.

16. Waiver. Exelixis' failure to insist on performance of any terms and conditions herein or to exercise any right or privilege, or Exelixis' waiver of any breach hereunder, shall not thereafter waive the same or other terms, conditions, rights or privileges or affect any subsequent breach.

17. Publicity, Use of Name. Seller shall not make reference to, advertise, promote, or otherwise publish any information pertaining to this Order, without prior written consent of Exelixis. Seller shall not use the name or trademark of Exelixis without prior written consent of Exelixis.

18. Assignment, Subcontracting. No part of the Order may be assigned, delegated, transferred, or subcontracted by Seller without Exelixis' prior written consent. Any such attempt to transfer or assign shall be void.

19. Severability. If any part of the term and condition of this Order is found to be illegal or unenforceable, that part shall be severed from the Order and the rest of the Order shall be enforceable as written.

20. Export Restrictions. Seller agrees to comply fully with all applicable laws and regulations of the United States and other countries with respect to the export or re-export of all goods and services delivered hereunder ("Export Laws") to ensure that such goods and services are not (i) exported, directly or indirectly, in violation of Export Laws, or (ii) used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation or proliferation of missile technology. The goods and services delivered hereunder may not be exported or re-exported (a) into (or to a national or resident of) Cuba, Iran, North Korea, Sudan, Syria or any other country that becomes subject to a U.S. economic embargo (the "Embargoed Countries"), or (b) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals or Foreign Sanction Evaders List or the U.S. Commerce Department's Denied Persons List, Unverified List, or Entity List (the "Prohibited Party Lists"). Seller represents and warrants that Seller is not located in, under the control of, or a national or resident of any Embargoed Country or on any Prohibited Party List, and acknowledges that Seller is responsible for obtaining any necessary government authorization to ensure compliance with Export Laws.

21. Federal Obligations. Exelixis and Seller shall, to the extent they apply, abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin and require affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. To the extent applicable, Exelixis incorporates by reference 29 Code of Federal Regulations (C.F.R.) Part 471, Appendix A to Subpart A, as well as any E-Verify obligations described in FAR 52.222-54. If Seller is required by federal regulations to file Employer Information Report EEO-1 (standard form 100) or Federal Contractor Veterans Employment Report VETS-100A, Seller certifies that it has done so or will file such reports in accordance with applicable instructions and will continue to file such reports unless or until no longer required by law or regulation.

22. Governing Law. This Order shall be interpreted and governed in all respects according to the laws of the State of California.