

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.
- 2. OWN USE.** Customer’s purchases of products from Fresenius Kabi (the “Products”) under this Terms and Conditions Policy (this “Policy”) 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 Association, 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. SHIPPING.** Orders will be shipped FOB Point of Destination with freight and insurance prepaid. Orders will be shipped by carrier selected by Fresenius Kabi.
- 4. 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.
- 5. 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.
- 6. 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 THIS POLICY, 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.
- 7. 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. If Fresenius Kabi agrees with such breach of warranty claim, then Fresenius Kabi’s sole liability shall be limited to credit for or replacement of the Product affected by such breach of warranty claims.
- 8. TERMS.** List prices, delivery terms, terms of payment, returned goods policies, and other terms and policies may be changed by Fresenius Kabi at any time without notice. No changes to this Policy, 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.

9. **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 and other terms directly with such wholesalers or distributors. Sections 1 and 3 through 5 shall not apply to the purchase of Products through wholesalers or distributors.
10. **EXCLUDED CUSTOMERS.** This Policy does not apply to the purchase of Fresenius Kabi's Products by wholesalers, distributors, manufacturers, veterinarians, retailers, U.S. government (including without limitation the Department of Veterans Affairs), medical surgical suppliers, exporters and purchasers outside the United States (including Alaska, Hawaii, and Washington, D.C.).
11. **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, inability to secure transportation, national disasters or discontinuance of a product line.
12. **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 the Products (inclusive of any discounts, rebates, and other reductions in price) under any state or federal program that provides cost or charge based reimbursement for the Products.
13. **ASSIGNMENT.** Fresenius Kabi shall have the right to assign its rights and obligations under any agreement that is subject to this Policy to a successor, affiliate, or unrelated third party without the consent of any other party.

05/01/2018