

Terms and Conditions of Sale

EFFECTIVE DATE	
CLIENT NAME	
CLIENT ADDRESS	
CLIENT PHONE NO.	
CLIENT CONTACT	

The Client’s signature below shall constitute an acceptance of these Terms and Conditions of Sale. These Terms and Conditions of Sale shall apply to all Purchase Orders, Quotations and Project Briefs (all hereinafter defined) placed by the Client with Asterand Bioscience, Inc. or its Affiliates (hereinafter defined) on or after the Effective Date. All references to “Asterand” contained herein shall be deemed references to both Asterand Bioscience, Inc. and its Affiliates, Asterand US Acquisition Corp. and Asterand UK Acquisition Limited.

1. DEFINITIONS

1.0.1 “Affiliate” shall refer, with respect to a particular party or other entity, another person or entity that controls, is controlled by or is under common control with such party or other entity; where, for the purposes of this definition, the term “control” shall refer to the ownership of no less than fifty-one percent (51%) of the voting stock of such entity. Asterand US Acquisition Corp. and Asterand UK Acquisition Limited are fully owned subsidiaries and Affiliates of Asterand Bioscience, Inc.

1.0.2 “Clinical Data” shall refer to any and all clinical or research information about the individual from whom the Materials were originally obtained, or about the Materials themselves, and may include pathology and autopsy information.

1.0.3 “Data” shall refer to any and all deliverables expressly set forth in a Project Brief, including without limitation, Reports and Results.

1.0.4 “Experimental Reagents” shall refer to any and all research materials supplied by the Client to Asterand, including but not limited to antibodies, cell lines, therapeutic agents and test compounds.

1.0.5 “Materials” shall refer to any and all human biological materials, including without limitation, tissue, tissue derivatives, cell lines, blood, blood derivatives, primary cells, biofluids, and tissue microarrays.

1.0.6 “Products” shall refer to Materials and Clinical Data.

1.0.7 “Project Brief” (sometimes also called a Work Plan or Statement of Work) shall refer to any written document setting forth the technical and scientific specifications for the Services to be performed by Asterand.

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1.0.8 “Quotation” shall refer to any written document setting forth the details of Materials or Products to be provided by Asterand.

1.0.9 “Reports” shall refer to any and all final compilations of data, results or information titled “Report” that arise from Asterand’s performance of the Services.

1.0.10 “Results” shall refer to experimental data and any and all information arising from Asterand’s performance of the Services, and expressly excludes any and all Confidential Information or IP rights belonging to Asterand.

1.0.11 “Services” shall refer to any and all services rendered by or on behalf of the Client by Asterand as set forth in more detail in the applicable Project Brief.

1.0.12 “Specifications” shall refer to the technical or scientific requirements applicable to the Services as agreed upon in writing by the parties.

1.0.13 “Term” shall refer to the term of these Terms and Conditions, which shall commence on the Effective Date and terminate on the third (3) anniversary of the Effective Date.

2. ETHICS

Asterand warrants that any and all of its activities under this agreement shall be in compliance with all applicable statutes, regulations and guidelines, including without limitation, those that govern the prior, free and informed consent of donors of the Materials and Clinical Data.

3. RESEARCH USE

Client shall not use any Materials or Clinical Data obtained from Asterand for (a) any use that is in contravention of applicable federal, state or local statutes or regulations; or (b) involves the use of the Materials in human subjects. The Client shall not transfer any Materials and Clinical Data to any third party without prior written consent from Asterand; unless such transfer is to an Affiliate of the Client for use in a manner consistent with this Section 3 (Research Use) and is not for valuable consideration.

4. PURCHASE ORDERS

Purchase orders (“PO”) may be used to acquire Products or Services from Asterand. A PO may be placed in any commercially reasonable manner the parties determine is appropriate, including via facsimile or e-mail. Each PO will indicate the Products or Services and any appropriate Specifications related thereto, quantity, price, total purchase price, shipping instructions, requested delivery dates, appropriate billing and shipping addresses, and any other special instructions. All POs are subject to acceptance by Asterand. In the event of any conflict between the terms of any PO and these Terms and Conditions, these Terms and Conditions shall govern the rights and obligations of the parties.

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5. QUOTATIONS

All purchases of Products, and where appropriate certain purchases of Services, shall be set forth in separate Quotations which shall be agreed to in writing by all parties. Each Quotation shall be subject to these Terms and Conditions. To the extent that any Quotation conflicts with or is inconsistent with these Terms and Conditions, these Terms and Conditions shall govern and control the rights and obligations of the parties. Each Quotation shall be separate and distinct from all other Quotations. Neither party shall have any obligation to enter into any Quotation.

6. PROJECT BRIEFS

6.0.1 Purchases of Services shall be set forth in separate Project Briefs (“PB”), which shall be agreed to in writing by all parties. Asterand, subject to Section 7 (Performance), shall use reasonable commercial efforts to complete all Services in accordance with the applicable PB. Each PB shall be subject to these Terms and Conditions. To the extent that any PB conflicts with or is inconsistent with these Terms and Conditions, these Terms and Conditions shall govern and control the rights and obligations of the parties. Each PB shall be separate and distinct from all other PB. Neither party shall have any obligation to enter into any PB.

6.0.2 The Client may provide Asterand with Experimental Reagents, Materials, Clinical Data (“Client Goods”), or Client’s Confidential Information for use in the Services. Nothing in these Terms and Conditions shall be deemed to grant Asterand a license to such Client Goods or Client Confidential Information except as reasonably necessary for the performance of the Services. Asterand shall exercise reasonable care in handling any such Client Goods or Client Confidential Information and shall, at the Client’s request, promptly return or destroy the same.

7. PERFORMANCE

7.0.1 Asterand shall provide all Services with all reasonable skill and care using suitably qualified and experienced personnel.

7.0.2 All Asterand obligations set forth in these Terms and Conditions shall be subject to the following: Asterand shall not carry out such obligations where (a) the relevant Services would lead to a conflict of interest with Asterand’s preexisting contractual or legal obligations; (b) necessary Materials and Clinical Data are unavailable; or (c) Asterand is prevented from doing so by any reason outside of its reasonable control, including breach of these Terms and Conditions by the Client.

7.0.3 Either party may cancel any PO, Quotation or PB at any time by providing no less than thirty (30) days prior written notice to the other party. Any such cancellation by Asterand shall be without penalty, and their sole obligation shall be to return any advance payment paid by the Client. Asterand shall retain the right to suspend performance of any PO, Quotation or PB or require adequate assurance satisfactory to Asterand when, in its sole opinion, reasonable grounds exist for such action. In case of cancellation or termination by the Client of a PO, Quotation or PB which is signed and in effect, Asterand shall retain any advance payments and the Client shall compensate Asterand for all and any Products already provided or any Services that Asterand has already performed prior to such cancellation or termination.

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7.0.4 Asterand shall not guarantee any favorable or useful result arising from the performance of any Services or provision of Products and Data.

8. PAYMENTS

Asterand's list prices are subject to change without prior notice to the Client. Prices quoted by Asterand shall be firm for thirty (30) days after the date of the Quotation or PB unless otherwise agreed upon in writing by the Parties. Payment by the Client shall be due no later than thirty (30) days of receipt of each invoice. Client shall pay all applicable sales tax, including any and all value added tax, shipping, import or export duties, customs fees and freight charges. Interest shall be payable, calculated on a daily basis, on any overdue payments, at the maximum rate allowed by law. The method of payment shall be separately agreed by both parties hereto.

The parties agree that all payments made hereunder are for the Services, Products or Data, and are not for the Materials or Clinical Data themselves.

9. DELIVERY

All Products and Data transferred to the Client will be shipped CIP Shipping Point (as defined by the International Chamber of Commerce Incoterms 2010). All delivery dates are best estimates possible based on current and anticipated conditions. Asterand shall not be liable for any loss, damage or claim by the Client arising out of failure to meet an estimated delivery date. Asterand shall keep the Client reasonably apprised of the availability and estimated delivery dates of such Products and Data.

10. OWNERSHIP & IP

10.0.1 Right and title to the Products and Data shall pass to the Client upon delivery in accordance with Section 9 (Delivery) of these Terms and Conditions subject to receipt by Asterand of full payment of all associated Asterand invoices.

10.0.2 Each party shall remain the absolute and unencumbered owner of any intellectual property rights owned by or otherwise in the possession of that party at the earlier of the Effective Date of these Terms and Conditions or the date of signature of the relevant Quotation or PB, including without limitation, any know-how, trade secrets, copyrights, trademarks, patent applications, and patents (hereinafter, "IP Rights"). As between the parties, the Client shall own any invention to the extent that it is first reduced to practice by Asterand during the course of the Services and requires the use of the Client's IP Rights or the Client's Confidential Information; provided that (i) this Section 10.0.2 shall not apply to the extent it relates to any method, process, assay, software, source code, information, analyses or technology used by Asterand in its own business; and (ii) the Client shall not assert or seek to assert against Asterand or its other clients any such right to the extent it would preclude Asterand providing its Services to third parties. Except as set forth above, all IP Rights which arise in the performance of Services automatically vest in Asterand. Save as otherwise expressly stated herein, no rights, licenses or obligations are granted by or to be implied by these Terms and Conditions. Nothing in these Terms and Conditions shall be deemed to grant the Client any license to practice any Asterand IP Rights.

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10.0.3 Notwithstanding the above, Asterand reserve the right to transfer all new XpressWay™ Profile data generated for a Client immediately into its publically available database of gene expression data unless otherwise agreed in writing by both parties.

11. ACCEPTANCE

The Client shall accept any Products or Data that comply with the Specifications set forth in any applicable Quotation, PO or PB. The Client may reject any Products or Data that do not conform to the Specifications. To properly reject any Products or Data, the Client shall deliver written notice of its intent to reject the Products or Data within sixty (60) business days of receipt of the applicable Products or Data, together with a written indication of the basis for such rejection. If such notice is not delivered within the specified period of time, any such Products or Data shall be deemed accepted by the Client. For any Products or Data properly rejected hereunder, Client shall be entitled to return the Products or Data, in reasonable good condition, at the Client's expense, for replacement by Asterand.

12. CONFIDENTIALITY

12.0.1 The parties shall take all steps reasonably necessary to hold the other party's Confidential Information in trust and shall not use such Confidential Information for any purpose other than that expressly stated in these Terms and Conditions; nor shall either party disclose the Confidential Information belonging to the other party to any third party without the prior written consent of the disclosing party. Each party shall destroy or return all Confidential Information belonging to the other party no later than thirty (30) days after the last date of the Term, except that each party may retain one copy of the Confidential Information of the other party for legal or administrative purposes only.

12.0.2 "Confidential Information" shall refer to any information provided to either Party by the other pursuant or relating to these Terms and Conditions, other than any information which (i) has been published or comes into the public domain other than by breach of these Terms and Conditions by the recipient; (ii) is known to the recipient prior to the date of disclosure as evidenced by written records; (iii) is disclosed to the recipient by a third party having the legal right to make such disclosure; or (iv) is developed by the recipient, independently of these Terms and Conditions. The receiving party may disclose Confidential Information belonging to the disclosing party to the extent required by any applicable law or competent authority, to which the receiving party is subject, provided the receiving party gives the disclosing party a reasonable opportunity to oppose, limit or seek confidential treatment with regard to such required disclosure.

13. HAZARDOUS MATERIALS

Products delivered pursuant to these Terms and Conditions may be experimental in nature and have hazardous or unknown properties. Asterand makes no representations or warranties, either express or implied, as to the merchantability or fitness of the Products or Data for a particular purpose. Asterand expressly recommends that all individuals who handle the Materials on the Client's behalf adhere to *Universal Precautions for the Prevention of Transmission of HIV and other Bloodborne Pathogens* (www.cdc.gov/niosh/topics/bbp/). If Client provides Asterand with Experimental Reagents or Materials for use in the Services, the Client shall provide all relevant information regarding the safety, handling, use, disposal and environmental effects of such Experimental Reagents and Materials.

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14. EQUAL OPPORTUNITY CLAUSE

This contract incorporates by reference the following clauses: 41 CFR §60-1.4(a); 41 CFR §60-300.5(a); 41 CFR §60-741.5(a) and 29 CFR Part 471, Appendix A to Subpart A. Contractor/vendor must abide by non-segregation regulations at 41 CFR §60-1.8 and any applicable affirmative action obligations as required by 41 CFR §60-1.40(a)(2).

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

15. ASSUMPTION OF RISK

Except to the extent prohibited by law, the Client shall assume all liability for damages or loss that may arise from the Client's use, storage, transfer, processing or disposal of the Products or Data. Asterand shall not be liable to the Client or any other party for any loss, claim or demand made by or against the Client or other party, due to or arising out of the use of the Products and Data, except to the extent caused by the willful misconduct of Asterand.

16. LIMITATION ON LIABILITY

Asterand's maximum liability to the Client in relation to these Terms and Conditions for any cause whatsoever shall be limited to direct costs and damages only in an amount not exceeding the sum equivalent to the total amount received by Asterand from the Client under these Terms and Conditions. The parties hereby agree that the limitations contained herein are reasonable in light of all the circumstances. All liability that is not expressly assumed by Asterand in these Terms and Conditions is hereby excluded. Under no circumstances shall Asterand be liable to the Client for any special, exemplary, punitive, incidental or consequential damages regardless of the cause.

17. PUBLICATION

The Client, and any individuals designated by the Client may publish the results of work performed with the Products or Data, provided however that if such publication contains proprietary data or Confidential Information belonging to Asterand, the Client will not publish such data or information without prior written permission from Asterand. The Client shall use reasonable efforts to reference Asterand as the provider of the Products or Data in any scholarly or industry publication arising from the use of the Products or Data. Notwithstanding, neither party shall use the name, logo, trademark or service mark of the other party, or any variation thereof, for any purpose in advertising, press release, publicity or promotional literature without the prior written consent of the party whose mark is proposed to be utilized.

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18. INTEGRATION

These Terms and Conditions, and all POs, Quotations and PBs governed by it, are the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersede and merge all prior discussions or proposals between the parties. These Terms and Conditions take precedence over any conflicting terms, including without limitation, terms included on an invoice, PO, Quotation, PB or receipt.

19. INDEPENDENT CONTRACTORS

The relationship between the parties is that of independent contractors. Nothing in these Terms and Conditions shall be interpreted to create a partnership, joint venture or employment relationship. No party may act as an agent of the other party hereunder, except as otherwise provided herein.

20. COUNTERPARTS

Facsimile or PDF electronic signatures shall be accepted as original signatures. Placement of any orders or the transaction of any business by electronic medium shall be subject to these Terms and Conditions. These Terms and Conditions may be executed as two or more counterparts, each of which shall be deemed an original agreement.

21. NOTICES

Any notice required under these Terms and Conditions shall be in writing and shall be delivered by certified mail, return receipt requested; postage prepaid, or guaranteed overnight delivery service to the addresses provided by each party to the other.

22. ASSIGNMENT

The Client shall not assign or transfer these Terms and Conditions without the prior written consent of Asterand, which shall not be unreasonably withheld. Either party may assign or transfer these Terms and Conditions, in whole or in part, to an Affiliate pursuant to a merger, acquisition or sale of substantially all of the assets of the company.

23. SEVERABILITY

If any provision of these Terms and Conditions shall be void, unlawful or for any reason unenforceable, that provision shall be deemed severable from these Terms and Conditions and shall not affect the validity and enforceability of the remaining provisions of these Terms and Conditions.

24. AMENDMENTS

The parties agree that any amendment, revision, waiver or alteration to these Terms and Conditions shall be in writing and signed by both parties. No waiver by either party of any breach of these Terms and Conditions shall be a waiver of

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any preceding or subsequent breach. No waiver by either party of any right under these Terms and Conditions shall be a waiver of any other right. The parties shall not be required to give advance notice to enforce strict adherence to the terms of these Terms and Conditions.

25. INJUNCTIVE RELIEF

A breach of these Terms and Conditions may result in irreparable and continuing harm to a party for which there may be no adequate remedy at law. Each party is therefore entitled to seek injunctive relief as well as other and further relief as may be appropriate.

26. GOVERNING LAW & ARBITRATION

The validity, interpretation and enforcement of these Terms and Conditions shall be governed by the laws of Delaware without reference to conflict or choice of law provisions. If a dispute arises under or relating to these Terms and Conditions, the parties shall submit the dispute to binding arbitration in the State of Delaware. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of such arbitration shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses and reasonable attorney fees. Any such arbitration shall be conducted by an arbitrator experienced in scientific research and commercial law and shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who is employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction. Nothing in this Section 25 may be interpreted so as to limit or modify Section 24 (Injunctive Relief).

Client has consented to these Terms and Conditions of Sale, as evidenced by the signature of its authorized representative below.

Signature	
Printed Name	
Title	

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