



## Terms and Conditions of Sale

Thank you for purchasing products and services from Sunflower Therapeutics, PBC (“**Sunflower**”, “**we**”, and “**us**”). Unless otherwise agreed in writing by us, your purchase, use, loan, lease, or licensing of Sunflower products (“**Products**”) and your purchase of Sunflower services, including installation, support, or access to software, as further outlined on **Schedule A** hereto (“**Services**”), and our supply of Products and provision of Services to you, are exclusively subject to these terms and conditions, including any schedules attached hereto (“**Terms**”).

**1. Contract Terms.** These Terms, and any Sunflower written quotation or proposal prepared by Sunflower specifically for you referencing these Terms (each a “**Quotation**”), and the other Sunflower documentation referenced in these Terms, together comprise the entire contract between you and Sunflower (“**Agreement**”), and supersede all other representations and understandings between the parties, whether written or oral, with respect to the subject matter of these Terms. Your purchase order or other order for Products or Services (each an “**Order**”) constitutes your commitment to purchase the Products and Services identified therein. By ordering Products or Services from us, you accept and are bound by these Terms. This Agreement is created when we accept your Order, either by sending a written confirmation or by shipping the ordered Product(s) or performing the ordered Service(s). In the event of a conflict among documents, these Terms take precedence over a Quotation (unless such Quotation expressly identifies a specific provision within these Terms that is superseded by such Quotation, in which case the provision within the Quotation shall take precedence over the conflicting provision within these Terms solely for purposes of such Quotation), and an agreement signed by both parties takes precedence over a Quotation and these Terms. The terms of your Order (other than the Products and Services identified therein) do not form a part of this Agreement and are rejected by both parties, and have no force or effect. To the extent you purchase Products or Services through any reseller or distributor (collectively, “**Distributor**”), you agree that (i) commercial terms as between you and the Distributor (e.g. payment, delivery) will be governed by any separate agreement in place between you and Distributor; and (ii) all limitations of liability and indemnity obligations in this Agreement that benefit Sunflower shall be deemed to benefit Distributor in the same manner, with Distributor as a third party beneficiary of all such terms.

**2. Prices, Taxes, and Fees.** Pricing in our Quotation is valid for sixty (60) days unless stated otherwise therein (and thereafter may be changed at any time without notice), but such pricing is subject to adjustment based on changes to specifications, quantities, raw materials, cost of production, shipment arrangements or other items that are not part of the original Quotation. If no price has been quoted to you in writing, the price is the Sunflower list price in effect at the time we accept your Order. Prices do not include taxes (including VAT), duties, levies or other government fees that may apply to your Order. If they apply, it is your responsibility to pay them. If we pay them, we will add them to your invoice. If you claim any exemption, you must provide a valid, signed certificate or letter of exemption for each applicable jurisdiction no later than sending your first Order. You are responsible for standard delivery and handling charges.

**3. Payment.** Unless otherwise described in a Quotation, you will pay invoices within 30 days of receipt, without withholding, discount, setoff or reduction. Each Order is a separate transaction, and you may not off-set payments from one order against another. We reserve the right to require you to make full or partial payment in advance, or other security to our satisfaction, if we believe in good faith that your financial condition does not justify the payments terms otherwise specified. You will make all payments in U.S. Dollars, through a method of Sunflower's choosing, and unless explicitly specified otherwise, payments are not refundable. If you are late in making payment, we may, without limiting our other rights: (i) suspend deliveries of Products and/or performance of Services, or terminate your Order and this Agreement; (ii) reject your Orders; and/or (iii) charge you a late-payment fee, from the due date until paid, at the rate of 1.5% per month, or, if less, the maximum amount allowed by law, which you must pay upon our demand. If we appoint a collection agency and/or an attorney to recover unpaid amounts, you will pay our costs of collection, including reasonable attorneys' fees.

**4. Delivery; Cancellation; Changes.** Unless otherwise described in a Quotation, we will ship Products to the destination you specify in your Order, Ex Works (INCOTERMS 2020) our facility, with our selected freight carrier. We may, in our sole discretion, make partial shipments and invoice each shipment separately. Our shipping dates are approximate only, and we are not liable for any loss or damage resulting from any delay in shipping or delivery. If we delay shipment for a cause beyond our reasonable control, we may terminate the affected Order or reschedule the shipment within a reasonable period of time. You may not refuse delivery or otherwise be relieved of any obligations as the result of a delay; if you do not accept delivery within thirty (30) days of the Product being made available, then, notwithstanding anything to the contrary, all amounts due and payable in respect of the Product will accelerate and become due immediately, the completion of system installation established on the Order Form for the Product will be deemed to have been met, and the Warranty Period will begin. If our delivery is delayed due to any cause within your control, we will place the delayed Products in storage at your risk and will invoice you at our then-current storage rates. Once you have placed your Order, you cannot cancel or change it unless we consent in writing, in which case you will pay cancellation charges or an adjustment in the purchase price, as specified by us. You may not return Products or terminate Services without our prior written consent. Any claims against us for shipment shortages or Product damage that could be discovered by inspection upon receipt must be made within ten (10) days of your receipt of shipment.

**5. Risk of Loss and Title.** Products are considered delivered when we make them available to you for pickup Ex Works (INCOTERMS 2020). At this point, you are responsible for risk of loss and damage; title to purchased Products will pass to you upon full and final payment therefore (except for software incorporated within a Product, which we and our licensors exclusively own).

**6. Authorized Use.** CUSTOMER IS SOLELY RESPONSIBLE AND SHALL REMAIN LIABLE FOR COMPLIANCE WITH ANY AND ALL LAWS, DECLARATIONS, DECREES, STANDARDS, CODES, LEGISLATIVE ENACTMENTS, ORDERS, ORDINANCES, REGULATIONS, RULE, OR OTHER BINDING RESTRICTION OF OR BY ANY GOVERNMENT AND ANY RULES AND REGULATIONS OF SELF-REGULATORY ORGANIZATIONS RELATING TO ITS USE OF THE PRODUCT, INCLUDING, BUT NOT LIMITED TO ANY LAWS SPECIFIC TO THE USE OF PRODUCTS FOR REGULATED MANUFACTURING, DIAGNOSTIC, CLINICAL, THERAPEUTIC USES OF ANY KIND (IN VITRO, EX VIVO OR IN VIVO), OR ANY TYPE OF CONSUMPTION BY OR APPLICATION TO HUMANS OR ANIMALS. Products have not been approved, cleared, certified or licensed by the United States Food and Drug Administration or any other regulatory entity, whether foreign or domestic, for any specific use, whether research, commercial, diagnostic, or otherwise. You must use, maintain and dispose of Products, as well as any results or information generated from such Products, in accordance with the Sunflower documentation accompanying such Products, and in accordance with all applicable law and regulation (including disposal rules), and ethical guidelines promulgated by established national and international ethical bodies. You may not (i) disassemble, reverse engineer, reverse compile, or reverse assemble a Product, or make any modifications to a Product, (ii) separate, extract, or isolate components of a Product or engage in other unauthorized analysis of a Product, (iii) gain access to or determine the

methods of operation of a Product, (iv) take any action to determine any characteristic and/or composition or structure of a Product, (v) attempt to gain unauthorized access to a Product, (vi) access or use a Product to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or interfaces, or (c) copy any ideas, features, functions or interfaces of the Product; (vi) use Products for any time sharing, leasing or service bureau purposes or permit use by anyone other than your employees and agents and/or (vii) aid or permit others to do any of the foregoing. You are solely responsible for your use of Products and for making sure that the way you use Products complies with all applicable laws, regulations and governmental policies. You must obtain all necessary approvals and permissions you may need to use the Products. It is your responsibility to make sure the Products are suitable for your particular use. You may not alter, obscure or remove any identification of ownership or other Sunflower marking on any Products. You may not resell or distribute the Products. You will not cause to occur any lien, security interest or encumbrance on any of the Products in your possession, you shall not affix any of the Products to realty and you shall not export the Products. In the event of any determination that any of the Products are the property of a third party notwithstanding the clear agreement of the parties hereunder that the Products may not be distributed nor resold, Sunflower is hereby granted (i) a first priority lien and security interest in and to the Products, and is hereby authorized to make any filings it may deem appropriate and to take any action in order to perfect such lien and security interest, and you shall cooperate with and assist in any reasonable manner in the grant and perfection of such lien and security interest, and (ii) the unilateral right to purchase from you the Products at a price equal to the original sale price you paid, depreciated on a straight-line basis over seven years. You shall not change your name as it appears on the Order without providing written notice to Sunflower at least thirty (30) days prior to such change.

**7. Software.** We may make software available to you for use in connection with Sunflower equipment, in which case you acknowledge you are receiving licensed rights only, and that software is licensed and not sold, and that, as between you and us, we own all rights to the software and all related documentation and physical media, and all copyright, trade secret, patent, trademark and other intellectual or industrial property rights therein. Ideas and expressions contained in our software are our confidential, proprietary information and trade secrets. We grant you a nonexclusive, non-transferable, non-sublicensable, personal license to use only one copy of the software on the Sunflower equipment, without making any copies. You may not, directly or indirectly, or authorize any person or entity to: (i) reverse engineer, decompile, disassemble, re-engineer, modify or otherwise create or attempt to create or permit, allow, or assist others to create the source code of the software or its structural framework; (ii) create derivative works of the software; (iii) use the software for any purpose except for use with the Sunflower equipment; (iv) copy, loan, publish, transfer, or disseminate the software or related documentation; or (v) disable or circumvent any access control or related device, process or procedure established with respect to the software. You acknowledge you have been provided sufficient information such that you do not need to reverse engineer software in order to permit other products or information to interoperate with the software. You may not remove or alter any trademark, copyright, patent, or other proprietary rights notices or legends from the software.

**8. Services.** We may provide you with certain Services, in which case we will do so in accordance with the applicable Quotation and Schedule A.

**9. Data.** We encourage you to download and backup all data that you may store on our Products. To the extent and as permitted by applicable law, we may monitor, collect and analyze data based on your Product use and Product performance to optimize and improve our Products and services and for business and data analytics purposes, and we may disclose the same provided that in connection with such disclosure, such data is de-identified or anonymized in accordance with applicable laws, is aggregated, and does not identify individual patients or subjects, health care providers, or other entities, and such data shall not be identified as originating from you. Such data, and all technology, products and information based on such data, is exclusively owned by Sunflower. We are not responsible or liable to you under any circumstance for any loss, damage or corruption of data stored on Products, even when

those Products are within our possession or control, except as required under applicable law, and you understand and acknowledge that repair services may result in damage to, or removal or destruction of, data, including, but not limited to, configuration, archives, files, programs, and documents. If you make Products available to us for repair or service, you authorize us to reformat any Product storage device, including hard drives if, in our judgment, such reformatting is reasonably necessary.

#### **10. Representations and Warranties: Certain Covenants.**

**10.1.** Each party to this Agreement represents and warrants to the other that (a) it is duly organized and in good standing under the laws of the state of its organization and has adequate power and authority to enter into and perform its obligations under this Agreement; (b) this Agreement has been duly authorized, executed and delivered on such party's behalf and constitutes the legal, valid, and binding agreement of such party, enforceable in accordance with its terms; and (c) the entering into and performance of this Agreement will not violate any judgment, order, law, regulation, or agreement applicable to such party or any provision of such party's charter, bylaws, or other organizational documents, or result in any breach of, constitute a default under, or result in the creation of, any lien, charge, security interest or other encumbrance upon any agreements, leases or other obligations or assets of such party. Sunflower's limited warranty for the Products and Services are set forth on Schedule B, which is incorporated into this Agreement and sets forth Sunflower's sole obligation and your sole remedy for any issues arising from the Products and Services. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SUNFLOWER DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WE DO NOT WARRANT THAT PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT. WE DO NOT WARRANT THAT SOFTWARE CAN OR WILL BE CORRECTED, OR THAT PRODUCTS ARE COMPLETELY SECURE. You acknowledge that you are responsible for your use of Products and Services, including reliance upon results from such use, and that you will use professional care and judgment in using Products and Services and relying upon results.

**10.2.** You will at all times comply with all applicable laws, rules, and regulations in connection with this Agreement and your use of the Products. You will not use the Product for any harmful purpose (including the manufacture of weapons). You acknowledge and agree that you are familiar with the provisions of the Foreign Corrupt Practices Act of 1977 of the United States of America, 91 Statutes at Large, Sections 1495 et seq., in addition to any other laws that may apply to Sunflower or to you, having to deal with corruption, money-laundering, export restrictions, controlled technology, or any similar subject matter; you represent and warrant that at all times you have complied with such laws and you covenant that you will continue at all times to comply with such laws, and that you shall not take or permit any action that will either constitute a violation under, or cause Sunflower to be in violation of, any such law.

#### **11. Sunflower Indemnity.**

**11.1.** We will defend and indemnify you against infringement damages finally awarded to a third party in any legal action brought by such third party against you to the extent that the action alleges that our manufacture and sale of a Product, or that our software, sold, leased or licensed to you, infringes any United States patent, registered copyright or trademark of such third party. This indemnity does not apply to claims based on (i) your failure to comply with this Agreement, (ii) your failure to acquire any applicable rights from third parties, (iii) Products (including software) that we make, assemble or label in reliance upon your instructions, specifications, or other directions, (iv) your use of Products (other than software products), (v) Product or software modifications made by you or any third party; (vi) Products or software originating from third parties that are not authorized Sunflower dealers; (vii) your failure to install software updates provided by us; (viii) your use of Products or our software other than as permitted herein; (ix) your use of Products, software or Services in combination with non-Sunflower

information or items; or (x) your failure to follow our Product or software installation, calibration or maintenance instructions (each of (i) through (x) constitutes a “Prohibited Use”).

**11.2.** As a condition to any of our indemnification obligations you must (i) notify us in writing, as soon as you become aware of any indemnifiable claim; (ii) not admit any liability or take any other action in connection with the claim that could affect the defense; (ii) allow us to control the defense or settlement of the claim; and (iv) give us your reasonable information, co-operation and assistance. If we believe a Product that you have purchased may be subject to allegations of infringement or misappropriation, we may replace such Product with a substitute Product, at our own cost and expense, in which case you will return the original Product in accordance with our instructions.

**11.3.** THE PROVISIONS OF THIS SECTION 11 ARE OUR ONLY LIABILITY TO YOU, AND YOUR ONLY REMEDY, FOR ANY INFRINGEMENT OR MISAPPROPRIATION OR CLAIMED INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY OR IN CONNECTION WITH ANY PRODUCT, SERVICE OR SOFTWARE.

**12. Your Indemnity.** You will indemnify, defend with competent and experienced counsel acceptable to us, and hold us and our subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders, agents and employees, harmless from and against any and all damages, liabilities, causes of action, suits, claims, demands, losses, fines, penalties, costs and expenses (including without limitation reasonable attorneys' fees) suffered or incurred by any of the foregoing entities or individuals arising from or in connection with (a) your negligence, misconduct, violation of applicable laws, or breach of this Agreement; (b) your use of Products (except where such use is covered by our software indemnification obligation in Section 11.1); (c) a Prohibited Use; (d) your failure to acquire any applicable third party rights when using a Product; and (e) the reliance by any person or entity on any evaluation, analytic results or other data derived from our Products or Services. You are responsible for the actions of your employees, agents and representatives for purposes of this Section 12.

**13. Intellectual Property.** As between you and us, we exclusively own all intellectual property rights relating to, covering, claiming, included and/or embodied in, our Products, software and Services. Our license, sale, loan or lease of Products to you grants you only a limited, nontransferable right under our intellectual property only for the specific intended use of the Products you bought, licensed, borrowed or leased from us and strictly in accordance with and for the term of this Agreement. You will not modify, change, remove, cover or otherwise obscure any trademarks, logos, trade or service marks on Products. Nothing in this Agreement limits our ability to enforce our intellectual property rights. You may not use any Sunflower trademark, trade name, trade dress or product name except to identify our Products and Services. Except as expressly permitted herein, no license or right, whether express or implied, is granted to any person under any Sunflower patent, trademark or other proprietary right, and we reserve all rights. You hereby assign to us all right, title and interest in and to all feedback, suggestions, ideas, improvements, modifications (including those made in breach of this Agreement), derivatives, and other comments provided by you to us, or developed by you, relating to our Products and Services (“Product IP”), and we will have the unrestricted right to use and disclose Product IP without duty or obligation or accounting to you, and any improvements, modifications and changes made based on Product IP are our exclusive property. You are solely responsible for determining whether you have all third party intellectual property rights that are necessary for your use of the Products and Services. You acknowledge that the Products (including software) may constitute, contain or embody our Confidential Information and intellectual property rights, including trade secrets.

**14. Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SUNFLOWER WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOSS OF REVENUE, THAT YOU OR A

THIRD PARTY MIGHT INCUR UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH OUR PRODUCTS, INFORMATION, OR SERVICES, EVEN IF WE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES; *PROVIDED, HOWEVER*, THAT THIS SENTENCE WILL NOT LIMIT DAMAGES CAUSED BY OUR GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD. IN ADDITION AND NOTWITHSTANDING ANYTHING TO THE CONTRARY, SUNFLOWER'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR ANY PRODUCT OR SERVICE, IS LIMITED TO THE AMOUNT YOU PAID TO SUNFLOWER UNDER THE ORDER UNDER WHICH THE LIABILITY AROSE. SUNFLOWER IS NOT LIABLE IN ANY WAY FOR USE OF THE PRODUCT IN COMBINATION WITH NON-SUNFLOWER SUBSTRATE OR TECHNOLOGIES, OR AS MODIFIED BY ANY PARTY OTHER THAN SUNFLOWER.

**15. Export Restrictions.** You acknowledge that each Product and any related technology, including technical information we supply you, including those contained in product documents (collectively "Items"), is subject to U.S. government export controls. The export controls may include, among others, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. You must comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item.

**16. Installation and Operation Qualification.** This section is applicable if and only if you have purchased IOQ protocol and documentation services, as established on the Order. After acceptance of your Order, Sunflower will prepare and deliver a general installation and operation qualification protocol to you (the "General Protocol"). Within 30 days of receipt of the General Protocol, you must review the General Protocol and provide your reasonable requirements (including suggestions and other feedback) for customization to the General Protocol that would be required for your use of the Products in the specific ways in which you plan to use them. Sunflower will then produce a customized protocol based on the General Protocol and your requirements (the "Customized Protocol"), which will be executed on the appropriate system (the "IOQ"). In order for the IOQ to be executed, you must provide an operating environment in accordance with the specifications set forth on the Order and Sunflower's documentation and specifications as may be provided to you from time to time. Sunflower shall not be responsible nor liable for your use of the Products, including but not limited, to the regulated use of the Products. Sunflower crafts the General Protocol in view of its own internal requirements for its Products, and crafts the Customized Protocol based entirely on your feedback and Sunflower's professional judgment. Notwithstanding anything to the contrary, Sunflower is not responsible (and shall have no liability) for ensuring that any particular use of the Products will meet any particular law or regulation in your jurisdiction or in any other jurisdiction.

**17. Miscellaneous and Force Majeure.**

**17.1.** You may not delegate any duties nor assign any rights or claims hereunder, and any such attempted delegation or assignment will be void. We may assign, delegate or transfer this Agreement or our rights or obligations hereunder, in each case under our discretion. This Agreement is made and entered into for the sole protection and benefit of the parties hereto, and no other person or entity shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with this Agreement.

**17.2.** The Agreement and performance under it will be governed by the laws of Massachusetts, without reference to choice of law provisions, and all actions brought to enforce or interpret the Agreement and any all disputes hereunder or in connection herewith, including any negotiations relating thereto, shall be heard exclusively in the state and federal courts located in Boston, Massachusetts, which courts have exclusive jurisdiction over all disputes relating hereto. The U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND



EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT TO THE MAXIMUM ALLOWED BY APPLICABLE LAW.

**17.3.** We will not be responsible or liable for failing to perform our obligations under the Agreement to the extent such failure is caused by, or to the extent we cannot perform due to, circumstances beyond our reasonable control, including without limitation acts of God and nature, embargoes, war, acts of war (whether war be declared or not), terrorism, insurrections, riots, civil commotions, strikes, lockouts, or other labor disturbances, government actions, fire, earthquakes, floods, epidemics, pandemics (whether declared or not), and any actions we take to comply with applicable laws, directives, pronouncements or guidelines issued by a governmental entity relating to pandemics, such as quarantines and sheltering in place. In certain situations, we may use our reasonable judgment and apportion Products then available for delivery fairly among our customers, or may terminate your order without liability to you.

**17.4.** Our failure to exercise any rights under the Agreement is not a waiver of our rights to damages for your breach of contract and is not a waiver of any subsequent breach. If any provision or part of the Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the Agreement. No person other than you or us will have any rights under the Agreement. This Agreement binds the parties' successors and permitted assigns. Headings are for convenience only and shall not be used in the interpretation of these Terms.

**17.5.** Any notice or communication required or permitted under these Terms must be in writing and will be deemed received when delivered by commercial courier, or 3 business days after being sent by certified mail, postage prepaid, to a party's specified address. Notices to Sunflower must be sent to the attention of its General Counsel.

**17.6.** No waiver, consent, modification, amendment or changes to the terms of this Agreement will be binding unless in writing and signed by both parties. Our failure to object to terms contained in any subsequent communication from you is not a waiver or modification of this Agreement.

