

## TERMS AND CONDITIONS OF SALE

January 1, 2023

All purchases of Product(s) from Fresenius Kabi Canada Ltd., including its Canadian affiliates (collectively referred to as “**Fresenius Kabi**”) are subject to and conditioned upon these terms and conditions of sale, as amended from time to time (the “**Terms and Conditions**”), which are accepted by and deemed binding on the Customer upon placing an order for Product(s) with Fresenius Kabi. The Terms and Conditions are made available to Customer at <https://www.fresenius-kabi.com/en-ca/>. Fresenius Kabi reserves the right to amend, update, replace, or cancel these Terms and Conditions at any time and without notice. Fresenius Kabi will update its website as these Terms and Conditions are changed, and such changes shall become effective immediately upon posting of the modified Terms and Conditions. It is Customer’s responsibility to review the latest version of the Terms and Conditions prior to submitting a Purchase Order. Any orders placed after any prior version of the Terms and Conditions is changed shall be subject to such amended Terms and Conditions.

1. **Definitions.** In these Terms and Conditions, the following definitions apply:

- a. “**Agreement**” means the agreement between Customer and Fresenius Kabi for the purchase and sale of Products under these Terms and Conditions, but excludes any separate written contract related to the purchase and sale of Products negotiated and executed between Customer and Fresenius Kabi, unless otherwise expressly agreed upon in writing.
- b. “**Controlled Substance**” means a substance included in Schedule I, II, III, IV, or V, of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 or a narcotic, as defined in the *Narcotic Control Regulations*, C.R.C., c. 1041.
- c. “**Customer**” means any person or entity located within Canada who is legally authorized to purchase Products from Fresenius Kabi, and either purchases such Products directly from Fresenius

Kabi or indirectly via an authorized Wholesaler or other third-party distributor.

- d. “**Delivery Date**” means the date Product is delivered to Customer.
- e. “**Delivery Point**” means the location identified by Customer in the Purchase Order to which Fresenius Kabi is to deliver Products, or such other delivery area or point which is specified in writing by Customer.
- f. “**Force Majeure Event**” means any event or cause that is not within a party’s reasonable control, and that by the exercise of due diligence is unable to be avoided or overcome in a reasonable manner. Without limiting the generality of the foregoing, a “Force Majeure Event” may include: (a) acts of God; (b) wars (declared or undeclared); (c) insurrections, hostilities, riots; (d) floods, fires, storms, storm warnings, landslides, lightning, earthquakes, washouts; (e) industrial disturbances, acts of a public enemy, acts of terror, sabotage, theft, espionage, blockades, pandemics, epidemics; (f) civil disturbances; (g) explosions, breakage or accidents; and (h) any action or restraint by court order or public or regulatory authority; provided, however, that a “Force Majeure Event” shall not include the lack of funds or the inability to pay any amounts due and owing to Fresenius Kabi.
- g. “**Good Manufacturing Practices**” or “**GMP**” means the practices required in order to conform to the guidelines recommended by regulatory agencies that control the authorization and licensing of the manufacture and sale of certain Products, including

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pharmaceutical products, nutritional supplements, and medical devices.

- h. **“Latent Damage”** means damage or a Product defect that exists as at the Delivery Date but is not discoverable by a reasonable inspection.
  - i. **“Patent Damage”** means damage or a Product defect that exists as at the Delivery Date and is discoverable by a reasonable inspection.
  - j. **“Product(s)”** means any product or service made available for sale by Fresenius Kabi, including pharmaceutical products, nutritional supplements, base solutions, IV solutions and administration sets, medical devices, pumps, bags, drug delivery systems, technology, and any other goods, parts, software, and/or accessories related thereto.
  - k. **“Purchase Order”** means the purchase order or other similar document submitted by Customer to Fresenius Kabi for the purchase of certain Products, to which these Terms and Conditions are deemed incorporated by reference.
  - l. **“Shipping Error”** means any mistake in the shipment details, including, without limitation, any Product shortage, damage, picking error, warehouse error, overage, labeling error, ordering error.
  - m. **“Recall”** means any action by Fresenius Kabi or any regulatory or governmental authority, whether voluntary or involuntary, to recover title to or possession of any Products sold, transferred or shipped to Customer.
  - n. **“Returned Goods Policy”** means Fresenius Kabi’s policy for accepting the return or destruction of certain Products, as amended from time to time, and available at <https://www.fresenius-kabi.com/en-ca/>.
  - o. **“Specifications”** means: (a) with respect to Products manufactured by Fresenius Kabi, Fresenius Kabi’s specifications for the Product in effect as at the Delivery Date; and (b) with respect to Products distributed (but not manufactured) by Fresenius Kabi, the manufacturer’s published specifications as at the Delivery Date.
  - p. **“Warranty”** means Fresenius Kabi’s guarantee that the Products and their manufacture shall be in conformance with the applicable Specifications and GMP as at the Delivery Date. More specific warranties may accompany certain Products and, if so, will be set out in documentation and included with the Product upon delivery.
  - q. **“Wholesaler”** means a legal entity primarily engaged in selling pharmaceutical products and medical devices to other businesses, including pharmacies, hospitals, and other manufacturers, wholesalers or distributors, consistent with the terms of their permits, licences, and applicable laws.
2. **Entire Agreement.** Each Agreement between Customer and Fresenius Kabi consists solely of: (a) these Terms and Conditions; and (b) only the below information contained in the applicable Purchase Order:
- a. Customer account number
  - b. Customer contact details
  - c. Purchase Order number
  - d. Customer name
  - e. Requested Delivery Date
  - f. Delivery Point

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- g. Product description/identification
- h. Product quantity
- i. Any special instructions

Accordingly, these Terms and Conditions apply to the exclusion of any other terms that Customer may wish to impose or incorporate or that are implied by trade, customer, practice, or course of dealing. Unless and except to the extent otherwise expressly agreed to in writing, Fresenius Kabi's sale and Customer's purchase of all Products shall be solely in accordance with these Terms and Conditions. No variation of these Terms and Conditions will be binding on Fresenius Kabi unless agreed to in writing and signed by an authorized employee of Fresenius Kabi. Both Customer and Fresenius Kabi hereby accept these Terms and Conditions and agree that no inconsistent, additional, or conflicting terms contained in any Purchase Order, acceptance, shipping instructions, quotation, request, confirmation, invoice, acknowledgement, documentation, material, release or other written correspondence submitted by either party shall apply. Any such additional or different terms shall be void and of no force or effect. To be clear, all such additional or different terms are hereby rejected, and no separate notice of such rejection need be given by either party.

3. **Ordering.** All Purchase Orders are subject to acceptance and credit approval by Fresenius Kabi, and must be submitted through the following channels:

- a. Global Health Exchange (GHX)
- b. Electronic Data Interchange (EDI)
- c. PConnect
- d. **Email:**  
[Canada\\_Customerservice@fresenius-kabi.com](mailto:Canada_Customerservice@fresenius-kabi.com)
- e. **Tel:** 1-877-821-7724 (Toll Free)
- f. **Fax:** 1-877-821-2108 (Toll Free)
- g. **McKesson Distribution Partners:**  
4705 Dobrin  
St. Laurent, Quebec

H4R 2P7

- Ontario & Atlantic Canada:  
**Fax:** 1-888-600-8104  
**Tel:** 1-877-671-1376
- West of Ontario:  
**Fax:** 1-800-830-6436 (Toll Free)  
**Tel:** 1-800-830-6465 (Toll Free)
- Quebec:  
Please contact your Wholesaler

To the extent any of the Products are purchased by Customer from a Wholesaler or third-party 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.

4. **Controlled Substance Ordering.** Controlled Substances should be ordered through McKesson Distribution Partners (or any other participating Wholesaler). When that is not possible, such Products can be ordered directly from Fresenius Kabi, but only in the following circumstances: (a) a pharmacist or physician, registered with a provincial professional regulatory body, and authorized to order and handle such Controlled Substances; or (b) any other person, authorized on behalf of a Wholesaler (or other licence holder), can initiate an order, by sending a separate endorsed script or order form via regular mail or courier, to:

**Fresenius Kabi Canada Ltd.**  
c/o Accuristix  
109 Summerlea Road  
Brampton, ON, L6T 4P6

5. **Export Restrictions.** Customer shall not market, sell, transfer, export, or distribute any Product, directly or indirectly, outside of Canada, nor shall Customer sell or transfer any Product, directly or indirectly, to any purchaser or third party that Customer knows, or reasonably ought to know, intends to market, sell, transfer, export, or distribute such Product outside of Canada.

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Fresenius Kabi shall have the right to suspend sales of Products to Customer if Fresenius Kabi suspects that Customer or any third-party purchaser of Products has violated or is likely to violate the provisions in this Section 5.

6. **Licences and Permits.** Customer hereby represents and warrants that it has, and will maintain in good standing at all material times, any and all applicable permits and licences (e.g. Drug Establishment Licence (DEL), pharmacy licence, physician's licence, etc.) required to purchase such Products and agrees that this representation is material consideration for purchasing Products from Fresenius Kabi and that Fresenius Kabi is relying upon such representation. Upon Fresenius Kabi's request, Customer shall promptly forward a copy of such licences to Fresenius Kabi. In addition, Customer represents and warrants that it is not prohibited or restricted in any way from purchasing or possessing the Products, and will not use or deal with the Products for any purposes, or in any way, prohibited by applicable law.
7. **Prices.** All accepted Purchase Orders will be filled and invoiced at Fresenius Kabi's prices in effect at the time the order is processed. All prices are subject to change without notice, and are exclusive of all applicable taxes. Customer shall be solely responsible for payment of all applicable local, provincial, and federal sales, use, and/or gross receipt taxes resulting from transactions with Fresenius Kabi.
8. **Payment.** Unless otherwise agreed to between Customer and Fresenius Kabi, Customers shall pay all sums owing to Fresenius Kabi within thirty (30) days from the date of invoice. Unless otherwise indicated on the invoice, payments for direct orders from Fresenius Kabi can be remitted as follows:

- Electronically
- By cheque to:  
**Fresenius Kabi Canada Ltd.**  
165 Galaxy Boulevard, Suite 100

Toronto, Ontario  
M9W 0C8

- Credit Card

Fresenius Kabi reserves the right to delay or withhold any shipment of Products for Customers with past-due balances. Interest shall be payable on any late payment at the lower of 1.25% per month, compounded monthly, or the highest rate permitted by applicable law.

9. **Delivery.** Notwithstanding anything to the contrary contained in these Terms and Conditions or in any Purchase Order, any of Customer's requested Delivery Dates and any shipment dates which may be provided to Customer are not binding on Fresenius Kabi and are an approximation only. Fresenius Kabi reserves the right to revise shipping estimates to reflect conditions in effect on or before the date on which an order is scheduled to be shipped. Any unfulfilled Purchase Order will automatically be cancelled, without notice and without penalty to Fresenius Kabi, sixty (60) days from the date of the Purchase Order, and Customer's sole remedy for Fresenius Kabi's failure to supply any Product within fourteen (14) business days of the requested Delivery Date, or at all, shall be to purchase alternative product from another supplier, at Customer's sole cost and expense. Upon written request, and in Fresenius Kabi's sole and absolute discretion, Customer may, in certain conditions, be compensated an amount equal to the difference in price between Fresenius Kabi's Products and the alternative Canadian labelled product purchased by Customer. Fresenius Kabi will use its reasonable commercial efforts to fill and ship accepted Purchase Orders to Customer within a reasonable time, but will not be liable for any losses or damages, including any special, indirect, or consequential damages, arising out of any delay or failure to ship Product for any reason. In any event, receipt of Product by Customer shall constitute acceptance and waiver of any and all claims due to delay. Without limiting the foregoing, Customer agrees that Fresenius Kabi

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will not be liable for any loss or damages that may result from nonperformance and/or delays caused by a supply shortage of raw materials, manufacturing problems, delivery or labor problems, acts of regulatory agencies, discontinuation of a Product, acts of Customer, and/or by reason of any Force Majeure Event.

10. **Minimum Orders.** Any Purchase Order totaling less than CDN\$500.00 (exclusive of tax) will be subject to a CDN\$75.00 minimum order handling charge.
11. **Expedited and Special Orders.** Any request to have Fresenius Kabi expedite the delivery of Products under a Purchase Order will be subject to a CDN\$150.00 expedited order handling charge, in addition to all other related shipping and delivery charges. Any special instructions requested by Customer, including any rush orders, may be subject to additional charges.
12. **Shipping Term/Title/Risk of Loss.** Unless otherwise agreed upon, deliveries will be FCA (*Incoterms 2020*) Delivery Point, with freight and insurance prepaid. Title and risk of loss on any Products will pass to Customer upon delivery on the Delivery Date. Any shipping and handling charges prepaid by Fresenius Kabi will be added to the Customer's invoice as separate line items.
13. **Inspection.** Customer shall be responsible for visually inspecting and counting all Product(s) received at the Delivery Point prior to acceptance of delivery. Any exception or deviation must be noted on the carrier's freight bill or bill of lading and must be signed by Customer and countersigned by the carrier. In order to be eligible for return in accordance with Fresenius Kabi's Returned Goods Policy, Customer must notify Fresenius Kabi's Customer Service Department of any: (a) Shipping Error, within three (3) business days of the Delivery Date; (b) Latent (Concealed) Damage, within five (5) business days of discovery; and (c) Patent (Visible) Damage, within thirty (30) days of the Delivery Date. All deliveries of Products will be deemed

accepted by Customer and without damage of any kind should Customer fail to provide notice in accordance with the timelines set out herein.

14. **Returned Goods Policy.** Products are subject to Fresenius Kabi's current Returned Goods Policy, which is available at <https://www.fresenius-kabi.com/en-ca/>, and which may be amended from time to time in Fresenius Kabi's sole discretion.
15. **Warranty.** In relation to any Product purchased hereunder, Fresenius Kabi provides a Warranty only to the original Customer. No Warranty is assignable or transferrable by Customer to any third party without Fresenius Kabi's prior written consent, which consent may be withheld in Fresenius Kabi's sole and absolute discretion. Fresenius Kabi does not warranty or guarantee Product shelf-life upon delivery. Fresenius Kabi's Warranty is conditioned upon proper storage, installation, use, and maintenance of Products in accordance with applicable written instructions or recommendations of Fresenius Kabi. Fresenius Kabi's Warranty will be void and of no force and effect if: (i) the Product is not used in accordance with its instructions or if it is used for a purpose not indicated on the labeling; (ii) the alleged defect is a result of abuse, misuse, improper maintenance, accident or the negligence of any party other than Fresenius Kabi; (iii) the Product's failure to conform to Fresenius Kabi's Warranty was due in whole or in part to factors or conditions beyond the reasonable control of Fresenius Kabi; (iv) any repairs, alterations or other work has been performed by Customer or others on such Product (other than work performed with Fresenius Kabi's prior written authorization and in accordance with approved procedures). Without limiting the foregoing, Fresenius Kabi's Warranty does not extend to damage to Products or other items resulting in whole or in part from the use of components, accessories, parts or supplies that are not furnished by Fresenius Kabi. EXCEPT AS EXPRESSLY SET FORTH HEREIN, ALL PRODUCTS ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND



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ARE WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING THOSE IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ARE HEREBY EXPRESSLY DISCLAIMED. FRESENIUS KABI'S SOLE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF A WARRANTY SHALL BE, AT FRESENIUS KABI'S OPTION, TO REPAIR OR REPLACE THE PRODUCT, OR TO REFUND THE PURCHASE PRICE BY CREDITING CUSTOMER'S ACCOUNT FOR THE NON-CONFORMING PRODUCT.

16. **Limitation of Liability.** IN NO EVENT SHALL FRESENIUS KABI, ITS AFFILIATES OR SUBSIDIARIES, OR ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS, CONSULTANTS, OR REPRESENTATIVES, BE LIABLE UNDER COMMON LAW, CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, EQUITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY THAT ARE OR INCLUDE ANY (A) ANY PROXIMATE, ACCIDENTAL, SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT OR SIMILAR DAMAGES OF ANY KIND, OR (B) LOST PROFITS, LOST REVENUES, DATA LOSS OR CORRUPTION, LOSS OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY OR THE PROVISION OF PRODUCTS OR SERVICES BY ANY THIRD PARTY. CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS 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 PRODUCT GIVING RISE TO THE CLAIM; OR (ii) FIFTY-THOUSAND DOLLARS (CDN\$50,000). THE FOREGOING SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
17. **Indemnification.** Customer hereby agrees to indemnify, defend, and hold harmless Fresenius Kabi, its affiliates and subsidiaries, and each of its and their respective officers, directors, employees, agents, partners, suppliers, consultants, and representatives (individually and/or collectively, "**Fresenius Kabi Indemnitees**"), from and against any and all third party claims, demands, actions, damages, expenses, costs, claims, judgments and liabilities (including, without limitation, interest, penalties and reasonable legal fees) which may be sustained or incurred by Fresenius Kabi Indemnitees, arising from, in relation to, or as a consequence of (i) any negligent or wrongful act or omission by Customer; (ii) Customer's use or sale of the Products (except to the extent that such suit or demand arises out of the failure of the Products to meet Fresenius Kabi's Warranty); and/or (iii) Customer's improper handling or storage of Product(s). Customer will provide Fresenius Kabi with the opportunity to participate in the defense and settlement of such claim. No settlement of such claim shall be made unless such settlement provides a complete and unconditional release of Fresenius Kabi. Fresenius Kabi has the right to approve counsel or be represented by independent counsel of its own choosing.
18. **Recalls.** Fresenius Kabi shall notify Customer promptly upon the occurrence of a Recall for any Products purchased by Customer directly from Fresenius Kabi. Fresenius Kabi shall be responsible for implementing the Recall and upon Fresenius Kabi's reasonable request, Customer shall fully cooperate to implement the Recall. The Product subject to Recall shall be deemed non-conforming and Fresenius Kabi shall pay or credit to Customer, in addition to any amounts payable pursuant to Section 15, Customer's reasonable, direct, documented out-of-pocket expenses incurred in connection with such Recall, provided such expenses are requested by or preapproved by Fresenius Kabi. Customer agrees that all Product complaints will

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be reported to Fresenius Kabi's Customer Service Department at the following coordinates:

**Email:**

[Canada\\_Product\\_Complaints@fresenius-kabi.com](mailto:Canada_Product_Complaints@fresenius-kabi.com)

**Tel:** 1-877-953-9002 (Toll Free)

19. **Arbitration.** Any and all disputes, claims or controversies ("**Disputes**") arising out of or in relation to an Agreement (including either or both of any Purchase Order or these Terms and Conditions), including without limitation, any dispute as to the existence, validity, performance, breach or termination of the Agreement, shall be resolved in the following manner. A party must first send written notice of the Dispute to the other party for attempted resolution by negotiation between executives who have authority to settle the controversy. Negotiations must be conducted within thirty (30) days after such notice is received. If the parties fail to meet or if the matter has not been resolved within such thirty (30) day period, the parties shall mediate their dispute within forty-five (45) days after the prior thirty (30) day period has expired. If the mediation fails to resolve all Disputes or if the mediation has not been scheduled, either party may initiate arbitration proceedings with respect to the matters submitted to negotiation and mediation, by filing a written demand for arbitration. Disputes shall be settled by final and binding arbitration, pursuant to the provisions of the *Arbitration Act, 1991, S.O. 1991, c. 17* (Ontario), as amended from time to time. The place of arbitration shall be Toronto, Ontario, Canada. A party who wishes to arbitrate shall give written notice of such intention to the other party (a "**Notice of Intention**"). The arbitrator shall be appointed by mutual agreement of the parties or, in default of such agreement, within fourteen (14) days of service of the Notice of Intention each of Customer and Fresenius Kabi shall, within five (5) days of the expiry of the aforesaid fourteen (14) day period, select one arbitrator and notify the other of its selection, with the third arbitrator to be chosen by the first two
- (2) named arbitrators. Notwithstanding the foregoing, to the extent a party is seeking injunctive relief either party may immediately bring a proceeding seeking preliminary injunctive relief in a court having jurisdiction, and this relief shall remain in effect until the parties reach a resolution or so long as the arbitrator(s) feel as appropriate.
20. **Force Majeure.** Fresenius Kabi shall not be held liable for any delay or failure in performance hereunder arising out of any Force Majeure Event. Customer agrees that in such events available Products may be allocated by Fresenius Kabi, in its sole discretion, amongst any of its customers or business partners, without liability of any kind.
21. **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.
22. **Compliance with Laws.** Customer and Fresenius Kabi shall each comply with all federal, provincial and local laws, rules and regulations applicable to its operations and/or its obligations with respect to the purchase and sale of Products hereunder.
23. **Governing Law.** The Agreement between Customer and Fresenius Kabi hereunder shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to its conflicts of laws principles, and the parties consent to exclusive jurisdiction and venue in the courts located in Toronto, Ontario, Canada.