

PharmaJet, Inc.

Terms and Conditions of Sale

The terms and conditions contained herein (these “Terms”) apply to all sales of products by PharmaJet, Inc. (“PharmaJet”) to the purchaser thereof (“Customer”) and shall govern irrespective of whether Customer accepts these Terms by a written acknowledgment, by implication, or by acceptance of, or payment for, products ordered. Any term, condition, or other provision (including any prior or subsequent understanding, agreement, or trade custom) that is different from, inconsistent with or in addition to these Terms, whether in a purchase order, receipt, acceptance, confirmation, correspondence or otherwise shall not apply to sales and purchases of products and are hereby rejected. If any or all of these Terms are unacceptable to Customer, Customer shall not accept or use any of the products and promptly return any products purchased in the original shipping package material.

1. Orders

Orders of standard products can be placed by phone (to (410) 209-2389 within the U.S or +1-303-526-4278 for international orders), e-mail (to sales@pharmajet.com) or facsimile (to (410) 209-4566 within the U.S. or +1-303-526-4278 for international orders). All orders placed by Customer for products are subject to acceptance by PharmaJet in writing, by electronic record delivered to Customer or by product delivery and are conditional on Customer’s unqualified assent to these Terms. PharmaJet may ship less than all products ordered, which shipment shall constitute acceptance of the order only as to those products shipped. Verbal orders for standard products will not be accepted without accompanying payment information or valid purchase order numbers, and must be followed by written order documentation supporting the same order products and quantities. Orders for custom products or of custom nature will only be made in a writing signed by authorized representatives of both parties.

2. Pricing and Payment Terms

Unless the parties specifically agree otherwise in a writing signed by both parties, the purchase prices for the products will be as specified in PharmaJet’s standard price list in effect on the delivery date. All listed prices are exclusive of shipping and insurance costs, taxes and duties. List prices in effect for PharmaJet’s products can be found in PharmaJet’s then-current Product Catalogue or by contacting Customer Service (at (410) 209-2389 within the U.S or +1-303-526-4278 for international inquiries). PharmaJet reserves the right to modify prices at any time without prior notice. Unless otherwise stated in writing by PharmaJet, custom product pricing quoted to Customer is quoted specifically on a per order basis.

Customer shall pay all invoices in full within thirty (30) days of the invoice date. All payments will be made in U.S. dollars. In addition to the purchase prices quoted or invoiced, Customer will be responsible for, and will pay or reimburse PharmaJet for, all shipping and handling charges pertaining to the order (as quoted by PharmaJet or specified in PharmaJet’s price list) and all taxes, fees, duties, tariffs or charges of any nature imposed by any governmental authority on the transaction between Customer and PharmaJet. All amounts past due will incur interest of 1.5% on a per month basis or the maximum allowed according to local law. PharmaJet reserves the right to withhold or delay shipment of any order if Customer is late in payment or is otherwise in default under these Terms.

3. Cancellations or Changes

Customer may not cancel, revise or reschedule any existing order (or portion thereof) without a written understanding with PharmaJet, in which case cancellation or rescheduling charges may apply. Additions to existing orders may be made through Customer Service, but will appear as separate orders and may be subject to additional shipping and handling charges.

4. Delivery and Shipping

All products will be packaged and shipped in the manner PharmaJet deems appropriate to ensure the safety of the products. PharmaJet will use commercially reasonable efforts to meet any delivery dates scheduled or

acknowledged, but will not be liable for any failure to meet such dates. PharmaJet will deliver all products Ex Works (Incoterms 2000) point of origin. Risk of loss or damage and title to the products will pass to Customer immediately upon delivery to the carrier. Title shall not pass to Customer as to any intellectual property rights of PharmaJet. PharmaJet reserves the right to ship product(s) in partial installments against a purchase order due to product availability issues or any other reason, and the customer may not cancel an order due to partial shipment status of product(s). PharmaJet will ship the products via its approved carriers. PharmaJet assumes no risk and is not liable for any failure to perform or delay in performing under these Terms, which is due to circumstances beyond its reasonable control, including, without limitation, governmental regulations, accidents, labor disputes, weather delays, earthquakes, fire, flood and other acts of nature. In the event that PharmaJet's ability to supply products or services becomes constraint, for any reason whatsoever, PharmaJet may reduce quantities, delay shipments or performance, or allocate products or services among its customers at its sole discretion.

5. Order Receipt and Acceptance

Customer shall inspect each shipment of products immediately upon arrival for completeness, accuracy and/or damage that is reasonably discoverable upon arrival. Customer shall report any issues with any shipment to PharmaJet immediately by phone with follow-up written confirmation of same within five (5) business days and shall adhere to the Returned Goods Policy set forth herein. Failure to notify PharmaJet in writing of any issue with an order within five (5) business days after receipt of the products will be deemed an unqualified acceptance by Customer of such order.

6. Storage of Products

Customer should follow the instructions provided with the shipment regarding unpacking of the shipment and transferring the product to permanent storage. Customer must store the products in accordance with the product information contained within each shipment. Exposing such products to improper temperatures, shock or other adverse storage factors and conditions not in accordance with proper and recommended conditions may damage the products.

7. Product Use Limitations; Labelling

All product sales from PharmaJet are for use by Customer and Customer shall not resell, redistribute or transfer the products to third parties. Customer will only allow qualified, licensed medical personnel who have been trained by PharmaJet (or PharmaJet-approved personnel) to use the products. Customer will implement, follow and adhere to all procedures, instructions and guidelines made available to Customer by PharmaJet relating to use of the products and shall otherwise use the products in compliance with all applicable laws and regulations and only as directed by a physician.

All products sold hereunder are FDA-cleared and labelled for use in their medically appropriate applications. Customer must carefully read all associated product labelling as to product safety and related warnings. Information on product characterization and safety can be found in the Material Safety Data Sheet (MSDS) associated with that product. MSDS sheets can be obtained by calling Customer Service.

If Customer has any questions regarding proper storage or use of products, Customer shall immediately contact PharmaJet's Customer Service (at (410) 209-2389 within the U.S. or +1-303-526-4278 for international inquiries) or Technical Support (at (888) 901-0009).

8. Returned Goods Policy

All returned goods shipments must be authorized through Customer Service prior to receipt at PharmaJet and PharmaJet Customer Service will issue a returned material authorization (RMA) number for all returns to any PharmaJet site. No return shipment will be accepted without an RMA number clearly marked on the outside of the shipping container. Customer shall ship the products back to PharmaJet, DDP (Incoterms 2000) PharmaJet's designated facility, at Customer's expense. Please contact (410) 209-2389 for U.S. orders and +1-303-526-4278 for international orders. All returned products are subject to re-test to determine if product is defective. If the product is found to be defective, it will be replaced or repaired (and shipped to Customer) at PharmaJet's discretion and at no

charge to Customer. If the returned product is found not to be defective, Customer will be charged a restocking fee of \$50 or 20% of the product purchase price, whichever value is greater, plus a reasonable cost of the product testing.

9. Limited Warranty; Disclaimer

PharmaJet warrants to Customer that for a period of one (1) year after delivery, the products will be free from defects caused by faulty materials or poor workmanship. Descriptions or specifications appearing in PharmaJet's literature, website or other materials are meant to generally describe the products and do not constitute any express warranties. This warranty does not apply to product defects due to (a) improper storage or alteration, (b) the consequences of uses not in compliance with PharmaJet's instructions or applicable regulatory requirements, or for which the product was not designed, or (c) accident or unusual physical stress. In the event of a breach of this limited warranty, Customer shall notify PharmaJet in writing by describing the nature of the defect, and return such products to PharmaJet within the warranty period in accordance with the Returned Goods Policy set forth herein. PharmaJet's liability and Customer's sole remedy under this warranty are limited to the obligation to repair or replace (at PharmaJet's option) without charge any product found by PharmaJet to be defective. Repaired or replacement products or parts provided under warranty are warranted for the remainder of the original Warranty Period or ninety (90) days from the date of delivery, whichever ends later.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY STATED IN THESE TERMS, PHARMAJET DOES NOT MAKE AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THE PRODUCTS AND ANY OTHER GOODS OR SERVICES DELIVERED UNDER THESE TERMS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR ANY OTHER WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

PHARMAJET DOES NOT MAKE AND HEREBY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES AS TO COMPLIANCE OF THE PRODUCTS WITH, OR THE APPLICABILITY TO PRODUCTS OF, LAWS OR REGULATIONS OF ANY COUNTRY OTHER THAN THE UNITED STATES OF AMERICA. CUSTOMER ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR DETERMINING WHETHER ANY ACTIONS, PERMITS, APPROVALS OR CONSENTS ARE NECESSARY TO ASSURE COMPLIANCE OF THE PRODUCTS WITH ALL APPLICABLE LAWS, REGULATIONS AND OTHER REQUIREMENTS OF CUSTOMER'S COUNTRY RELATING TO THE IMPORTATION, USE, OR ANY OTHER ASPECT OF THE PRODUCTS' ENTRY INTO OR USE WITHIN SUCH COUNTRY.

10. Limitation of Liability

EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL (A) PHARMAJET HAVE ANY OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE, OR IMPUTED NEGLIGENCE, STRICT LIABILITY, OR PRODUCT LIABILITY, BUT EXCLUDING WILLFUL MISCONDUCT) OR OTHERWISE, FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR LOSS OF USE, LOSS OF REVENUE, LOSS OF BUSINESS, LOST PROFIT, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCT OR OTHER GOODS OR SERVICES FURNISHED UNDER THESE TERMS OR ANY OTHER AGREEMENT SIGNED BY THE PARTIES, REGARDLESS OF WHETHER OR NOT PHARMAJET WAS AWARE OF THE POSSIBILITY OF THE SAME; AND (B) PHARMAJET'S AGGREGATE LIABILITY IN CONNECTION WITH THESE TERMS OR PRODUCTS EXCEED THE TOTAL AMOUNTS ACTUALLY RECEIVED BY PHARMAJET FROM CUSTOMER HEREUNDER. CUSTOMER ACKNOWLEDGES THAT PHARMAJET HAS SET ITS PRICES AND AGREED TO SELL PRODUCTS TO CUSTOMER IN RELIANCE UPON THE LIMITATIONS OF LIABILITY, DISCLAIMER OF WARRANTIES, EXCLUSION OF DAMAGES AND EXCLUSIVE REMEDIES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH PHARMAJET WOULD NOT HAVE AGREED TO SELL PRODUCTS TO CUSTOMER. CUSTOMER AGREES THAT SUCH PROVISIONS SHALL SURVIVE AND APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

11. Indemnification

Customer assumes all risks associated with use of the products and Customer agrees to indemnify, defend and hold harmless PharmaJet and its affiliates, employees, agents, directors and officers against any and all third-party claims

and liabilities arising from or relating to product use, except to the extent such claims or liabilities are based on alleged infringement of valid U.S. patents by the PharmaJet products when used in strict accordance with PharmaJet's product instructions and the terms hereof.

12. General

Notices. Unless otherwise stated herein, all notices required or permitted by these Terms shall be in writing and shall be delivered to the other party: (i) in person; (ii) by certified or registered mail, return receipt requested, postage prepaid; or (iii) by a reputable international courier with tracking capabilities, postage prepaid. Such notices shall be delivered to the addresses set forth by each party in these Terms or to such other address as either party may designate in writing pursuant to this clause.

No Waiver; Amendments; Severability. The failure of PharmaJet to enforce at any time or for any period of time any of the provisions of these Terms shall not constitute a waiver of such provisions. No amendment, modification, or waiver of this Agreement will be valid unless set forth in a written instrument signed by both parties. In the event any one or more of the provisions contained in these Terms is deemed illegal or unenforceable, such provision (a) shall be automatically construed and adjusted in a manner which enables it to be valid and enforced to the extent permitted by applicable law and which most nearly effects the parties' intent in entering into these Terms, and (b) shall not affect the validity and enforceability of any other provision of these Terms.

Assignment. Customer may not assign (directly or indirectly, by operation of law or otherwise) or delegate these Terms or its rights or obligations under these Terms without written consent of PharmaJet. Any attempted assignment without such consent shall be void. PharmaJet may freely assign and delegate these Terms and these Terms shall bind and inure to the benefit of PharmaJet's successors and assigns, including without limitation, any entity into which PharmaJet shall merge or consolidate.

Governing Law. This Agreement shall be governed by the laws of the State of California without regard to conflict of law rules. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement or to any of the transactions contemplated hereby. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction and venue of the state courts within San Francisco, California and the federal courts of the Northern District of the State of California, and each party hereby consents to personal jurisdiction in such forum, for any actions, suits or proceedings arising out of or relating to these Terms (and agrees not to commence any action, suit or proceeding relating thereto except in such courts). Notwithstanding the foregoing, nothing in these Terms will prevent PharmaJet from pursuing an injunctive relief or filing any action to recover amounts owed to PharmaJet by Customer in any court having jurisdiction over Customer.

Entire Agreement. These Terms constitute the entire agreement between Customer and PharmaJet and supersedes any other prior, contemporaneous or subsequent oral or written agreements, understandings or communications relating to the subject matter hereof. Notwithstanding the foregoing, in the event PharmaJet and Customer enter into a written supply or purchase agreement signed by authorized representatives of both parties, the terms of such agreement shall prevail in the event of any inconsistency or conflict with these Terms.