

FENWAL, INC.
A Fresenius Kabi Company
Terms and Conditions

These Terms and Conditions are incorporated by reference and form an integral part of each proposal or agreement between Fenwal, Inc., a Fresenius Kabi Company, and its affiliates ("Fresenius Kabi") and Customer.

1. **ACCEPTANCE.** Fresenius Kabi's acceptance of Customer's purchase order for Fresenius Kabi products ("Products") is subject to these Terms and Conditions ("Terms") and attachments hereto (collectively referred to as "Order"). Any shipment of goods, ordering of supplies or performance of services shall constitute acceptance of these Terms. These Terms and any attachments hereto represent the entire agreement between the parties and no changes are binding unless they are in writing and signed by an authorized representative of Fresenius Kabi. Any references to or attachment of Customer's terms and conditions, or any over stamping on the acknowledgement or invoicing of this Order shall not alter the Terms and shall be expressly objected to by Fresenius Kabi.
2. **OWN USE.** Customer's purchase of Products from Fresenius Kabi under these Terms must be for its "own use" as defined by the United States Supreme Court in the case of Abbott Laboratories, et al., v. Portland Retail Druggist Assoc., Inc., 425 U.S.1 (1976). Fresenius Kabi shall have the right to suspend sales of Products to Customer if Fresenius Kabi suspects a violation of this "own use" provision by Customer.
3. **DELIVERY.** Fresenius Kabi's delivery dates are provided for information purposes only and are non-binding. Fresenius Kabi shall not be liable for late delivery, unless late delivery would be such as to amount to Fresenius Kabi being freed from its obligations to deliver Title to the Products and risk of loss or damage during shipment passes from Fresenius Kabi to Customer ex works Fresenius Kabi's designated location (then current Incoterms). To the extent permitted by law, Fresenius Kabi shall retain a security interest in the Products until Fresenius Kabi receives payment in full. Customer will be responsible for all shipping and related charges. Fresenius Kabi shall not be held accountable for failure or delay of performance under this contract if it is due to force majeure, as described in Section 12, or to any occurrence other than negligence.
4. **DELIVERY COMPLAINTS.** Customer shall immediately take possession of the Products and inspect them upon delivery. In the event of visible defects or nonconforming orders, Customer shall ensure that this is recorded at the time of delivery. No complaints shall be accepted more than seven (7) days after delivery. Fresenius Kabi will be responsible for hidden defects only if Customer has used reasonable due diligence to detect such defect, and Customer has informed Fresenius Kabi of such defect in writing within seven (7) days of detection, Fresenius Kabi's liability in any case shall be limited to the warranty provided in Section 6.
5. **PRODUCT COMPLAINTS; RECALLS.** In the event of a complaint for non-conforming Products Customer shall notify Fresenius Kabi Quality Assurance: (i) via telephone at 1-800-933-6925; (ii) by emailing a performance report form to mdpmqa.usa@fresenius-kabi.com; (iii) faxing a performance report form to 1-888-858-2983; or (iv) submitting an online product performance report at productperformance.FreseniusKabiUSA.com (requires membership). If Fresenius Kabi recalls or withdraws from the market a Product shipped to Customer, Customer shall be reimbursed for any monies paid to purchase the Product returned and for performing recall services specifically requested by Fresenius Kabi in writing.
6. **WARRANTIES AND EXCLUSIVE REMEDY.** Fresenius Kabi warrants that all articles furnished hereunder will be merchantable, free from defects in material and workmanship, and will conform to applicable specifications, drawings or descriptions. FRESENIUS KABI HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO PRODUCTS SOLD, SERVICES PROVIDED BY THIRD PARTIES OR AFFILIATES OF FRESENIUS KABI, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NON-INFRINGEMENT. If any Products are found and reported within one (1) year (for spare parts, within three (3) months) 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 Products manufactured or supplied by others is subject to that manufacturer's or supplier's consent. No 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 this contract in connection with the manufacture, sale, delivery, installation or repair of the Products hereunder, or the technical direction covered by or furnished under this contract 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

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any defective Products that have been identified by Customer. If Fresenius Kabi and Customer are unable to correct a defective or non-conforming 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 Products without Fresenius Kabi's prior written approval, improper use of 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 Product materially and adversely shall void the foregoing warranty.

7. **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. 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) \$50,000.00.
8. **PRICES.** Prices do not include, and Customer is responsible for any applicable sales, use, transaction, excise or other similar taxes, and from any federal, state or local fees or charges (including, but not limited to, environmental or similar fees), imposed on, in respect of, or otherwise associated with an Order. Customer must provide Fresenius Kabi with any exemption documentation at or before the time of purchase.
9. **PAYMENT.** Customer shall pay for the Products (including applicable taxes and other charges) within thirty (30) days from the invoice date. Fresenius Kabi will invoice Customer for Products on the date of shipment. Fresenius Kabi reserves the right to charge Customer interest on all past due invoices, one-point five percent (1.5%) per month or the highest rate allowed by law, whichever is less. In the event of payment default, Customer will be responsible for Fresenius Kabi's reasonable costs of collection, including court costs, filing fees and attorney's fees. Customer may not deduct or offset any disputed amounts from Fresenius Kabi's invoice.
10. **TERMINATION OF ORDERS.** In the event Customer terminates an Order accepted by Fresenius Kabi prior to delivery, Customer shall pay Fresenius Kabi twenty percent (20%) of the Order price to cover Fresenius Kabi's fixed and variable costs incurred. Fresenius Kabi may terminate the Order without cause upon thirty (30) days prior written notice to the Customer. Customer shall pay for all Products ordered prior to the date of termination.
11. **MINIMUM ORDERS.** All Product Orders of less than two hundred fifty dollars (\$250.00) (excluding taxes) shall be subject to a forty-dollar (\$40.00) charge, representing the additional costs of processing, preparing and delivering such Order.
12. **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 fires, strikes, embargoes, shortages or unavailability of supplies or raw materials or components from customary sources at customary prices, acts of God, production or delivery problems, labor problems, acts of government, war, sabotage, acts of Customer's inability to secure transportation, national disasters or discontinuance of a product line.
13. **COMPLIANCE WITH LAWS.** Customer agrees to perform its obligations hereunder in compliance with all applicable laws, rules and regulations. In accordance with applicable law, Customer agrees to report prices paid for Orders (inclusive of any discounts, rebates, and other reductions in price) under any state or federal program that provides cost or charge based reimbursement for Products ordered by Customer.
14. **ASSIGNMENT.** Fresenius Kabi shall have the right to assign its rights and obligations under any agreement that is subject to these Terms to a successor, affiliate, or unrelated third party without the consent of any other party.

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15. **PROPRIETARY DISCLOSURES.** Customer agrees that devices, drawings, data, design, reports and other technical information or any information contained therein, supplied by Fresenius Kabi and relating to this Order are the proprietary property of Fresenius Kabi and such information shall be held in confidence by Customer. Such information shall only be used for the purposes of this Order, and shall not be reproduced, used or disclosed to others without Fresenius Kabi's prior written consent, except as necessary for the performance of this Order. Except with Fresenius Kabi's prior written consent, information which Customer shall have disclosed or may hereafter disclose to Fresenius Kabi in connection with the placement and performance of this Order shall be deemed non-confidential and non-proprietary and Customer agrees not to assert any claims by reason of the use, duplication or disclosure thereof by Fresenius Kabi and/or its successors, assigns or customers. Upon completion of this Order, Customer shall, at Fresenius Kabi's request, either dispose of or return all such devices, drawings, data, design, reports and other technical information, and all copies, which have been made thereof to Fresenius Kabi. Title to and the right of immediate possession of all property furnished by Fresenius Kabi to Customer for use hereunder, including but not restricted to tooling, designs, patterns, drawings and materials, shall be and remain the property of Fresenius Kabi in all stages of production. Such property shall not be used in the production, manufacture or design of any other articles for Customer or for any other purchases or for manufacture or production of larger quantities than those specified herein, except with the express written consent of Fresenius Kabi. All such property supplied by Fresenius Kabi shall be segregated by Customer in Customer's plant and, wherever possible, clearly marked so as to be easily identified as Fresenius Kabi's property. Customer shall be fully responsible for all such property upon delivery to Customer until redelivery thereof to Fresenius Kabi and shall protect, preserve and maintain such property in accordance with sound industrial practices. Customer shall keep an inventory of all such property in its possession which is furnished by Fresenius Kabi or which becomes the property of Fresenius Kabi and shall furnish copies of such inventories to Fresenius Kabi as may be required. At the completion or termination of this Order all such property, together with all excess materials, shall be returned to Fresenius Kabi or disposed of as Fresenius Kabi shall direct. In the event such property is damaged or made unfit for its intended use, except for reasonable wear and tear or for the authorized use of the property in accordance with the provisions of this Order, Fresenius Kabi's cost of replacement thereof is to be paid by Customer.
16. **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.
17. **DISCOUNTS.** The parties acknowledge and agree that for purposes of 42 U.S.C. § 1320a-7b(b)(3)(A) and 42 C.F.R. § 1001.952(h), any reduction in the amount Fresenius Kabi charges Customer for the Products pursuant to this contract will constitute a "discount or other reduction in price" to Customer on those Products. With respect to such discounts or other reductions in price, Customer will comply with the "safe harbor" regulation regarding discounts or other reductions in price set forth at 42 C.F.R § 1001.952(h) and/or the requirements of the discount statutory exception at 42 U.S.C. § 1320a-7b(b)(3)(A), including: (i) fully and accurately reporting the specified dollar value of such discounts or reductions in price on the Products in the applicable cost report submitted to any state or federal program, and (ii) providing to the Secretary of the Department of Health and Human Services or a State agency, upon request, certain information and documentation required to be provided relative to the discounts on the Products. If the value of any discount or reduction in price is unknown at the time of sale, Fresenius Kabi will provide such documentation of the discount when it is known which identifies the items purchased to which it applies.
18. **NOTICE.** All notices to Fresenius Kabi must be sent via registered mail to: Fresenius Kabi, Inc., Attention General Counsel, Three Corporate Drive, Lake Zurich, Illinois 60047.
19. **JURISDICTION.** All agreements subject to these Terms 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.