

SCA Pharmaceuticals LLC - GENERAL TERMS AND CONDITIONS OF SALE

1. APPLICABILITY

These terms and conditions of sale (these "Terms"), any Sales Documents accompanying or referencing these Terms, and supplemental terms, if any, comprise the entire agreement (the "Agreement") between SCA Pharmaceuticals LLC (the "Seller") and the Purchaser with respect to the purchase and sale of products ("Products") indicated on Sales Documents. "Products" means all compounded pharmaceutical products listed for sale by SCA Pharmaceuticals, LLC. "Sales Documents" means any document, print or digital, provided by Seller in the purchase and sale process, including but not limited to quotations, invoices, documents confirming, acknowledging or accepting an order ("Order Confirmation") and shipping documents.

If the parties have signed a contract applicable to the sale of certain Products, the terms of such contract shall prevail to the extent they are inconsistent with these Terms.

These Terms prevail over any Purchaser's terms regardless of when such terms are provided. Fulfillment of Purchaser's order does not constitute acceptance of any of Purchaser's terms and does not serve to modify or amend these Terms.

The Agreement between Seller and Purchaser is created when Seller confirms, acknowledges or begins to fulfill Purchaser's order. Purchaser may not modify or cancel the Agreement without Seller's express written consent. Modification or cancellation may require payment by Purchaser of certain costs incurred by Seller.

2. DELIVERY & INSPECTION

Delivery terms shall be F.O.B. Destination. Unless otherwise agreed in writing, Products are shipped using Seller's standard packaging and shipping methods, for which fees may apply. Incremental costs of emergency shipments, expedited shipments and shipments of Products requiring refrigeration, if any, may be invoiced by the Seller to the Purchaser.

Seller may, in its sole discretion, make partial shipments of Products and invoice immediately, therefore. Purchaser shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Purchaser's order.

Seller may, in its sole discretion, without liability or penalty, cancel any individual delivery to Purchaser that it has accepted if Seller determines that Customer is in violation of its payment obligations or is in material breach of this Agreement.

Upon inspection within seven (7) days from receipt, Purchaser may reject Products that (i) are found not to comply with Purchaser's purchase order, including quantities; (ii) in any way fail to comply with the warranties provided under this Agreement or with applicable law; or (iii) are damaged in shipment. Purchaser must hold any Product rejected for reasons described in this Agreement pending Seller's authorization and instructions for return. Purchaser must specify the reason for the return, (i.e. shipping damages, shipping errors (wrong order quantity or incorrect product supplied). Purchaser shall not return Products without Seller's prior written consent.

3. PRICING & PAYMENT

Prices are firm and are set forth within the Sales Documents. Seller shall invoice Purchaser subsequent to delivery, and Purchaser shall pay all invoiced amounts within thirty (30) days from date of invoice to the bank account specified by the Seller.

Purchaser shall notify Seller in writing of any dispute with any invoice (along with substantiating documentation) within ten (10) days from the date of Customer's receipt of such invoice. Purchaser will be deemed to have accepted all invoices for which Seller does not receive timely notification of disputes and shall pay all undisputed amounts due under such invoices within thirty (30) days from date of invoice. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Purchaser shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, Purchaser's obligation to pay all due and undisputed invoice amounts.

Purchaser shall not, and acknowledges that it will have no right, under this Agreement, any Purchase Order, any other agreement, or document, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller.

Each Party will be responsible for any taxes on property it owns or leases, for any franchise or privilege tax on its business, and for any tax based on its income. All fees due under this Agreement do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value added, use or withholding taxes (collectively, "Taxes"). If Seller is required to pay or collect any Taxes based on the Products provided under this Agreement (excluding Taxes based on Seller's net income or property), then such Taxes will be invoiced to and paid by Purchaser pursuant to the terms herein, unless Purchaser furnishes Seller with a valid tax exempt certificate.

4. REPRESENTATIONS & WARRANTIES

Seller represents and warrants to Purchaser that the Products when received by Purchaser:

4.1 Have been manufactured and packaged by the Seller in compliance with all applicable laws, rules and regulations, including the applicable sections of Title 21 of the Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.) and regulations thereto, and have met all applicable United States Pharmacopeia standards;

4.2 Are compounded using bulk drug substances, as defined by 21 C.F.R. § 201.3(a)(4), only if (i) the bulk drug substance appears on a list established by the Food and Drug Administration ("FDA"), or the drug compounded from bulk drug substance appears on the drug shortage list established under 21 U.S.C. § 356e; (ii) where an applicable monograph exists under the USP or National Formulary monograph, or another compendium or pharmacopeia recognized by the FDA, the bulk drug substances comply with the monograph; (iii) the drug substance is manufactured in an establishment that is registered under 21 U.S.C. § 360; (iv) and the bulk drug substance is accompanied by a valid certificate of analysis;

4.3 Are genuine, authentic and contain the stated compounds;

4.4 Are not defective, adulterated, contaminated, or misbranded as set forth in or under applicable state or federal law, and any applicable pharmacy law, rule, or regulation;

4.5 Are not identified by the FDA as a drug product that presents demonstrable difficulties for compounding;

4.6 Are not included on a list published by the FDA of drug products that have been removed or withdrawn from the market because such drug products or components of such drug products have been found to be unsafe;

4.7 Conforms with statements in Seller's Product inserts, advertising literature, user documentation, specifications, and written warranties for the Products;

4.8 Conforms to the packaging and labeling requirements of all applicable federal, state, and local laws and regulations and ordinances, all applicable pharmacy standards, USP <795> and <797> standards, requirements imposed by the Joint Commission, Medicare/Medicaid conditions of participation, and any amendments thereto, as applicable;

4.9 To the extent applicable, all packaging and barcoding conforms to all requirements imposed on Purchaser by the Joint Commission, Medicare/Medicaid conditions of participation, and any amendments thereto, as applicable; and

4.10 Shall be (i) marked with an industry standard barcode for each unit of measure associated with such Product, (ii) such barcode meets an overall Symbol Grade of "C" as specified in the ANSI X3.182-1990 Barcode Print Quality Guideline, and (iii) all barcoding meets the then applicable requirements of the Drug Supply Chain Security Act (21 U.S.C. § 355 et seq.).

5. RECALLS

Seller will promptly notify Purchaser upon becoming aware of any patient safety issue involving the Products. If any Product or any of its components is subject to recall as that term is defined under 21 C.F.R. Part 7, or a voluntary recall by Seller, or is subject to an FDA-initiated court action (any of the foregoing being referred to as a "Recall"), Seller shall notify Purchaser after becoming aware of any Recall or after Seller provides notice of the Recall to the FDA.

6. INDEMNIFICATION

Purchaser assumes all risk and liability for loss, damage or injury to persons or to property of Purchaser or others arising out of the transport, storage or use of Products. Purchaser shall indemnify and hold Seller, its affiliates, and their respective agents, employees, and representatives, harmless from and against all claims, damages, losses, costs and expenses (including attorney's fees) (i) arising from or in connection with the transport, storage, sale or use of Products, (ii) resulting from Purchaser's breach of the Agreement, and/or (iii) arising from the negligence, recklessness or misconduct of Purchaser, its affiliates, or their respective agents, employees, partners or subcontractors.

Except as otherwise expressly provided herein, Seller shall not indemnify nor be liable to Purchaser or any person or entity for any claim, damage or loss arising out of the Products, including the sale, transport, storage, failure, use or distribution thereof including but not limited to warranty, negligence or strict liability. In addition, Seller shall not be liable for incidental, consequential, indirect, exemplary or special damages of any kind, including, without limitation, liability for loss of use, loss of work in progress, loss of revenue or profits, cost of substitute equipment, facilities or services, downtime costs, or any liability of Purchaser to a third party. The total liability of Seller hereunder shall not exceed the purchase price of Products. Without limiting the provisions regarding and limiting warranty claims hereunder, all claims must be brought within one (1) year of delivery of Products, regardless of their nature.

7. LIMITATION OF LIABILITY

NEITHER PARTY NOR ITS REPRESENTATIVES IS LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE; (ii) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

EXCEPT FOR PURCHASER'S OBLIGATIONS TO MAKE PAYMENTS UNDER THIS AGREEMENT, A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER PURSUANT TO THIS AGREEMENT IN THE TWELVE (12)-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

8. PUBLICITY AND USE OF NAME

Purchaser shall not, without the prior written consent of Seller, (i) refer to Seller, its affiliates, Products in any marketing, promotion or other publicity material, whether written or in electronic form, or (ii) use proprietary brand names, trademarks, trade names, logos and other intellectual property owned by Seller or one of its affiliates.

9. CONFIDENTIALITY

In connection with this Agreement, a Party (as the "Disclosing Party") may disclose or make available Confidential Information to the other Party (as the "Receiving Party"). "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential".

The Parties agree that Confidential Information will be kept confidential by the Receiving Party and will not be disclosed to any other party, provided, however, that any of such information may be disclosed to the officers, directors, members, partners, employees and agents of the Receiving Party, and to the officers, directors, members, partners, employees and agents of any corporation affiliated with such party (collectively, "Representatives") of Receiving Party who need to know such information in connection with Receiving Party's use and/or disclosure of the Confidential Information pursuant to this Agreement. Receiving Party will be liable for any unauthorized use and/or disclosure of the Confidential Information by their Representatives. Receiving Party's obligations of confidentiality will not apply to any of the following: (i) information that was in the public domain or available to the public at the time of such disclosure, or thereafter became public knowledge, other than as a result of acts attributable to the Receiving Party in violation of this Agreement; (ii) information provided to the Receiving Party from third parties without any non-disclosure obligation to Disclosing Party; (iii) information independently developed by Receiving Party without access to or use of the Confidential Information of the Disclosing Party; or (iv) is explicitly identified by Disclosing Party as not being Confidential. The Receiving Party shall promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information.

If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights; and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

10. ASSIGNMENT

Notwithstanding any contrary provision in the Agreement, neither Party may assign the Agreement nor delegate its obligations hereunder, in whole or in part except with the prior written consent of the other Party; provided, however, that the Seller may assign the Agreement or delegate its obligations hereunder at any time to any successor of Seller or to any entity which controls, is controlled by or is under common control with Seller.

11. GOVERNING LAW

This Agreement is deemed to have been executed in and shall be governed by and construed according to the internal laws of the State of Arkansas without regard to its conflicts of laws and principles. Each Party agrees to submit to the jurisdiction of the Courts of Arkansas for purposes of resolving any dispute. If particular portions of this Agreement are ruled unenforceable, such portions shall be deleted, and all other terms and conditions of this Agreement shall remain in full force and effect.

12. NO THIRD PARTY BENEFICIARIES

This Agreement has been made and is made solely for the benefit of the Parties hereto and their respective successors and permitted assigns. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties to it and their respective successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement.

13. WAIVER

A Party's failure to exercise or delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver of such right, power, or privilege; nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise thereof.

14. RELATIONSHIP OF PARTIES

Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties. Seller is an independent contractor pursuant to this Agreement. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

15. SURVIVAL

Except as otherwise expressly provided in this Agreement, all covenants, agreements, representations and warranties, express and implied, shall survive the execution of this Agreement, and shall remain in effect and binding upon the Parties until they have fulfilled all of their obligations hereunder and the statute of limitations shall not commence to run until the time such obligations have been fulfilled.