

Preferred Cell Systems™ Contract Terms and Conditions of Sale

Thank you for purchasing products from Preferred Cell Systems™ (PCS™). We value your business and our goal is to make your purchasing experience as smooth as possible. If you have any questions about our quotation or ordering process, please call PCS™ at 1-719-264-6251. Unless otherwise expressly agreed in writing, your purchase of products is subject to the following terms and conditions:

1.0. General Terms.

- 1.1. These terms and conditions ("Terms"), our quotation (if any) comprise the agreement ("Agreement") between you and PCS™. Unless your order is subject to a valid, written, executed agreement between you and PCS™, in which case such agreement applies, you agree to accept and be bound by the Agreement by ordering products on www.preferred-cell-systems.com or if you receive ordering or sales documents that reference these Terms. This Agreement is the complete and exclusive contract between PCS™ and your purchase of the products.
- 1.2. Terms Conflict. If any conditions within the Agreement documents conflict with each other, we will give them the following priority: the quotation/order acknowledgement and finally these Terms. We expressly reject any different terms or provisions contained in any document you provide, and if the terms and conditions in this Agreement differ from the terms of your offer, this Agreement will serve as the governing terms for our contract.
- 1.3. When Agreement takes Effect. The Agreement with PCS™ is created when we accept your order, either by written confirmation as fax or scanned document sent by email to orders@preferred-cell-systems.com. or initiating action to provide what you have ordered.

2.0. Price

- 2.1. Determining Price. Preferred Cell Systems™ may change prices at any time without notice. Prices quoted by PCS™ are valid for 30 days, unless stated otherwise in writing. Additionally, the price as shown in the quotation to you, is subject to adjustment due to specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of the original price quotation. If no price has been specified or quoted to you, the price will be the product price on www.preferred-cell-systems.com in effect at the time PCS™ accepts your order.
- 2.2. Taxes and Fees. Preferred Cell Systems™ product prices do not include any taxes (including VAT), duties, levies or other government fees that may apply to your order. If they apply, it will be your responsibility to pay them. If PCS™ pays 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 respective jurisdiction.
- 2.3. Delivery, Freight, Shipping Policy. Unless you have provided PCS™ with a freight/shipping carrier account number and expressed your request to have freight/shipping charged to your account, you are responsible for all delivery, freight, shipping charges. These will be added to the invoice. Preferred Cell Systems™ will also add handling charges to your invoice. For details of our freight policy, please call Customer Services.

3.0. Payment

- 3.1. Payment Terms. No payment terms greater than 30 days net will be accepted by PCS™. Unless credit terms have been established in writing, we require payment-in-advance of shipping, including product and any shipping and/or handling charges. Payment can be made via wire transfer, Electronic Funds Transfer, or credit card (PCS™ presently only accepts VISA or MasterCard). Depending on the type of transfer, PCS™ will charge a \$25 fee). Preferred Cell Systems™ will invoice you for the product price and all other charges due. If credit terms have been established in writing, you will pay us within 30 days from our invoice date. Each order is a separate transaction, and you may not off-set payments from one order against another. All payments must be in U.S. Dollars.
- 3.2. Late Payment. A late payment is considered 5 days after the invoice due date. If you are late in making payment, we will, without affecting our other rights:

- (i) Charge you a late-payment fee of \$200.00/late invoice, from the due date until paid, and interest at the rate of 2.5% per month based on the total invoiced amount from the invoice due date, or, the maximum amount allowed by law—which you must pay upon our demand.
 - (ii) suspend delivery or cancel the Agreement;
 - (iii) reject all future orders;
 - (iv) report the situation to Consumer Affairs and the Better Business Bureau.
- 3.3. Collection Costs. If we appoint a collection agency or an attorney to recover any unpaid amounts, you must pay all reasonable costs of collection, including all associated reasonable attorneys' fees. The minimum amounts will be \$500.00.

4.0. Delivery, Cancellation, Changes

- 4.1. Delivery Within the United States. Unless otherwise directed by the purchaser, PCS™ will use Federal Express Overnight Priority shipping and delivery. For large orders, PCS™ may add additional insurance, the cost of which will be added to the invoice amount. Preferred Cell Systems™ will ship products to the U.S. destination you specify in your order, FOB our shipping point. We may, at our discretion, (a) make partial shipments and invoice each shipment separately; and/or (b) stop delivery of products in transit and withhold shipments in whole or in part if you do not pay us when due, or if you otherwise do not perform your obligations in this Agreement. Our shipping dates are approximate only, and we will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond our reasonable control. If we do delay shipment because of a cause beyond our reasonable control, we may terminate the affected order, or reschedule the shipment, and we will do so within a reasonable period of time. You may not refuse delivery or otherwise be relieved of any obligations as the result of such delay. If our delivery of a product to you is delayed due to any cause within your control, we will place the delayed products in storage at your risk and expense and adjust your account as required.
- 4.2. Delivery Outside the United States. Unless otherwise directed by the purchaser, PCS™ will used Federal Express International Priority for brokerage, shipping and delivery. If the purchaser wishes to use a different broker to import products, the purchaser must state this in writing to PCS™ and must inform the broker to provide PCS™ with the information they need to ensure that the product is not held by customs due to lack of shipping documents. Preferred Cell Systems™ will not be held responsible for any lack of documentation and extended length of time held by customs under these circumstances. If the purchaser wishes the shipment to be sent to a specific Port of Entry to a country, the purchaser is responsible for organizing the shipment and ensuring that the documentation at the Port of Entry is in correct for the order to be delivered. Preferred Cell Systems™ will not take responsibility for any part of the shipment if the purchaser requests the shipment to be sent to a specific Port of Entry. If a shipment is returned to PCS™ due to the lack of documentation provided by the importer, the purchaser will be held financially responsible for the cost of the whole product shipment. This cost will be invoiced and must be paid within 10 days of invoice receipt or by credit card.
- 4.3. Cancellation. Once you have placed your order, you cannot cancel it, unless we consent in writing, and you pay all applicable cancellation and restocking charges. The cancellation charge is \$250. The restocking fee is \$125. If payment has been made, all applicable costs, including wire transfer costs, will be deducted from the returned amount.
- 4.4. Changes. You may not change orders in process, except with our written consent and agreement as to an appropriate adjustment in the purchase price for the applicable products. You will not receive credit for products returned without our prior consent.

5.0. Risk and Loss, Title

- 5.1. Title. Title to products will pass when payment is received. to you when we deliver the product to the carrier.
- 5.2. Risk of Loss. Aside from the trade terms indicated above, products are delivered when they reach the

commercial carrier for shipment. At this point you become responsible for risk of loss and damage.

6.0. Damage, Returns and Shortages

- 6.1. Dry Ice. Preferred Cell Systems™ wants you to receive their products in good condition. Most products from PCS™ must be shipped on dry ice. The amount of dry ice added to the insulation box will usually be sufficient for up to 2-3 days. Products shipped outside of the United States will have extra dry ice added for up to 5 days, if necessary. If shipment is made using the PCS™ carrier and shipping is delay, PCS™ will try and ensure that the package is refilled with dry ice. If shipping is performed using the purchaser's shipping company and broker, and shipment is delay due to customs or other eventuality, PCS™ will not be held responsible for damage to the product.
- 6.2. Damage to the Product Upon Arrival. The purchaser is requested to inspect the package for any damage and to ensure that the contents of the product arrive in a frozen condition. Preferred Cell Systems™ will make every effort to ensure this occurs. If the product has been damaged by Federal Express, we request that the purchaser send PCS™ pictures of the damaged package or lack of dry ice and PCS™ will file a claim with Federal Express. Preferred Cell Systems™ will then ship the product again or refund the cost. If the shipment has been damaged by the purchaser's own shipping company, PCS™ will not take responsibility for any damage caused to the product. It is then the responsibility of the purchaser or broker to claim for loss of goods. The purchaser will have to provide a new purchase order for reshipment of the product and will be responsible for payment of the damaged product.
- 6.3. Returns and Shortages. You may return a product that is damaged or defective on delivery, or correct any shortages, if you contact PCS™ Inc within 5 days after receiving the product. If you do not contact us within this 5-day period, we will deem the product accepted, but you will not lose any warranty rights.
- 6.4. Authorization for Returns. Preferred Cell Systems™ must authorize all product returns. If your product return is authorized, PCS™ Inc will provide you directions regarding the return process.
- 6.5. Product-Credit Eligibility. To be eligible for product credit, a product must be authorized in writing for return and must arrive at our facilities in a condition satisfactory for resale. Any return not due to our error is subject to a restocking charge of \$125. Preferred Cell Systems™ does not credit shipping charges. You may not return a product for credit more than 20 days after you receive it.
- 6.6. Custom-Product Returns. You may return a custom product we make to your specifications only if the product does not conform to the given specifications as of the date of shipment. In that case, we will, in our sole discretion, either replace the custom product or refund you the purchase price.

7.0. Warranties

- 7.1. Limited Warranties for Consumables. The warranty and conditions of the warranty are stated in the product literature. Unless a different written warranty period is included with product literature, PCS™ warrants that each consumable will meet its specifications stated in our published catalogs. This warranty lasts from the time we ship the consumable until the earlier of: (1) the consumable's expiry or "use by" date, or (2) its specified number of uses. If we do not specify the expiry date, the number of uses, or a different warranty period, the warranty will last for five (5) months from the date we ship the consumable.
- 7.2. Exclusions. Preferred Cell System™ warranties do not apply to (a) normal wear and tear; (b) accident, disaster or event of force majeure; (c) your misuse, fault, negligence or failure to correctly use the product according to the instructions associated with the product; (d) use of the products in a manner for which they were not designed; (e) causes external to the products such as, but not limited to, power failure or electrical power surges; (f) improper storage and handling of the product(s) as specified in the product instructions; (g) use of the products in combination with equipment that PCS™ did not supply; (h) contact with improperly used or unapproved chemicals or samples; (i) installation, removal, use, maintenance, storage, or handling in an improper, inadequate, or unapproved manner, such as, but not limited to, failure to follow our instruction manual or operating guidelines, or protocols, operation outside of stated environmental or use specifications,

materials or other products; (j) manufacture in accordance with specifications you gave us; ADDITIONALLY, ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN PCS™ WITHOUT OUR PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS PCS™ HAS NOT SUPPLIED, WILL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS. PREFERRED CELL SYSTEMS™ WILL ALSO VOID YOUR WARRANTY IF YOU SHIP THE PRODUCT TO A THIRD PARTY.

- 7.3. If PCS™ determines that products for which you requested warranty services are not covered by the warranty, you will pay or reimburse PCS™ for all costs of investigating and responding to such request at our then prevailing time and materials rates. If PCS™ provides services or replacement parts that are not covered by this warranty, you will pay us at our then prevailing time and materials rates.
- 7.4. Limitations. PREFERRED CELL SYSTEMS™ WARRANTIES EXTEND ONLY TO YOU, THE ORIGINAL PURCHASER AND YOU CANNOT TRANSFER THEM. OUR OBLIGATION TO REPLACE A PART OF OR THE WHOLE PRODUCT IS YOUR SOLE REMEDY. EXCEPT AS WE HAVE OTHERWISE STATED, PCS™ DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. PREFERRED CELL SYSTEMS™ DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR- FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.
- 7.5. Remedies. During the applicable warranty period only, for products not meeting the PCS™ warranty, PCS™ agrees, in our sole discretion, to replace the non-conforming product and/or provide additional parts as reasonably necessary to comply with our warranty obligations, but you must first (a) promptly notify us, within 5 days, in writing when you discover any defect or non-conformance, and include in the notice the details of your warranty claim as requested by PCS™ Inc; and (b) after our review, assuming we authorize the product return, we will provide you with service data and/or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions that you must follow. For valid product warranty claims timely made in accordance with this Agreement, you must return the non-conforming products to us, unless we agree otherwise, and we will prepay the shipping costs.

8.0. Indemnification

- 8.1. Preferred Cell Systems™ General Indemnity. We will defend and indemnify you against third-party claims for injury to persons, including death, or damage to tangible property occurring while our employees are on your premises performing related services, to the extent the claims are caused by our employees' negligent acts or negligent omissions, except to the extent caused by your negligent acts or negligent omissions.
- 8.2. Preferred Cell Systems™ Infringement Indemnity. We will defend and indemnify you against infringement damages finally awarded in any legal action brought by a third party against you to the extent that the action is based on a claim that our manufacture and sale of a product infringes any patent, copyright, trademark or other intellectual property right of such third party if we had actual knowledge of such intellectual property right and the actual infringement at the time of delivery of the product to you. This infringement indemnity does not apply to claims that arose based on (a) your failure to comply with the Agreement, (b) your failure to acquire any applicable Additional Rights, (c) products that we made, assembled or labeled in reliance upon your instructions, specifications, or other directions, (d) your use or resale of products, (e) modifications made by you or any third party; or (f) products originating from third parties.
- 8.3. Additionally, PCS™ infringement related indemnity obligations will be extinguished if we, at our option and expense, either: (a) secure for you the right to continue using the product; (b) substitute the product with another suitable product with similar functionality; or (c) in the event (a) and (b) are not practical, refund to you the amortized amounts you paid for the infringing product, based on a 5-year amortization schedule.
- 8.4. THIS INDEMNITY IS PREFERRED CELL SYSTEMS™ ONLY LIABILITY TO YOU, AND YOUR ONLY REMEDY, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY OR INCONNECTION WITH ANY PRODUCT.

- 8.5. **Conditions to PCS™ Indemnity.** As a condition to any of our indemnification obligations you must (a) notify us in writing, as soon as you become aware of any claim; (b) not admit any liability or take any other action in connection with the claim that could affect the defense; (c) allow us to solely control the defense or settlement of the claim; and (d) give us your reasonable information, co-operation and assistance.
- 8.6. **Your Indemnity.** You will indemnify, defend with competent and experienced counsel and hold PCS™ Inc and its employees, harmless from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) suffered by any of the foregoing entities or individuals to the extent arising from or in connection with (a) your or your agents', employees', representatives' or contractors' negligence or willful misconduct; (b) use of a product we supplied to you where the product itself would not be infringing; (c) our compliance with designs, specifications or instructions you gave us; (d) use of a product in an application or environment for which it was not designed; (e) product modifications we did not make or approve in writing; and (f) your failure to acquire any applicable Additional Rights.

9.0. Intellectual Property

- 9.1. **Limitation of Rights.** As between you and us, we exclusively own all intellectual property rights relating to our products and services. Unless we expressly state otherwise in Supplementary Terms, our selling products to you grants you only a limited, nontransferable right under our intellectual property: only you may use the products you have bought from us, and only for your internal research purposes. No right to transfer, distribute or resell our products or any of their components is conveyed expressly, by implication, or by estoppel. Unless expressly permitted by us in writing, you will not modify, change, remove, cover or otherwise obscure any of our or our brands, trade or service marks on the products. Nothing in the Agreement limits our ability to enforce our intellectual property rights.
- 9.2. **Commercial Applications; Additional Rights.** Unless we expressly state otherwise in Supplementary Terms, PCS™ give no rights to use its products in any commercial application, including manufacturing, quality control, or commercial services such as reporting the results of your activities for a fee or other consideration. If you need commercial use rights to PCS™ products (including the right to perform fee-for services), please contact PCS™ Inc. Where your use of our product is outside the scope of the Agreement, it is solely your responsibility to acquire additional intellectual property rights related to such use ("Additional Rights").
- 9.3. **Intellectual Property Ownership.** Preferred Cell Systems™ exclusively owns all intellectual property rights for any inventions (patentable or otherwise), discoveries, improvements, data, know-how, or other results that are conceived, developed, discovered, reduced to practice, or generated by or for us, or jointly by you and us, in relation to processes, methods, or related synthesis of a custom product, or otherwise in connection with designing or manufacturing a custom product. You agree to transfer and assign to PCS™ all your rights, title, and interest in and to any joint intellectual property. And at our request and at our expense, you will help us secure and record our rights in the intellectual property.

10. Custom Products

Preferred Cell Systems™ does not design, develop, manufacture or produce any customs products. This is performed by HemoGenix® Contract Research Services. Please contact HemoGenix® for more information.

11. Export Restrictions

- 11.1. No products manufactured and produced by PCS™ may be exported from the United States and re-exported from another country unless the company to which the products are originally exported has a Distribution Agreement with PCS™. Preferred Cell Systems™ will not sell any products to any individual, institution or company who PCS™ deems will export its products outside the United States without the consent of PCS™ or a Distributor Agreement from PCS™.

11.2. Items. 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.

11.3. Export Controls. (Please see Section 4). 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.

11.4. Compliance Requirements. (Please see Section 4). 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. You must not, directly or indirectly, without first obtaining the required license to do so from the appropriate U.S. government agency; (a) export, re-export, distribute or supply any Item to (a) any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government; (b) any person or entity who is involved in improper development or use of nuclear weapons or of chemicals/biological weapons, or missiles, or in terrorist activities. You will, if we request, provide information on the end user and end use of any Item you export or plan to export.

11.5. Audit Cooperation. You will cooperate fully with us in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and will indemnify and hold us harmless from, or in connection with, your or your consultants', agents' or employees' violation of this Section 14.

Miscellaneous

No Assignment. You may not delegate any duties nor assign any rights or claims hereunder without our prior written consent, and any such attempted delegation or assignment will be void.

Governing Law. The Agreement and performance under it will be governed by Colorado law, without reference to its choice of law provisions. In the event of any legal proceeding between you and us relating to this Agreement, neither party may claim the right to a trial by jury. Any action arising under this Agreement must be brought within 1 year from the date that the cause of action arose. The U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

Regulatory Restrictions. Unless otherwise expressly stated on the product or in the documentation accompanying our products, our products are intended for research only and are not to be used for any other purpose, including without limitation, unauthorized commercial uses, in vitro diagnostic uses, ex vivo or in vivo therapeutic uses, or any type of consumption by or application to humans or animals. You must use our products in accordance with our instructions. You are solely responsible for making sure that the way you use our products complies with applicable laws, regulations and governmental policies. You must obtain all necessary approvals and permissions you may need. It is solely your responsibility to make sure the products are suitable for your particular use.

Uncontrollable Circumstances. We will not be responsible or liable for failing to perform our obligations under the Agreement to the extent caused by circumstances beyond our reasonable control. In certain situations, we may use our reasonable judgment and apportion products then available for delivery fairly among our customers.

No Waiver; Invalidity. 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.

Headings. Headings are for convenience only and shall not be used in the interpretation of these Terms.

Confidentiality. You agree to keep confidential any non-public technical information, commercial information (including prices, without limitation) or instructions (including any gene sequences, oligo types or sequences) received from us as a result of discussions, negotiations and other communications between us in relation to our products or services.

Notices. Any notice or communication required or permitted under these Terms must be in writing and will be deemed received when personally delivered, or 3 business days after being sent by certified mail, postage prepaid, to a party's specified address.

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