

Evolution Biologyx™ Terms and Conditions of Sale

The following Standard Terms and Conditions (the "Terms") apply to all purchases of products made available for sale ("Products") by Evolution Biologyx LLC., having a business address at 4001 Schoolhouse Lane, Center Valley, PA 18034 ("Evolution") to its customers (each referred to in these Terms, individually, as "Customer") and the facilities Customer owns, manages or controls (referred to in these Terms as "Facility" or "Facilities"). Except as superseded by a separate, written agreement in effect between Customer and Evolution that is signed by an officer or duly authorized representative of Evolution, or as provided in Section 2B herein, these Terms will apply to all purchases of Products by Customer. Evolution may, in its sole discretion, revise or update these Terms at any time, with or without notice, effective upon posting of the modified Terms on its website at <https://www.evolutionbiologyx.com/about-us/terms-and-conditions/>. Customer's terms and conditions shall be of no effect to the extent they are inconsistent with or in addition to these terms and conditions, and notwithstanding anything to the contrary in Customer's purchase order. By accepting the Products and/or paying the invoice for the Products, Customer accepts all of Evolution's terms and conditions set forth herein.

1. ORDERS, SHIPPING, RESTRICTIONS.

- A. Evolution shall ship orders to destination(s) in the United States designated by Customer. Unless otherwise specified by Customer in the order form, Evolution will ship all orders via two (2) business day morning (10:30 am and 12:00 pm) delivery. Expedited shipping will result in additional costs at Customer's sole cost and expense. All orders must be received by Evolution before 4:00 pm eastern standard time and in quantities that are reasonable and available at the time of Evolution's receipt of the order to be fulfilled per the default or expedited delivery times.
- B. Risk of loss of Products shall pass to Customer upon delivery by Evolution to the common carrier.
- C. All order shortages, overages, or other discrepancies must be reported to Evolution in accordance with Evolution's Return Policy (as hereinafter defined).
- D. Any and all Products ordered are to be used solely for application to patients of Customer in the United States. Distribution, redistribution, transshipment, freight-forwarding and exportation of Products is prohibited. Products ordered from Evolution shall not be used in clinical trials, comparative testing or for reverse engineering without prior written consent from Evolution. Violation of these restrictions shall provide Evolution a basis for immediate termination of any agreement with Evolution.

2. PRICES & PAYMENT.

- A. The initial prices payable by Customer for Products shall be at the applicable contracted price, or, in the absence of any applicable contract, at the price established by Evolution. Evolution shall give Customer notice of any price change. Evolution may change the specific Products available from Evolution (either by adding or removing Products) after giving Customer written notice of any such change. Customer shall be responsible for any and all taxes, duties, fines, tariffs and other similar charges imposed by governmental/quasi-governmental authorities whether federal, state or local and however designated payable in connection with Customer's purchase of Products (except for any taxes based on Evolution's income).
- B. To the extent that any group purchasing organization ("GPO") demands any administrative fees from Evolution relating to the purchases made by Customer pursuant to these Terms, Customer shall be solely responsible to pay such fees. In the event Evolution enters into an agreement with a GPO for the sale of any Products, and Customer (i) is a member of such GPO, (ii) has elected to purchase the Products under the pricing and terms set forth on such agreement between Evolution and the applicable GPO, and (iii) Evolution has been notified of such election consistent with the terms of the applicable GPO agreement, these Terms shall be suspended during the term of such GPO agreement for the sale of only those Products (i.e., specific product/item numbers) set forth on the applicable GPO agreement but all other Product purchases shall be subject to these Terms. During the period of suspension, with respect to the sale of such Products set forth on the applicable GPO agreement, the terms of such GPO agreement will supersede these Terms. If Evolution has been notified, consistent with the terms of the applicable GPO agreement, that Customer is no longer a member of such GPO, or if such GPO agreement terminates for any reason, Customer agrees that these Terms will resume effectiveness.

3. TERMS OF PAYMENT.

- A. Payment shall be due on or before the forty-fifth (45th) calendar day from the date of Evolution's invoice subject to Customer maintaining credit arrangements satisfactory to Evolution; otherwise, terms are cash in advance. Evolution reserves the right to revoke credit terms extended to Customer in the event (i) Customer fails to pay for any Products, previously or subsequently delivered, when due, or (ii) in the sole judgment of Evolution there has been a material adverse change in Customer's financial condition. Upon such determination, Evolution shall have the right to demand payment or other assurances which it deems adequate before shipment or performance of any other goods or services.
- B. Evolution may levy a late payment charge of 1.5% per month (or the maximum amount permitted by law, if lower) to any amount for which payment is not received by the due date.

- C. Evolution reserves the right to suspend deliveries to Customer at any time without notice if any overdue amounts remain outstanding. Customer shall have thirty (30) days following receipt of any invoice to contest any alleged errors in such invoice. Claims made following such period shall be deemed waived by Customer.
- D. Failure to make any payment when due shall cause the entire amount of the unpaid debt to become immediately due and payable, at the option of Evolution. Customer hereby grants Evolution a security interest in the Products and any proceeds (including accounts receivable) as security for its obligations hereunder and will execute any document required to perfect this security interest if and when requested by Evolution.

4. RESPONSIBILITY FOR PAYMENT.

- A. Customer is solely responsible for payment to Evolution of the entire purchase price for all Products ordered, irrespective of whether or when Customer may receive reimbursement for Products from Medicare, Medicaid, and/or any other third-party payors.
- B. Customer shall be solely responsible for obtaining reimbursements, if any, from third-party payors, including, without limitation, Medicare, Medicaid, and/or any other third-party payors, for amounts Customer pays Evolution for Products, and for obtaining all information and documentation necessary to bill and collect from such third-party payors in the manner prescribed by such third-party payors.
- C. Customer shall be solely responsible for obtaining any pre-certification and/or other authorization required by Medicare, Medicaid, and/or third-party payors.
- D. Evolution shall have no obligation to compensate Customer for any failure by Customer, for any reason, to collect amounts otherwise payable to Customer on account of services rendered by Customer in connection with Products.

5. ATTORNEYS' FEES AND COSTS OF COLLECTION. Customer shall reimburse Evolution on demand for any and all costs, including, without limitation, court costs, attorneys' fees, fees of collection agents, and related costs and expenses incurred in collecting and attempting to collect any amounts due from Customer hereunder.

6. LIMITED WARRANTY, INSPECTION, ACCEPTANCE, RETURNS, RECALL and FIELD CORRECTIONS.

- A. Limited Warranty. The limited warranty for the Product, if any, shall be in writing and included in the package insert that accompanies the product. OTHER THAN THE WRITTEN LIMITED WARRANTY THAT IS INCLUDED IN THE PACAKAGE INSERT THAT ACCOMPANIES THE PRODUCT, EVOLUTION MAKES NO AND DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING ANY PRODUCT

OR SERVICE, OR CONCERNING ANY PATENTS OR TECHNOLOGY USED OR INCLUDED IN ANY PRODUCT OR SERVICE. ALL GUARANTIES, WARRANTIES, CONDITIONS AND REPRESENTATIONS WHATSOEVER, EITHER EXPRESS OR IMPLIED, WHETHER ARISING UNDER ANY STATUE, LAW, COMMERCIAL USAGE OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED. Representations and warranties made by any person, including employees, distributors, dealers and representatives of Evolution, which are in addition to, inconsistent with or in conflict with the terms of the limited warranty, shall not be binding upon Evolution unless reduced to writing and approved by an expressly authorized officer of Evolution.

- B. Product Inspection and Acceptance. Customer has the obligation to thoroughly inspect the Products upon receipt. Failure to reject any delivery of Products upon receipt shall constitute acceptance of that delivery of those Products and shall be deemed a waiver of any other right to reject or revoke acceptance.
- C. Product Returns. Evolution's Product Return Policy ("Return Policy") is set forth at <https://www.evolutionbiologyx.com/about-us/terms-and-conditions/> and shall govern all Product returns and order cancellations. Evolution may change the Return Policy at any time, with or without notice to Customer, effective upon posting the modified policy at <https://www.evolutionbiologyx.com/about-us/terms-and-conditions/>.
- D. Products Recall and Field Corrections. In the event of a general recall or a limited recall, whether directed by the Food and Drug Administration or undertaken voluntarily by Evolution, Evolution shall, at Evolution's discretion, either replace the applicable Product or refund all amounts paid by Customer for the applicable Product as Customer's sole and exclusive remedy. Customer shall return the applicable recalled Product to Evolution, and Evolution shall bear all return shipping costs.

7. REJECTION OF PURCHASE ORDERS.

- A. Evolution may reject all or any part of any purchase order for any reason.
- B. Rejection of a purchase order shall not relieve Customer of any duty, claim, or liability that accrued before the date of termination.
- C. Any provision of these Terms that, by its terms, is intended to continue beyond the Customer's use of the Product or any other date certain shall continue in effect thereafter.

8. CONFIDENTIAL INFORMATION. Customer agrees (a) to hold in strict confidence all information given to it by Evolution, unless such information is publicly available or otherwise available to Customer without restriction or breach of any confidentiality agreement or is independently developed by Customer, and (b) that it will not, without Evolution's prior approval, disclose such information or use it for any purpose other than as contemplated by these Terms. The obligations set forth herein shall not apply with respect to any information which is disclosed

pursuant to the requirement of a governmental agency or any law requiring disclosure thereof, provided that Customer has provided prior written notice of any such disclosure to Evolution and has given Evolution the opportunity to contest or minimize such disclosure.

9. **INDEMNIFICATION.** Customer shall defend, indemnify and hold Evolution harmless against all liabilities to third parties whatsoever (and expenses connected therewith, including reasonable attorneys' fees) not caused by the negligence or other wrongful conduct of Evolution, arising as a result of (a) Customer's use of Evolution's Product other than as directed by Evolution and (b) any actual or asserted violation(s) of federal, state or local law or regulation by Customer in connection with Customer's use of Product.
10. **FORCE MAJEURE.** Evolution shall not be liable for any loss, damage, delay or failure to perform in whole or in part resulting from causes beyond Evolution's reasonable control, including, but not limited to, fires, strikes, insurrections, riots, pandemic, epidemic, embargoes or requirements of any governmental authority.
11. **INDEPENDENT RELATIONSHIP.** Nothing in these Terms shall constitute or be construed as the creation of a partnership or joint venture between Customer and Evolution. Customer shall not represent Customer or Customer's organization as having any relationship to Evolution other than that of an independent purchaser of Product for the limited purposes described in these Terms.
12. **TRADE NAMES AND TRADEMARKS.** Solely to the extent reasonably necessary to enable Customer to inform patients regarding the availability and nature of the Product, Evolution grants to Customer a non-exclusive, non-transferable, royalty-free right to use the various trade names, trademarks, service marks and other word and design marks that Evolution associates with the Product. Customer acknowledges that Evolution is the exclusive owner or authorized user of the above-mentioned intellectual property and agrees that Evolution has the right to control the use or display thereof by Customer. The license granted hereunder is a limited license and may be terminated at any time by Evolution.
13. **LIMITATION OF LIABILITY.**
 - A. EVOLUTION SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF EVOLUTION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF EVOLUTION FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE FROM ANY CAUSE WHATSOEVER RELATING TO OR ARISING UNDER THESE TERMS SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE QUANTITY OF THE PARTICULAR

PRODUCT DIRECTLY GIVING RISE TO THE LIABILITY WHICH WAS SHIPPED TO CUSTOMER BY EVOLUTION DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

- B. CUSTOMER ACKNOWLEDGES AND AGREES THAT EVOLUTION SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES THAT CUSTOMER MAY INCUR FROM DELAYED SHIPMENT, PRODUCT FAILURE, PRODUCT DESIGN OR PRODUCTION OR FROM ANY OTHER CAUSE, WHETHER LIABILITY IS ASSERTED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY).
- C. NO ACTION OR PROCEEDING AGAINST EVOLUTION MAY BE COMMENCED MORE THAN TWELVE (12) MONTHS AFTER THE SPECIFIC PRODUCT GIVING RISE TO THE CLAIM WAS INITIALLY SHIPPED BY EVOLUTION.

14. LAWS. These Terms have been entered into in the Commonwealth of Pennsylvania and all questions regarding construction of the Terms and the rights and liabilities of the parties shall be governed by the laws of the Commonwealth of Pennsylvania without reference to its choice of law rules. Each party agrees that all disputes arising in connection with these Terms shall be heard in Allentown, Pennsylvania, and each party irrevocably submits to the exclusive jurisdiction of, and venue in, the state and federal courts located in Lehigh County, Pennsylvania and the United States District Court for the Eastern District of Pennsylvania and agrees that service in any such disputes may be made in accordance with the notice provisions of these Terms.
15. NOTICES. Any notice required or permitted by these Terms shall be in writing and delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally, (b) by reputable overnight courier upon written or electronic verification of receipt, (c) by telecopy or facsimile transmission when confirmed by telecopier or facsimile transmission, or (d) by certified or registered mail, return receipt requested, upon verification of receipt. All notices must be sent to the addresses first described above or, for notices to Customer, to the address that the Evolution has on file applicable to Customer for delivery of Product.
16. NO THIRD-PARTY BENEFICIARIES. Except as set forth herein, no provision of these Terms shall give any rights, remedies, or other benefits to any person or entity other than Evolution and Customer.
17. FACILITIES LIST. Customer represents and warrants that it has the corporate or limited liability company power and authority on behalf of its Facilities and shall be responsible for payment of the purchases of Products by those Facilities. Customer shall update its authorized Facilities by giving written notice to Evolution.
18. TRANSMISSION OF UNWARRANTED INFORMATION. These Terms do not constitute a Business Associates Agreement ("BAA"). In the context of utilizing these Terms, Customer is responsible for not transmitting any information to Evolution, its employees, officers, directors, managers, vendors, consultants, and/or contractors (collectively "Evolution's Employee(s)") via any communication medium (including but not limited to in-person

communications, emails, faxes, and/or phone-calls) that contains/may contain information that may be reasonably considered: (a) privileged and/or confidential; (b) patient information and/or protected health information as defined under relevant/applicable law; and/or (c) subject to protection under relevant law, including the Health Insurance Portability and Accountability Act of 1996, as amended and/or The Health Information Technology for Economic and Clinical Health Act (HITECH Act). Such information shall collectively be known as "Unwarranted Information." In the event that, while utilizing these Terms, Customer transmits unwarranted information via any medium to Evolution and/or Evolution's Employee(s), Customer must immediately contact Evolution and provide: (1) the name, address and contact information of the person(s) who are responsible for maintaining privacy and/or compliance on behalf of Customer; (2) the date and time the transmission occurred; (3) the medium by which the transmission was sent; and/or (4) any other information that could possibly assist Evolution in identifying the communication. Should Unwarranted Information be transmitted by Customer to Evolution, Customer agrees to assist Evolution with any necessary steps to remediate any further breaches and to keep Evolution notified of steps Customer reasonably takes to notify potentially affected patients.

19. **OBSERVATIONS OF NON-COMPLIANCE.** Customer agrees to notify Evolution in the event that Customer reasonably observes instances where Evolution's Employee(s) may not be in compliance with relevant law, regulation, and/or policy. Notice must include details of the observation and a Customer point-of-contact who may be able to reasonably assist Evolution with its investigation of the observation. Customer shall send written notice of any such observations to Evolution's CEO and President at the address first described above.
20. **ENTIRE AGREEMENT.** These Terms together with the Return Policy set forth the entire agreement between Evolution and Customer concerning the subject matter hereof, and supersede all prior and contemporaneous written and oral negotiations and agreements between them concerning the subject matter hereof. Except as herein provided, any modification of these Terms must be in writing and signed by both parties. Any different, conflicting, and additional terms in any purchase order, invoice, confirmation, or other writing or communication from Customer (except for administrative details about each quantity of Products ordered) are superseded by these Terms and shall be of no force or effect. Notwithstanding the foregoing, in the event Customer and Evolution have previously executed a written contract governing the sale of the Products, the parties agree that the terms and conditions of such written contract shall control with regard to any conflicting provisions and that these Terms shall supplement the written contract in all respects so long as such contract remains in effect.
21. **NO IMPLIED WAIVERS.** The failure of Evolution at any time to require the performance by the Customer of any provision of these Terms shall not affect in any way the right to require such performance at any later time nor shall the waiver by Evolution of a breach of any provision hereof be taken or held to be a waiver of such provision.

All rights and remedies of Evolution are cumulative and concurrent, and the exercise of one right or remedy shall not be deemed a waiver or release of any other right or remedy.

22. **ASSIGNMENT**. The rights or obligations hereunder cannot be assigned without the prior written consent of both parties. Subject to the foregoing, these Terms shall be binding on and inure to the benefit of each party's successors and assigns.
23. **SEVERABILITY**. If any provision of these Terms is determined to be invalid or unenforceable by a court of law, the provision shall be deemed automatically adjusted to conform to the requirements for validity in a manner to best effect the parties' intent (or deleted if it cannot be so adjusted), and the validity and enforceability of the remainder of these Terms shall not be affected.