

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 12 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). Customer may not deduct or offset any disputed amounts from Fresenius Kabi's invoice.

- 7. BACKORDERS.** Backorders for all products (excluding I.V. Solutions and Devices) will be cancelled after sixty (60) days) without penalty to Fresenius Kabi unless the cancellation is requested by customer. Customer's sole remedy for Fresenius Kabi's failure to supply any Product ordered within (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.

If any Device Products are found and reported within two (2) years (for spare parts, within ninety (90) days) from date of delivery to have been defective when delivered (any shortcoming which prevent performance to specified standards, if any, set forth in the specifications being deemed a defect) and provided immediate notification in writing is given to Fresenius Kabi, Fresenius Kabi will replace or repair such defects (defects caused by normal wear are excluded from warranty replacement). During repair, risk of loss will remain with Customer. Replacement of Device Products or parts thereof manufactured or supplied by others is subject to that manufacturer's or supplier's consent. No Device Products can be returned without Fresenius Kabi's prior written consent. The remedies of Customer set forth herein are exclusive and the total liability of Fresenius Kabi with respect to the performance or breach of these Terms and Conditions in connection with the manufacture, sale, delivery, installation or repair of the Device Products hereunder. The technical direction covered by or furnished under these Terms and Conditions is limited to making within the time period set forth above such modifications as may be necessary to achieve performance to specified standards, if any, and to repairing any defective Device Products that have been identified by Customer. If Fresenius Kabi and Customer are unable to correct a defective or non-conforming Device Product, Fresenius Kabi's sole liability shall be to repay any portion of the purchase price paid for it upon Customer returning it to Fresenius Kabi. Any modifications to Device Products without Fresenius Kabi's prior written approval, improper use of Device Products, whether intentional or unintentional, operation beyond capacity, failure to report to Fresenius Kabi within the warranty period, substitution or addition of components or parts, lack of proper maintenance, abuse, improper installation, or abnormal conditions of temperature, moisture or corrosive matter, or alteration or repair by others in such manner which in Fresenius Kabi's judgment affects the Device Product materially and adversely shall void the foregoing warranty.

- 10. LIMITATION OF LIABILITY.** FRESENIUS KABI WILL NOT BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. FRESENIUS KABI SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTIES, ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS, INCLUDING NEGLIGENCE AND STRICT LIABILITY, OR ARISING UNDER ANY OTHER THEORIES OF LAW. FRESENIUS KABI WILL NOT BE LIABLE FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR SOFTWARE OR THE PROVISION OF SERVICES BY THIRD PARTIES. FRESENIUS KABI HAS NOT AUTHORIZED ANYONE TO MAKE ANY REPRESENTATIONS OR WARRANTIES ON FRESENIUS KABI'S BEHALF OTHER THAN AS PROVIDED ABOVE. CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES PROVIDED DIRECTLY BY FRESENIUS KABI, FRESENIUS KABI WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGE IN EXCESS OF THE LESSER OF: (i) THE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PRODUCTS GIVING RISE TO THE CLAIM; OR (ii) FIFTY THOUSAND DOLLARS (\$50,000.00). THE FOREGOING WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
- 11. 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.
- 12. 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.
- 13. RETURNS.** Products are subject to Fresenius Kabi's current Standard Returned Goods Policy ("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.
- 14. PRODUCT COMPLAINTS; RECALLS.** Product Complaints and Recalls shall be governed by the Returned Goods Policy.
- 15. PRODUCT SOLD THROUGH WHOLESALERS 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.
- 16. EXCLUDED CUSTOMERS.** These Terms and Conditions do not apply to the purchase of Products by unauthorized wholesalers and distributors, 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.
- 17. 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, pandemics, epidemics, 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.

- 18. 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.
- 19. 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.
- 20. INSURANCE.** Customer shall obtain and maintain comprehensive general liability insurance covering each occurrence of bodily injury and property damage in an amount not less than the equivalent of one million dollars (\$1,000,000.00) (or such higher limits as Fresenius Kabi shall reasonably request) with endorsements for Products/completed operations, blanket contractual liability and vendor's liability.
- 21. AUTHORIZED TRADING PARTNER.** Customer agrees that to the extent applicable to the Products purchased by Customer under these Terms and Conditions, 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.
- 22. 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.
- 23. JURISDICTION.** All agreements subject to these Terms and Conditions shall be deemed to have been entered into in the State of Delaware and their interpretation, construction and enforcement shall be determined pursuant to the laws of that state without giving effect to conflict of laws principles.

11/01/2021