



Fresenius Kabi, LLC Pharmaceutical Product Terms and Conditions

- 1. ORDERS.** All orders are subject to acceptance by Fresenius Kabi, LLC ("Fresenius Kabi"). ACCEPTANCE SHALL BE ONLY BY ACCEPTANCE LETTER OR ACTUAL PERFORMANCE. These Terms and Conditions shall apply to all orders for Fresenius Kabi products ("Products"). By submitting an order for a Product, an individual or entity ("Customer") accepts and agrees to comply with these Terms and Conditions. Subject to Section 11 below, no additional or different terms contained in any purchase order or other document submitted by Customer shall be binding on Fresenius Kabi.
- 2. RESTRICTION ON RESALE.** Customer shall not resell any Products, except that if Customer is a wholesaler or distributor of any Products, Customer may comply with this provision by causing each third party purchaser to whom Customer sells Products (each a "Third Party Purchaser") to agree that such Third Party Purchasers shall not resell any Products purchased under these Terms and Conditions. For the purpose of these Terms and Condition, "resell" shall not include dispensing or administering the Products to an individual patient pursuant to a valid prescription. Some Products are subject to limited distribution as described at <https://www.fresenius-kabi.com/us/pharmaceutical-products-and-lethal-injection> ("Restricted Products"); pursuant to such policy, Customer may not, under any circumstances, resell any "Restricted Products" to a prison or other correctional facility.
- 3. OWN USE.** To the extent Customer is a non-profit entity subject to 15 U.S.C. § 13c (the Non-Profit Institutions Act), such as but not limited to non-profit hospitals, Customer's Product purchases must be for Customers "own use," as that term has been interpreted by the United States Supreme Court defined in Abbott Laboratories, et al v. Portland Retail Druggist Association, Inc., 425 U.S. 1 (1976), subsequent case law, and the Federal Trade Commission.

Fresenius Kabi reserves the right to not honor future Product orders from Customer if Fresenius Kabi suspects that Customer or a Third Party Purchaser to whom Customer sells has violated or is likely to violate the provisions in this Section 3 or Section 2 above.
- 4. RESTRICTION ON EXPORTS.** Customer shall not, and if Customer is a wholesaler or distributor of any Products, Customer shall cause each Third Party Purchaser to agree that the Third Party Purchaser shall not, sell, export, or distribute, directly or indirectly, any Products purchased under these Terms and Conditions to any location or territory outside of the United States, or take any action that is likely to result in such sale, export, or distribution. Fresenius Kabi shall have the right to suspend sales of Products to Customer if Fresenius Kabi suspects that Customer or a Third Party Purchaser has violated or is likely to violate the provisions in this Section 4, including with respect to sales, exports, or distributions to the U.S. territories.
- 5. SHIPPING.** Orders will be shipped FOB Point of Destination with freight and insurance prepaid. Orders will be shipped by carrier selected by Fresenius Kabi.
- 6. PAYMENT TERMS.** Immediately upon shipment of the Products to Customer, Fresenius Kabi shall submit invoices therefore to Customer. Payment of all invoices shall be due within thirty (30) days of the date on such invoice. All such payments shall be submitted to Fresenius Kabi, LLC, 25476 Network Place, Chicago, IL 60673-1254. Prices are subject to all taxes, excise or other charges levied by any government (federal, state, local)

upon the sales, consumption or use of the Products. Late payments will accrue interest at the rate of 1.5% per month (or the highest rate permitted by law, if lower).

- 7. BACKORDERS.** Backorders will be cancelled after sixty (60) days without penalty to Fresenius Kabi. Customer's sole remedy for Fresenius Kabi's failure to supply any Product ordered within ten (10) business days of date specified on purchase order shall be to purchase alternate product from another supplier.
- 8. ALLOCATION.** In the event of a Fresenius Kabi or industry-wide shortage of any Product, or in the event that Fresenius Kabi, in its sole discretion, expects that demand for any Product will exceed Fresenius Kabi's available supply, Fresenius Kabi shall have the right to allocate the affected Products to all of its customers, including Customer, (i) in accordance with Fresenius Kabi's policies, as may be amended from time to time, or (ii) as may be required by any applicable laws and regulations.
- 9. WARRANTY.** FRESENIUS KABI WARRANTS THAT AT THE TIME OF SHIPMENT, NO PRODUCT DELIVERED HEREUNDER WILL BE ADULTERATED OR MISBRANDED WITHIN THE MEANING OF THE UNITED STATES FEDERAL FOOD, DRUG AND COSMETIC ACT, AS AMENDED FROM TIME TO TIME. EXCEPT FOR THOSE WARRANTIES EXPRESSLY STATED IN THESE TERMS AND CONDITIONS, FRESENIUS KABI MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.
- 10. BREACH OF WARRANTY CLAIMS.** Customer must give Fresenius Kabi notice of any claim for breach of warranty with respect to Product delivered by Fresenius Kabi hereunder within twelve (12) months after the date of delivery of such Product to Customer hereunder. Fresenius Kabi's sole liability shall be limited to credit for or replacement of the Product affected by such breach of warranty claims.
- 11. TERMS.** List prices, delivery terms, payment terms, returned goods policies, and other terms and policies may be changed by Fresenius Kabi on a prospective basis at any time without notice. No changes to these Terms and Conditions, including any conflicting or additional terms contained in any purchase order or other document submitted by Customer, shall be valid unless approved in writing by the Fresenius Kabi business office in Lake Zurich, Illinois.
- 12. RETURNS.** Products are subject to Fresenius Kabi's current Standard Returned Goods Policy, which is available at <https://www.fresenius-kabi.com/us/pharmaceutical-product-policies> and may be amended from time to time in Fresenius Kabi's sole discretion.
- 13. PRODUCT SOLD THROUGH WHOLESALE OR DISTRIBUTORS.** To the extent any of the Products are purchased by Customer from a wholesaler or distributor, Customer shall negotiate order process, Products, delivery, payment, and other order-related terms directly with such wholesalers or distributors. All other provisions of these Terms and Conditions shall apply.
- 14. EXCLUDED CUSTOMERS.** These Terms and Conditions do not apply to the purchase of Products by manufacturers, veterinarians, retailers, U.S. government (including without limitation the Department of Veterans Affairs), medical surgical suppliers, exporters and purchasers outside the 50 United States of America and Washington, D.C., excluding Puerto Rico and all other U.S. territories and possessions.

- 15. FORCE MAJEURE.** Fresenius Kabi shall be excused from any delay or failure in performance hereunder arising out of causes beyond its reasonable control or without its fault or negligence. Such causes may include, but are not limited to: strikes, work stoppages, lockouts, boycotts or other labor problems; embargoes, shortages or other unavailability of supplies, raw materials, fuel, energy, or components from customary sources at customary prices; insurrections or riots; acts of God; production or delivery problems; equipment failures; acts of government; compliance with, or other action taken to carry out the intent or purpose of, any law or administrative regulation having the effect of law (now or hereafter enacted); compliance with any request by a government agency; war; acts of a public enemy; terrorism; sabotage; acts of Customer; inability to secure transportation; fires, explosions, flood; national disasters; pandemics; or discontinuance of a product line.
- 16. COMPLIANCE WITH LAWS; DISCOUNT DISCLOSURE.** Customer agrees to perform its obligations hereunder in compliance with all applicable laws, rules, and regulations. Without limiting the foregoing, Customer acknowledges and agrees that to the extent that Customer and/or any Third-Party Purchasers receive any discounts or other reductions in price, the federal Anti-Kickback Statute discount statutory exception (42 U.S.C. § 1320-7b(b)(3)(a)) and regulatory discount safe harbor (42 C.F.R. § 1001.952(h)) may apply. Customer shall comply with these statutory and regulatory provisions to the extent applicable, including, as applicable, providing notice to Third-Party Purchasers via invoices, shipping documents, or other commercially reasonable methods, and shall cooperate with Fresenius Kabi in order to ensure Third-Party Purchasers are aware of, and able to comply with, any applicable reporting requirements. Customer shall retain documentation of discounts, rebates, or other price reductions and make such information available to federal or state health care programs, upon request.
- 17. COMPLIANCE WITH PRODUCT STORAGE AND HANDLING REQUIREMENTS.** Customer agrees to comply with the storage and handling requirements for each Product as may set forth in the applicable Product package insert or as otherwise provided to the Customer by Fresenius Kabi.
- 18. AUTHORIZED TRADING PARTNER.** Customer agrees that it is an "authorized trading partner" as that term is defined by the Drug Supply Chain Security Act ("DSCSA") and that Customer is and will remain in compliance with all relevant provisions of such law. If customer is a wholesaler or distributor, Customer agrees that it will only sell Product to "authorized dispensers," as that term is defined by the DSCSA.
- 19. ASSIGNMENT.** Fresenius Kabi shall have the right to assign its rights and obligations under any agreement that is subject to these Terms and Conditions to a successor, affiliate, or unrelated third party without the consent of any other party.

01/01/2021